Docket No. FD 35915

BEFORE THE
SURFACE TRANSPORTATION BOARD

TRI-CITY RAILROAD COMPANY, LLC, a Washington limited liability company,

Petitioner,

v.

THE CITY OF KENNEWICK, of the State of Washington, located in Benton County, Washington; THE CITY OF RICHLAND, of the State of Washington, located in Benton County, Washington,

Respondents.

REPLY BRIEF OF THE CITY OF KENNEWICK AND THE CITY OF RICHLAND

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GLOSSARY

ALJ:	Administrative Law Judge
BNSF:	Burlington Northern Santa Fe Railroad Company
Cities:	The City of Richland and City of Kennewick
CP	Court of Appeals Clerk's Papers, numbered 0-000000001-2209, which contains the full record in UTC Docket TR-130499, as certified at CP 0-000000069-73.
Crossing:	The Center Parkway extension between Kennewick and Richland, to Tapteal Drive in Richland
ICCTA	Interstate Commerce Commission Termination Act, 49 U.S.C. 10101, *et. seq.*
Kennewick:	The City of Kennewick
Petitioner:	TCRY
RCW	Revised Code of Washington
Richland:	The City of Richland
Richland Junction	The commencement of the Port of Benton rail line (extension from UPRR) to Hanford
STB	Surface Transportation Board
TCRY:	Tri-City Railroad Company, LLC
UPRR:	Union Pacific Railroad Company
UTC (or Commission):	The Washington Utilities and Transportation Commission

UTC Order 03:	Order 03, Final Order Granting Petition For Administrative Review, UTC Docket TR-130499 (May 29, 2014) at CP 0-000000629-647.
UTC Order 04:	Order 04, Order Denying Petition For Reconsideration, Petition For Stay, and Petition For Rehearing, UTC Docket TR-130499 (June 24, 2014) at CP 0-000000702-712.

1. INTRODUCTION

The extension of Center Parkway fits squarely within the STB's well-recognized exemption from federal jurisdiction for routine crossings under 49 U.S.C. §10501(b). Consistent with the STB's seminal *Maumee* decision, there is no preemption in this case because the Center Parkway Crossing will not unreasonably interfere with railroad operations or pose undue safety risks.[1] 49 U.S.C. §10906 does not alter the jurisdictional analysis for the Cities' condemnation action to acquire a public street right-of-way over the lessee's interest in the siding track.

The at-grade Crossing is part of a regionally important project that extends a public street, Center Parkway, between the City of Kennewick and the City of Richland in Benton County, Washington. The Crossing will cross the tracks and siding owned by the Port of Benton, not TCRY. The tracks are used by three railroads: BNSF, UPRR, and the Petitioner, Tri-City Railroad Company, LLC. TCRY, a Class III railroad and lessee of the Port of Benton tracks, is the **only** railroad that opposes the Crossing. After years of local and regional planning, and extensive hearings and review, the Crossing received unanimous approval from the Washington

[1] *Maumee & Western Railroad Corp. and RMW Ventures, LLC*, Petition for Declaratory Order, STB Finance Docket No. 34354, 2004 WL 395835 (S.T.B.) (March 3, 2004).

Utilities and Transportation Commission, which has regulatory authority over railroad companies operating in Washington State.

The Crossing will not unreasonably interfere with railroad operations, including switching and rail car storage operations. The Crossing was designed by Susan Grabler and Kevin Jeffers, railroad professionals with over 59 years' of railroad experience. Ms. Grabler and Mr. Jeffers designed the Crossing to **always** restrict vehicular traffic when a train occupies the track within the limits of the Crossing, which may average approximately three to five trains per day. Moreover, expert testimony confirms that the Crossing will not adversely impact TCRY train operations because of the Crossing's safety features and geometry. TCRY's assertions about rail usage data and projections are wholly unsupported by facts. And they are irrelevant because of the railway right-of-way. When the Crossing gates are down, there is simply no interference with railroad operations or interstate commerce.

The Crossing will not pose undue safety risks, including safety risk to rail crews or members of the public. It is a well-designed routine crossing that **exceeds** typical engineering safety standards for such an intersection. In addition, the Crossing will reduce traffic congestion, increase access by emergency responders, and promote economic

development. State, regional and local planning and transportation agencies, and public comment, all support the project.

TCRY chose not to participate in the Cities' extensive planning process for the Crossing. TCRY also ignored the UTC's diagnostic meeting to analyze Crossing options and safety measures. Instead, TCRY has repeatedly litigated this Crossing, and the Cities have prevailed in every forum. Thus, the STB may rely upon the extensive record that TCRY has created before the UTC, the Benton County Superior Court, and the Washington State Court of Appeals. Supported by this record, the Cities' respectfully request that the STB not invoke jurisdiction over this routine crossing and deny TCRY's Petition for Declaratory Order.

2. EVIDENCE RELIED UPON BY CITIES.

The Cities' Reply is supported by the following materials and verified statements. The witnesses have experience and knowledge directly related to the issues in this proceeding. The Cities submit:

2.1. The record from the Court of Appeals, Division III, of the State of Washington, which includes the complete UTC record, hearing testimony and the UTC certification of authenticity. The Court of Appeals record is sequentially numbered 0-000000001— 0-000002208.

References to this record, the Clerk's Papers, will be in the form "CP_____".[2]

2.2. Affidavit and Verified Statement of **Pete Rogalsky, P.E.,** City of Richland Public Works Director ("Rogalsky VS"), with four exhibits. Mr. Rogalsky has been the City's Public Works Director for over 10 years, and has been a licensed professional engineer for over 20 years. Mr. Rogalsky has knowledge regarding the foundation and background of the Crossing, actual track usage, and the City of Richland's field study and supporting materials.

2.3. Affidavit and Verified Statement of **Susan K. Grabler** ("Grabler VS"). Ms. Grabler has 42 years' experience in railroad engineering, including 34 years' experience working for Union Pacific Railroad, a Class 1 railroad. Ms. Grabler provides knowledge and expert testimony regarding the Crossing, the City of Richland's field study, track and siding usage, Crossing safety, and the Crossing's lack of interference with commerce or the movement of freight.

2.4. Affidavit and Verified Statement of **Kevin Jeffers, P.E.** ("Jeffers VS"). Mr. Jeffers is a licensed professional engineer in the states

[2] The Clerk's Papers have two sets of numbers on the lower right hand corner of each page. For clarity, the Cities' Reply Brief cites to the CP numbers, which begin with the prefix "0-00000...." The second set of bold numbers reflects prior numbering by the UTC.

of Washington, Oregon, and Idaho, with over 20 years of experience. Mr. Jeffers provides knowledge and expert testimony regarding the Crossing, switching at Richland Junction, track and siding usage, and the Crossing's lack of interference with railroad operations.

2.5. Affidavit and Verified Statement of **P. Stephen DiJulio** ("DiJulio VS"), with one exhibit. Mr. DiJulio is counsel of record for the Cities and participated in the prior proceedings regarding the Crossing.

2.6. Affidavit and Verified Statement of **Stephanie G. Weir** ("Weir VS"), with one exhibit containing excerpts or record. Ms. Weir is counsel of record for the Cities.

3. THE CITIES DENY TCRY'S FACTUAL ALLEGATIONS

The Cities deny all factual allegations contained in TCRY's Petition, unless otherwise specifically admitted herein. The Cities specifically deny TCRY's contentions that the Crossing poses undue safety risks or unreasonably interferes with railroad operations or interstate commerce, and that the Cities lack the authority to take the actions at issue regarding the Crossing.

The Cities specifically deny TCRY's characterization of the siding as a passing track. The Cities specifically deny TCRY's unsupported rail usage data and projections referenced in TCRY's petition and affidavits, and the speculative and unsupported assertions contained in the Miller and

Peterson affidavits. Mr. Miller's affidavit regarding the City of Richland's rail usage projection is misleading, at best.[3] The City of Richland projected an increase of 30 rail cars each week (1,560 annual total) based upon changes in operations and the construction of a new rail loop by the City of Richland.[4] The Cities offer responsive rebuttal testimony by Mr. Rogalsky, Ms. Grabler and Ms. Jeffers as well as the record in the prior proceedings, as summarized below.

4. STANDARD OF REVIEW

TCRY bears the burden of proof in this action. The burden of proof, by statute, is on "the petitioner seeking a declaratory order from an administrative agency." *City of Lincoln v. Surface Transportation Board*, 414 F.3d 858, 862 (8th Cir. 2005) (citing 5 U.S.C. §556(d)). As explained below, TCRY is both legally and factually incorrect in its assertions and cannot meet this burden.

5. FACTUAL AND PROCEDURAL BACKGROUND

5.1 <u>The Port of Benton Owns the Tracks, Not TCRY.</u>

This matter involves a branch rail line track and a siding track at the Richland Junction, situated in Benton County, Washington. The Port

[3] *See* Rogalsky VS, ¶¶ 14-16. For example, in contrast to Mr. Miller's assertion in ¶ 14 of his affidavit, the City of Richland has never projected as many as 12,500 cars inbound and 12,500 cars outbound.

[4] CP 0-000001298:16-1299:17; CP 0-000001326:6-14 (Testimony of Gary Ballew, Economic Development Manager for the City of Richland).

of Benton owns both tracks at Richland Junction, and TCRY is a lessee of the tracks.[5] The federal government, acting through the U.S. Atomic Energy Commission, constructed the tracks to serve the Hanford Nuclear Reservation (a branch from the end of a UPRR branch). In 1998 the Port of Benton acquired the tracks through an Indenture from the federal government.[6] BNSF, UPRR, and TCRY operate trains on the Port of Benton-owned tracks.[7]

This history of the tracks and TCRY's rights to the tracks are identified in an Order from the U.S. District Court – Eastern District of Washington.[8] The matter before the Eastern District arose in 2009 when TCRY erected a barrier which physically prevented BNSF trains from reaching BNSF customers along the trackage.[9] Before the District Court, TCRY argued that it had the right to restrict commerce on the same tracks that it now argues must be protected for interstate commerce.[10] The

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[5] CP 0-000000632 (UTC Order 03, ¶ 10); CP 0-000000235-253 (The Port of Benton and TCRY lease)

[6] *BNSF Railway Co v. Tri-City and Olympia R.R.*, United States District Court, Eastern District of Washington, No. CV-09-5062-EFS (February 14, 2012), Amended Order Granting BNSF's Motion for Summary Judgment, Denying TCRY's Motion for Summary Judgment, and Denying All Other Pending Motions As Moot, at p. *5, attached as Exhibit 1 to DiJulio VS (the "Federal Court Order").

[7] CP 632 (UTC Order 03).

[8] Federal Court Order, p. *2-3 (DiJulio VS, Ex. 1).

[9] Federal Court Order, p. *7:16-19 (DiJulio VS, Ex. 1).

[10] Federal Court Order, p. *11:15-12:13; *15-16 (DiJulio VS, Ex. 1).

District Court held that TCRY was in breach of track usage agreements,[11] and found that TCRY misstated case law in its briefings.[12]

5.2 Track Usage Averages Three to Five Trains Per Day.

In 2013, BNSF, UPRR, and TCRY reported the following track usage to the UTC:

- TCRY: 2 to 4 trains per weekday,[13] with an average length of "roughly 15 cars per train."[14] In 2013, TCRY also reported that it is projected to move over the crossing a total of 2,310 total railcars in 2013.[15] Now, TCRY reports to the STB that it fell short of that target, carrying 2,247 railcars.[16]
- UPRR: 0 trains in 2013. UPRR stated that it moved 12 unit trains between 80-100 cars per train over the past 4.5 years (or, approximately 3 trains per year).[17]

[11] Federal Court Order, p. *19:20-21 (DiJulio VS, Ex. 1).
[12] Federal Court Order, p. *19:13-17 (DiJulio VS, Ex. 1).
[13] CP 0-000001915:2-3 (TCRY's response to the UTC data request for track usage).
[14] CP 0-000001917:7-8 (TCRY's response to the UTC data request for track usage).
[15] CP 0-000001914-1917 (TCRY's response to UTC data request for track usage)
[16] TCRY's Petition for Declaratory Order, p. 6 (first line).
[17] CP 0-000001927-1928 (UPRR's response to UTC Data Request).

- BNSF: 1 train per day, with an average length of six cars per train.[18]

Based upon TCRY's inflated 2013 projections, track usage for the three railroads is calculated at approximately 3.2 to 5.02 trains per weekday.[19] There are no regularly scheduled passenger trains on the line.[20]

TCRY fails to explain how it intends or has the capacity to increase its track usage from 2,247 railcars in 2013 to 4,174 railcars in 2015, an 85 percent increase in rail traffic.[21] A field study conducted by the Cities between February and May 2015 shows three to five trains per day, carrying an average of nine cars per train.[22] Thus, actual track usage from earlier this year demonstrates that TCRY's claim to 2015 track usage is speculative, at best.[23] Moreover, the data provided by TCRY to the UTC in fact show a *decrease* in total railcar traffic from 2,060 railcars in 2000 to 1,999 in 2012.[24]

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[18] CP 0-000001911-1912 (BNSF's response to UTC Data Request).
[19] CP 0-000001597:18-21 (Testimony of Kevin Jeffers, P.E.).
[20] CP 0-000001600:25-26 (Testimony of Kevin Jeffers, P.E.); CP 0-000001268:8-10 (Cross Examination of Gary Norris, TCRY's expert witness)
[21] Miller Affidavit, ¶ 8.
[22] Jeffers VS, ¶ 13.
[23] Jeffers VS, ¶ 14.
[24] CP 0-000001598:6-9 (Testimony of Kevin Jeffers, P.E.); CP 0-000001921:10-20 (track usage data submitted by TCRY).

TCRY also fails to explain how BNSF or UPRR will expand their track usage. Both BNSF and UPRR have stated their future track usage is unknown.[25] Without any input from BNSF or UPRR, TCRY relies upon the affidavit of John Miller in attempt to speak for the Class I railroads. Mr. Miller, in turn, asserts that the City of Richland itself has projected future track usage. Miller Affidavit, ¶ 14. ("the City of Richland has projected as many as 12,500 inbound and 12,500 outbound rail cars per year at the passing track area in the coming years").

While Richland can plan and hope for more economic development and supporting train movement, Richland never made this projection cited in Mr. Miller's affidavit.[26] And Mr. Miller's citation to Exhibit 5, 6, and 7 is misleading, at best. Exhibit 5 is TCRY's response to the UTC data request and TCRY's response to the Cities' data request, not a City of Richland document. Exhibit 6 is a memo with supporting documentation from the City of Richland's Economic Development Committee. Exhibit 7 is a real property purchase and sale agreement. These materials do not support Mr. Miller's unfounded assertion that the

[25] CP 0-000001911-1912 (BNSF's response to UTC Data Request); CP 0-000001927-1928 (UPRR's response to UTC Data Request).
[26] Rogalsky VS, ¶¶ 15-16. The record shows the City projected an average of 30 rail cars each week (1,560 total) from the cold storage facility. CP 0-000001298:16-1299:17; CP 0-000001326:6-14 (Testimony of Gary Ballew, Economic Development Manager for the City of Richland).

City of Richland projected 12,500 inbound and 12,500 outbound cars per year.[27]

In contrast to TCRY's grossly inflated track usage projections,[28] the City has provided the STB with data that identifies actual track usage in 2015, as described above.[29]

Moreover, regardless of track usage, the record shows that the Crossing will have no impact on railroad operations because the gates will prevent vehicular access to the Crossing when the track is in use.[30] The City of Richland has planned to construct the Horn Rapids Industrial Park, which includes a cold storage facility that is served by a proposed loop track.[31] The City projects that the storage facility will result in an average of 30 rail cars each week.[32] Regardless of the amount of rail traffic, the cold storage facility will have no impact on rail operations at the Crossing.[33] The Crossing's safety devices provide security and safety to the public and rail crews, because they avoid conflicts between vehicular

[27] Rogalsky VS, ¶ 16.
[28] Grabler VS ¶¶ 13-16; Rogalsky VS, ¶¶ 9-16; Jeffers VS, ¶¶ 13-17.
[29] Rogalsky VS, ¶¶ 17-26.
[30] Rogalsky VS, ¶ 14; Grabler VS, ¶¶ 20-24; Jeffers VS, ¶¶ 15-17, 23.
[31] Miller Decl., Exhibit 6.
[32] CP 0-000001298:16-1299:17; CP 0-000001326:6-14 (Testimony of Gary Ballew, Economic Development Manager for the City of Richland).
[33] Rogalsky VS, ¶ 14; Grabler VS, ¶¶ 20-24; Jeffers VS, ¶¶ 15, 23.

traffic and train traffic.[34] There will be no impact on the movement of freight or other rail as a result of the Crossing.[35] Railroad operations at the Crossing do not require blocking the Crossing.[36]

5.3 The Siding Is Not A Passing Track.

TCRY's characterization of a siding as a "passing track" is not supported by a Benton County Superior Court Order, and an exhaustive administrative record before the UTC. The UTC has jurisdiction over rail crossings in Washington State.[37] The UTC characterizes the siding as a "short, parallel spur" used for "switching and storage of rail cars."[38] The Class I railroads – BNSF and UPRR – do not use the siding.[39]

The Benton County Superior Court has affirmed the UTC's characterization of the siding.[40] Thus, the record from TCRY's own

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[34] Rogalsky VS, ¶¶ 12-14; Grabler VS, ¶¶ 20-23; Jeffers VS, ¶¶ 15, 23.
[35] Grabler VS, ¶ 24.
[36] Jeffers VS, ¶¶ 12-22. The Cities specifically deny the speculative assertions in the Peterson affidavit, which contain absolutely no data or facts to support it.
[37] Chapter 81.53 RCW.
[38] CP 0-000000632 (UTC Order 03). The Federal Court Order similarly describes the tracks as an "interchange facility." Federal Court Order, p. *2-7 (DiJulio VS, Ex. 1).
[39] Jeffers VS, ¶ 12; CP 0-000000790, 794 (Track Use Agreement by and between the City of Richland and BNSF) (attention to the third recital and section 4.3); CP 0-000000769 (Track Use Agreement by and between the City of Richland and UPRR) (attention to the fourth recital and section 4.3).
[40] CP 0-000002207-2209 (Benton County Superior Court Order Affirming the UTC's Orders).

litigious actions undermines TCRY's improper characterization of the siding. In addition, there were no incidents in a three-month observation period of the siding of a passing event where one train used the siding to get out of the way of another train.[41]

5.4 Siding Usage Is Minimal.

The siding track was formerly used in conjunction with now-removed UPRR siding track for the interchange of railcars between BNSF and TCRY. BNSF no longer uses the remaining siding for interchange.[42] UPRR also does not use the siding for interchange.[43]

TCRY provides the STB with no facts identifying its siding use. And no fact exists to support TCRY's assertion that the siding is a passing track.

TCRY's improper characterization of the siding is also not supported by the Cities' ongoing field study of the tracks. The field study shows TCRY staged railcars on the siding, and that TCRY's railcars stayed at the same location on the siding for three (3) days or more, and on

[41] Grabler VS ¶¶ 13-19; Rogalsky VS, ¶¶ 17-26.
[42] CP 0-000000790, 794 (Track Use Agreement by and between the City of Richland and BNSF) (attention to the third recital and section 4.3). That interchange now takes place near Walulla, Washington, east of Kennewick. CP 0-000001525:23-1526:2 (Testimony of Kevin Jeffers, P.E.).
[43] CP 0-000000769 (Track Use Agreement by and between the City of Richland and UPRR) (attention to the fourth recital and section 4.3); CP 0-000001608 (Cities' response to UTC data request).

many occasions for more than a week.[44] TCRY's cars are often staged immediately in front of the Crossing.[45] TCRY's car staging at this location appears solely for the purpose of misleading the STB because the car placement in front of the Crossing does not serve any railroad purpose.[46]

The only practical use of the siding track is for storage of rail cars not required by a shipper, or to store on-track equipment and rail cars used for track maintenance, or to hold railcars that are found to be defective by a train crew (aka bad-ordered) while en-route.[47] These actions do not require blocking the Crossing.[48] TCRY cites Kennewick Municipal Code 11.80.090, but this provision is similar to the established UTC regulation, which similarly restrict crossing blockage only "when practicable" (UTC's language) or "when it can be avoided" (City of Kennewick language). There is simply no evidence that the Crossing will impede railroad operations.[49]

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[44] Jeffers VS, ¶ 19.
[45] Jeffers VS, ¶ 21.
[46] Jeffers VS, ¶ 21; Grabler VS ¶¶ 17-19.
[47] Jeffers VS, ¶ 22; CP 0-000001608:14-20 (Cities' response to UTC data request, prepared by Kevin Jeffers and Pete Rogalsky).
[48] Jeffers VS, ¶ 22.
[49] Jeffers, VS, ¶¶ 21-22; Grabler VS, ¶¶ 17-19.

5.5 The Crossing Project Is An Essential Regional Improvement.

The Cities have received unanimous approval from the UTC to construct an at-grade Crossing over the track and siding at the Richland Junction.[50] The Benton County Superior Court has affirmed the UTC Order approving the Crossing.[51]

The Center Parkway Crossing is an essential capital improvement identified in the City of Richland's Comprehensive Plan, the City of Kennewick's Comprehensive Plan, and the Regional Transportation Plan.[52] Recognizing the regional significance of this project, the Crossing has received federal and state funding through the Washington State Community Economic Revitalization Board, the Surface Transportation Program Regional Competitive Fund, and the Transportation Improvement Board.[53]

The Crossing will extend Center Parkway northward, across the Port of Benton-owned track and siding, and into the City of Richland,

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[50] CP 0-000000644-645 (UTC Order 03).

[51] CP 0-000002207-2209 (Benton County Superior Court Order Affirming the UTC's Orders).

[52] CP 0-000000862 (City of Richland Comprehensive Plan); CP 0-0000001736-1737 (City of Kennewick Comprehensive Plan); CP 0-000000909 (Regional Transportation Plan); CP 0-000000637-638 (UTC Order 03 at §§ 20, 21).

[53] CP 0-000000756 (Joint Agreement Center Parkway Extension) ("Whereas Kennewick has secured $2,016,000 in Rural Economic Vitality funds ... and $364,241 through the Surface Transportation Program Regional Competitive Fund.").

intersecting Tapteal Drive, thereby completing a grid network of regional significance.[54] Center Parkway currently ends at a roundabout west of the Columbia Center Mall in Kennewick, as identified in the following image.[55]

[54] CP 0-000000637-638 (UTC Order 03 at §§ 20, 21, citing the City of Richland Comprehensive Plan, the City of Kennewick Comprehensive Plan, and the Regional Transportation Plan).
[55] CP 0-000000631 (UTC Order 03 at ¶ 9).

5.6 The Crossing Has Been Subjected To Extensive Administrative and Judicial Review.

The Crossing has been subject to extensive administrative and judicial review. Pursuant to Washington State law, in April 2013, the Cities jointly petitioned the UTC to approve construction of the Center Parkway Crossing.[56] UTC Order 03, approving the Crossing, was unanimously issued by the Commission.[57] The Commission **overturned** an ALJ's initial decision.[58] Order 03 presented the Commission with its first opportunity to conduct a de novo review of the Crossing record. In its Order 03, the Commissioners concluded that "the record includes substantial competent evidence showing sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing."[59] In its further Order 04, the UTC denied TCRY's petition for

[56] RCW 81.53.020 and .030.
[57] CP 0-000000644-645 (UTC Order 03 at ¶¶ 40-42).
[58] CP 0-000000644 (UTC Order 03, ¶ 41, expressly overturning UTC Order 2 by the ALJ dated February 12, 2014). TCRY's citation to and quotation from UTC Order 2 is misleading, at best. UTC Order 2 was an Initial Order by a single ALJ, and as noted, was expressly overturned by UTC Order 03 (CP 0-000000629-645), which was a Final Order by the full Commission, including the Chairman. UTC Order 03, in turn, was reinforced by UTC Order 04 (CP 0-000000707-712), which denied TCRY's Petition for Reconsideration. As such, UTC Order 2 was superseded and has no precedential value. *See* WAC 480-07-825(7)(c) (UTC procedural rule stating "[a]n initial order that becomes final by operation of law does not reflect a decision by the commissioners and has no precedential value.").
[59] *Id*. (UTC Order 03, ¶ 38).

reconsideration, concluding that TCRY's arguments for reconsideration were misleading and incorrect.[60]

TCRY appealed the UTC Orders, and the Benton County Superior Court concurred with the UTC in finding that the Crossing poses only speculative risk to public safety because the Crossing's safety features **exceed** typical engineering safety standards for such an intersection.[61] The record before the UTC and Benton County Superior Court established that the Crossing will (1) complete a grid network to provide safe and efficient movement of traffic; (2) provide relief to congested arterials; (3) encourage economic development; and (4) improve police and fire response times.[62]

TCRY has appealed the Benton County Superior Court decision to the Washington State Court of Appeals, Division III. Thus, the STB may take notice of and rely upon the record from these administrative and judicial proceedings.[63] TCRY is the **only** entity opposing the Crossing.

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[60] CP 0-000000707 (UTC Order 04, ¶¶ 10-11) ("TCRY misleadingly and incorrectly argues that Order 03 'overturns the Initial Order without finding any issue with its propriety [, amounting] to a wholesale subversion of the adjudicative process. What TCRY ignores …").

[61] CP 0-000002207-2209 (Benton County Superior Court Order Affirming the UTC's Orders).

[62] *See, e.g.*, CP 0-000000637-638 (UTC Order 03, ¶¶ 20-21 citing the JUB Study available at CP 0-000000077-127).

[63] 49 CFR §1114.1. The Cities have provided the STB with ten (10) copies of the Clerk's Papers for the pending matter before the Washington

The Port of Benton, BNSF, UPRR, and other entities with any interest in the Crossing, do not oppose the Center Parkway extension.

5.7 The Planning Process for the Crossing Was Thorough.

Unlike the previous crossing petition filed in 2005 (decided in 2007 without Commission consideration), the planning process for this crossing petition followed the 2006 comprehensive planning update process. Through this process, the Cities engaged the public and other governmental agencies to further study the proposed crossing and analyze potential transportation alternatives.[64]

Although invited to participate, TCRY chose **not** to engage in the Cities' extensive planning process for the Crossing. TCRY submitted **no** comments in the planning process.[65] TCRY also did not attend the UTC's diagnostic meeting for the Crossing.[66] Because TCRY did not participate in these actions, the Cities prepared two Crossing plans: one with the

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State Court of Appeals (CP 0-000000001-2209). These Clerk's Papers include the entire record before the UTC, as certified by the UTC Executive Director and Secretary (CP 0-000000069-73) and the record before the Benton County Superior Court, as transmitted by the Benton County Superior Court Clerk. DiJulio VS at ¶ 2.

[64] CP 0-000000824-826 (Testimony of Rick Simon, Development Services Manager for the City of Richland).

[65] CP 0-000000826 (Testimony of Rick Simon, Development Services Manager for the City of Richland).

[66] CP 0-000000109-110 (UTC Diagnostic Meeting Record).

siding and the other without.[67] For the first time, TCRY objected to the removal of the siding in the contested hearing before the UTC's ALJ. The Cities voluntarily agreed to proceed with a design that preserved the siding and crossed both tracks. CP 634, fn 6 ("However, in the face of Tri-City and Olympia Railroad's opposition, Staff's analysis of the site and consideration of its proposed safety features assumes that the second track remains in operation.").[68]

Following the planning process, the Cities engaged consultants to further study and design the proposed crossing.[69] The consultants designed the crossing to exceed relevant state and federal safety and engineering standards. The DEA consultants included Susan Grabler and Kevin Jeffers, P.E., together with a combined 59 years' experience in railroad safety.[70] A separate study documented the public need for the Crossing.[71]

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[67] Jeffers VS ¶ 9.

[68] Also see CP 0-000001609:12-17 (Cities' Response to UTC Data Request, prepared by Kevin Jeffers and Pete Rogalsky).

[69] CP 0-000000754:6-8 (Testimony of Jeff Peters, the Transportation of Development Manager for the City of Richland).

[70] CP 0-000001513 (Testimony of Susan Grabler, identifying her experience with railroads and railroad safety); CP 0-000001522 (Testimony of Kevin Jeffers, P.E., identifying his experience with railroads and railroad safety). Also see Grabler VS, ¶¶ 1-8; Jeffers VS, ¶¶ 1-5.

[71] CP 0-000000090-127 (the JUB Study).

5.8 The Record Demonstrates That the Crossing Does Not Invoke The STB's Jurisdiction.

The Cities provide the STB with the State administrative agency record and judicially-reviewed evidence identifying the lack of interference with any railway activity, safety measures that exceed standards, and the public need for the Crossing:

5.8.1 Grade Separation Is Not Warranted.

It is undisputed that the Crossing does not require grade separation. The UTC concluded that "no one contests on review the Initial Order's finding that it is physically and financially impractical to build a grade-separated crossing in this instance."[72] See also the UTC record[73], including the Grade Separation Evaluation.[74]

5.8.2 No Blockage of the Railway.

To avoid conflict, the Crossing's gates will block vehicular traffic when the tracks are in use. TCRY itself established this point before the UTC.[75] TCRY also established that supplementary safety measures, such

[72] CP 0-000000633 (Order 03, ¶ 12); CP 0-000002021:21 (Testimony of Kathy Hunter, UTC Deputy Assistant Director Transportation Safety, identifying the risk for Crossing at one incident every 53.5 years). TCRY does not contest the UTC's risk calculation.
[73] CP 0-000001529-1530 (Testimony of Kevin Jeffers, P.E.); CP 0-000002005-2007 (Testimony of Kathy Hunter, UTC Deputy Assistant Director Transportation Safety).
[74] CP 0-000000113-114.
[75] See e.g., CP 0-000001113-1114 (TCRY cross-examination of Kevin Jeffers).

as the raised median, keep drivers from circumventing the gates.[76] These issues were discussed in detail at the UTC diagnostic meeting that TCRY chose not to attend.[77] As described by Kevin Jeffers:

> The gates will go down was a train approaches and will stay down when a train occupies the tracks within the limits of the crossing. The gates will not rise until all trains have cleared the crossing limits.[78]

Simply put, the Crossing is designed so that vehicles will never interfere with any railway activity. The Crossing will have no impact on the movement of freight.[79] The Crossing will not adversely impact TCRY train operations.[80]

5.8.3 The Safety Measures of the Crossing Over Two Tracks.

The UTC found that the Crossing presents only a speculative risk — one potential incident every 53.5 years[81] — in part because the Crossing design includes modern features that exceed typical engineering standards for such an intersection. TCRY does not contest UTC's calculation of risk for the proposed crossing.

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[76] CP 0-000001172:10-16 (TCRY cross-examination of Spencer Montgomery, author of the JUB Study).
[77] CP 0-000001172:11 (TCRY cross-examination of Spencer Montgomery, author of the JUB Study).
[78] Jeffers VS, ¶ 11.
[79] Grabler VS, ¶¶ 24.; Jeffers VS, ¶ 23;
[80] Grabler VS, ¶¶ 23-24; Jeffers VS, ¶ 23
[81] CP 0-000002021:21-22 ((Testimony of Kathy Hunter, UTC Deputy Assistant Director Transportation Safety).

The proposed roadway in the area of the proposed crossing will be on tangent (aka "straight") roadway. This will maximize the site distance of approaching vehicles to the warning devises.[82]

The roadway profile over the Crossing meets the current standards for vertical clearances by the American Railway Engineering and Maintenance-of-way Association (AREMA) that is referenced in the Manual of Uniform Traffic Control Devises (MUTCD) and American Association of State Highway and Transportation Officials (AASHTO). As with the tangent horizontal alignment, this slight vertical profile will not restrict the site distance of approaching vehicles to the warning devices. [83]

The vehicle traffic will be warned of an approaching train by flashing lights and gates. The Federal Railroad Administration (FRA) requires Constant Warning Time ("CWT") devices set between 20"-40". The Crossing design provides that the motorist will always get CWT of usually 30", meeting the CWT standard. This further reduces the

[82] CP 0-000001528-1529 (Testimony of Kevin Jeffers, P.E., describing the safety features of the Crossing).
[83] CP 0-000001528-1529 (Testimony of Kevin Jeffers, P.E., describing the safety features of the Crossing).

likelihood that a vehicle will try to cross the tracks as a train is approaching.[84]

The center lane used for left turns outside the Crossing will stop at traffic islands that will be a median separator, blocking vehicles from driving around the lowered gates.[85] As a result, there are no undue safety risks for rail crews or the public.

Based upon these facts, the UTC concluded that "even imprudent drivers will be effectively barred from crossing the tracks when the gates are closed next to concrete barrier medians;"[86] and, the safety measures "significantly reduce" the risk of the Crossing.[87]

5.8.4 The Public Need for the Crossing.

The UTC approved the Crossing because the public need for the Crossing outweighs its speculative risk. The UTC found that the Crossing completes a grid network for the efficient movement of traffic and economic development:

> The Center Parkway Extension, including the proposed at-grade railroad crossing, is a long-planned and important component of the Cities' transportation system. The project will improve traffic movement between two

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[84] *Id.*
[85] *Id.*
[86] CP 0-000000634 (Order 03 ¶ 14).
[87] CP 0-000000634-635 (Order 03 ¶ 14); CP 0-000001521-1532 (Testimony of Kevin Jeffers, P.E., describing the Crossings attributes and its safety features).

> important and growing commercial areas in Kennewick and Richland, thus promoting economic development.[88]

The Cities' studies[89] and other substantial evidence[90] support this finding.

Further, the UTC found that the Crossing provides an alternative route for police and fire:

> The Center Parkway extension may assist the Cities' emergency responders by providing an alternative route for responding to incidents in the vicinity of the Columbia Center Mall, when trains are not blocking the intersection.[91]

Substantial evidence in the record supports the UTC's conclusion.[92] It is also undisputed that the Crossing will be blocked less than one percent (1%) of the day based upon current railroad usage.[93] The Crossing will be

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[88] CP 0-000000644 (Order 03 ¶ 37).
[89] *See e.g.*, CP 0-000000096-97 (The JUB Study).
[90] *See e.g.*, the Cities' pre-filed testimony, CP 0-000000831:14-832:2 (Testimony of Rick Simon, Development Services Manager for the City of Richland); CP 0-000001698:22-25, and CP 0-000001699:6-7 (Testimony of Spencer Montgomery, author of the JUB Study).
[91] CP 0-000000644 (UTC Order 03 ¶ 36).
[92] CP 0-000000097 (the JUB Report, with a section titled "Improve Emergency Response"); also see CP 0-000001696-1702 (Testimony of Spencer Montgomery, author of the JUB Study); CP 0-000001169:7-1171:1(TCRY's cross-examination of Spencer Montgomery); CP 0-000001879-1902 (data supporting the JUB Study); CP 0-000001059:15. (Richland's Fire Chief Baynes' testimony that the crossing would improve emergency response times by "[a]pproximately a minute").
[93] CP 0-000001183 (TCRY cross-examination of Spencer Montgomery, author of the JUB Study).

blocked less than three percent (3%) of the day, even assuming TCRY's unrealistic projection that rail traffic will increase 85 percent this year.[94]

5.9 The UTC and The Benton County Superior Court Have Rejected TCRY's Arguments.

More than two years have passed since the Cities filed the Crossing petition, and TCRY has failed in its motion for reconsideration to UTC and in its Administrative Procedures Act appeal before the Benton County Superior Court.[95] The UTC, the Washington State agency charged with fact-finding, concluded that TCRY's arguments for reconsideration were misleading and incorrect.[96] TCRY repeats those arguments before the STB. For example, in response to TCRY's motion for reconsideration, the UTC clearly articulated that Order 03 was based upon the entire record, not just public safety. As succinctly summarized by the UTC,

> "What TCRY ignores is that our Order on review examines the question of public need in terms of economic development as an important factor in addition to public safety. … In addition, while the ALJ's role does not necessarily require consideration of broader policy implications of the Commission's adjudicative orders, the Commissioner's role requires this inquiry."

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[94] CP 0-000001183-1185 (TCRY cross-examination of Spencer Montgomery), attention to CP 0-000001185:18-25 (explaining that the Crossing will not be closed more than three percent of the day).
[95] CP 0-000000702-710 (UTC Order 04, Denying TCRY's Petition for Reconsideration); CP 0-000002207-2209 (Benton County Superior Court Order Affirming UTC Orders).
[96] CP 0-000000707 (UTC Order 04, ¶ 10).

Based upon the evidence identified above, the Benton County Superior Court found that substantial evidence supports the UTC's Orders approving the Crossing.[97]

5.10 TCRY Challenges The Cities' Condemnation Proceeding.

The Cities have acquired from the Port of Benton, the owner of the tracks, an easement for the Crossing.[98] Acknowledging TCRY's leasehold interest in the tracks, the Cities initiated a condemnation proceeding against TCRY.[99] In response, TCRY brought an action for declaratory judgment and injunctive relief in Benton County Superior Court. In response to the Cities' motion for summary judgment,[100] TCRY withdrew its action and filed this action with the STB, asking the STB to invoke jurisdiction over the tracks and siding.

6. POINTS AND AUTHORITIES

6.1 Summary of Argument.

The STB holds that crossing of railroad tracks with construction of a new public street (here, the extension of Center Parkway) does not implicate federal preemption under 49 U.S.C. §10501(b). TCRY's

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[97] CP 0-000002207-2209 (Benton County Superior Court Order Affirming UTC Orders).
[98] CP 0-000000219 (the Cities' agreement with the Port of Benton); CP 0-000000254 (the easement deed).
[99] TCRY's Schroeder Affidavit, Ex. 11
[100] TCRY's Schroeder Affidavit Ex. 13 (Cities' Summary Judgment Motion)

Petition mischaracterizes the law and prior proceedings. There has already been an adjudication that the Crossing exceeds safety standards and would not prevent or unreasonably interfere with railroad operations. And, there is no evidence that it would interfere with interstate commerce.

The Port of Benton and its tenant TCRY retain the right to use the branch line between Richland Junction and Hanford (and the adjacent siding). Both tracks will be preserved and protected with safety improvements exceeding established standards.[101] 49 U.S.C. §10906 does not alter the jurisdictional analysis with respect to the Cities' condemnation action to acquire a public street right-of-way over the leasehold for the siding track. TCRY's Petition should be dismissed.

6.2 The Surface Transportation Board Rejects Jurisdiction Over Crossings.

Under ICCTA, STB jurisdiction extends to "the construction, acquisition, operation, abandonment, or discontinuance of … tracks." 49 U.S.C. §10501(b). While the preemption regime under ICCTA is broad, "[t]his does not mean that all state and local regulations that affect railroads are preempted . . . state and local regulation is permissible where it does not interfere with interstate rail operations." *Joint Petition for Declaratory Order—Boston & Me. Corp. & Town of Ayer*, No. 33971,

[101] Jeffers VS ¶ 10 (preserving both tracks); this brief details the safety standards in detail, above.

2001 WL 458685, at *5 (S.T.B.) (Apr. 30, 2001) ("[N]othing in [§]10501(b) is intended to interfere with the role of state and local agencies in implementing Federal environmental statutes, such as ... the CWA ...."), *aff'd sub nom. Boston & Me. Corp. v. Town of Ayer*, 191 F. Supp. 2d 257 (D.Mass. 2002).

The STB's jurisdiction does *not* extend to new at-grade crossing so long as the at-grade crossing "would not impede rail operations or pose undue safety risks." *Maumee*, STB Finance Docket No. 34354.

Maumee is squarely on point, and governs the analysis in this case. In *Maumee*, a local government sought to condemn an easement for an at-grade crossing over (and subsurface utilities under) an 8,000 s.f. parcel on a main line rail right-of-way. The STB rejected the railroad company's argument that 49 U.S.C. 10501(b) preempts the exercise of eminent domain authority with respect to railroad property. In its decision, the STB easily concluded that the railroad's preemption argument was overbroad:

> …**state and local regulation is permissible where it does not interfere with interstate rail operations**, and localities retain certain police powers to protect health and public safety**.** Thus, acquisition of an easement by eminent domain to permit a crossing of railroad track in connection with construction of a new public street would **not** implicate the Federal preemption of 49 U.S.C. 10501(b) unless it would prevent or unreasonably interfere with railroad operations.…. **[R]outine, non-conflicting uses,**

> **such as non-exclusive easements for at-grade railroad crossings…, are not preempted so long as they would not impede rail operations or pose undue safety risks**.[102]

Simply stated, the STB does not assert jurisdiction over at-grade crossings that do not prevent or unreasonably interfere with railroad operations or pose undue safety risks.[103] As the STB stated, "these crossing cases are typically resolved in state courts." *Id.* And, of course, this Crossing has been approved in state court, and remains subject to state court review.

The federal courts have similarly upheld the STB's jurisdictional avoidance of such crossing cases. Preemption is disfavored in these circumstances. *See, e.g., New Orleans & Gulf Coast Ry. Co. v. Barrois,* 533 F.3d 321, 332-34 (5th Cir. 2008); *City of Sachse, Texas v. Kansas City Southern*, 564 F. Supp. 2d 649 (E.D. Tex. 2008). Applying this well-established standard to the Crossing, the STB will find no basis for exercising jurisdiction. There is no interference with rail operations, and safety measures exceed all standards.

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[102] *Maumee & Western Railroad Corp. and RMW Ventures, LLC, - Petition for Declaratory Order*, STB Finance Docket No. 34354, (S.T.B.) (March 3, 2004), 2004 WL 395835 at *2 (internal citations omitted, emphasis added).

[103] In *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 642 (2005), the Second Circuit Court of Appeals found that the STB is "uniquely qualified" on the application of 49 U.S.C. 10501(b).

6.3 No Interference with Rail Operations.

The Crossing unequivocally will not unreasonably interfere with rail operations. As explained above:

- The railroad will continue to have the right-of-way over the Crossing.
- The Crossing's gates will block vehicular traffic when the tracks are in use. [104] When the gates are down, there can be no impairment of rail operations or interstate commerce.
- The gates will go down was a train approaches and will stay down when a train occupies the tracks within the limits of the crossing. The gates will not rise until all trains have cleared the crossing limits.[105]
- Supplementary safety measures, such as the raised median, keep drivers from circumventing the gates.[106] The UTC concluded that "even imprudent drivers will be effectively barred from crossing the tracks when the gates are closed next to concrete barrier medians;"[107]

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[104] *See e.g.,* CP 0-000001113-1114 (TCRY cross-examination of Kevin Jeffers).
[105] Jeffers VS, ¶ 11.
[106] CP 0-000001172:10-16 (TCRY cross-examination of Spencer Montgomery, author of the JUB Study).
[107] CP 0-000000634-635 (Order 03 ¶ 14).

- The Crossing will have no impact on the movement of freight.[108]
- The Crossing will not adversely impact TCRY train operations.[109]
- The track owner and the two Class I carriers – BNSF and UPRR – do not object to the Crossing.
- TCRY offers no evidence or expert testimony that supports its assertion regarding interstate commerce.
- TCRY's assertions regarding future track use are wholly unsupported, contrary to available facts, and ultimately irrelevant.[110] Regardless of the amount of traffic, the right-of-way is preserved for railroad traffic.
- At most, the Crossing will be blocked less than 1% of the day based upon current railroad usage[111], and less than 3% of the day, even assuming TCRY's unrealistic projection that rail traffic will increase 85 percent.[112]

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[108] Grabler VS, ¶ 24.; Jeffers VS, ¶ 23.
[109] Grabler VS, ¶¶ 23-24; Jeffers VS, ¶ 23.
[110] Jeffers VS, ¶¶ 13-17.
[111] CP 0-000001183 (TCRY cross-examination of Spencer Montgomery, author of the JUB Study).
[112] CP 0-000001183-1185 (TCRY cross-examination of Spencer Montgomery), attention to CP 0-000001185:18-25 (explaining that the Crossing will not be closed more than three percent of the day).

- The siding is not used as a passing track.[113]
- Storage or holding defective rail cars on the siding does not require blocking the Crossing.[114]
- UPRR and BNSF do not switch any trains at this location, and UPRR and BNSF do not use the siding. [115]
- There is simply no evidence of any unreasonable interference with storage, switching, train stoppages, or commerce. The substantial evidence before the STB is to the contrary.

6.4 <u>The Crossing Exceeds Safety Standards.</u>

The Crossing will meet and exceed safety standards. As explained above:

- The Crossing presents only a speculative risk - one potential incident every 53.5 years.[116]
- The proposed roadway in the area of the Crossing will be straight roadway. This will maximize the site distance of approaching vehicles to the warning devises.[117]

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[113] Grabler VS, ¶¶ 17-19.
[114] Jeffers VS, ¶ 22.
[115] Jeffers VS, ¶ 12.
[116] CP 0-000002021:21-22 ((Testimony of Kathy Hunter, UTC Deputy Assistant Director Transportation Safety). TCRY does not contest UTC's calculation of risk for the proposed crossing.

- The Crossing design includes modern features that exceed typical engineering standards for such an intersection. [118]
- The vehicle traffic will be warned of an approaching train by flashing lights and gates with Constant Warning Time devices consistent with FRA standards. This further reduces the likelihood that a vehicle will try to cross the tracks as a train is approaching.[119]
- The center lane used for left turns outside the grade crossing area will have a traffic island that will be a median separator, blocking vehicles from driving around the lowered gates.[120]
- The UTC concluded that "even imprudent drivers will be effectively barred from crossing the tracks when the gates are closed next to concrete barrier medians;"[121] and, the

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[117] CP 0-000001528-1529 (Testimony of Kevin Jeffers, P.E., describing the safety features of the Crossing).
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] CP 0-000000634 (Order 03 ¶ 14).

safety measures "significantly reduce" the risk of the Crossing.[122]

- There is simply no evidence of any undue safety risks to the public or rail crews. The substantial evidence before the STB establishes that the Crossing exceeds safety standards.

6.5 No Contrary Authority Exists.

In short, TCRY does not meet (or even come close to meeting) its burden of proof that the Crossing will impede rail operations or pose undue safety risks sufficient to meet the STB's *Maumee* test for exercise of its jurisdiction. To the contrary, the facts already adjudicated and summarized above conclusively demonstrate no interference with rail operations. The railroads will continue to have the right-of-way over the Crossing; and, the safety measures exceed typical engineering and safety standards for such an intersection.[123]

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[122] CP 0-000000634-635 (Order 03 ¶ 14); CP 0-000001521-1532 (Testimony of Kevin Jeffers, P.E., describing the Crossings attributes and its safety features).

[123] The UTC reviewed the merits of the proposed crossing. On appeal filed by TCRY, Benton County Superior Court Judge Spanner's Order stated: "As found by the UTC, the public need for the Center Parkway Crossing outweighs any speculative risk. And, the UTC committed no error of law in its approval of the Center Parkway Crossing." *Tri-City R.R. Co. v. State of Washington*, No. 14-2-07894-8 at CP 0-000002208.

The TCRY analysis of STB preemption is wrong in citing to *City of Auburn v. U.S. Government,* 154 F.3d 1025 (9th Cir. 1998) (city challenging expansion of Stampede Pass rail crossing and related impacts on city). That case has no application to this simple rail crossing. In *City of Auburn*, the Ninth Circuit held that state and local environmental review laws regarding railroad operations were preempted because any state or local permitting or preclearance requirements fall within the broad category of complete or categorical preemption.[124] By contrast, routine crossings are evaluated using "as applied" preemption analysis. *Barrois*, 533 F.3d at 332-33; *Maumee*, STB Finance Docket No. 34354 at *2.

Citing the U.S. Supreme Court, the Fifth Circuit Court of Appeals holds that the STB's refusal of jurisdiction over rail crossings is consistent with the historical, pre-ICCTA rule governing crossing disputes:

> The care of grade crossings is peculiarly within the police power of the states, and, if it is seriously contended that the

[124] Both Courts and the STB have found two broad categories of state and local actions to be categorically preempted: 1) permitting or preclearance that, by its nature could be used to deny a railroad to conduct some part of its operations or to proceed with activities that the Board has authorized (e.g. environmental and land use permitting, preconstruction permitting); and 2) matters directly regulated by the Board (e.g. railroad mergers, line acquisitions, consolidation, rates, services). *CSX Transp., Inc. – Petition for Declaratory Order*, 2005 WL 1024490, at *2 (S.T.B.) (2005) (citing *City of Auburn*, 154 F.3d at 1030-31; *Green Mountain R.R.*, 404 F.3d at 641-43; *Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439 (5th Cir. 2001); *Emerson v. Kansas City Southern Ry. Co.*, 503 F.3d 1126, 1130 (10th Cir. 2007).

> cost of this grade crossing is such as to interfere with or impair economical management of the railroad, this should be made clear. **It was certainly not intended by the Transportation Act to take from the states or to thrust upon the Interstate Commerce Commission investigation into parochial matters like this**, unless by reason of their effect on economical management and service, their general bearing is clear.

Barrois, 533 F.3d at 332-34, *citing Lehigh Valley R.R. Co. v. Bd. of Pub. Util. Comm'rs*, 278 U.S. 24, 35 (1928) (citations omitted, emphasis added); *see also Erie R.R. Co. v. Bd. of Pub. Util. Comm'rs*, 254 U.S. 394, 409 (1921) ("It is well settled that railroad corporations may be required, at their own expense, not only to abolish existing grade crossings but also to build and maintain suitable bridges or viaducts to carry highways, newly laid out, over their tracks or to carry their tracks over such highways." (internal quotation marks omitted)).

The cases relied upon by TCRY as supporting preemption have no application to this proceeding. For example, in *City of Lincoln* and *City of North Little Rock*, the proposed actions narrowed the right of way, running parallel to the railroad's track rather than a simple at-grade crossing. In addition, evidence showing that by narrowing the right of way, the railroads' equipment would not be able to access the area for maintenance or to handle derailments and increased safety issues were created due to the proximity of proposed bike/walking trails to the track. *City of Lincoln*

v. Surface Transportation Board, 414 F.3d 858 (8th Cir. 2005); *City of North Little Rock v. Union Pacific R.R. Co.,* 808 F. Supp. 2d 1102.

In *Wisconsin Central, Fort Bend,* and *Harris County,* the proposed actions would have either entirely eliminated a large portion of a parallel passing track or bisected the only passing tracks for significant distance thereby removing a significant portion of the passing track from use due to visual hazards and creating safety risks. *Wisconsin Central v. City of Marshfield,* 160 F. Supp. 2d 1009 (W.D.Wis. 2000); *Fort Bend Co. v. Burlington Northern and Santa Fe Railway Co.,* 237 S.W.3d 355 (Tex. App. 2007); *Harris County, Texas v. Union Pacific Railroad Company,* 807 F. Supp. 2d 624 (2011).

Union Pacific was a unique situation where a lessee sought to condemn property that it already used under a lease; further, the proposed action would have condemned 40% of the railroad's right of way and would prevent UP from using its tracks or developing additional tracks on the property. *Union Pacific R.R. Co v. Chicago Transit Auth. – Petition for Declaratory Order,* No. 07CV229, 2009 WL 448897 at *5 (N.D. Ill. Feb. 23, 2009). Of course, in this case, the Center Parkway Crossing eliminates no right of way and does not interfere with track use.

In short, the STB's jurisdictional test for at-grade rail crossings is supported by the ICCTA, the STB's interpretation of the ICCTA, case

law, and longstanding U.S. Supreme Court precedent. There is no federal preemption of the Cities' Center Parkway crossing project.

6.6 49 U.S.C. §10906 Does Not Change the Analysis

49 U.S.C. §10906 does not alter the jurisdictional analysis for the Cities' condemnation action to acquire a public street right-of-way over the lessee's interest in the siding track. The fundamental question is whether the Board has general jurisdiction under §10501(b). Either (1) the Board has general jurisdiction over the siding, and the routine crossing exemption operates to remove the Crossing from the exercise of that jurisdiction; or (2) the Board has no jurisdiction over the siding, in which case state condemnation laws apply. Under either scenario, the Cities' condemnation action is permissible. TCRY's invocation of §10906 is a red herring.

Petitioners fundamentally misconstrue the import of exemption of 49 U.S.C. §10906; the general jurisdiction of the Board is not altered. The exemption operates to remove siding tracks from the **licensing** authority of the Board – *not* the **jurisdiction** of the Board.[125] *Pinelawn Cemetery,*

[125] 49 U.S.C. §10906 exempts rail carriers from the STB's authority of "this chapter;" *i.e.* Chapter 109. Chapter 109 addresses STB licensing requirements for certain issues, such as the construction, abandonment, or sale of railroad lines. *See e.g.,* 49 U.S.C. 10901(a). Chapter 109 does not define the Board's jurisdictional authority which is set forth at 49 U.S.C. §10501(b).

S.T.B. Docket No. FD 35468 (Service Date April 21, 2015), 2015 WL 1813674 at *1 ("§10906 track, while excepted from licensing, is subject to the Board's general jurisdiction under 49 U.S.C. §10501(b)(2)."); *See also, N.Y.& Atlantic Ry. v. STB,* 635 F.3d 66, 75 (2nd Cir. 2011).[126]

TCRY misstates the holdings in *Port City Properties*[127]and *United Transport.*[128] In both *Port Cities* and *United Transport,* the Courts addressed whether the Board had authority to require railroads to seek the Board's authorization to construct, operate or cease operations for spur track – issues arising under Chapter 109, the very Chapter that 49 U.S.C. §10906 exempts rail carriers from. The cases do not address state and local authority relating to ancillary tracks.

If the Board has general jurisdiction under §10501(b) the next step in the analysis is to determine whether the STB's routine crossing exemption applies to the Crossing. This question applies regardless of the type of track crossed, and the analysis as to whether the Cities' condemnation proceeding should be preempted for the siding track is the same analysis as for the branch line. As explained above, because this is a

[126] Any citations to case law regarding the removal of siding tracks are irrelevant because the siding track will remain, consistent with UTC Order 03 and the Cities' repeated stipulations to this fact. CP 0-000000634, fn 6 (UTC Order 03); Jeffers VS ¶10.
[127] *Port City Properties,* 518 F.3d at 1188-89.
[128] *United Trasp. Union-Illinois Legislative Bd. v. Surface Traspotation Board.*, 183 F.3d. 606 (7th Cir. 1999).

routine at-grade crossing that falls squarely within the STB's routine crossing exception, the Board should hold that the proposed crossings are not preempted and that the Cities' condemnation action to acquire a right-of-way for the lessee's interest in the siding track does not violate 49 U.S.C. §10906.

If the Board's general jurisdiction does not extend to the siding, the Cities may exercise their police and eminent domain power (as deemed necessary), and as authorized by the State of Washington, to extend the UTC-approved Crossing over the Port's line and the siding track.

6.7 <u>TCRY Is Only A Lessee with A Contract Right.</u>

A noted above, TCRY is the only party with any interest in the Crossing who opposes the Crossing. The Port of Benton granted a lease to TCRY, and the Port has granted Crossing rights to the Cities.

The 2002 Railroad Lease between the Port of Benton and TCRY states that "the Tenant shall comply with all laws, rules and regulations applicable to the Tenant's use, operation and maintenance of the property."[129]

In this case, the Crossing was properly reviewed and approved by the local governing authorities. TCRY's rights are derivative of the Port of Benton's rights, and the Port of Benton has no objection. To the extent

[129] CP 0-000000239 (Railroad Lease at 7.1).

there is a dispute, it would be a contract dispute. The UTC has jurisdiction over railroad crossings and has approved the project. Chapter 81.53 RCW. For all the reasons stated above, the extension of Center Parkway fits squarely within the STB's well-recognized exemption from federal jurisdiction for routine crossings under 49 U.S.C. §10501(b).

7. CONCLUSION

There is no federal preemption in this matter. The crossing will not unreasonably interfere with railroad operations or pose undue safety risks. TCRY's arguments and objections to the project have been carefully considered and repeatedly rejected over a several year process. Similarly, the STB and governing law hold that rail crossings, such as the Center Parkway, project, do not implicate federal preemption. The Cities respectfully request that TCRY's Petition For Declaratory Order be denied.

RESPECTFULLY SUBMITTED this 15th day of June, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

William J. Schroeder Gregory C. Hesler William C. Schroeder **Paine Hamblen LLP** 717 West Sprague Avenue, Suite 1200 Spokane, WA 99201 william.schroeder@painehamblen.com greg.hesler@painehamblen.com will.schroeder@painehamblen.com	_____ U.S. Mail _____ Hand Delivery _____ Overnight Mail __X__ E-Mail

s/ Christopher G. Emch
Christopher G. Emch

SURFACE TRANSPORTATION BOARD

TRI-CITY RAILROAD COMPANY, LLC, a Washington limited liability company, Petitioners, v. THE CITY OF KENNEWICK, a Washington municipal corporation; THE CITY OF RICHLAND, a Washington municipal corporation, Respondents.	No. FD 35915 VERIFIED STATEMENT AND AFFIDAVIT OF SUSAN GRABLER

COMES NOW Susan Grabler who declares under penalty of perjury that the foregoing is true and correct:

1. I have 42 years' experience in railroad engineering, including 34 years' experience working for Union Pacific Railroad ("UPRR"), a class 1 railroad.

2. I reaffirm my pre-filed testimony that I submitted in the Washington Utilities and Transportation Commission proceeding for the Center Parkway Crossing (Docket TR-130499), available in the Washington State Court of Appeals Clerk's Papers CP 1512-1519.

PROFESSIONAL QUALIFICATIONS

3. When I provided my profiled testimony before the Washington Utilities and Transportation Commission ("WUTC") (Docket TR-130499) in August 2013, I was

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employed as a Senior Railroad Project Manager at David Evans and Associates, Inc. ("DEA") with my offices in Portland, Oregon and Denver, Colorado. I retired from DEA in January 2014.

4. Prior to joining DEA, I worked for 34 years at UPRR in the Engineering Department, with the last 24 years working as a Manager of Industry & Public Projects covering a total of nine western states.

5. During my tenure at UPRR, I was first based in Portland, Oregon with the rail design group, from 1973 – 1983. I eventually became the Chief Draftsman responsible for all elements of railroad design projects in Oregon. From 1983 -1993, I managed all public projects in Oregon and Northern California with the state, county and local municipalities that the railroad operated through. From 1993 to 2007, I worked in Denver, Colorado as the Manager of Industry & Public Projects for Texas, Arkansas, Louisiana, New Mexico, Wyoming, Colorado, and Nebraska. During my 24 years in the public projects group, I was responsible for all new industry and public projects in a total of nine states before my retirement. I have managed hundreds of public projects similar to the extension of Center Parkway while at UPRR.

6. For several years I was also responsible for training all new Northern Region Managers of Industry and Public Projects and co-authoring the UPRR Industry Track Specifications used by private engineers and contractors for new industry track projects, including new industry tracks that cross public and private roadways.

7. I have testified in hearings held by the Oregon Department of Transportation Rail Division (formerly known as the Oregon Public Utility Commission) and I have testified in hearings held by the Colorado Public Utility Commission. I worked with the California Public Utility Commission, Arkansas Department of Transportation, Louisiana Department of Transportation, Nebraska Department of Transportation, and Wyoming Department of Transportation, but did not testify in these states as we were able to work

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toward the mutually common goal of public safety. I have also testified before the Washington Utilities and Transportation Commission ("UTC") on the Center Parkway Crossing in Benton County, Washington.

8. As a member of AREMA (American Railway Engineering and Maintenance-of-Way Association), Committee 36, we are responsible for defining the technical specifications for the latest in technology in automatic warning devices used in the United States and Canada.

PROJECT BACKGROUND

9. The City of Richland and the City of Kennewick have received unanimous approval from the UTC to extend Center Parkway through construct an at-grade crossing (the "Crossing").

10. The Crossing will cross a main track and a siding owned by the Port of Benton. Those tracks extend from a UPRR line, and begin at the Richland Junction, immediately east of the Crossing. UPRR (and BNSF) have no objection to the Crossing.

11. Tri-City Railroad Company LLC ("TCRY") is a lessee of the tracks.

12. Three railways use the tracks: BNSF, UPRR, and TCRY.

TRACK USAGE

13. I have personally observed the tracks (including train movement) and the proposed Crossing. I have considered the record of train movement from railway-filed reports with the UTC. I have reviewed a field study prepared by the City of Richland that document the use of the existing rail siding that crosses the proposed roadway crossing location. Those observations are dated from February 10, 2015 to May 26, 2015. As discussed in greater detail in Pete Rogalsky's verified statement, both still and time-lapse photos were used to compile the field study data.

14. Based upon data submitted by TCRY, the Cities calculated that TCRY had an average of 4 – 6 train movements per day over the Crossing. This figure exaggerates TCRY's

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actual track usage. The field study's video recordings demonstrate that the average daily train traffic at the Crossing is approximately 2 – 3 train movements per day (this train count does not include any late night or after midnight train operations that were not video recorded, if any).

15. The field study also shows that BNSF Railway makes trips to the Port of Benton on the track every few days, and my review of the train operations included the BNSF engine movements in my average train operation counts.

16. The field study does not include any UPRR trips on the tracks (which is consistent with earlier UPRR reports to the UTC).

SIDING USAGE

17. The siding track that is west of and parallel to the main line track and adjacent to the hotel is being used as a storage track.

18. TCRY is staging cars immediately in front of the proposed Center Parkway Crossing, instead of elsewhere on the siding track.

19. The siding track is not being used as a typical railroad passing track, because of the parked rail cars that the TCRY is parking on the siding track. There appears no reason for such conduct other than an attempt to mislead the STB. And, TCRY is parking rail cars on the siding tracks for several days at a time, which would preclude the TCRY Railroad from using the siding as a passing track (as TCRY apparently asserts).

CROSSING SAFETY / NO INTERFERENCE WITH COMMERCE

20. The Automatic Constant Warning Devices included in the Crossing's safety features give a constant warning time (CWT) to all motorists using an at-grade highway-railroad crossing equipped with gates and lights. The CWT is defined by the Federal Highway Administration (FHWA) as a warning time of not less than 20 seconds, reference "49 CFR part 234 – Grade Crossing Signal System Safety and State Action Plans, Subpart A: General, 234.5 – Definitions." The railroads will typically use approximately 30-35

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seconds of CWT, which will give a CWT whether the train is traveling at 5 MPH or 35 MPH.

21. The Crossing also is in conformance with the Federal Highway Administration's "Manual of Uniform Traffic Control Devices, 2009 Edition, Section 8C-04 – Automatic Gates, page 773, "The gates should cover the approaching highway to block all highway vehicles from being driven around the gate without crossing the center line." This will typically keep even the smallest of vehicles from trying to circumvent the automatic gates.

22. In addition to these safety measures, the Crossing's safety features includes center medians, which are known in the railroad crossing safety arena, deters drivers from trying to circumvent the automatic warning devices.

23. The Crossing will not adversely impact TCRY train operations because of the Crossing's safety features and geometry.

CONCLUSION

24. Based on my 42 years of railroad engineering experience, and my knowledge of the operations of the Port of Benton tracks that begin at the Richland Junction, there is no impact on the movement of freight or other rail as a result of the Crossing.

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SIGNED AND SWORN STATEMENT

25. Pursuant to 49 CFR 1112.9:

State of Colorado,

County of Arapahoe,

Susan Grabler, being duly sworn, deposes and says that she has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

Signed Susan Grabler

Susan Grabler, Principal
Railroad Coordination, LLC
7914 S. Pennsylvania Drive
Littleton, CO 80122

Signed and sworn to before me this 11th day of June, 2015.

Notary Public of _____.

My Commission expires _____.

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INDIVIDUAL ACKNOWLEDGMENT

State/Commonwealth of Colorado
County of Arapahoe } ss.

On this the 11th day of June, 2015, before me,
(Day) (Month) (Year)

Jenifer A Lamy, the undersigned Notary Public,
(Name of Notary Public)

personally appeared Susan k Grabler,
(Name(s) of Signer(s))

JENIFER A LAMY
Notary Public
State of Colorado

☐ personally known to me – **OR** –

☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same for the purposes therein stated.

WITNESS my hand and official seal.

Signature of Notary Public

Jenifer A Lamy

exp. April 18, 2019

Any Other Required Information
(Printed Name of Notary, Expiration Date, etc.)

Place Notary Seal/Stamp Above

OPTIONAL

Not required by law, this information can be useful to those relying on the document and prevent fraud.

Description of Any Attached Document

Title or Type of Document: STBTestimony-CityofRichland/TCRY Railroad

Document Date: June 11, 2015 Number of Pages: 2

Signer(s) Other Than Named Above: n/a

RIGHT THUMBPRINT OF SIGNER #1	RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here	Top of thumb here

 Item #15936

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

William J. Schroeder Gregory C. Hesler William C. Schroeder **Paine Hamblen LLP** 717 West Sprague Avenue, Suite 1200 Spokane, WA 99201 william.schroeder@painehamblen.com greg.hesler@painehamblen.com will.schroeder@painehamblen.com	_____ U.S. Mail _____ Hand Delivery __X__ Overnight Mail _____ E-Mail

Christopher G. Emch

SURFACE TRANSPORTATION BOARD

TRI-CITY RAILROAD COMPANY, LLC, a Washington limited liability company, Petitioner, v. THE CITY OF KENNEWICK, a Washington municipal corporation; THE CITY OF RICHLAND, a Washington municipal corporation, Respondents.	No. FD 35915 VERIFIED STATEMENT AND AFFIDAVIT OF PETE ROGALSKY, P.E. **CONTAINS COLOR**

COMES NOW Pete Rogalsky who declares under penalty of perjury that the foregoing is true and correct:

QUALIFICATIONS

1. I am the City of Richland's Public Works Director. I have held this position in the City for over 10 years. As the Public Works Director, I am responsible for overseeing infrastructure and services for (1) transportation and streets, (2) water, (3) wastewater / sewer; (4) stormwater, and (5) solid waste.

2. I have a degree in Civil Engineering from the University of California Los Angeles (UCLA). I have been a licensed professional engineer in Washington for over 20 years, and was previously licensed in California. I have worked for the City of Los Angeles and the City of Pasadena. I have been employed by the City of Richland since 1994.

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3. I have lived and worked in the Tri-City community (Richland-Kennewick-Pasco, Washington) since 1994. I have regularly observed the operations of trains on the rail lines from the Richland Junction, both professionally and as a community resident.

CROSSING PROJECT BACKGROUND

4. By interlocal agreement, I am responsible for the planning and execution of the Center Parkway Crossing ("Crossing") for the Cities of Richland and of Kennewick (the "Cities").

5. In 2013, the Cities petitioned the Washington Utilities and Transportation Commission ("UTC") to construct the Crossing over the main track and the siding track owned by the Port of Benton. Those tracks extend from a UPRR line, and begin at the Richland Junction, immediately east of the Crossing and extend several miles to the north and west within the City of Richland and onto the Hanford Site. The siding track that is west of and parallel to the main line track is approximately 2,000 feet long, 400 feet of which is east of the Crossing and the remainder is west of the Crossing.

6. UPRR (and BNSF) have no objection to the Crossing.

7. The UTC unanimously approved the Crossing, rejecting the Tri-City Railroad Company LLC ("TCRY") opposition to the Cities' Crossing petition.

8. TCRY is a lessee on the Port of Benton track.

TCRY'S UNVERIFIED TRACK USAGE AND PROJECTED USAGE

9. Before the UTC, TCRY reported that it moved two to four trains per weekday, with roughly "fifteen cars per train." (Facts located in the Court of Appeals Clerk's Paper ("CP") at 1915:2-3 and CP 1917:7-8 (TCRY's response to the UTC data request for track usage).

10. Before the UTC, TCRY also reported that it projected 20% annual growth in its rail traffic.

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11. Now, before the Surface Transportation Board ("STB"), TCRY assert that it handled 2,247 railcars in 2013,[1] and that it projects to handle approximately 4,175 carloads on the Port of Benton tracks in 2015. (TCRY's Petition at p. 6).

12. TCRY has not submitted any data or records to the UTC or the STB to support its 2013 track usage or its projected track usage.

13. TCRY has not submitted any data or records to the UTC or the STB to identify its usage of the siding track.

14. A cold storage company is proceeding to develop a new storage facility in the City's Horn Rapids Industrial Park that will be served by rail. When the facility is completed and begins shipping by rail, the increased rail shipping will have no impact on rail operations at the Crossing. The crossing safety devices provide security and safety, and avoid conflicts between vehicular traffic and train traffic.

15. The declaration of John Miller states that "the City of Richland has projected as many as 12,500 inbound and 12,500 outbound rail cars per year at the passing track area in the coming years" (Miller Affidavit, ¶ 14). In support of this assertion, John Miller's affidavit cites Miller Exhibits 5, 6, and 7.

16. The City of Richland never made this rail traffic projection. The City of Richland has permitted development of a unit train servicing facility in its Horn Rapids Industrial Park. The facility is scheduled to begin operation in 2015. The facility's developers have speculated that additional business attracted to the facility may eventually result in up to two inbound and two outbound unit trains using facility per week. These trains would each include approximately one hundred cars. This activity, if it materialized in the future, would contribute no more than one additional train trip per day over the Crossing. Also, Miller Exhibit 5, 6, and 7 do not support Mr. Miller's assertion. Miller Exhibit 5 is TCRY's response to the UTC data request and TCRY's response to the Cities' data

[1] TCRY's Petition for Declaratory Order, p. 6 (first line).

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request, not a City of Richland document. Miller Exhibit 6 is a memo with supporting documentation from the City of Richland's Economic Development Committee. Miller Exhibit 7 is a real property purchase and sale agreement. These materials do not support John Miller's unfounded assertion that the City of Richland projected 12,500 inbound and 12,500 outbound cars per year.

THE CITY'S FIELD STUDY

17. To gather quantifiable data on track usage by the Crossing, I directed and oversaw a City of Richland's Public Works Department field study to document the track and siding usage at the Crossing.

18. The field study documents actual track usage through (1) time lapse footage of the track and (2) still camera shots of track usage. **Exhibit A**, attached to this Verified Statement, shows the time lapse camera in the Holiday Inn Express, located immediately to the north of the tracks. Exhibit A also shows that my staff took photos of the track and siding just to the north of the tracks.

19. The Field Study began on February 10, 2015 and it continues to this day. For the purposes of this proceeding for the STB, the attached exhibits include information from February 10, 2015 through May 26, 2015.

20. Based on the information in the time lapse footage, the City prepared a fifteen page chart that identifies train movements on the Port of Benton tracks near the Crossing. This chart is attached as **Exhibit B**. Exhibit B identified the date of the movement, the time of the movement, and total amount of cars, and the railroad responsible for moving the cars.

21. Based on the information in the still photos, the City prepared a series of eight graphics, attached as **Exhibit C**. Exhibit C shows the date and location of cars on the siding. In each instance, the cars were stationary. **Exhibit D** identifies the dates when City took the still photos.

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22. Exhibits A though D are true, accurate, and complete copies of the materials that the City of Richland created to gather quantifiable data on track usage.

23. To provide the STB with additional information, the Cites have provided the STB with a hard drive that includes a true, accurate, and complete copy of the time lapse footage and the still footage.

24. I have personally observed the tracks (including train movement) and the proposed Crossing. I have considered the record of train movement from railway-filed reports with the WUTC.

25. The field study and my past observations show that railcars were present (staged) on the siding on most days during the referenced period. Based on the Field Study and observations, once the cars were placed on the siding, they typically stayed at the same locations on the siding for three (3) days or more, and on many occasions they stayed for more than a week.

26. During the field study TCRY frequently staged cars immediately in front of the proposed Center Parkway Crossing, instead of elsewhere on the siding track.

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SIGNED AND SWORN STATEMENT

1. Pursuant to 49 CFR 1112.9:

State of Washington,

County of Benton,

Pete Rogalsky, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

Signed _____
Pete Rogalsky

Signed and sworn to before me this 12th day of June, 2015.

Notary Public of Washington.

My Commission expires 1-22-16.

Tammi Mae Larche

TAMMI MAE LARCHE
Notary Public
State of Washington
My Commission Expires
January 22, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

William J. Schroeder Gregory C. Hesler William C. Schroeder **Paine Hamblen LLP** 717 West Sprague Avenue, Suite 1200 Spokane, WA 99201 william.schroeder@painehamblen.com greg.hesler@painehamblen.com will.schroeder@painehamblen.com	_____ U.S. Mail _____ Hand Delivery __X__ Overnight Mail _____ E-Mail

Christopher G. Emch

Exhibit A


Center Parkway Railroad Study Site Map
Richland
Washington
N
Center Parkway
Holiday Inn
(Mngr: Mark)
(Asst: Heather)
Time-Lapse Camera
RR Tracks
RICHLAND
Still-Shot Camera(1)
Still-Shot Camera(2)
Still-Shot Camera(3)
KENNEWICK
RR Tracks

Exhibit B

FIELD STUDY BY
SC NYBY - 942-7515
COR

Feb 2015 RR Study - Center Parkway

KEY:
BNSF = Burlington Northern Santa Fe Railway
TCRR = Tri City Railroad
W & E = West or East
STND = Standard
CPW = Center Parkway
XING = Crossing

	DATE	FILE NAME	FILE TIME	STND TIME	(W or E)	TOTAL CARS	(BNSF OR TCRR)	RUN TIME
1	2/10/15	CPW Study 2-10-2015	0:26	12:53PM	W	17	TCRR	NOON TO 8PM (disc full)
2							Red, White & Blue Engine	
3	2/11/15	CPW Study 2-11-2015	0:42	6:13AM	W	?DARK OUT	?DARK OUT	5AM TO 8PM
4								
5	2/11/15	CPW Study 2-11-2015	1:38	7:47AM	E	2	BNSF	5AM TO 8PM
6							Orange Engine	
7	2/11/15	CPW Study 2-11-2015	3:18	10:31AM	E	5	TCRR	5AM TO 8PM
8							Red, White & Blue Engine	
9	2/11/15	CPW Study 2-11-2015	3:52	11:34AM	W	4	TCRR	5AM TO 8PM
10							Red, White & Blue Engine	
11	2/12/15	CPW Study 2-12-2015 1of2	2:42	9:30AM	E	6	TCRR	5am to 11am (disc full)
12							Red, White & Blue Engine	
13	2/12/15	CPW Study 2-12-2015 2of2	3:27	10:45AM	W	11	TCRR	5am to 11am (disc full)
14						staging @ xing	Red, White & Blue Engine	
15	2/12/15	CPW Study 2-12-2015	0	0	0	0	0	11AM to 8PM
16								
17	2/13/15	CPW Study 2-13-2015	1:58	11:40AM	E	15	TCRR	5AM TO 8PM
18							Red, White & Blue Engine	
19	2/13/15	CPW Study 2-13-2015	2:18	12:50PM	W	6	TCRR	5AM TO 8PM
20								
21	2/14/15	CPW Study 2-14-2015	0	0	0	0	0	5AM TO 8PM
22								
23	2/15/15	CPW Study 2-15-2015	0	0	0	0	0	5AM TO 8PM
24								
25	2/16/15	CPW Study 2-15-2015	0	0	0	0	0	5AM TO 8PM
26								
27	2/17/15	CPW Study 2-16-2015 1of2	0:52	7:57AM	W	2	BNSF	5AM TO 10:15(disc full)

28							Orange Engine	
29	2/17/15	CPW Study 2-17-2015 1of2	1:30	10:05AM	E	0	BNSF	5AM TO 10:15(disc full)
30						ENGINE ONLY	Orange Engine	
31	2/17/15	CPW Study 2-17-2015 2of2	0:26	11:11AM	E	14	TCRR	10:30AM TO 8PM
32							Red, White & Blue Engine	
33	2/17/15	CPW Study 2-17-2015 2of2	1:33	1:01PM	W	35	TCRR	10:30AM TO 8PM
34							Red, White & Blue Engine	
35	2/18/15	CPW Study 2-18-2015	4:10	11:59AM	E	6	TCRR	5AM TO 8PM
36							Red, White & Blue Engine	
37	2/18/15	CPW Study 2-18-2015	4:47	1:03PM	W	5	TCRR	5AM TO 8PM
38							Red, White & Blue Engine	
39	2/19/15	CPW Study 2-19-2015	3:11	10:20AM	E	10	TCRR	5AM TO 8PM
40							Red, White & Blue Engine	
41	2/19/15	CPW Study 2-19-2015	3:57	11:36AM	W	4	TCRR	5AM TO 8PM
42						staging @ xing	Red, White & Blue Engine	
43	2/20/15	CPW Study 2-20-2015	1:29	7:36AM	W	1	BNSF	5AM TO 8AM(disc full)
44							Orange Engine	
45	2/23/15	CPW Study 2-23-2015	0:27	10:37AM	W	10	TCRR	(START)9:50AM TO 8PM
46							Red, White & Blue Engine	
47	2/23/15	CPW Study 2-23-2015	1:15	12:02PM	W	7	TCRR	9:50AM TO 8PM
48							Red, White & Blue Engine	
49	2/24/15	CPW Study 2-24-2015	3:18	10:40AM	W	0	BNSF	5AM TO 8PM
50						ENGINE ONLY	Orange Engine	
51	2/24/15	CPW Study 2-24-2015	3:21	10:43AM	E	6	TCRR	5AM TO 8PM
52							Red, White & Blue Engine	
53	2/24/15	CPW Study 2-24-2015	4:14	12:07PM	W	11	TCRR	5AM TO 8PM
54						staging @ xing	Red, White & Blue Engine	
55	2/24/15	CPW Study 2-24-2015	4:26	12:30PM	W	3	BNSF	5AM TO 8PM
56							Orange Engine	
57	2/25/15	CPW Study 2-25-2015	3:30	10:52AM	E	8	TCRR	5AM TO 5:30PM(disc full)
58							Red, White & Blue Engine	
59	2/25/15	CPW Study 2-25-2015	4:15	12:10PM	W	16	TCRR	5AM TO 5:30PM(disc full)
60							Red, White & Blue Engine	
61	2/26/15	CPW Study 2-26-2015	0:36	11:43AM	E	11	TCRR	(START)10:40 TO 8PM
62							Red, White & Blue Engine	
63	2/26/15	CPW Study 2-26-2015	1:10	12:40PM	W	0	TCRR	(START)10:40 TO 8PM
64						ENGINE ONLY	Red, White & Blue Engine	
65	2/27/15	CPW Study 2-27-2015	3:03	10:06AM	E	10	TCRR	5AM TO 8PM
66							Red, White & Blue Engine	

67	2/27/15	CPW Study 2-27-2015	3:41	11:19AM	W	8	TCRR	5AM TO 8PM
68							Red, White & Blue Engine	
69	2/27/15	CPW Study 2-27-2015	4:59	1:19	E&W	0	TCRR	5AM TO 8PM
70							RR Service Pickup	
71	2/28/15	CPW Study 2-28-2015	0	0	0	0	0	5AM TO 8PM
72								
73	3/2/15	CPW Study 3-2-2015	0	0	0	0	0	1:40PM TO 8PM (new 32g disc)
74								
75	3/3/15	CPW Study 3-3-2015	3:01	10:02AM	E	4	TCRR	5AM TO 8PM
76							Red, White & Blue Engine	
77	3/3/15	CPW Study 3-3-2015	3:52	11:27AM	W	18	TCRR	5AM TO 8PM
78							Red, White & Blue Engine	
79	3/4/15	CPW Study 3-4-2015	3:13	10:28AM	E	8	TCRR	5AM TO 8PM
80							Red, White & Blue Engine	
81	3/4/15	CPW Study 3-4-2015	3:50	11:30AM	W	0	TCRR	5AM TO 8PM
82		staging @ xing				ENGINE ONLY	Red, White & Blue Engine	
83	3/5/15	CPW Study 3-5-2015	3:30	10:51AM	E	7	TCRR	5AM TO 8PM
84							Red, White & Blue Engine	
85	3/5/15	CPW Study 3-5-2015	4:14	12:09PM	W	2	TCRR	5AM TO 8PM
86							Red, White & Blue Engine	
87	3/6/15	CPW Study 3-6-2015	3:13	10:22AM	E	10	TCRR	5AM TO 8PM
88							Red, White & Blue Engine	
89	3/6/15	CPW Study 3-6-2015	3:56	11:36AM	W	13	TCRR	5AM TO 8PM
90							Red, White & Blue Engine	
91	3/6/15	CPW Study 3-6-2015	4:53	1:10PM	E&W	0	TCRR	5AM TO 8PM
92							RR Service Pickup	
93	3/7/15	CPW Study 3-7-2015	0	0	0	0	0	5AM TO 8PM
94								
95	3/8/15	CPW Study 3-8-2015	0	0	0	0	0	5AM TO 8PM
96								
97	3/9/15	CPW Study 3-9-2015	2:57	9:58PM	E	17	TCRR	5AM TO 12:05PM
98							Red, White & Blue Engine	
99	3/9/15	CPW Study 3-9-2015	3:44	11:17PM	W	14	TCRR	5AM TO 12:05PM(CHANGED DISC)
100							Red, White & Blue Engine	
101	3/9/15	CPW Study 3-9-2015	0	0	0	0	0	12:15PM TO 8PM
102								
103	3/10/15	CPW Study 3-10-2015	0:32	5:57AM	W	1	BNSF	5AM TO 12:40PM
104							Orange Engine	
105	3/10/15	CPW Study 3-10-2015	1:34	7:37AM	E	0	BNSF	5AM TO 12:40PM

106					ENGINE ONLY	Orange Engine	
107 3/10/15	CPW Study 3-10-2015	2:36	9:22AM	E	7	TCRR	5AM TO 12:40PM
108						Red, White & Blue Engine	
109 3/10/15	CPW Study 3-10-2015	3:17	10:31AM	W	13	TCRR	5AM TO 12:40PM (CHANGED DISC)
110						Red, White & Blue Engine	
111 3/10/15	CPW Study 3-10-2015	0	0	0	0	0	12:45PM TO 8PM (CHANGED DISC)
112							
113 3/11/15	CPW Study 3-11-2015	0:58	6:40AM	W	?DARK OUT	?DARK OUT	5AM TO 8PM
114							
115 3/11/15	CPW Study 3-11-2015	2:37	9:24AM	E	0	BNSF	5AM TO 8PM
116					ENGINE ONLY	Orange Engine	
117 3/11/15	CPW Study 3-11-2015	3:50	11:25AM	E	8	TCRR	5AM TO 8PM
118						Red, White & Blue Engine	
119 3/11/15	CPW Study 3-11-2015	4:38	12:53PM	W	10	TCRR	5AM TO 8PM
120						Red, White & Blue Engine	
121 3/12/15	CPW Study 3-12-2015	3:42	11:12PM	E	6	TCRR	5AM TO 8PM
122						Red, White & Blue Engine	
123 3/12/15	CPW Study 3-12-2015	4:17	12:19PM	W	6	TCRR	5AM TO 8PM
124						Red, White & Blue Engine	
125 3/13/15	CPW Study 3-13-2015	1:39	7:48AM	W	0	BNSF	5AM TO 8PM
126					ENGINE ONLY	Orange Engine	
127 3/13/15	CPW Study 3-13-2015	2:27	9:06AM	E	1	BNSF	5AM TO 8PM
128						Orange Engine	
129 3/13/15	CPW Study 3-13-2015	3:42	11:12AM	E	12	TCRR	5AM TO 8PM
130						Red, White & Blue Engine	
131 3/13/15	CPW Study 3-13-2015	4:09	11:56AM	E&W	0	TCRR	5AM TO 8PM
132						RR Service Pickup	
133 3/13/15	CPW Study 3-13-2015	4:14	12:03PM	W	0	TCRR	5AM TO 8PM
134					ENGINE ONLY	Red, White & Blue Engine	
135 3/14/15	CPW Study 3-14-2015	0	0	0	0	0	5AM to 8PM
136							
137 3/15/15	CPW Study 3-15-2015	0	0	0	0	0	5AM TO 8PM
138							
139 3/16/15	CPW Study 3-16-2015	3:26	10:45AM	W	0	BNSF	5AM TO 8PM
140					ENGINE ONLY	Orange Engine	
141 3/16/15	CPW Study 3-16-2015	4:07	11:53AM	E	17	TCRR	5AM TO 8PM
142						Red, White & Blue Engine	
143 3/16/15	CPW Study 3-16-2015	4:26	12:25PM	E	1	BNSF	5AM TO 8PM
144						Orange Engine	

145	3/16/15	CPW Study 3-16-2015	4:58	13:29PM	W	27	TCRR	5AM TO 8PM
146							Red, White & Blue Engine	
147	3/17/15	CPW Study 3-17-2015	3:46	11:18PM	E	5	TCRR	5AM TO 1:45PM
148							Red, White & Blue Engine	
149	3/17/15	CPW Study 3-17-2015	4:47	13:01PM	W	22	TCRR	5AM TO 1:45PM
150						staging @ xing	Red, White & Blue Engine	
151	3/17/15	CPW Study 3-17-2015	0	0	0	0	0	1:55PM TO 8PM
152								
153	3/18/15	CPW Study 3-18-2015	1:52	8:10AM	W	2	BNSF	5AM TO 1:30PM
154							Orange Engine	
155	3/18/15	CPW Study 3-18-2015	3:06	10:12AM	E	0	BNSF	5AM TO 1:30PM
156						ENGINE ONLY	Orange Engine	
157	3/18/15	CPW Study 3-18-2015	3:53	11:30AM	E	10	TCRR	5AM TO 1:30PM
158							Red, White & Blue Engine	
159	3/18/15	CPW Study 3-18-2015	4:34	12:40PM	W	5	TCRR	5AM TO 1:30PM
160						staging @ xing	Red, White & Blue Engine	
161	3/18/15	CPW Study 3-18-2015	0	0	0	0	0	1:30PM TO 8PM
162								
163	3/19/15	CPW Study 3-19-2015	1:34	7:41AM	W	2	BNSF	5AM TO 8PM
164							Orange Engine	
165	3/19/15	CPW Study 3-19-2015	2:56	9:55AM	E	1	BNSF	5AM TO 8PM
166							Orange Engine	
167	3/19/15	CPW Study 3-19-2015	3:19	10:27AM	E	6	TCRR	5AM TO 8PM
168							Red, White & Blue Engine	
169	3/19/15	CPW Study 3-19-2015	3:55	11:36AM	W	9	TCRR	5AM TO 8PM
170							Red, White & Blue Engine	
171	3/20/15	CPW Study 3-20-2015	1:33	7:35AM	W	2	BNSF	5AM TO 8PM
172							Orange Engine	
173	3/20/15	CPW Study 3-20-2015	2:42	9:31AM	E	0	BNSF	5AM TO 8PM
174							Orange Engine	
175	3/20/15	CPW Study 3-20-2015	3:22	10:38AM	E	10	TCRR	5AM TO 8PM
176							Red, White & Blue Engine	
177	3/20/15	CPW Study 3-20-2015	3:57	11:36AM	W	0	TCRR	5AM TO 8PM
178							Red, White & Blue Engine	
179	3/21/15	CPW Study 3-21-2015	0	0	0	0	0	5AM TO 8PM
180								
181	3/22/15	CPW Study 3-22-2015	0	0	0	0	0	5AM TO 8PM
182								
183	3/23/15	CPW Study 3-23-2015	2:26	9:10AM	W	2	BNSF	5AM TO 8PM

184							Orange Engine	
185	3/23/15	CPW Study 3-23-2015	3:41	11:11AM	E	17	TCRR	5AM TO 8PM
186							Red, White & Blue Engine	
187	3/23/15	CPW Study 3-23-2015	3:53	11:29AM	E	0	BNSF	5AM TO 8PM
188						ENGINE ONLY	Orange Engine	
189	3/23/15	CPW Study 3-23-2015	4:31	12:38PM	W	16	TCRR	5AM TO 8PM
190							Red, White & Blue Engine	
191	3/24/15	CPW Study 3-24-2015	3:02	10:05AM	E	6	TCRR	5AM TO 8PM
192							Red, White & Blue Engine	
193	3/24/15	CPW Study 3-24-2015	3:48	11:23AM	W	13	TCRR	5AM TO 8PM
194							Red, White & Blue Engine	
195	3/25/15	CPW Study 3-25-2015	1:36	7:44AM	W	2	BNSF	5AM TO 8PM
196							Orange Engine	
197	3/25/15	CPW Study 3-25-2015	3:25	10:43AM	E	0	BNSF	5AM TO 8PM
198						ENGINE ONLY	Orange Engine	
199	3/25/15	CPW Study 3-25-2015	3:49	11:24AM	E	10	TCRR	5AM TO 8PM
200							Red, White & Blue Engine	
201	3/25/15	CPW Study 3-25-2015	4:21	12:21PM	W	0	TCRR	5AM TO 8PM
202						staging @ xing	Red, White & Blue Engine	
203	3/26/15	CPW Study 3-26-2015	3:20	10:36AM	E	6	TCRR	5AM TO 12:46PM
204							Red, White & Blue Engine	
205	3/26/15	CPW Study 3-26-2015	3:51	11:28AM	W	0	TCRR	5AM TO 12:46PM
206						ENGINE ONLY	Red, White & Blue Engine	
207	3/26/15	CPW Study 3-26-2015	0	0	0	0	0	12:55PM TO 8PM
208								
209	3/27/15	CPW Study 3-27-2015	1:15	7:08AM	W	0	BNSF	5AM TO 1:05PM
210						ENGINE ONLY	Orange Engine	
211	3/27/15	CPW Study 3-27-2015	2:03	8:29AM	E	1	BNSF	5AM TO 1:05PM
212							Orange Engine	
213	3/27/15	CPW Study 3-27-2015	2:40	9:30AM	E&W	0	TCRR	5AM TO 1:05PM
214							RR Service Pickup	
215	3/27/15	CPW Study 3-27-2015	3:16	10:29AM	E	10	TCRR	5AM TO 1:05PM
216							Red, White & Blue Engine	
217	3/27/15	CPW Study 3-27-2015	3:25	10:42AM	E&W	0	TCRR	5AM TO 1:05PM
218							RR Service Pickup	
219	3/27/15	CPW Study 3-27-2015	4:00	11:41AM	W	3	TCRR	5AM TO 1:05PM
220						staging @ xing	Red, White & Blue Engine	
221	3/27/15	CPW Study 3-27-2015	0	0	0	0	0	1:10PM TO 8PM
222								

223	3/28/15	CPW Study 3-28-2015	0	0	0	0	0	5AM TO 8PM
224								
225	3/29/15	CPW Study 3-29-2015	0	0	0	0	0	5AM TO 8PM
226								
227	3/30/15	CPW Study 3-30-2015	3:09	10:17AM	E	7	TCRR	5AM TO 8PM
228							Red, White & Blue Engine	
229	3/30/15	CPW Study 3-30-2015	3:29	10:51AM	E	0	BNSF	5AM TO 8PM
230						ENGINE ONLY	Orange Engine	
231	3/30/15	CPW Study 3-30-2015	3:51	11:31AM	W	10	TCRR	5AM TO 8PM
232							Red, White & Blue Engine	
233	3/31/15	CPW Study 3-31-2015	2:28	9:09AM	E	10	TCRR	5AM TO 8PM
234							Red, White & Blue Engine	
235	3/31/15	CPW Study 3-31-2015	3:01	10:12AM	W	4	TCRR	5AM TO 8PM
236							Red, White & Blue Engine	
237	4/1/15	CPW Study 4-1-2015	2:27	9:07AM	W	1	BNSF	5AM TO 8PM
238							Orange Engine	
239	4/1/15	CPW Study 4-1-2015	3:13	10:23AM	E	6	TCRR	5AM TO 8PM
240							Red, White & Blue Engine	
241	4/1/15	CPW Study 4-1-2015	3:39	11:07AM	E	0	BNSF	5AM TO 8PM
242						ENGINE ONLY	Orange Engine	
243	4/1/15	CPW Study 4-1-2015	3:46	11:18AM	W	0	TCRR	5AM TO 8PM
244						ENGINE ONLY	Red, White & Blue Engine	
245	4/2/15	CPW Study 4-2-2015	1:22	7:25AM	W	1	BNSF	5AM TO 8PM
246							Orange Engine	
247	4/2/15	CPW Study 4-2-2015	2:35	9:20AM	E	1	BNSF	5AM TO 8PM
248							Orange Engine	
249	4/2/15	CPW Study 4-2-2015	3:45	11:16AM	E	4	TCRR	5AM TO 8PM
250							Red, White & Blue Engine	
251	4/2/15	CPW Study 4-2-2015	4:14	12:05PM	E&W	0	TCRR	5AM TO 8PM
252							RR Service Pickup	
253	4/2/15	CPW Study 4-2-2015	4:22	12:24PM	W	8	TCRR	5AM TO 8PM
254							Red, White & Blue Engine	
255	4/3/15	CPW Study 4-3-2015	3:11	10:20AM	E	7	TCRR	5AM TO 8PM
256							Red, White & Blue Engine	
257	4/3/15	CPW Study 4-3-2015	3:40	11:11AM	W	0	TCRR	5AM TO 8PM
258						ENGINE ONLY	Red, White & Blue Engine	
259	4/4/15	CPW Study 4-4-2015	0	0	0	0	0	5AM TO 8PM
260								
261	4/5/15	CPW Study 4-5-2015	0	0	0	0	0	5AM TO 8PM

262								
263	4/6/15	CPW Study 4-6-2015	3:44	11:13AM	E	12	TCRR	5AM TO 8PM
264							Red, White & Blue Engine	
265	4/6/15	CPW Study 4-6-2015	4:20	12:14PM	W	0	TCRR	5AM TO 8PM
266						staging @ xing	Red, White & Blue Engine	
267	4/7/15	CPW Study 4-7-2015	1:31	7:37AM	W	5	BNSF	5AM TO 8PM
268							Orange Engine	
269	4/7/15	CPW Study 4-7-2015	3:13	10:22AM	E	0	BNSF	5AM TO 8PM
270						ENGINE ONLY	Orange Engine	
271	4/7/15	CPW Study 4-7-2015	3:29	10:51AM	E	9	TCRR	5AM TO 8PM
272							Red, White & Blue Engine	
273	4/7/15	CPW Study 4-7-2015	4:24	12:22PM	W	20	TCRR	5AM TO 8PM
274							Red, White & Blue Engine	
275	4/8/15	CPW Study 4-8-2015	2:04	8:32AM	W	0	BNSF	5AM to 1:26PM
276						ENGINE ONLY	Orange Engine	
277	4/8/15	CPW Study 4-8-2015	3:23	10:39AM	E	6	TCRR	5AM to 1:26PM
278							Red, White & Blue Engine	
279	4/8/15	CPW Study 4-8-2015	4:08	11:57AM	W	19	TCRR	5AM to 1:26PM
280							Red, White & Blue Engine	
281	4/8/15	CPW Study 4-8-2015	0	0	0	0	0	1:30PM TO 8PM
282								
283	4/9/15	CPW Study 4-9-2015	1:40	7:52AM	W	5	BNSF	5AM TO 1:10PM
284							Orange Engine	
285	4/9/15	CPW Study 4-9-2015	2:43	9:34AM	E	6	TCRR	5AM TO 1:10PM
286							Red, White & Blue Engine	
287	4/9/15	CPW Study 4-9-2015	3:22	10:41AM	W	10	TCRR	5AM TO 1:10PM
288						staging @ xing	Red, White & Blue Engine	
289	4/9/15	CPW Study 4-9-2015	4:35	12:40PM	W&E	0	TCRR	5AM TO 1:10PM
290							RR Service Pickup	
291	4/9/15	CPW Study 4-9-2015	0	0	0	0	0	1:15PM TO 8PM
292								
293	4/10/15	CPW Study 4-10-2015	3:32	10:55AM	E	8	TCRR	5AM TO 8PM
294							Red, White & Blue Engine	
295	4/11/15	CPW Study 4-11-2015	0	0	0	0	0	5AM TO 8PM
296								
297	4/12/15	CPW Study 4-12-2015	0	0	0	0	0	5AM TO 8PM
298								
299	4/13/15	CPW Study 4-13-2015	3:29	10:49AM	W	2	BNSF	5AM TO 8PM
300							Orange Engine	

301	4/13/15	CPW Study 4-13-2015	3:41	11:12AM	E	6	TCRR	5AM TO 8PM
302							Red, White & Blue Engine	
303	4/13/15	CPW Study 4-13-2015	4:24	12:27AM	W	15	TCRR	5AM TO 8PM
304							Red, White & Blue Engine	
305	4/13/15	CPW Study 4-13-2015	5:23	2:07PM	E	5	BNSF	5AM TO 8PM
306							Orange Engine	
307	4/14/15	CPW Study 4-14-2015	3:55	11:34AM	E	11	TCRR	5AM TO 8PM
308							Red, White & Blue Engine	
309	4/14/15	CPW Study 4-14-2015	5:05	1:34PM	W	33	TCRR	5AM TO 8PM
310							Red, White & Blue Engine	
311	4/15/15	CPW Study 4-15-2015	1:41	7:51AM	W	5	BNSF	5AM TO 8PM
312							Orange Engine	
313	4/15/15	CPW Study 4-15-2015	3:16	10:28AM	E	2	BNSF	5AM TO 8PM
314							Orange Engine	
315	4/15/15	CPW Study 4-15-2015	3:38	11:04AM	E	9	TCRR	5AM TO 8PM
316							Red, White & Blue Engine	
317	4/16/15	CPW Study 4-16-2015	1:51	8:06AM	W	2	BNSF	5AM TO 8PM
318							Orange Engine	
319	4/16/15	CPW Study 4-16-2015	4:16	12:08PM	E	5	BNSF	5AM TO 8PM
320							Orange Engine	
321	4/16/15	CPW Study 4-16-2015	5:22	1:57PM	E	11	TCRR	5AM TO 8PM
322							Red, White & Blue Engine	
323	4/16/15	CPW Study 4-16-2015	6:11	3:24PM	W	9	TCRR	5AM TO 8PM
324							Red, White & Blue Engine	
325	4/17/15	CPW Study 4-17-2015	1:04	6:51AM	W	3	BNSF	5AM TO 8PM
326							Orange Engine	
327	4/17/15	CPW Study 4-17-2015	2:12	8:40AM	E	0	BNSF	5AM TO 8PM
328						ENGINE ONLY	Orange Engine	
329	4/17/15	CPW Study 4-17-2015	3:49	11:27AM	E	8	TCRR	5AM TO 8PM
330							Red, White & Blue Engine	
331	4/17/15	CPW Study 4-17-2015	4:29	12:35PM	W	0	TCRR	5AM TO 8PM
332						staging @ xing	Red, White & Blue Engine	
333	4/18/15	CPW Study 4-18-2015	0	0	0	0	0	5AM TO 8PM
334								
335	4/19/15	CPW Study 4-19-2015	0	0	0	0	0	5AM TO 8PM
336								
337	4/20/15	CPW Study 4-20-2015	1:37	7:44AM	W	2	BNSF	5AM TO 1:35PM
338							Orange Engine	
339	4/20/15	CPW Study 4-20-2015	2:39	9:26AM	E	1	BNSF	5AM TO 1:35PM

340							Orange Engine	
341	4/20/15	CPW Study 4-20-2015	3:03	10:06AM	E	5	TCRR	5AM TO 1:35PM
342							Red, White & Blue Engine	
343	4/20/15	CPW Study 4-20-2015	4:01	11:47AM	W	14	TCRR	5AM TO 1:35PM
344							Red, White & Blue Engine	
345	4/20/15	CPW Study 4-20-2015	0	0	0	0	0	1:40PM TO 8PM
346								
347	4/21/15	CPW Study 4-21-2015	2:12	8:43AM	W	0	BNSF	5AM TO 1:30PM
348						ENGINE ONLY	Orange Engine	
349	4/21/15	CPW Study 4-21-2015	3:57	11:36AM	E	1	BNSF	5AM TO 1:30PM
350							Orange Engine	
351	4/21/15	CPW Study 4-21-2015	4:00	11:42AM	E	11	TCRR	5AM TO 1:30PM
352							Red, White & Blue Engine	
353	4/21/15	CPW Study 4-21-2015	4:55	1:12PM	W	13	TCRR	5AM TO 1:30PM
354							REd, White & Blue Engine	
355	4/21/15	CPW Study 4-21-2015	0	0	0	0	0	1:35PM TO 8PM
356								
357	4/22/15	CPW Study 4-22-2015	1:05	6:51AM	W	1	BNSF	5AM to 1:26PM
358							Orange Engine	
359	4/22/15	CPW Study 4-22-2015	3:06	10:13AM	E	2	BNSF	5AM to 1:26PM
360							Orange Engine	
361	4/22/15	CPW Study 4-22-2015	4:25	12:24AM	E	11	TCRR	5AM to 1:26PM
362							Red, White & Blue Engine	
363	4/22/15	CPW Study 4-22-2015	4:58	1:22PM	W	0	TCRR	5AM to 1:26PM
364						ENGINE ONLY	Red, White & Blue Engine	
365	4/22/15	CPW Study 4-22-2015	0	0	0	0	0	1:28PM TO 8PM
366								
367	4/23/15	CPW Study 4-23-2015	1:24	7:23AM	W	3	BNSF	5AM TO 8PM
368							Orange Engine	
369	4/23/15	CPW Study 4-23-2015	2:24	9:01AM	E	0	BNSF	5AM TO 8PM
370						ENGINE ONLY	Orange Engine	
371	4/23/15	CPW Study 4-23-2015	3:17	10:31AM	E	6	TCRR	5AM TO 8PM
372							Red, White & Blue Engine	
373	4/23/15	CPW Study 4-23-2015	4:32	12:39AM	W	15	TCRR	5AM TO 8PM
374							Red, White & Blue Engine	
375	4/24/15	CPW Study 4-24-2015	0:57	6:39AM	W	6	BNSF	5AM TO 8PM
376							Orange Engine	
377	4/24/15	CPW Study 4-24-2015	2:09	8:34AM	E	0	BNSF	5AM TO 8PM
378						ENGINE ONLY	Orange Engine	

379	4/24/15	CPW Study 4-24-2015	3:49	11:22AM	E	9	TCRR	5AM TO 8PM
380							Red, White & Blue Engine	
381	4/24/15	CPW Study 4-24-2015	4:17	12:15AM	W	0	TCRR	5AM TO 8PM
382						ENGINE ONLY	REd, White & Blue Engine	
383	4/25/15	CPW Study 4-25-2015	0	0	0	0	0	5AM TO 8PM
384								
385	4/26/15	CPW Study 4-26-2015	0	0	0	0	0	5AM TO 8PM
386								
387	4/27/15	CPW Study 4-27-2015	1:35	7:45AM	W	0	BNSF	5AM TO 8PM
388						ENGINE ONLY	Orange Engine	
389	4/27/15	CPW Study 4-27-2015	2:58	9:58AM	E	5	BNSF	5AM TO 8PM
390							Orange Engine	
391	4/27/15	CPW Study 4-27-2015	3:26	10:45AM	E	15	TCRR	5AM TO 8PM
392							Red, White & Blue Engine	
393	4/27/15	CPW Study 4-27-2015	4:13	12:11PM	W	20	TCRR	5AM TO 8PM
394							Red, White & Blue Engine	
395	4/28/15	CPW Study 4-28-2015	3:19	10:33AM	E	12	TCRR	5AM TO 8PM
396							Red, White & Blue Engine	
397	4/28/15	CPW Study 4-28-2015	4:19	12:13AM	W	20	TCRR	5AM TO 8PM
398							Red, White & Blue Engine	
399	4/29/15	CPW Study 4-29-2015	1:03	6:47AM	W	1	BNSF	5AM TO 8PM
400							Orange Engine	
401	4/29/15	CPW Study 4-29-2015	2:01	8:25AM	E	0	BNSF	5AM TO 8PM
402						ENGINE ONLY	Orange Engine	
403	4/29/15	CPW Study 4-29-2015	2:59	10:01AM	E	0	TCRR	5AM TO 8PM
404							RR Service Pickup	
405	4/29/15	CPW Study 4-29-2015	3:59	11:39AM	E	8	TCRR	5AM TO 8PM
406							Red, White & Blue Engine	
407	4/29/15	CPW Study 4-29-2015	4:27	12:27AM	W	0	TCRR	5AM TO 8PM
408						ENGINE ONLY	Red, White & Blue Engine	
409	4/30/15	CPW Study 4-30-2015	1:03	6:46AM	E	2	BNSF	5AM TO 9:53AM
410							Orange Engine	
411	4/30/15	CPW Study 4-30-2015	2:15	8:46AM	E	1	BNSF	5AM TO 9:53AM
412							Orange Engine	
413	4/30/15	CPW Study 4-30-2015	0:48	11:19AM	E	19	TCRR	9:55AM TO 8PM
414						staging @ xing	Red, White & Blue Engine	
415	4/30/15	CPW Study 4-30-2015	1:36	12:40PM	W	12	TCRR	9:55AM TO 8PM
416							Red, White & Blue Engine	
417	5/1/15	CPW Study 5-1-2015	1:24	7:20AM	W	8	BNSF	5AM TO 10:43AM

418							Green Engine	
419	5/1/15	CPW Study 5-1-2015	2:38	9:25AM	E	2	BNSF	5AM TO 10:43AM
420							Green Engine	
421	5/1/15	CPW Study 5-1-2015	2:59	9:59AM	E	3	TCRR	5AM TO 10:43AM
422							Red, White & Blue Engine	
423	5/1/15	CPW Study 5-1-2015	0:03	10:54AM	W	0	TCRR	10:45AM TO 8PM
424						ENGINE ONLY	Red, White & Blue Engine	
425	5/2/15	CPW Study 5-2-2015	0	0	0	0	0	5AM TO 8PM
426								
427	5/3/15	CPW Study 5-3-2015	0	0	0	0	0	5AM TO 8PM
428								
429	5/4/15	CPW Study 5-4-2015	1:39	7:49AM	W	1	BNSF	5AM TO 8PM
430						ENGINE ONLY	Orange Engine	
431	5/4/15	CPW Study 5-4-2015	3:14	10:27AM	E	4	BNSF	5AM TO 8PM
432							Orange Engine	
433	5/4/15	CPW Study 5-4-2015	4:12	12:02AM	E	21	TCRR	5AM TO 8PM
434							Red, White & Blue Engine	
435	5/4/15	CPW Study 5-4-2015	5:01	1:23PM	W	13	TCRR	5AM TO 8PM
436							Red, White & Blue Engine	
437	5/5/15	CPW Study 5-5-2015	3:16	10:27AM	E	0	TCRR	5AM TO 8PM
438							RR Service Pickup	
439	5/5/15	CPW Study 5-5-2015	3:26	10:45AM	E	7	TCRR	5AM TO 8PM
440							Red, White & Blue Engine	
441	5/5/15	CPW Study 5-5-2015	4:11	12:06PM	W	14	TCRR	5AM TO 8PM
442							Red, White & Blue Engine	
443	5/6/15	CPW Study 5-6-2015	1:30	7:33AM	W	2	BNSF	5AM TO 8PM
444							Orange Engine	
445	5/6/15	CPW Study 5-6-2015	2:53	9:50AM	E	0	BNSF	5AM TO 8PM
446						ENGINE ONLY	Orange Engine	
447	5/6/15	CPW Study 5-6-2015	4:02	11:45AM	E	10	TCRR	5AM TO 8PM
448							Red, White & Blue Engine	
449	5/6/15	CPW Study 5-6-2015	4:54	1:11PM	W	15	TCRR	5AM TO 8PM
450							Red, White & Blue Engine	
451	5/7/15	CPW Study 5-7-2015	3:46	11:17AM	E	8	TCRR	5AM TO 8PM
452							Red, White & Blue Engine	
453	5/7/15	CPW Study 5-7-2015	4:18	12:14AM	W	3	TCRR	5AM TO 8PM
454							Red, White & Blue Engine	
455	5/8/15	CPW Study 5-8-2015	4:25	12:22PM	E	13	TCRR	5AM TO 8PM
456							Red, White & Blue Engine	

457	5/8/15	CPW Study 5-8-2015	5:07	1:34PM	W	10	TCRR	5AM TO 8PM
458							Red, White & Blue Engine	
459	5/9/15	CPW Study 5-9-2015	0	0	0	0	0	5AM TO 8PM
460								
461	5/10/15	CPW Study 5-10-2015	0	0	0	0	0	5AM TO 8PM
462								
463	5/11/15	CPW Study 5-11-2015	2:26	9:06AM	W	2	BNSF	5AM TO 1:29PM
464							Orange Engine	
465	5/11/15	CPW Study 5-11-2015	3:42	11:11AM	E	0	BNSF	5AM TO 1:29PM
466						ENGINE ONLY	Orange Engine	
467	5/11/15	CPW Study 5-11-2015	3:46	11:17AM	E	13	TCRR	5AM TO 1:29PM
468							Red, White & Blue Engine	
469	5/11/15	CPW Study 5-11-2015	4:25	12:24PM	W	6	TCRR	5AM TO 1:29PM
470							Red, White & Blue Engine	
471	5/11/15	CPW Study 5-11-2015	0	0	0	0	0	1:31PM TO 8PM
472								
473	5/12/15	CPW Study 5-12-2015	1:37	7:43AM	W	3	BNSF	5AM TO 11:21AM
474							Orange Engine	
475	5/12/15	CPW Study 5-12-2015	2:45	9:36AM	E	0	BNSF	5AM TO 11:21AM
476						ENGINE ONLY	Orange Engine	
477	5/12/15	CPW Study 5-12-2015	2:59	10:00AM	E	6	TCRR	5AM TO 11:21AM
478							Red, White & Blue Engine	
479	5/12/15	CPW Study 5-12-2015	0:04	11:33AM	W	21	TCRR	11:25AM TO 8PM
480							Red, White & Blue Engine	
481	5/13/15	CPW Study 5-13-2015	2:49	9:46AM	W	6	BNSF	5AM TO 8PM
482							Orange Engine	
483	5/13/15	CPW Study 5-13-2015	2:56	9:55AM	E	6	TCRR	5AM TO 8PM
484							Red, White & Blue Engine	
485	5/13/15	CPW Study 5-13-2015	3:37	11:05AM	W	13	TCRR	5AM TO 8PM
486							Red, White & Blue Engine	
487	5/13/15	CPW Study 5-13-2015	4:15	12:05PM	E	2	BNSF	5AM TO 8PM
488							Orange Engine	
489	5/14/15	CPW Study 5-14-2015	1:03	6:50AM	W	1	BNSF	5AM TO 8PM
490							Orange Engine	
491	5/14/15	CPW Study 5-14-2015	2:36	9:21AM	E	2	BNSF	5AM TO 8PM
492							Orange Engine	
493	5/14/15	CPW Study 5-14-2015	2:59	10:00AM	E	5	TCRR	5AM TO 8PM
494							Red, White & Blue Engine	
495	5/14/15	CPW Study 5-14-2015	4:02	11:44AM	E	18	TCRR	5AM TO 8PM

496						staging @ xing	Red, White & Blue Engine	
497	5/14/15	CPW Study 5-14-2015	4:50	1:04PM	E&W	0	TCRR	5AM TO 8PM
498							RR Service Pickup	
499	5/15/15	CPW Study 5-15-2015	3:05	10:09AM	E	4	BNSF	5AM TO 8PM
500							Orange Engine	
501	5/15/15	CPW Study 5-15-2015	3:22	10:40AM	E	8	TCRR	5AM TO 8PM
502						staging @ xing	Red, White & Blue Engine	
503	5/15/15	CPW Study 5-15-2015	5:10	1:43PM	W	5	TCRR	5AM TO 8PM
504							Red, White & Blue Engine	
505	5/16/15	CPW Study 5-16-2015	0	0	0	0	0	5AM TO 8PM
506								
507	5/17/15	CPW Study 5-17-2015	0	0	0	0	0	5AM TO 8PM
508								
509	5/18/15	CPW Study 5-18-2015	2:00	8:23AM	W	8	BNSF	5AM TO 8PM
510							Orange Engine	
511	5/18/15	CPW Study 5-18-2015	3:36	11:01AM	E	2	BNSF	5AM TO 8PM
512							Orange Engine	
513	5/18/15	CPW Study 5-18-2015	3:45	11:17AM	E	9	TCRR	5AM TO 8PM
514							Red, White & Blue Engine	
515	5/18/19	CPW Study 5-18-2015	4:19	12:18PM	W	4	TCRR	5AM TO 8PM
516						staging @ xing	Red, White & Blue Engine	
517	5/19/15	CPW Study 5-19-2015	1:58	8:18AM	W	11	BNSF	5AM TO 8PM
518							Orange Engine	
519	5/19/15	CPW Study 5-19-2015	3:19	10:32AM	E	5	BNSF	5AM TO 8PM
520							Orange Engine	
521	5/19/15	CPW Study 5-19-2015	3:49	11:23AM	E	10	TCRR	5AM TO 8PM
522							Red, White & Blue Engine	
523	5/19/15	CPW Study 5-19-2015	4:37	12:47PM	W	8	TCRR	5AM TO 8PM
524							Red, White & Blue Engine	
525	5/20/15	CPW Study 5-20-2015	1:06	6:50AM	W	1	BNSF	5AM TO 8PM
526							Orange Engine	
527	5/20/15	CPW Study 5-20-2015	2:12	8:41AM	E	3	BNSF	5AM TO 8PM
528							Orange Engine	
529	5/20/15	CPW Study 5-20-2015	3:07	10:13AM	E	6	BNSF	5AM TO 8PM
530							Orange Engine	
531	5/20/15	CPW Study 5-20-2015	3:44	11:16AM	W	4	TCRR	5AM TO 8PM
532							Red, White & Blue Engine	
533	5/20/15	CPW Study 5-20-2015	3:50	11:25AM	E&W	0	TCRR	5AM TO 8PM
534							RR Service Pickup	

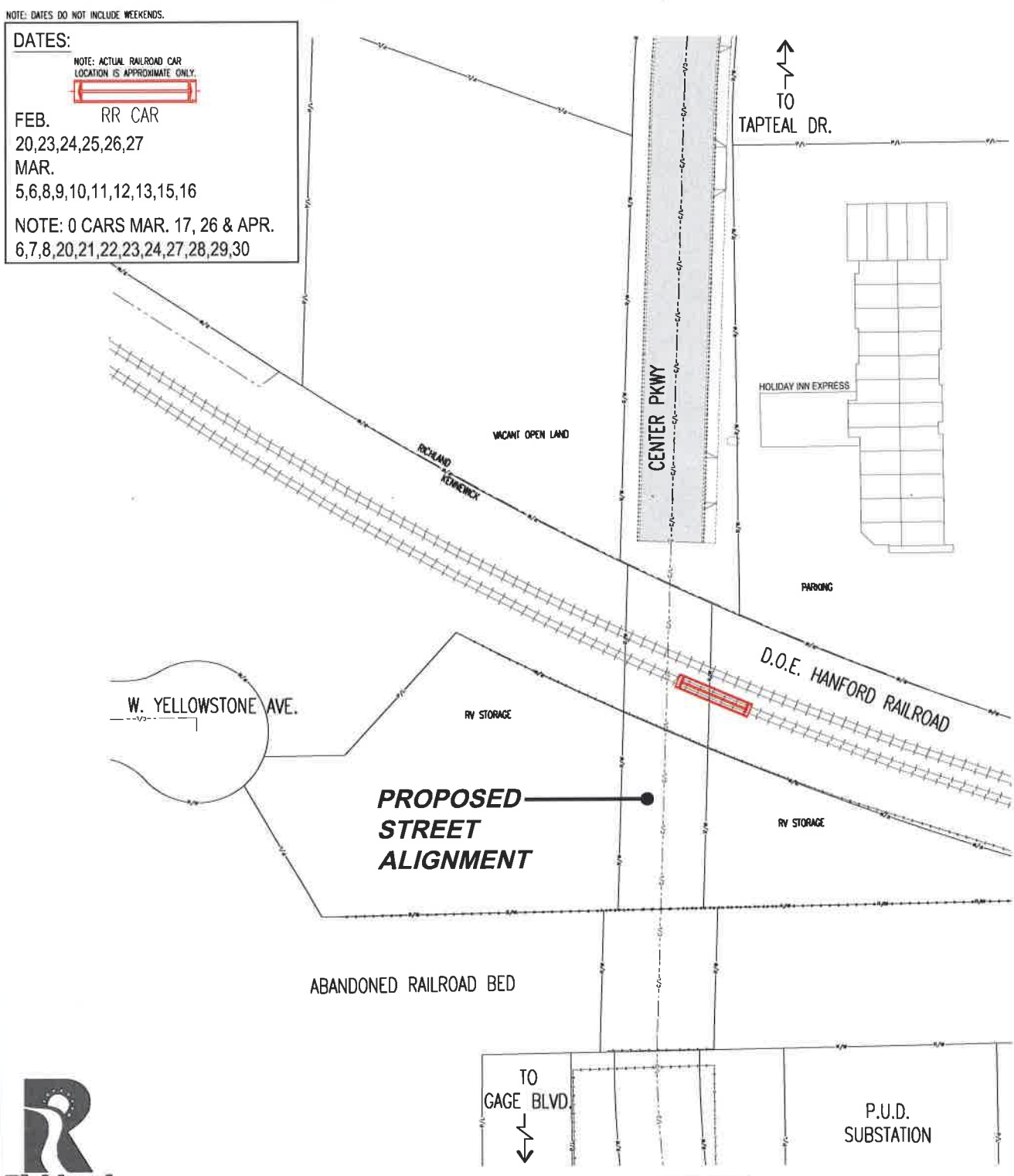
535	5/21/15	CPW Study 5-21-2015	3:02	10:05AM	E	6	TCRR	5AM TO 10:22AM
536							Red, White & Blue Engine	
537	5/21/15	CPW Study 5-21-2015	3:06	10:12AM	W	6	BNSF	5AM TO 10:22AM
538							Orange Engine	
539	5/21/15	CPW Study 5-21-2015	0:27	11:13AM	W	5	TCRR	10:25AM TO 8PM
540							Red, White & Blue Engine	
541	5/21/15	CPW Study 5-21-2015	1:09	12:22PM	E	3	BNSF	10:25AM TO 8PM
542							Orange Engine	
543	5/22/15	CPW Study 5-22-2015	0:49	6:22AM	W	0	BNSF	5AM TO 1:37PM
544						ENGINE ONLY	Orange Engine	
545	5/22/15	CPW Study 5-22-2015	2:34	9:18AM	E	4	BNSF	5AM TO 1:37PM
546							Orange Engine	
547	5/22/15	CPW Study 5-22-2015	3:36	11:02AM	E	7	TCRR	5AM TO 1:37PM
548							Red, White & Blue Engine	
549	5/22/15	CPW Study 5-22-2015	4:15	12:09PM	W	8	TCRR	5AM TO 1:37PM
550							Red, White & Blue Engine	
551	5/22/15	CPW Study 5-22-2015	0	0	0	0	0	1:40AM TO 8PM
552								
553	5/23/15	CPW Study 5-23-2015	0	0	0	0	0	5AM TO 8PM
554								
555	5/24/15	CPW Study 5-24-2015	0	0	0	0	0	5AM TO 8PM
556								
557	5/25/15	CPW Study 5-25-2015	0	0	0	0	0	5AM TO 8PM
558								
559	5/26/15	CPW Study 5-26-2015	2:52	9:51AM	W	3	BNSF	5AM TO 1:18PM
560							Orange Engine	
561	5/26/15	CPW Study 5-26-2015	3:35	11:00AM	E	5	TCRR	5AM TO 1:18PM
562							Red, White & Blue Engine	
563	5/26/15	CPW Study 5-26-2015	4:05	11:49AM	E	7	BNSF	5AM TO 1:18PM
564							Orange Engine	
565	5/26/15	CPW Study 5-26-2015	4:19	12:20AM	W	12	TCRR	5AM TO 1:18PM
566		(End of Study To Date)					Red, White & Blue Engine	
567								
568								
569								
570								
571								
572								
573								

613
614

Exhibit C

City of Richland

CENTER PARKWAY PROJECT
RR Car Staging Layouts
Feb 10th thru May 26, 2015



Richland

CAD DWG: Center_parkway_base_scn site map.DWG
DATE: 06.02.2015
DRAWN BY: SC NYBY
SCALE: NONE

1 Railroad Car Stage

1 of 8

City of Richland

CENTER PARKWAY PROJECT
RR Car Staging Layouts
Feb 10th thru May 26, 2015

N

Legend

City Limits

Railroad

NOTE: DATES DO NOT INCLUDE WEEKENDS.

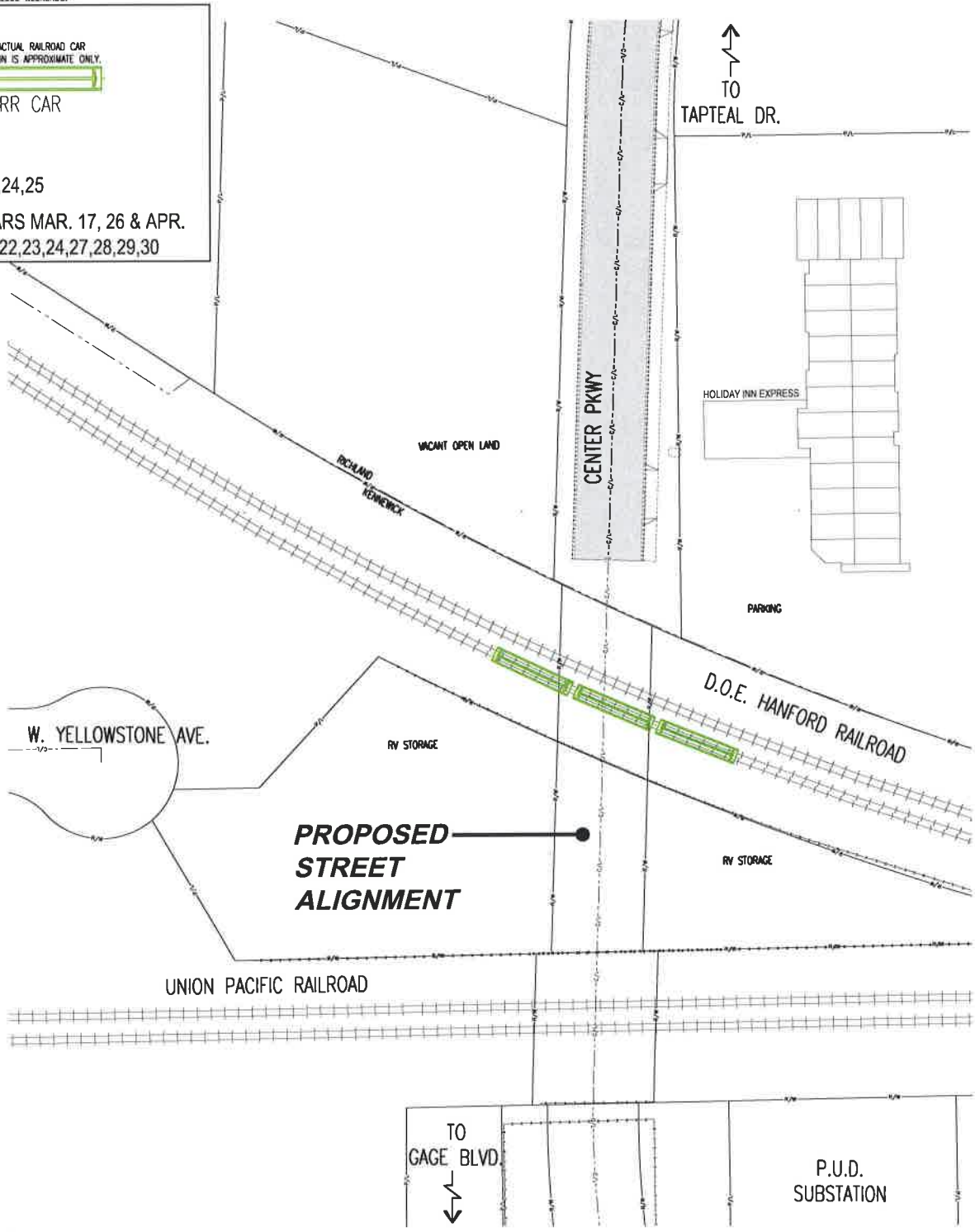
DATES:

NOTE: ACTUAL RAILROAD CAR LOCATION IS APPROXIMATE ONLY.

RR CAR

FEB.
10,11,12
MAR.
18,19,20,23,24,25

NOTE: 0 CARS MAR. 17, 26 & APR.
6,7,8,20,21,22,23,24,27,28,29,30



Richland

CAD DWG: Center_parkway_base_scn site map.DWG
DATE: 05.26.2015
DRAWN BY: SC NYBY
SCALE: NONE

3 (EAST) Railroad Car Stage

2 of 8

City of Richland

CENTER PARKWAY PROJECT
RR Car Staging Layouts
Feb 10th thru May 26, 2015

N

Legend

City Limits

Railroad

NOTE: DATES DO NOT INCLUDE WEEKENDS.

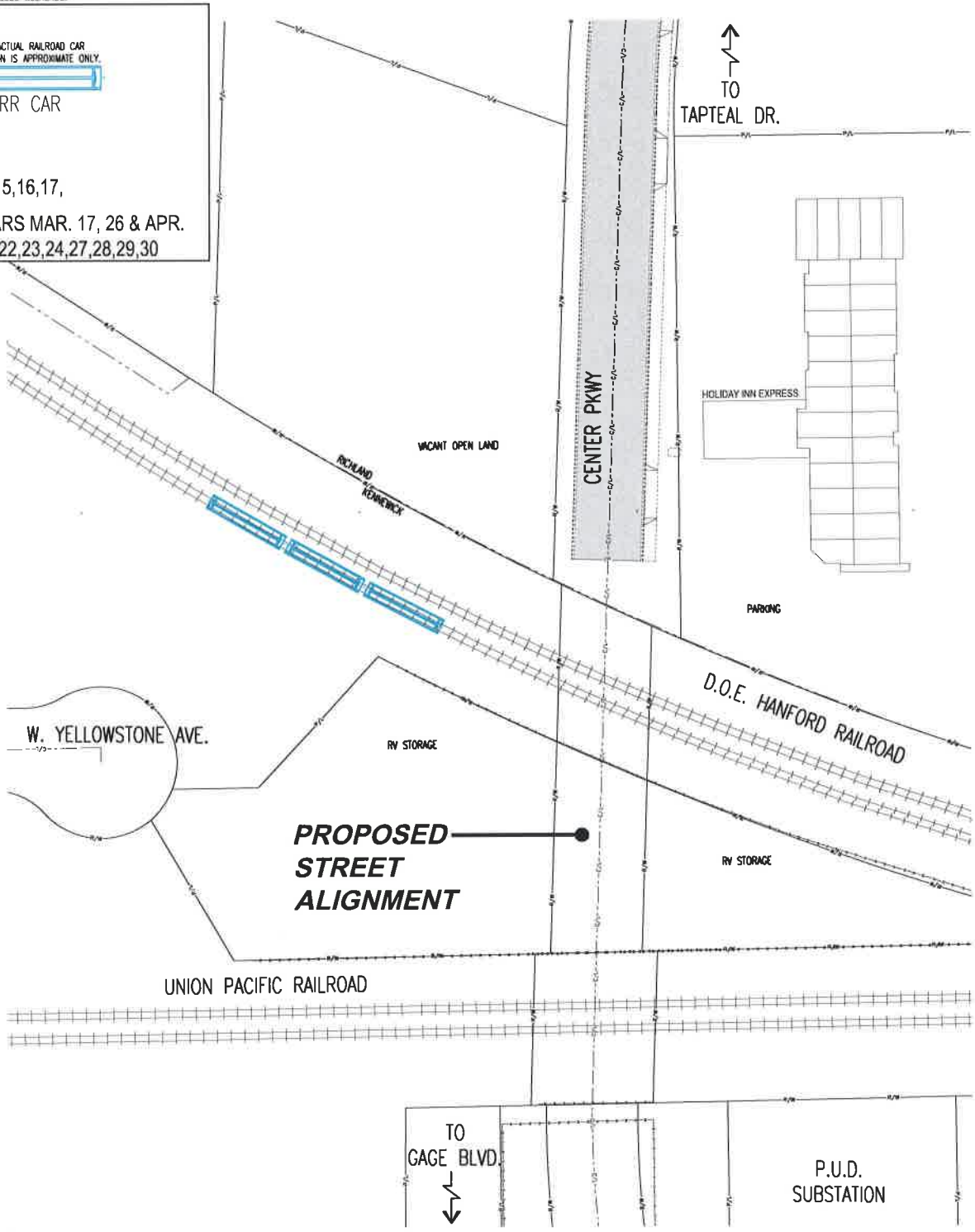
DATES:

NOTE: ACTUAL RAILROAD CAR LOCATION IS APPROXIMATE ONLY.

RR CAR

FEB.
13,17,18,19
APR.
9,10,13,14,15,16,17,

NOTE: 0 CARS MAR. 17, 26 & APR.
6,7,8,20,21,22,23,24,27,28,29,30



Richland

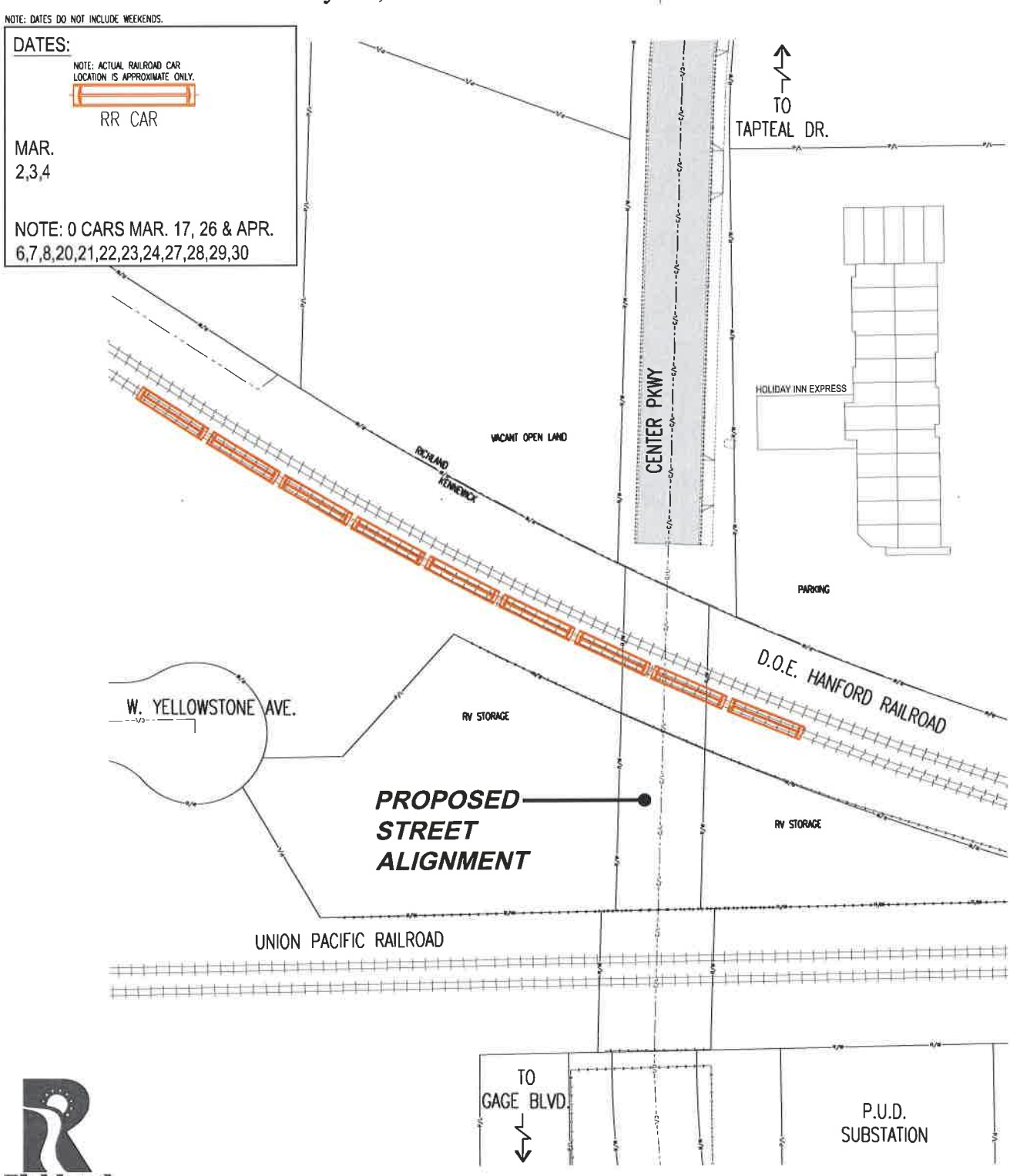
CAD DWG: Center_parkway_base_scn site map.DWG
DATE: 05.26.2015
DRAWN BY: SC NYBY
SCALE: NONE

3 (WEST) Railroad Car Stage

3 of 8

City of Richland

CENTER PARKWAY PROJECT
RR Car Staging Layouts
Feb 10th thru May 26, 2015



Richland

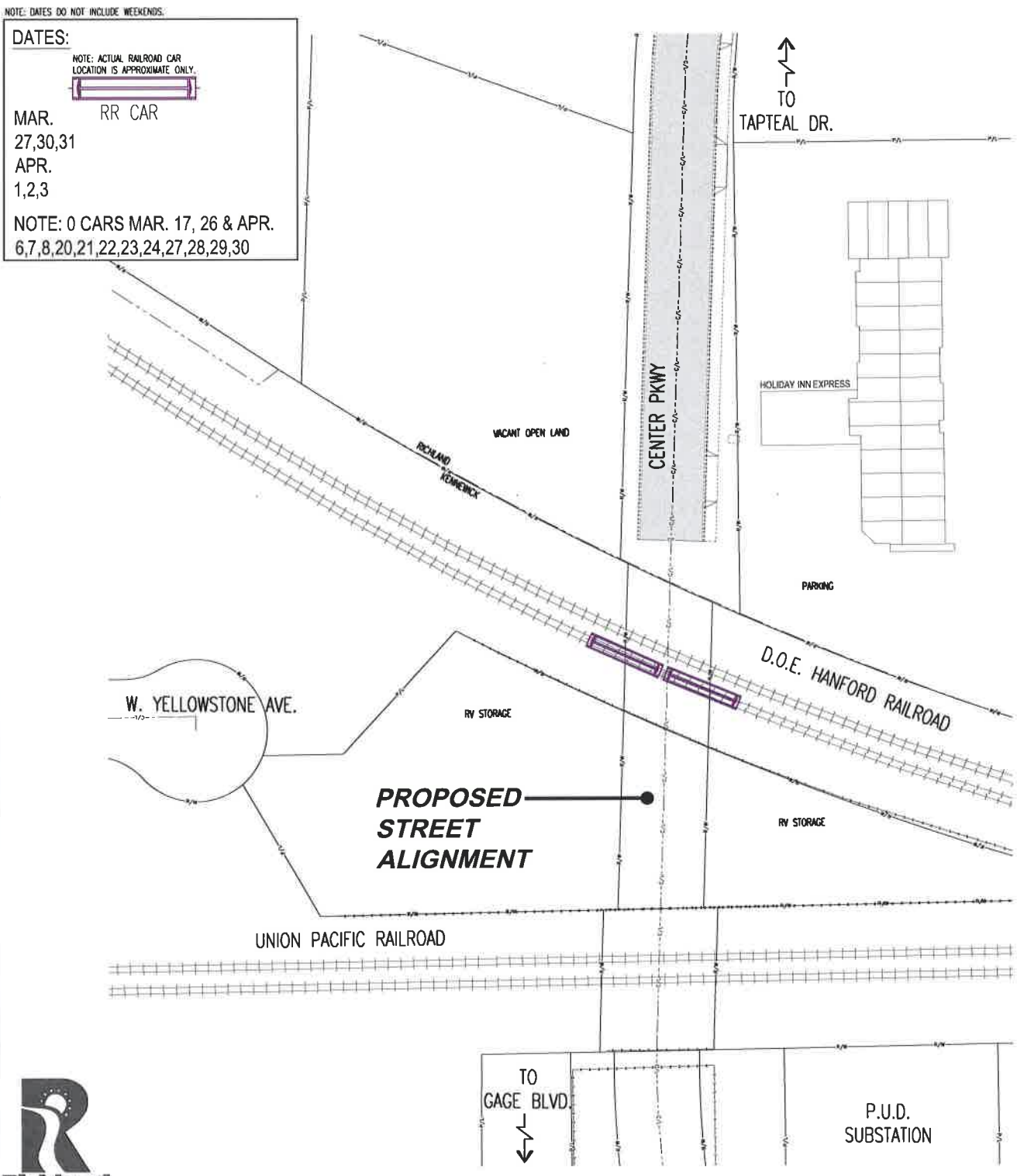
CAD DWG: Center_parkway_base_scn site map.DWG
DATE: 05.26.2015
DRAWN BY: SC NYBY
SCALE: NONE

9 Railroad Car Stage

4 of 8

City of Richland

CENTER PARKWAY PROJECT
RR Car Staging Layouts
Feb 10th thru May 26, 2015



Richland

CAD DWG: Center_parkway_base_scn site map.DWG
DATE: 05.26.2015
DRAWN BY: SC NYBY
SCALE: NONE

2 Railroad Car Stage

5 of 8

City of Richland

CENTER PARKWAY PROJECT
RR Car Staging Layouts
Feb 10th thru May 26, 2015

N

Legend

City Limits

Railroad

NOTE: DATES DO NOT INCLUDE WEEKENDS.

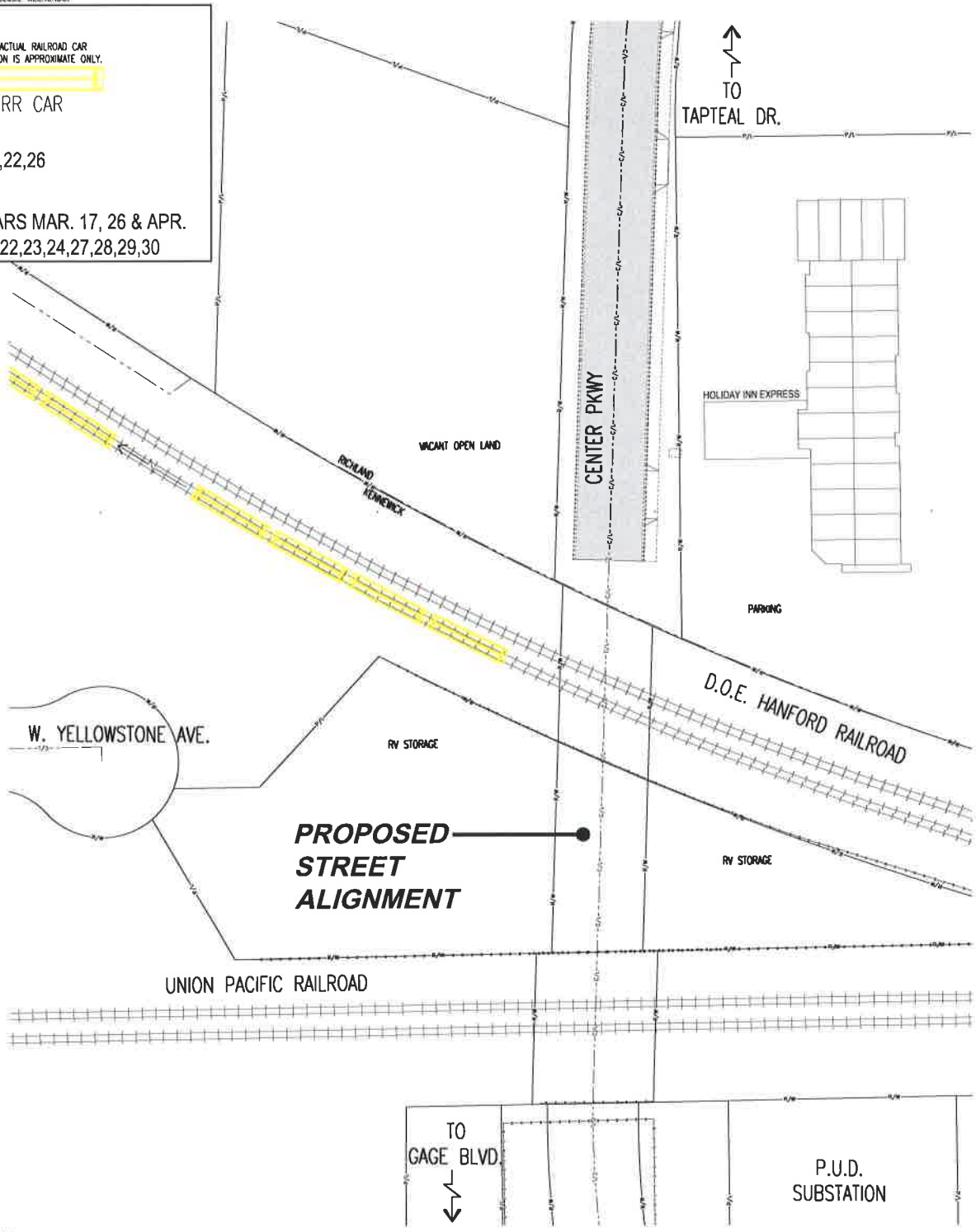
DATES:

NOTE: ACTUAL RAILROAD CAR LOCATION IS APPROXIMATE ONLY.

RR CAR

MAY
18,19,20,21,22,26

NOTE: 0 CARS MAR. 17, 26 & APR. 6,7,8,20,21,22,23,24,27,28,29,30



Richland

CAD DWG: Center_parkway_base_scn site map.DWG
DATE: 05.26.2015
DRAWN BY: SC NYBY
SCALE: NONE

17 Railroad Car Stage

6 of 8

City of Richland

CENTER PARKWAY PROJECT
RR Car Staging Layouts
Feb 10th thru May 26, 2015

N

Legend

City Limits

Railroad

NOTE: DATES DO NOT INCLUDE WEEKENDS.

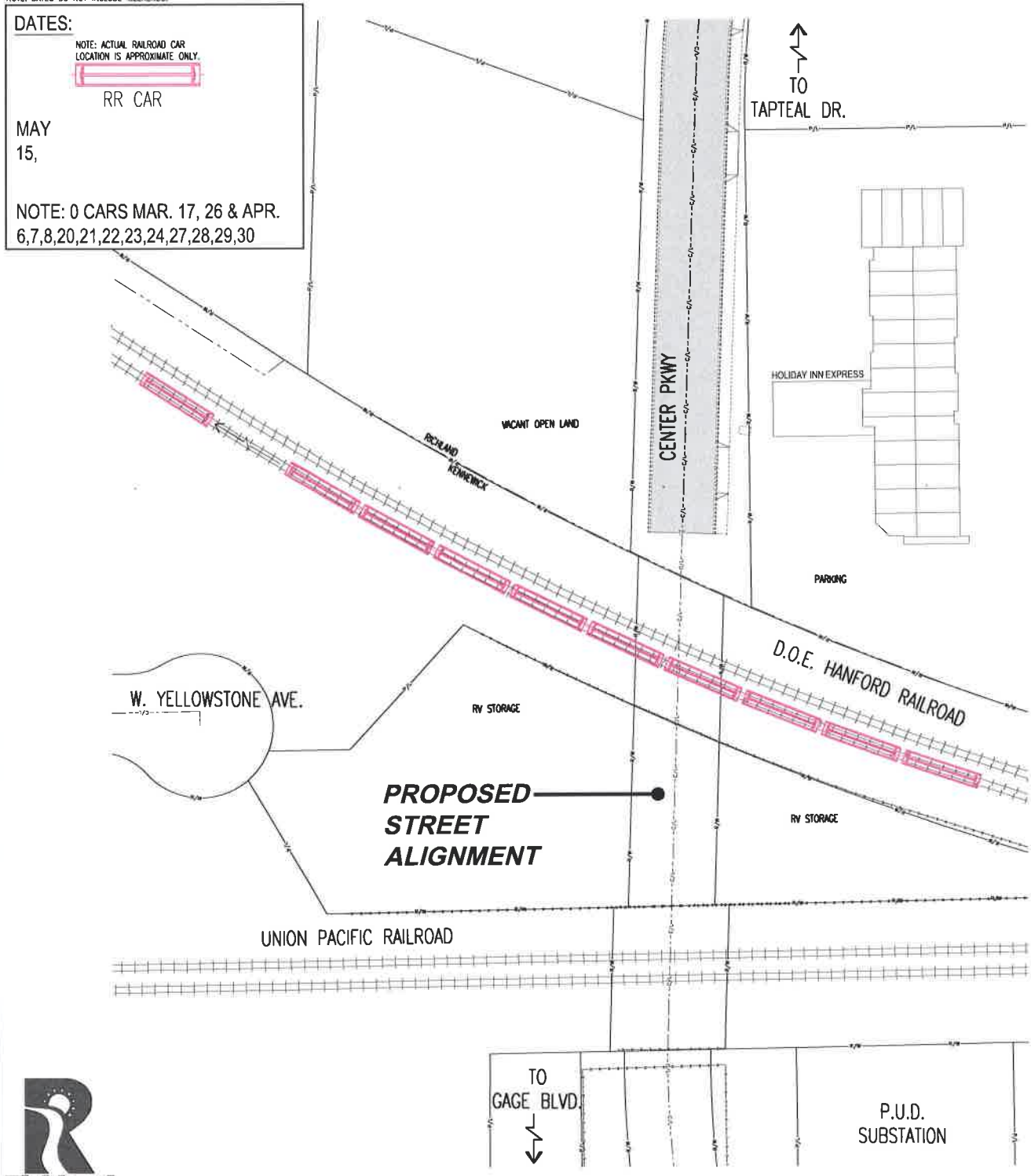
DATES:

NOTE: ACTUAL RAILROAD CAR LOCATION IS APPROXIMATE ONLY.

RR CAR

MAY
15,

NOTE: 0 CARS MAR. 17, 26 & APR. 6,7,8,20,21,22,23,24,27,28,29,30



Richland

CAD DWG: Center_parkway_base_scn site map.DWG
DATE: 05.26.2015
DRAWN BY: SC NYBY
SCALE: NONE

22 Railroad Car Stage

7 of 8

City of Richland

CENTER PARKWAY PROJECT
RR Car Staging Layouts
Feb 10th thru May 26, 2015

NOTE: DATES DO NOT INCLUDE WEEKENDS.

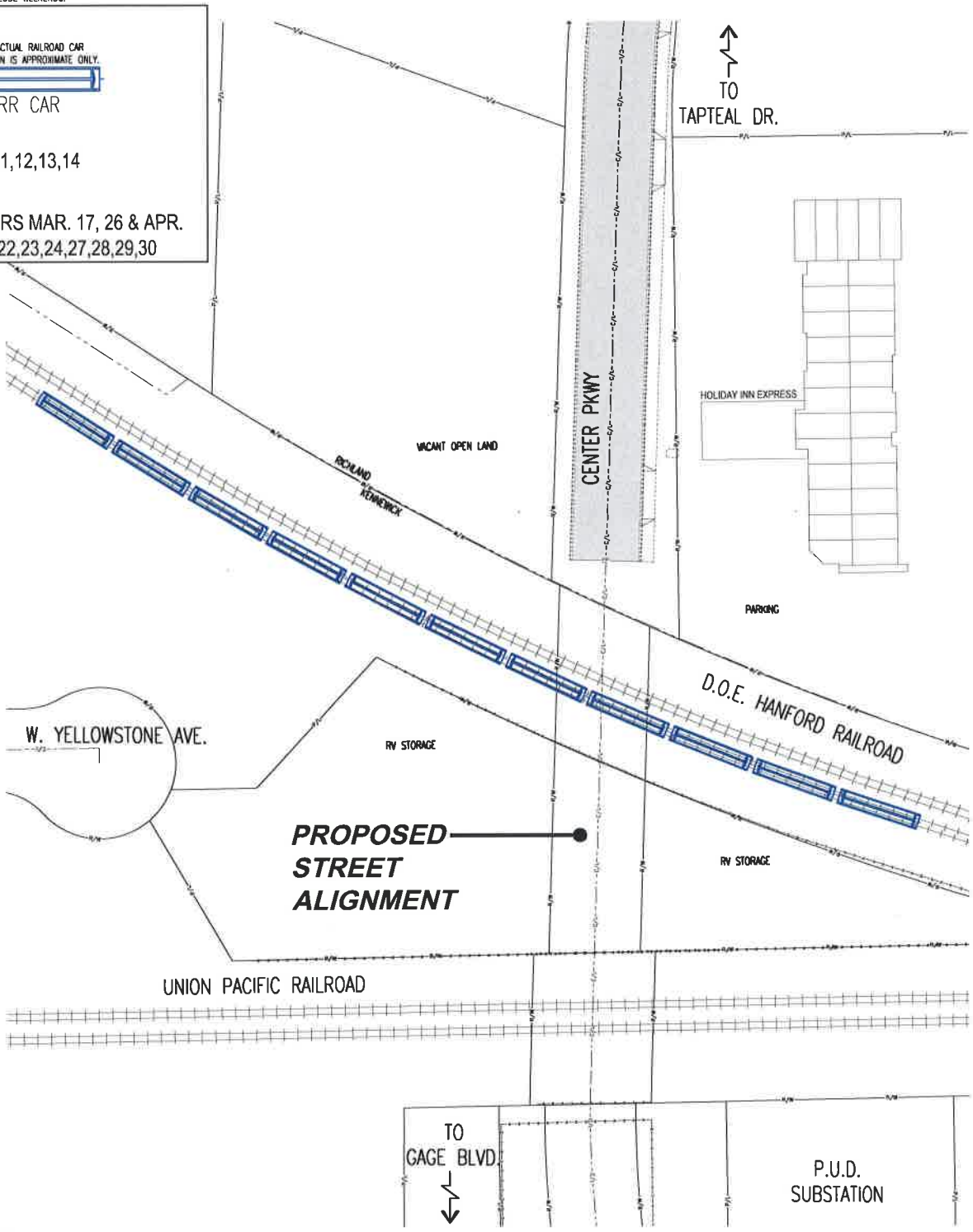
DATES:

NOTE: ACTUAL RAILROAD CAR LOCATION IS APPROXIMATE ONLY.

RR CAR

MAY
1,4,5,6,7,8,11,12,13,14

NOTE: 0 CARS MAR. 17, 26 & APR.
6,7,8,20,21,22,23,24,27,28,29,30



Richland

CAD DWG: Center_parkway_base_scn site map.DWG
DATE: 05.26.2015
DRAWN BY: SC NYBY
SCALE: NONE

11 Railroad Car Stage

8 of 8

Exhibit D

City of Richland

CENTER PARKWAY PROJECT
Site Visit Schedule
Feb 10th thru May 26, 2015

Camera Legend

Time-Lapse Camera
(AVI Files, 5am to 8pm)

Still Shot Camera
(Jpg Files, Daily)

BEGAN STUDY

February 2015

S	M	T	W	T	F	S
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	26	27	28

March 2015

S	M	T	W	T	F	S
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	26	27	28
29	30	31				

April 2015

S	M	T	W	T	F	S
			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
26	27	28	29	30		

May 2015

S	M	T	W	T	F	S
					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	26	27	28	29	30
31						

STUDY TO DATE

Richland

CAD DWG: Center_parkway_base_scn site map.DWG
DATE: 05.26.2015
DRAWN BY: SC NYSY
SCALE: NONE

SURFACE TRANSPORTATION BOARD

TRI-CITY RAILROAD COMPANY, LLC, a Washington limited liability Company, Petitioners, v. THE CITY OF KENNEWICK, a Washington municipal corporation; THE CITY OF RICHLAND, a Washington municipal corporation, Respondents.	No. FD 35915 VERIFIED STATEMENT AND AFFIDAVIT OF P. STEPHEN DIJULIO

COMES NOW P. Stephen DiJulio who declares under penalty of perjury that the foregoing is true and correct:

1. I am one of the attorneys for the Respondents, the City of Kennewick and the City of Richland, in the above-captioned action. I am competent to testify to the matter contained herein based on my personal knowledge.

2. Included with the Cities' submission to the Surface Transportation Board in the above-captioned action is a true and correct copy of the record from the Court of Appeals, Division III. These clerk's papers include the entire record before the UTC, as certified by the UTC Executive Director and Secretary (0-000000069-73) and the record before the Benton County Superior Court, as transmitted by the Benton County Superior Court

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

Clerk. The Court of Appeals record is sequentially numbered 0-000000001 — 0-000002209. I personally participated in the UTC and Court of Appeals proceedings on behalf of the Cities.

3. Attached hereto as **Exhibit A** is a true and correct copy of the Amended Order Granting BNSF's Motion For Summary Judgment, Denying TCRY's Motion For Summary Judgment, And Denying All Other Pending Motions As Moot, *BNSF Railway Co v. Tri-City and Olympia R.R.*, United States District Court, Eastern District of Washington, No. CV-09-5062-EFS (filed February 14, 2012).

SIGNED AND SWORN STATEMENT

Pursuant to 49 CFR 1112.9:

State of Washington,

County of Pierce,

P. Stephen DiJulio, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

Signed _____
P. Stephen DiJulio

Signed and sworn to before me this 24th day of June 2015.

Notary Public of State of Washington

My Commission expires 4/20/17.

Debra Ann Samuelson

DEBRA ANN SAMUELSON NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 4-20-17

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

William J. Schroeder Gregory C. Hesler William C. Schroeder **Paine Hamblen LLP** 717 West Sprague Avenue, Suite 1200 Spokane, WA 99201 william.schroeder@painehamblen.com greg.hesler@painehamblen.com will.schroeder@painehamblen.com	_____ U.S. Mail _____ Hand Delivery __X__ Overnight Mail _____ E-Mail

Christopher G. Emch

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BNSF RAILWAY COMPANY,

Plaintiff,

UNION PACIFIC RAILROAD COMPANY, and PORT OF BENTON,

Plaintiff-Intervenors,

v.

TRI-CITY & OLYMPIA RAILROAD COMPANY LLC,

Defendant.

NO. CV-09-5062-EFS

AMENDED[1] ORDER GRANTING BNSF'S MOTION FOR SUMMARY JUDGMENT, DENYING TCRY'S MOTION FOR SUMMARY JUDGMENT, AND DENYING ALL OTHER PENDING MOTIONS AS MOOT

Before the Court, without oral argument, are Plaintiff BNSF Railway Company's (hereinafter "BNSF") Motion for Summary Judgment, ECF No. 267, and Defendant Tri-City & Olympia Railroad Company LLC's (hereinafter "TCRY") Motion for Summary Judgment, ECF No. 273. Also before the Court are BNSF's Motion to Compel Discovery Propounded to Defendant Tri-City & Olympia Railroad Company, L.L.C., ECF No. 305, and TCRY's Motion for Protective Order, ECF No. 316. After reviewing the submissions of the parties and applicable authority, the Court is fully informed. For the

[1] This Amended Order clarifies an imprecise statement at page 16, lines 3-4 of the Court's prior Order, ECF No. 329. The amended language can be found at page 16, lines 11-14 of this Amended Order.

reasons discussed below, the Court grants BNSF's Motion for Summary Judgment, denies TCRY's Motion for Summary Judgment, and denies all other pending motions as moot.

I. BACKGROUND[2]

A. 1947 Agreement

On November 6, 1947, the United States, acting through the U.S. Atomic Energy Commission ("Commission"), entered into an agreement ("1947 Agreement") with several railroads to establish service to the Hanford Nuclear Reservation ("Hanford site"). BNSF and Union Pacific Railroad Company ("UP"), the undisputed successors-in-interest to the 1947 Agreement, were granted "equal joint" operating rights over trackage beginning near Kennewick and extending north of Richland to the Hanford site ("Richland Trackage").

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[2] In connection with their motions, the parties submitted Joint Statements of Uncontroverted Facts. ECF Nos. 281 & 294. The Court treats these facts as established consistent with Federal Rule of Civil Procedure 56(d), and sets these forth in this "Factual Background" section without reference to an ECF number. Any disputed facts are supported by a citation to the record. The Court has reviewed the record supporting the parties' cross-motions for summary judgment, and finds that there are no issues of material fact precluding summary judgment. *See Fair Housing Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001) (discussing district court's duty to review the record when ruling on cross-motions for summary judgment).

The 1947 Agreement identifies the rights of the parties to railway lines as shown on an August 25, 1947 map attached to the Agreement as "Exhibit A." The 1947 Agreement acknowledges that "the Government has constructed on its property a line of railway . . . extending from Hanford, Washington, southerly to a point near the north bank of the Yakima River," and states as its purpose that "the Government desires to have a direct rail connection to the south so as to interchange business with [BNSF and UP's predecessors in interest]." To this end, Article V of the 1947 Agreement grants BNSF and UP's predecessors in interest the "equal joint right" to operate on the rail line and "to use said interchange facilities and wye for the purpose of interchanging business with the Government." Article VII of the Agreement states that BNSF and UP's predecessors in interest "each of itself agrees to deliver and receive at said interchange facilities all business which either is obligated to transport as a common carrier railroad." Article IX of the Agreement imposes an obligation on BNSF and UP's predecessors to "agree from time to time upon rules and regulations covering the movement of engines, cars and trains over the line B-E and on said interchange facilities."

The map attached to the 1947 Agreement identifies several points, labeled A through E. Point A is in Kennewick, and points B, C, and D extend along the rail line in a northwesterly direction toward the Hanford site. The map identifies point E as a location to the north of Richland upon which interchange tracks were to be built. The government later constructed an interchange facility at Point E, and today, Point E is TCRY's rail yard and is still operated as an interchange facility.

Though the 1947 map identified a location to the south of the interchange tracks for the wye, the wye was in fact later built to the north of the interchange tracks.[3]

In 1948, the 1947 Agreement was the subject of a ruling by the Interstate Commerce Commission (ICC). Because the government was the only "customer" served by BNSF and UP's predecessors, the railroads sought exemption from the required public convenience and necessity certifications for common rail carriers. The ICC's Order held that a certificate *was* required because the railroads would also provide common carrier services to businesses in and around Richland. The ICC's Order modified terms in the 1947 Agreement regarding payment and rights to termination, but left the remainder of the Agreement undisturbed.

B. 1961 Agreement

In 1961, the Commission entered into a second agreement ("1961 Agreement") with the Railroads. Section 1 of the 1961 Agreement leased three specified areas of track to the railroads. Section 2 of the Agreement granted "the Railroads, and the industries served by them, the right to construct additional industrial spur, set-out, and such other tracks connecting with the Government's main tracks or classification yards as may be required to provide rail service for industries." Section 3 of the 1961 Agreement states as follows:

> The Commission hereby grants the Railroads the right to operate with their employees and equipment over such segments of the Government's tracks shown on Exhibit "A" as it may be necessary to use for the purpose of moving freight shipments to or from the tracks covered by this agreement.

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[3] A wye is a triangular arrangement of rail tracks designed to allow railway equipment to change direction by performing a "three-point turn."

Section 3's grant of authority was consistent with the agreement's stated purpose of allowing the railroads to operate on the United States' tracks "for the sole purpose of receiving and delivering shipments routed via the Railroads and consigned by or to shippers and receivers located on said spur or side tracks."

The rail line depicted in a 1960 map attached as Exhibit A to the 1961 Agreement begins south of Richland at the Yakima River Bridge, and extends to a Department of Energy (DOE) "barricade" roughly one thousand feet north of the wye tracks. The three segments of track leased in the 1961 Agreement are all south of the interchange facility and wye.

In 1979, the United States entered into an agreement with the railroads converting the 1961 lease agreement into a permit so that the tracks could be classified as surplus under the Federal Property and Administrative Services Act of 1949. This agreement deleted Sections 1 and 4 of the 1961 Agreement, which detailed the terms of the lease and the railroads' maintenance obligation, but left the 1961 Agreement's other provisions "in full force and effect."

C. 1998 Indenture

In 1998, the United States, acting through the DOE, conveyed ownership of a six-mile section of track to the Port of Benton ("Port") through an Indenture, thereby assigning the DOE and Commission's rights under the 1947 and 1961 Agreements to the Port. The indenture stated that the 1947 and 1961 Agreements and the 1979 permit agreement governed access to the Railroad. The Indenture also stated that the Port, as assignee, agreed to be bound by the obligations and considerations in the United States' permit. As a result of these agreements, the Port has the

right to terminate BNSF and UP's rights to use the Richland Trackage upon six months notice.

D. Interchange Agreement

On October 1, 1998, the Port entered into a Maintenance and Operation Agreement with TCRY's predecessor, Livingston Rebuild Center, Inc. ("Livingston"), under which it agreed to pay Livingston $325,000 per year for the maintenance of the Richland Trackage. These contractual rights and obligations were subsequently assigned to TCRY.

In May 2000, BNSF and TCRY contracted to interchange cars going into the Richland Trackage ("Interchange Agreement"). They exchanged cars at the Richland Junction, and TCRY served BNSF's customers along the Richland Trackage. TCRY maintained the trackage at its own expense and began charging a per-car fee for its services. This contract specifically reserved BNSF's rights under the 1947 and 1961 Agreements.

In a September 12, 2000 letter to then-TCRY President John Haakenson, the Port's Assistant Executive Director Scott Keller acknowledged that the Port was paying TCRY to maintain the railroad under a contract that allowed TCRY to charge a fee for its railroad operations, the revenue from which would offset the cost of maintenance. Recognizing that UP was using the Richland Trackage without paying a fee, the Port directed TCRY "to give written notice to [UP] terminating its rights to use the Port of Benton track." Beginning November 14, 2000, UP could no longer continue its unauthorized use of the Richland Trackage: it would need to establish an interchange agreement with TCRY.

From approximately April 2001 through November 2001, TCRY and BNSF continuously disagreed about BNSF's right to operate on the Richland

Trackage. BNSF claimed the 1947 and 1961 Agreements allowed it to directly operate on the Richland Trackage without interchanging; TCRY maintained that BNSF could only operate on the Richland Trackage if it operated under the Interchange Agreement. This disagreement about BNSF's rights to operate on the Richland Trackage forms the essential controversy before the Court today.

E. Railroad Lease

In 2002, TCRY and the Port negotiated a lease agreement ("Railroad Lease") that authorized TCRY to provide rail and track maintenance services on the Richland Trackage. Paragraph 7.4 of the lease agreement states that TCRY "shall not take any actions which will amend, modify, terminate or invalidate any existing contracts which the Port has with any other railroad carrier, without the Port's prior written consent."

F. Legal Action

In 2009, BNSF informed TCRY that it intended to exercise its rights to directly operate on the Richland Trackage. TCRY objected, and on July 20 and 21, 2009, TCRY erected a barrier which physically prevented a BNSF locomotive from reaching BNSF customers along the Richland Trackage. A few days later, TCRY requested that the Port terminate the Richland Trackage agreements with BNSF. The Port refused.

BNSF filed this suit on July 20, 2009. ECF No. 1. UP moved to intervene on August 4, 2009, ECF No. 26, and the Court granted UP's motion. ECF No. 46. On August 12, 2009, the Court granted BNSF's motion for a preliminary injunction, prohibiting TCRY from blocking BNSF's access to the Richland Trackage and requiring TCRY to charge its customary fee. ECF No. 46 & 93. TCRY filed an interlocutory appeal on

September 9, 2009, which was voluntarily dismissed. ECF Nos. 67, 101, 108 & 109. Since August 15, 2009, BNSF and TCRY have been operating under the Proposed Operating Plan created to comply with the Court's preliminary injunction. ECF No. 52.

On March 8, 2010, the Court granted the Port of Benton's request to intervene. ECF No. 121. On June 2, 2010, TCRY filed a separate but related action in Benton County Superior Court against the Port, asserting claims for inverse condemnation, breach of contract, breach of implied covenant of good faith and fair dealing, promissory estoppel, and quantum meruit. ECF No. 209-1. By order dated August 20, 2010, the Superior Court stayed the state court action pending resolution of the federal claims in this Court. ECF No. 209-2.

On September 29, 2010, the Port amended its complaint, asserting that TCRY breached Railroad Lease Paragraph 7.4, which prohibits TCRY from "amend[ing], modify[ing], terminat[ing], or invalidat[ing]" other railroads' existing contractual relationships with the Port, when it temporarily blocked BNSF Railroad Company (BNSF)'s access to the Richland Trackage in July 2009. ECF No. 136. TCRY asserted several counterclaims against the Port, including inverse condemnation, breach of contract, breach of implied covenant of good faith and fair dealing, promissory estoppel, quantum meruit, and tortious interference with contract. ECF No. 165, ¶¶ 18-24.

TCRY filed a motion for summary judgment on October 20, 2010, seeking dismissal of the Port's Amended Complaint. ECF No. 142. On November 24, 2010, the Port moved for summary dismissal of TCRY's counterclaims. ECF No. 171. TCRY then moved on December 17, 2010, to

remand the inverse condemnation claims to state court for determination where they were originally asserted. ECF No. 200. On July 1, 2011, the Court denied TCRY's Motion for Summary Judgment and Motion for Remand. ECF No. 264. The Court's Order granted the Port's Motion for Partial Summary Judgment, dismissing TRCY's counterclaims against the Port. *Id*. In denying TCRY's Motion for Summary Judgment, the Court found that under the 1947 and 1961 Agreements, BNSF and UP have "equal joint" rights to operate directly upon the Richland Trackage, and that TCRY took its lease of the Richland Trackage subject to BNSF and UP's rights. *Id*.

TCRY and BNSF now both move for summary judgment regarding the nature and extent of BNSF and UP's rights to operate on the Richland Trackage. ECF Nos. 267 & 273. TRCY asserts that BNSF and UP's rights under the Agreements are limited to use of the trackage only up to the interchange, or alternatively, the wye, and that BNSF may use those portions of track for interchange purposes only. BNSF argues that their right to operate directly extends to all Richland Trackage south of the old Department of Energy barricade, and is subject only to the limitation that it be used "for the purpose of moving freight shipments." After reviewing the record in this matter, the arguments of the parties, and applicable authority, the Court is fully informed. Because the 1947 and 1961 Agreements give BNSF and UP the right to operate directly on the entirety of the Richland Trackage, the Court denies TRCY's motion and grant BNSF's motion.

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III. DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate if the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Once a party has moved for summary judgment, the opposing party must point to specific facts establishing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If the nonmoving party fails to make such a showing for any of the elements essential to its case for which it bears the burden of proof, the trial court should grant the summary judgment motion. *Id.* at 322. When considering a motion for summary judgment, the Court does not weigh the evidence or assess credibility; instead, "the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson*, 477 U.S. at 255. When ruling on cross-motions for summary judgment, the Court has a duty to review the record supporting the parties' motions and to determine whether there are issues of material fact precluding summary judgment. *Fair Housing Council of Riverside Cnty., Inc.*, 249 F.3d at 1136.

Here, both TRCY and BNSF have moved for summary judgment. Both parties agree that there are no genuine issues of material fact, and after reviewing the record in this matter, the Court finds that there are none. Summary judgment is thus appropriate if either party is entitled to judgment as a matter of law.

B. Applicable Law

When interpreting a contract under Washington law, the Court attempts to "ascertain the parties' intentions and give effect to their intentions." *Taylor-Edwards Warehouse & Transfer Co. of Spokane, Inc. v. Burlington N., Inc.*, 715 F.2d 1330, 1334 (9th Cir. 1983) (citing *Jones v. Hollingsworth*, 88 Wn.2d 322, 326 (1977)). Under Washington law, extrinsic evidence is only admissible "as to the entire circumstances under which the contract was made, as an aid in ascertaining the parties' intent." *Berg v. Hudesman*, 115 Wn.2d 657, 667 (1990). When a contract is unambiguous and its formation is undisputed, the interpretation of the contract is a question of law that is appropriate for resolution on summary judgment. *See, e.g., Mfg'd Hous. Cmtys. of Wash. v. St. Paul Mercury Ins. Co.*, 660 F. Supp. 2d 1208, 1212 (W.D. Wash. 2009) (citing *Mayer v. Pierce Cnty. Med. Bureau*, 80 Wn. App. 416, 420 (1995)).

C. The Parties' Positions

TCRY concedes that BNSF has the right to operate directly on a portion of the Richland Trackage, but argues that language in the 1947 Agreement geographically restricts the United States' grant to BNSF and UP's predecessors to direct service between points "C" and "E" on the map attached as Exhibit A to the 1947 Agreement. Because point "E" on Exhibit A to the 1947 Agreement is the present-day site of TCRY's interchange facility, TCRY argues that BNSF and UP should be enjoined from directly serving points north of the interchange facility, and should be required to interchange with TCRY in order to serve customers north of the interchange facility. Alternatively, TCRY argues that BNSF

and UP's operating rights should terminate at the wye built a short distance north of the interchange facility.

TCRY also asserts, in an argument developed primarily in its reply memorandum, that the 1947 Agreement only grants the railroads rights to use trackage between points "C" and "E" on Exhibit A for the purpose of interchanging rail traffic with the government, and not to provide direct rail service to customers along that track. Finally, TCRY argues that it would be unfair to allow BNSF and UP to directly service customers north of the interchange facility because pursuant to the 1998 Maintenance and Operation Agreement, it is charged with the sole responsibility for maintaining the Richland Trackage. TCRY requests a permanent injunction prohibiting BNSF and UP from traveling north of its interchange facility.

BNSF argues that because the wye pictured in Exhibit A to the 1947 Agreement was later built to the north of the interchange facility (instead of to the south as represented in Exhibit A), the 1947 Agreement does in fact grant the railroads operating rights north of the interchange facility. BNSF further argues that Sections 2 and 3 of the 1961 agreement extended the Railroads' operating rights to the entirety of the Richland Trackage, limited only by the broad requirement that their operations be for the purpose of "moving freight shipments."[4] BNSF

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[4] BNSF also argues that TCRY's argument is foreclosed by the law of the case. However, the Court's September 28, 2009 Order Granting BNSF's Motion for Preliminary Injunction expressly stated that the Court's preliminary injunction ruling was "not binding on the Court in future proceedings in this case." ECF No. 93 at 2; *see also Sierra On-Line*, ORDER * 12

requests a declaratory judgment recognizing its operating rights over the Richland Trackage and a permanent injunction compelling TCRY to afford it equal access to the Richland Trackage.

Intervenor-Plaintiff UP does not oppose BNSF's motion, but asks that any ruling on the motion protect the "equal, just, and fair" operating rights to the Richland Trackage that it was granted by the 1947 Agreement. UP also asserts that BNSF does not have the right to provide direct rail service to the Hanford site, but that BNSF's direct rail service rights instead terminate somewhere between TCRY's interchange facility and Hanford.

D. Analysis

i. BNSF's Operating Rights on the Richland Trackage

On close review of the underlying agreements, it is apparent that BNSF's reading of the 1947 and 1961 Agreements is the correct one. While the 1947 Agreement's grant to BNSF and UP's predecessors in interest is explicitly limited to the "right to operate . . . between points B and E, and to use said interchange facilities and wye for the purpose of

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Inc. v. Phoenix Software, Inc., 739 F.2d 1415, 1423 (9th Cir. 1984) (recognizing that trial court's findings regarding a party's probability of success on the merits are not binding on future stages of the case). Furthermore, while the Court's July 1, 2011 Order held that TRCY leasehold rights were "subject to UP and BNSF's continued use of the Richland Trackage, as secured by the 1947 and 1961 Agreements," ECF No. 264 at 23, the question of the exact nature and extent of the parties' rights over the Richland Trackage was not then before the Court.

interchanging business with the government," ECF No. 32-2 at 13, this agreement was speculative and referenced trackage that had yet to be built. *See id.* at 12 (the Commission shall lay track in "*approximately* the location shown in yellow on said exhibit," and shall build an interchange and wye "*in the vicinity* of point E." (emphasis added)). At the time the 1947 Agreement was drafted, the United States was the only shipper on this section of track, and security concerns prevented private access to the Hanford site; thus, the Agreement's reference to point "E" appears to be intended to demarcate a convenient place for interchange, rather than to provide an affirmative limitation on the railroads' later ability to service rail customers. But regardless of the exact intent behind the 1947 Agreement, the 1961 Agreement greatly expands the United States' grant to BNSF and UP.

The 1961 Agreement has the stated purpose of allowing the railroads to "receiv[e] and deliver[] shipments routed via the Railroads and consigned by or to shippers and receivers" located on spur or side tracks connecting to the United States' tracks. ECF No. 32-3 at 62. As noted above, Section 3 of the 1961 Agreement states as follows:

> The Commission hereby grants the Railroads the right to operate with their employees and equipment over such segments of the Government's tracks shown on Exhibit "A" as it may be necessary to use for the purpose of moving freight shipments to or from the tracks covered by this agreement.

Id. at 63. Exhibit A to the 1961 Agreement is a detailed map depicting the entirety of the Richland Trackage, minus the subsequently-built Port trackage and spurs extending west from the wye. The above-quoted language grants BNSF and UP broad operating rights over the Richland Trackage, and bulwark's BNSF's position.

TCRY makes much of Section 3's limitation that the railroads may only use such segments of the tracks as may be necessary to access "the tracks covered by this agreement." TCRY argues that because Section 1 of the agreement, which contains the operative language of the lease, lists only sections of track *south* of the interchange facility, the "tracks covered by this agreement" are all south of the interchange, and thus Section 3's grant does not extend north of the interchange or wye. Section 2 of the agreement, however, also grants "the Railroads, and industries served by them," the right to construct additional "industrial spur, set-out, and such other tracks connecting with the Government's main tracks or classification yards as may be required to provide rail service for industries." *Id*. It seems readily apparent that the Port's spur tracks are "industrial spur, set-out, and such other tracks" that were constructed by "the industries served by [the railroads]" as the phrase is used in the 1961 Agreement. These subsequently-built tracks are thus "tracks covered by" the 1961 Agreement, and it follows logically that Section 3 also grants BNSF and UP the right to serve customers on these later-built sections of Port trackage and spurs extending west of the wye.

TCRY also argues that Section 3's reference to "tracks shown on Exhibit 'A'" precludes a reading of the 1961 Agreement that grants BNSF and UP rights relating to tracks built after the Agreement, because they by definition could not be shown on Exhibit A. But Section 3's reference to "tracks shown on Exhibit 'A'" relates to the section of track over which BNSF and UP are afforded rights, not the Section's later use of the phrase "tracks covered by this agreement;" these tracks are precisely the

tracks over which BNSF and UP seek access. This interpretation of the 1961 Agreement is supported by its stated purpose of opening up the Richland Trackage to common carrier rail service in order to promote industrial development in the Richland area. Of course, BNSF and UP's right to use the Richland Trackage may only be "for the purpose of moving freight shipments."

Accordingly, the Court finds that the 1961 Agreement grants BNSF and UP the right to operate directly on the Richland Trackage. This right extends north of the TCRY interchange facility, and includes both the spur tracks to the west of the wye and the main-line tracks north to Horn Rapids Road. Nothing in this Order should be construed as granting BNSF or UP the right to serve the Hanford site directly; disputes regarding direct service to the Hanford site, should they arise, should be determined by the appropriate entity at that time.

ii. UP's Operating Rights on the Richland Trackage

UP's position is clearly supported by the 1947 Agreement. The 1947 Agreement grants both BNSF and UP's predecessors in interest "the equal joint right" to operate on the relevant section of track. ECF No. 32-2 at 13. This grant includes the future-looking assurance that "any right or privilege at any time granted by the Commission to one of said companies in respect to its operations shall be a right or privilege which the other company may at its option exercise in respect to its operations." *Id*. Furthermore, the Agreement requires BNSF and UP's predecessors to "agree from time to time upon rules and regulations" for the use of the Richland Trackage, and requires that such rules and regulations "shall be equal, just, and fair," and "shall not unjustly

discriminate against either." *Id.* at 14. These portions of the 1947 Agreement have not been modified by later agreement, and remain in force today. As such, the Court includes UP in any declaratory or injunctive relief it affords BNSF.

E. Relief Granted

i. Declaratory Judgment

Under the Declaratory Judgment Act, 28 U.S.C. § 2201, declaratory judgment is proper when one party has established that "there is a substantial controversy, between parties having adverse interest, of sufficient immediacy and reality to warrant issuance of a declaratory judgment." *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 658 (9th Cir. 2002) (quoting *Western Min. Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)). Here, the factual background of this case unquestionably demonstrates that such a controversy exists and that declaratory judgment is proper.

BNSF requests a declaratory judgment recognizing its rights to provide direct rail service over the Richland Trackage.[5] For the reasons discussed above, the Court grants BNSF's request in this regard, and issues a declaratory judgment recognizing both BNSF and UP's rights to provide direct rail service over the Richland Trackage.

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[5] TCRY argues that BNSF's requested relief must be denied because BNSF failed to name the Port and UP, who are necessary parties under Federal Rule of Civil Procedure 19. However, any argument that BNSF has improperly failed to join the Port and UP was rendered moot when they intervened in this lawsuit.

ii. Permanent Injunction

BNSF also requests a permanent injunction compelling TCRY to allow it access over the Richland Trackage and requiring TCRY to coordinate train scheduling and dispatching with BNSF and UP.

Permanent injunctive relief is proper when a party can show "(1) that is has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). The first factor, the existence of irreparable injury, is also satisfied by a continuing and imminent threat of harm. *See, e.g., Bowler v. Home Depot USA Inc.*, No. C-09-5523 JCS, 2011 WL 166140, at *3 (N.D. Cal. January 19, 2011) (citing *Monsanto Co. v. Geertson Seed Farms*, 130 S.Ct. 2743, 2760 (2010)). The decision to grant or deny permanent injunctive relief is within the Court's discretion. *See eBay Inc.*, 547 U.S. at 391 (citing *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 320 (1982)).

Here, BNSF fulfills the first two factors because the percipient loss of customer goodwill that will occur if TCRY again blocks it from accessing the Richland Trackage is imminent; the loss of consumer goodwill is an irreparable injury, and legal remedies are inadequate to compensate for that injury. *See Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991); *Regents of Univ. of Cal. v. Am. Broad. Cos.*, 747 F.2d 511, 519-20 (9th Cir. 1984). The balance of hardships between BNSF and TCRY also runs in BNSF's favor:

While TCRY is currently tasked with maintaining the Richland Trackage under the 1998 Maintenance and Operation Agreement and the 2002 Lease, as the Court has already found, TCRY took possession of the Richland Trackage subject to BNSF and UP's pre-existing rights; the temporary hardship TCRY will suffer under its contract with the Port is outweighed by the long-term hardship BNSF and UP would suffer if their rights under the 1947 and 1961 Agreements were permanently abrogated. Finally, as the Court found in its Order granting BNSF's motion for a preliminary injunction, ECF No. 93 at 10-11, it is in the public interest to encourage competition among the railroads and to ensure that railroad service remains efficient. Accordingly, a permanent injunction is proper.

TCRY argues that if such relief is granted, the injunction should not be "asymmetrical." TCRY cites *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010), in support of this position, but this case mentions no such consideration, and simply affirms a district court's preliminary injunction issued under the *Winter* framework. TCRY asserts that an order enjoining only it would be unfair because it would "give[] only one party the asymmetric right to seek an order of contempt over any claim of contract breach." ECF No. 283 at 15. However, only TCRY is in breach of the 1947 and 1961 Agreements, and BNSF has committed no harm that need be redressed with equitable relief. Furthermore, the Court's contempt power will only be available for breach of the *injunction*, and both parties will retain the ability to seek legal relief for breach of the underlying contract. As such, the Court denies TCRY's request for a "symmetrical" injunction.

For the reasons discussed above, the Court grants BNSF's request and issues a permanent injunction requiring TCRY 1) to allow both BNSF and UP to directly serve customers along the Richland Trackage, and 2) to coordinate train scheduling and dispatching with both BNSF and UP. The parties shall meet and confer to develop a comprehensive operational plan as detailed below.

F. Conclusion

For all of the historical complexity surrounding the Richland Trackage, the relative rights of the parties are actually quite simple: The United States granted BNSF and UP's predecessors in interest full rights to operate on the Richland Trackage, and TCRY took possession of the Richland Trackage subject to these rights. Accordingly, the Court issues a declaratory judgment recognizing BNSF and UP's operating rights, and issues a permanent injunction protecting these rights.

Accordingly, **IT IS HEREBY ORDERED:**

1. BNSF's Motion for Summary Judgment, **ECF No. 273**, is **GRANTED**. Both BNSF and UP shall have the right to operate directly on the Richland Trackage. Representatives from BNSF, TCRY, and UP shall meet and confer at a mutually-convenient time and place - either by phone or in person - and draft a comprehensive operational plan (COP), consistent with the Court's ruling, that is signed and agreed upon by all three parties. A representative of the Port shall be permitted to attend and offer comments. The COP shall cover trackage from the Richland junction to Horn Rapids Road (and all spurs that spring therefrom). The proposed COP shall be filed for Court approval **no later than 5:00 p.m. on December 23, 2011** unless on or before that date, BNSF, TCRY, and UP file with the

Court a joint stipulation to a later date. The Port shall have seven (7) days after the filing of the proposed COP in which to file a statement with the Court stating its comments or objections to the proposed COP. The parties shall have seven (7) days after the filing of the Port's statement in which to file individual or joint reply to the Port's statement. No other responsive or reply memoranda will be considered.

2. All pending motions are **DENIED as moot.**

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and distribute copies to counsel.

DATED this 14th day of February 2012.

S/ Edward F. Shea
EDWARD F. SHEA
United States District Judge

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ORDER * 21

SURFACE TRANSPORTATION BOARD

TRI-CITY RAILROAD COMPANY, LLC, a Washington limited liability Company, Petitioners, v. THE CITY OF KENNEWICK, a Washington municipal corporation; THE CITY OF RICHLAND, a Washington municipal corporation, Respondents.	No. FD 35915 VERIFIED STATEMENT AND AFFIDAVIT OF KEVIN JEFFERS, P.E.

COMES NOW Kevin Jeffers who declares under penalty of perjury that the foregoing is true and correct:

1. I am a licensed professional engineer and senior associate at the engineering firm David Evans and Associates ("DEA"). The City of Richland has contracted DEA to assist in the design of the Center Parkway Extension project, specifically for the elements associated with the proposed highway-rail grade crossing.

2. I reaffirm my pre-filed testimony that I submitted in the Washington Utilities and Transportation Commission ("UTC") proceeding for the Center Parkway Crossing (Docket TR-130499), available in the Washington State Court of Appeals Clerk's Papers CP 1521-1532; 1592-1601.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

PROFESSIONAL QUALIFICATIONS

3. I have been a licensed professional engineer in Washington State since 1994, and I am also licensed in the states of Oregon and Idaho. I began designing and overseeing the design of railroad projects in 1998 while employed by the Washington State Department of Transportation. From 1989 until 1998, I specialized in bridge design and conditions inspection, including bridges over rail lines and, in limited cases, bridges carrying rail lines over roadways. I joined David Evans and Associates in 2011.

4. Since 1998, I have either designed or led the design of improvements to 35 highway-rail grade crossings in Clark, Columbia, Franklin, Grays Harbor, King, Lewis, Lincoln, Pierce, Skagit, Snohomish, Spokane, Thurston, Whatcom, Whitman, and Yakima Counties in Washington State. I have also led or managed the design of grade separations at three locations in Washington State.

5. My knowledge of the rail lines in this area is based on information I have gathered organically in my 15-plus years working in the rail industry, together with observations of the Port of Benton line; the area served by the Port rail line; through discussions with the City of Richland and the City of Kennewick engineering and operations staff; through research of TCRY; and, through review of Union Pacific Railroad (UPRR) and BNSF Railway timetables and track charts.

PROJECT BACKGROUND

6. As I stated in my pre-filed testimony before the UTC, the City of Richland has worked closely with both the BNSF Railway and the UPRR to eliminate BNSF and UPRR's use of the railroad siding in the vicinity of Center Parkway. The City has worked with the Port of Benton, which owns the remaining railroad line, to address issues with respect to a new railroad crossing that would be created by the Center Parkway Extension. The

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City has also secured federal and state funding for the construction of the roadway, including the railroad crossing.

7. The City of Richland contracted with David Evans and Associates to study and document conditions with the proposed roadway crossing of the rail line to contribute to design considerations and ensure safety with the railroad crossing.

8. As part of the City of Richland's work, I facilitated a grade crossing diagnostic meeting prior to the Cities' petition to the UTC to establish the road crossing. This is a standard of care when a new crossing or modifications to an existing crossing are evaluated. I mailed invitations for the diagnostic meeting to the UTC, the Port of Benton (owner of the rail line), City of Richland, City of Kennewick (both as the road authorities), UPRR, BNSF and TCRY. I also followed-up with e-mails and phone calls or messages to the three railroads. TCRY did not attend the site visit or diagnostic meeting and did not respond to the invitation or messages.

9. At the diagnostic meeting, the Cities and the UTC discussed Crossing options and safety measures. Because TCRY was not present, the Cities designed two Crossing options: one with the siding and one without.

10. The UTC approved the Crossing over both tracks. Thus, the project will not remove any tracks. The Crossing will cross a main line and a siding.

11. As detailed in the UTC record, the Crossing has safety features that include active warning devices, bells, gates, and a raised median. The gates will go down as a train approaches and will stay down when a train occupies the tracks within the limits of the crossing. The gates will not rise until all trains have cleared the crossing limits.

SWITCHING AT RICHLAND JUNCTION

12. In the past, UPRR and TCRY interchanged (exchanged) on the siding that Center Parkway will cross. However, UPRR contracted to stop switching at this location. The interchange of cars now takes place near Walulla, Washington, east of Kennewick. In

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addition, BNSF is now using operating rights over the Port-owned rail line to access the UPRR-owned tracks. And, BNSF has contracted to not engage in switching in the Center Parkway crossing-area. But, BNSF does not interchange cars with either TCRY or UPRR. Thus, UPRR and BNSF do not switch any trains at this location. UPRR and BNSF do not use the siding.

TRACK USAGE

13. Based upon information submitted by TCRY to the UTC, I calculated that an average of three to five TCRY trains pass the crossing location on a daily basis. Based upon a field study conducted by the City of Richland using time-lapse photos (discussed in greater detail below), I calculate two to four TCRY trains pass the proposed crossing location on a daily basis, carrying an average of 9 cars per train.

14. TCRY's petition states that "TCRY is expected to handle approximately 4,175 carloads on this trackage in 2015." (TCRY's Petition at p. 6). Actual track usage does not support TCRY's estimate.

15. Even if track use increased, the crossing safety devices provide security and safety, and avoid conflicts with train traffic.

16. UPRR or BNSF trains may use the rail line twice a day, but likely not on the same day. This information is documented in information the railroads provided to the UTC.

17. The City of Richland field study showed only TCRY and BNSF trains and not UPRR trains during the study period (February 10, 2015 to May 26, 2015).

TCRY'S USE OF THE SIDING

18. I have reviewed a field study prepared by the City of Richland that documents observations of the use of the existing rail siding that cross the proposed roadway crossing location. Those observations are dated from February 10, 2015 to May 26, 2015. As discussed in greater detail in Pete Rogalsky's verified statement, both still and time-lapse photos were used to compile the field study data.

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19. The documentation showed that railcars were present on the siding on most days during the referenced period. Based on the observations, once the cars were placed on the siding, they typically stayed at the same locations on the siding for three (3) days or more, and on many occasions they stayed for more than a week.

20. The field study data demonstrates that TCRY is using the siding for car storage, not for regular switching, as might be seen in a typical yard. Also, since the cars were observed being moved into place and then removed only by TCRY locomotives, there is no interchange with UPRR or BNSF occurring here.

21. The field study also demonstrates that TCRY is placing cars on the siding immediately in front of the Crossing. It appears that TCRY's car staging is solely for the purpose of misleading the Surface Transportation Board in this proceeding because the car placement in front of the Crossing does not serve any railroad purpose.

22. The only practical use of the siding track is for long-term storage of rail cars not required by a shipper, or to store on-track equipment and rail cars used for track maintenance, or to hold railcars that are found to be defective by a train crew (aka bad-ordered) while en-route. These actions do not require blocking the Crossing.

CONCLUSION

23. Based on my experience, and my knowledge of the operations of the Port of Benton tracks that begin at the Richland Junction, there is no impact on the movement of freight or other rail as a result of the Crossing.

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SIGNED AND SWORN STATEMENT

24. Pursuant to 49 CFR 1112.9:

State of Washington,

County of Pierce,

Kevin Jeffers, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

Signed _____
Kevin Jeffers

Signed and sworn to before me this 11TH day of 2015.

Notary Public of Washington.

My Commission expires 2/22/16.

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed to the following:

William J. Schroeder Gregory C. Hesler William C. Schroeder **Paine Hamblen LLP** 717 West Sprague Avenue, Suite 1200 Spokane, WA 99201 william.schroeder@painehamblen.com greg.hesler@painehamblen.com will.schroeder@painehamblen.com	_____ U.S. Mail _____ Hand Delivery __X__ Overnight Mail _____ E-Mail

Christopher G. Emch

SURFACE TRANSPORTATION BOARD

TRI-CITY RAILROAD COMPANY, LLC, a Washington limited liability Company, Petitioners, v. THE CITY OF KENNEWICK, a Washington municipal corporation; THE CITY OF RICHLAND, a Washington municipal corporation, Respondents.	No. FD 35915 VERIFIED STATEMENT AND AFFIDAVIT OF STEPHANIE G. WEIR

COMES NOW Stephanie G. Weir who declares under penalty of perjury that the foregoing is true and correct:

1. I am one of the attorneys for the Respondents, the City of Kennewick and the City of Richland, in the above-captioned action. I am competent to testify to the matter contained herein based on my personal knowledge.

2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts of record from the Court of Appeals, Division III. These Clerk's Papers ("CP") include excerpts from the record before the Washington Utilities and Transportation Commission ("UTC") and excerpts from the record before the Benton County Superior Court. A complete set of these records — the UTC record as certified by the UTC Executive Director and Secretary, *see* CP 0-000000069-73, and the Benton County Superior Court record, as

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transmitted by the Benton County Superior Court Clerk — have been sent to the STB for convenience, and served on counsel.

SIGNED AND SWORN STATEMENT

Pursuant to 49 CFR 1112.9:

State of Washington,

County of Pierce,

Stephanie G. Weir, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

Signed _____
Stephanie G. Weir

Signed and sworn to before me this 15th day of June 2015.

Notary Public of Washington.

My Commission expires 4/20/17.

Debra Ann Samuelson

DEBRA ANN SAMUELSON
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
4-20-17

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The City of Richland and the City of Kennewick submit to the Surface Transportation Board the record from the Court of Appeals, Division III, of the State of Washington, which includes the complete UTC record, hearing testimony and certification of authenticity at 0-000000069-73. The Court of Appeals record is sequentially numbered 0-000000001 — 0-000002209. Reference to this record, the clerk's papers, will be in the form "CP_____".

RECORD FROM COURT OF APPEALS, DIVISION III,
WASHINGTON STATE, WHICH INCLUDES WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION RECORD.

JOSIE DELVIN
BENTON COUNTY CLERK
FEB 04 2015
FILED

Benton County Clerk

OFFICE OF COUNTY CLERK & EX-OFFICIO CLERK OF SUPERIOR COURT

JOSIE DELVIN, COUNTY CLERK 7122 W. OKANOGAN PL., BLDG A
KENNEWICK, WA 99336
(509) 735-8388
WWW.CO.BENTON.WA.US

February 04, 2015

William Schroeder
Gregory Hesler
William Schroeder
Paine Hamblem, LLP
717 West Sprague Ave. Ste. 1200
Spokane, WA 99201

RE: Tri-City Railroad Company v. State of WA Utilities and Transporation
Benton County No. 14-2-01894-8
Appeal No. 33031-1-III

Dear Counsel:

This is to inform you that the Appellant's Designation of Clerk's Papers have been completed. The Transcript of Clerk's Papers on Appeal Consists of (6) Volume(s) Page(s) 1-2209 in the above referenced matter, which was filed with this court on January 28, 2015.

Attached please find your copy of the Index to the Transcript of Clerk's Papers on Appeal. **Please review this Index (page numbers per document, & documents requested) as soon as possible. Please advise us of any errors.**

Pursuant to RAP 9.7(a) the costs must be paid by the designating party within 14 days of receipt of the Index. The transcript has been completed and the **preparation fee is $1104.50**.

Payment of this amount is due by February 19, 2015.**Upon receipt of your check in that amount the transcript will be e-filed to the Court of Appeals, Division III.**

Should either counsel wish to request a complete Bates numbered copy of the Designation, the request and additional copy fees **must** be received before February 19, 2015. The requesting party has the following options:

Hard copy of the Bates numbered Clerk's Papers at .50 a page $1104.50
(If there is a cost for postage it will be billed at a later date.)

E-mailed copy of the Bates numbered Clerk's Papers at .25 a page $525.25
(Please include an e-mail address you wish to have the Clerk's Papers sent)

Very truly yours,

JOSIE DELVIN
Benton County Clerk

Camas Murry, Deputy Clerk

Enclosure
Index
Cc : Michael Fassio Attorney General's Office PO Box 40128 Olympia, WA 98504
Cc : Julian Beattie Attorney General's Office PO Box 40128 Olympia WA 98504

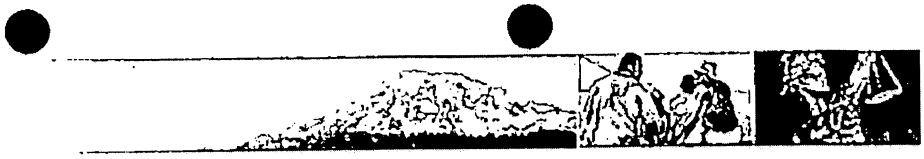
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

TRI-CITY RAILROAD COMPANY LLC Petitioner,	)	**Cause No. 14-2-01894-8**
Vs.	)	Appeal No. **33031-1**
STATE OF WASHINGTON, UTILITIES AND TRANSPORTATION COMMISION Respondent	)	

INDEX

Appellant's/Respondent's

** END **



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Case Name: Tri-City Railroad Company v. State of WA Utilities and Transportation
County Cause Number: 14-2-01894-8
Court of Appeals Case Number: 33031-1

☐ Notice of Appeal (NOA)/Notice of Discretionary Review (DR)/CrR 7.8 Transfer (PRP)

Check All Included Documents

- ☐ Judgment & Sentence/Order Judgment/Order of Disposition
  Signing Judge: _____
- ☐ Order of Indigency
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☐ Verification of Verbatim Report of Proceedings Filed - Date ___
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Reporter/Transcriptionist:

☐ Other: _____

Co-Defendant Information:
No Co-Defendant information was entered.

Comments:

Sender Name/Email Address: Camas M Murry - camas.murry@co.benton.wa.us

0-000000001d

IN THE SUPERIOR COURT, STATE OF WASHINGTON

IN AND FOR THE COUNTY OF BENTON

TRI-CITY RAILROAD COMPANY, LLC, a Washington corporation Petitioner, vs. STATE OF WASHINGTON, UTILITIES AND TRANSPORTATION COMMISSION Respondent.	No. 14-2-01894-8 **AMENDED PETITION FOR REVIEW OF ORDER OF WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION ALLOWING NEW AT-GRADE CROSSING**

COMES NOW Petitioner, Tri-City Railroad Company, LLC, by and through its attorneys Paine Hamblen LLP, and, pursuant to RCW 34.05.570 and RCW 34.05.546, submits the following Amended Petition for Review of the Washington State Utilities and Transportation Commission's May 29, 2014 Final Order Granting Petition for Administrative Review in Docket No. TR-130499, which approved the City of Kennewick and the City of Richland's proposed construction of a new at-grade crossing, and elimination of a 1900-foot passing track.

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IDENTIFICATION OF PETITIONER, AGENCY, AND PARTIES

Pursuant to RCW 34.05.546(1), (2), (3), and (5), the petitioner, agency, and other parties are as follows:

Petitioner

- Petitioner is the Tri-City Railroad Company, LLC, d/b/a Tri-City & Olympia Railroad Company (hereinafter "TCRY"). Its address is P.O. Box 1700, Richland, Washington, 99352.

- TCRY is represented by Paine Hamblen LLP, located at 717 West Sprague Avenue, Suite 1200, Spokane, Washington, 99201.

Agency

- The agency in question is the Washington State Utilities and Transportation Commission ("UTC"), located at 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, Washington, 98504-7250. *See* WAC 480-07-125.

Parties in the Adjudicative Proceedings

- City of Kennewick, 210 West Sixth Avenue, Kennewick, Washington, 99336.
- City of Richland, 505 Swift Boulevard, Richland, Washington, 99352.
- Port of Benton, 3100 George Washington Way, Richland, Washington, 99354.[1]
- TCRY, P.O. Box 1700, Richland, Washington, 99352.

[1] BNSF Railway Company ("BNSF") and Union Pacific Railroad Company ("UPRR") were initially named as parties in the Petition to the UTC by the City of Kennewick. However, both railroad companies filed waivers, and did not participate in the adjudicative proceedings.

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ORDER OF WHICH REVIEW IS SOUGHT

TCRY seeks review of the UTC's May 29, 2014 Final Order Granting Petition for Administrative Review ("Final Order"), a copy of which is attached as **Exhibit A** to this Petition.

JURISDICTION AND VENUE

Pursuant to RCW 34.05.546(6), jurisdiction and venue are as follows:

Venue is proper in Benton County, pursuant to RCW 81.53.170, RCW 81.53.261, and RCW 34.05.514(1).

TCRY has standing, pursuant to RCW 34.05.530, as 1) the UTC's Final Order has prejudiced TCRY in appropriating its property rights in a passing track without compensation; 2) TCRY's interests were among those the UTC was required to consider in its adjudication; and 3) a judgment in favor of TCRY would remedy the UTC's ultra vires acts.

TCRY exhausted its administrative remedies, including bringing a motion for reconsideration before the UTC. *See* RCW 34.05.534.

After the UTC denied TCRY's reconsideration motion on June 24, 2014, TCRY timely filed and served the instant Petition for Review. *See* RCW 34.05.470(3); RCW 34.05.542.

SUMMARY OF CASE

This case concerns the City of Kennewick's plans to extend to the north a certain city street within the City of Kennewick city limits, known as Center Parkway, so that it intersects with Tapteal Drive.

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Between the roundabout where Center Parkway currently ends and Tapteal Drive are two railroad tracks, both owned by the Port of Benton. One of the tracks is used by TCRY, as well as the BNSF and UPRR. The other is a parallel passing track, approximately 1900 feet in length, which has switches on both its east and west ends. TCRY uses this passing track as part of its operations.

The City of Kennewick petitioned the UTC for approval of an at-grade crossing where the newly-extended Center Parkway will cross the two existing railroad tracks. The proposed crossing will eliminate the passing track.

Both the tracks in question, and the proposed crossing, are located entirely within the City of Kennewick. However, if Center Parkway is extended to the north of the tracks, it will cross into the City of Richland immediately north of the tracks. For that reason, the City of Richland intervened in the Petition submitted to the UTC by the City of Kennewick.

TCRY has a written leasehold interest with the Port of Benton in the passing track. In a 2006 Agreement with the Port of Benton, the City of Kennewick, and the City of Richland agreed to obtain authority from TCRY, either by contract or by exercise of authority granted by law, prior to extending Center Parkway over the tracks.

No eminent domain proceeding has been commenced to condemn TCRY's property rights in the passing track.

The Administrative Law Judge ("ALJ") issued, on February 25, 2014, an Initial Order Denying Petition to Open At-Grade Railroad Crossing ("Initial Order"). A copy of that Initial

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Order is attached for ease of reference as **Exhibit B**. The Cities of Richland and Kennewick sought administrative review of the Initial Order.

The UTC granted the petition for administrative review, and is allowing the crossing to be constructed, with the elimination of the passing track. The UTC found no error with the findings and conclusions of the ALJ. Rather, the UTC referred to five (5) public comments, treated those public comments as evidence, and relied exclusively upon them as a basis to reverse the ALJ's decision and approve the City of Kennewick and the City of Richland's proposed construction of the new at-grade crossing and the elimination of the 1900-foot passing track.

ASSIGNMENTS OF ERROR

- **RCW 34.05.570(3)(c) –Failure to Follow Prescribed Procedure**

  Evidentiary hearings were conducted in the instant matter before the ALJ on November 19-20, 2013. After the evidentiary hearings, the ALJ accepted public comment, as permitted by statute. Based entirely upon five (5) written public comments submitted after the evidentiary hearing, the UTC accepted all of the ALJ's factual findings, but reversed the ultimate conclusion. The UTC's treatment of public comments as substantive evidence violates the UTC's own adjudicative procedures, WAC 480-07-490(5) and WAC 480-07-498, and deprived TCRY of its due process right to confront evidence and cross-examine witnesses. Error is therefore assigned to the Final Order, paragraphs 23, 24, 26, 27, 28, 37, 38, 39, and 41.

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- **RCW 34.05.570(3)(e) – Lack of Substantial Evidence**

The UTC accepted all of the ALJ's factual findings in the Initial Order. However, based entirely upon five (5) public comments, the UTC reversed the ALJ's conclusion. The public comments relied upon by the UTC are inadmissible as substantive evidence, both as hearsay and under WAC 480-07-490(5), which provides that public comment is not evidence until it is "received into evidence as proof of the matters asserted after an opportunity for cross-examination." As the UTC accepted the findings of fact of the ALJ, and as the UTC based its reversal of the ALJ's conclusions entirely on inadmissible public comment, the UTC lacked substantial evidence for its ultimate conclusion. Error is therefore assigned to the Final Order, paragraphs 23, 24, 26, 27, 28, 37, 38, and 39.

- **RCW 34.05.570(3)(b) and (d) – Exceeding Statutory Authority**

The UTC's Final Order was arrived at by considering "economic development interests," "deference to local government," and "the broader public policy environment." These criteria are not among the statutory standard of "public safety" the UTC is authorized to consider when evaluating an at-grade crossing petition brought by a city pursuant to RCW 81.53.261. Error is therefore assigned to the Final Order, paragraphs 17, 22, 25, 28, 33, 39, and 41.

- **RCW 34.05.570(3)(a) – Unconstitutional Taking**

The UTC's Final Order, as applied, violates Article I, Section 16 of the Washington Constitution, and constitutes an inverse condemnation of TCRY's property rights in

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the 1900-foot passing track. The implementation of the UTC's Final Order will require elimination of the 1900-foot passing track, yet no eminent domain proceeding has been initiated pursuant to RCW 81.53.180 to take TCRY's property rights, nor has just compensation been paid for the same. Error is therefore assigned to the Final Order, paragraphs 13 n.6, 39, 40, and 41.

FACTUAL AND PROCEDURAL HISTORY

- On April 8, 2013, the City of Kennewick filed, with the UTC, a petition to construct a highway-rail grade crossing at Center Parkway, Kennewick, Washington, and remove an existing railroad siding. (Initial Order, ¶ 1)
- On May 31, 2013, the City of Richland petitioned to intervene in support of this petition, which was granted. (Initial Order, ¶¶ 1-2) (hereinafter, the Cities of Richland and Kennewick will be referred to collectively as the "Cities").
- Center Parkway is a minor arterial roadway in the City of Kennewick. As currently constructed, its northbound traffic moves into a roundabout intersection with Gage Boulevard and cannot proceed further north to Tapteal Drive. The Cities intend to connect Tapteal Drive in the City of Richland with Gage Boulevard in the City of Kennewick by extending Center Parkway northward. In order to accomplish this, Center Parkway would cross two sets of railroad tracks owned by the Port of Benton. (Initial Order, ¶ 6)
- As shown in Figure 1 below, the Columbia Center Mall is located immediately southeast of the proposed crossing, bordered by Center Parkway (west side), Quinault

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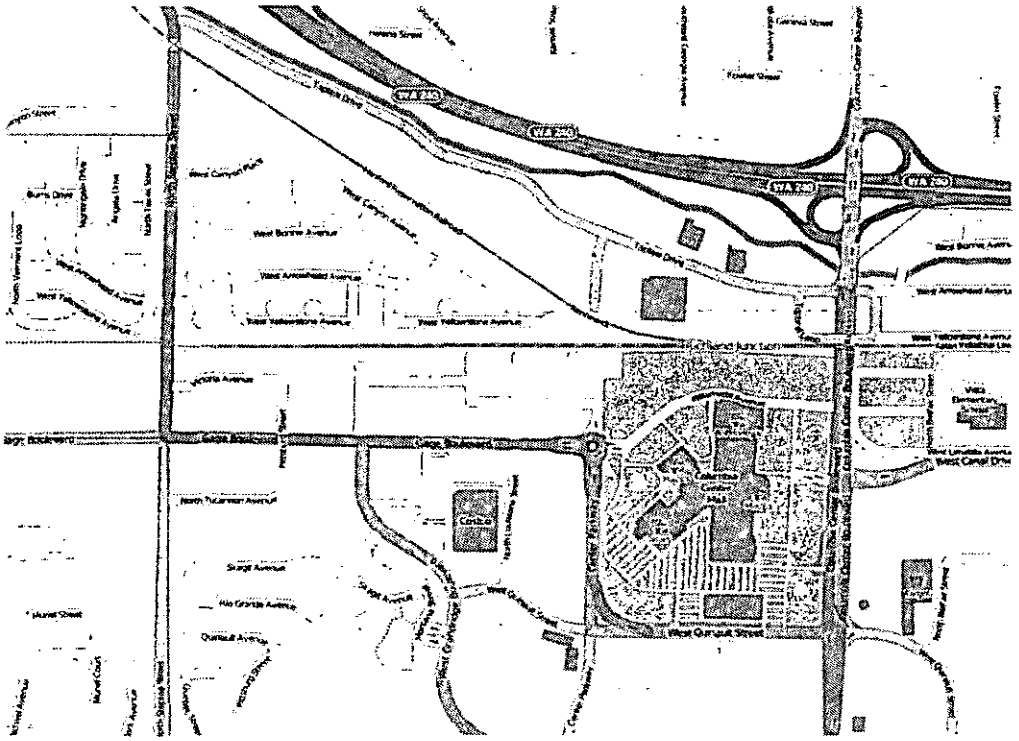
Street (south side), and Columbia Center Boulevard (east side). The Mall's northern boundary abuts Port of Benton and UPRR railroad tracks that connect at Richland Junction, just east of the proposed crossing.

Figure 1
Overview Map of Area (including old UPRR spur track, now removed)



(Initial Order, ¶¶ 8-9; Final Order, ¶ 9)

- TCRY is a rail carrier conducting interstate rail operations through the Cities. TCRY leases the track west and north of Richland Junction from the Port of Benton; BNSF and UPRR also operate on this track. (Initial Order, ¶ 11)
- The second set of tracks immediately west of Richland Junction allows TCRY trains to meet and pass when entering or exiting the area. TCRY makes frequent, if not daily,

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use of that facility. When no passing operations are scheduled, TCRY also uses the second track as a siding to store idle freight cars. (Initial Order, ¶ 11)

- TCRY presently operates 10 to 20 freight trains each week on the mainline track that passes through the Richland Junction. BNSF operates another 10 freight trains each week and, on occasion, UPRR operates a "unit train," a mile-long freight train consisting of approximately 100 to 120 cars all carrying the same cargo. No passenger trains operate on this track. (Initial Order, ¶ 12)
- The combined annual train traffic through the Richland Junction increased from nearly 4,500 railcars in 2012 to over 5,100 railcars in 2013. Further increases in train traffic are expected because of TCRY's continued growth and new commercial developments and railroad facilities in the Horn Rapids Industrial Park. (Initial Order, ¶¶ 12-13)
- All trains traveling to the Horn Rapids area must pass through the Richland Junction and cross the proposed Center Parkway extension. (Initial Order, ¶ 14)
- TCRY opposed the Center Parkway crossing because rail operations could regularly require freight trains to block the crossing, occasionally for lengthy periods of time. (Initial Order, ¶ 14)
- The Cities presented evidence contending that grade separation is not warranted at the proposed crossing site because of roadway characteristics, accident prediction models,

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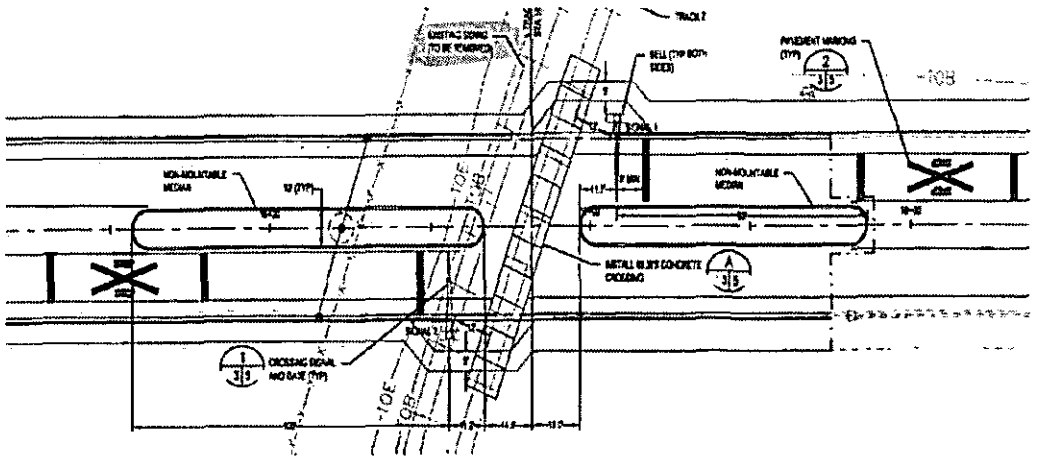
and cost.[2] (Initial Order, ¶¶ 15-17) The Cities propose to install signage, flashing lights, a bell, automatic gates, and a raised median strip designed to prevent drivers from going around lowered gates.

Figure 2
At-Grade Crossing Configuration



(Final Order, ¶ 13 (emphasis added))

- The Cities attempted to demonstrate public need by arguing improvements to public safety through faster emergency response times, reduced accident rates around the Columbia Center Mall, and relief of traffic congestion at nearby intersections with deficient levels of service. (Initial Order, ¶¶ 20-36, 59)
- As found by the UTC:

> . . . The Initial Order analyzes the evidence on this issue in detail that does not bear repeating here. It is sufficient for us to observe that we agree

[2] "Grade separation refers to the method of aligning the junction of two or more surface transportation rights-of-way at different heights (grades) to avoid conflicts or disruption of traffic flows as they cross each other. In the case of highway-rail junctions, underpasses, overpasses, or bridges are the most common forms of grade separated crossings." (Initial Order, ¶ 15)

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> with the analysis, the findings, and the conclusion reached in the Initial Order that the benefits to public safety alleged by the Cities are too slight on their own to support the petition, even though the inherent risks are mitigated to a large extent by the project design.

(Final Order, ¶ 16).

- Nonetheless, the UTC reversed the final conclusion of the ALJ and allowed the crossing. It described as follows:

> We determine that the Commission should consider public need for the proposed at-grade railroad crossing in the broader context of the several purposes discussed in the JUB transportation study, rather than with the narrower focus that the parties, and consequently the Initial Order, place on public safety. It is particularly important to give weight to the economic development interests considering that the Center Parkway extension would conveniently connect existing, complementary commercial developments in Richland and Kennewick, and would promote development of 60 acres of currently vacant commercial real estate along Tapteal Drive in Richland . . . .

(Final Order, ¶ 22)

- The basis for the UTC's reversal is five (5) written public comments, all submitted after the evidentiary hearing on this matter, and none of the submitters of the comments was examined by the parties. (*See* Final Order, ¶ 23 fn. 18, comment submitted 12/9/2013; ¶ 24 fn.19, comment submitted 11/20/2013; ¶ 26 fn.24, comment submitted 11/20/2013; ¶ 27 fn. 25, comments submitted 11/25/2013 and 12/6/2013).
- A local landowner submitted a written public comment asserting a desire to develop two nearby undeveloped properties. (Final Order, ¶ 23) An official from a local governmental panel submitted a written public comment asserting that the proposed

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crossing would encourage people to bike and walk between retail areas, rather than driving. (Final Order, ¶ 24).

- The UTC further found as follows:

> In addition to economic benefits, the Commission as a matter of policy should give some deference to the Cities' transportation and land use planning goals, as these are matters of local concern and within the jurisdictional authority of the Cities. . . .

(Final Order, ¶ 25)

- The UTC then emphasized written public comments asserting dramatically improved traffic movement. (Final Order, ¶¶ 26-27).

- The UTC concluded:

> The Initial Order fairly weighs the evidence and argument presented in the post-hearing briefs, and reaches a legally sustainable result. The Cities' almost exclusive focus on improved response times for first responders on a point-to-point basis as the principal benefit demonstrating "public need" does not weigh persuasively against even the demonstrated low level of "inherent risk" at the proposed crossing. Nor are the Cities' legal arguments that their comprehensive planning processes under the Growth Management Act mandate Commission approval persuasive. However, considering evidence the parties largely ignored that shows additional public benefits in the form of enhanced economic development opportunities, and considering the broader public policy context that gives a degree of deference to local jurisdictions in the areas of transportation and land use planning, we determine that the Cities' petition for administrative review should be granted and their underlying petition for authority to construct the proposed at-grade crossing should be approved.

(Final Order, ¶¶ 28; *see, also*, ¶¶ 37-39)

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ARGUMENT

A. Standards of Review

This Petition for Review is brought pursuant to RCW 34.05.570(3), and seeks relief from a Final Order issued by the UTC in an adjudicative hearing. The statute provides, in pertinent part:

> (3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:
>
> > (a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;
> >
> > (b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;
> >
> > (c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;
> >
> > (d) The agency has erroneously interpreted or applied the law;
> >
> > (e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter; . . .

RCW 34.05.570(3).

The standard of review is *de novo* for petitions brought pursuant to subsections (a) ~ (d). An agency's interpretation or application of the law is reviewed *de novo*. Chicago Title Insurance Company v. The Office of the Insurance Commissioner, 178 Wn.2d 120, 133, 309 P.3d 372 (2013). "Legal determinations are reviewed using the 'error of law' standard, which

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allows the court to substitute its view of the law for that of the [agency]." Chicago Title, at 133 (*citing* Verizon Nw., Inc. v. Emp't Sec. Dep't, 164 Wn.2d 909, 915, 194 P.3d 255 (2008)).

Petitions brought pursuant to RCW 34.05.570(3)(e) are reviewed for substantial evidence. *See* Edelman v. Washington, 160 Wn. App. 294, 303, 248 P.3d 581 (2011). "Substantial evidence is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premises." Id. at 304 (*quoting* Heinmiller v. Dep't of Health, 127 Wn.2d 595, 607, 903 P.2d 433, 909 P.2d 1294 (1995)).

B. The UTC Violated Evidentiary Procedures in Accepting Public Comment as "Proof of the Matter Asserted" and Should Be Reversed Pursuant to RCW 34.05.570(3)(c)

The Cities conferred jurisdiction upon the UTC over the proposed crossing in question by filing a petition for an at-grade crossing pursuant to RCW 81.53.261. *See* RCW 81.53.291.

Hearings on petitions for at-grade crossings are governed by the Administrative Procedures Act, RCW 34.05.410 ~ .494, RCW 81.53 *et seq.*, and the WAC provisions promulgated by the UTC for the conduct of its adjudicative hearings under WAC 480-07-300 ~ -498.

Concerning public comment, the UTC regulations provide:

> The commission will receive as a bench exhibit any public comment filed, or otherwise submitted by nonparties, in connection with an adjudicative proceeding. The exhibit will be treated as an illustrative exhibit that expresses public sentiment received concerning the pending matter. The commission may convene one or more public comment hearing sessions to receive oral and written comments from members of the public who are not parties in the proceeding. . . .

WAC 480-07-498.

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The UTC regulations define the evidentiary status of public comments as follows:

> Documents from the public. When a member of the public presents a document in conjunction with his or her testimony, the commission may receive the document as an illustrative exhibit. The commission may receive as illustrative exhibits any letters that have been received by the secretary of the commission and by public counsel from members of the public regarding a proceeding. Documents a public witness presents that are exceptional in their detail or probative value may be separately received into evidence as proof of the matters asserted after an opportunity for cross-examination.

WAC 480-07-490(5).

Within administrative law, parties have the right to cross-examine the preparers of documents which are considered as evidence by the adjudicative agency. *See* Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 32-35, 873 P.2d 498 (1994).

Here, the procedural order permitted the parties three rounds of pre-filed testimony, with the final rebuttal testimony being filed by all parties on October 23, 2013. (Final Order, ¶ 3). Evidentiary hearings were conducted on November 19 and 20, 2013. (Final Order, ¶ 4). Public comment was accepted on November 20, 2013, with additional written public comments being filed in the weeks following. (Id.).

The ALJ issued the Initial Order Denying Petition to Open At-Grade Railroad Crossing on February 25, 2014. (*See*, Initial Order, dated February 25, 2014) The Initial Order neither mentions, nor treats as evidence any public comments.

The Cities petitioned for administrative review of the Initial Order on March 18, 2014. (Final Order, ¶ 5). The Cities' petition does not reference the public comments as a basis to

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reverse the Initial Order. (*See* March 18, 2014 Petition for Administrative Review, filed in *City of Kennewick v. Port of Benton, et al.*, UTC Docket TR-130499).[3]

The UTC issued the Final Order on May 29, 2014. It provides, in pertinent part:

> . . . It is sufficient for us to observe that we agree with the analysis, the findings, and the conclusion reached in the Initial Order that the benefits to public safety alleged by the Cities are too slight on their own to support the petition, even though the inherent risks are mitigated to a large extent by the project design.

(Final Order, ¶ 16).

Despite the UTC's agreement with the Initial Order, the Final Order reverses the Initial Order's conclusion, and authorizes the passing track removal and at-grade crossing installation. The entire basis for the UTC's reversal is five (5) written public comments, all submitted after the evidentiary hearing on this matter, and none of the submitters of the comments was examined by the parties. (*See* Final Order, ¶ 23 fn.18, comment submitted 12/9/2013; ¶ 24 fn.19, comment submitted 11/20/2013; ¶ 26 fn.24, comment submitted 11/20/2013; ¶ 27 fn.25, comments submitted 11/25/2013 and 12/6/2013).

As provided by the UTC regulation, public comment is to be treated as illustrative exhibits, rather than evidence. WAC 480-07-498. Public comment cannot be "received into evidence as proof of the matters asserted" unless there is an opportunity for cross-examination. WAC 480-07-490(5).

Here, the UTC elevated public comment to the status of admissible, substantive evidence, and based its reversal of the Initial Order entirely on those comments. The parties

[3] This document will be provided with the transcript.

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were not given notice that the UTC intended to *sua sponte* consider public comment as "proof of the matters asserted," nor were they afforded the opportunity to cross-examine the submitters of the five (5) public comments relied upon by the UTC.

Pursuant to RCW 34.05.570(3)(c), having failed to follow its own evidentiary regulations and procedures, the UTC's Final Order should be reversed.

C. The UTC's Reversal of the Initial Order was Based Entirely Upon Inadmissible Evidence; the UTC Therefore Lacked Substantial Evidence For Its Decision, and Should Be Reversed Pursuant to RCW 34.05.570(3)(e)

The UTC's Final Order must be supported by substantial evidence in the record. *See* RCW 34.05.570(3)(e); Edelman v. Washington, 160 Wn. App. 294, 303, 248 P.3d 581 (2011). "Substantial evidence is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premises." Edelman 160 Wn. App. at 304 (internal quotation omitted). *Cf.* In re X.T., 174 Wn. App. 733, 739, 300 P.3d 824 (2013) ("In the absence of the testimony based on inadmissible hearsay, substantial evidence did not support the juvenile court's findings of fact."). In re X.T., 174 Wn. App at 739.

As provided by the UTC regulation, public comment is to be treated as illustrative exhibits, rather than evidence. WAC 480-07-498. Public comment cannot be "received into evidence as proof of the matters asserted" unless there is an opportunity for cross-examination. WAC 480-07-490(5).

Nonetheless, the UTC based its reversal of the Initial Order entirely upon five (5) written public comments. (*See* Final Order, ¶¶ 16, 23, 24, 26, 27, 28, 37, 38, and 39).

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Since 1) the UTC accepted all of the facts found in the Initial Order; 2) the only basis for the UTC's reversal of the Initial Order was public comments; and 3) public comment is not itself "proof of the matters asserted"; the UTC lacked substantial evidence for paragraphs 23, 24, 26, 27, 28, 37, and 38 of the Final Order. Therefore, TCRY asks that the Court reverse the Final Order, pursuant to RCW 34.05.570(3)(e), for want of substantial evidence.

D. The UTC's Consideration of Criteria Outside of its Statutory Authority Renders the Final Order *Ultra Vires*; It Should Be Reversed Pursuant to RCW 34.05.570(3)(b)

RCW 81.53 *et seq.*, establishes two parallel procedures for receiving approval for an at-grade crossing. The first is contained in RCW 81.53.010 through .240, and concerns constructing crossings on highways. The second procedure is contained within RCW 81.53.261 through .295, and concerns crossings of railroad track and municipal or other surface streets within city limits.

The City of Richland is a first class city, and the City of Kennewick is a code city. Under RCW 81.53.240, the procedures of 81.53.010 through .240 are inapplicable to the Cities. Instead, the Cities filed a petition for the UTC to approve an at-grade crossing within a city pursuant to RCW 81.53.261, which constituted the Cities' election to confer statutory jurisdiction to the UTC. RCW 81.53.291.

In a petition under RCW 81.53.261, the only statutory criterion is "public safety." Here, the UTC found that the Cities had not met their burden of establishing the public safety requirement:

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> . . . It is sufficient for us to observe that we agree with the analysis, the findings, and the conclusion reached in the Initial Order that the benefits to public safety alleged by the Cities are too slight on their own to support the petition, even though the inherent risks are mitigated to a large extent by the project design.

(Final Order, ¶ 16).

Nonetheless, the Final Order provides, in the next paragraph:

> If the feasibility of grade separation and public safety as a component of public need were our only concerns, we would end our discussion here and sustain the Initial Order. However, having studied the full record, we find reason to analyze this matter outside the narrow constraints of these two questions. We address in the next section of this Order an additional point of decision that we find determinative.

(Final Order, ¶ 17).

The UTC determined "that [it] should consider public need for the proposed at-grade railroad crossing in the broader context of the several purposes discussed in the JUB transportation study, rather than with the narrower focus that the parties, and consequently the Initial Order, place on public safety." (Final Order, ¶ 22).

The UTC then proceeded to consider "economic development interests," "deference to local government," and "the broader public policy environment." (*See* Final Order, ¶¶ 17, 22, 25, 28, 33, and 39).

In a petition under RCW 81.53.261, "[i]f the commission shall determine from the evidence that public safety does not require the installation of the signal, other warning device or change in the existing warning device specified in the petition, it shall make determinations to that effect and enter an order denying said petition in toto." Id.

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"[U]nlike courts, which are granted the 'judicial power of the state' by the Washington Constitution, CONST. art. IV, § 1, agencies are limited to the powers the legislature has granted them." Snohomish County Public Transportation Benefit Area v. Public Employment Relations Commission, et al., 173 Wn. App. 504, 518, 294 P.3d 803 (2013) (*citing* Local 2916, IAFF v. PERC, 128 Wn.2d 375, 379, 907 P.2d 1204 (1995)).

"[A]n administrative agency ... has no more authority than is granted to it by the Legislature. Determining the extent of that authority is a question of law[.]" Local 2916 at 379 (internal citations omitted).

Since RCW 81.53.261 does not provide statutory authority for the UTC to consider criteria other than public safety, such as "economic development interests," "deference to local government," and "the broader public policy environment," the UTC's Final Order is ultra vires, and should be reversed. RCW 34.05.570(3)(b).

E. The UTC's Final Order Eliminates TCRY's Property Rights in the 1900-Foot Passing Track, Yet No Condemnation Proceeding Has Been Initiated. The Final Order Should Be Reversed Pursuant to RCW 34.05.570(3)(a), as it Effects an Inverse Condemnation Taking of TCRY's Property Rights

The plan approved by the UTC will remove a 1900-foot passing track. (*See* Final Order, p. 6, Figure 2). TCRY uses this passing track for switching and railcar storage; removal of the track will interfere with TCRY's operations. (*See* Final Order, ¶ 10). TCRY has a leasehold interest in the passing track, pursuant to a written lease with the Port of Benton.

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Article I, sec. 16 of the Washington Constitution provides that "[n]o private property shall be taken or damaged for public or private use without just compensation having been first made[.]"

RCW 81.53.180(2) provides:

> In cases where it is necessary to take, damage, or injuriously affect private lands, property, or property rights to permit the opening of a new highway or highway crossing across a railroad, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired by the municipality or county petitioning for such new crossing by a condemnation proceeding brought in the name of such municipality or county as provided by law for the exercise of the power of eminent domain by such municipality or county. . . .

Inverse condemnation is "(1) a taking or damaging (2) of private property (3) for public use (4) without just compensation being paid (5) by a governmental entity that has not instituted formal [condemnation] proceedings." Fitzpatrick v. Okanogan County, 169 Wn.2d 598, 605-06, 238 P.3d 1129 (2010).

Here, the UTC has approved a Final Order which will permit the Cities to eliminate the 1900-foot passing track, and therefore to take TCRY's property rights in the same. The Cities have not initiated a condemnation proceeding to take TCRY's property rights.

As the UTC lacks authority to eliminate property rights, particularly in the absence of an eminent domain proceeding, the Final Order is ultra vires, and should be reversed pursuant to RCW 34.05.570(3)(a), as the Final Order constitutes an inverse condemnation taking of TCRY's property rights in the passing track.

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CONCLUSION

For the foregoing reasons, TCRY requests that the Court grant its petition, and reverse the Final Order of the UTC. Moreover, TCRY requests fees and expenses, including reasonable attorney fees, pursuant to RCW 4.84.350.

Respectfully submitted this 23rd day of July, 2014.

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Gregory C. Hesler, WSBA No. 34217
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Attorneys for Tri-City Railroad Company, LLC

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IN THE SUPERIOR COURT, STATE OF WASHINGTON

IN AND FOR THE COUNTY OF BENTON

TRI-CITY RAILROAD COMPANY, LLC, a Washington corporation Petitioner, vs. STATE OF WASHINGTON, UTILITIES AND TRANSPORTATION COMMISSION Respondent.	No. 14-2-01894-8 **GR 17 DECLARATION OF HOLLY HARRIS**

I, Holly Harris, hereby declare under penalty of perjury pursuant to the laws of the State of Washington as follows:

1. I am a citizen of the United States, a resident of the State of Washington, over the age of 18 years, not a party to or interested in the above captioned action and am competent to be a witness herein.

2. The foregoing document with signature for William J. Schroeder, which consists of three (3) pages, including these Declaration pages, are a complete and

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legible image I have examined personally and they were received by me via facsimile at 1333 Columbia Park Trail, Ste. 250, Richland, Washington, 99352, phone number 509-783-7105, fax number 509-783-7145.

I CERTIFY UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND ABILITY.

SIGNED at Richland, Washington this 23rd day of July, 2014.

Holly Harris

1307376

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[Service date May 29, 2014]

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	)	DOCKET TR-130499 ORDER 03 FINAL ORDER GRANTING PETITION FOR ADMINISTRATIVE REVIEW

BACKGROUND

1 On April 8, 2013, the City of Kennewick filed with the Washington Utilities and Transportation Commission (Commission) a petition to construct a highway-rail grade crossing at Center Parkway, Kennewick, Washington and remove an existing railroad siding. On May 31, 2013, the City of Richland petitioned to intervene in support of the petition.

2 Three railroad companies move trains on the subject track, which is owned by the Port of Benton. Burlington Northern Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UPRR) filed waivers of hearing stating their agreement to the proposed crossing. The third railroad company that operates on these tracks, Tri-City & Olympia Railroad (TCRY), answered Kennewick's petition and requested a hearing. TCRY opposes the petition.

3 Commission Staff filed a memo on May 5, 2013, recommending that the Commission set this matter for hearing. The Commission conducted a prehearing conference on June 4, 2013, and on June 7, 2013, entered Order 01-Prehearing Conference Order; Notice of Hearing. Order 01 set a procedural schedule allowing three rounds of pre-filed testimony. The cities of Kennewick and Richland (collectively "Cities") filed direct testimony and exhibits on September

3, 2013. Staff filed responsive testimony supporting the petition on October 1, 2013. TCRY filed opposing testimony on October 2, 2013. Finally, the Cities and TCRY filed rebuttal testimony and exhibits on October 23, 2013.

4 The Commission conducted evidentiary hearings on November 19-20, 2013, and a public comment hearing on November 20, 2013, in Richland, Washington before Administrative Law Judge Adam Torem. Judge Torem performed a site visit and toured the area on November 21, 2013. The parties simultaneously filed written post-hearing briefs on December 20, 2013.

5 The Commission entered its Initial Order on February 25, 2014, denying Kennewick's petition. Kennewick and Richland filed a joint Petition for Administrative Review on March 18, 2014. The Cities ask for oral argument, which we find unnecessary to resolve their Petition for Administrative Review. Denying the Cities' request for oral argument causes them no prejudice.

6 TCRY filed an answer on March 27, 2014, opposing the joint petition. Staff also filed an answer on March 27, 2014, reiterating its support for the Cities' petition for authority to construct the subject rail crossing, but addressing the Cities' alternative arguments about the impact of the Growth Management Act (GMA) and the application of chapter 81.53 RCW to code Cities. Staff disagrees with the city on the application of both the GMA and RCW 35A.11.020 to its petition.

7 On April 1, 2014, Kennewick and Richland filed a "Reply in Support of Commission Review." TCRY filed a motion to strike the reply on April 3, 2014, arguing it failed to satisfy the requirements for such a pleading under WAC 480-07-825(a) and is procedurally deficient because the Cities did not seek leave to file a reply as required under WAC 480-07-825(5)(b). On April 4, 2014, the Cities filed a response to TCRY's motion to strike. The Commission grants TCRY's motion and will not consider the Cities' reply.[1]

[1] Contrary to what the Cities argue in their response to TCRY's motion, the Commission's procedural rules are not mere technicalities. Those who elect to practice before the Commission are expected to be familiar with and adhere to its procedural rules. Not only did the Cities fail to seek leave to file a reply, the reply itself does not meet the substantive requirements for such a pleading. It does not cite new matters raised by TCRY's answer and state why those matters were not reasonably anticipated or explain satisfactorily why a reply is necessary, all as required by the Commission's rule governing replies.

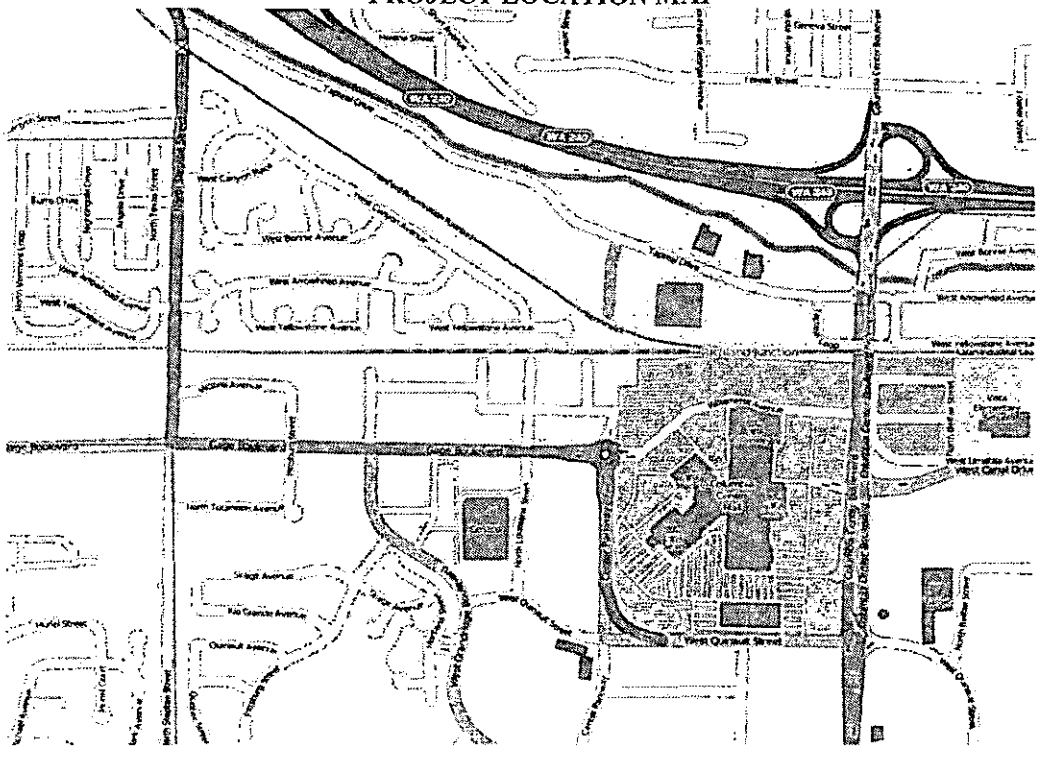
8 **APPEARANCES.** P. Stephen DiJulio and Jeremy Eckert, Foster Pepper PLLC, Seattle, represent the Cities. Paul J. Petit, Richland, represents respondent TCRY. Steven W. Smith, Assistant Attorney General, Olympia, represents the Commission's regulatory staff (Commission Staff or Staff).[2]

DISCUSSION

I. Description of Proposed At-Grade Railroad Crossing

9 The proposed crossing would be built at the intersection of an extension of Center Parkway in the City of Kennewick, and two tracks owned by the Port of Benton. The location and configuration of the proposed site are illustrated in Figure 1.

FIGURE 1
PROJECT LOCATION MAP



[2] In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

The Center Parkway extension would be from an existing roundabout in Kennewick, where the parkway intersects Gage Boulevard, continuing north to Tapteal Drive, a one-mile stretch of road connecting North Steptoe Street to the west, with Columbia Center Boulevard to the east, in Richland. There is a "T" intersection at both ends of this short roadway. There is an at-grade crossing on North Steptoe Street and a grade-separated crossing at Columbia Center Boulevard.

10 Tri-City and Olympia Railroad, BNSF Railway, and Union Pacific Railroad all operate trains over the so-called Hanford Reservation tracks at this location. Tri-City and Olympia Railroad uses a short, parallel spur at Richland Junction for switching and storage of rail cars, and opposes the Cities' petition, arguing the crossing would interfere with its operations. Both tracks are owned by the Benton County Port Authority. BNSF and UPRR have moved their switching operations since the Commission denied an earlier petition to open a crossing in this location and do not oppose the Cities' current petition.[3]

II. Review of Initial Order

11 The Initial Order analyzes Kennewick's petition using the framework in a 2011 Commission initial order approving another petition for an at-grade crossing in Benton County:

> The Commission, in practice, addresses two principal questions when considering whether to authorize construction of an at-grade crossing, which, by its nature, poses risks for motorists and pedestrians not present at grade-separated crossings:
>
> a) Whether a grade-separated crossing is practicable considering cost and engineering requirements and constraints.

[3] When the Cities petitioned to open a crossing at this same location in 2007, Tri-City and Olympia Railroad, BNSF and UPRR opposed the two petitions, which were consolidated for hearing. Staff also opposed the earlier petitions. At that time, there were four tracks and all three railroad companies conducted switching operations in the vicinity of the Richland Junction. The Commission denied the petitions in a single order. *See City of Kennewick v. Union Pacific Railroad*, Docket TR-040664,Order 06 and Docket TR-050967, Order 02, Initial Order Denying Petition[s] (January 26, 2007). The Initial Order in these dockets became final by operation of law on February 15, 2007.

b) Whether there is a demonstrated public need for the crossing that outweighs the hazards inherent in an at-grade configuration.[4]

We agree that we should evaluate the petition to determine whether a grade-separated crossing is practicable and whether a demonstrated public need for the crossing outweighs the hazards of an at-grade crossing. We agree with most of the Initial Order's findings and conclusions on these questions, but we conclude that a broader public need than the public safety concerns the parties advocate supports the petition.

A. Grade Separation and Inherent Risk

12 No one contests on review the Initial Order's finding that it is physically and financially impractical to build a grade-separated crossing in this instance:

> The amount and character of travel on the railroad and on Center Parkway do not justify grade separation. Further, there is no evidence in the record disputing the engineering infeasibility of constructing a grade-separated crossing at Center Parkway. Finally, there is no serious dispute in the record that a grade-separated crossing would be tremendously more expensive than the proposed at-grade crossing. Therefore, considering engineering requirements and cost constraints, the Commission determines that a grade-separated crossing is not practicable at Center Parkway.[5]

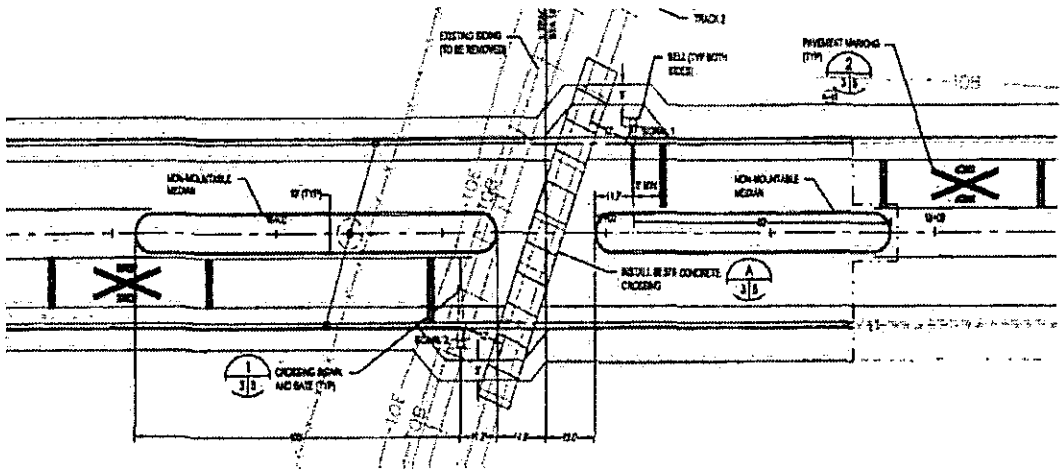
13 The Cities, however, propose to build an at-grade crossing designed to mitigate the inherent dangers to vehicles and pedestrians by using active warning devices and taking other measures. Specifically, the Cities propose to install advanced signage, flashing lights, an audible bell, automatic gates, and a raised median strip

[4] *Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06 - Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions, ¶ 29 (Feb. 15, 2011) (citing: *In re Town of Tonasket v. Burlington Northern Railroad Company*, Docket TR-921371 (December 1993) and *Burlington Northern Railroad Company v. City of Ferndale*, Docket TR-940330 (March 1995). This Initial Order became final by operation of law on March 8, 2011.

[5] Initial Order ¶ 50.

designed to prevent drivers from going around lowered gates, as illustrated below in Figure 2.[6]

FIGURE 2
AT-GRADE CROSSING CONFIGURATION



14 Taken together, these measures significantly reduce the risks to motorists who might, in the absence of these measures, make inopportune efforts to cross the tracks when trains are present.[7] Even imprudent drivers will be effectively barred from crossing the tracks when the gates are closed next to concrete barrier medians. These same measures reduce the risk to pedestrian and bicyclist traffic

[6] This illustration shows the removal of the 1900 foot siding track. However, in the face of Tri-City and Olympia Railroad's opposition, Staff's analysis of the site and consideration of its proposed safety features assumes that the second track remains in operation. Ms. Hunter testifies:

> The active warning devices consisting of advanced pavement markings and warning signs, gates and lights, and a traffic island that will act as a median separator, provide an adequate level of safety at the proposed crossing. In addition, the train and vehicle speeds and the volume of train and vehicle traffic at the site of the proposed crossing are fairly low, making the possibility of an accident less likely than crossings with higher speeds or increased traffic.

Exh. No. KH-1T at 23:15-20.

[7] Mr. Jeffers, a professional engineer, calculated the predicted accident rate to be 0.145 per year or 1 accident per 6.9 years. Exh. No. KMJ-1T at 7:11-20. The USDOT Accident Prediction Formula standard for requiring a grade-separated crossing is 0.5 accident per year. Exh. No. KH-1T at 11:18-20.

by alerting prudent travelers when it is unsafe for them to cross the tracks and making it more difficult for them to pass.[8]

B. Public Safety Need

15 The Initial Order determines that the Cities failed to carry their burden to show a "public need" for the crossing that outweighs the hazards inherent in the at-grade configuration that are present despite the relatively low-level risk of an accident. To establish public need petitioners must provide evidence of public benefits, such as improvements to public safety or improved economic development opportunities.[9]

16 Petitioners challenge this conclusion, focusing almost exclusively on asserted public safety benefits, largely in the form of improved response times from two local fire stations to the point where the planned Center Parkway extension would intersect Tapteal Drive. In other words, the Cities' principal claim of improved public safety is that emergency responders could get to a single point on a one-mile long, two-lane collector roadway with a "T" intersection at both ends more quickly than they can today. In addition, there is some evidence that completion of this project would reduce traffic on other roadways in the vicinity, relieving congestion and potentially reducing accidents. The Initial Order analyzes the evidence on this issue in detail that does not bear repeating here. It is sufficient for us to observe that we agree with the analysis, the findings, and the conclusion reached in the Initial Order that the benefits to public safety alleged by the Cities are too slight on their own to support the petition, even though the inherent risks are mitigated to a large extent by the project design.

17 If the feasibility of grade separation and public safety as a component of public need were our only concerns, we would end our discussion here and sustain the Initial Order. However, having studied the full record, we find reason to analyze this matter outside the narrow constraints of these two questions. We address in the next section of this Order an additional point of decision that we find determinative.

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[8] The planned road extension includes sidewalks and bike paths on both sides so it is clear some such traffic is expected. However, there is some evidence that pedestrian and bicycle traffic is expected to be light, and no evidence to the contrary. *See* Exh. No. KH-1T at 24:1-7.

[9] *See Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions ¶¶ 33-37 (Feb. 15, 2011).

C. Broader Public Need

18 The Cities argue that state agencies are mandated to comply with local land use plans adopted under the Growth Management Act (GMA).[10] They contend that their regional comprehensive planning process "mandates" the Center Parkway crossing in order for them to achieve their stated levels of service for emergency response times and traffic flow at signalized intersections.[11] According to the Cities, the GMA prohibits the Commission from evaluating public need, alternatives for opening a proposed railroad crossing, or even whether the proposed crossing will function in the matter claimed by the Cities. As the Initial Order observes:

> Taken to its logical end point, the Cities' argument would require the Commission to approve any at-grade crossing planned for in a local jurisdiction's comprehensive planning process.[12]

The Initial Order rejects the Cities' legal argument that the GMA somehow controls our determination of their petition under RCW 81.53for authority to construct the subject railroad crossing.

19 We agree with the Initial Order's determination that the GMA does not relieve the Commission from its statutory obligation to regulate public safety at rail crossings, including the one proposed here. The two statutes do not conflict with each other and the integrity of both statutes within the overall statutory scheme is preserved by reading the GMA together and in harmony with RCW 81.53.[13] The Initial Order ends its discussion of this issue without considering how this

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[10] Petitioners' Post-Hearing Brief at 7-12. The Cities cite specifically to RCW 36.70A.103's mandate that "[s]tate agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter." *Id.* at 8, n. 29.

[11] Petitioners' Post-Hearing Brief, at 9-11.

[12] Initial Order ¶ 42.

[13] *Philippides v. Bernard*, 141 Wn.2d 376, 385, 88 P.2d 939 (2004), *citing State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974) ("In ascertaining legislative purpose, statutes which stand in pari materia are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes.").

harmony should be achieved in the context of the facts presented in this case. We find it necessary to undertake this analysis on review.[14]

20 The proposed extension of Center Parkway has been part of Richland's and Kennewick's transportation planning for some time.[15] As summarized in the introduction to the Center Parkway Extension and Railroad Crossing Traffic Study completed for the city in March 2013 by JUB Engineers, Inc.:

> For several years the City of Richland has pursued the extension of Center Parkway to connect Gage Boulevard on the south to Tapteal Drive on the north. This effort has been challenging because of existing railroad lines that operate parallel to and in between Gage Boulevard and Tapteal Drive. There are multiple purposes for connecting Center Parkway which include:
>
> - Complete a grid network of functionally classified roadways.
> - Provide relief to congested arterial facilities.
> - Provide improved access to commercial areas and developable land..
> - Improve emergency response times.[16]

21 Following a detailed narrative, supported by appendices, the JUB Engineers, Inc. report summarizes the study's key findings, elaborating on the points above:

> This Traffic Study has been performed to describe the efforts put forth by the City of Richland and the City of Kennewick to complete a

[14] In considering petitions for administrative review, the Commission conducts de novo review of the issues decided in an initial order. *See* RCW 34.05.464(4) ("The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing").

[15] The Center Parkway extension project has been included in the Cities' comprehensive planning process since 2006. The proposed at-grade Center Parkway Crossing has been identified as an essential public facility in (1) the City of Richland Comprehensive Plan, (2) the City of Kennewick Comprehensive Plan, and (3) the Regional Transportation Plan. The proposed project has received funding from the State through the Washington State Community Economic Revitalization Board, the Surface Transportation Program Regional Competitive Fund, and the Transportation Improvement Board. Petition for Admin. Rev. at 19:2-9.

[16] Exh. KJ-5 at page 1 of JUB Traffic Study.

roadway network that includes the extension of Center Parkway in order to accommodate growth in the region. Four primary objectives have been discussed that document the needs and benefits of extending Center Parkway between Gage Boulevard and Tapteal Drive that include:

- Complete a grid network of functionally classified roadways -The completion of Center Parkway north of Gage Boulevard is merely one step of many to complete both a functionally classified network and a north-south component of a grid system to provide safe efficient movement of traffic into this area of the region.
- Provide relief to congested arterial facilities -Center Parkway has been planned to provide relief to both Columbia Center Boulevard as well as Steptoe Street, consistent with the philosophy of providing collector roadways parallel and in between arterial roadways.
- Provide improved access to commercial areas and developable land - nearly 60 developable acres of commercial land between the railroad and SR 240 which has desirable visibility will have improved access and will gain the synergy that commercial areas often seek.
- Improve emergency response times - a significant area will have improved emergency response times, some with nearly a 30% reduction.[17]

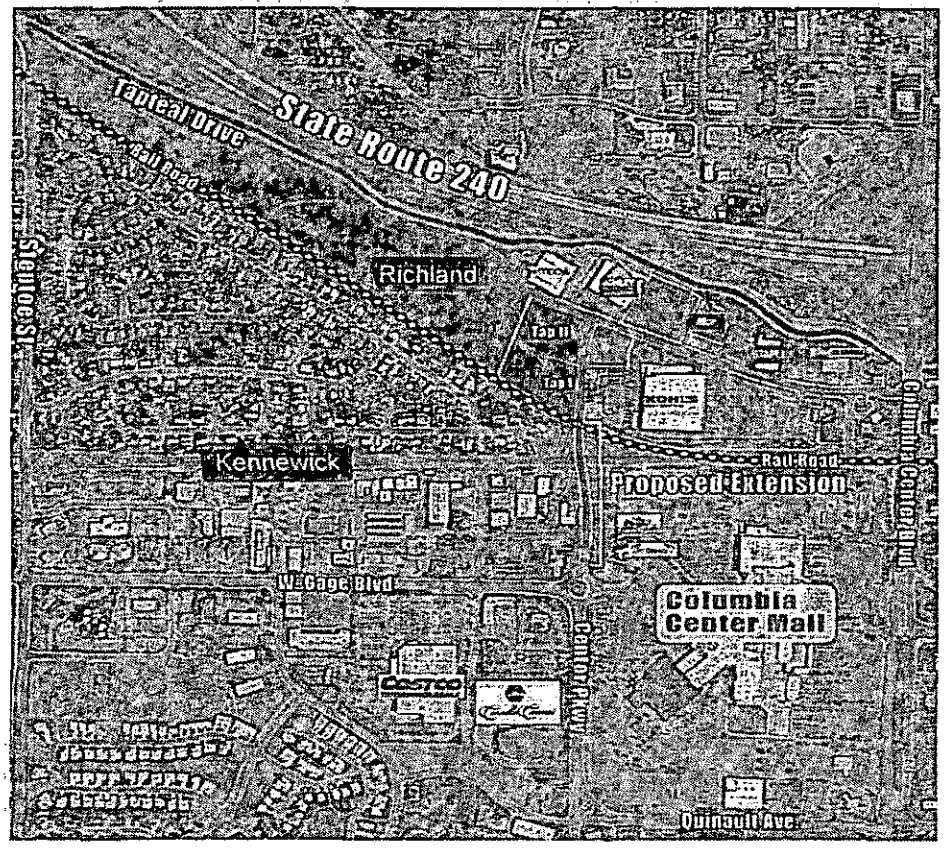
Economic Development

22 We determine that the Commission should consider public need for the proposed at-grade railroad crossing in the broader context of the several purposes discussed in the JUB transportation study, rather than with the narrower focus that the parties, and consequently the Initial Order, place on public safety. It is particularly important to give weight to the economic development interests considering that the Center Parkway extension would conveniently connect existing, complementary commercial developments in Richland and Kennewick,

[17] *Id.* at page 14 of JUB Traffic Study.

and would promote development of 60 acres of currently vacant commercial real estate along Tapteal Drive in Richland, as shown below in Figure 3.

FIGURE 3
DEVELOPMENT AND DEVELOPMENT POTENTIAL



23 The potential for additional development in this area is underscored by a public comment filed in this proceeding by a landowner, Preston K. Ramsey III, writing on behalf of FBA Land Holdings. FBA Land Holdings owns two undeveloped parcels bordered on the north by Tapteal Drive and on the west by the proposed Center Parkway Extension. These are labeled "Tap I" and "Tap II" in Figure 3. Mr. Ramsey comments that:

> The proposed street extension of Center Parkway across railroad tracks currently leased by TCRY literally would create a new bridge between two highly interdependent communities in terms of transportation, economics, land use as well as the traffic patterns and habits of the

> approximate 25,000 people who live, work and otherwise travel through this area daily.[18]

24 Similarly, another public comment filed by Brian Malley, Executive Director of the Benton-Franklin Council of Governments, the Metropolitan Planning Organization for the Tri-City metropolitan area, emphasizes community expectations with respect to the proposed Center Parkway extension:

> In addition to easing congestion, this proposed link provides connectivity to two adjacent retail areas that are separated only by the tracks that divide them. The Tri-City area has, and continues to, grow at impressive rates. Planning and encouraging alternate modes, such as bike/ [pedestrian]/ transit will be a crucial step toward alleviating future congestion. At this time, there simply is no option between these two retail areas that does not require the use of a car to negotiate the roadways to travel between. Additionally, a connection in this location may well contribute to the tax base, as Tapteal area businesses have suffered through marginal access for years, with no reasonable link to the adjacent retail areas to the south.[19]

Deference to Local Government

25 In addition to economic benefits, the Commission as a matter of policy should give some deference to the Cities' transportation and land use planning goals, as these are matters of local concern and within the jurisdictional authority of the Cities. Indeed, it is worth considering that if the City of Richland was the petitioner for this project, instead of Kennewick, it would be exempt from the Commission's jurisdiction.[20] RCW 81.53.240 exempts first-class cities from the

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[18] Public Comment Exhibit (Written comment submitted December 9, 2013).

[19] Public Comment Exhibit (Written comment submitted November 20, 2013).

[20] The Cities note in their petition for administrative review that:

> The Petitioners do not waive any jurisdictional argument regarding the Cities' exemption from this petition process. RCW 81.53.240 exempts first-class cities from the at-grade crossing petition process. The City of Richland is a first-class city, and the City of Kennewick is a code city. State law provides that code cities have the same authority as first-class cities. RCW 35A.11.020: "The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of the state, and not specifically denied to code cities by law." Nevertheless, the Petitioners believe UTC review and approval worthwhile.

at-grade crossing petition process. The City of Richland is a first-class city.[21] This exemption has been present in the law in one form or another since 1909. It is reasonable to infer its passage into law was largely a reflection of the state Constitution giving deference to local jurisdictions on matters that are deemed best left to local control.[22] Planning and designing intra-urban transportation networks that will best serve the public's needs in the jurisdictional boundaries of the state's larger Cities fall squarely into this category.[23] Although Kennewick is not legally exempt from our jurisdiction, it is consistent with legislative policies implementing Constitutional home rule that the Commission give significant weight to the evidence concerning the Cities' perspective that the Center Parkway extension is important to transportation planning and economic development in both jurisdictions.

26 There is additional public comment in the record of this proceeding from various community leaders that focuses on these points and illustrates the local

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Petition for Administrative Review at 8, footnote 30.

Staff argues that because RCW 81.53.240 is a limitation on Commission jurisdiction, not a grant of authority to first-class cities, RCW 35A.11.020 does not apply. We see no need to resolve this legal argument in this case. We consider the underlying purpose of the exemption as part of the policy context in which the Commission should evaluate the evidence.

[21] The Washington Constitution, adopted in 1889, directed the legislature to provide for the incorporation of cities and established that cities with population of 20,000 or more could frame a charter for their own government. Wash. Const., Art. XI, Sec. 10. The 1890 legislature established a classification scheme and provided that charter cities are "first class cities" with the broad powers generally associated with "home rule" concepts. Efforts toward greater local self-government powers as the state has become more urban led to amendment of the state Constitution in 1964, lowering the population threshold for charter cities to 10,000 and to legislation in 1994 that similarly lowered the population threshold for first class city designation to 10,000. *See* Amendment 40, Wash. Const., Art. XI, Sec. 10 and; RCW 35.01.010. In 1967, the legislature enacted a new municipal code (Ch. 119, Laws of 9167, Ex. Sess.), effective July 1, 1969, that gave cities the option of becoming a "code city" with generally the same powers as first class cities. *See* RCW 35A.11.020. Kennewick is such a code city.

[22] Wash. Const., Art. XI, Sec. 10 (cities and towns with population greater than 20,000 could frame a charter for their own government). Amendment 40, in 1964, allowed any city with 10,000 or more inhabitants to frame a charter, subject to the state's general laws. In this sense, RCW 81.53.240, is consistent with the general scheme of government in Washington that gives broad "home rule" powers to first class cities.

[23] Richland's population is greater than 50,000 and that of Kennewick greater than 75,000. The Tri-cities metropolitan area, including Pasco and surrounding urban and suburban areas is more than 250,000.

importance of recognizing the broader public policy environment. Carl F. Adrian, president of the Tri-City Development Council, for example, comments that:

> This at-grade railroad crossing on Center Parkway is a well-planned necessary component of our region's transportation system. The project will dramatically improve traffic movement between two important and growing commercial areas in Richland and Kennewick.
>
> . . . Completion of Center Parkway between Tapteal Drive and Gage Boulevard is a long-standing element of a carefully developed transportation system plan. That planning has included careful consideration of the safety implications in the planned road and at-grade railroad crossing.[24]

27 Comments from the Tri-City Regional Chamber of Commerce and the Port of Kennewick also support the proposed project on the bases that it is an important feature in a long-planned transportation network that will contribute to commercial development while reducing traffic congestion and promoting public safety in the project vicinity.[25]

III. Conclusion

28 The Initial Order fairly weighs the evidence and argument presented in the post-hearing briefs, and reaches a legally sustainable result. The Cities' almost exclusive focus on improved response times for first responders on a point-to-point basis as the principal benefit demonstrating "public need" does not weigh persuasively against even the demonstrated low level of "inherent risk" at the proposed crossing. Nor are the Cities' legal arguments that their comprehensive planning processes under the Growth Management Act mandate Commission approval persuasive. However, considering evidence the parties largely ignored that shows additional public benefits in the form of enhanced economic development opportunities, and considering the broader public policy context that gives a degree of deference to local jurisdictions in the areas of transportation and land use planning, we determine that the Cities' petition for administrative review

[24] Public Comment Exhibit (Written comment submitted November 20, 2013).

[25] *Id.* (Tri-City Regional Chamber of Commerce written comment submitted November 25, 2013; Port of Kennewick written comment submitted December 6, 2013).

should be granted and their underlying petition for authority to construct the proposed at-grade crossing should be approved.

FINDINGS AND CONCLUSIONS

29 We endorse certain of the findings and conclusions in the Initial Order, and restate them below. In addition, we modify certain of the Initial Order's findings and conclusions to make them consistent with the discussion in this Order. Finally, we add new findings and conclusions based on our de novo review of the record.

30 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate railroad crossings, and has jurisdiction over the parties and subject matter of this proceeding.

31 (2) The City of Kennewick is a governmental entity authorized by law to petition the Commission pursuant to RCW 81.53.020 for authority to construct an at-grade railroad crossing where it is not practicable to construct a grade-separated crossing and there is a public need for such a crossing that outweighs its inherent risks.

32 (3) Res judicata does not bar the Commission from ruling on the Cities' petition because it is sufficiently different from the City of Kennewick's prior petition.

33 (4) Comprehensive planning under the Growth Management Act does not relieve the Cities from complying with RCW 81.53. The Commission, however, considers the Cities' planning as part of the policy context in which it evaluates a proposed at-grade rail crossing in the commercial center of the urban area.

34 (5) A grade-separated crossing at the proposed project site is not practicable because of engineering requirements and cost constraints.

35 (6) The risks of an accident at the proposed crossing are relatively low considering current and projected train traffic, predicted levels of vehicle traffic, and engineering plans that include active warning devices and other safety measures.

36 (7) The Center Parkway extension may assist the Cities' emergency responders by providing an alternative route for responding to incidents in the vicinity of Columbia Center Mall, when trains are not blocking the intersection.

37 (8) The Center Parkway extension, including the proposed at-grade railroad crossing, is a long-planned and important component of the Cities' transportation system. The project will improve traffic movement between two important and growing commercial areas in Richland and Kennewick, thus promoting economic development.

38 (9) The record includes substantial competent evidence showing sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing.

39 (10)The Commission should grant the City of Richland's and City of Kennewick's petition for authority to construct an at-grade crossing at the proposed extension of Center Parkway.

ORDER

THE COMMISSION ORDERS:

40 (1) The Petition for Administrative Review filed by the City of Kennewick and joined in by the City of Richland is granted.

41 (2) The Initial Order entered in this proceeding on February 25, 2014, is reversed to the extent it would deny the City of Kennewick's petition to construct a highway-rail grade crossing at Center Parkway, Kennewick, Washington. The Commission authorizes construction of the proposed crossing.

42 (3) The Commission retains jurisdiction to enforce the terms of this order.

Dated at Olympia, Washington, and effective May 29, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. 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 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

[Service date February 25, 2014]

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	)	DOCKET TR-130499 ORDER 02 INITIAL ORDER DENYING PETITION TO OPEN AT-GRADE RAILROAD CROSSING

BACKGROUND

1 On April 8, 2013, the City of Kennewick filed with the Washington Utilities and Transportation Commission (Commission) a petition to construct a highway-rail grade crossing at Center Parkway, Kennewick, Washington and remove an existing railroad siding. On May 31, 2013, the City of Richland petitioned to intervene in support of this petition.

2 On June 4, 2013, the Commission held a prehearing conference in Olympia, Washington, before Administrative Law Judge Adam E. Torem. At that time, the Commission granted intervenor status to the City of Richland and adopted a procedural schedule for this docket.

3 At the prehearing conference, the City of Kennewick indicated compliance with the State Environmental Policy Act (SEPA) by its 2003 completion of a SEPA checklist for the Center Parkway Extension project and subsequent issuance of a Mitigated Determination of NonSignificance (MDNS). On July 26, 2013, the City of Kennewick updated its previous environmental assessment and prepared an Addendum to its SEPA checklist. On August 20, 2013, the City of Kennewick confirmed to the Commission that all SEPA compliance work was complete.

4 The Commission conducted evidentiary hearings on November 19-20, 2013, and a public comment hearing on November 20, 2013, in Richland, Washington. Judge Torem performed a site visit and toured the area on November 21, 2013. The parties simultaneously filed written post-hearing briefs on December 20, 2013.

5 *Representatives.*[1] P. Stephen DiJulio and Jeremy Eckert, Foster Pepper PLLC, Seattle, represent petitioner City of Kennewick and intervenor City of Richland (Cities). Paul J. Petit, Richland, represents respondent Tri-City & Olympia Railroad (TCRY). Steven W. Smith, Assistant Attorney General, Olympia, represents the Commission's regulatory staff (Commission Staff or Staff).[2]

EVIDENCE

A. Center Parkway and Surroundings

6 Center Parkway is a minor arterial roadway in Kennewick. As currently constructed, its northbound traffic moves into a roundabout intersection with Gage Boulevard and cannot proceed further north to Tapteal Drive.[3] As part of their comprehensive plans, the Cities intend to connect Tapteal Drive in Richland with Gage Boulevard in Kennewick by extending Center Parkway northward.[4] In order to accomplish this, Center Parkway would cross two sets of railroad tracks owned by the Port of Benton.[5]

7 Seven years ago, the Commission denied the City of Kennewick's original petition to construct this at-grade crossing.[6] At that time, extending Center Parkway northward would have required crossing four sets of tracks. However, in 2011, the City of Richland completed negotiations with the Union Pacific Railroad Company (UPRR) and Burlington Northern Santa Fe Railway Company (BNSF) to relocate their switching operations from the area, allowing removal of the two UPRR spur tracks.[7]

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[1] The following parties appeared at the prehearing conference but did not participate in any other portion of the proceedings: Thomas A. Cowan, Richland, represents respondent Port of Benton. Tom Montgomery and Kelsey Endres, Seattle, represent respondent Burlington Northern Santa Fe Railway Company (BNSF). Carolyn Larson, Portland, OR, represents respondent Union Pacific Railroad Company (UPRR).

[2] *In formal proceedings, such as this,* the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

[3] Exh. JP-5-X, at 2-3 (overview maps of area).

[4] Exh. JP-1T, 2:11-24; *see also* Exh. JP-2, Exh. JP-3, and Exh. JP-4.

[5] *See* Exh. KH-2 (aerial view of surrounding area) and Exh. KH-3 (crossing configuration).

[6] *See* Docket TR-040664, *City of Kennewick v. Union Pacific Railroad*, Order 06, Initial Order Denying Petition; Docket TR-050967, *City of Kennewick v. Port of Benton and Tri-City & Olympia Railroad*, Order 02, Initial Order Denying Petition (January 26, 2007) (2007 Order).

[7] Exh. JP-6-X (UPRR) and Exh. JP-7-X (BNSF).

8 Commercial and retail properties dominate the area surrounding the proposed crossing. As shown in Figure 1,[8] the Columbia Center Mall, a major regional shopping center, is located immediately southeast of the proposed crossing, bordered by Center Parkway (west side), Quinault Street (south side), and Columbia Center Boulevard (east side). The Mall's northern boundary abuts Port of Benton and UPRR railroad tracks that connect at Richland Junction, just east of the proposed crossing.

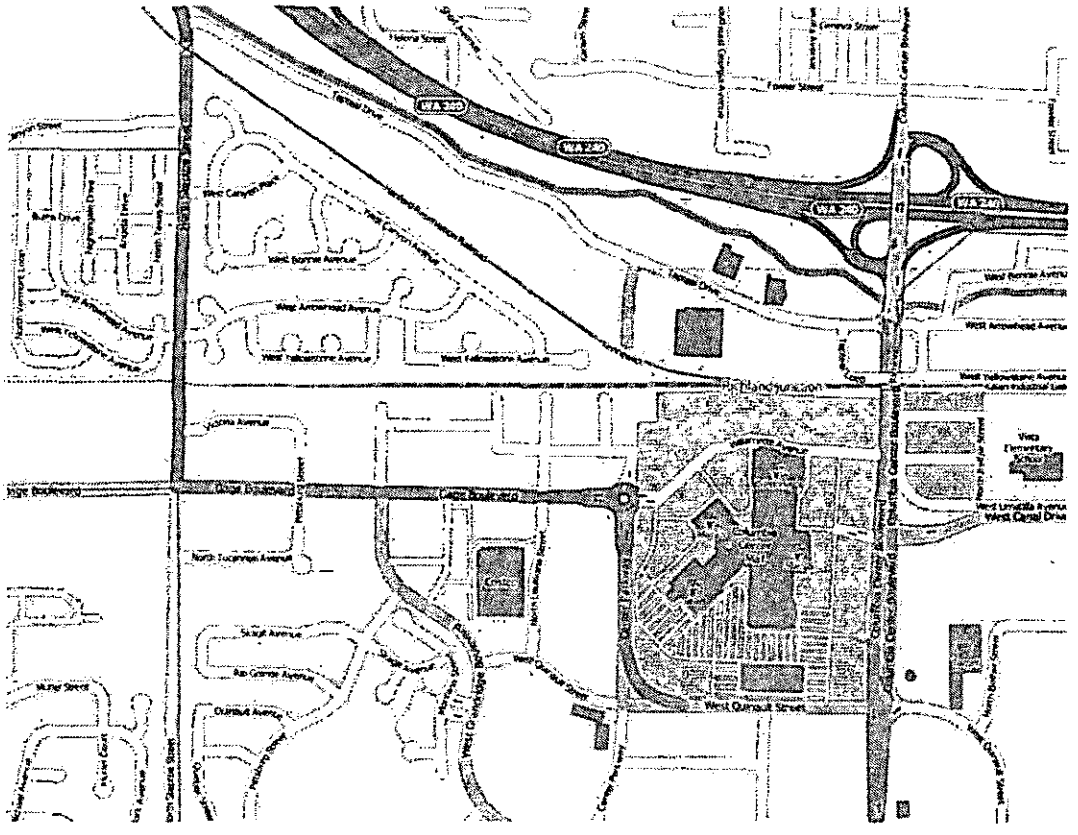

Figure 1. Overview Map of Area (including old UPRR spur track, now removed)

9 North of the proposed crossing, Tapteal Drive provides access to a hotel and various retail, commercial and undeveloped properties located in a mile-long pocket of land below Highway 240. The proposed Center Parkway crossing would provide a more direct connection from this area to the Columbia Center Mall.[9]

10 Road access between these two areas now exists where Tapteal Drive intersects Columbia Center Boulevard, approximately 0.4 miles east of the proposed crossing.

[8] Aerial imagery of the area is provided by Exhs. JD-27-X, JD-28-X, JD-29-X, and JD-30-X.

[9] *See* Petition at 8; *see also* Exh. RS-1T, 8:20 – 9:2 and Exh. JD-1T, 3:6 – 4:20.

Columbia Center Boulevard has a grade-separated overpass to cross the UPRR mainline track; however, as this section of the roadway is divided, northbound traffic accessing Tapteal Drive must make a series of right turns to loop up and over the major arterial roadway (Tapteal Loop). Alternatively, Tapteal Drive meets Steptoe Street approximately 0.7 miles west of the proposed crossing. From there, southbound motorists currently pass through a regular at-grade crossing to connect with Gage Boulevard, another major arterial roadway that provides eastbound access to the mall area via the current roundabout intersection with Center Parkway.[10]

B. Rail Operations at Richland Junction

11 TCRY is a rail carrier conducting interstate rail operations through Kennewick and Richland. TCRY leases the track west and north of Richland Junction from the Port of Benton; BNSF and UPRR also operate on this track. Randolph V. Peterson, Managing Member of TCRY, explained that the second set of tracks immediately west of Richland Junction allows trains to meet and pass when entering or exiting the area. According to Mr. Peterson, this passing track is "absolutely essential" because TCRY makes frequent, if not daily, use of that facility.[11] When no passing operations are scheduled, TCRY also uses the second track as a siding to store idle freight cars.[12]

12 Mr. Peterson estimates that TCRY presently operates 10 to 20 freight trains each week on the mainline track that passes through the Richland Junction. BNSF operates another 10 freight trains each week and, on occasion, UPRR operates a "unit train," a mile-long freight train consisting of approximately 100 to 120 cars all carrying the same cargo. No passenger trains operate on this track. Mr. Peterson testified that the combined annual train traffic through the Richland Junction increased from nearly 4,500 railcars in 2012 to over 5,100 railcars in 2013.[13] Mr. Peterson expects further

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[10] *See* Exh. JP-5-X, at 2-3. In 2009, the Commission granted the City of Richland's petition to realign the Tapteal-Steptoe intersection atop the at-grade crossing to create Washington's first-ever roundabout intersection with a rail line running through the middle. *See* Exh. GAN-10-X, Docket TR-090912, *City of Kennewick v. Tri-City & Olympia Railroad*, Order 01, Order Granting Petition to Reconstruct the Steptoe Street Highway-Rail Grade Crossing and Modify Active Warning Devices (July 2, 2009). Although the Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan projected this construction to begin in 2012, the City has not yet initiated any construction work. *See* Exh. RS-4, at 16 (Steptoe Street Phase 3).

[11] Peterson, TR. 381:5 – 383:15.

[12] The Cities contend TCRY makes only sparing use of the passing track. *See* Exh. KJ-13-X, at 2. The Cities argued that several tank cars present on the siding during the evidentiary hearing had not been moved for days or even weeks. Peterson, TR. 405:14 – 410:19; *see also* Exh. RVP-9-X.

[13] Exh. RVP-1T at 3-4; *see also* Exh. RVP-3-X at 1-3. The Cities estimate current train traffic to be appreciably lower, between 3.2 to 5.02 trains per weekday, or 2,310 total railcars moved by TCRY annually. *See* Exhs. KJ-10T-R, KJ-11, and KJ-12; *see also* Jeffers, TR. 143:1 – 146:25.

increases in train traffic because of TCRY's continued growth and new commercial developments in the Horn Rapids Industrial Park that will be served by rail.[14]

13 Gary Ballew, the City of Richland's Economic Development Manager, testified that the Richland City Council recently approved a series of development agreements to construct a rail loop of sufficient size to service unit trains in the Horn Rapids area.[15] Mr. Ballew expects this new rail loop will be operational by summer 2015 and able to process the equivalent of two and a half unit trains per week (approximately one unit train entering or leaving the facility each day).[16] Mr. Ballew also testified that Richland has entered real estate and development agreements with ConAgra Foods to build an automated cold storage warehouse in the Horn Rapids area served by a separate smaller loop track.[17] Mr. Ballew expects an average of 30 rail cars each week will come and go from ConAgra's facility.[18]

14 All trains traveling to the Horn Rapids area must pass through the Richland Junction and cross the proposed Center Parkway extension.[19] Considering the expected increase train traffic across Richland Junction, TCRY contends that the passing track will become even more essential and perhaps need to be extended to accommodate longer trains.[20] Mr. Peterson testified that he opposes the new Center Parkway crossing because rail operations could regularly require freight trains to block the crossing, occasionally for lengthy periods of time.[21]

C. Grade Separation

15 Grade separation refers to the method of aligning the junction of two or more surface transportation rights-of-way at different heights (grades) to avoid conflicts or disruption of traffic flows as they cross each other. In the case of highway-rail junctions, underpasses, overpasses, or bridges are the most common forms of grade

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[14] Exh. RVP-1T at 5-6; *see also* Exh. GAN-16-X.

[15] Richland's rail loop will be approximately 8400 feet in total length. Ballew, TR. 354:25 – 357:22; *see also* Exhs. JD-37-X, JD-38-X, JD-39-X, KJ-14-X, and King, TR. 334:1 – 336:15 and 337:21 – 340:16.

[16] Ballew, TR. 358:2-12, 364:15 – 365:3, 369:21 – 370:6, 375:4 – 376:24; *see also* Exh. JD-38-X.

[17] Ballew, TR. 342:23 – 345:15; *see also* Exhs. JD-9-X, JD-10-X, and JD-11-X.

[18] Ballew, TR. 345:16 – 346:17 and 373:6-14.

[19] Ballew, TR. 346:22 – 347:8; *see also* Jeffers, TR. 173:10-19.

[20] Post-Hearing Brief of Respondent Tri-City & Olympia Railroad Co. at 9; *see also* Jeffers, TR. 154:24 – 159:12.

[21] Peterson, TR. 414:23 –418:5.

separated crossings. The Cities presented evidence contending that grade separation is not warranted at the proposed crossing site because of roadway characteristics, accident prediction models, and cost.

16 Rick Simon, Development Services Manager for the City of Richland, testified that constructing a grade-separated crossing at Center Parkway is not feasible due to differences in topography on the north and south sides of the rail line.[22] Susan Grabler, a railroad engineer from David Evans and Associates, Inc. (DEA), explained that roadway geometry at Center Parkway and the close proximity of Columbia Center Boulevard make grade separation impracticable.[23] Ms. Grabler pointed out that a grade-separation project would require increasing the steepness of the track approaching the crossing from the existing one percent grade to something greater than two percent, exceeding the operational capabilities of most trains now using that track.[24] Kevin Jeffers, a DEA associate working with Ms. Grabler, determined that grade separation would require either replacement of the existing rail bridge over Columbia Center Boulevard (to the east) or elimination of existing access to the hotel immediately north of the crossing due to the depth of the undercrossing.[25]

17 Ms. Grabler also testified that the expected average daily traffic (ADT) on the Center Parkway extension would not justify grade separation. The Federal Highway Administration (FHWA) Railroad-Highway Grade Crossing Handbook establishes a threshold of 100,000 ADT to require grade separation at an urban crossing.[26] The Cities estimate that Center Parkway's traffic will reach only 7,000 ADT by 2033, much lower than the FHWA threshold.[27] This low traffic volume contributes to a low predicted accident frequency rate, further reducing justification for grade separation. Using an FHWA model, Mr. Jeffers predicted that the crossing's accident frequency would be 0.145 accidents per year, or 1 accident every 6.9 years.[28] Kathy Hunter, testifying for Commission Staff, analyzed a similar crossing in Prosser and forecast an even lower likelihood of accidents at the proposed Center Parkway crossing.[29]

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[22] Exh. RS-1T, 6:17-23.

[23] Exh. SKG-1T, 3:13-20; *see also* Grabler, TR. 205:21 – 206:13.

[24] Exh. SKG-1T, 6:11-23; *see also* Exh. KJ-1T, 9:7-19.

[25] Exh. KJ-1T, 4:12-17.

[26] Exh. KJ-2, at 11 (*see* paragraph 6.a.iv).

[27] Exh. SKG-1T, 3:21-25; *see also* Exh. KJ-1T, 6:14-20.

[28] Exh. KJ-1T, 7:11-20; *see also* Exh. KJ-2 (at 4-8) and Exh. KJ-7 (at 2-3).

[29] Exh. KH-1T, 24:21 – 26:22; *see also* Exh. KH-12. Ms. Hunter's calculation predicts 0.018701 collisions per year, or one accident every 53.5 years.

18 Jeff Peters, Transportation and Development Manager for the City of Richland, testified that constructing the proposed at-grade crossing would cost approximately $250,000. Mr. Peters estimated that a grade-separated crossing for Center Parkway would cost between $15 million and $200 million.[30] Mr. Jeffers identified four different design options for a grade-separated crossing within that price range, each requiring extensive retaining walls due to excavation depths of 20 feet or more for the roadway or, alternatively, fill depths under the tracks in equivalent amounts.[31]

19 Commission Staff concurred with the Cities that grade separation is not warranted at this location.[32] Noting the low traffic volumes and determining that train crossings would be infrequent, Ms. Hunter endorsed the Cities' proposal to mitigate the dangers of an at-grade crossing through installation of active warning devices, to include advanced signage, flashing lights, audible bell, automatic gates, and a raised median to prevent drivers from going around the gates.[33] Staff believes these measures adequately moderate the dangers presented by the proposed at-grade crossing.[34]

D. Public Need for Proposed Crossing

20 The Cities seek to complete a planned network of roadways and address traffic issues in the area by extending Center Parkway from Tapteal Drive to Gage Boulevard. The Center Parkway extension project has been included in the Cities' comprehensive planning process since 2006.[35] The project is also noted for funding in the Benton-Franklin Council of Governments Regional Transportation Plan.[36] According to the Cities, extending Center Parkway to Tapteal Drive and constructing the necessary at-grade crossing will decrease emergency vehicle response times, reduce the amount of accidents near the Columbia Center Mall, and improve traffic circulation in an important commercial area.[37]

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[30] Exh. JP-1T, 3:1-8.

[31] Exh. KJ-1T, 10:3-13; *see also* Exhs. KJ-6 and KJ-7 and Jeffers, TR. 195:8 – 201:2.

[32] Exh. KH-1T, 8:1 – 12:9.

[33] Exh. KH-1T, 21:15 – 24:19; *see also* Exhs. KH-3 and KH-9.

[34] Exh. KH-1T, 27:1-3.

[35] Deskins, TR. 58:7-15; *see also* Exhs. RS-2, RS-3, GAN-2-X, GAN-3-X, GAN-4-X, GAN-6-X, GAN-7-X at 2, GAN-13-X, GAN-14-X, and GAN-15-X.

[36] *See* Exhs. RS-4, GAN-8-X, and GAN-9-X. The Executive Summary of the Regional Transportation Plan only discusses current congestion on Gage Boulevard in Kennewick being relieved in future years by extension of the Steptoe Street Corridor. The Plan has no specific discussion of anticipated benefits from extending Center Parkway. Exh. RS-4 at 6.

[37] Exh. JD-1T, 5:1-21; *see also* Exh. KJ-5.

1. Emergency Response Times

21 The Cities' police and fire departments have each established response time objectives for arriving at emergency incidents or high priority calls. In Richland, the police department has a one-to-five minute average response goal for high priority calls.[38] Similarly, Richland's Fire & Emergency Services first responders seek to arrive at incidents within five minutes or less from time of dispatch, 90 percent of the time.[39] Kennewick's fire response goal is five minutes and the emergency medical response goal is four minutes, each for 90 percent of events.[40]

22 The Cities' emergency response providers support each other and respond to each other's calls for help.[41] The Cities and three local fire districts signed a Master Interlocal Partnership and Collaboration Agreement in 2010 that includes an "automatic aid agreement" for prioritizing and sequencing certain aid calls.[42] The Cities' emergency service providers all agree that extending Center Parkway from Gage Boulevard to Tapteal Drive will improve emergency response times in the area. However, none of these witnesses testified that any of the Cities' emergency services providers were not routinely meeting their response time objectives.

23 Richland Chief of Police Chris Skinner explained that police response times are sometimes difficult to evaluate because officers are often already deployed in the community and can be responding from varied distances.[43] Chief Skinner testified that extending Center Parkway would provide better access for his officers, providing them a potentially faster alternative route to choose from when responding to emergency calls.[44] Kennewick Chief of Police Kenneth Hohenberg testified similarly.[45] Neither police chief conducted or consulted specific studies to support their claims of faster response times if the proposed crossing was opened.[46]

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[38] Exh. RS-1T, 5:11-12; *see also* Exh. GAN-4-X.

[39] Exh. RS-1T, 5:5-11; *see also* Exh. GAN-3-X.

[40] Exh. GAN-6-X at 2.

[41] Exh. CS-1T, 3:12-14 and KMH-1T, 2:10-15; *see also* Skinner, TR. 93:19 – 94:5.

[42] Exh. NH-1T, 2:13-25, and Exh. RGB-1T, 2:18—3:15. *See also* Baynes, TR. 109:4 – 110:15.

[43] Skinner, TR. 87:20 – 88:17.

[44] Exh. CS-1T, 4:1-6.; *see also* TR. Skinner, 95:4-8.

[45] Exh. KMH-1T, 3:1-21.

[46] Skinner, TR. 95:4-14; Hohenberg, TR. 138:11-25.

24 Kennewick Fire Chief Neil Hines testified that the best emergency response routes for fire and medical units are on "straight arterial-type roadways providing the most direct route with the least amount of traffic, traffic control systems, intersections, and turns to negotiate."[47] Without a direct connection between Gage Boulevard and Tapteal Drive, Kennewick emergency responders must travel north of the Mall via Columbia Center Boulevard or Steptoe Street, routes that are less direct, occasionally burdened with heavy traffic, and with multiple intersections and numerous turns to negotiate. According to Chief Hines, improving response times by even a few seconds could significantly impact the outcome for a patient in a critical event.[48] Richland Fire & Emergency Services Director Richard Baynes testified that the Center Parkway extension would provide a viable north-south route for fire and medical units if the primary routes on Steptoe Street or Columbia Center Boulevard were obstructed, growing in value as the Tapteal area continues its development.[49]

25 In support of their petition, the Cities submitted a traffic study completed by JUB Engineers, Inc. (JUB Study).[50] Using the hotel on Tapteal Drive and Center Parkway as an example, the JUB Study claimed that extending Center Parkway northward would reduce the response distance from the City of Kennewick's fire station to this point by one-third of a mile and reduce the response time from 2 minutes, 48 seconds, down to only 2 minutes. Coming from the Richland Fire Station, the JUB Study found that the response distance would be reduced by almost two-thirds of a mile and reduce response time from 5 minutes, 42 seconds, down to 4 minutes, 18 seconds.[51] Chief Baynes reviewed the response times in the JUB Study against his Department's records and calculated that "there's about a minute difference between accessing Tapteal via the proposed crossing versus the traditional routes."[52]

26 Gary Norris, a traffic engineer hired by TCRY, questioned whether the JUB Study should be relied upon to demonstrate a public need for extending Center Parkway and opening an at-grade crossing. Mr. Norris pointed out that the above-noted 2 minute,

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[47] Exh. NH-1T, 3:15-18.

[48] *Id.* at 3:18-24.

[49] Exh. RGB-1T, 4:12-22.

[50] Exh. KJ-5; *see also* Petition.

[51] Exh. KJ-5, at 9; Exh. JP-5-X, at 1. Exh. KJ-5 provides a vicinity map showing the locations of both fire stations on page 7. Chief Hines stated his agreement with the JUB Study's response times. *See* Exh. NH-1T, 3:15.

[52] Baynes, TR. 105:16-18; *see also* Baynes, TR. 107:13-15 and Exh. GAN-18-X. However, Chief Baynes noted that the 2:48 response time could not include the firefighters' turnout time, as it would only be possible under optimum driving conditions (averaging 28 miles per hour) and probably could not be replicated during heavier daytime traffic. Baynes, TR. 123:4 – 124:13.

48 second response time to the hotel already meets the Cities' goal for response times by a wide margin. Further, Mr. Norris contends that the JUB Study fails to consider that existing or increased future train traffic may make the new roadway unavailable for reliable emergency response.[53]

27 Acknowledging the possibility of a train blocking the Center Parkway crossing, Chief Baynes explained "the more routes into areas we have, the better" number of alternatives there are for working around such problems.[54] Even so, Chief Baynes conceded that a unit train could block traffic at both the existing Steptoe Street crossing and the proposed Center Parkway crossing for lengthy periods of time, delaying emergency response times even longer if a fire or medical unit committed to a particular crossing before knowing the train's direction of travel.[55]

28 Mr. Norris presented an alternate response route from the Richland Fire Station to the hotel that avoided the potentially congested intersection of Steptoe Street and Gage Boulevard and would not require crossing a rail line at-grade. Mr. Norris contended that his alternate route over existing streets would take less than four minutes and perhaps be advantageous because it avoided potential delays from traffic and trains.[56]

29 Mr. Norris asserted that the JUB Study does not document an existing lack of reasonable alternate access for public emergency services.[57] Mr. Simon, Richland's Development Services Manager, conceded that he did not know if there were any areas in the City of Richland where meeting emergency response objectives would be improved by construction of the proposed Center Parkway crossing.[58]

2. Accident Reduction

30 The Cities also contend that opening the Center Parkway crossing would reduce traffic on Columbia Center Boulevard and therefore the number of accidents on that route and also remove the temptation for drivers to use the Mall's ring road as a through-route, endangering pedestrians.[59] Mr. Deskins likened the new Center

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[53] Exh. GAN-1T, 5:1 – 6:17.

[54] Baynes, TR. 108:9 – 109:3 and 119:9-11.

[55] Baynes, TR. 114:1 – 120:12; *see also* TR. 130:3 – 132:1.

[56] Norris, TR. 308:7 – 309:19; *see also* Exh. GAN-19-X. Mr. Norris calculated response speed to be approximately 28 miles per hour, the same as that relied upon in the Cities' JUB Study. Norris, TR. 310:8 – 312:16.

[57] Exh. GAN-1T, 5:1-16.

[58] Simon, TR. 60:13 – 61:5.

[59] Exh. JD-1T, 4:1-20 and Exh. JD-2TR, 2:23 – 3:4; *see also* Exh. SM-1TR, 6:9-12.

Parkway crossing to "connecting the parking lots between two popular businesses so that drivers don't have to enter the busier city street to travel between the two."[60]

31 Mr. Deskins provided an exhibit listing 12 years of crash data for two Columbia Center Boulevard intersections: Quinault Avenue and Canal Drive.[61] Going back to 2001, the intersection reports show 154 total crashes at Quinault Avenue and 165 total crashes at Canal Drive.[62] According to Mr. Deskins, opening the Center Parkway crossing on the other side of the Mall would reduce traffic at these intersections and "should ultimately reduce crashes" at these locations.[63] Spencer Montgomery, a transportation specialist with JUB Engineers, explained that JUB did not perform a study to support this conclusion because "if you reduce the traffic volume on a road, and it has a certain accident rate, then you will reduce the number of accidents."[64]

3. Mitigation of Traffic Congestion

32 In compliance with the Growth Management Act (GMA), the Transportation Element of Richland's Comprehensive Plan adopts standards and threshold levels of service (LOS) for the City's intersections. The LOS scale goes from A to F, measuring the length of delay a vehicle will experience at a signalized intersection. Richland's threshold LOS for acceptable delay is LOS D, a delay of 35-55 seconds; any intersection rated worse (E or F) is considered deficient.[65]

33 The Cities presented evidence that Columbia Center Boulevard is one of the busiest roadways in the region and that Steptoe Street could occasionally be congested at peak hours.[66] Further, the roadways around Columbia Center Mall can become extremely congested during the holiday shopping season in late November and early December.[67] According to the JUB Study, extending Center Parkway to Tapteal Drive will relieve some of this traffic congestion, but the study provides no further explanation of how the proposed crossing will achieve this result.[68]

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[60] Exh. JD-1T, 4:5-7.

[61] Exh. JD-3.

[62] *Id.* at 7 and 14.

[63] Exh. JD-2TR, 3:8-14.

[64] Montgomery, TR. 222:14-23.

[65] Exh. RS-2 at 17-19; *see also* Exh. RS-1T, at 4-5 (generalized explanation of LOS).

[66] Exh. KJ-5, at 9.

[67] Exh. JD-1T, 3:6-26.

[68] Montgomery, TR. 219:2-12 (acknowledging that the JUB Study provides no data or explanation of the methodology used to arrive at its conclusions).

34 JUB's Mr. Montgomery estimated that 7,000 vehicles per day would make use of the new Center Parkway crossing, some coming from Columbia Center Boulevard and some coming from Steptoe Street.[69] The JUB Study predicts that in 20 years, opening the Center Parkway crossing will decrease the afternoon peak hour volumes on those streets by 210 and 310 vehicles, respectively.[70] The JUB Study makes no further predictions on how opening Center Parkway would improve LOS ratings at surrounding intersections currently suffering congestion issues.[71]

35 Mr. Simon testified that "one way to reduce congestion is to increase the number of access routes between any two points" and contended "the extension of Center Parkway would provide an important link, not only for emergency vehicle response, but also to reduce overall traffic congestion."[72] As to LOS levels, Mr. Simon testified that Tapteal Drive was not currently operating at a deficient level,[73] but two other intersections south of the railroad tracks were identified as deficient: Columbia Center Boulevard at Quinault[74] and Steptoe Street at Gage Boulevard.[75] When asked to explain the effect of extending Center Parkway on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault, Mr. Simon stated "I'm not sure that I can."[76] Even though he had not seen any data or traffic studies to inform his opinion, Mr. Simon also asserted that a Center Parkway crossing

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[69] Montgomery, TR. 222:24 – 225:6; see also Exh. KJ-5, at 11.

[70] Exh. KJ-5, at 13, 17, and 19; *see also* Exh. GAN-1T, 7:13-19.

[71] The JUB Study claims that after construction of the proposed crossing, the Center Parkway / Tapteal Drive intersection would operate a LOS C for northbound left turns and LOS B for northbound right turns. Exh. KJ-5, at 14.

[72] Exh. RS-1T, 5:22-25.

[73] Simon, TR. 61:18-22.

[74] According to information provided to Kevin Jeffers by John Deskins and Spencer Montgomery, the intersection of Columbia Center Boulevard and Quinault Street is deficient because the eastbound left-turn movement is currently LOS E, degrading to LOS F by 2028. The overall intersection is currently LOS C, but expected to degrade to LOS F by 2028. *See* Exh. GAN-17-X.

[75] According to that same information, the intersection of Steptoe Street and Gage Boulevard is deficient because the southbound left-turn movement is currently LOS F, with three out of four left-turn movements degrading to LOS F by 2028. The overall intersection is currently LOS E and expected to remain at that level in 2028. *See* Exh. GAN-17-X.

[76] Simon, TR. 67:1-13. Mr. Simon conceded that other than the JUB Study, he had no other evidence to support his opinion. Simon, TR. 62:16 – 63:6 (referring to the intersection of Columbia Center Boulevard and Quinault Street).

could improve the deficient LOS at the Steptoe Street and Gage Boulevard intersection by allowing some traffic to divert to the proposed crossing.[77]

36 Mr. Deskins, the City employee most familiar with the City's traffic modeling simulation, conceded that he did not perform an LOS analysis specifically focused on the result of installing the proposed crossing at Center Parkway.[78] Mr. Deskins also acknowledged that he did not attempt to consider or model potential delays from trains at the proposed crossing or at the existing Steptoe Street crossing.[79]

DISCUSSION AND DETERMINATIONS

A. Res Judicata Does Not Bar the Cities' Petition

37 TCRY argues that the Commission's 2007 Order denying the City of Kennewick's request to construct an at-grade crossing at Center Parkway precludes the Cities from pursuing a subsequent petition seeking the same relief.[80] According to TCRY, the prior and current petitions are "fundamentally identical" in seeking an at-grade crossing at the same location.[81]

38 The Cities differentiate their current petition from the one put forward in 2005: they followed comprehensive planning update procedures adopted in 2006, completed extensive engineering and design studies, and worked with stakeholders to eliminate two track crossings from the project.[82] Commission Staff agrees that removal of two track crossings and the related reduction in rail switching operations at the site present a substantial change in circumstances.[83]

39 In administrative proceedings, the doctrine of res judicata limits repeated submissions of applications involving the same subject matter.[84] In order to apply res judicata, repeat applications must have the same (a) subject matter, (b) cause of action, (c) persons and parties, and (d) quality of the persons for or against whom the claims

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[77] Simon, TR. 67:14 – 69:22.

[78] Deskins, TR. 78:4-7; *see also* Deskins, TR. 73:4-12.

[79] Deskins, TR. 79:2 – 81:8. Mr. Deskins stated that because he was focused on specific intersection LOS ratings, the impact of delays from trains at the crossings "didn't concern me."

[80] Post-Hearing Brief of Respondent Tri-City & Olympia Railroad Co. at 3:5 – 6:3.

[81] *Id.* at 5:16-17.

[82] Petitioners' Post-Hearing Brief at 3-4.

[83] Post-Hearing Brief of Commission Staff at 13-14.

[84] *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wn.2d 22, 31, 891 P.2d 29 (1995).

are made.[85] Second applications that present a substantial change in circumstances or conditions are permitted.[86]

40 There is no dispute that the Center Parkway crossing is proposed for the same site and the same use previously rejected in the 2007 Order. However, the Cities have negotiated with BNSF and UPRR to remove their switching tracks from the area, reducing the number of tracks involved from four down to two. This alone is a significant change from the prior circumstances. Further, the record supporting the current petition is substantially different than that created seven years ago: the Cities presented updated traffic studies, additional detail regarding emergency response needs in the area, and much more detailed information about safety mitigation measures and warning devices to be installed at the proposed crossing. In addition to these substantial factual differences, the 2007 Order suggested that the Commission would consider a second application.[87]

41 The Commission finds that the Cities' current petition presents a substantially different situation from that considered by the Commission seven years ago. The Commission determines that res judicata does not bar the Cities' current petition.

B. The Growth Management Act is Not Dispositive

42 The Cities contend that state agencies are mandated to comply with local land use plans adopted under the Growth Management Act.[88] Therefore, the Cities argue that their regional comprehensive planning process "mandates" the Center Parkway crossing in order for the Cities to achieve their stated LOS for emergency response times and traffic flow at signalized intersections.[89] According to the Cities, the GMA prohibits the Commission from evaluating public need, alternatives for opening a proposed railroad crossing, or even whether the proposed crossing will function in the matter claimed by the Cities. Taken to its logical end point, the Cities' argument

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[85] *Id.* at 32, citing *Rains v. State*, 100 Wn.2d 660, 663, 674 P.2d 165 (1983).

[86] *Id.* at 32-33.

[87] 2007 Order at 10, ¶ 23 (". . .the petitions could be denied without further discussion. However, it may provide some guidance to Kennewick for future filings to consider the second prong of the legal standard.").

[88] Petitioners' Post-Hearing Brief at 7-12. The Cities cite specifically to RCW 36.70A.103's mandate that "[s]tate agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter." *Id.* at 8, n. 29.

[89] Petitioners' Post-Hearing Brief, at 9-11.

would require the Commission to approve any at-grade crossing planned for in a local jurisdiction's comprehensive planning process.[90]

43 We disagree that a land use planning statute deprives the Commission of its statutory authority to regulate public safety at rail crossings. We do not dispute that the GMA requires cities such as Richland and Kennewick to plan for future growth and make efforts at intergovernmental coordination.[91] However, a jurisdiction's comprehensive planning obligations under the GMA do not substitute for meeting the standards set out in RCW 81.53. The GMA and RCW 81.53 both address transportation safety issues, but from wholly different perspectives on public policy. In order to maintain the integrity of both statutes within the overall statutory scheme, the GMA must be read together and in harmony with RCW 81.53.[92] We find that the Cities must comply with the requirements of both statutes.

44 The Commission's statutory responsibility to protect the public from the dangers inherent to all at-grade crossings is independent of the Cities' obligation to plan under the GMA. The Commission retains and will exercise its authority to determine whether the proposed crossing satisfies the requirements of RCW 81.53.

C. Standards for Commission Approval of Rail Crossings

45 RCW 81.53.020 prohibits construction of at-grade crossings without prior authorization from the Commission. The statute requires that crossings be grade-separated "when practicable" and provides that:

> In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.

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[90] *Id.* at 8. In essence, the Cities argue that the GMA invalidated the Commission's ruling in *In re Town of Tonasket v. Burlington Northern Railroad Company*, Docket TR-921371 (December 1993) (*Tonasket*), at least for GMA planning jurisdictions.

[91] RCW 36.70A.070(6)(a)(v) requires the transportation element of a growth management plan to include intergovernmental coordination efforts.

[92] *Philippides v. Bernard*, 141 Wn.2d 376, 385, 88 P.2d 939 (2004), *citing State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974) ("In ascertaining legislative purpose, statutes which stand in pari materia are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes.").

If a grade crossing is authorized, RCW 81.53.030 allows the Commission to require installation and maintenance of proper signals or other devices to ensure public safety.

46 The Commission answers three key questions when evaluating a petition to authorize construction of a new at-grade crossing:

1) Considering engineering requirements and cost constraints, is grade-separation practicable?

2) Have inherent and site-specific hazards been moderated to the extent possible?

3) Is there a demonstrated public need for the crossing that outweighs the risks of opening the at-grade crossing?[93]

The Cities carry the burden of proof for each of these issues. Absent the required showing of impracticability of grade separation, moderation of risks, and a sufficient demonstration of public need, the Commission will not authorize the Cities to open a new at-grade crossing at Center Parkway.

1. Practicability of Grade Separation

47 By its nature, an at-grade crossing poses hazards for motorists, pedestrians, and railroad operators that are not present at grade-separated crossings. Washington courts have deemed at-grade crossings to be inherently dangerous.[94] In determining whether the Commission will require grade separation, RCW 81.53.020 requires an evaluation of

- the amount and character of travel on the railroad and on the highway;
- the grade and alignment of the railroad and the highway;
- the cost of separating grades;
- the topography of the country; and
- all other circumstances and conditions naturally involved in such an inquiry.

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[93] *See In re Town of Tonasket v. Burlington Northern Railroad Company*, Docket TR-921371 (December 1993) (*Tonasket*); *see also Burlington Northern Railroad Company v. City of Ferndale*, Docket TR-940330 (March 1995).

[94] *See Reines v. Chicago, Milwaukee,, St. Paul & Pacific R. Co.*, 195 Wn. 146, 150, 80 P.2d 406, 407 (1938); *State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County*, 5 Wn.2d 95, 104,104 P.2d 764 (1940); *Department of Transportation v. Snohomish County*, 35 Wn.2d 247, 250-51 and 257, 212 P.2d 829, 831-32 and 835 (1949).

In addition to these statutory factors, Commission Staff relies on the U.S. Department of Transportation's Federal Railroad Administration Railroad-Highway Grade Crossing Handbook (FRA Handbook) when considering "other circumstances and conditions" for grade separating a roadway from a railroad right-of-way, such as predicted accident frequency and vehicle delay times.[95]

48 Mr. Deskins and Mr. Montgomery testified that Center Parkway is expected to carry up to 7,000 vehicles per day by the year 2033. Mr. Peterson and Mr. Jeffers estimated that rail traffic may grow from the current high of five trains per weekday to perhaps double that amount in the foreseeable future. According to the FRA Handbook, traffic levels this low do not mandate grade separation, even in an urban setting.[96]

49 Mr. Simon, Ms. Grabler, and Mr. Jeffers all testified to the infeasibility of constructing a grade-separated crossing due to roadway alignment, topography, and cost considerations. Further, Mr. Jeffers and Ms. Hunter determined that accidents at the proposed crossing would be uncommon and infrequent. Finally, the JUB Study provided assurances that lowered crossing gates associated with normal rail operations would not result in vehicle queues extending into nearby intersections.

50 The Commission finds that the amount and character of travel on the railroad and on Center Parkway do not justify grade separation. Further, there is no evidence in the record disputing the engineering infeasibility of constructing a grade-separated crossing at Center Parkway. Finally, there is no serious dispute in the record that a grade-separated crossing would be tremendously more expensive than the proposed at-grade crossing. Therefore, considering engineering requirements and cost constraints, the Commission determines that a grade-separated crossing is not practicable at Center Parkway.

2. Moderation of Risk

51 If grade separation is impracticable, the Commission evaluates whether inherent and site-specific hazards at a proposed at-grade crossing have been moderated to the extent possible. As noted above, the risks of an accident at the proposed crossing are relatively low considering current and projected train traffic and predicted levels of

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[95] Exh. KH-7 and Exh. KJ-2 at 11. The FRA Handbook echoes the statute's requirement to consider the levels of train traffic, train speeds, and levels of auto traffic, and posted speed limits. The FRA Handbook also states that "[i]f a new access is proposed to cross a railroad where railroad operation requires temporarily holding trains, only grade separation should be considered." *See* Exh. KH-10.

[96] *See* Norris, TR. 321:10 – 325:5.

vehicle traffic. However, the existence of a second set of tracks and limited sight distances from some approaches to the crossing present a risk for motorists.

52 The Cities' petition includes crossing design specifications intended to mitigate the dangers of the at-grade crossing with active warning devices. Specifically, the Cities propose to install advanced signage, flashing lights, an audible bell, automatic gates, and a raised median strip designed to prevent drivers from going around lowered gates.

53 Commission Staff performed a diagnostic review of the proposed crossing design configuration and determined that the Cities' planned safety devices specifically address the hazards presented by the proposed Center Parkway at-grade crossing.[97] There is no evidence in the record disputing Staff on this determination.

54 We concur with Commission Staff that the petition's proposed advance and active warning devices would moderate the risks presented by this crossing to the extent possible at this site, even with motorists crossing two sets of tracks.

3. Demonstration of Public Need

55 The Commission will not approve construction of a new at-grade crossing without a demonstration of public need that outweighs the hazards inherent in the at-grade configuration. Petitioners must provide evidence of public benefits, such as improvements to public safety or improved economic development opportunities.[98]

56 In the City of Kennewick's prior petition to construct an at-grade crossing at this same location, the Commission determined that Kennewick failed to demonstrate "acute public need" and denied the petition.[99] The 2007 Order concluded that a city's goal to encourage economic development did not rise to the level of an acute public need, noting that economic development was already occurring along Tapteal Drive even without the proposed crossing.[100] The 2007 Order also concluded that traffic mitigation might constitute an acute public need, but only if alternate crossings were insufficient to accommodate traffic. The traffic study presented seven years ago

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[97] Exh. KH-5.

[98] *See Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions ¶¶ 33-37 (Feb. 15, 2011).

[99] 2007 Order, ¶¶ 24-26.

[100] *Id.* ¶ 25.

showed only a *de minimis* level of traffic diversion to Center Parkway and did not prove the nearby alternate crossings insufficient to handle the entire traffic flow.[101]

57 The Cities and Staff argue that the 2007 Order relied upon an outdated and overly stringent "acute public need" standard. They contend that in recent years the Commission has approved opening other at-grade crossings using a balancing test, weighing the need for the crossing against any dangers remaining after installation of safety devices.[102] The Cities and Staff cite several orders approved through the Commission's open meeting process, none of which presented the complexities involved in this matter.[103]

58 We agree with the Cities and Staff that the statute does not require a showing of "acute public need" to justify opening a new at-grade crossing. Nevertheless, no party petitioned for review of the 2007 Order and, until now, we have not had an opportunity to revisit the Center Parkway crossing. RCW 81.53 does not prohibit the Commission from approving approve new at-grade crossings, but mere convenience or a *de minimis* showing of need will not suffice. As Staff points out, we are obligated to balance public need against the hazards presented by a new crossing.[104] The Cities similarly concede that the Commission must determine "whether there is a

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[101] *Id.* ¶ 26.

[102] Petitioners' Post-Hearing Brief at 5-7, n. 20, and Post-Hearing Brief of Commission Staff at 9-12; *see also* Hunter, TR. 273:16 – 277:22. Staff also points out that while the FRA Handbook discourages opening new crossings, it recognizes that consideration of public necessity, convenience, safety, and economics will factor into individual decisions. According to the Handbook, "new grade crossings, particularly on mainline tracks, should not be permitted unless no other alternatives exist and, even in those instances, consideration should be given to closing one or more existing crossings." *See* Exh. KH-10.

[103] The Cities cited open meeting dockets that were all uncontested and did not benefit from a thoroughly developed evidentiary record. The only case with any persuasive value resulted in a net closure of crossings, trading two existing passively protected private at-grade crossings in the City of Marysville for one new public crossing with active warning devices (Docket TR-111147). None of the other approved new crossings were in urban areas where over 7,000 vehicles per day were expected to cross tracks currently traveled by five or more trains per day (in one case, the Commission approved a new crossing to divert approximately 400 commercial vehicles per day away from residential roadways and across a single set of tracks traveled by up to two trains per day (Docket TR-112127); in two other cases, the Commission approved installing new industrial rail lines across very lightly traveled roadways in order to promote industrial growth (the road in Docket TR-100072 had only 150 vehicles per day and the road in Docket TR-121467 had less than 1600 vehicles per day); and in two other cases, the Commission approved new pedestrian-only crossings across lightly used tracks (Docket TR-100041 had one weekly freight train and Docket TR-110492 had no active railroading operations)).

[104] Post-Hearing Brief of Commission Staff at 12, ¶ 33.

demonstrated public need for the crossing that outweighs the hazards inherent in an at-grade configuration."[105]

59 In this case, the Cities attempt to demonstrate public need by arguing improvements to public safety through faster emergency response times, reduced accident rates around the Columbia Center Mall, and relief of traffic congestion at nearby intersections with deficient levels of service. As explained below, the evidence in the record does not support the Cities' arguments that opening the Center Parkway crossing will create such improvements or alleviate existing traffic problems.

a) Emergency Response Times

60 The Cities contend that the proposed crossing will improve emergency response times. However, the evidence in the record demonstrates that the Cities' police and fire departments are generally meeting the response time objectives established in their respective comprehensive plans. Although the Cities point out individual statistics where response times have occasionally exceeded these goals,[106] the Cities' emergency responders are not regularly failing to achieve their established LOS. We recognize that improving emergency medical response times by even a few seconds could significantly impact the outcome for some patients, but the Cities introduced no evidence of a public need for faster response times and did not adequately explain how the Center Parkway extension would contribute to improved public safety.

61 Even if the Cities' emergency response time LOS levels were deficient, there is insufficient evidence in the record to demonstrate that opening a crossing at Center Parkway would solve this problem. Richland's comprehensive planning documents do not focus on building more roadways to solve response time deficiencies. Instead, the capital facilities element of Richland's GMA documents discuss building additional fire stations closer to areas needing better response times.[107]

62 Chief Baynes, Chief Skinner, and Chief Hohenberg all testified that more choices and more alternatives are always better for emergency responders. However, this new access route between Gage Boulevard and Tapteal Drive may prove to be an illusory option if rail traffic increases according to even the most conservative estimates made

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[105] Petitioners' Post-Hearing Brief at 6, citing *Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions (February 15, 2011) at ¶ 29.

[106] Petitioners' Post-Hearing Brief at 10, citing to Exhs. GAN-3-X and GAN-18-X. Chief Baynes provided little, if any, context for additional response time data he provided in Exh. GAN-18-X. *See* Baynes, TR. 103:5 – 105:21, 121:13 – 125:6 and Norris, TR. 295:6 – 297:16.

[107] *See* Exhs. GAN-3-X and GAN-4-X.

part of the record in this case. The potentially shorter response times that might be possible to a very limited area of south Richland with this new at-grade crossing are not sufficient to demonstrate public need.

b) Reduced Accident Rates

63 The Cities also argued that a public need exists to open the Center Parkway crossing because doing so would reduce traffic accident rates at two Columbia Center Boulevard intersections. However, neither the JUB Study nor the Cities' traffic engineering witnesses provided any data or studies to support this assertion.

64 Mr. Deskins provided raw data on the number of vehicle collisions over a decade's time but analysis on how or why these accidents occurred. Mr. Montgomery offered only unconfirmed notions that reducing traffic levels would reduce accident rates. The record has no persuasive evidence connecting improved traffic safety on Columbia Center Boulevard to opening a new roadway that will regularly be blocked by rail traffic.

c) Relief of Traffic Congestion

65 Similarly, the Cities presented evidence showing that busy intersections in the vicinity of the Mall were approaching deficient LOS levels during peak travel times. Traffic waits for left turn signals at two intersections feeding into the Mall are already one level below the acceptable LOS D. We do not dispute that the Cities must find a way to resolve traffic congestion patterns in this area, but the Cities offered no persuasive evidence that opening a crossing at Center Parkway would materially contribute to this desired result:

- The JUB Study made no specific findings about how a crossing at Center Parkway would impact deficient LOS ratings at congested intersections.
- Mr. Simon was unable to explain the effect of extending Center Parkway on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault.
- Mr. Deskins failed to conduct any LOS analysis focused on the installation of a crossing at Center Parkway and never factored train delays into any of the models he did consider.

66 The record does not conclusively link extending Center Parkway to any improvement in traffic flow at congested intersections in the immediate area. At best, the record demonstrates that opening the proposed at-grade crossing will make public travel

more convenient between the Tapteal Drive area and the Columbia Center Mall. It is certainly possible that opening a new roadway will divert traffic away from existing overcrowded intersections, but supposition alone is not sufficient to demonstrate public need. The Cities failed to demonstrate that opening the proposed Center Parkway crossing would reduce traffic congestion around the Mall or at the intersection of Gage Boulevard and Steptoe Street.

4. Balancing of Public Need Against Hazards of At-Grade Crossings

67 The Cities failed to demonstrate public need for the proposed crossing, leaving nothing to balance against the inherent hazards of an at-grade crossing. Even if public convenience were sufficient to demonstrate public need, we find that it does not outweigh the hazards of an at-grade crossing.

68 By its nature, opening a new at-grade crossing at Center Parkway would increase risk to motorists by creating another opportunity to interact with freight trains. Motorists who might deviate from Columbia Center Boulevard's grade-separated crossing in order to access the Tapteal Road area would trade safe and undelayed passage over the UPRR tracks for a potentially faster route that comes with a risk of collision. The active safety measures proposed to be installed at the crossing would mitigate, but would not eliminate, such risk.

69 The Cities' justifications for the crossing do not outweigh the risk. At most, the evidence demonstrates that, on occasion, a police, fire, or ambulance response *might* be faster if the Center Parkway crossing was available and no trains were blocking traffic. Some drivers also would find the option to use Center Parkway more appealing to enter or depart the north side of the Columbia Center Mall than Gage Boulevard, particularly during the busy holiday shopping season. Such slight benefits do not overcome the law's strong disfavor for at-grade crossings. Accordingly, the Commission should deny the Cities' petition for failure to demonstrate a public need for the proposed crossing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

70 Having discussed above in detail the evidence received in this proceeding regarding all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts and conclusions, incorporating by reference pertinent portions of the preceding detailed discussion:

71 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate railroad

crossings, and has jurisdiction over the parties and subject matter of this proceeding.

72 (2) The City of Richland and the City of Kennewick are governmental entities authorized by law to petition the Commission pursuant to RCW 81.53.020 for authority to construct an at-grade railroad crossing where it is not practicable to construct a grade-separated crossing and there is a public need for such a crossing that outweigh its inherent risks.

73 (3) Res judicata does not bar the Commission from ruling on the Cities' petition because it is sufficiently different from the City of Kennewick's prior petition.

74 (4) Comprehensive planning under the Growth Management Act does not relieve the Cities from complying with RCW 81.53.

75 (5) A grade-separated crossing at the proposed project site is not practicable because of engineering requirements and cost constraints.

76 (6) The risks of an accident at the proposed crossing are relatively low considering current and projected train traffic, predicted levels of vehicle traffic, and plans to install active warning devices and other safety measures.

77 (7) The Cities' emergency responders are meeting or exceeding the response time objectives established in the Cities' comprehensive plans.

78 (8) The Center Parkway extension may assist the Cities' emergency responders by providing an alternative route for responding to incidents in the vicinity of Columbia Center Mall, but only when trains are not blocking the intersection.

79 (9) The Cities did not produce sufficient evidence to demonstrate that the Center Parkway extension would reduce accident rates in the area or improve traffic flow at congested intersections surrounding the Columbia Center Mall.

80 (10) The Cities failed to demonstrate sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing.

81 (11) The Commission should deny the City of Richland's and City of Kennewick's petition for authority to construct an at-grade crossing at the proposed extension of Center Parkway.

ORDER

THE COMMISSION ORDERS:

82 (1) The petition filed by the City of Kennewick and joined in by the City of Richland is denied.

83 (2) The Commission retains jurisdiction to enforce the terms of this order.

Dated at Olympia, Washington, and effective February 25, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

Via FedEx Delivery

August 21, 2014

Clerk of the Superior Court
Benton County Superior Court
7122 West Okanogan Place, Building A
Kennewick Washington 99336

RE: Tri-City Railroad Company, LLC, a Washington corporation v. Washington Utilities and Transportation Commission
Benton County Cause No. 14-2-01894-8

Dear Clerk:

Enclosed for filing is the record of the Washington Utilities and Transportation Commission in the above-entitled matter. The record consists of the documents listed on the attached sheets.

Sincerely,

Steven V. King
Executive Director and Secretary - Acting

cc: Parties

Enclosure

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

August 21, 2014

William Schroeder
Paine Hamblen LLP
717 West Sprague Avenue, Suite 1200
Spokane, Washington 99201

RE: Tri-City Railroad Company, LLC, a Washington corporation v. Washington Utilities and Transportation Commission
Benton County Cause No. 14-2-01894-8

Dear Mr. Schroeder:

The Commission record in the above matter is being mailed via FedEx to the Clerk of the Thurston County Superior Court today. The record consists of the documents listed on the attached sheets.

If you believe that this record is deficient, please advise immediately, and consideration will be given to the filing of a supplemental record.

Sincerely,

Steven V. King
Executive Director and Secretary

cc: Parties

Enclosure

0-000000068

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

BENTON COUNTY SUPERIOR COURT

Tri-City & Olympia Railroad Company, LLC, a Washington corporation Petitioner, v. Washington Utilities and Transportation Commission, Respondent.	)	NO. 14-2-01894-8 CERTIFICATE

STATE OF WASHINGTON
ss.
County of Thurston)

I, Steven V. King, Executive Director and Secretary of the Washington Utilities and Transportation Commission, hereby certify that the attached documents contain a full, true, and correct copy of the record in the Washington Utilities and Transportation Commission Docket No. TR-130499, captioned "Petition to construct a highway-rail grade crossing, Center Parkway, Kennewick, WA."

IN TESTIMONY WHEREOF I have signed and affixed the official seal of the Washington Utilities and Transportation Commission this 21st day of August, 2014.

Steven V. King
Executive Director and Secretary

RETURN

TRI-CITY RAILROAD COMPANY, LLC, a Washington corporation,

Petitioner,

v.

STATE OF WASHINGTON, UTILITIES AND TRANSPORTATION COMMISSION,

Respondent.

Benton County Superior Court
No. 14-2-01894-8

Docket No. TR-130499

Page No.

0115 Memorandum from Kathy Hunter, Deputy Assistant Director, Transportation Safety, to Greg Kopta, Director, Administrative Law Division, RE: Staff Recommendation to Set Matter for Hearing TR-130499 – Petition on behalf of the City of Kennewick to Construct an At-grade Highway-Rail Grade Crossing at Center Parkway, dated May 3, 2013.

0117 Notice of Appearance of on Behalf of the Washington Utilities and Transportation Commission Staff of Steven W. Smith, from Steven W. Smith, Assistant Attorney General, dated May 6, 2013, with cover letter and certificate of service.

0121 Notice of Appearance for the City of Kennewick of Stephen DiJulio and Jeremy Eckert; Notice of Appearance for the City of Richland of Stephen DiJulio and Jeremy Eckert; and Motion to Intervene by the City of Richland, from Jeremy Eckert and Stephen DiJulio, Attorneys, dated May 31, 2013, with e-mail cover letter, attachments, and certificates of service.

0184 Commission's Transcript Order Form dated June 4, 2013.

0185 Commission's Order 01, Prehearing Conference Order; Notice of Hearing (Evidentiary Hearing Set for November 19-21, 2013, at 9:30 a.m.), dated June 7, 2013, with Proof of Service.

0196 Petitioner's Response Regarding SEPA Compliance, on behalf of City of Kennewick and City of Richland, from Jeremy Eckert, Attorney, dated August 20, 2013, with cover letter, attachment, and certificate of service.

0205 Commission's Notice of Hearing (Set for November 19-21, 2013) and Notice of Public Comment Hearing (Set for November 20, 2013, at 6:00 p.m.), dated September 11, 2013, with Proof of Service.

0210 Motion to Add Evidentiary Exhibits by the City of Richland, from Jeremy Eckert, Attorney, dated November 15, 2013, with Exhibits 1 thru 6 and certificate of service.

0290 Sign-in Sheet from Public Comment Hearing, dated November 20, 2013.

0292 Post-Hearing Brief of Respondent Tri-City & Olympia Railroad Co., from Paul J. Petit, General Counsel, dated December 19, 2013, with cover letter and certificate of service.

0309 Post-Hearing Brief of Commission Staff, from Steven W. Smith, Assistant Attorney General, dated December 20, 2013, with cover letter and certificate of service.

0327 Post-Hearing Brief of the Cities of Kennewick and Richland, from Jeremy Eckert, Attorney, dated December 20, 2013, with cover letter and certificate of service.

0355 Commission's Order 02, Initial Order Denying Petition to Open At-Grade Railroad Crossing, dated February 25, 2014, with Proof of Service.

0382 Letter to Steven King, Executive Director and Secretary, from Sharon Brown, State Senator; Bradley A. Klippert, State Representative; Larry Haler, State Representative;, on behalf of the 8th Legislative District, and Mike Hewitt, State Senator; and Maureen Walsh, State Representative, on behalf of the 16th Legislative District, RE: City of Kennewick Docket TR-130499, dated March 14, 2014.

0384 Cities of Kennewick and Richland Petition for Administrative Review Oral Argument Requested, from Jeremy Eckert, Attorney, dated March 17, 2014, with cover letter, Attachments A and B, and certificate of service.

0484 Answer of Respondent Tri-City & Olympia Railroad Co. to Petition for Administrative Review, from Paul J. Petit, General Counsel, dated March 27, 2014, with cover letter and certificate of service.

0519 Answer of Commission Staff to Cities of Kennewick and Richland Petition for Administrative Review, from Steven W. Smith, Assistant Attorney General, dated March 27, 2014, with cover letter and certificate of service.

0526 Cities' Reply in Support of Commission Review Oral Argument Requested, from Jeremy Eckert, Attorney, dated April 1, 2014, with cover letter and certificate of service.

0554 Respondent's Motion to Strike "Cities Reply in Support of Commission Review," from Paul J. Petit, General Counsel, on behalf of Tri-City Railroad Company, dated April 2, 2014, with cover letter and certificate of service.

0560 Cities' Response to Respondent's Motion to Strike, from Jeremy Eckert, Attorney, on behalf of City of Kennewick and City of Richland, dated April 3, 2014, with cover letter and certificate of service.

0566 Commission's Order 03, Final Order Granting Petition for Administrative Review, dated May 29, 2014, with Proof of Service.

0585 Petition for Reconsideration of Final Order, Petition for Rehearing and Petition for Stay of Order, on behalf of Tri-City & Olympia Railroad Company, from Paul J. Petit, General Counsel, dated June 9, 2014, with cover letter and certificate of service.

0615 Notice of Substitution of Counsel of Michael A. Fassio, from Michael A. Fassio, Assistant Attorney General, on behalf of Commission Staff, dated June 11, 2014, with cover letter and certificate of service.

0618 Response of Commission Staff to Tri-City Railroad Company's Petition for Rehearing and Petition for Stay, from Michael A. Fassio, Assistant Attorney General, dated June 16, 2014, with cover letter and certificate of service.

0623 Cities' Response to Tri-City & Olympia Railroad Co.'s Petition for Rehearing and Petition for Stay of Order, on behalf of City of Kennewick and City of Richland, from Jeremy Eckert, Attorney, dated June 16, 2014, with cover letter and certificate of service.

0639 Commission's Order 04, Denying Petition for Reconsideration, Petition for Stay, and Petition for Rehearing, dated June 24, 2014, with Proof of Service.

0650 Commission's Exhibit List.

0660 Thru 1548 Commission's Exhibits RGB-1T, RGB-2TR, JP-1T, JP-2, JP-3, JP-4, JP-5-X, JP-6-X, JP-7-X, CS-1T, CS-2TR, RS-1T, RS-2, RS-3, RS-4, NH-1T, NH-2TR, JD-1T, JD-2TR, JD-3, JD-9-X, JD-10-X, JD-11-X, JD-27-X, JD-28-X, JD-29-X, JD-30-X, JD-37-X, JD-38-X, JD-39-X, KMH-1T, KMH-2TR, SKG-1T, KJ-1T, KJ-2 - KJ-12, KJ-13-X, KJ-14-X, SM-1TR, GAN-1T, GAN-1TR, GAN-2-X, GAN-3-X, GAN-4-X, GAN-6-X, - GAN-11-X, GAN-13-X - GAN-20-X, RVP-1T, RVP-2-X, RVP-3-X, RVP-4-X, RVP-5-X, RVP-6-X, RVP-7-X, RVP-9-X, KH-1T, KH-2 - KH-12 admitted. Exhibits JP-8-X, JP-9-X, JD-4-X, JD-5-X, JD-6-X, JD-7-X, JD-8-X, JD-12-X - JD-26-X, JD-31-X - JD-36-X, GAN-5-X, GAN-12-X, and RVP-8-X no offered.

1 thru 444 Commission Transcripts: Volume 1 through 4.

1992 Total Pages

MASTER SERVICE LIST

As of: 8/5/2014 Docket: 130499

Original MSL Date: 4/9/2013

Status	Name and Address	Phone & Fax	Added	By
Assistant Attorney General	Fassio, Michael Assistant Attorney General WUTC PO Box 40128 Olympia, WA 98504-0128 MFassio@utc.wa.gov	Tel: (360) 664-1192 Fax: (360) 586-5522	5/29/2014	Crawford, Denise
Respondent" s Counsel or Representative Representing: BNSF Railway	Montgomery, Tom Montgomery Scarp MacDougall, PLLC 1218 Third Avenue STE 2700 Seattle, WA 98101 tom@montgomeryscarp.com	Tel: (206) 625-1801 Fax: (206) 625-1807	5/9/2013	Higgins, Joni
Respondent" s Counsel or Representative	Petit, Paul J. Tri-City & Olympia Railroad P.O. Box 1700 Richland, WA 99354 paulpetit@tcry.com	Tel: (509) 371-8313	4/29/2013	Higgins, Joni
Respondent	Keller, Scott D Executive Director Port of Benton 3100 George Washington Way Richland, WA 99352		4/9/2013	Wyse, Lisa
Intervenor" s Counsel or Representative Representing: City of Richland City of Kennewick	Ecket, Jeremy Foster Pepper PLLC 1111 3rd Avenue STE 3400 Seattle, WA 98101		5/31/2013	Higgins, Joni
Respondent" s Counsel or Representative Representing: Union Pacific Railroad Company	Larson, Carolyn Attorney at Law Dunn Carney Allen Higgins and Tongue LLP 851 SW Sixth Avenue STE 1500 Portland, OR 97204 cll@dunn-carney.com	Tel: (503) 224-6440 Fax: (503) 224-7324	5/9/2013	Higgins, Joni

MASTER SERVICE LIST

As of: 8/5/2014 Docket: 130499

Original MSL Date: 4/9/2013

Status	Name and Address	Phone & Fax	Added	By
Intervenor	Johnson, Cindy City Manager City of Richland PO BOX 190 Richland, WA 99352-0190	Tel: (509) 942-7390 Fax: (509) 942-5666	5/31/2013	Higgins, Joni
Petitioner	Beaudry, Peter M Public Works Director City of Kennewick 210 W. 6th Avenue Kennewick, WA 99336		4/9/2013	Wyse, Lisa
Respondent" s Counsel or Representative Representing: Tri-City & Olympia Railroad Co.	Johnson, Brandon L Minnick-Hayner, P.S. 249 West Alder; P.O. Box 1757 Walla Walla, WA 99362-0348 bljohnson@my180.net	Tel: (509) 527-3500 Fax: (509) 527-3506	5/9/2013	Higgins, Joni
Respondent	Anderson, Terrel Union Pacific Railroad Company 9451 Atkinson St. Roseville, CA 95747 taanders@up.com	Tel: (916) 789-5134	5/9/2013	Higgins, Joni
Respondent" s Counsel or Representative Representing: Port of Benton	Cowan, Tom A Cowan Moore Stam & Luke PO BOX 927 Richland, WA 99352 tcowan@cowanmoore.com	Tel: (509) 943-2676 Fax: (509) 946-4257	4/30/2013	Higgins, Joni
Respondent	Wagner, Richard Manager Public Projects BNSF Railway Co. 2454 Occidental Ave S STE 2D Seattle, WA 98134 Richard.wagner@bnsf.com	Tel: (206) 625-6152	5/9/2013	Higgins, Joni

0-000000075

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MASTER SERVICE LIST

As of: 8/5/2014 Docket: 130499

Original MSL Date: 4/9/2013

Status	Name and Address	Phone & Fax	Added	By
Respondent	Peterson, Rhett Tri-City & Olympia Railroad P.O. Box 1700 Richland, WA 99352 rhettwater@mac.com	Tel: (509) 727-8824	5/9/2013	*Higgins, Joni*
Intervenor" s Counsel or Representative Representing: City of Richland City of Kennwick	DiJulio, P. Stephen Attorney Foster Pepper & Shefelman PLLC 1111 3rd Avenue STE 3400 Seattle, WA 98101-3299 dijup@foster.com	Tel: (206) 447-4400 Fax: (206) 447-9700	5/31/2013	Higgins, Joni
Respondent" s Counsel or Representative Representing: BNSF Railway	Endres, Kelsey Montgomery Scarp MacDougall, PLLC 1218 Third Avenue STE 2700 Seattle, WA 98101 kelsey@montgomeryscarp.com	Tel: (206) 625-1801 Fax: (206) 625-1807	5/9/2013	Higgins, Joni

0-000000076

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UTC
LITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

City of Kennewick Petitioner, vs. **Port of Benton;** **Tri City & Olympia Railroad Company;** **BNSF Railway; Union Pacific Railroad** Respondent	)	DOCKET NO. TR-130499-P PETITION TO CONSTRUCTA HIGHWAY-RAIL GRADE CROSSING **Center Parkway**

Prior to submitting a Petition to Construct a Highway-Rail Grade Crossing to the Washington Utilities and Transportation Commission (UTC), State Environmental Protection Act (SEPA) requirements must be met. Washington Administrative Code (WAC) 197-11-865 (2) requires:

> **All actions of the utilities and transportation commission under statutes administered as of December 12, 1975, are exempted, except the following:**
>
> **(2) Authorization of the openings or closing of any highway/railroad grade crossing, or the direction of physical connection of the line of one railroad with that of another;**

Please attach sufficient documentation to demonstrate that the SEPA requirement has been fulfilled. For additional information on SEPA requirements contact the Department of Ecology.

The Petitioner asks the Washington Utilities and Transportation Commission to approve constructionof a highway-rail grade crossing.

Section 1 – Petitioner's Information

City of Kennewick
Petitioner

Peter Beaudry
Signature

210 W. 6th Avenue
Street Address

Kennewick, WA 99336
City, State and Zip Code

P.O. Box 6108, Kennewick, WA 99336-0108
Mailing Address, if different than the street address

Peter Beaudry
Contact Person Name

(509) 585-4292, Peter.Beaudry@ci.kennewick.wa.us
Contact Phone Number and E-mail Address

Section 2 – Respondent's Information

Port of Benton
Respondent

3100 George Washington Way
Street Address

Richland, WA 99354
City, State and Zip Code

Mailing Address, if different than the street address

Scott D. Keller
Contact Person Name

(509) 375-3060, keller@portofbenton.com
Contact Phone Number and E-mail Address

0-000000078

000005

Tri-city and Olympia Railroad Company
Respondent

10 North Washington Street
Street Address

Kennewick, Washington 99336
City, State and Zip Code

PO Box 1700, Richland, WA 99352
Mailing Address, if different than the street address

RhettPeterson
Contact Person Name

(509) 727-8824,rhettwater@mac.com
Contact Phone Number and E-mail Address

BNSF Railway
Respondent

2454 Occidental Ave. S., Suite 2D
Street Address

Seattle, WA 98134
City, State and Zip Code

Mailing Address, if different than the street address

Richard Wagner
Contact Person Name

(206) 625-6152; richard.wagner@bnsf.com
Contact Phone Number and E-mail Address

Union Pacific Railroad Company
Respondent

9451 Atkinson Street
Street Address

Roseville, CA 95747
City, State and Zip Code

Mailing Address, if different than the street address

Terrel Anderson
Contact Person Name

(916) 390-3693, taanders@up.com
Contact Phone Number and E-mail Address

Section 3 – Proposed Crossing Location

1. Existing highway/roadway **Center Parkway**

2. Existing railroad **Port of Benton Rail Spur (aka Richland Spur), operated by Tri-City and Olympia Railroad**

3. Location of proposed crossing:
Located in the **NW** 1/4 of the **SE1/4** of Sec. **30**, Twp. **9** , Range **29** W.M.

4. GPS location, if known: **Latitude 46.22983, Longitude -119.23120**

5. Railroad mile post (nearest tenth) **0.2**

6. City **Kennewick** County: **Benton**

Section 4 – Proposed Crossing Information

1. Railroad company: **Tri-City and Olympia Railroad Company**

2. Type of railroad at crossing ☒ Common Carrier ☐ Logging ☐ Industrial

☐ Passenger ☐ Excursion

3. Type of tracks at crossing ☒ Main Line ☐ Siding or Spur

4. Number of tracks at crossing: **2 existing, including siding; 1 proposed**

5. Average daily train traffic, freight **2 to 4 per day**

Authorized freight train speed: **15 mph** Operated freight train speed: **15 mph**

6. Average daily train traffic, passenger **0**

Authorized passenger train speed **N/A** Operated passenger train speed: **N/A**

7. Will the proposed crossing eliminate the need for one or more existing crossings?
Yes ____ No **X**

8. If so, state the distance and direction from the proposed crossing.

9. Does the petitioner propose to close any existing crossings?
Yes ____ No **X**

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Section 5 – Temporary Crossing

1. Is the crossing proposed to be temporary? Yes ____ No __X__

2. If so, describe the purpose of the crossing and the estimated time it will be needed

_____

3. Will the petitioner remove the crossing at completion of the activity requiring the temporary crossing? Yes ____ No ____

Approximate date of removal _____

Section 6 – Current Highway Traffic Information

1. Name of roadway/highway: **Center Parkway**

2. Roadway classification **Minor Arterial**

3. Road authority: **City of Kennewick**

4. Estimated average annual daily traffic (AADT): **5,200(Projected, Opening Year2014)**

5. Estimated average pedestrian use per day:**Unknown, See #12**

6. Number of lanes: **2 (Proposed)**

7. Roadway speed: **30mph (Proposed)**

8. Is the crossing part of an established truck route? Yes _____ No: **X**

9. If so, trucks are what percent of total daily traffic? _____

10. Is the crossing part of an established school bus route? Yes _____ No: **X**

11. If so, how many school buses travel over the crossing each day? _____

12.Describe any changes to the information in 1 through 7, above, expected within ten years:

The AADT is projected to increase to 7,000 in 2033; traffic is projected to be between 5,200 and 7,000 during the initial 10 years of operation.Train speeds could increase to 20 MPH in the future with the removal of a turnout (aka switch) east of the project site.

The pedestrian use per day is expected to be low due to the lack of pedestrian-oriented businesses and recreational facilities in the vicinity.However sidewalks will be provided on both sides of the proposed roadway that meet the city's design standards.

Section 7 – Alternatives to the Proposal

1. Does a safer location for a crossing exist within a reasonable distance of the proposed location?
   Yes ____ No **X**

2. If a safer location exists, explain why the crossing should not be located at that site.

   _____
   _____
   _____
   _____

3. Are there any hillsides, embankments, buildings, trees, railroad loading platforms or other barriers in the vicinity which may obstruct a motorist's view of the crossing?
   Yes **X** No ____

4. If a barrier exists, describe:
   - ♦ Whether petitioner can relocate the crossing to avoid the obstruction and if not, why not.
   - ♦ How the barrier can be removed.
   - ♦ How the petitioner or another party can mitigate the hazard caused by the barrier.

   The trees in the NE quadrant of the proposed crossing are on private property. Security fences in the SE and SW quadrants are anticipated just outside the roadway and railroad property lines. The lack of sight distance in that quadrant will be mitigated through the use of active warning devices (flashing lights and gates) and a non-mountable median.

5. Is it feasible to construct an over-crossing or under-crossing at the proposed location as an alternative to an at-grade crossing?
   Yes ____ No **X**

6. If an over-crossing or under-crossing is not feasible, explain why.

   A roadway bridge over the rail line is not feasible. The northern roadway approach would exceed the established design standards for the City of Richland of 8%. This is true even if the rail line was lowered beginning at the end of the bridge over Columbia Center Boulevard (CCB) at a 1% grade. Lowering the CCB rail bridge would create a substandard vertical clearance for that roadway. Regardless, the required elevated Center Parkway roadway would eliminate access to the existing hotel in the Northeast quadrant of the proposed crossing and limit access to other commercial parcels.
   A rail bridge over the roadway is also not feasible. The required lowered roadway would eliminate access to the existing Holiday Inn hotel at the Northeast quadrant of the proposed crossing and limit access to other commercial parcels.

   Please refer to the supporting document prepared by the City of Richland, titled *Center Parkway Extension, Grade Separation Evaluation,* for more detailed information.

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7. Does the railway line, at any point in the vicinity of the proposed crossing, pass over a fill area or trestle or through a cut where it is feasible to construct an over-crossing or an under-crossing, even though it may be necessary to relocate a portion of the roadway to reach that point?

Yes ____ No X

8. If such a location exists, state:
   - ♦ The distance and direction from the proposed crossing.
   - ♦ The approximate cost of construction.
   - ♦ Any reasons that exist to prevent locating the crossing at this site.

9. Is there an existing public or private crossing in the vicinity of the proposed crossing?

Yes X No ____

10. If a crossing exists, state:
   - ♦ The distance and direction from the proposed crossing.
   - ♦ Whether it is feasible to divert traffic from the proposed to the existing crossing.

There is public underpass (road under rail) about 1950 feet (0.37 miles) east of the proposed location for Columbia Center Boulevard. *Columbia Center Boulevard is a* heavily traveled 6-lane roadway that intersects with Tapteal Rd. as Columbia Center Boulevard enters the interchange with State Route 240. The heavy vehicle traffic that serves large retail developments from SR240 has resulted in an unusual access arrangement to and from Tapteal Dr. SB vehicles on Columbia Center Blvd.originating from WB SR 240 *or Columbia Park Trail that wish to* access Tapteal Drive and the Richland side of the rail line are required to make an uncontrolled left turn across 3 lanes of NB Columbia Center Blvd. traffic and loop in a clockwise direction back over Columbia Center Blvd. and down to Tapteal Drive, then make a left turn at a stop sign. NB traffic on Columbia Center Blvd. has to make a right turn onto Tapteal Drive and *follow the same route* up and back over Columbia Center Blvd. to access this area.

Section 8 – Sight Distance

1. Complete the following table, describing the sight distance for motorists when approaching the tracks from either direction.

"Number of feet from proposed crossing" is measured from the crossing gate along the centerline of the travel lane. Sight distance is measured from the edge of traveled way (edge of fog line or curb line) along the centerline of track at the crossing. NOTE - for "Left" sight distances, the edge of traveled way is on the *opposite* side of the roadway.

a. Approaching the crossing from **South**, the current approach provides an unobstructed view as follows: (North, South, East, West)

Direction of sight (left or right)	Number of feet from proposed crossing	Provides an unobstructed view for how many feet
Right	250	17
Right	150	20
Right	100	27
Right	50	73
Left	250	26
Left	150	37
Left	100	53
Left	50	192

b. Approaching the crossing from **North**, the current approach provides an unobstructed view as follows: (Opposite direction-North, South, East, West)

Direction of sight (left or right)	Number of feet from proposed crossing	Provides an unobstructed view for how many feet
Right	250	>500 (unobstructed)
Right	150	>500 (unobstructed)
Right	100	>500 (unobstructed)
Right	50	>500 (unobstructed)
Left	250	60
Left	150	72
Left	100	94
Left	50	154

2. Will the new crossing provide a level approach measuring 25 feet from the center of the railway on both approaches to the crossing?

Yes ____ No **X**

3. If not, state in feet the length of level grade from the center of the railway on both approaches to the crossing.

The track that is proposed to remain has a cross slope (superelevation) that places the northern rail lower than the south rail. The roadway will be constructed such that the roadway profiles will be within 3 inches of the plane of the two rails for30 feet from the closest rail.

4. Will the new crossing provide an approach grade of not more than five percent prior to the level grade?

Yes ____ No **X**

5. If not, state the percentage of grade prior to the level grade and explain why the grade exceeds five percent.

The existing Center Parkway roadway approaching the proposed crossing from the north is 6%. The grade is proposed to decrease to meet the track's superelevation as it approaches the crossing and to continue to decrease as it continues southward. If the roadway grade is decreased to 5%, the intersection with Tapteal Drive would have to be raised more than 15 feet.

Section 9 – Illustration of Proposed Crossing Configuration

Attach a detailed diagram, drawing, map or other illustration showingthe following:

- The vicinity of the proposed crossing.
- Layout of the railway and highway 500 feet adjacent to the crossing in all directions.
- Percent of grade.
- Obstructions of view as described in Section 7 or identified in Section 8.
- Traffic control layout showing the location of the existing and proposed signage.

Section 10 –Proposed Warning Signals or Devices

1. Explain in detail the number and type of automatic signals or other warning devices planned at the proposed crossing, including a cost estimate for each.

The proposedwarning devices include flashing lights, audible bells, and crossing gates.

The control equipment for the railroad warning devices will be modern constant warning time units.

The approximate cost for railroad crossing signal improvements is $250,000.

2. Provide an estimate for maintaining the signals for 12 months.**$5,000**

3. Is the petitioner prepared to pay to the respondent railroad company its share of installing the warning devices as provided by law?

Yes **X** No ____

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Section 11 – Additional Information

Provide any additional information supporting the proposal, including information such as the public benefits that would be derived from constructing a new crossing as proposed.

Concrete crossing panel surfaces will be installed, and the roadway paved to match the elevation of the panels.

Non-mountable median islands will be installed on either side of the track. The south island will be 100 ft. from the NB crossing gate; the north island will be at least 60 feet from the SB crossing gate.

Section 12 – Waiver of Hearing by Respondent

Waiver of Hearing

The undersigned represents the Respondent in the petition to construct a highway-railroad grade crossing.

USDOT Crossing No.: _____

We have investigated the conditions at the proposedor existing crossing site. We are satisfied the conditions are the same as described by the Petitioner in this docket. We agree that a crossing be installed or reconstructed and consent to a decision by the commission without a hearing.

Dated at _____ , Washington, on the _____ day of

_____, 20. ____

_____
Printed name of Respondent

_____
Signature of Respondent's Representative

_____
Title

Name of Company

_____
Phone number and e-mail address

_____

_____
Mailing address

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Traffic Study

March 2013

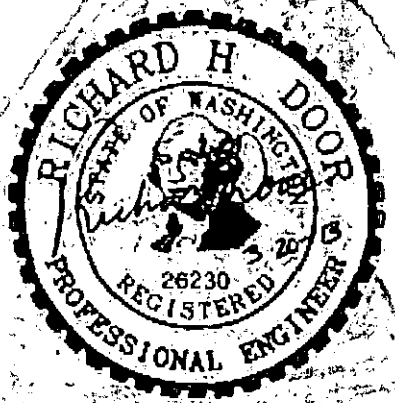
Prepared by:

J-U-B ENGINEERS, Inc.
2810 W. Clearwater Avenue, Suite 201
Kennewick, Washington 99336

Center Parkway Extension And Railroad Crossing

Traffic Study

March 2013



Prepared by:

Spencer Montgomery
Rick Door, PE

J-U-B

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Kennewick, Washington 99336

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Introduction

For several years the City of Richland has pursued the extension of Center Parkway to connect between Gage Boulevard on the south to Tapteal Drive on the north. This effort has been challenging because of existing railroad lines that operate parallel to and in between Gage Boulevard and Tapteal Drive. There are multiple purposes for connecting Center Parkway which include:

- Complete a grid network of functionally classified roadways
- Provide relief to congested arterial facilities
- Provide improved access to commercial areas and developable land
- Improve emergency response times

The City has worked closely with both the Burlington Northern Santa Fe Railroad and the Union Pacific Railroad to relocate railroad siding in the vicinity of Center Parkway. The City has also worked with the Port of Benton, who owns the remaining railroad line, to address issues with respect to a new railroad crossing that would be created by the Center Parkway Extension. This effort has produced substantial progress such that the Center Parkway is within reasonable reach. The City has also secured federal and state funding for the construction of the roadway including the railroad crossing.

The City has commissioned this traffic study to document conditions with the future roadway connection to contribute to design considerations and ensure safety with the new railroad crossing. This traffic study will summarize existing conditions, transportation need and benefit for the project, forecast 20-year traffic volumes with and without the roadway connection, evaluate traffic operational conditions with the Center Parkway Extension and make recommendations to safely accommodate the project including safe railroad crossing treatment.

Existing Conditions

This section will discuss existing land use and the roadway network in the area around Center Parkway. A vicinity map showing the study area is included in Figure 1.

Land Use

The study area around Center Parkway is dominated by commercial development, with the Columbia Center Regional Mall located immediately adjacent to Center Parkway. Gage Boulevard terminates at Center Parkway at the west entrance to the Columbia Center Mall. Many other commercial developments have also located in the vicinity of the Mall so as to take advantage of the activity generated in the area. To the west is a residential development which takes access from Steptoe Street approximately one-half mile to the west. To the northwest is undeveloped land within the City of Richland that is zoned for commercial development.

Roadway Characteristics

Center Parkway south of Gage Boulevard is designated as a principal arterial south to Quinault Avenue. North of Gage Boulevard Center Parkway is discontinuous in the vicinity of the railroad tracks and thus is identified as a future minor arterial roadway from north of Gage Boulevard to Tapteal Drive. Center Parkway also extends south of Quinault Avenue as a local roadway serving residential neighborhoods. In recent years Center Parkway was extended by the City of Kennewick and curves to the west to connect with Steptoe Street. The Richland Transportation Plan identifies Center Parkway to be extended one more mile to the west to connect with Leslie Road. It provides 3 lanes including a two-way-left-turn-lane with shoulders, curb, gutter, sidewalks and street lights and a speed limit of 30 MPH. A two lane roundabout is at the intersection with Gage Boulevard that also provides access to the Mall to the east. The traffic volume during the PM peak hour is nearly 800 vehicles south of Gage Boulevard.

Gage Boulevard is an east-west principal arterial roadway that extends from Center Parkway to the west and currently terminates at the foothills of Badger Mountain approximately 2.75 miles to the west. To the east of Center Parkway is one entrance to the Columbia Center Mall. The City Transportation Plan identifies Gage Boulevard to be extended westward through the saddle of Badger Mountain to connect with Dallas Road and the interchange with I-82 approximately three miles to the west. Gage Boulevard in the vicinity of Center Parkway is a 5 lane roadway, including a two-way left-turn lane with curb, gutter, sidewalks and streetlights with a speed limit of 40 MPH. The traffic volume during the PM peak hour is 1200 vehicles west of Center Parkway and 2500 vehicles east of Steptoe Street.

Steptoe Street is a north south principal arterial situated approximately 0.6 miles west of Center Parkway. This street was recently extended south of Gage Boulevard to connect with Center Parkway and additional extension is underway that will connect to Clearwater Avenue in Kennewick as well as 10th Avenue further to the south. Steptoe Street general includes 5 lanes including a two-way-left-turn-lane with shoulders, curb, gutter, sidewalks and street lights with a speed limit of 40 MPH. To the north Steptoe Street has an at-grade railroad crossing, connects with Tapteal Drive and provides access to SR 240. The traffic volume during the PM peak hour is 1400 vehicles north of Gage Boulevard.

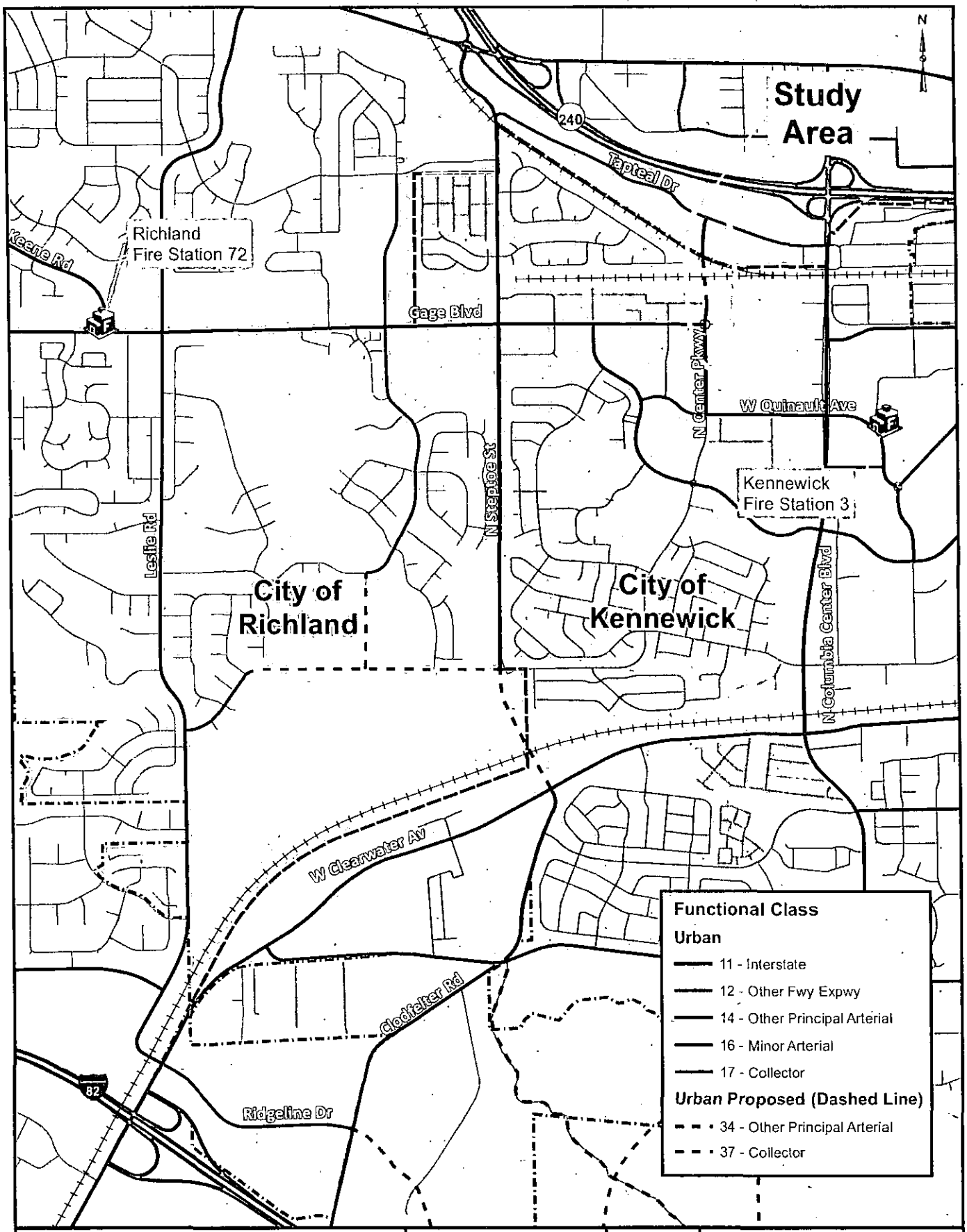
Columbia Center Boulevard is a north south principal arterial situated approximately 0.4 miles east of Center Parkway that gives major access to the most significant retail area in southeastern Washington. It provides connections to SR 240 at an interchange to the north and south to 10th Avenue. In the

vicinity of the Columbia Center Mall it is a 6 lane facility with curb, gutter, sidewalks and streetlights with a speed limit of 35 MPH. Columbia Center Boulevard provides a grade separated crossing of the railroad Several years ago, in an effort to alleviate congestion on Columbia Center Boulevard, a grade separated connection to Tapteal Drive for northbound traffic was provided via Tapteal Loop. The traffic volume during the PM peak hour is 2400 vehicles north of Quinault Avenue and 2600 vehicles south of SR 240.

Tapteal Drive is an east west collector roadway with a single through lane in each direction and a two-way left turn lane with shoulders. Although there is curb and gutter on both sides of the road, sidewalks are only provided where development has been implemented. It currently extends from Steptoe Street on the west to Columbia Center Boulevard (CCB) on the east, with a "T" intersection at either end. At the east end a grade separated overpass was built to limit movements at CCB to right-in/right-out only; eastbound Tapteal Drive traffic wishing to turn north on CCB must use the overpass to cross CCB and then make a right turn to go north. At the west end studies have been performed to extend Tapteal Drive westward to provide access to commercial area, cross the canal to the north and connect with Columbia Park Trail. The seed limit is 30 MPH. The traffic volume during the PM peak hour is 225 vehicles west of Columbia Center Boulevard.

Quinault Avenue between Center Parkway and Columbia Center Boulevard is a 5 lane east-west principal arterial roadway with a speed limit of 30 MPH. West of Center Parkway and east of Columbia Center Boulevard it is a 3-lane minor arterial roadway.

Grandridge Boulevard is generally an east-west minor arterial roadway that provides a by-pass of sorts to the Columbia Center Mall. It is 3 lanes, with extra turn lanes at some intersections. It connects on the west to Gage Boulevard west of Center Parkway and heads south, then east, crossing Center Parkway and Columbia Center Boulevard, then continues east and then north to connect with Canal Drive.



JUB ENGINEERS, INC.	Vicinity Map	FIGURE 1	City of Richland Center 0-000000095 Traffic Study

Transportation Need and Benefit

There are multiple purposes for the pursuit of the completion of Center Parkway across the railroad tracks to connect the two separate segments to the north and south. Some of the major objectives are discussed below.

Complete a Roadway Network

In planning for a transportation network within a region, city, subarea or even a neighborhood, a hierarchy of roadways that make up a system with varying functional classifications is beneficial for the movement of people and goods. A roadway system functions best when some roads are designed to primarily move traffic and other roadways are intended to provide access to adjacent parcels. Principal arterial roadways which limit access are typically spaced one mile apart, have higher speeds and are capable of moving more traffic. Local access roadways have lower speeds to more safely accommodate entering and exiting traffic; their capacity is much lower. Collector roadways serve to both move traffic and provide some access, these roads typically are situated in between arterial roadways and provide connections between local roads and arterials roadways.

One other component of a well-designed roadway network is the formation of a grid system with arterial and collector roadways running both north/south and east/west. In many communities there are natural and man-made barriers that prevent the completion of a fully functioning grid. These barriers include: rivers, canals, topographical features such as hills and canyons, freeways, airports, railroads, freeways or even large developments such as military installations. Often times bridges or other means to cross these features are constructed to complete a grid system, especially when nearby roadways reach their capacity.

Over the last three to four decades the area of Richland and Kennewick south of SR 240 and west of Columbia Center Boulevard has been developing. As this area has developed additional roadways have been planned and constructed to serve the area, many of which have been widened after being in existence for over 20 years. As evidence of this joint effort between the two cities of Richland and Kennewick to put in place a grid network of functionally classified roads the following improvements have been carried out in recent years:

- Steptoe Street was connected between SR 240/Columbia Park Trail and Gage Boulevard
- Tapteal Drive was constructed between Columbia Center Boulevard and Steptoe Street
- Columbia Center Boulevard was widened to 6 lanes and grade separated with the BNSF railroad being lowered
- Gage Boulevard was widened to 5 lanes
- Leslie Road was constructed to urban standards
- Center Parkway was extended south and west to future Steptoe Street
- Steptoe Street was extended south to connect to Center Parkway
- Construction is underway of Steptoe Street south to Clearwater Avenue, including a grade separation with the BNSF railroad, with opening anticipated in 2013

The completion of Center Parkway north of Gage Boulevard is merely one step of many to complete both a functionally classified network and a north-south component of a grid system to provide safe efficient movement of traffic into this area of the region.

Congestion Relief

As described above, Center Parkway is one piece of a planned network of roadways. Columbia Center Boulevard is one of the busiest roadways in the region. The extension and connection of Steptoe Street to Clearwater Avenue has long been planned to provide significant relief to that congested facility. However, as growth continues to fill in the undeveloped portions of the area, regional models indicate that Steptoe Street will also become congested. The significant commercial activity attracted to the area immediately around the Columbia Center Mall requires a well thought out plan for accommodating traffic demand. Having alternate routes and multiple roadways will allow traffic to move into and out of this congested area, enhancing the ability to provide services and let the region continue to develop without extending other urban infrastructure into areas not yet served.

Center Parkway has been planned to provide relief to both Columbia Center Boulevard as well as Steptoe Street, consistent with the philosophy of providing collector roadways parallel and in between arterial roadways.

Improved Access

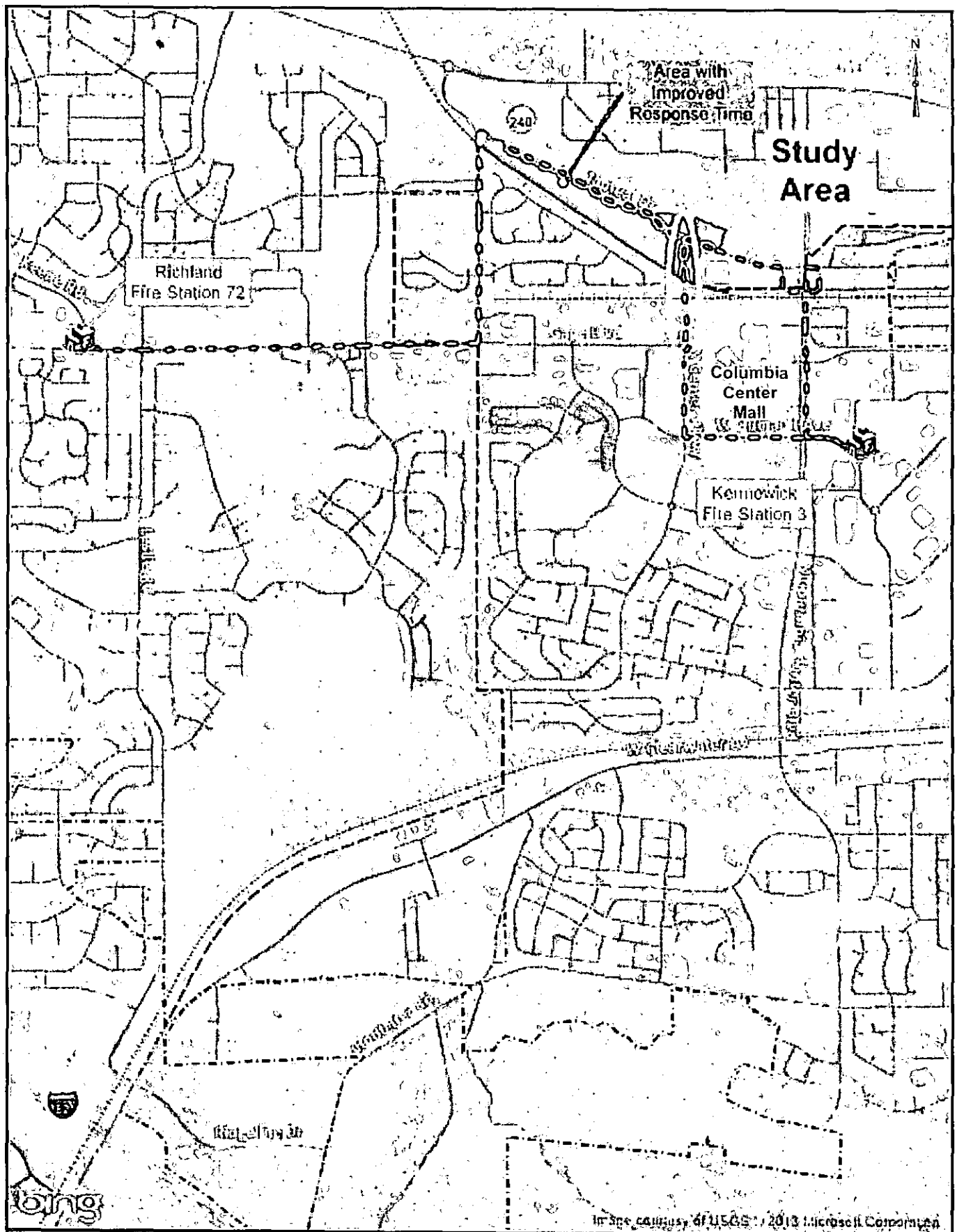
There is also significant land yet to be developed in this general area of the region, including nearly 60 acres between the railroad and SR 240 which has desirable visibility. Today this land has all utilities and collector roadway access on Tapteal Drive, however it is not as close to the rest of the commercial areas as it could be without Center Parkway, because of the barrier created by the railroad, so it lacks the synergy that commercial areas often seek.

Currently to get from the Columbia Center Mall to businesses on Tapteal Drive, traffic must make a left turn to go north on Columbia Center Boulevard, which is often congested, then proceed to go east on Yellowstone Avenue, south on Belfair Street and then proceed west on Tapteal Loop to access Tapteal Drive. With the Center Parkway connection, traffic will be able to exit the Mall area on the west side and go north at the roundabout at Gage Boulevard and proceed directly north to Tapteal Drive.

Improve Emergency Response

Emergency response to the area is provided by both the City of Richland, with a fire station on Gage Boulevard West of Leslie Road, and by the City of Kennewick with a fire station on Quinault Avenue east of Columbia Center Boulevard. An interagency agreement allows both jurisdictions to respond to incidents in the other jurisdiction, so coverage areas overlap. An evaluation of distances and emergency response times was performed by examining 4 potential routes: from each fire station with and without the proposed Center Parkway connection between Gage Boulevard and Tapteal Drive. Three of these routes are shown in Figure 2 (the fourth is not shown because using the new Center Parkway Extension is only a benefit from the City of Kennewick fire station because response from that site is quicker).

For comparative purposes an examination of response times to the Holiday Inn hotel immediately north and east of the Center Parkway crossing of the railroad tracks was undertaken. It was determined that from the Kennewick fire station that the current route on Columbia Center Boulevard and Tapteal Loop is 1.31 miles away and takes 2:48 minutes to respond, with the Center Parkway connection the distance would be 0.98 miles and only take 2 minutes, nearly a 30% reduction. From the Richland fire station the current route on Gage Boulevard, Steptoe Street and Tapteal Drive is 2.59 miles and would take 5:42 minutes, with the Center Parkway connection the distance is shortened to 2.02 miles and 4:18 seconds.



JUB ENGINEERS, INC.	Emergency Routes	FIGURE 2	CI0-000000098 Center Parkway Extension Traffic Study

Traffic Forecast and Operational Analysis

Traffic Volumes

For this traffic study a 20 year forecast of traffic volumes with Center Parkway was needed in order to perform operational analysis at the intersection of Center Parkway and Tapteal Drive. This forecast was needed to determine appropriate intersection and traffic control and ensure that traffic would not back up across the railroad tracks during peak times. A comparison of the benefits to other facilities was also desired. Thus a forecast of year 2033 traffic volumes with the existing roadway network (without the Center Parkway Extension) and with the Center Parkway Extension was prepared. The methodology to prepare those forecasts is presented below.

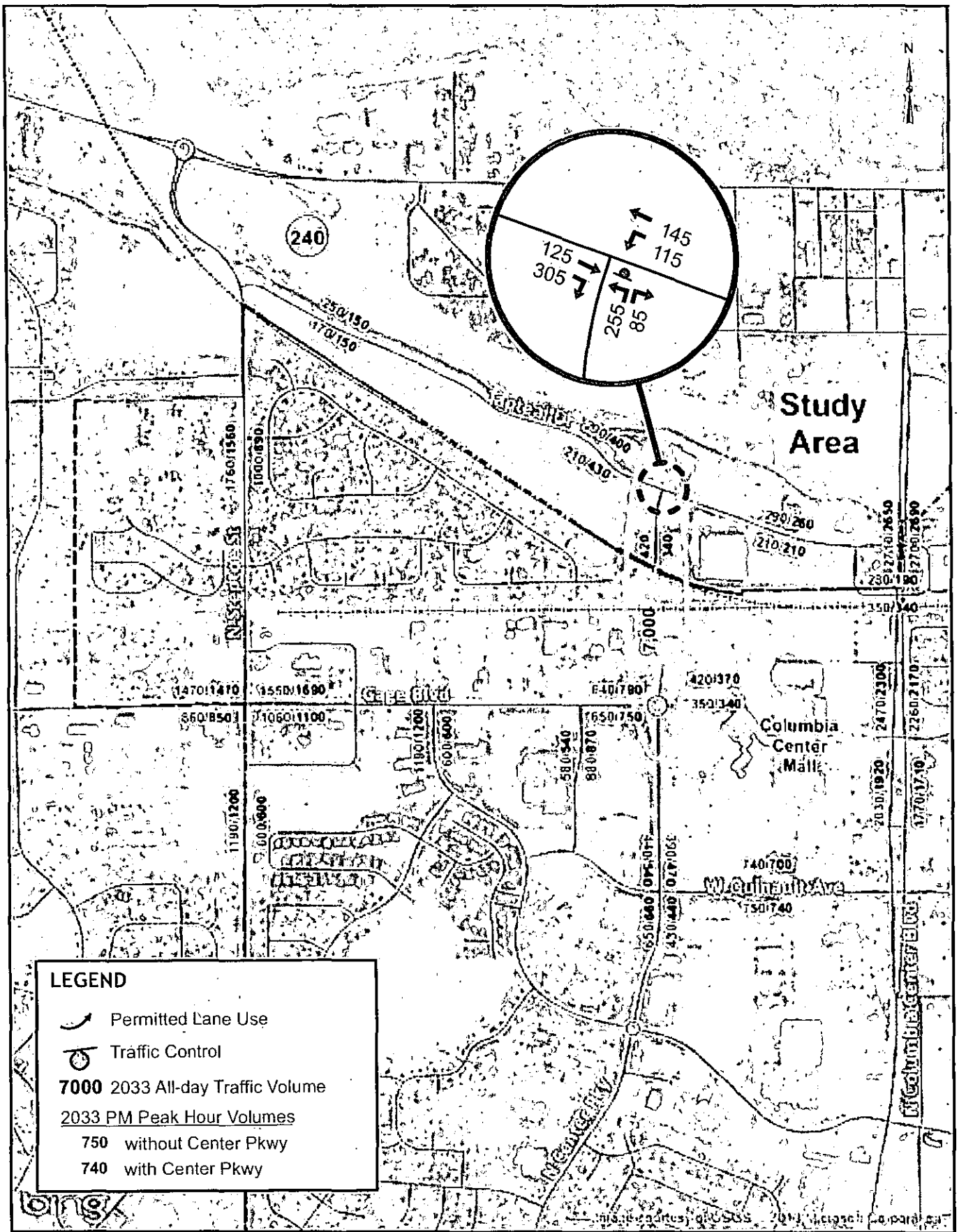
As a tool in preparing the Regional Transportation Plan, the Benton Franklin Council of Governments maintains a set of regional computerized transportation models. The model is developed using current traffic data and land uses in the region (representing year 2010) using Transportation Analysis Zones (TAZs) that are defined with various attributes describing the number and type of households and employees as well as other land uses within each zone. The model is calibrated using Federal Highway Administration procedures and methods. Once calibrated, changes in assumptions for future land uses and roadway networks can be made to determine the potential impacts of developments and/or roadway scenarios. Land use assumptions representing future conditions are developed to determine various impacts on the roadway network at a regional level. The future year model representing the year 2030 developed by BFCOG represents the best land use and roadway assumptions available at the time it was created.

It must be recognized that although traffic models are calibrated within acceptable ranges, the model is a tool in transportation planning and traffic forecasting. Professional judgment should be used in interpreting model outputs. To arrive at reasonable estimates of traffic volumes for the year 2033, a comparison of model results representing the year 2030 and 2010 was made; a comparison between 2010 model results and actual 2010 traffic counts was also made.

Specifically, an evaluation of how well the model currently performs and how closely existing traffic volumes are predicted by the model was made. An assumption was made that if the model currently predicts higher or lower traffic volumes than actually observed that this trend would continue into the future. The 2030 model was also compared to determine the growth in traffic between it and the 2010 model. Growth rates for the various roadway links being evaluated for this study were determined and continued from the year 2030 to 2033, but were applied to the year 2010 ground counts.

A few additional steps were undertaken to arrive at final projections for traffic volumes on applicable roadways. First, a cordon line was examined to ensure that the future volumes crossing a line immediately north of Gage Boulevard was within 1% in both scenarios. Since there is no existing traffic to compare against for the Center Parkway Extension some minor adjustments were needed. A second step was performed which balanced the volumes entering and exiting the two intersections at the end of the new Center Parkway Extension at Gage Boulevard and Tapteal Drive.

Average Daily Traffic (ADT) volumes were also prepared by examining the peak hour proportion of the all day volumes for the 2010 calibration counts along the cordon line used and applying that percentage to the final peak hour forecasts prepared. The forecast ADT for Center Parkway at the railroad crossing is 7,000 vehicles. A table in the Appendix shows all of the various volumes used for this forecast, with the volumes for both scenarios being shown in Figure 3.



JUB	2033 Traffic Forecast	FIGURE 3	City 0-000000100 Center Parkway Extension Traffic Study

Some observations with respect to anticipated adjustments to traffic patterns during the PM peak hour with Center Parkway Extension in place include:

- Traffic volumes on Columbia Center Blvd and Steptoe St will go down 210 and 310 respectively
- Traffic volumes on Gage Blvd west of Center Parkway and East of Steptoe Street will go up 250 and 180 respectively
- Volumes on Center Parkway south of Gage Boulevard will go up 220
- Volumes on Tapteal Drive will go up 330
- Volumes on Grandridge Boulevard south of Gage Boulevard will go down 50
- Quinault Avenue west of Columbia Center Boulevard will go down 50
- Columbia Center Blvd south of Canal Drive will go down 170
- On several roadways outside of those mentioned above, such as Gage Blvd west of Steptoe Street, Steptoe Street south of Gage Blvd

An opening day forecast of the ADT was also prepared. The BFCOG model had no such projection, so the growth rate along the cordon line of 1.6% per year was used and backed up from the 2033 forecast. The resulting 2014 ADT is 5200 vehicles.

Operational Analysis

An operational analysis was performed for the intersection of Center Parkway/Tapteal Drive, it being 660' from the railroad crossing. The intersection of Center Parkway/Gage Boulevard was not expected to cause any problems because it is approximately 1,000' from the railroad crossing and the intersection control is a roundabout which would provide better service that the stop sign north of the railroad crossing.

The analysis of Level-of-Service (LOS) is a means of quantitatively describing the quality of operational conditions of a roadway segment or intersection and the perception by motorists and passengers. Service levels are identified by letter designation, A – F, with LOS "A" representing the best operating conditions and LOS "F" the worst. Each LOS represents a range of operating conditions and one or more measures of effectiveness (MOE's) are used to quantify the LOS of a roadway element. For intersections the MOE used is average control delay (seconds) per vehicle. While there are several methodologies for estimating the LOS of intersections, the most commonly used is presented in the Highway Capacity Manual and is the methodology used in this study (HCM 2000). The Highway Capacity Manual LOS criteria for unsignalized intersections are summarized in Table 1.

Table 1. Level of Service Criteria for Unsignalized Intersections

Level of Service (LOS)	Average Control Delay (seconds/vehicle)
A	<=10
B	>10 - < 15
C	>15 - < 25
D	>25 - < 35
E	>35 - <50
F	>50

Source: *Highway Capacity Manual 2000*, Transportation Research Board, National Research Council, Washington, D.C., 2000.

For unsignalized intersections delay is based on the availability of gaps in the major street to allow minor street movements to occur. As traffic volumes increase the availability of gaps will decrease and greater delay tends to result in driver frustration and anxiety, loss of time, unnecessary fuel consumption, and contributes to unnecessary air pollution. The City of Richland standard for Level of Service is LOS "D" for minor street approaches at unsignalized intersections, meaning the overall intersection LOS must be "D" or better.

Peak hour traffic volumes shown in Figure 3 at the intersection of Center Parkway and Tapteal Drive were input into the Highway Capacity Software (HCS) along with the assumption that the intersection would have exclusive left turn lanes for each approach and a stop sign for northbound Center Parkway. This analysis was performed to determine the delay and Level of Service at the intersection as well as queue lengths for the northbound approach. The results of the capacity analysis and intersection delay for existing conditions are shown in Table 2 with LOS worksheet calculations included in the Appendix.

As shown in Table 2, the intersection of Center Parkway is forecast to operate with acceptable delay and LOS, with under 25 seconds of average vehicle delay and LOS C. It was determined that the average queue length during the PM peak hour would be approximately 4.09 vehicles for the left turn lane and less than 1 vehicle for the right turn lane. Thus, with an average vehicle length of 25 feet the queue length would not extend more than 125' of the total 660' feet back from Tapteal Drive to the railroad crossing and there is no concern that vehicles would be put in an unsafe situation of being stopped on the railroad tracks during a train event.

Table 2. Summary of 2017 Build Scenario Delay (sec) and Level of Service

Intersection	Northbound Left Turn	Northbound Right Turn
Center Parkway/ Tapteal Drive	24.7/C	10.6/B

LEGEND

22.5/C Delay and Level of Service using existing lane configurations

An analysis was also performed to determine the potential impact of a train event on the intersection of Center Parkway/Tapteal Drive. Trains operating on the Tri-City and Olympia Railway are typically relatively short trains of 10 – 12 cars. To be conservative, and allowing for increased rail demand, an evaluation of a train with 30 cars of average length of 50 feet was performed. Because it is not uncommon for trains to travel in the 10 MPH range, this speed was used for this analysis, however clearly a faster train would result in a shorter duration of the railroad crossing closure. It would take 1.7 minutes for a 30 car train to travel its 1500 foot length at 10 MPH. Adding 15 seconds to account for the railroad crossing gate arms amounts to just under 2 minutes of total closure during a train event or 3.33% of the peak hour. With 420 southbound vehicles during the peak hour it would be expected that approximately 14 vehicles might be stopped at the crossing during a train event. The average length of vehicle being 25' would amount to a queue length extending back from the railroad crossing of approximately 350', which would still leave 300' between the queue and Tapteal Drive. The driveway for the Holiday Inn and the property on the west side opposite the Holiday Inn could be blocked for a portion of the train event, however southbound vehicles destined for the Holiday Inn could use the center turn lane to proceed to their destination. Cross access between the two parcels on the west side could be a possible feature to better accommodate a train event.

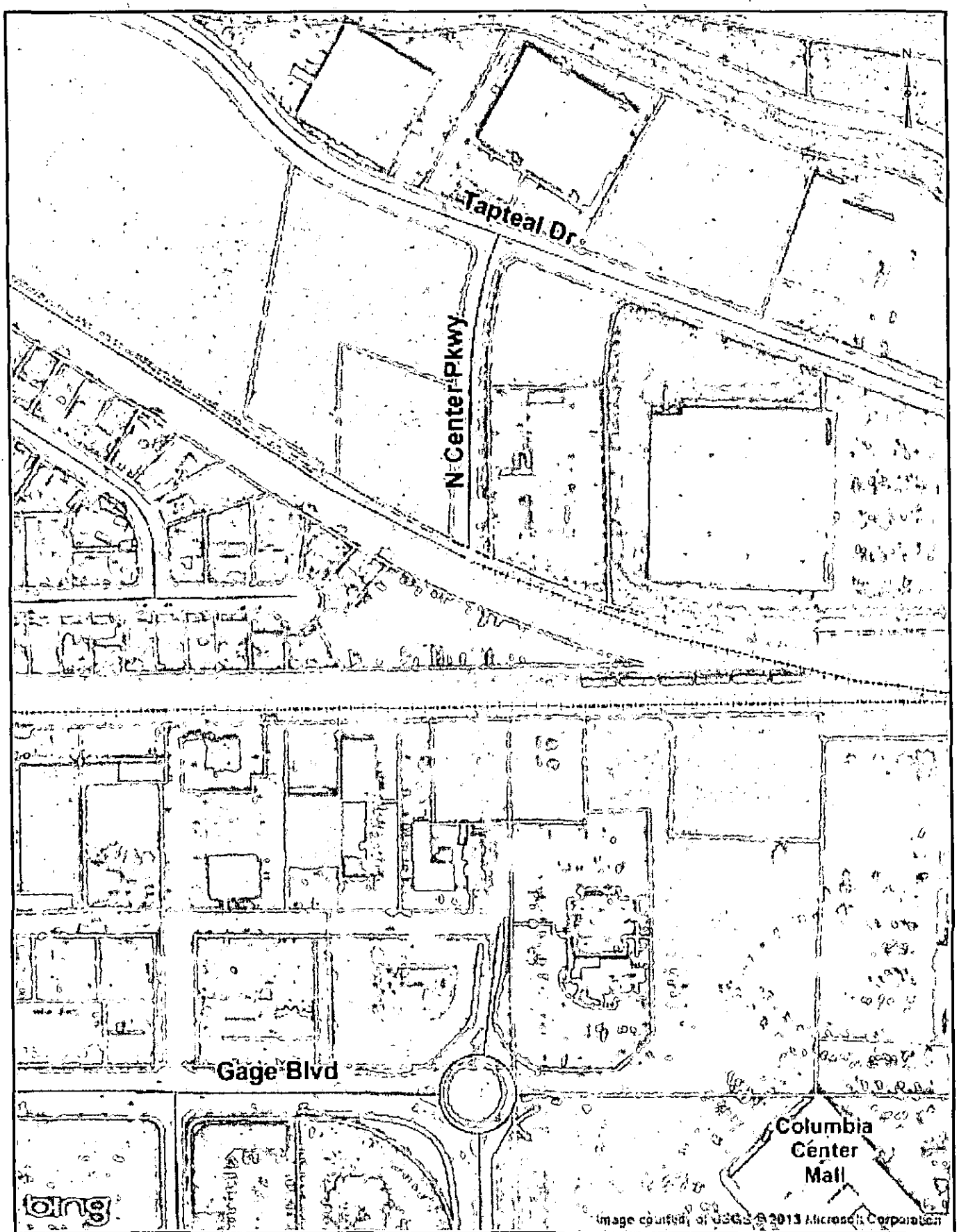
Center Parkway Project Area Considerations

The project area for the Center Parkway Extension is shown in Figure 4. There are two considerations worth discussion here for future development and consideration in the design of the roadway.

First, development on the east side of the road immediately north of the railroad crossing is the Holiday Inn which has two access points. The southern access is within 100' of the railroad crossing and the northern driveway is over 200' from the crossing. On the west side of Center Parkway there are two undeveloped lots. It is recommended that the southern lot on the west take its access opposite the northern access to the Holiday Inn, and that the northern lot take either share that access or take access from Tapteal Drive. In this fashion there will be enough spacing between the railroad crossing and the driveway accesses to Center Parkway.

Second, as a safety benefit to the railroad crossing, and to improve the environment for businesses and homes in the vicinity, the cities are interested in creating a Quiet Zone at the railroad crossing. To be most effective, a Quiet Zone at the Steptoe Street railroad crossing would be desirable as well.

The Federal Railroad Administration, since the early 1990's has undertaken a substantial technical and public process to put rules in place to require the sounding of train horns at all railroad crossings. The rule was finalized in 2005. Along with this requirement, provisions were included to allow the creation of Quiet Zones that have Supplementary Safety Measures (SSM's) at railroad crossings that "fully compensate for the absence of the train horn." These SSM's are physical constraints that prevent travelers from circumventing the gate arms at a railroad crossing, thus providing for a safer condition. Without the need for train horns the crossings are also more neighborhood and business friendly. In any event, when the train conductor sees the need, the train horn can be blown for improved safety. The purpose of the Quiet Zone is to eliminate the "routine" blowing of the train horn. For these particular crossings, a raised center median extending back 100' in length from the gate arms is the most cost-effective SSM. A formal procedure will need to be followed by the City of Richland to establish the Quiet Zone once the Supplementary Safety Measures are in place.



JUB ENGINEERS, INC.	0 125 250 Feet 1 inch = 250 feet	Center Parkway Extension Projet Area	FIGURE 4	City Center Parkway Extension Traffic Study

Summary and Recommendations

This Traffic Study has been performed to describe the efforts put forth by the City of Richland and the City of Kennewick to complete a roadway network that includes the extension of Center Parkway in order to accommodate growth in the region. Four primary objectives have been discussed that document the needs and benefits of extending Center Parkway between Gage Boulevard and Tapteal Drive that include:

- **Complete a grid network of functionally classified roadways** – The completion of Center Parkway north of Gage Boulevard is merely one step of many to complete both a functionally classified network and a north-south component of a grid system to provide safe efficient movement of traffic into this area of the region.
- **Provide relief to congested arterial facilities** - Center Parkway has been planned to provide relief to both Columbia Center Boulevard as well as Steptoe Street, consistent with the philosophy of providing collector roadways parallel and in between arterial roadways.
- **Provide improved access to commercial areas and developable land** – nearly 60 developable acres of commercial land between the railroad and SR 240 which has desirable visibility will have improved access and will gain the synergy that commercial areas often seek.
- **Improve emergency response times** – a significant area will have improved emergency response times, some with nearly a 30% reduction.

Traffic forecasts were prepared with and without the Center Parkway Extension for the year 2033. It is expected that the most significant change in traffic patterns will be a decrease in traffic volumes on Columbia Center Boulevard and Steptoe Street of 210 and 310 respectively during the PM peak hour. An examination of traffic queues in the vicinity of the railroad crossing was performed and it was estimated that the northbound queue would be less than 125 feet back from Tapteal Drive with over 650 feet of distance between Tapteal Drive and the railroad crossing.

For the undeveloped land west of Center Parkway between the railroad and Tapteal Drive, it is recommended that the southern lot on the west take its access opposite the northern access to the Holiday Inn, and that the northern lot take either share that access or take access from Tapteal Drive. In this fashion there will be enough spacing between the railroad crossing and the driveway accesses to Center Parkway.

Lastly, as a safety benefit to the railroad crossing, and to improve the environment for businesses and homes in the vicinity, a 100' median extending back from the railroad crossing gate arms should be installed. This is recommended as a Supplementary Safety Measures (SSM's) that will "fully compensate for the absence of the train horn" and allow the establishment of a "Quiet Zone" per the Federal Railroad Administration rules. This SSM is a physical constraint that prevents travelers from circumventing the gate arms at a railroad crossing, thus providing for a safer condition. The crossing at Steptoe Street should also be included in the Quiet Zone

CENTER PARKWAY TRAFFIC STUDY
TRAFFIC FORECAST

	2010				2030 Model				2033 *					
	Calibration Ground Counts		Regional Model		Without Center Pkwy		With Center Pkwy		Without Center Pkwy		With Center Pkwy		2033 ADT	
Location	NB/WB	SB/EB	NB/WB	SB/EB	NB/WB	SB/EB	NB/WB	SB/EB	NB/WB	SB/EB	NB/WB	SB/EB	w/o Center Pkwy	with Center Pkwy
Tapteal W/CCB	120	101	132	163	299	326	265	266	290	210	260	210	4600	4400
Tapteal W/Center Pkwy	120	101	132	163	299	326	445	602	290	210	400	430	4600	7700
Tapteal E/ Steptoe	82	73	136	153	399	344	232	307	250	170	150	150	3900	2800
CCB s/SR 240	1906	1981	1618	1724	2182	2250	2180	2202	2700	2710	2690	2650	50100	49400
Mall E/Ctr Pkwy	314	296	200	265	255	303	217	296	420	350	370	340	7100	6600
Gage W/Steptoe	1144	765	1117	1014	1370	1081	1368	1070	1470	860	1470	850	21600	21500
Gage E/Steptoe	1424	1117	1534	1305	1593	1177	1740	1228	1550	1060	1690	1100	24200	25800
Gage W/Ctr Pkwy	596	595	735	826	756	856	945	978	640	650	790	750	11900	14300
Tapteal Overpass	156	95	138	55	234	129	157	133	280	230	190	240	4700	4000
Leslie N/Gage	471	662	408	645	476	757	470	754	580	810	570	810	12900	12800
Steptoe N/Gage	670	825	833	784	1183	1597	1051	1414	1000	1760	890	1560	25600	22700
Center Pkwy N/Gage	--	--	--	--	--	--	271	427	--	--	340	420	--	7000
CCB N/Canal Dr	1603	1815	1676	1825	2252	2361	2171	2205	2260	2470	2170	2300	43800	41400
Leslie S/Gage	625	984	672	907	782	917	779	915	760	1040	760	1040	16700	16700
Steptoe S/Gage	--	--	--	--	574	1132	573	1140	600	1190	600	1200	16600	16700
Grandridge S/Gage	967	755	620	675	540	498	530	459	880	580	870	540	13500	13100
Center Pkwy S/Gage	384	414	575	601	550	603	651	761	390	440	470	540	7700	9400
CCB S/Canal Dr	1275	1478	1514	1629	2003	2133	1935	2022	1770	2030	1710	1920	35200	33600
Center Pkwy s/G'Ridge	256	498	270	410	429	512	445	522	430	650	440	660	10000	10200
Quinault W/CCB	627	567	865	841	976	1054	925	1042	740	750	700	740	13800	13300
Cordon Line N/Gage	2744	3302	2917	3254	3911	4715	3963	4800	4120	5270	4160	5330	87000	87900

* el Growth Rate Perpetuated from 2020 to 2033

TWO-WAY STOP CONTROL SUMMARY

General Information		Site Information	
Analyst	Montgomery	Intersection	Tapteal Dr/Center Parkway
Agency/Co.	JUB ENGINEERS	Jurisdiction	City of Richland
Date Performed	3/13/2013	Analysis Year	2033
Analysis Time Period	PM Peak Hour		

Project Description: Center Parkway Extension

East/West Street: Tapteal Drive	North/South Street: Center Parkway
Intersection Orientation: East-West	Study Period (hrs): 0.25

Vehicle Volumes and Adjustments

Major Street	Eastbound			Westbound		
Movement	1	2	3	4	5	6
	L	T	R	L	T	R
Volume (veh/h)		125	305	115	145	
Peak-Hour Factor, PHF	0.90	0.90	0.90	0.90	0.90	0.90
Hourly Flow Rate, HFR (veh/h)	0	138	338	127	161	0
Percent Heavy Vehicles	0	--	--	0	--	--
Median Type	Raised curb					
RT Channelized			0			0
Lanes	0	1	0	1	1	0
Configuration			TR	L	T	
Upstream Signal		0			0	

Minor Street	Northbound			Southbound		
Movement	7	8	9	10	11	12
	L	T	R	L	T	R
Volume (veh/h)	255		85			
Peak-Hour Factor, PHF	0.90	0.90	0.90	0.90	0.90	0.90
Hourly Flow Rate, HFR (veh/h)	283	0	94	0	0	0
Percent Heavy Vehicles	0	0	0	0	0	0
Percent Grade (%)		0			0	
Flared Approach		N			N	
Storage		0			0	
RT Channelized			0			0
Lanes	1	0	1	0	0	0
Configuration	L		R			

Delay, Queue Length, and Level of Service

Approach	Eastbound	Westbound	Northbound			Southbound		
Movement	1	4	7	8	9	10	11	12
Lane Configuration		L	L		R			
v (veh/h)		127	283		94			
C (m) (veh/h)		1097	458		738			
v/c		0.12	0.62		0.13			
95% queue length		0.39	4.09		0.44			
Control Delay (s/veh)		8.7	24.7		10.6			
LOS		A	C		B			
Approach Delay (s/veh)	--	--	21.2					
Approach LOS	--	--	C					

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DAVID EVANS AND ASSOCIATES INC.

Meeting Record

Project:	City of Richland – Center Parkway At-Grade Crossing
DEA Project #:	CRCH0000-0001
Date:	December 11th, 2012
Time:	9:30 A.M. until 12:00 P.M.
Subject:	Center Parkway proposed at-grade highway-railroad Crossing Diagnostic Meeting
Attendees:	Pete Rogalsky, City of Richland; Jeff Peters; City of Richland; Julie Nelson, City of Richland; Kathy Hunter, Washington Utilities and Transportation Commission (UTC); John Deskins, City of Kennewick; Steve Plummer, City of Kennewick; Bruce Beauchene, City of Kennewick; Spencer Montgomery, JUB Engineers; Susan Grabler, David Evans and Associates; Kevin Jeffers, David Evans and Associates
Invited but not in attendance	Rhett Peterson, Tri-City and Olympia Railroad; Scott D. Keller, Port of Benton
Location:	Current end of street near 1970 Center Parkway, Richland, WA 99352
Copies to:	Invitees, project file

Introductions

City of Richland

Pete Rogalsky, Public Works Director
Jeff Peters, Transportation & Development Manager
Julie Nelson, Project Engineer

City of Kennewick

John Deskins, Traffic Engineer
Steve Plummer, Engineering Services Manager
Bruce Beauchene, City Engineer

Washington Utilities and Transportation Commission (UTC)

Kathy Hunter, Rail Manager

David Evans and Associates (DEA)

Susan Grabler, Grade Crossing/Quiet Zone Specialist
Kevin Jeffers, Project Manager

JUB Engineers

Spencer Montgomery, Transportation Planner

Items Discussed:

City of Richland (City) intends to petition the UTC to allow the opening of a new at-grade crossing at Center Parkway over the Port of Benton (Port) tracks operated by Tri-Cities and Olympia Railroad (TCRY). They are leading the project under an inter-local agreement with the City of Kennewick. The two cities will have joint ownership and maintenance responsibilities for the roadway infrastructure.

The proposed roadway would run north-south and connect the existing dead-end Center Parkway in Richland to the existing round-a-bout at North Center Parkway and West Gage Avenue in Kennewick.

The proposed roadway will cross the Port tracks just south of the current dead-ended Center Parkway. The north property line of the Port railroad is the boundary of the two cities, making the proposed at-grade crossing in the City of Kennewick.

While invited, the TCRY and Port did not have representatives in attendance. Thus, no one at the meeting entered the Port right-of-way.

There are currently two sets of tracks at the proposed highway-railroad crossing. The TCRY holds train operating rights on the northern-most set of tracks that extend to the Port of Benton, north of Richland. The Port of Benton owns the rail infrastructure and the underlying right-of-way. There are two tracks on the Ports right-of-way at the proposed Center Parkway highway-railroad crossing; based on aerial photos, the northerly track is the "main" line track; the south track is a siding track. The turnouts (aka switches) to the siding are about 500 feet to the east and about 1,600 feet to the west of the proposed crossing.

It is believed that the train speed on the main track is about 35 mph; the siding speed is believed to be no higher than 10 mph. The Federal Railroad Administration (FRA) crossing database for the Steptoe Road at-grade crossing (USDOT Number 310397T) about 1/3rd of a mile to the west suggests that six trains per day traverse the proposed crossing, but this data has not been updated since 2004. Further, the Port and the City both anticipate increases in industrial development on the rail line which could increase the number or length of trains using the branch line.

In the past, TCRY is believed to have used the siding to interchange cars with Union Pacific Railroad (UPRR). It is now understood that TCRY moves cars bound for UPRR further into Kennewick.

Both UPRR and BNSF Railway have trackage rights into the Port of Benton, based on a recent court case. The City has agreements with both the BNSF and UPRR to not oppose a petition for the proposed Center Parkway at-grade highway-railroad crossing. The UPRR agreement includes a clause that UPRR will no longer interchange cars at the proposed at-grade crossing location. The City also has an agreement with the Port of Benton that would grant an easement for the roadway once a Crossing Order is received through the UTC process.

About 200 feet south of Port tracks are two UPRR tracks. These tracks are no longer being used. The City of Kennewick has purchased the ROW for the roadway from Union Pacific. The City intends to remove the tracks from the roadway ROW as part of the project, so no at-grade crossing of these two tracks will be required.

DEA presented a three-page conceptual design of what the proposed at grade crossing might look like. This depicts only the "main line" Port track will be crossed and assumes the "siding track" will be relocated or removed from the crossing. It was discussed that elimination of the "siding" track would likely be a condition of approval of the petition. The crossing is conceptually designed to include active warning devises including bells, flashing lights, and gates. While the conceptual design depicts four lanes, the City advised that it will only have two travel lanes, a center turn lane and two bike lanes. Sidewalks on both sides of the proposed roadway are also included to be located behind the automatic warning devices per the MUTCD.

During the meeting, it was discussed that non-mountable medians would be included at the proposed Port crossing; the southern median would be at least 100 feet from the crossing arm protecting the

nearest track. The northern median would be 60 feet long to accommodate the existing hotel driveway in the northeast quadrant of the proposed crossing.

It was also discussed that a quiet zone for the crossing would likely be pursued if the crossing is approved by the UTC. This may result in the use of four-quadrant gates rather than the two-quadrant gates shown in the conceptual design; however, this will not be a part of the initial petition. The Quiet Zone process for the crossing was briefly discussed. The UTC's only role in such actions is to provide comments on the safety of the proposal; it is the FRA that makes the final decision on Quiet Zone applications.

Emergency services were discussed. The City has a fire station and EMT service at 710 Gage Boulevard, while the City of Kennewick has a fire station and EMT service at 7400 W Quinault Avenue. It appears that the Kennewick station is closer to the existing hotel just north of the proposed crossing. A map showing the emergency services covering this area should be provided to the UTC during the petition process.

The UTC petition process was discussed. The UTC will require the City to provide justification for why a grade separation is not feasible at this location. Technical infeasibility is a major consideration at this location due to grades approaching it from the north and the Holiday Inn Express main entrance that would be eliminated. Once the petition is submitted, the UTC will notify all stakeholders who have not waived the UTC hearing process. The stakeholders will have 20 calendar days to respond to the petition. If all stakeholders are not in support of the petition, UTC staff will recommend that the matter be set for hearing. The City should also provide the projected AADT for the Center Parkway crossing, which will be required in the UTC petition.

Center Parkway Extension

Grade Separation Evaluation

Center Parkway and Tri-City and Olympia Railroad

The Cities of Richland and Kennewick are seeking to extend Center Parkway from Gage Blvd north to Tapteal Blvd. The extension is part of the City of Richland's and City of Kennewick's long term transportation plans. The project would construct a 3-lane roadway for 750 feet starting on the north side of the Gage Blvd Roundabout crossing the railroad tracks and connecting into the existing improvements just south of Tapteal Blvd.

This report evaluates the feasibility of constructing a grade separated crossing in lieu of an at-grade crossing at this location. It is intended to be used to support a petition to the Washington Utilities and Transportation Commission.

EXISTING CONDITIONS:

Railroad

- To the East of the proposed Center Parkway crossing, approx. 1,900 feet, there is a railroad bridge crossing over Columbia Center Blvd.
- To the West of the proposed Center Parkway crossing, approx. 3,800 feet, there is an at-grade signalized crossing of Steptoe St.
- For evaluation purposes, the track is assumed to be on an approx. 0.11% grade from Steptoe St. to Columbia Center Blvd.

Center Parkway

- The existing width of Center Parkway is 46 feet.
- Improvements stop just north of Gage Blvd at the Private Dr and start just north of the railroad tracks.
- The roadway grade approaching the railroad from the south is descending at 0.5%, but approaching the railroad from the north, the roadway is climbing at up to 6.0%.

DESIGN CRITERIA:

Railroad

- Max track grade of 1%.
- Minimum vertical clearance of 23.33 feet.
- Minimum horizontal clearance of 25 feet either side of track.

Center Parkway

- The width of Center Parkway in the area of the railroad will be 46 feet.
- Minimum vertical clearance of 16.5 feet.
- Minimum horizontal clearance is the width of the roadway section.

EVALUATED OPTIONS:

Option #1-Maintain Center Parkway elevation and lower track either side of crossing.

- This option is not feasible due to the impacts at the Columbia Center Blvd crossing. In order to lower the track and maintain the elevation at Center Parkway, the grade past the existing railroad bridge and Columbia Center Blvd would need to be lowered over 18 feet. Columbia Center Blvd is a highly travelled arterial and the surrounding area around the crossing is developed. Therefore, the impacts to the traveling public and properties rule out this option. *(Due to its obvious infeasibility; no exhibit has been created for this option.)*

Option #2-Lower railroad and elevate Center Parkway

- This option is not feasible because the Center Parkway profile design will not meet City design criteria. The roadway grade would be over 8%. Further the fill depth would be over 19 feet restricting access to existing businesses as well as adjacent properties. It would also require extensive retaining wall systems along the railroad as well as Center Parkway. *(See Grade Separation Evaluation #2 Exhibit)*

Option #3-Maintain railroad elevation and lower Center Parkway under track.

- This option is not feasible because the excavation depth along Center Parkway would be over 23 feet. This would restrict access to existing businesses as well as adjacent properties. It would require an extensive retaining wall system along Center Parkway. It should also be noted that a rail over roadway crossing is generally not desirable to railroads as this tends to increase maintenance costs. *(See Grade Separation Evaluation #3 Exhibit)*

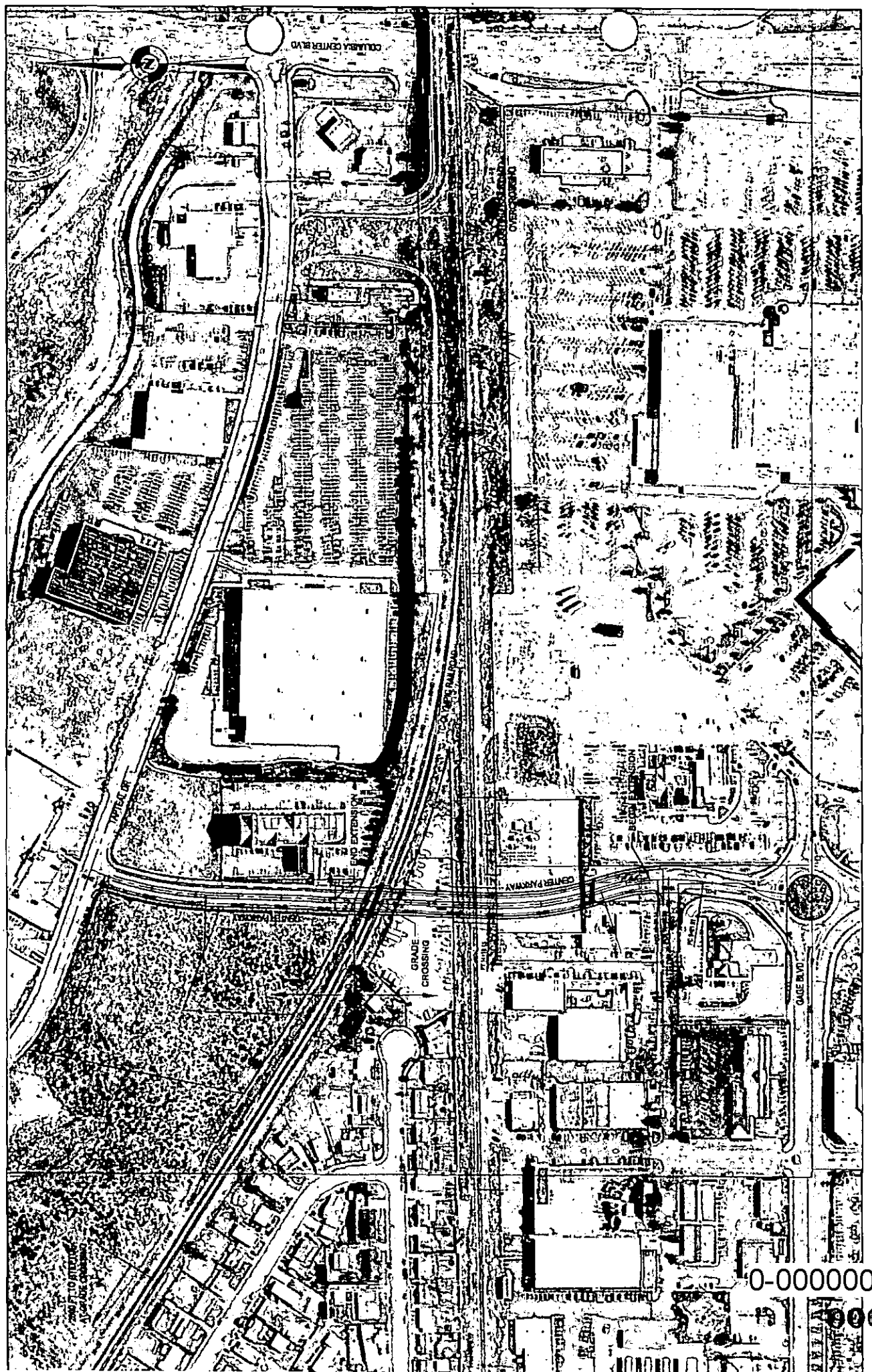
Option #4-Raise railroad and lower Center Parkway.

- This option is not feasible because the fill depth along the track would be over 18 feet requiring an extensive retaining wall system to keep the fill within the right of way. Raising the grade of the railroad would likely require fill slopes that could impact the loop road parallel to the tracks that goes over Columbia Center. Similarly, fill slopes would likely impact private properties on either side of Center Parkway. Although this has the least grade impact along Center Parkway it would still require an excavation depth over 6 feet and would restrict access to existing businesses as well as adjacent properties. *(See Grade Separation Evaluation #4 Exhibit)*

Summary

In looking at a grade separation, the most desirable configuration is for the roadway to go over the railroad. Options #1 and #2 evaluate what would be required to provide a roadway overcrossing of the railroad. Neither of these options are feasible geometrically. The next configuration is for the railroad to go over the roadway. Options #3 and #4 evaluate what would be required to provide a roadway undercrossing of the railroad. Option #3 is not feasible due to the excavation depths and access issues. Option #4 is not feasible because, like Option #3, the depths of the fills restrict access to the businesses and adjacent properties. In addition, Option #3 and #4 would be difficult to construct while maintaining rail operations.

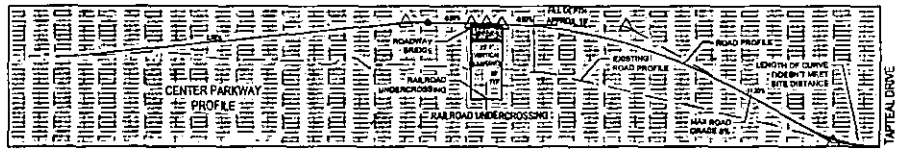
Based on this analysis, a grade separated crossing is not feasible at this location.

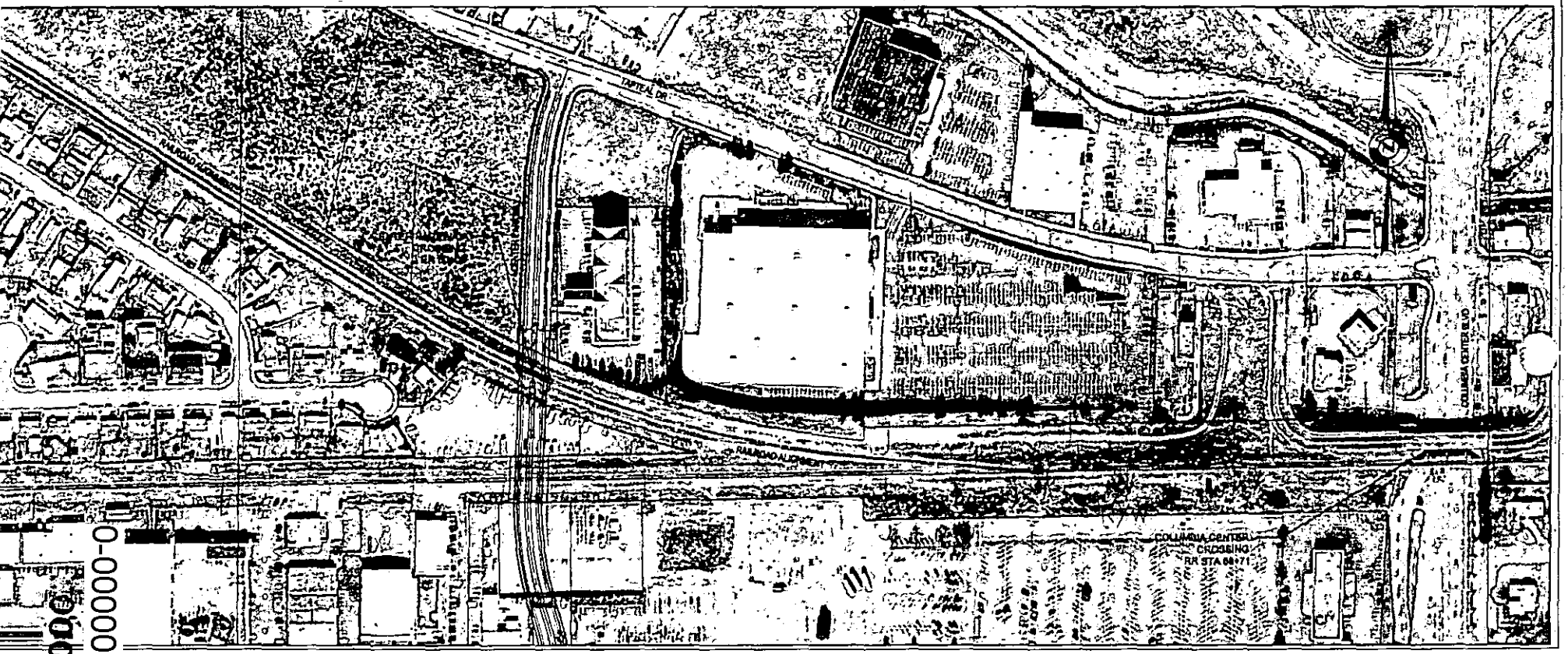

COLUMBIA CENTER BLVD
OVERCROSSING
CENTER PARKWAY
GRADE CROSSING
GAGE BLVD

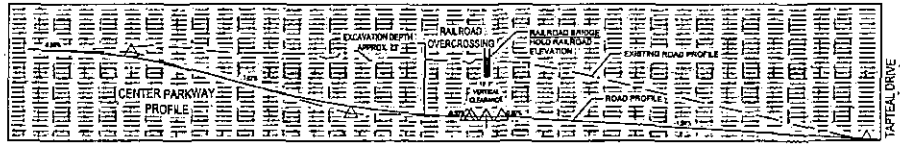
GRADE SEPARATION EVALUATION #2
RAILROAD UNDER ROADWAY

- HOLD RR ELEVATION AT COLUMBIA CENTER RR BRIDGE
- GRADE RR TOWARDS CENTER PARKWAY USING A MAX -1% SLOPE
- CONSTRUCT ROADWAY BRIDGE OVER RAILROAD FOR CENTER PARKWAY CROSSING

OPTION DOES NOT WORK GEOMETRICALLY:
- GRADE ON CENTER PARKWAY EXCEEDS MAX ROADWAY GRADES ALLOWED
- FILL DEPTH IS IN EXCESS OF 19' WOULD RESTRICT ACCESS TO PROPERTIES ALONG CORRIDOR.
- RETAINING WALL HEIGHTS GREATER THAN 19' WOULD BE REQUIRED.



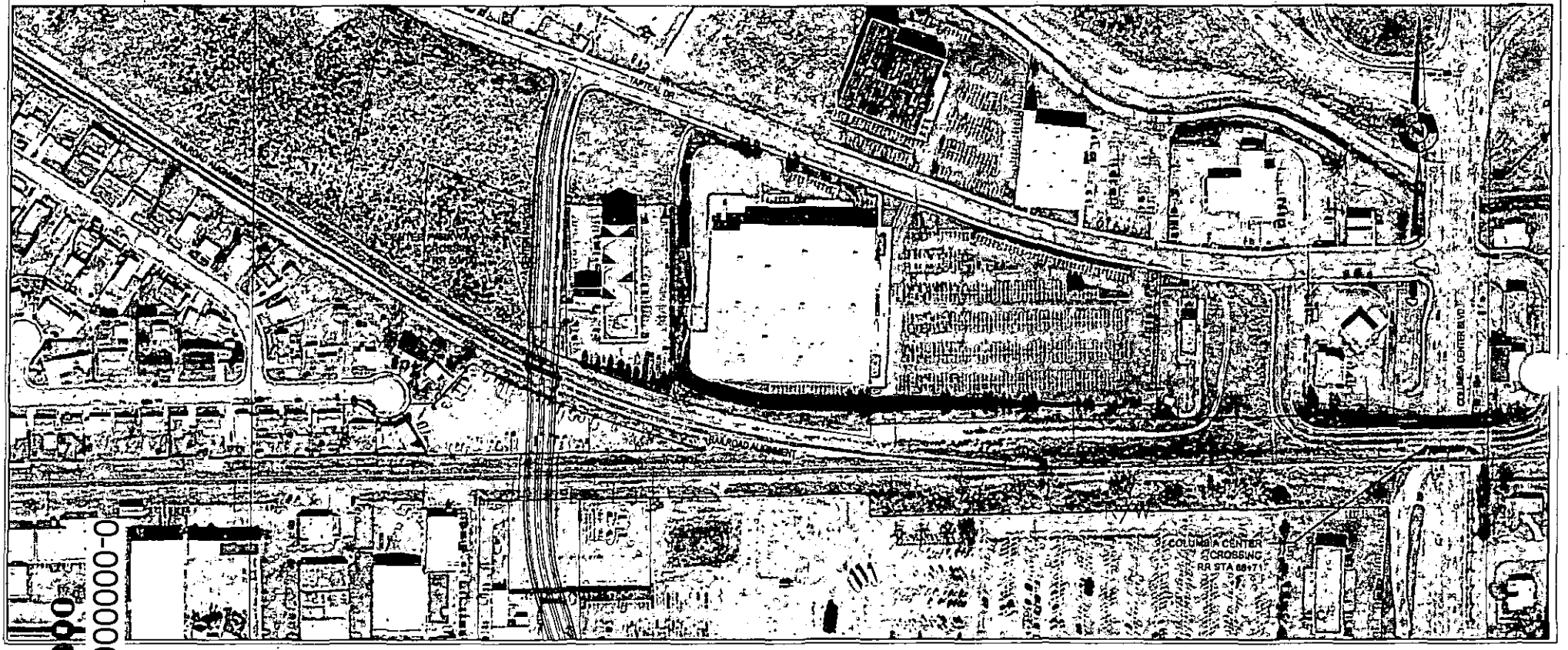


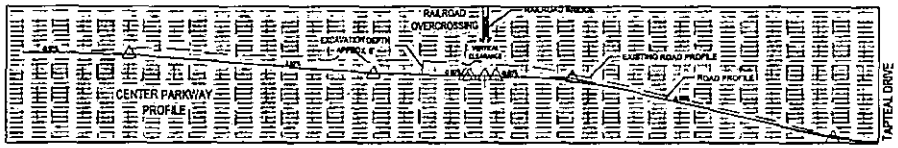


GRADE SEPARATION EVALUATION #3
ROADWAY UNDER RAILROAD

- HOLD RR ELEVATION AT CENTER PARKWAY
- GRADE ROADWAY UNDER RAILROAD
- CONSTRUCT RR BRIDGE OVER ROADWAY FOR CENTER PARKWAY CROSSING

OPTION DOES NOT WORK GEOMETRICALLY:
- EXCAVATION DEPTH IS IN EXCESS OF 23' WOULD RESTRICT ACCESS TO PROPERTIES ALONG CORRIDOR.
- RETAINING WALL HEIGHTS GREATER THAN 23' WOULD BE REQUIRED.

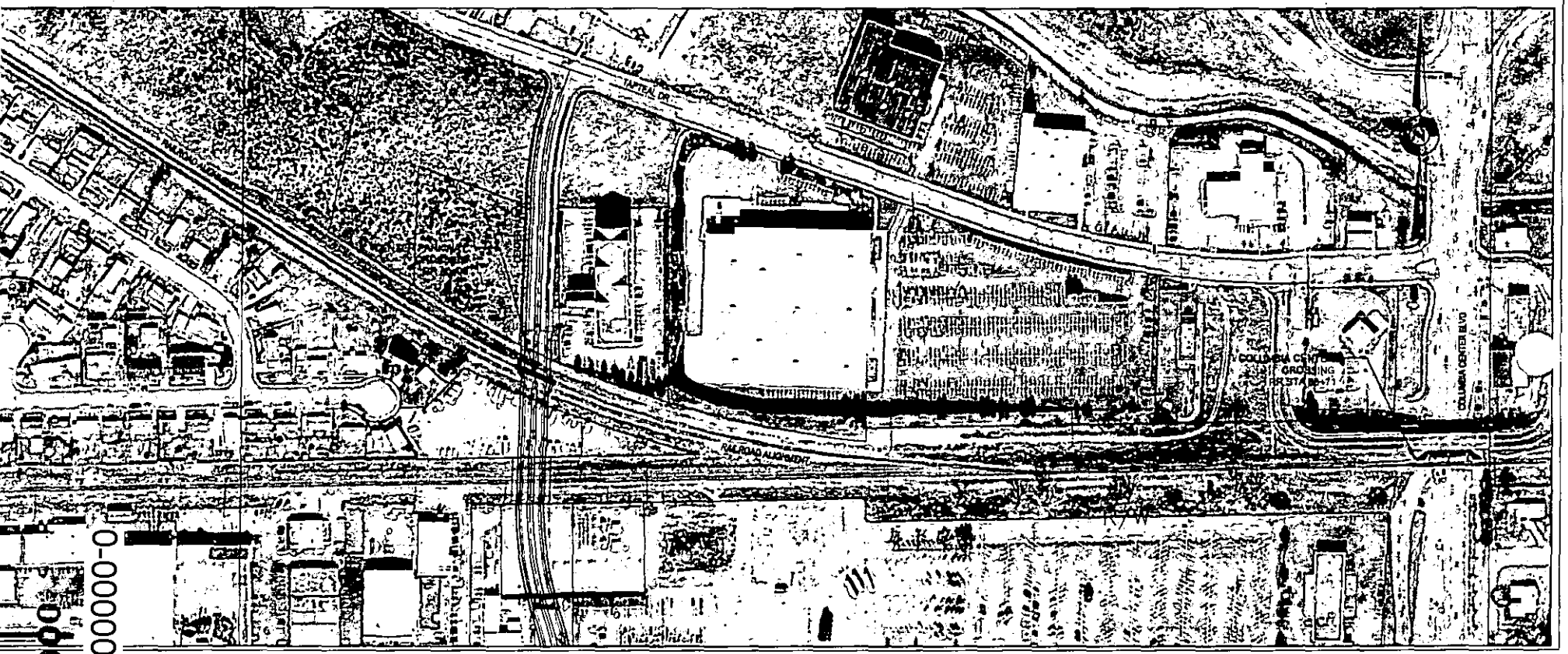




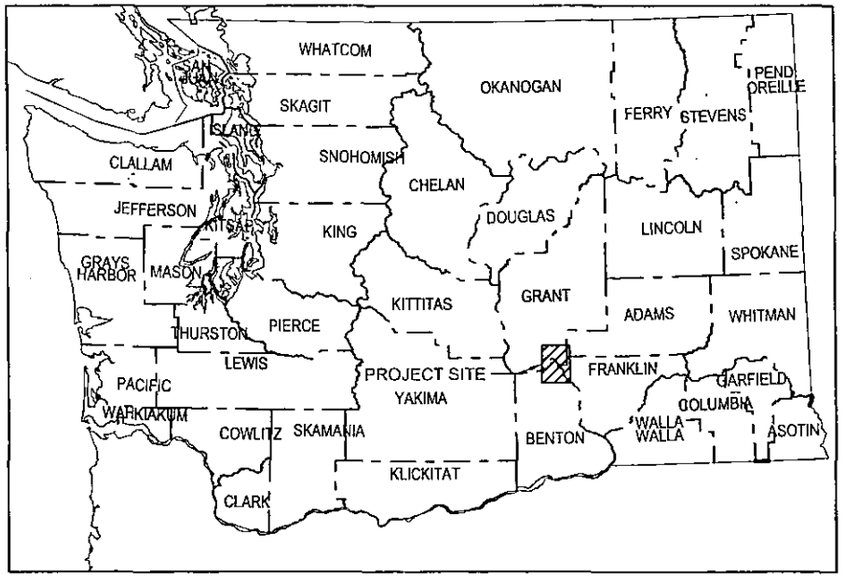
GRADE SEPARATION EVALUATION #4
ROADWAY UNDER RAILROAD

- HOLD RR ELEVATION AT COLUMBIA CENTER RR BRIDGE
- GRADE ROADWAY TOWARDS CENTER PARKWAY USING A MAX +1% SLOPE
- CONSTRUCT RR BRIDGE OVER ROADWAY FOR CENTER PARKWAY CROSSING

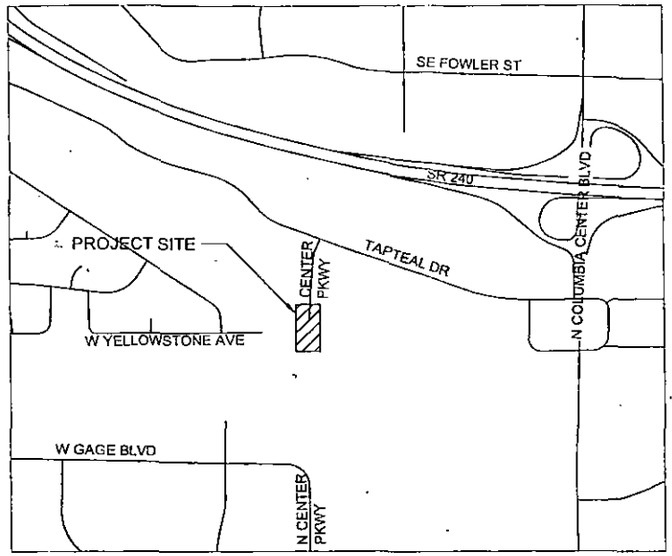
OPTION DOES NOT WORK GEOMETRICALLY:
- EXCAVATION DEPTH IS IN EXCESS OF 6' WOULD RESTRICT ACCESS TO PROPERTIES ALONG CORRIDOR.
- RETAINING WALL HEIGHTS GREATER THAN 18' WOULD BE REQUIRED ALONG THE RAILROAD.



CENTER PARKWAY
AT-GRADE CROSSING DESIGN



VICINITY MAP



LOCATION MAP

DRAWING LIST

SHEET NO.	PLANS
1	COVER SHEET / PROJECT AREA
2	AERIAL MAP
3	AT-GRADE CROSSING PLAN
4	AT-GRADE CROSSING WITH AERIAL
5	AT-GRADE CROSSING DETAILS
6	CENTER PARKWAY PROFILES

000046

COVER SHEET / PROJECT AREA
CENTER PARKWAY
AT-GR(0-000000119
Richland, Washington

DAVID EVANS AND ASSOCIATES INC.
3700 Pacific Hwy. East, Suite 311
Tacoma Washington 98424
Phone 2539239790

PRELIMINARY CONTENT SUBJECT TO CHANGE

REVISIONS: APPD.

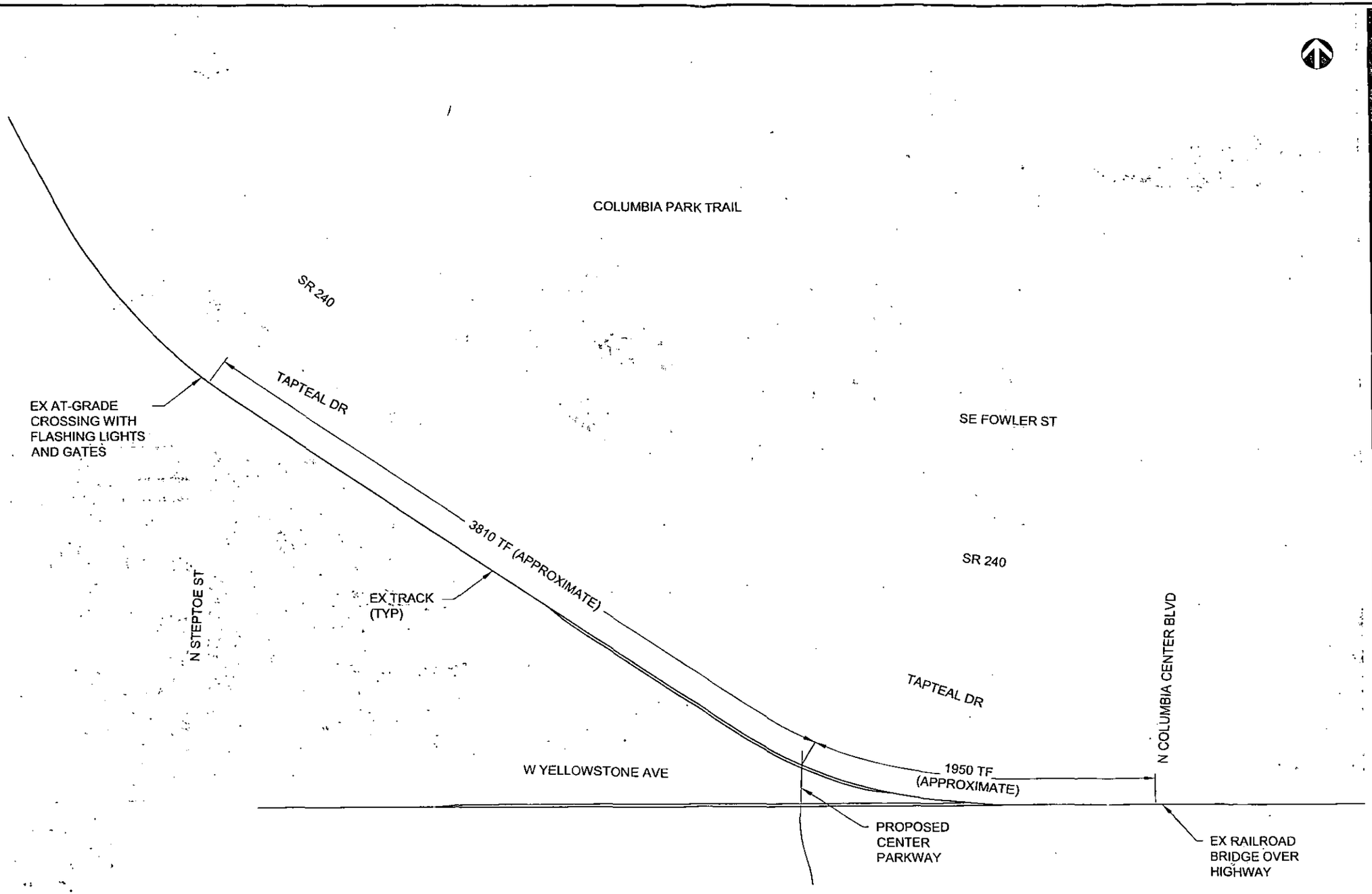
DATE: 01-14-2013
DESIGN: KMJE
DRAWN: CDB
CHECKED:
REVISION NUMBER:

SCALE: NOT TO SCALE

PROJECT NUMBER:
CRCH00000001

DRAWING FILE:
rcv01circh01.dwg

SHEET NO.
1
SHEET 1 OF 6



AERIAL MAP
CENTER PARKWAY
AT-GR0-000000120
Richland, Washington

DAVID EVANS AND ASSOCIATES INC.
3700 Pacific Hwy. East, Suite 311
Tacoma, Washington 98424
Phone 2539223760

PRELIMINARY CONTENT SUBJECT TO CHANGE

REVISIONS:	APPD.

DATE: 01-14-2013
DESIGN: KMJE
DRAWN: COB
CHECKED:
REVISION NUMBER:

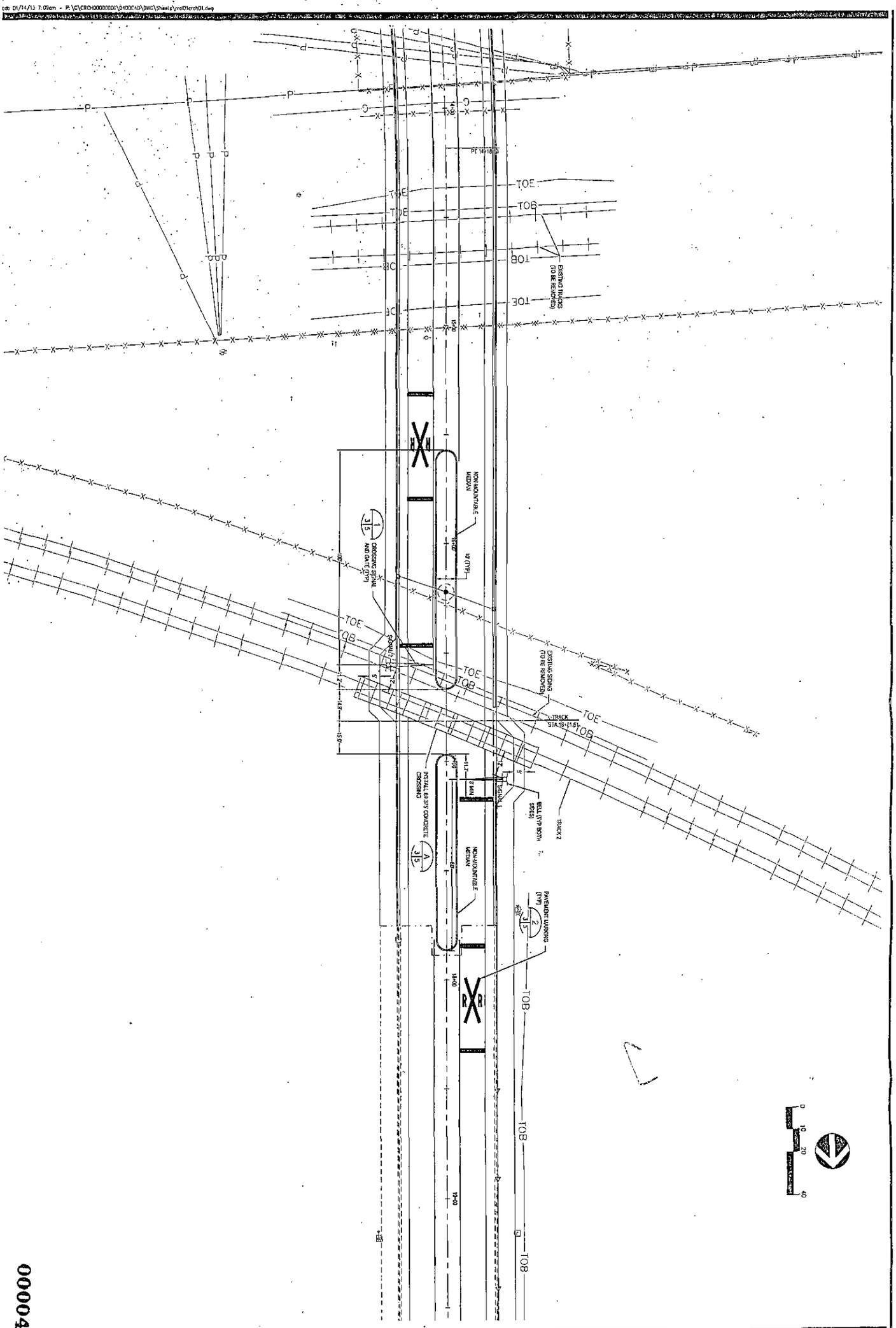
SCALE: NOT TO SCALE

PROJECT NUMBER: CRCH00000001

DRAWING FILE:

SHEET NO. 2

000047



AT-GRADE CROSSING PLAN

CENTER PARKWAY

AT-GRADE CROSSING

Richland, Washington

DAVID EVANS AND ASSOCIATES INC.
3700 Pacific Hwy. East, Suite 311
Tacoma, Washington 98424
Phone: 253.922.9780

PRELIMINARY CONTENT SUBJECT TO CHANGE

REVISIONS: APPD.

DATE: 01-14-2013
DESIGN: KALE
DRAWN: CDB
CHECKED:
REVISION NUMBER:

SCALE: 1"=20'

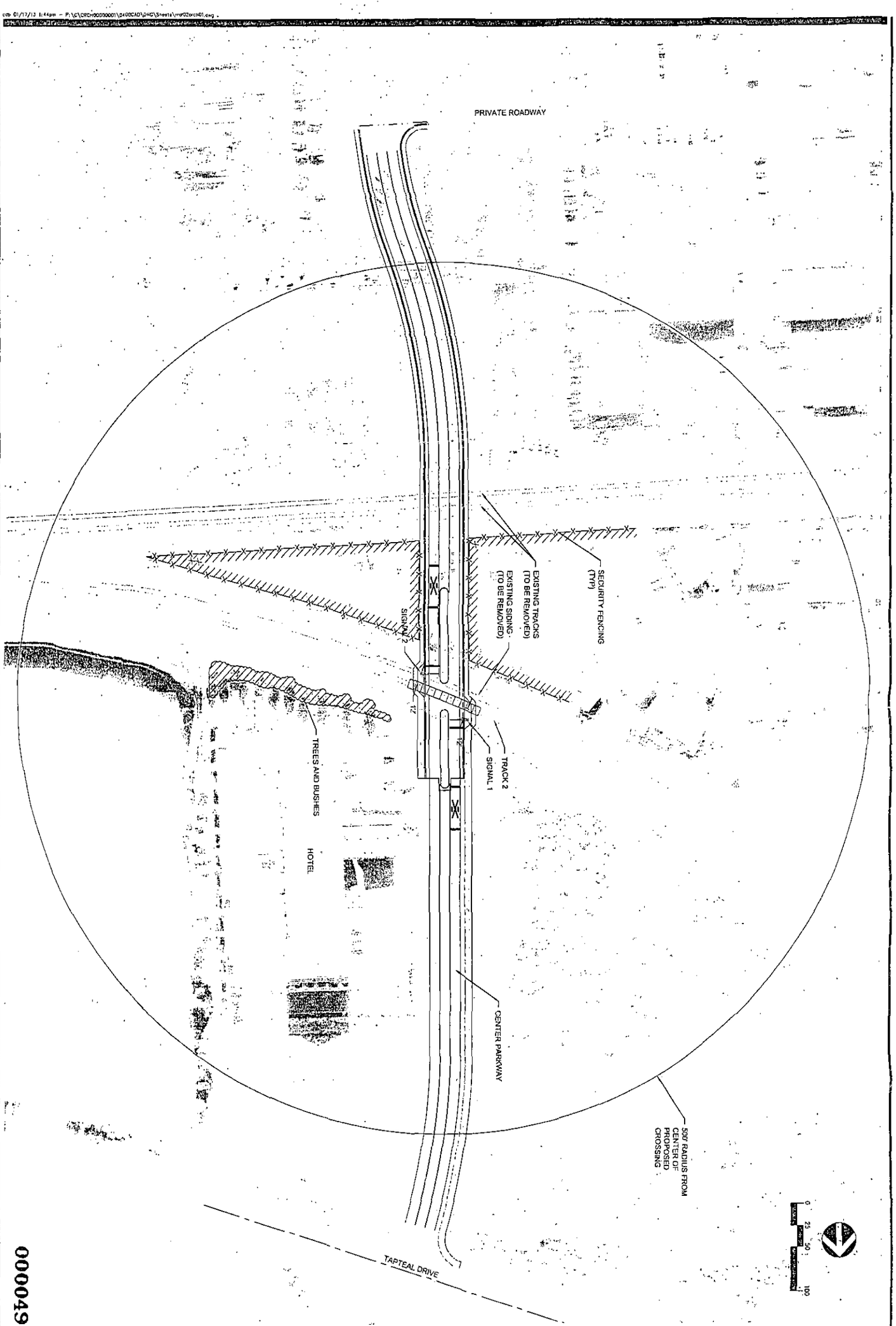
PROJECT NUMBER: CRCH00000001

DRAWING FILE: crch01.dwg

SHEET NO. 3 SHEET 3 OF 6

00004

0-000000121



000049

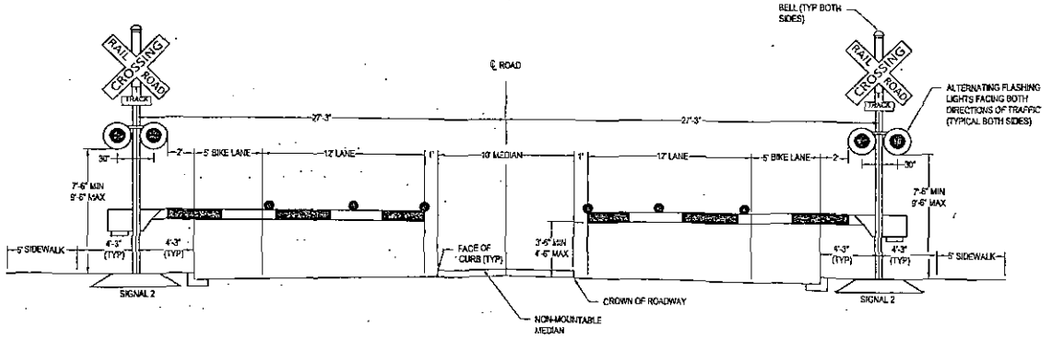
PRELIMINARY
CONTENT SUBJECT TO CHANGE

DAVID EVANS AND ASSOCIATES INC.
3700 Pacific Hwy. East, Suite 311
Tacoma Washington 98424
Phone: 253.922.9780

AT-GRADE CROSSING SIGHT DISTANCE
CENTER PARKWAY
AT-GRADE CROSSING
Richland, Washington

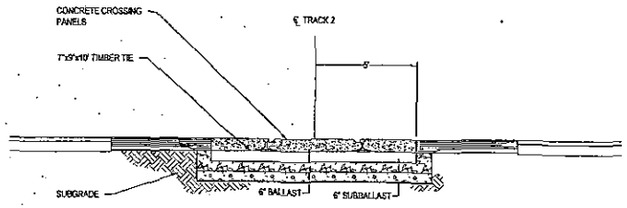
0-000000122

REVISIONS: AFP
DATE: 01-14-20
DESIGN: MAJE
DRAWN:
CHECKED: CDB
REVISION NUMBER:
SCALE: 1"=50'
PROJECT NUMBER: CRCH0000000
DRAWING FILE: roadScreen01.dwg
SHEET NO. 4
SHEET 4 OF 4

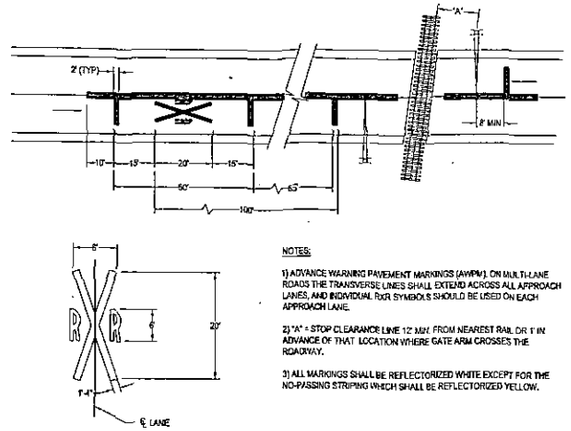


1/3|5 CROSSING DETAIL
NOT TO SCALE
SYMMETRICAL BOTH SIDES

NOTE: THE ACTIVATION OF THE FLASHING LIGHTS AND GATES WILL BE PROGRAMMED TO PROVIDE A "CONSTANT" WARNING TIME BASED ON TRAIN SPEED.



A/3|5 CONCRETE CROSSING SECTION
NOT TO SCALE



NOTES:

1) ADVANCE WARNING PAVEMENT MARKINGS (AWPM), ON MULTI-LANE ROADS THE TRANSVERSE LINES SHALL EXTEND ACROSS ALL APPROACH LANES, AND INDIVIDUAL R&R SYMBOLS SHOULD BE USED ON EACH APPROACH LANE.

2) "A" = STOP CLEARANCE LINE 12' MIN. FROM NEAREST RAIL OR 1' IN ADVANCE OF THAT LOCATION WHERE GATE ARM CROSSES THE ROADWAY.

3) ALL MARKINGS SHALL BE REFLECTORIZED WHITE EXCEPT FOR THE NO-PASSING STRIPING WHICH SHALL BE REFLECTORIZED YELLOW.

2/3|5 PAVEMENT MARKING
NOT TO SCALE

000050

AT-GRADE CROSSING DETAILS
CENTER PARKWAY
AT-GRA
Ci
Richl
0-000000123

DAVID EVANS AND ASSOCIATES INC.
3700 Pacific Hwy. East, Suite 311
Tacoma Washington 98424
Phone: 253.922.5780

PRELIMINARY CONTENT SUBJECT TO CHANGE

REVISIONS:	APPD.

DATE: 01-14-2013
DESIGN: KMJE
DRAWN: CDB
CHECKED:
REVISION NUMBER:

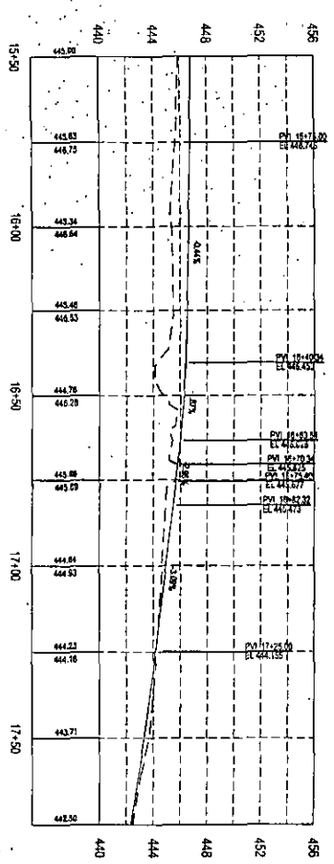
SCALE: NOT TO SCALE

PROJECT NUMBER:
CRCH00000001

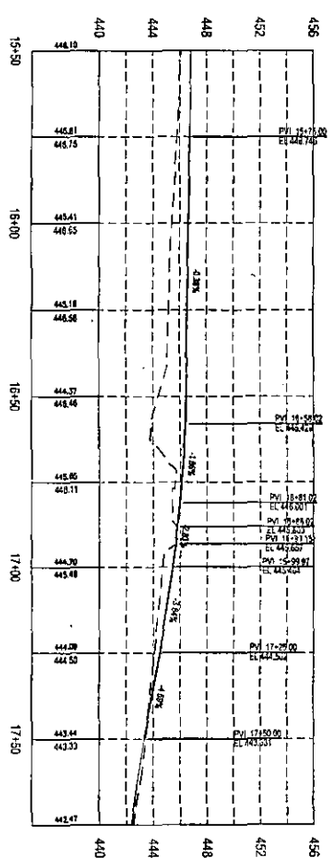
DRAWING FILE:
rrst01crch01.dwg

SHEET NO.
5
SHEET 5 OF 6

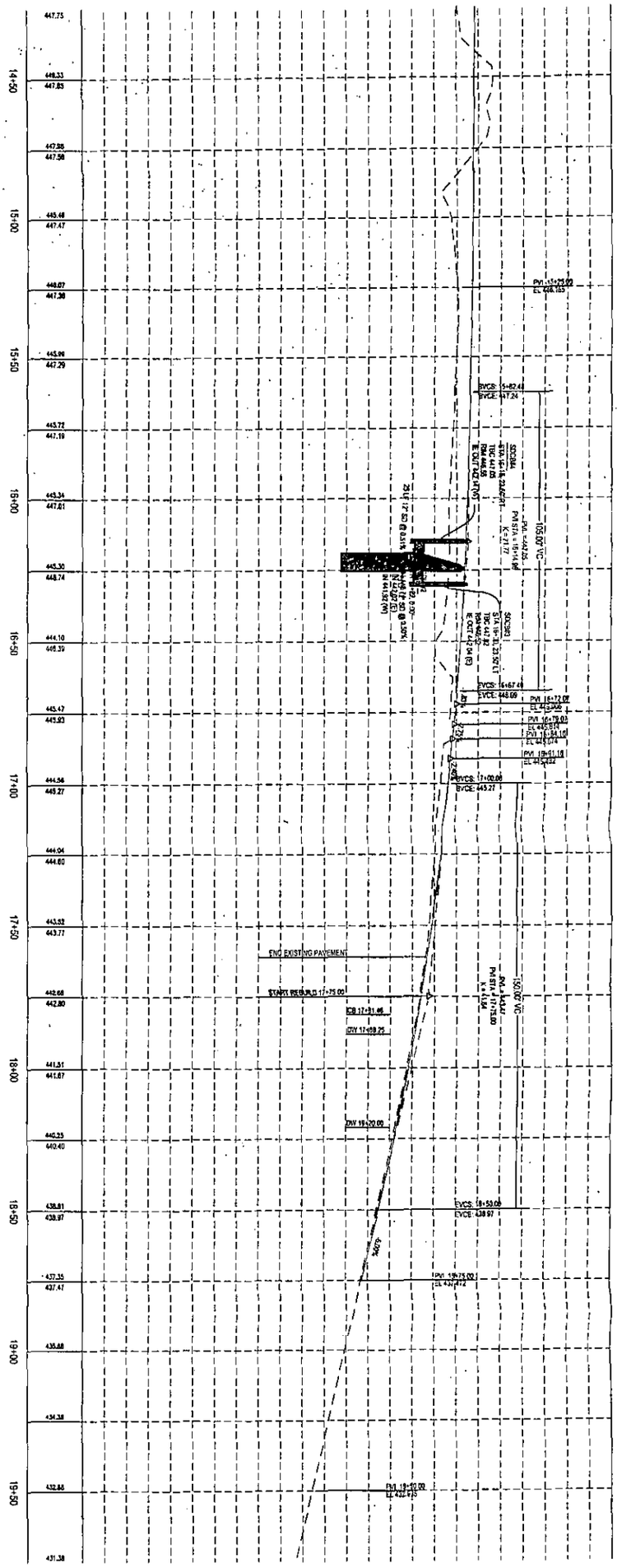
cdb 01/14/13 7:17am - P:...\CH00000001\CH00CAD\Plan\Sheets\rrst01crch01.dwg



PV - (17) -FOG-RR-RIGHT



PV - (15) -FOG-RR-LEFT



PV - (9) -CENTER PARKWAY

DAVID EVANS AND ASSOCIATES INC.
3700 Pacific Hwy. East, Suite 311
Tacoma Washington 98424
Phone: 253.922.9780

CENTER PARKWAY PROFILES

CENTER PARKWAY

AT-GRADE CROSSING

City of Richland

0-000000124

REVISIONS: APPD.

DATE: 01-14-2013
DESIGN: KJE
DRAWN: CDB
CHECKED:
REVISION NUMBER:

SCALE: NOT TO SCALE

PROJECT NUMBER: CRCH00000001

DRAWING FILE: rpv09crch.dwg

SHEET NO. 6

SHEET 6 OF 6

000054

DAVID EVANS AND ASSOCIATES INC.

Appendix to Center Parkway Extension Grade Separation Evaluation

In Support of a Petition to Construct a New Highway-Rail Grade Crossing
Prepared by Kevin M. Jeffers, PE of David Evans and Associates
March 25, 2013

Background

The cities of Richland and Kennewick propose to extend Center Parkway over the rail line owned by the Port of Benton. It is a proposed to be a two lane urban arterial roadway with a center turn lane, two bike lanes and two sidewalks, running north/south and connecting the two cities. Land use in the urban area is primarily commercial, with residences southwest of the proposed crossing. The proposed speed of the roadway is 30 mph. The projected Annual Average Daily Traffic (AADT) is 7,000 in 2033.

The existing rail line is running east/west but is curving slightly at the proposed crossing location, resulting in a slight skew (22 degrees from normal). There are two tracks at the proposed crossing location; however the project proposes to remove the short siding track on the south side of the "main" track. The rail line is expected to host and maximum of up to six (6) freight trains per day at speeds up to 15 mph, based on the current level of service and the industry move to consolidate car-load service into blocks or unit trains for economy of scale. No passenger trains are operating or anticipated.

Why is a grade separation not warranted?

The Federal Highway Administration (FHWA) Grade Separation Guidelines state that a highway-rail grade crossing should be considered for grade separation whenever one or more of the following conditions in the table below exist.

The roadway is part of the designated Interstate System	No
The roadway is otherwise designed to have full controlled access	No
The posted roadway speed equals or exceeds 70 mph	No
AADT exceeds 100,000 in urban area of 50,000 in rural areas	No
Maximum authorized train speed exceeds 110 mph	No
An average of 75 or more passenger trains per day in urban area or 30 or more passenger trains per day in rural areas	No
Crossing exposure (the product of the number of trains per day and AADT) exceeds 1,000,000 in urban areas or 250,000 in rural areas	No
Passenger train crossing exposure (the product of the number of passenger trains per day and AADT) exceeds 800,000 in urban areas or 200,000 in rural areas	No
The expected accident frequency (EAF) for active devises with gates, as calculated by the USDOT Accident Prediction Formula including 5-year accident history, exceeds 0.5	No
Vehicle Delay exceeds 40 vehicle hours per day	No

As such, a grade separation is not warranted based on:

- Roadway characteristics
- Average Daily Vehicle Delay
- Crossing Exposure Value, or
- Accident Prediction

To support this finding, the following data was gathered and calculations prepared.

Traffic Volumes

Traffic volumes for 2033 were based on the Center Parkway Extension and Railroad Crossing Traffic Study, dated March 2013 and prepared by Spencer Montgomery and Rick Door, PE, of J-U-B Engineers, Inc. These were predicted to be 7,000 average daily vehicles.

Vehicle Delay

In the previously cited traffic study, along with the number of vehicles per day using the crossing, the duration of a train event is derived to be just under 2 minutes. Based on the 7000 vehicles per day, the average vehicles per minute would be just under 5. At 5 vehicles per minute, a train event lasting 2 minutes, and up to 6 train events per day, the number of hours of vehicle delay would be:

5 vehicles/minute x 2 minutes/train x 6 trains/day x 2 minutes of delay/train / 60 minutes/hour
= 2 vehicle hours per day

This is less than the 40 vehicle hours per day threshold.

Crossing Exposure

The Crossing Exposure in 2033 is calculated as:

6 trains per day X 7,000 AADT = 42,000, which is less than the 1,000,000 threshold for urban areas

Accident Prediction:

The methodology used to prepare an accident prediction model for the proposed crossing was developed using principles consistent with USDOT Accident Prediction Model (http://safety.fhwa.dot.gov/xings/com_roaduser/07010/sec03.htm). It should also be noted that no accident history for this proposed crossing is available.

The basic formula provides an initial hazard ranking based on a crossing's characteristics. The proposed crossing's characteristic will be as follows:

Warning Device	Crossing Gate
AADT (2033)	7,000
Trains per day	6
Main Tracks	1
Daytime through Trains	6
Roadway Surface	Paved
Maximum Train Speed	15
Highway Type	Urban Minor Arterial
Highway Lanes	2

The Basic formula is:
a=K × EI × MT × DT × HP × MS × HT × HL,
where:
a = initial collision prediction, collisions per year at the crossing
K = formula constant
EI = factor for exposure index based on product of highway and train traffic
MT = factor for number of main tracks
DT = factor for number of through trains per day during daylight
HP = factor for highway paved
MS = factor for maximum timetable speed
HT = factor for highway type
HL = factor for number of highway lanes

Based on the proposed crossing characteristics and using Table 19 from *Railroad-Highway Grade Crossing Handbook - Revised Second Edition 2007*, the following factors to be used in the basic formula are:

K = 0.001088
EI = 46.53
MT = 3.21
DT = 1.0
HP = 1.0
MS = 1.0
HT = 1.0
HL = 1.11

The resulting factor "a" from the basic formula is 0.180.

Based on the Table 20 of *Railroad-Highway Grade Crossing Handbook - Revised Second Edition 2007*, and assuming no accidents have occurred, the resulting Final Accident Prediction is 0.145 accidents per year. This is derived by interpolating between the two "a" values in Table 20 of 0.10 and 0.20.

This result shows that the proposed crossing will be well below the FHWA expected accident frequency threshold of 0.5, where grade separation should be considered. Further, the result is also below the FHWA expected accident frequency threshold of 0.2, where a grade separation should be considered based on fully allocated life-cycle costs.

Based on the level of accidents predicted, it does not appear a grade separation is warranted from a public benefit perspective.

CITY OF KENNEWICK
WASHINGTON
www.ci.kennewick.wa.us

CE-SP-03-002

January 24, 2003

Pete Rogalsky
City of Richland
PO Box 190
Richland, WA 99352

RE: Center Parkway/Gage Boulevard
SEPA – Mitigated Determination of Non-Significance #02-95

Dear Pete:

Enclosed is the MDNS for the referenced project for your review and approval. If you have any questions, please call me at (509) 585-4287.

Yours truly,

Steve Plummer
Project Engineer

Encl.

0-000000129
000056

PUBLIC WORKS DEPARTMENT
210 W. 6th Avenue • P.O. Box 6108 • Kennewick, WA 99336-0108
(509) 585-4249 • Fax (509) 585-4451

CITY OF
KENNEWICK

January 7, 2003

Jack Clark
Dept. of Public Works
PO Box 6108
Kennewick, WA 99336

Dear Mr. Clark,

Enclosed is a Mitigated Determination of Non-Significance #02-95 for the Center Parkway extension and Gage Boulevard widening. This Determination means no Environmental Impact Statement is required in order for the City to continue the processing of your application.

Please notice that several changes have been made to your Environmental Checklist. No additional conditions have been added. The City of Kennewick has determined that as mitigated, this proposal will not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed Environmental Checklist, and will be available to the public on request.

If you should have any questions, please feel free to contact me.

Sincerely,

R White

Rick D. White, Director
Community and Economic Development

RDW:drk

Enclosure

c: Dept. of Ecology
WA Dept. Fish & Wildlife - Paul LaRiviere
WA Dept. Fish & Wildlife - Mark Teske, 201 N. Pearl, Ellensburg, WA 98926
Yakama Nation, 815 Sanford Avenue, Richland WA 99352
CTUIR - Carey Miller, PO Box 638, Pendleton, OR 97801
Associate Planner
File

0-000000130

RECEIVED JAN 13 2003

E.D. #02-95

CITY OF KENNEWICK
MITIGATED DETERMINATION OF NON-SIGNIFICANCE

Description of Proposal: Center Parkway Extension - Gage Boulevard Widening.

Proponent: City of Kennewick, Jack Clark, Public Works Department.

Location of proposal, including street address, if any: See attached map.

Lead Agency: CITY OF KENNEWICK

Mitigation Required for Potentially Significant Adverse Impacts: According to KMC 18.80.040(1), the City may impose any condition necessary to protect the health, safety, and welfare or otherwise bring a proposed development into compliance with the purpose and intent of this Title.

For this proposal, conditions include the mitigation from the required acquisition of three (3) existing businesses in a building at 8220 W. Gage Boulevard owned by Mail by the Mall. This building will be demolished for the Center Parkway extension pursuant to the options discussed and adopted by the Kennewick City Council on October 1, 2002. The existing business will be relocated at city expense in accordance with state and federal guidelines.

x This Mitigated DNS is issued under 197-11-340(2). The City will not act on this proposal for fifteen (15) days from the date below. Comments must be submitted by 1/23/03. After the review period has elapsed, all comments received will be evaluated and the DNS will be retained, modified, or withdrawn as required by SEPA regulations.

x Changes, modifications and/or additions to the checklist have been made on the attached Environmental Checklist Review.

x This MDNS is subject to the attached conditions.

Responsible Official: Rick D. White
Position/Title: Director, Community and Economic Development
Address: 210 West 6th Avenue, P.O. Box 6108, Kennewick, WA 99336
Phone: (509) 585-4278
Date 1/8/03 Signature R White

****

According to KMC 4.08.430, this determination may be appealed to:

Board of Zoning Adjustment
City of Kennewick
210 West 6th Avenue, P.O. Box 6108
Kennewick, WA 99336

The time for appealing SEPA issues is thirty (30) days after notice (WAC 197-11-680(5)(a). 0-000000131 be prepared to make specific, written factual objections. Contact Rick White to read or request the procedures for SEPA appeals.

CITY OF KENNEWICK

ENVIRONMENTAL CHECKLIST REVIEW

E.D. File #: 02-95 Reviewed by: L. Patterson
Action: Center Parkway Extension - Gage Boulevard Widening. Date: January 7, 2003

The City of Kennewick has reviewed the checklist and has made changes on it.

The City of Kennewick is adopting the Biological Assessment and Essential Fish Habitat Document prepared by Jack Clark, Environmental Engineer, in conjunction with MDNS #02-95.

A. BACKGROUND

1. Name of proposed project, if applicable: Center Parkway Extension – Gage Boulevard Widening

2. Name of applicant: City of Kennewick

3. Address and phone number of applicant and contact person: Jack Clark, DPW Environmental Engineer, POBox 6108, Kennewick, WA 99336 (509) 585-4317

4. Date checklist prepared: August 28, 2002

5. Agency requesting checklist: City Of Kennewick - Community and Economic Development Department (Planning Division) and a courtesy review sent to the City of Richland Community Development Dept.

6. Proposed timing or schedule (including phasing, if applicable): Design through 2002, acquire right of way, bid in September 2003, start construction in November 2003, and finish in summer of 2004.

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? No If yes, explain

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal. Biological Assessment for ESA listed species in area that will be submitted to Corps of Engineers, National Marine Fisheries Service (NMFS), US Fish and Wildlife Service (USFW), and Cultural Resources Survey of project area.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? Yes If yes, explain. Following the SEPA determination governmental approval from Corps, WDFW, NMFS, USFW and Confederated Tribes of the Umatilla Reservation will have to occur for work to proceed.

10. List any government approvals or permits that will be needed for your proposal, if known. Corps of Engineers Nation Wide permit, Washington State Department of Fish and Wildlife (WDFW) Hydraulic Project Approval (HPA) and informal consultation with NMFS and USFWS.

11. Give a brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. This is a joint project with the City of Richland. It proposes to widen Gage Blvd. from Leslie Road in Richland to Center Parkway in Kennewick with the addition of curb, gutter and sidewalk where none exists. Add a storm drain pipe from Steptoe east to Center Parkway and north to Tapteal Drive. And extend Center Parkway in Kennewick to Tapteal in Richland by creating a new road with sidewalk, curb and gutter.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist. The project area is from Leslie

Richland on Gage Boulevard to Center Parkway and Center Parkway extension to Tapteal Drive in Richland. A vicinity and site maps are attached to this document.

B. ENVIRONMENTAL ELEMENTS

1. Earth

a. General description of the site (circle one): Flat, **rolling,** hilly, steep slopes, mountainous, other

b. What is the steepest slope on the site (approximate percent slope?) 5.4% on Center Parkway and 8% - 10% on Gage Blvd.

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland. The soil classifications are varied, from Finley stony fine sandy loam (0-30% slopes), Kennewick silt loam (2-5% slopes), Scooteney silt loam with gravely subsoil (0-2% slopes) and Warden silt loam (0-8% slopes).

d. Are there surface indications or history of unstable soils in the immediate vicinity? No If so describe.

e. Describe the purpose, type and approximate quantities of any filling or grading proposed. The Center Parkway extension will be cleared, grubbed and graded. The surface area exposed to allow for material to be placed, which will be an urban arterial street. Material brought to the site will be from a local sand and gravel company. Material removed will be taken to permitted facility. Indicate source or fill. Immediate source of material unknown, contractor will provide material according to contract specifications.

f. Could erosion occur as a result of clearing, construction or use? Yes If so, generally describe? Soil erosion due to water and air is likely during construction.

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)? On Center Parkway there will be approximately 57,000 sq. ft. of new impervious surface. On Gage Boulevard there will be approximately 90,000 sq. ft. of new impervious surface.

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any: Water (domestic) to be applied for soil stabilization and dust control. Revegetation of disturbed soils with native varieties will be specified in the contract.

2. Air

a. What types of emissions to the air would result from the proposal (i.e., dust, automobile odors, industrial wood smoke) during construction and when the project is completed? The project area is in attainment for all EPA criteria pollutants. It is not expected to substantially change transportation demand in the region. Rather, it is intended solely to improve safety for the traveling public and is not expected to affect air quality. During project construction PM_{10} emissions would be associated with demolition, land clearing, ground excavation, cut-and-fill operation and construction of the roadways. Construction emissions would be greatest during the earthwork phase because most emission would be associated with the movement of dirt on the site. Benton Clean Air Authority (BCAA) regulates particulate emission (typically in t0-000000134 of fugitive dust) during construction activities. Incorporating mitigation measures into the

construction specifications for the project will reduce construction impacts. If any, generally describe and give approximate quantities if known. The approximate quantities are not known.

b. Are there any off-site sources of emissions or odor that may effect your proposal? None identified in the vicinity of this project. If so, generally describe.

c. Proposed measures to reduce or control emissions or other impacts to air, if any: Dust control through water application to limit the amount of-air borne particulants as described in the Benton County Clean Air Authority guidelines. Rev-vegetation of disturbed soils to control erosion.

3. Water

a. Surface.

1. Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, and wetlands)? Yes If yes, describe type and provide names. Amon Creek If appropriate, state what stream or river it flows into. Amon Creek enters the Yakima River delta area approximately 6,000 from Gage Blvd

2. Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? Yes If yes, please describe and attach available plans. The roadway will cross over Amon Creek. The WDFW considers the existing culvert to be compatible with existing fish passage criteria.

3. Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Presently there is no fill coming into the Gage Blvd portion of the project. Material removed will remain on site and out of the stream channel or removed during roadway construction to a permitted facility for reuse. Indicate the source of fill material. Fill and roadway material on the Center Parkway portion will be imported from a local sand and gravel facility.

4. Will the proposal require surface water withdrawals or diversions? None being proposed in this project. Give general description, purpose, and approximate quantities if known.

5. Does the proposal lie within a 100-year floodplain? No If so, note location on the site plan.

6. Does the proposal involve any discharges of waste materials to surface waters? No If so, describe the type of waste and anticipated volume of discharge?

b. Ground.

1. Will ground water be withdrawn, or will water be discharged to ground water? No Give general description, purpose, and approximate quantities if known.

2. Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals . . .; agricultural; etc.) Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve. None

c. Water Runoff (including storm water).

1. Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Stormwater runoff will be from impervious surfaces such as roofs and driving paths. Where will this water flow? To ground. Will this water flow into other waters? Only if weather event is in excess of 25-year event If so, describe.

2. Could waste materials enter ground or surface waters? During construction, accidental spills of construction materials and fuels are always a possibility. However, using BMP's, prevention, and containment of accidental spills of waste material will reduce the risk of ground water contamination and transportation of materials from the project site. If so, generally describe.

d. Proposed measured to reduce or control surface, ground and runoff water impacts, if any: Contract administration and scheduling of work. The contractor to provide a spill containment and counter measure plan for construction activities that would affect ground water impacts. Disturbed areas and roadside slopes will receive erosion control measures to minimize erosion and replace vegetation cover. Vegetation will be reestablished in disturbed areas

4. Plants

a. Check or circle the types of vegetation found on the site:

__ **deciduous tree:** alder, maple, aspen, other
__ evergreen tree: fir, cedar, pine, other
__ shrubs
__ **grass**
__ pasture
__ crop or grain
__ **wet soil plants**; cattail, buttercup, bulrush, skunk, cabbage, other
__ water plants: water lily, eelgrass, milfoil, other
__ other types of vegetation

b. What kind and amount of vegetation will be removed or altered?
The dominant plant associations to be removed are mainly grasses, sagebrush, and weedy species. Post construction erosion control techniques such as revegetation will take place in areas that have been disturbed.

c. List threatened or endangered species known to be on or near the site. Status listings received for Benton County. No reported instances or sightings of T&E plant species have been found in or near the project site. After numerous site visits and some vegetation surveys, the determination is that the area has been significantly altered from pre-European settlement conditions and any habitat that may have been suitable for rare plants has been eliminated.

Status	Species listed and Agency listing
Endangered	Upper Columbia River Chinook Spring Run – NMFS
Threatened	Middle Columbia River Steelhead – NMFS
Endangered	Upper Columbia River Steelhead – NMFS

Threatened	Bald Eagle – USFWS
Threatened	Ute Ladies' tresses – USFWS
Threatened	Bull Trout – USFWS
Candidate	Umtanum wild buckwheat – USFWS

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any: Native plants, grasses and trees in areas disturbed that are not covered with impervious surface.

5. Animals

a. Circle any birds and animals, which have been observed on or near the site or are known to be on or near the site:

birds: **hawk**, heron, eagle, **songbirds**, other

mammals: deer, **rodents**, bear, elk, **beaver**, other

fish: bass, **salmon**, trout, herring, shellfish, other

b. List any threatened or endangered species known to be on or near the site. Various animals, birds, fish etc. are located on or near the vicinity of the project site. Threatened and Endangered Species list obtained from federal and state resources indicate the following species may be affected by the proposed project:
Threatened: Mid-Columbia River Steelhead, Bald Eagle, and Bull Trout.
Endangered: Upper Columbia River Spring-run Chinook Salmon and Upper Columbia River Steelhead.
Species of Concern: Coho Salmon (State)

c. Is the site part of a migration route? Yes Is so, explain. The Pacific Coast Flyway (Columbia Basin) for waterfowl. The Amon Creek has been reported by the WDFW to contain Coho Salmon. They believe the fish actually spawn in the upper reach associated with the colder springs coming from the hillsides to the south of Meadow Springs Golf Course.

d. Proposed measures to preserve or enhance wildlife, if any: Vegetation enhancements to Amon Creek in the vicinity of the crossing will help existing species survive. It is anticipated that further work may be necessary in the down stream area of the lower stretch of the Amon to serve as mitigation.

6. Energy and Natural Resources

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Electric, gas, and diesel. Describe whether it will be used for heating, manufacturing, etc. Construction only

b. Would your project affect the potential use of solar energy by adjacent properties? No If so, generally describe.

c. What kinds of energy conservation features are included in the plans of this proposal? The proposal by its very nature reduces the average trip distance to and from the Tapteal / Center Parkway area. The extension of Center Parkway would eliminate over 610,00 miles of t

year. The savings are in time, cleaner air, less noise and fuel. List other proposed measures to reduce or control energy impacts, if any: Light conservation

7. Environmental Health

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill or hazardous waste that could occur as a result of this proposal? Yes Is so, describe. There are environmental health hazards associated with construction projects of this size include fires, explosion from fuels and spills of fuels or chemicals.

1. Describe special emergency services that might be required. Emergency Medical Services for employees injured on the job site.

2. Proposed measures to reduce or control environmental health hazards, if any: Normal safety practices required by federal, state, and local regulations will apply to all construction work. The contractor must submit to the City Public Works Department a Spill Containment and counter Measure Plan that is acceptable before work will be allowed to start. This plan will address procedures, equipment, and materials used in the event of a spill.

b. Noise.

1. What types of noise exist in the area, which may affect your project (for example: traffic, equipment, operation, other)? None identified

2. What types and levels of noise would be created by or associated with the project on short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hour's noise would come from the site. Traffic from trucks delivering construction equipment and material. Noise from construction equipment. The hours are 7:00am to 5:00pm .

3. Proposed measures to reduce or control noise impacts, if any: The hours of work will be between 7:00am to 5:00pm, Monday to Friday, and the project engineer will follow the City of Kennewick Standard Specifications and Details for construction work.

8. Land and Shoreline Use

a. What is the current use of the site and adjacent properties? Commercial business and apartments on the Gage Blvd. portion. Commercial businesses and modular home park on the Center Parkway portion.

b. Has the site been used for agriculture? No If so, describe.

c. Describe any structures on the site. Fences, commercial business buildings, railroad tracks, poles for lighting, power transmission or traffic control.

d. Will any structures be demolished? Yes If so, what? On the Center Parkway extension, Mail By The Mall will be demolished and the PUD fence relocated. On Gage Blvd. some above ground poles for lighting or power will be removed or replaced or relocated.

e. What is the current zoning classification of the site? On Gage Blvd. through the City of Richland the zoning is Central Business (CB), Planned Unit Development (PUD), Commercial Limited Business (C-LB), Medium Density Single Family Residential (R-1M), Multiple Family Residential (R-3), and Agricultural (AG). On the City of Kennewick portion of the project on Gage Blvd. the zoning is Commercial General (CG) and Residential High (RH), Commercial Retail (CR), and Commercial Office (CO). On Center Parkway through the City of Richland the zoning is General Business (C-3). On Center Parkway through the City of Kennewick the zoning is Commercial Retail (CR), Commercial General (CG) and Public Facility.

f. What is the current Comprehensive Plan designation of the site? In the City of Richland on Gage Blvd. the Comp Plan designation is Commercial, High Density Residential and Low Density Residential, while Kennewick's Plan designates commercial and residential. In the City of Kennewick on Gage Blvd. the current designation is Commercial and High Density Residential. In the City of Richland along Center Parkway the designation is Commercial, which is the same as the City of Kennewick's Comp Plan.

g. If applicable, what is the current Shoreline Master Program designation of the site? Compliance

h. Has any part of the site been classified as an "environmentally sensitive" area? Yes If so, specify. The Amon Creek has a critical area designation on Richland's Geological Hazard Map. The creek area between Gage Blvd. and the railroad causeway is a Class II wetland with only the eastern boundary delineated to date.

i. Approximately how many people would reside or work in the completed project? Not applicable

j. Approximately how many people would reside or work in the completed area? Not applicable

k. Proposed measures to avoid or reduce displacement impacts, if any: None

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any: Already compatible with existing land uses.

9. Housing

a. Approximately how many units would be provided, if any? Does not apply Indicate whether high, middle or low-income housing.

b. Approximately how many units, if any, would be eliminated? Mail By The Mail Indicate whether high, middle, or low-income housing. Structure houses three businesses

c. Proposed measures to reduce or control housing impacts, if any: Relocation of businesses

10. Aesthetics

a. What is the tallest height of any proposed structure(s), not including antennas; Street light poles what is the principal exterior building material(s) proposed? None proposed

b. What views in the immediate vicinity would be altered or obstructed? None

c. Proposed measures to reduce or control aesthetic impacts, if any: None

11. Light and Glare

a. What type of light or glare will the proposal produce? Street lighting What time of day would it mainly occur? Night

b. Could light or glare from the finished project be a safety hazard or interfere with views? Not very likely

c. What existing off-site sources of light or glare may affect your proposal? None

d. Proposed measures to reduce or control light and glare impacts, if any? Low glare downward illuminating street lights

12. Recreation

a. What designated and informal recreational opportunities are in the immediate vicinity? There are walking, jogging, bike riding and bird watching activities to pursue in and around the roadway. To the South of Gage Blvd. lies the Meadow Springs Golf Course.

b. Would the proposed project displace any existing recreational use? No If so, describe.

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any: None identified

13. Historic and Cultural Preservation

a. Are there any places or objects listed on, or proposed for, national, state or local preservation registers known to be on or next to the site? No If so, generally describe.

b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site. No

c. Proposed measures to reduce or control impacts, if any: A preliminary cultural survey will be completed by the Confederated Tribes of the Umatilla Nation by visiting the site and inspecting the land being disturbed. If any cultural resources are discovered during construction, work will stop and appropriate parties notified. A cultural resource inspector may be required during land disturbance activities.

14. Transportation

a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. See site and area maps for major arterial streets Show on site plans, if any.

b. Is site currently served by public transit? Yes If not, what is the approximate distance to the nearest transit stop?

c. How many parking spaces would the completed project have? None How many would the project eliminate?

ESA LISTED SALMONIDS CHECKLIST

The Listed Salmonids Checklist is provided in order that the City can identify a project's potential impacts (if any) on salmonids that have been listed as "threatened" or "endangered" under the Federal Endangered Species Act (ESA). A salmonid is any fish species that spends part of its life cycle in the ocean and returns to fresh water. Potential project impacts that may result in a "taking" of listed salmonids must be avoided, or mitigated to insignificant levels. Generally, under ESA, a "taking" is broadly defined as any action that causes the death of, or harm to, the listed species. Such actions include those that affect the environmental in ways that interfere with or reduce the level of reproduction of the species.

If ESA listed species are present or ever were present in the watershed where your project will be located, your project has the potential for affecting them, and you need to comply with the ESA. The questions in this section will help determine if the ESA listing will impact your project. The Fish Program Manager at the appropriate Department of Fish and Wildlife (DFW) regional office can provide additional information. Please contact the Dept. of Fish and Wildlife at 1701 S. 24th, Yakima WA 98902-5720, Phone No. 509-575-2740.

1. Are ESA listed salmonids currently present in the watershed in which your project will be? YES xx NO____
Please Describe.
Upper Columbia River Spring – Run Chinook (Endangered)
Upper Columbia River Steelhead (Endangered)
Middle Columbia River Steelhead (Threatened)

2. Has there ever been an ESA listed salmonid stock present in this watershed?
YES xx NO____
Please Describe.
All migrate through this section of the Columbia River at various times during the year. WDFW has records of salmonid fish in Amon Creek.

NOTE: Kennewick is located in the upper Mid-Columbia watershed. Salmonids are present in the watershed - questions no. 1 and no. 2 already answered "yes". Questions A-1 and A-2 are also answered.

PROJECT SPECIFIC: The questions in this section are specific to the project and vicinity.

A1. Name of watershed Upper Mid-Columbia (Lower Yakima River)

A2. Name of nearest waterbody Amon Creek

A3. What is the distance from this project to the nearest body of water? Gage Blvd. crosses over Amon Creek

Often a buffer between the project and a stream can reduce the chance of a negative impact to fish.

A4. What is the current land use between the project and the potentially affected water body (parking lots, farmland, etc.) Open space and public arterial street.

A5. What percentage of the project will be impervious surface (including pavement & roof area)? 90%

FISH MIGRATION: The following questions will help determine if this project could interfere with migration of adult and juvenile fish. Both increases and decreases in water flows can affect fish migration.

B1. Does the project require the withdrawal of

a. Surface water? Yes_____ No__X___
Amount_____
Name of surface water body_____

b. Ground water? Yes_____ No_X____
Amount_____
From Where_____
Depth of well _____

B2. Will any water be rerouted? YES_____ NO__X____
If yes, will this require a channel change?

B3. Will there be retention ponds? YES__X___ NO_____
If yes, will this be an infiltration pond or a surface discharge to either a municipal storm water system or a surface water body? Discharge to surface from retention pond (25 year weather event) through a constructed wetland (2).

If to a surface water discharge, please give the name of the waterbody. Amon Creek and then to the Yakima River Delta.

B4. Will this project require the building of new roads? Yes Increased road mileage may affect the timing of water reaching a stream and may, thus, impact fish habitat.

B5. Are culverts proposed as part of this project? No

B6. Are stormwater drywells proposed as part of this project?
Yes_X____ No_____

B7. Will topography changes affect the duration/direction of runoff flows?
Yes_____ No_X____

If yes describe the changes.

B8. Will the project involve any reduction of a floodway or floodplain by filling or other partial blockage of flows? Yes_____ No_X____

If yes, how will the loss of flood storage be mitigated by your project?

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WATER QUALITY: The following questions will help determine if this project could adversely impact water quality. Degraded water quality can affect listed species. Water quality can be made worse by runoff from impervious surfaces, altering water temperature, discharging contaminants, etc.

C1. Will your project either reduce or increase shade along or over a waterbody?
YES____ NO__X__ Removal of shading vegetation or the building of structures such as docks or floats often result in a change in shade.

C2. Will the project increase nutrient loading or have the potential to increase nutrient loading or contaminants (fertilizers, other waste discharges, or runoff) to the waterbody?
YES____ NO_X___

C3. Will turbidity (dissolved or partially dissolved sediment load) be increased because of construction of the project or during operation of the project? In-water or near water work will often increase turbidity.
YES____ NO__X__

C4. Will your project require long term maintenance, i.e., bridge cleaning, highway salting, chemical sprays for vegetation management, clearing of parking lots?
YES____ NO__X__
Please Describe.

Vegetation: The following questions are designed to determine if the project will affect riparian vegetation, which can impact listed species.

D1. Will the project involve the removal of any vegetation from the stream banks?
YES_____ NO__X____

If yes, please describe the existing conditions and the amount and type of vegetation to be removed.

D2. If any vegetation is removed, do you plan to re-plant? YES_X___ NO____
If yes, what types of plants will you use? Native grasses and trees

E. SIGNATURE
The above answers are true and complete to the best of my knowledge. I understand the City is relying on them to make its decision.

Jack Clark, Environmental Engineer – DPW — August 28, 2002 Date

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this proposal will include new roads & improvements to existing roadways.

d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? No If so, generally describe (indicate whether public or private).

Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? Yes If so, generally describe. Center Parkway is extended to Tapteal and crosses two rail lines. One is used as a siding and the other goes to the Hanford area.

f. How many vehicular trips per day would be generated by the completed project? On the new extension of Center Parkway traffic engineering estimates are for 2,200 vehicular trips a day. If known, indicate when peak volumes would occur. Peak times of usage would be morning traffic between the hours of 7-9 a.m. and evening traffic between the hours of 4-6 p.m.

g. Proposed measures to reduce or control transportation impacts, if any: Work hours for construction will be between the hours of 7:00am and 5:00pm during the weekdays of Monday to Friday.

15. Public Services

a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? No If so, generally describe.

b. Proposed measures to reduce or control direct impacts on public services, if any. None identified.

16. Utilities

a. Circle utilities currently available at the site: **electricity**, natural gas, **water, refuse service, telephone, sanitary sewer**, septic system, other _____.

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity, which might be needed. Existing services are all that are needed.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the City is relying on them to make its decisions.

Signature Josh Clark

Date Submitted: August 28, 2002

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment. When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise? Not very likely to increase any of the above.

Proposed measures to avoid or reduce such increases are: By its very nature the project proposes to decrease an estimated 610,000 miles of travel per year in twenty years.

2. How would the proposal be likely to affect plants, animals, fish, or marine life? The proposal would not likely affect plants, animal, fish, or marine life. Some degraded step-shrub vegetation will be removed and replaced by impervious surface. Affects are considered inconsequential.

Proposed measures to protect or conserve plants, animals, fish, or marine life are: Disturbed land will be revegetated with native species, erosion control plans will be in place before contractor can start work. Any in water work in Amon creek will be timed to minimally impact fish species and habitat.

3. How would the proposal be likely to deplete energy or natural resources? Not very likely to deplete either.

Proposed measures to protect or conserve energy and natural resources are: By building the project, a savings of 30,500 gallons of fuel would be saved each year. Building the project, means reduced traffic volumes on Columbia Center Boulevard.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains or prime farmlands? The proposal does not use or affect environmentally sensitive areas.

Proposed measures to protect such resources or to avoid or reduce impacts are: Project timing, insuring adequate resources are present during construction and attention to obtaining adequate permits.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans? The proposal is compatible with existing land uses and plans.

Proposed measures to avoid or reduce shoreline and land use impacts are: None

6. How would the proposal be likely to increase demands on transportation or public services and utilities? The proposal would not likely increase demands on transportation or public services and utilities.

Proposed measures to reduce or respond to such demand(s) are: Compatible with existing services and transportation plans.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requ0-000000145 for the protection of the environment. None, identified at this time.

CITY OF
KENNEWICK
WASHINGTON'S TRI-CITIES
www.ci.kennewick.wa.us

October 11, 2002

To Interested Parties

Subject: Center Parkway Extension and Gage Boulevard Widening Project

This is a joint project with the City of Richland. As lead agency, the City of Kennewick Department of Public Works is proposing to extend Center Parkway from Gage Boulevard to Tapteal Drive in the City of Richland. The project will also widen Gage Boulevard from Center Parkway to Leslie Boulevard in Richland. Additional information on property acquisition required for this traffic enhancement project as part of a SEPA checklist is available.

The purpose of this notification is to provide an opportunity for comments on any additional information that may affect the environmental determination for this project. The checklist containing the additional information is best summarized as follows:

- Extending Center Parkway from Gage Boulevard to Tapteal Drive in the City of Richland
- Widening Gage Boulevard from Center Parkway to Leslie Boulevard in the City of Richland
- This is a joint project with the Cities' of Richland and Kennewick.
- The City of Kennewick is the lead agency on this project
- Right of way is being purchased for this project

The SEPA Checklist and related documents are available at City Hall for review. To review these materials please contact the City of Kennewick Project Engineer, Steve Plummer at 585-4287. To provide written comments for consideration during this environmental review of the checklist, please provide those to:

SEPA Responsible Official
Rick White
PO Box 6108
Kennewick WA 99336
rwhite@ci.kennewick.wa.us

This notification is being published in the Tri City Herald on October 12, 2002. It is expected that a Threshold Determination will be issued after 30 days of this publication date. Therefore any comments must be submitted by November 12, 2002.

0-000000146

City of Kennewick

SEPA NOTIFICATION

The Community Economic and Development Department has received a SEPA Checklist for the Center Parkway Extension and Gage Boulevard Widening on August 28, 2002. The checklist is complete and the lead official is seeking comments on this project. Thirty (30) days from the publication of this notice in the Tri City Herald the lead official will issue an environmental threshold determination for this project.

The purpose of this notification is to provide an opportunity for comments on any additional information that may affect the environmental determination of this project. The checklist containing the additional information is best summarized as follows:

- Extending Center Parkway from Gage Boulevard to Tapteal Drive into the City of Richland
- Widening Gage Boulevard from Center Parkway to Leslie Boulevard into the City of Richland
- This is a joint project with the Cities' of Richland and Kennewick
- The City of Kennewick is the lead agency on this project
- Right of way is being purchased for this project

The revised SEPA Checklist and related documents are available at City Hall for review. To review these materials please contact the City of Kennewick Project Engineer, Steve Plummer at 585-4287. To provide written comments for consideration during this environmental review of the checklist, please provide those to:

SEPA Responsible Official
Rick White
PO Box 6108
Kennewick WA 99336
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This notification is being published in the Tri City Herald on **October 12, 2002.** It is expected that a Threshold Determination will be issued after 30 days of this publication date. Therefore any comments must be submitted by **November 12, 2002.**

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TRUSTEE
1976 GREENVIEW
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Yakima, WA 98902

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GORDON C HETTERSCHEIDT
303 GAGE BLVD APT #311
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DION L DIETRICH
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KTV LLC
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RICHLAND, WA 993523258

CAR WASH INVESTMENTS,
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RICHLAND, WA 993520000

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GAGE PROPERTY DEVELOPMENT LLCA,
8551 GAGE BLVD SUITE A
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ORCHARD HILLS MEDICAL BUILDING LLC
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KENNEWICK, WA 99336

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JOHN F TORTORELLI
3521 S FOX
SPOKANE, WA 99206

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16425 WOOD VALLEY TRAIL
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1930 MINT LP
RICHLAND, WA 99352

OSCAR RODRIGUEZ
1955 MINT LP
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[redacted]TY COURSON
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ROBERT E-PATRICIA
RFUHRMAN
1954 SHERIDAN PL
RICHLAND, WA 99352

JAMES TILLMAN &
PATTIELILLY
1948 SHERIDAN PL
RICHLAND, WA 99352

JOHN RAMMERMAN
1942 SHERIDAN PL
RICHLAND, WA 99352

MICHAEL F & CHERYL MEYER
1936 SHERIDAN PLACE
RICHLAND, WA 99352

BERNIE J & JANET O NEILL
1930 SHERIDAN PLACE
RICHLAND, WA 99352

JOHN F & BETTY AMARRON
TRUSTEES
1924 SHERIDAN PLACE
RICHLAND, WA 99352

HARENDRA P &
USHASHRIVASTAVA
183 EDGEWOOD
RICHLAND, WA 99352

KENNEWICK IRRIGATION
DISTRICT,
214 W 1ST AVENUE
KENNEWICK, WA 99352

Washington State Department of Fish anc
Wildlife
C/O Paul LaRiviere
2620 North Commercial Ave.
Pasco, WA 99301

GREGORY & MADELINE
BENNETT
297 GAGE BLVD
RICHLAND, WA 99352

ANGELINA THORPE
321-B GAGE BLVD
RICHLAND, WA 99352

DALE V & ELIZABETH WHITE
323-A GAGE BLVD
RICHLAND, WA 99352

LOYD PETTY
323 B GAGE BLVD
RICHLAND, WA 99352

GARY W & BETSY CSMITH
289 GAGE BLVD
RICHLAND, WA 99352-968

WILLIAM R-WALDEANA KING
291 GAGE BLVD
RICHAND, WA 99352

GLORIA SHERFEY
285 GAGE BLVD
RICHLAND, WA 99352

GREGORY P & BECKY
TARMATROUT
345 BLALOCK CT
RICHLAND, WA 99352

MARK R STRANKMAN
281 GAGE BLVD
RICHLAND, WA 99352

MARTHA A NIPPER
329-B GAGE BLVD
RICHLAND, WA 99352

FRED A & DIANA L RUCK
227 GAGE BLVD
RICHLAND, WA 99352

MICHAEL BRUCE & DOROTHY
HALLERKOVANEN TRUSTEES
7306 STEILACOOM BLVD SW
LAKEWOOD, WA 98499

WILLIAM R & MARION
AWOMBACHER
273 GAGE BLVD
RICHLAND, WA 99352

JAMES V & SYDAWNA RHOKE
275 GAGE BLVD
RICHLAND, WA 99352

TIMOTHY MCKAY
269 GAGE BLVD
RICHLAND, WA 99352

V[redacted]A MORCUENDE
33[redacted] GAGE BLVD UNIT B
RICHLAND, WA 99352

ALLISON H DEGOES
337-A GAGE BLVD
RICHLAND, WA 99352

VIRGINIA G PITTS
337-B GAGE BOULEVARD
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LARRYTRICKEY
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LIBERTY LAKE, WA 99019

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KENNEWICK, WA 99337

MICHAEL R CONLEY
303 GAGE BLVD UNIT 317
RICHLAND, WA 99352

TODD SCHUMACHER
303 GAGE BLVD
RICHLAND, WA 99352

Resident
PO Box 3167
Portland, OR

TRACIE MILLER
303 GAGE BLVD APT 320
RICHLAND, WA 99352

LISA KOSKI
2257 GRANITE DR
WALLA WALLA, WA 99362

Stephen Henager
16202 S. Griffin Rd.
Prosser, WA 99350

Resident
16301 NE 8th St.
St. 102
Bellevue, WA

NATALIE SHAFFER
303 GAGE BLVD UNIT 124
RICHLAND, WA 99352

Gage Park Mini Storage
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Suite A
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Bruce & Joyce Fleming
359 Quailwood Place
Richland, WA 99352

Resident
7655 Market Street
Youngstown, OH

PATRICK E & JULIE
PLAMBERT
303 GAGE BLVD UNIT 224
RICHLAND, WA 99352

ON THE GREEN
CONDOMINIUM ASSOC,
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JOHN & MARY ANN NIELSEN
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Richland, WA 99352

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St. C
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DELORES ANDRIE
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RICHLAND, WA 99352

Resident
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Richland, WA 99352

SHELLY R CALLAWAY
303 GAGE BLVD #227
RICHLAND, WA 99352

ARNOLD R & CAROL CLOBES
2454 PYRAMID
LIVERMORE, CA 94550

0-000000150

000077

ARTHUR & SHARON MEYERS
261 GAGE BLVD
RICHLAND, WA 99352

DAVID HNYMAN
339 B GAGE BLVD
RICHLAND, WA 99352

ANN JACKSON
303 GAGE BLVD APT 101
RICHLAND, WA 99352

LADD CALLISON
303 GAGE BLVD APT 102
RICHLAND, WA 99352

PEGGY HAGGARD, ET AL
94805 E GRANADA COURT
KENNEWICK, WA 99336

BONNIE LARMATIS
1310 HAINS
RICHLAND, WA 99352

MAURICE & KATHY BALCOM
1331 PHEND ROAD
PASCO, WA 99301

TERRI FRAZIER
303 GAGE BLVD UNIT 202
RICHLAND, WA 99352

MARY D FLEISCHMANN
303 GAGE BOULEVARD #203
RICHLAND, WA 99352

VERNA GAYLE KRAN
303 GAGE BLVD APT #204
RICHLAND, WA 99352

CHRISTINE KOEPP
12384 SAINT HEDWIG RD
SAINT HEDWIG, TX 781529706

CAROL M WELCH
303 GAGE BLVD UNIT 302
RICHLAND, WA 99352

KARI JUDY
303 W GAGE BLVD
RICHLAND, WA 99352

LAWRENCE J HIPPLER
303 GAGE BLVD APT #304
RICHLAND, WA 99352

ROGER LEHMAN
303 GAGE BLVD UNIT 105
RICHLAND, WA 99352

BARBARA I PEARSON
303 GAGE BLVD #106
RICHLAND, WA 99352

BILLIE A MASTERSON
303 GAGE BLVD APT 107
RICHLAND, WA 99352

CARL & SHIRLEY MARUSHIA
303 GAGE BLVD #108
RICHLAND, WA 99352

DAVID L & ENA M KNUTSON
303 GAGE BLVD APT 216
RICHLAND, WA 99352

JERALD & SANDRA LUKINS
303 GAGE BLVD UNIT 110
RICHLAND, WA 99352

RICHARD L & JUDY HAMES
303 GAGE BLVD #309
RICHLAND, WA 99352

KEVIN & ELIZABETH HIRSCH
1027 COUNTRY CT
RICHLAND, WA 99352

BETTY CERRILLO
303 GAGE BLVD #206
RICHLAND, WA 99352

ARNOLD R & CAROL CLOBES
2454 PYRAMID
LIVERMORE, CA 94550

BRUCE A & JEAN M TURLEY
34 W 23RD PLACE
KENNEWICK, WA 993370000

DAVID E & SUSAN MEAKIN
4807 W 12TH
KENNEWICK, WA 99337

DAVID E & SUSAN MEAKIN
4807 W 12TH
KENNEWICK, WA 99337

[redacted]a Nation
O Box 151
oppenish, WA 98948

JOANN LLOYD
303 GAGE BLVD #306
RICHLAND, WA 99352

JOYCE BYRD, TRUSTEE
303 GAGE BLVD UNIT 307
RICHLAND, WA 0-000000151

000078

Confederated Tribes of the Umatilla
Indian Reservation (CTUIR)
C/O Carey Miller
P[redacted] x 638
Pendleton, OR 97801

Resident
8911 Grandridge Blvd.
Suite C
Kennewick, WA 99336

Terry & Cnythia Preszler
8797 W. Gage Blvd.
Kennewick, WA 99336

MARY ANN BRISSE
303 GAGE BLDG #111
RICHLAND, WA 99352

SUE BELL
303 GAGE BLVD UNIT 112
RICHLAND, WA 99352

SCOTT BARTHOLOMEW
303 GAGE BLVD APT 113
RICHLAND, WA 99352

JAMES R JOHNSON
4990 HACIENDA AVE
SAN LUIS OBISPO, CA 93401-

MYRTLE OFSTHUN
303 GAGE BLVD #115
RICHLAND, WA 99352

LINDA K BISHOP
201 S SHERMAN PLACE
KENNEWICK, WA 99336

ROGER R TRUE
1615 LAMB AVE
RICHLAND, WA 99352

CLAUDE D & VERGIE
KRAWLINS
303 GAGE BLVD APT 212
RICHLAND, WA 99352

DAVID & PATRICIA
VANLEUVEN
303 GAGE BOULEVARD #213
RICHLAND, WA 99352

JOAN I BATES
303 GAGE BLVD APT #214
RICHLAND, WA 99352

NEIL WARREN PALMER
2721 S GARFIELD
KENNEWICK, WA 99337

DAVID L & ENA M KNUTSON
303 GAGE BLVD APT 216
RICHLAND, WA 99352

GORDON HETTERSCHEIDT
303 GAGE BLVD #311
RICHLAND, WA 99352

LANCE EGGERS
PO BOX 1262
RICHLAND, WA 99352

STEVENS EVERN
303 GAGE BLVD APT 313
RICHLAND, WA 99352

NANCY NADOLSKI
303 GAGE BLVD #313
RICHLAND, WA 99352

SHAWN STODDARD
303 GAGE BLVD #313
RICHLAND, WA 99352

PHILLIP TRACY
303 GAGE BLVD #313
RICHLAND, WA 99352

WILLIAM CORSIGLIA
303 GAGE BLVD APT 313
RICHLAND, WA 99352

MICHAEL K HAMILTON
303 GAGE BLVD 315
RICHLAND, WA 99352

SEAN STOCKARD
303 GAGE BOULEVARD #117
RICHLAND, WA 99352

MARIONE SKILDSEN
303 GAGE BLVD UNIT 118
RICLAND, WA 99352

Resident
8836 Gage Blvd.
Suite 201B
Kennewick, WA 99336

ADELINE RYATES
95204 E REATA RD
KENNEWICK, WA 99338

W[redacted]IAM & LORALEE
C[redacted]LAWAY
1520 NACHES CRT
RICHLAND, WA 99352

MARY SAMUELSON
303 GAGE BLVD UNIT 121
RICHLAND, WA 99352

DARWIN D & LOIS MLAMBIER
PO BOX 964
CAMAS, WA 98[illegible]0-000000152

000079

Laser 5260™

AVERY® Address Labels

Resident
3104 W. Kennewick Ave.
St. C
Kennewick, WA 99337

Resident
3500 Gage Blvd.
St. A
Kennewick, WA 99337

Resident
16301 N 8th St.
St. 102
Bellevue, WA

Resident
9202 W. Gage Blvd.
Kennewick, WA 99337

Terry Lynn & Suzanne Bee
McCardle Trustees
PO Box 518
Friday Harbor, WA 98250

Resident
PO Box 1900—
Pasco, WA 99301

John Meyer
1976 Greenview Dr.
Richland, WA 99352

Jeff & Amy Bertelsen
33881 Riverview Dr.
Hermiston, OR 97838

Dirk & Derae Stricker
3104 S. Morain Place
Kennewick, WA 99336

Resident
1335 Grandridge Blvd.
Kennewick, WA 99337

CCW East property Owners Assoc.
3104 W. Kennewick Ave. St. 3
Kennewick, WA 99337

Emanuel Edibiokpo
807 N. Pittsburgh St.
Kennewick, WA 99337

Robert & Margaret Stratton
1101 S. Taft St.
Kennewick, WA 99337

0-000000153
000080

Jack Clark

Gage & Gopher Parkway
Mailing Labels

From: Steve Plummer
Sent: Monday, October 07, 2002 3:37 PM
To: Jack Clark
Subject: FW:

-----Original Message-----
From: Richard Evans [mailto:RichardE@scm-ae.com]
Sent: Friday, September 20, 2002 11:49 AM
To: Steve Plummer
Subject: RE:

Here is what I have:

Columbia Center Mall
Barb Johnson
Columbia Center Blvd
Kennewick, WA 99336

Peter Rogalsky (E-mail)
City of Richland
840 Northgate Dr.
Richland, WA 99352

The Home Depot Inc
1451 Tapteal Drive
Richland, WA 99352

Greg Markel
8551 Gage Blvd
Kennewick, WA 99336-7113

Banner Bank
Dave Bixby
1221 Jadwin Ave
Richland, WA 99352

Columbia Center West Business Owners Assoc.
Nick Castorina
27008 Clover Rd
Kennewick, WA 99336

McCoys
Mail By The Mail, McCoy Recording, McCoy Distributing
Laurie McCoy
8220 West Gage Boulevard
Kennewick, WA 99336

Victor Gomez
8236 Gage Boulevard
Kennewick, WA 99336

Benton PUD
Brad Langdell
P.O. Box 6270
Kennewick, WA 99336

(I typed these envelopes)
not on list)

Port of Benton

Scott Keller

3100 George Washington Way
Richland, Washington 99352

[redacted]ohn Haakenson
[redacted]100 George Washington Way
Richland, WA 99352

UPRR
John Trumbull
5424 S.E. Mc Loughlin Blvd.
Portland, OR 97202

Tapteal Properties (Holiday Inn):
Allpro Inc
Jack Nelson
1232 Columbia Drive Southeast, Richland, WA 99352

Tapteal II LLC (Bob Young):
Bob Young
5 Presidio Terrace
San Francisco, CA 94118

Columbia Center West Homeowners Assoc.
Floyd & Dixie Johnston
8306 W Yellowstone
Kennewick, WA 99336

-----Original Message-----
From: Steve Plummer [mailto:stephen-plummer@ci.kennewick.wa.us]
Sent: Friday, September 20, 2002 11:24 AM
[redacted]: Richard Evans
[redacted]bject: RE:

Thanks Rich. Will you be able to get me a mailing list today? Steve

-----Original Message-----
From: Richard Evans [mailto:RichardE@scm-ae.com]
Sent: Friday, September 20, 2002 11:22 AM
To: Steve Plummer (E-mail)
Cc: Roger Wright
Subject:

Steve,

Here is the status of our calls.
Everyone I spoke with was happy to receive a call.

Richard

Columbia Center Mall (Barb Johnson)
Out until Monday. Staff took message.

Pete Rogalski
Left voice message

Home Depot
Manager out until Monday. Spoke with Jeff, the Assistant Manager.

Greg Markel
Unavailable. Staff took message.

Banner Bank, Dave Bixby

Left Dave a voice message

Columbia Center West Business Owners Assoc.
Left Nick Castorina a voice message.

McCoys
Spoke with Laurie McCoy. She will inform her father and brother.

Victor Gomez (owner next to Mail by the Mall)
Spoke with Victor. Asked him to see if he could catch Nick Castorina

Benton PUD
Brad Langdell out until Monday. Left Brad a voice message.

Port of Benton
Scott Keller out of town until Monday.
I left John Haakenson a voice message, he called and asked to have the information regarding the meeting e-mailed to him, which I did.

UPRR
Spoke with John Trumbull

Tapteal Properties (Holiday Inn)
Jack Nelson out of town until Oct 1. Staff took message and will contact Jack.

Tapteal II LLC (Bob Young)
Roger Wright to contact Bob.

Columbia Center West Homeowners Assoc.
Spoke with Dixie Johnston, Her husband is the homeowner President.

911 GRANDRIDGE BLVD, STE C,,KENNEWIC'
ERRY J & CYNTHIA L,PRESZLER,8797 W G BL' NNEWICK,WA,99336
836 GAGE BLVD STE 201B,,KENNEWICK,WA,99336
O BOX 3167,,PORTLAND,OR
TEPHEN,HENAGER,16202 S GRIFFIN RD,,PROSSER,WA,99350-
6301 NE 8TH ST STE 102,,BELLEVUE,WA
[redacted]ARK MINI STG),8500 GAGE BLVD STE A,,KENNEWICK,WA
R[redacted]D & JOYCE A,FLEMING,359 QUAILWOOD PLACE,,RICHLAND,WA,99352
655 MARKET STREET,,YOUNGSTOWN,OH
ATRICK & DOLORES E,MC COY,402 ANTHONY DR,,RICHLAND,WA,99352
ACK J,WHITE,8911 W GRANDRIDGE BLVD STE C,,KENNEWICK,WA,99336
O BOX 190,,RICHLAND,WA,99352
104 W KENNEWICK AVE STE C,,KENNEWICK,WA,99336
O BOX 1900,,PASCO,WA,99301
TEPHEN D & CAROLYN K,HENAGER,8400 W GAGE BLVD,,KENNEWICK,WA,99336
335 GRANDRIDGE BLVD,,KENNEWICK,WA
500 GAGE BLVD STE A,,KENNEWICK,WA
OHN,MEYER,1976 GREENVIEW DR,,RICHLAND,WA,99352
CW EAST PROPERTY OWNERS ASSOC,3104 W KENNEWICK AV STE C,,KENNEWICK,WA,99336
UDLEY AVENUE,,PROSSER,WA
6301 NE 8TH ST STE 102,,BELLEVUE,WA
EFF & AMY,BERTELSEN,33881 RIVERVIEW DR,,HERMISTON,OR,97838
MANUEL,EDIBIOKPO,807 N PITTSBURGH ST,,KENNEWICK,WA,99336
202 W GAGE BLVD,,KENNEWICK,WA,99336
IRK A & DERAE,STRICKER,3104 S MORAIN PL,,KENNEWICK,WA,99337
OBERT H & MARGARET R,STRATTON,1101 S TAFT ST,,KENNEWICK,WA,99337
ERRY LYNN & SUZANNE BEE,MCCARDLE TRUSTEES,PO BOX 518,,FRIDAY HARBOR,WA,98250

Eng for L. Center Parkway
Mailing Labels

(these addresses are included in the mailing label list.

0-000000157

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KENNEWICK
WASHINGTON

April 2, 2013

Washington Utilities and Transportation Commission
Chandler Plaza
1300 S. Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504

ATTN: Kathy Hunter, Rail Manager

RE: At-Grade crossing of Port of Benton Hanford Industrial Branch
Kennewick Washington Contract P0219 (Phase 3)

Dear Kathy:

Enclosed are an original and three copies of the completed petition for a proposed at-grade crossing of Center Parkway over the Port of Benton Hanford Industrial Branch west of Richland Junction (MP 18.8 of the former UPRR Yakima Mainline). Included with each petition is a copy of:

- Preliminary Crossing Design
- Grade Separation Evaluation
- Appendix to Grade Separation Evaluation
- Traffic Study
- Diagnostic Meeting Record

Due to the complexity of this project, we are requesting that the Commission serve the respondents.

Your support of this important project is appreciated. If you have questions or require additional information, please contact me at (509) 585-4287 or by e-mail at: steve.plummer@ci.kennewick.wa.us.

Yours truly,

Stephen R. Plummer
Engineering Services Manager

ENGINEERING DIVISION

1010 E. Chemical Drive • PO Box 6108 • Kennewick, WA 99336-0108
(509) 585-4287 • Fax (509) 585-4451 • steve.plummer@ci.kennewick.wa.us

TR-130499

Hunter, Kathy (UTC)

From: Terrel A. Anderson <TAANDERS@UP.COM>
Sent: Thursday, April 18, 2013 3:25 PM
To: Kevin Jeffers
Cc: jpeters@CI.RICHLAND.WA.US; Hunter, Kathy (UTC)
Subject: Re: At-Grade Crossing Petition - New Crossing, 30% Plans, City of Kennewick, WA, Center Parkway, MP 0.2, Yakima Sub - Richland Industrial Lead,(No USDOT#),Lat 46.22983, Long -11923120
Attachments: 20130418150517288.pdf

Kevin
Attached is the waiver of hearing for the above mentioned project.
Thanks

(See attached file: 20130418150517288.pdf)
Terrel A. Anderson
Manager Industry & Public Projects
9451 Atkinson St.
Roseville CA. 95747
Office: 916 789-5134
Fax: 402 233-3066
anders@up.com

When Making a submittal to UPRR ensure that the following information is in the email subject or your plan will be rejected.
Project type, % Plans, City, State, Street, RR Milepost, Subdivision, DOT#, and Lat/Long

"Kevin Jeffers" ---04/17/2013 08:45:36 AM---Terrel,

From: "Kevin Jeffers" <Kmje@deainc.com>
To: <TAANDERS@UP.COM>
Cc: <jpeters@CI.RICHLAND.WA.US>
Date: 04/17/2013 08:45 AM
Subject: At-Grade Crossing Petition - New Crossing, 30% Plans, City of Kennewick, WA, Center Parkway, MP 0.2, Yakima Sub - Richland Industrial Lead,(No USDOT#),Lat 46.22983, Long -11923120

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The Washington UTC petition to establish at new at-grade crossing for Center Parkway over the Port of Benton-owned rail line was filed April 8. I have attached the petition, which includes drawings of the proposed crossing and an analysis of the warrant for a grade separation. I also attached the email correspondence between you and I for ease of reference, and the trackage rights agreement between Union Pacific and the City of Richland which makes reference to establishing this crossing.

If UPRR wishes to waive hearing, please sign the sheet in section 13 of the petition and return it to me, the City of Kennewick, or the WUTC by April 28th.

Please let me know if you have any questions.

Kevin M. Jeffers, PE, PMP
Senior Project Manager
David Evans and Associates
3700 Pacific Highway East Suite 311
Tacoma, WA 98424
kmje@deainc.com
Direct: 253-250-0674
Cell: 360-280-5570
Fx: 253.922.9781

ttachment "TR-130499+Initial+Filing.pdf" deleted by Terrel A. Anderson/UPC]

----- on Tue, 9 Apr 2013 08:26:41 -0700 <TAANDERS@UP.COM> "Terrel A. Anderson" Message from -----

"Kevin Jeffers" <Kmje@deainc.com> **:To**
<jpeters@CI.RICHLAND.WA.US> **:cc**
RE: City of Richland, WA - Center Parkway **:Subject**

Yes.
Union Pacific will not object to this petition

Terrel A. Anderson
Manager Industry & Public Projects
9451 Atkinson St.
Roseville CA. 95747
Office: 916 789-5134
Fax: 402 233-3066
taanders@up.com

When Making a submittal to UPRR ensure that the following information is in the email subject or your plan will be rejected.
Project type, % Plans, City, State, Street, RR Milepost, Subdivision, DOT#, and Lat/Long

0-000000162

TR - 130499

Section 12 – Waiver of Hearing by Respondent

Waiver of Hearing

The undersigned represents the Respondent in the petition to construct a highway-railroad grade crossing.

USDOT Crossing No.: TBA Center Parkway Extension

We have investigated the conditions at the proposedor existing crossing site. We are satisfied the conditions are the same as described by the Petitioner in this docket. We agree that a crossing be installed or reconstructed and consent to a decision by the commission without a hearing.

Dated at Roseville, ~~Washington~~ California, on the 18 day of April, 20 13

RECEIVED
2013 APR 19 AM 8:25
STATE OF CALIFORNIA
UTIL. ENFORCEMENT
CONSUMER PROTECTION

Terrel A Anderson
Printed name of Respondent

Terrel A
Signature of Respondent's Representative

Manager of Industry & Public Project
Title

Terrel A. Anderson
Mgr. - Industry & Public Projects
Union Pacific Railroad Company
9451 Atkinson Street
Roseville, CA 95747

Name of Company

Union Pacific Railroad Co.
Phone number and e-mail address

9451 Atkinson St

Roseville Ca 95747 916 789 5134
Mailing address

0-000000163

000090

STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

April 12, 2013

Richard Wagner
BNSF Railway Co.
2454 Occcidental Avenue South #2-D
Seattle, WA 98134

Terrel Anderson
Union Pacific Railroad
9451 Atkinson Street
Roseville, CA 95747

Rhett Peterson
Tri City and Olympia Railroad Company
10 North Washington Street
PO Box 1700
Kennewick, WA 99336

Scott Keller
Port of Benton
3100 George Washington Way
Richland, WA 99354

Sent via Email and First Class Mail

RE: TR-130499 - Petition on Behalf of the City of Kennewick to Reconstruct a Highway-Rail Grade Crossing at Center Parkway in Kennewick, Washington

Dear Mr. Wagner, Mr. Anderson, Mr. Peterson, and Mr. Keller:

On April 8, 2013, the City of Kennewick filed a petition with the Washington Utilities and Transportation Commission (Commission), seeking approval to construct a crossing at Center Parkway in Kennewick. The Commission assigned Docket TR-130499 to this petition.

Please review the enclosed petition and respond now or by the May 2, 2013, deadline. Your response options include:

- Support the petition – Complete the Respondent's Waiver of Hearing form, which serves as your consent for the Commission to issue an order without further notice or hearing.

- Do not support the petition – Reply with your position and include whether you feel a hearing is necessary to resolve the issues or suggest other courses of action, such as further discussion prior to going to hearing.

You must respond with your position within 20 days of the date of this letter. If you have any questions, please contact Kathy Hunter at 360-664-1257 or khunter@utc.wa.gov.

Sincerely,

David Pratt
Assistant Director, Transportation Safety

Enclosure

cc: Peter Beaudry, City of Kennewick (without enclosure)

MH
Minnick·Hayner
attorneys at law

249 West Alder · P.O. Box 1757 · Walla Walla, WA 99362-0348
(509) 527-3500 · Fax (509) 527-3506 · E-mail info@minnickhayner.com

April 26, 2013

Washington State Utilities and
Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

RE: City of Kennewick f. Port of Benton, et al.
Docket No. TR-130499-P

Greetings:

Enclosed please find the original and seven (7) copies of the Answer to Petition to Construct a Highway – Rail Grade Crossing, Center Parkway and Notice of Appearance of Brandon L. Johnson. Please do not hesitate to contact us if you have any questions or need anything additional. Thank you for your assistance.

Very truly yours,

Sylvia Acosta
Assistant to Brandon L. Johnson

BLJ/sa
Enclosures
ec: Client w/Enclosures

Brandon L. Johnson
Minnick-Hayner, P.S.
P.O. Box 1757
Walla Walla, WA 99362
(509) 527-3500

Paul J. Petit
MT Bar No. 3051
General Counsel
Tri-City Railroad Company, LLC
d/b/a Tri-City & Olympia Railroad
P.O. Box 1700
Richland, WA 99352
(509) 727-6982

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK Petitioner vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD CO., BNSF RAILWAY and UNION PACIFIC RAILROAD Respondents.	DOCKET NO. TR-130499-P ANSWER TO PETITION TO CONSTRUCT A HIGHWAY – RAIL GRADE CROSSING, Center Parkway

RESPONDENT TRI-CITY & OLYMPIA RAILROAD CO. ("TCRY") by its attorneys of record herein, pursuant to WAC 480-07-370, submits this ANSWER to the PETITON TO CONSTRUCT A HIGHWAY-RAIL GRADE CROSSING at Center Parkway ("PETITION")

1. TCRY opposes the PETITION and requests that it be denied.

2. TCRY asserts that a hearing is necessary to resolve the issues raised by the PETITION which include, but are not limited to the following:

a. Whether the "inherent site-specific dangers" of an at-grade crossing will be moderated to the extent possible so as to justify the Commission's exercise of its discretion in permitting an inherently disfavored and dangerous at-grade crossing pursuant to the requirements of RCW 81.53.020.

b. Whether there exists "an acute public need which outweighs the resulting danger of the [at-grade] crossing pursuant to the requirements of RCW 81.53.020.

c. Whether a separation of grades is impractical so as to justify the inherent danger of an at-grade crossing.

d. Whether the Commission's prior January 26, 2007 Initial Order Denying Petition and Final Order in the consolidated matters TR-040664 and TR-050967 denying Petitions for an at-grade crossing at the same location by the same Petitioner against this Respondent operates as a claim preclusion bar to this PETITION.

3. TCRY further requests that the Commission hold a Pre-Hearing Conference and enter a Pre-Hearing Conference Order determining that, pursuant to WAC 480-07-400(2), all methods and means of discovery described in WAC 480-07-400(1)(c) as well as all methods described in WAC 480-07-410 and WAC 480-07-415 be available to the parties and setting the schedule for discovery, hearing and other matters herein.

DATED this 26 day of April, 2013.

MINNICK-HAYNER, P.S.

By: _____

Brandon L. Johnson, WSBA# 30837
Of Attorney for Respondent Tri-City & Olympia Railroad Company

Minnick • Hayner
P.O. Box 1757
Walla Walla, WA 99362
(509) 527-3500

CERTIFICATE OF SERVICE

SYLVIA ACOSTA declares under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am a citizen of the United States, over the age of 18 years, and not a party to this action;

2. That on April 26, 2013, a true and correct copy of the foregoing Notice of Appearance was served via email on:

City of Kennewick
Peter Beaudry
P.O. Box 6108
210 West 6th Avenue
Kennewick, WA 99336
Email:
Peter.Beaudry@ci.kennewick.wa.us

Port of Benton
Scott D. Keller
3100 George Washington Way
Richland, WA 99354
Email: keller@portofbenton.com

BNSF Railway
Richard Wagner
2454 Occidental Avenue S., Suite 2D
Seattle, WA 98134
Email: Richard.wagner@bnsf.com

Union Pacific Railroad Company
Terrel Anderson
9451 Atkinson Street
Roseville, CA 95747
Email: taanderson@up.com

SYLVIA ACOSTA
Signed on the 26 day of April, 2013, at
Walla Walla, Walla Walla County, Washington

Minnick • Hayner
P.O. Box 1757
Walla Walla, WA 99
(509) 527-3500

MH
Minnick·Hayner
attorneys at law

249 West Alder · P.O. Box 1757 · Walla Walla, WA 99362-0348
(509) 527-3500 · Fax (509) 527-3506 · E-mail info@minnickhayner.com

April 26, 2013

Washington State Utilities and
Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

RE: City of Kennewick f. Port of Benton, et al.
Docket No. TR-130499-P

Greetings:

Enclosed please find the original and seven (7) copies of the Answer to Petition to Construct a Highway – Rail Grade Crossing, Center Parkway and Notice of Appearance of Brandon L. Johnson. Please do not hesitate to contact us if you have any questions or need anything additional. Thank you for your assistance.

Very truly yours,

Sylvia Acosta
Assistant to Brandon L. Johnson

BLJ/sa
Enclosures
ec: Client w/Enclosures

Paul J. Petit
MT Bar No. 3051
General Counsel
Tri-City Railroad Company, LLC
d/b/a Tri-City & Olympia Railroad
P.O. Box 1700
Richland, WA 99352
(509) 727-6982

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK Petitioner vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD CO., BNSF RAILWAY and UNION PACIFIC RAILROAD Respondents.	DOCKET NO. TR-130499-P NOTICE OF APPEARANCE

TO: WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AND TO: CITY OF KENNEWICK

PLEASE TAKE NOTICE THAT PAUL J. PETIT hereby makes and enters his Appearance in this proceeding on behalf of Respondent Tri-City & Olympia Railroad.

YOU ARE HEREBY REQUESTED to serve all future pleadings and papers, except process, upon the undersigned at the address listed above.

DATED this 26th day of April, 2013.

Paul J. Petit
Of Attorneys for Respondent Tri-City & Olympia Railroad Company
Tri-City & Olympia Railroad
P.O. Box 1700
Richland, WA 99354
Tel: 509-371-8313, Ex. 307
Email: paulpetit@tcry.com

CERTIFICATE OF SERVICE

KENNETH PERKES declares under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am a citizen of the United States, over the age of 18 years, and not a party to this action;

2. That on April 26, 2013, a true and correct copy of the foregoing Notice of Appearance was served via email on:

City of Kennewick
Peter Beaudry
P.O. Box 6108
210 West 6th Avenue
Kennewick, WA 99336
Email:
Peter.Beaudry@ci.kennewick.wa.us

Port of Benton
Scott D. Keller
3100 George Washington Way
Richland, WA 99354
Email: keller@portofbenton.com

BNSF Railway
Richard Wagner
2454 Occidental Avenue S., Suite 2D
Seattle, WA 98134
Email: Richard.wagner@bnsf.com

Union Pacific Railroad Company
Terrel Anderson
9451 Atkinson Street
Roseville, CA 95747
Email: taanderson@up.com

Kenneth S. Perkes
KENNETH PERKES
Signed on the 26 day of April, 2013, at Kennewick, Benton County, Washington

Mnnick • Hayne
P.O. Box 1757
Walla Wala, WA 99362
(509) 527-3500

COWAN MOORE & LUKE

ATTORNEYS AT LAW

A Professional Limited Liability Company
503 KNIGHT STREET, SUITE A
P.O. BOX 927
RICHLAND, WASHINGTON 99352
TELEPHONE (509) 943-2676
FAX (509) 946-4257

THOMAS A. COWAN
PETER P. MOORE
LUCINDA J. LUKE
ANISSA L. SHOEMAKER
DAVID J. BILLETDEAUX

DARYL D. JONSON
(Retired)

PARALEGALS

JULIE HIGUERA
MARY ANNE KROL
DONNA M. SUTHERLAND

April 29, 2013

Washington State Utilities and
Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

RE: City of Kennewick v. Port of Benton, et al
Docket No. TR-130499-P

Dear Sir or Madam:

Enclosed herewith for filing please find my Notice of Appearance on behalf of the Port of Benton. Please contact my office should you have any questions.

Very truly yours,

Thomas A. Cowan

THOMAS A. COWAN
TAC/mak
Enclosure
cc: Port of Benton
Peter Beaudry
Richard Wagner
Terrel Anderson
Paul J. Petit

THOMAS A. COWAN
Cowan Moore & Luke
503 Knight Street, Suite A
Richland, Washington 99352-0927
Telephone: (509) 943-2676
Facsimile: (509) 946-4257
tcowan@cowanmoore.com
Attorneys for Port of Benton

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD CO., BNSF RAILWAY and UNION PACIFIC RAILROAD, Respondents.	DOCKET NO. TR-130499-P NOTICE OF APPEARANCE

TO: WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AND TO: CITY OF KENNEWICK

COWAN MOORE & LUKE
A Professional Limited Liability Company
Attorneys at Law
503 Knight Street, Suite A
Richland, Washington 99352-0927
(509) 943-2676/Fax (509) 946-4257

PLEASE TAKE NOTICE that Thomas A. Cowan of the law firm of Cowan Moore & Luke hereby makes and enters his appearance in this proceeding on behalf of Respondent Port of Benton.

YOU ARE HEREBY REQUESTED to serve all future pleadings and papers, except process, upon the undersigned at the address listed below:

THOMAS A. COWAN
Cowan Moore & Luke
503 Knight Street, Suite A
Richland, Washington 99352-0927
Telephone: (509) 943-2676
Facsimile: (509) 946-4257
tcowan@cowanmoore.com

DATED the 29 day of April, 2013, at Richland, Washington.

COWAN MOORE & LUKE
Attorneys for Port of Benton

By: Thomas A. Cowan
THOMAS A. COWAN, WSBA #5079

COWAN MOORE & LUKE
A Professional Limited Liability Company
Attorneys at Law
503 Knight Street, Suite A
Richland, Washington 99352
(509) 943-2676/Fax (509) 946-4257

Certification

Mary Anne Krol, declares under penalty of perjury under the laws of the State of Washington, as follows:

1. I am a citizen of the United States, over the age of eighteen years and not a party to this action;

2. That on April 29, 2013, a true and correct copy of the foregoing Notice of Appearance was served via U.S. Mail, postage prepaid, and via email on the following parties:

City of Kennewick
Peter Beaudry
P.O. Box 6108
210 West Sixth Avenue
Kennewick, WA 99336
Email: Peter.Beaudry@ci.kennewick.wa.us

BNSF Railway
Richard Wagner
2454 Occidental Avenue S, Suite 2D
Seattle, WA 98134
Email: Richard.wagner@bnsf.com

Union Pacific Railroad Company
Terrel Anderson
9451 Atkinson Street
Roseville, CA 95747
Email: taanderson@up.com

Tri-City Railroad Company, LLC
d/b/a Tri-City & Olympia Railroad
Paul J. Petit, General Counsel
P.O. Box 1700
Richland, WA 99352
Email: paulpetit@tcry.com

Signed on April 29, 2013, in Richland, Benton County, Washington.

MaryAnneKrol

Mary Anne Krol

COWAN MOORE & LUKE
A Professional Limited Liability Company
Attorneys at Law
503 Knight Street, Suite A
Richland, Washington 99352
(509) 943-2676/Fax (509) 946-4257

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	)	DOCKET TR-130499 NOTICE OF PREHEARING CONFERENCE **(Set for Tuesday, June 4, 2013, at 1:30 p.m.)**

1 On April 8, 2013, the City of Kennewick (City) filed with the Washington Utilities and Transportation Commission (Commission) a petition to construct a highway-rail grade crossing at Center Parkway, City of Kennewick.

2 On April 12, 2013, the Commission sent a letter to BNSF Railway Company (BNSF), Union Pacific Railroad (Union Pacific), Tri City and Olympia Railroad Company (Tri City RR), and Port of Benton (Port) notifying them of the petition and requesting they respond within twenty days indicating their support or opposition to the City's petition.

3 On April 19, 2013, Union Pacific filed with the Commission a signed "Waiver of Hearing by Respondent" form; on May 2, 2013, BNSF also filed a signed waiver. On April 29, 2013, counsel for Tri City RR filed an answer opposing the petition and a request that it be denied. Counsel for the Port informally notified Commission Staff that it would not be filing a written response to the petition, but will state the Port's position on the matter at a prehearing conference, if one is scheduled.

4 **STATUTORY AUTHORITY**: The Commission has jurisdiction over this matter under RCW Title 81, and has legal authority to regulate alterations in the style or nature of construction of existing grade crossing, and to apportion the expense of such

a change between the railroad and the municipality or county affected pursuant to RCW 81.53, including without limitations, RCW 81.53.060 and RCW 81.53.110. Statutes involved, in addition to those previously cited, include those within RCW 80.01, RCW 81.04, RCW 81.44, and RCW 81.53, including but not limited to RCW 80.01.040 and RCW 81.04.020.

5 The Commission will hear this matter under the Administrative Procedure Act (APA), particularly Part IV of RCW 34.05 relating to adjudications. The provisions of the APA that relate to this proceeding include, but are not limited to RCW 34.05.413, RCW 34.05.422, RCW 34.05.431, RCW 34.05.440, RCW 34.05.449, RCW 34.05.452, RCW 81.04.110, RCW 81.44.010, and RCW 81.53.060. The Commission will also follow its procedural rules in WAC 480-07 in this proceeding.

6 **THE COMMISSION GIVES NOTICE That it will hold a prehearing conference in this matter at 1:30 p.m., on June 4, 2013, in Room 206, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** If you are unable to attend the prehearing conference in person, you may attend via the Commission's teleconference bridge line at **(360) 664-3846**. Please appear on the teleconference bridge five minutes before the conference is scheduled to begin.

7 The purpose of the prehearing conference is to consider requests for intervention, resolve scheduling matters including establishing dates for distributing evidence and workpapers, to identify the issues in the proceeding and determine other matters to assist the Commission in resolving the matter, as listed in WAC 480-07-430.

8 ***INTERVENTION:*** *Persons who wish to intervene should file a petition to intervene* in writing at least three business days before the date of the prehearing conference. *See* WAC 480-07-355(a). The Commission will consider oral petitions to intervene during the conference, but strongly prefers written petitions to intervene. Party representatives must file a notice of appearance with the Commission no later than the business day before the conference. *See* WAC 480-07-345(2). Any party or witness in need of an interpreter or other assistance should fill out the form attached to this notice and return it to the Commission. The Commission will set the time and place for any evidentiary hearings at the prehearing conference, on the record of a later conference or hearing session, or by later written notice.

9 **THE COMMISSION GIVES NOTICE that any party who fails to attend or participate in the prehearing conference set by this Notice, or any other stage of this proceeding, may be held in default under RCW 34.05.440 and WAC 480-07-450.**

10 The names and mailing addresses of all known parties and their known representatives are as follows:

Petitioner:	City of Kennewick Peter Beaudry 210 West 6th Avenue P.O. Box 6108 Kennewick, WA 99336-0108 (509) 585-4292 Peter.beaudry@ci.kennewick.wa.us
Representative:	Unknown
Respondent:	Port of Benton Scott D. Keller 3100 George Washington Way Richland, WA 99354 (509) 375-3060 keller@portofbenton.com
Representative:	Thomas A. Cowan Cowan Moore & Luke 503 Knight Street, Suite A P.O. Box 927 Richland, WA 99352-0927 (509) 943-2676 tcowan@cowanmoore.com
Respondent:	Tri-City & Olympia Railroad Co. Rhett Peterson 10 North Washington Street Kennewick, WA 99336 (509) 727-8824 rhettwater@mac.com

Representatives:

Paul J. Petit
General Counsel
P.O. Box 1700
Richland, WA 99352
(509) 727-6982
paulpetit@tcry.com

Brandon L. Johnson
Minnick-Hayner, P.S.
P.O. Box 1737
Walla Walla, WA 99362
(509) 527-3500
Brandon@minnickhayner.com

Respondent:

BNSF Railway
Richard Wagner
Manager Public Projects
2454 Occidental Ave S, Suite 2D
Seattle, WA 98134
(206) 625-6152
Richard.wagner@bnsf.com

Representatives:

Tom Montgomery
Kelsey Endres
Montgomery Scarp, PLLC
1218 Third Avenue, Suite 2700
Seattle, WA 98101
(206) 625-1801
tom@montgomeryscarp.com
Kelsey@montgomeryscarp.com

Respondent:

Union Pacific Railroad Company
Terrel A. Anderson
Manager Industry & Public Projects
9451 Atkinson Street
Roseville, CA 95747
(916) 789-5134
taanders@up.com

Representative:	Carolyn Larson Dunn Carney Allen Higgins and Tongue LLP 851 SW Sixth Avenue Suite 1500 Portland, OR 97204 (503) 417-5462 clarson@dunncarney.com
Commission Staff:	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive SW P.O. Box 47250 Olympia, WA 98504-7250 (360) 664-1160
Representative:	Steven W. Smith Assistant Attorney General 1400 S. Evergreen Park Drive SW P.O. Box 40128 Olympia, WA 98504-0128 (360) 664-1225 ssmith@utc.wa.gov

11 Administrative Law Judge Adam E. Torem, from the Commission's Administrative Law Division, will preside during this proceeding.

12 The Commission will give parties notice of any other procedural phase of the proceeding in writing or on the record, as appropriate during this proceeding.

DATED at Olympia, Washington, and effective May 9, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

STEVEN V. KING
Acting Executive Director and Secretary

Inquiries may be addressed to:

Executive Director and Secretary
Washington State Utilities and
Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

Hearing facilities are accessible to persons with disabilities. Smoking is prohibited. If limited English-speaking, hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please fill out this form and return it to Washington State Utilities and Transportation Commission, Attention: Steven V. King, 1300 S. Evergreen Park Drive SW, P. O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket :_____

Case Name:_____

Hearing Date:_____ Hearing Location:_____

Primary
Language:_____

Hearing Impaired (Yes)_____ (No)_____

Do you need a certified sign language interpreter:

Visual_____ Tactile_____

Other type of assistance needed:_____

English-speaking person who can be contacted if there are questions:

Name:_____
Address:_____
_____
Phone No.: (___)_____

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PROOF OF SERVICE

DOCKET 130499

I HEREBY CERTIFY That I, as an employee of the Washington Utilities and Transportation Commission at Olympia, Washington, have served on 5/9/2013 the parties of record in this proceeding a true copy of the following document(s):

Notice of Prehearing Conference (Set for Tuesday, June 4, 2013, at 1:30 p.m.)

The document(s) was/were mailed to each of the parties of record in this docket. Each envelope was addressed to the address shown in the official file, with the required first class postage, and deposited on this date in the United States mail in the City of Olympia, County of Thurston, State of Washington.

Joni Higgins, Customer Service Specialist 3

PARTIES OF RECORD AND OTHERS RECEIVING NOTICE

SERVED BY MAIL:

Anderson, Terrel, Union Pacific Railroad Company, 9451 Atkinson St., Roseville, CA, 95747

Petit, Paul J., Tri-City & Olympia Railroad, P.O. Box 1700, Richland, WA, 99354

Peterson, Rhett, Tri-City & Olympia Railroad, 10 North Washington Street, Kennewick, WA, 99336

Wagner, Richard, BNSF Railway Co., 2454 Occidental Ave S, STE, 2D, Seattle, WA, 98134

Larson, Carolyn, Dunn Carney Allen Higgins and Tongue LLP, 851 SW Sixth Avenue, STE, 1500, Portland, OR, 97204

Rogalsky, Peter K, City of Richland, 840 Northgate Drive, Richland, WA, 99325-3550

Beaudry, Peter M, City of Kennewick, 210 W. 6th Avenue, Kennewick, WA, 99336

Keller, Scott D, Port of Benton, 3100 George Washington Way, Richland, WA, 99352

Montgomery, Tom, Montgomery Scarp MacDougall, PLLC, 1218 Third Avenue, STE, 2700, Seattle, WA, 98101

Johnson, Brandon L, Minnick-Hayner, P.S., 249 West Alder; P.O. Box 1757, Walla Walla, WA, 99362-0348

Cowan, Tom A, Cowan Moore Stam & Luke, PO BOX 927, Richland, WA, 99352

Endres, Kelsey, Montgomery Scarp MacDougall, PLLC, 1218 Third Avenue, STE, 2700, Seattle, WA, 98101

NOTIFIED BY E-MAIL:

Anderson, Terrel, Union Pacific Railroad Company, taanders@up.com

Petit, Paul J., Tri-City & Olympia Railroad, paulpetit@tcry.com

Peterson, Rhett, Tri-City & Olympia Railroad, rhettwater@mac.com

Wagner, Richard, BNSF Railway Co., Richard.wagner@bnsf.com

Perkinson, Mathew, mperkins@wutc.wa.gov

Smith, Steve, WUTC, Ssmith@utc.wa.gov

Torem, Adam, atorem@utc.wa.gov
Dickson, Alan, ADickson@utc.wa.gov
Kern, Cathy, ckern@utc.wa.gov
Gomez, David, dgomez@utc.wa.gov
Pratt, David, dpratt@utc.wa.gov
Holman, Donna, dholman@utc.wa.gov
Eckhardt, Gene, geckhard@utc.wa.gov
Foster, John, jfoster@utc.wa.gov
Hunter, Kathy, khunter@utc.wa.gov
Gross, Krista, kgross@utc.wa.gov
Wyse, Lisa, lwyse@utc.wa.gov
Holloway, Lynda, lhollowa@utc.wa.gov
Meehan, Marilyn, mmeehan@utc.wa.gov
Moen, Nancy, nmoen@utc.wa.gov
Ingram, Penny, pingram@utc.wa.gov
Carnes, Rae Lynn, rcarnes@utc.wa.gov
Pearson, Rayne, rpearson@utc.wa.gov
Smith, Richard, rsmith@utc.wa.gov
Wallace, Sharon, swallace@utc.wa.gov
King, Steve, sking@utc.wa.gov
Leipski, Tina, tleipski@utc.wa.gov
McVaugh, Tom, tmcvaugh@utc.wa.gov
Paul, Susie, Spaul@utc.wa.gov
McCloy, Lauren, LMcCloy@utc.wa.gov
Larson, Carolyn, Dunn Carney Allen Higgins and Tongue LLP, cll@dunn-carney.com
Montgomery, Tom, Montgomery Scarp MacDougall, PLLC, tom@montgomeryscarp.com
Johnson, Brandon L, Minnick-Hayner, P.S., bljohnson@my180.net
Cowan, Tom A, Cowan Moore Stam & Luke, tcowan@cowanmoore.com
Endres, Kelsey, Montgomery Scarp MacDougall, PLLC, kelsey@montgomeryscarp.com

Hunter, Kathy (UTC)

From: Wagner, Richard W <Richard.Wagner@BNSF.com>
Sent: Thursday, May 02, 2013 10:15 AM
To: Hunter, Kathy (UTC)
Cc: Peter Beaudry (Peter.Beaudry@ci.kennewick.wa.us); keller@portofbenton.com; rhettwater@mac.com; Terrel A. Anderson
Subject: RE: TR-130499 - Notification of Filing of Petition to Construct a Railroad Crossing , Waiver of Hearing
Attachments: TR-130499 PetitionSignedWaiverofHearing05022013.pdf

Kathy –

Please find attached BNSF Railway's signed waiver of hearing for TR-130499.

Rick

Rick Wagner
BNSF Mgr Public Projects
O – 206.625.6152
F – 206.625.6356

From: Hunter, Kathy (UTC) [mailto:khunter@utc.wa.gov]
Sent: Friday, April 12, 2013 10:10 AM
To: keller@portofbenton.com; rhettwater@mac.com; Wagner, Richard W; Terrel A. Anderson
Cc: Peter Beaudry (Peter.Beaudry@ci.kennewick.wa.us)
Subject: TR-130499 - Notification of Filing of Petition to Construct a Railroad Crossing at Center Parkway in Kennewick

Good morning,

Attached is notification of filing of a petition by the City of Kennewick to establish an at-grade crossing at Center Parkway in Kennewick. Paper copies of all documents will be mailed to each of you today too. Please note that you must respond to the Utilities and Transportation Commission by May 2, 2013.

If you have any questions, please contact me.

Thank you.

Kathy Hunter, Deputy Assistant Director, Transportation Safety
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250

Office Telephone: (360) 664-1257
Cell: (360) 701-1612
Fax: (360) 586-1150

TR-130499

Section 12 – Waiver of Hearing by Respondent

Waiver of Hearing

The undersigned represents the Respondent in the petition to construct a highway-railroad grade crossing.

USDOT Crossing No.: _____

We have investigated the conditions at the proposedor existing crossing site. We are satisfied the conditions are the same as described by the Petitioner in this docket. We agree that a crossing be installed or reconstructed and consent to a decision by the commission without a hearing.

Dated at SEATTLE, Washington, on the 2ND day of May, 2013

BNSF Railway
Printed name of Respondent

Richard L Wagner
Signature of Respondent's Representative

MGR Public Projects
Title

Name of Company

206.625.6152, Richard.Wagner@BNSF.com
Phone number and e-mail address

2454 Occidental Ave South Ste 2D

Seattle, WA 98134
Mailing address

RECEIVED
RECORDS MANAGEMENT
2013 MAY -2 AM 11:20
STATE OF WA.
UTIL AND TRANS
COMMISSION

Filed
TO-000000187
Rmy
000114

WASHINGTON UTC UTILITIES AND TRANSPORTATION COMMISSION

Memorandum

May 3, 2013

To: Greg Kopta, Director, Administrative Law Division

Thru: David Pratt, Assistant Director, Transportation Safety

From: Kathy Hunter, Deputy Assistant Director, Transportation Safety

Subject: Staff Recommendation to Set Matter for Hearing
TR-130499 – Petition on behalf of the City of Kennewick to Construct an At-grade Highway-Rail Grade Crossing at Center Parkway

On April 8, 2013, the City of Kennewick (City) filed a petition with the Utilities and Transportation Commission (commission) seeking approval to construct an at-grade highway-rail grade crossing in the city of Kennewick at Center Parkway. In 2004, the City filed two petitions with the commission to construct crossings at the same location. The commission assigned TR-040664 and TR-050967 to the petitions which were denied.

On April 12, 2013, commission staff provided notice of the filing of the petition to Union Pacific Railroad, BNS Railway Co., Tri-City and Olympia Railroad, and the Port of Benton. Union Pacific Railroad, BNSF Railway Co., and the Tri-City and Olympia Railroad all operate on the tracks at the location of the proposed crossing. The Port of Benton owns the tracks.

In response to the April 12, notice Union Pacific Railroad and BNSF Railway Co. signed and filed "Waiver of Hearing by Respondent" forms with the commission. The Tri-City and Olympia Railroad filed an answer opposing the petition and requests that it be denied. Mr. Thomas Cowan, attorney for the Port of Benton contacted commission staff and verbally notified staff that the Port of Benton will not be filing a written response to the petition but will state their position on the matter at the Prehearing Conference, if scheduled. Subsequently, Mr. Cowan filed a Notice of Appearance on behalf of the Port of Benton.

After reviewing the responses from all parties, UTC staff recommends that the petition be set for hearing to address the objections filed by the Tri-City and Olympia Railroad. In addition, a formal response is needed from the Port of Benton to determine their position on the petition.

Attachment 1 – Petition TR-130499 and supporting documents
Attachment 2 – Letter from David Pratt to Richard Wagner, Terrel Anderson, Rhett Peterson, and Scott Keller
Attachment 3 – Waiver of Hearing on behalf of Union Pacific
Attachment 4 – Waiver of Hearing on behalf of BNSF Railway Co.
Attachment 5 – Answer to Petition to Construct a Highway Rail Grade Crossing on behalf of Tri-City and Olympia Railroad

Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Utilities and Transportation Division
1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

May 6, 2013

Steven V. King, Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *City of Kennewick - Petition to Construct a Highway-Rail Grade Crossing, Center Parkway, Kennewick, WA*
Docket TR-130499

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and one copy of a Notice of Appearance of Steven W. Smith, and Certificate of Service.

Sincerely,

Steven W. Smith

STEVEN W. SMITH
Assistant Attorney General

SWS/emd
Enclosures
cc: Parties w/enc.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY, UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499 NOTICE OF APPEARANCE OF BEHALF OF THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF

1 TO: STEVEN V. KING, Acting Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington, 98504-7250; and

2 TO: PARTIES OF RECORD:

3 PLEASE TAKE NOTICE THAT THE UNDERSIGNED hereby enter their appearance as counsel for the Staff of the Washington Utilities and Transportation Commission in the above-entitled matter, specifically reserving all rights including those relating to jurisdiction, and request that all further motions, notices, pleadings, and other papers in this proceeding be served upon them at the following address:

STEVEN W. SMITH
Office of the Attorney General
Utilities and Transportation Division
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128
Phone: (360) 664-1225
E-mail: ssmith@utc.wa.gov

//
//
//

Dated this 6th day of May, 2013.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General.

STEVEN W. SMITH
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

Docket TR-130499
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Notice of Appearance upon the persons and entities listed on the Service List below via e-mail and by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 6th day of May, 2013.

ELIZABETH M. DeMARCO

***For City of Kennewick*:**

Peter Beaudry
210 W. 6th Ave.
Kennewick, WA 99336
Phone: (509) 585-4292
E mail: Peter.Beaudry@ci.kennewick.wa.us

***For BNSF Railway Co.*:**

Richard Wagner
2454 Occidental Ave., S., Suite 2D
Seattle, WA 98134
Phone: (206) 625-6152
E-mail: Richard.wagner@bnsf.com

***For Port of Benton*:**

Thomas A. Cowan
Cowan Moore & Luke
503 Knight Street, Suite A
Richland, WA 99352-0927
Phone: (509) 943-0927
E-mail: tcowan@cowanmoore.com

***For Union Pacific Railroad Co.*:**

Terrel Anderson
9451 Atkinson Street
Roseville, CA 95747
Phone: (916) 390-3693
E-mail: taanders@up.com

***For Tri-City & Olympia Railroad*:**

Paul J. Petit
P.O. Box 1700
Richland, WA 99354
Phone: (509) 371-8313
E-mail: paulpetit@tcry.com

From: Jeremy Eckert [mailto:EckeJ@foster.com]
Sent: Friday, May 31, 2013 3:00 PM
To: UTC DL Records Center
Cc: Jeremy Eckert
Subject: Cover Letter for materials delivered 5/31 re Docket TR-130499

Hi Joni –

Pursuant to WAC 480-07-140(4), please accept this email as the cover letter for the materials that you recently received.

1. **Identification of the sender**

   The sender is Jeremy Michael Eckert, attorney at Foster Pepper PLLC, 1111 3rd Ave Ste. 3400, Seattle, WA, 98101. Phone: 206.447.6284. Email: eckej@foster.com. Fax: 206.749.2018.

2. **Identification of the proceeding**

   The proceeding is City of Kennewick, Petitioner v. Port of Benton; Tri City & Olympia Railroad Company; BNSF Railway; Union Pacific Railroad, Respondent. Docket TR-130499. Administrative Law Judge Adam E. Torem is assigned to this proceeding.

3. **Delivered materials**

   The delivered materials are: (1) a motion to intervene by the City of Richland; (2) a notice of appearance for the City of Kennewick; (3) a notice of appearance for the City of Richland.

Thank you for your assistance in this matter.

Jeremy Eckert
Foster Pepper PLLC | P: 206.447.6284 | eckej@foster.com

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 NOTICE OF APPEARANCE FOR THE CITY OF KENNEWICK

1. P. Stephen DiJulio and Jeremy Eckert of Foster Pepper PLLC enters an appearance in this petition on behalf of the City of Kennewick. You are notified that service of all further pleadings, notices, documents or other papers, exclusive of original process, be served upon them at the address below stated.

Foster Pepper PLLC
Attention: Stephen DiJulio
1111 3rd Avenue, Suite 3400
Seattle, WA 98101

Foster Pepper PLLC
Attention: Jeremy Ecket
1111 3rd Avenue, Suite 3400
Seattle, WA 98101

Dated this 31st day of May, 2013

FOSTER PEPPER PLLC

By: _____
P. Stephen DiJulio, WSBA #12921
Jeremy Eckert, WSBA #42596
Attorneys for Intervenor, The City of Richland

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 340(
SEATTLE, WASHINGTON 98101-32
PHONE (206) 447-4400 FAX (206) 447-9700

ORIGINAL

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of this record in this proceeding by U.S. Postal Service – postage prepaid, or hand delivery. The parties of record are identified below:

City of Kennewick Peter Beaudry 210 West 6th Ave. P.O. Box 6108 Kennewick WA 99336-0108 *Peter.beaudry@ci.kennewick.wa.us*	Port of Benton Scott D. Keller 3100 George Washington Way Richland WA 99354 *keller@portofbenton.com*
Thomas A. Cowan Cowan Moore & Luke 503 Knight St., Ste. A Richland WA 99352-0927 *tcowan@cowanmoore.com*	Tri-City & Olympia Railroad Co. Rhett Peterson 10 North Washington St. Kennewick WA 99336 *Rhettwater@mac.com*
Paul J. Petit General Counsel P.O. Box 1700 Richland WA 99352 *paulpetit@tcry.com*	Brandon L. Johnson Minnick-Hayner, P.S. P.O. Box 1737 Walla Walla WA 99362 *Brandon@minnickhayner.com*
BNSF Railway Richard Wagner Manager Public Projects 2454 Occidental Ave. S., Ste. 2D Seattle WA 98134 *Richard.wagner@bnsf.com*	Tom Montgomery Kelsey Endres Montgomery Scarp, PLLC 1218 Third Ave., Ste. 2700 Seattle WA 98101 *tom@montgomeryscarp.com* *Kelsey@montgomeryscarp.com*
Union Pacific Railroad Company Terrel A. Anderson Manager Industry & Public Projects 9451 Atkinson St. Roseville CA 95747 *taanders@up.com*	Carolyn Larson Dunn Carney Allen Higgins and Tongue LLP 851 S.W. Sixth Ave., Ste. 1500 Portland OR 97204 *clarson@dunncarney.com*
Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. S.W. P.O. Box 47250 Olympia WA 98504-7250	Steven W. Smith Assistant Attorney General 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia WA 98504-0128 *ssmith@uts.wa.gov*

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A courtesy copy was also delivered, in the manner indicated, to:

Adam E. Torem
Administrative Law Judge
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia WA 98504-7250
atorem@utc.wa.gov

DATED this 31st day of May, 2013, at Seattle, Washington.

Helen M. Stubbert

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 NOTICE OF APPEARANCE FOR THE CITY OF RICHLAND

1. P. Stephen DiJulio and Jeremy Eckert of Foster Pepper PLLC enters an appearance in this petition on behalf of the City of Richland. You are notified that service of all further pleadings, notices, documents or other papers, exclusive of original process, be served upon them at the address below stated.

Foster Pepper PLLC
Attention: Stephen DiJulio
1111 3rd Avenue, Suite 3400
Seattle, WA 98101

Foster Pepper PLLC
Attention: Jeremy Ecket
1111 3rd Avenue, Suite 3400
Seattle, WA 98101

Dated this 31st day of May, 2013

FOSTER PEPPER PLLC

By: _____
P. Stephen DiJulio, WSBA #12921
Jeremy Eckert, WSBA #42596
Attorneys for Intervenor, The City of Richland

ORIGINAL

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Thomas A. Cowan Cowan Moore & Luke 503 Knight St., Ste. A Richland WA 99352-0927 *tcowan@cowanmoore.com*	Tri-City & Olympia Railroad Co. Rhett Peterson 10 North Washington St. Kennewick WA 99336 *Rhettwater@mac.com*
Paul J. Petit General Counsel P.O. Box 1700 Richland WA 99352 *paulpetit@tcry.com*	Brandon L. Johnson Minnick-Hayner, P.S. P.O. Box 1737 Walla Walla WA 99362 *Brandon@minnickhayner.com*
BNSF Railway Richard Wagner Manager Public Projects 2454 Occidental Ave. S., Ste. 2D Seattle WA 98134 *Richard.wagner@bnsf.com*	Tom Montgomery Kelsey Endres Montgomery Scarp, PLLC 1218 Third Ave., Ste. 2700 Seattle WA 98101 *tom@montgomeryscarp.com* *Kelsey@montgomeryscarp.com*
Union Pacific Railroad Company Terrel A. Anderson Manager Industry & Public Projects 9451 Atkinson St. Roseville CA 95747 *taanders@up.com*	Carolyn Larson Dunn Carney Allen Higgins and Tongue LLP 851 S.W. Sixth Ave., Ste. 1500 Portland OR 97204 *clarson@dunncarney.com*
Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. S.W. P.O. Box 47250 Olympia WA 98504-7250	Steven W. Smith Assistant Attorney General 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia WA 98504-0128 *ssmith@uts.wa.gov*

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Adam E. Torem
Administrative Law Judge
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia WA 98504-7250
atorem@utc.wa.gov

DATED this 31st day of May 2013, at Seattle, Washington.

Helen M. Stubbert

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1111 THIRD AVENUE, SUITE 34
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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 MOTION TO INTERVENE BY THE CITY OF RICHLAND

Petitioner's Interest in the Proceeding and Petitioner's Information

1. The City of Richland ("City") moves to intervene as a Petitioner in this appeal to support the City's substantial interest in construction of a highway-rail grade crossing on Center Parkway. The railway crossing has been an essential component of the City's adopted Comprehensive Plan since 2006. As the Tri-Cities continue to grow, placing increased vehicular demand on roadways, the crossing has become a critical infrastructure improvement that will allow the City to achieve its stated level of service for fire and emergency response services, and police protection, all of which serve the public interest.

Petitioners:	The City of Richland
Address:	P.O. Box 190, Richland, WA 99352
Attention:	Cindy Johnson, City Manager
Representative:	Foster Pepper PLLC
Address:	1111 3rd Avenue, Suite 3400, Seattle, WA 98101
Attention:	Steve DiJulio

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Statute and Rules at Issue

2. A motion for intervention is subject to WAC 480-07-355. A motion to intervene must be granted unless the moving party does not have a substantial interest in the proceeding, or that the public interest will not be served by the intervenor's continued participation. WAC 480-07-355(4).

Statement of Issue

3. Whether the City has a substantial interest in this proceeding that will determine whether the City may proceed with critical transportation improvements that have been identified in the City's Comprehensive Plan since 2006.

Relief Requested

4. The City respectfully requests that the Commission allow the City to intervene in this matter. The City's intervention will ensure that the Commission is presented with relevant evidence that directly identifies the public interest in establishing the rail crossing.

Comprehensive Planning Under the Growth Management Act

5. The City is required to adopt a Comprehensive Plan to accommodate growth under the state's Growth Management Act ("GMA," Ch. 36.70A RCW). The GMA mandates that each Comprehensive Plan include a capital facilities element and a transportation element that provides a stated level of service ("LOS") standard for all locally owned arterials. RCW 36.70A.070.

6. Comprehensive Plans are developed through early and continuous public participation. The GMA mandates that the City use procedures for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, open discussion, communication programs, information services, and consideration of and response to public comments. RCW 36.70A.140.

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7. All city planning activities and budget decisions must be in conformity with the adopted Comprehensive Plan. RCW 36.70A.120.

8. Title 35 RCW provides cities with the authority to complete projects projects identified in the Comprehensive Plan. The City of Richland, as a first class city, together with the City of Kennewick, as a code city, have the authority to perform any function granted to any other city classification under Title 35 RCW.

The Crossing Is an Essential Component of the City's Comprehensive Plan

9. The City Comprehensive Plan establishes LOS at five minutes for fire and emergency services and one to five minutes for high priority police calls. Comprehensive Plan at T 5-3; CF 6-4.

10. The Comprehensive Plan recognizes that expected population growth will likely result in increased response times.

11. To address LOS standards, in 2006, the City adopted a Transportation Improvement Program that provides a timeline for specified improvement. Three specified improvements are directly related to the crossing at issue in this petition. As background, Tapteal Dr. is north of the proposed crossing. Gage Blvd. is south of the proposed crossing. And Center Parkway is the proposed arterial that runs between Tapteal and Gage, crossing the railroad tracks.

- The first identified project creates a collector arterial on Center Parkway from Tapteal to the South City limits (i.e., the railway): "Center Parkway – Tapteal to south City Limits … projected project cost: $850,000." Comprehensive Plan, Table T-5 (2006 – 2015 Projects)
- The second identified project is a signalized intersection at Center Parkway and Tapteal: "Center Parkway/Tapteal Dr. Traffic Signal … Projected Cost $220,000. Comprehensive Plan, Table T-5 (2016 - 2025 Projects)

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Taken together, the new road and intersection would not address projected LOS deficiencies unless it connected to Center Parkway on the south side of the train tracks.

- To address the identified long-term LOS deficiency, the third identified project creates a continuous arterial on Center Parkway that crosses the railroad tracks between Tapteal Dr. to north, and Gage Blvd. to the south: "Center Parkway from Tapteal to Gage: Construct 3-lane Road ... Estimated Cost ($1,000s): $500." Comprehensive Plan, Table T-8 (RTP Projects included in travel demand modeling (2020)).

12. In developing its transportation plan, the City adhered to the GMA's extensive public participation requirements. Tri City & Olympia Railroad Company did not submit any comments opposing the City's Comprehensive Plan.

13. A recent J-U-B Engineers study demonstrates that the proposed crossing would significantly improve emergency response times, allowing the City of Richland to achieve its stated LOS for emergency services. J-U-B Engineers, Center Parkway Extension And Railroad Crossing Traffic Study at 6.

14. The City of Richland and the City of Kennewick are relying upon their authority set forth in Title 35 RCW to complete the railway crossing, which is consistent with their respective Comprehensive Plans and the Joint Agreement between the cities. Attached is the cities' Joint Agreement – Center Parkway Extension – Gage Boulevard to Tapteal Drive, set forth in Exhibit A to this motion. The crossing is also consistent with the Railroad Crossing Agreement executed between the cities and the Port of Benton, set forth in Exhibit B to this motion

Intervention by the City Will Serve the Public Interest

15. The City of Richland's intervention does not broaden the issue in the proceeding. At the Hearing, the sole issue before the Board will be whether the proposed crossing advances

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the public interest. All City of Richland-related material will be directly related to this issue.

16. For the reasons discussed above, this petition will have a direct impact on public health and safety. It also will directly determine whether the City of Richland and the City of Kennewick comply with their Comprehensive Plans. Failure to comply with Comprehensive Plans will have numerous detrimental impacts to the City and its residents' welfare.

The Prompt and Orderly Conduct of the Petition Will Not be Impaired by the City's Intervention

17. The City will not seek to change the existing petition schedule or to revise the issue in this case. The City will cooperate with the other parties in producing a record that is appropriate and conducive to the resolution of this petition, and the City's legal counsel will allow the City to brief any matter for the Commission without delay.

Conclusion

18. The City of Richland respectfully asks the Commission to grant this motion to intervene for the reasons discussed above.

Dated this 31st day of March, 2013.

FOSTER PEPPER PLLC

By: _____
P. Stephen DiJulio, WSBA #12921
Jeremy Eckert, WSBA #42596
Attorneys for Intervenor, the City of Richland

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DATED this 31st day of May, 2013, at Seattle, Washington.

Helen M. Stubbert

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EXHIBIT A

C91-01

JOINT AGREEMENT

CENTER PARKWAY EXTENSION – GAGE BOULEVARD TO TAPTEAL DRIVE

CITY OF KENNEWICK – CITY OF RICHLAND

This AGREEMENT, made and entered into this 18th day of September, 2001, between the City of Kennewick (hereinafter called "KENNEWICK") and the City of Richland (hereinafter called "RICHLAND"), collectively hereinafter referred to as the "PARTIES".

WHEREAS, KENNEWICK has secured $2,016,000 in Rural Economic Vitality funds (hereinafter referred to as "REV") through the Washington State Community Economic Revitalization Board and $364,241 through the Surface Transportation Program Regional Competitive Fund (hereinafter referred to as "STP") for the construction of a new roadway extending Center Parkway from Gage Boulevard to Tapteal Drive, widening and improvements of Gage Boulevard from Center Parkway to Leslie Road, a new traffic signal at Center Parkway and Gage Boulevard, a new traffic signal at Bellerive and Gage Boulevard, channelization improvements, curb and gutter and sidewalk, storm drainage, at-grade railroad crossing, and associated work, all of which is hereinafter called the PROJECT, and

WHEREAS, KENNEWICK did obligate the REV and STP funds to the PROJECT, and

WHEREAS, RICHLAND did elect to commit $475,800 in Surface Transportation Program Direct Allocation funds (hereinafter referred to as "DIRECT ALLOCATION") to the PROJECT, and

WHEREAS, a Local Agency Agreement Supplement (DOT Form 140-041) is required in order to obligate the DIRECT ALLOCATION funding to the PROJECT, and

WHEREAS, RCW 47.28.140, Agreements to Benefit or Improve Highways, Roads, Streets, and Establish Urban Public Transportation Systems, provides authority for agencies to enter into this agreement, and

WHEREAS, the PARTIES recognize the mutual benefits of improvements to Center Parkway and Gage Boulevard, and

WHEREAS, the PARTIES recognize that a consultant has been chosen to accomplish the preliminary engineering for the Center Parkway Extension, and for the preliminary engineering for the Gage Boulevard improvements within the Richland city limits, and

WHEREAS, the PARTIES agree that KENNEWICK will accomplish the preliminary engineering for the Gage Boulevard Widening within the Kennewick city limits, including the preliminary engineering for a new traffic signal at the intersection of Gage Boulevard and Center Parkway, and

NOW THEREFORE, in consideration for the mutual covenants, conditions, and terms contained herein, the said PARTIES hereby enter into this agreement for the PROJECT design engineering and right-of-way phases as follows:

I GENERAL

1) KENNEWICK, as agent acting for and on the behalf of the PARTIES, agrees to:

   a) prepare the said Local Agency Agreement Supplement (DOT Form 140-041) to obligate the DIRECT ALLOCATION funds on behalf of RICHLAND.
   b) prepare a Consultant Agreement with the chosen consultant and administer said Consultant Agreement for the preliminary design and right-of-way acquisition for the Center Parkway Extension and Gage Boulevard Widening within the Richland city limits portions of the PROJECT.
   c) prepare the preliminary design for the Gage Boulevard Widening within the Kennewick city limits and for a new traffic signal at the intersection of Center Parkway and Gage Boulevard portion of the PROJECT.
   d) submit right-of-way plans and contract documents for review and approval by RICHLAND for portions of the PROJECT lying within Richland City Limits.

2) The provisions of this agreement shall become effective on the date written above and the charges provided for herein commence on the effective date, except, charges for design engineering which have occurred after May 2, 2001, are considered to be PROJECT charges and will be billed to the appropriate PARTIES as set forth in the payment section of this agreement.

   This agreement covers the design engineering and right-of-way acquisition phases of the PROJECT only and therefore will require a supplemental agreement for the construction phase of the project

II PAYMENT

Payment for PROJECT PRELIMINARY ENGINEERING costs and RIGHT-OF-WAY ACQUISITION for Center Parkway shall be apportioned between KENNEWICK and RICHLAND equally. Costs of RIGHT-OF-WAY ACQUISITION and PROJECT PRELIMINARY ENGINEERING for Gage Boulevard in Richland will be paid by Richland and costs for Gage Boulevard in Kennewick will be paid by Kennewick. RIGHT-OF-WAY donation(s) for Center Parkway will be applied as local matching funds for all project grants.

Payment of construction phase costs will be determined by the supplemental agreement completed prior to the construction phase. An equitable cost sharing

formula for the construction phase will be developed once the final scope of work and detailed cost estimates for the construction are completed. This is expected near the completion of the preliminary engineering phase. Local matching funds for additional grants that may be obtained for the PROJECT shall also be apportioned by the construction phase supplemental agreement..

PROJECT costs are defined as all actual direct and related indirect costs, including but not limited to, roadway engineering, railway engineering, right-of-way acquisition, legal, administrative overhead, testing services, and costs related to or incidental to the REV, STP or DIRECT ALLOCATION programs.

RICHLAND shall provide monthly billings as required to KENNEWICK itemizing Richland Public Works Department support costs, so these costs can be incorporated in the overall PROJECT costs and be reimbursed in accordance with Federal guidelines.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year first above written.

CITY OF KENNEWICK

James R. Beaver, Mayor

ATTEST:

Valerie Loffler, City Clerk

APPROVED AS TO FORM

John Ziobro, City Attorney

CITY OF RICHLAND

John C. Darrington, City Manager

ATTEST:

Kenneth Bays, City Clerk

APPROVED AS TO FORM

Thomas O. Lampson, City Attorney

C-1607 C91-01 (1)

JOINT AGREEMENT

CENTER PARKWAY EXTENSION – GAGE BOULEVARD TO TAPTEAL DRIVE
CITY OF KENNEWICK – CITY OF RICHLAND

SUPPLEMENT No. 1

This SUPPLEMENT, No. 1 to the JOINT AGREEMENT, dated September 18, 2001, made and entered into this 17th day of February, 2006, between the City of Kennewick (hereinafter called "KENNEWICK") and the City of Richland (hereinafter called "RICHLAND"), collectively hereinafter referred to as the "PARTIES".

WHEREAS, the PARTIES previously entered into a JOINT AGREEMENT, dated September 18, 2001, that provided for the preliminary engineering and right-of-way acquisition for the construction of a new roadway extending Center Parkway from Gage Boulevard to Tapteal Drive, widening and improvements to Gage Boulevard from Center Parkway to Leslie Road, a new traffic signal at Center Parkway and Gage Boulevard, a new traffic signal at Bellerive Drive and Gage Boulevard, channelization improvements, curb and gutter and sidewalk, storm drainage, at-grade railroad crossing, and associated work, all of which is hereinafter called the PROJECT, and,

WHEREAS, the PARTIES have mutually agreed that the PROJECT should be modified and constructed in phases as follows: Phase 1 – installation of a new traffic signal at Bellerive Drive and Gage Boulevard; Phase 2A - widening and improvements of Gage Boulevard from Louisiana Street to Leslie Road, including channelization improvements, curb and gutter and sidewalk, storm drainage, and associated work; Phase 2B – construction of a roundabout, in lieu of a traffic signal, at the intersection of Center Parkway and Gage Boulevard, and widening and improvements to Gage Boulevard from Louisiana Street to Center Parkway, including channelization improvements, curb and gutter and sidewalk, storm drainage, and associated work; Phase 3 - construction of a new roadway extending Center Parkway from Gage Boulevard to Tapteal Drive, and

WHEREAS, Phase 1 of the PROJECT is complete, and

WHEREAS, RICHLAND did obtain an Urban Corridor Program (UCP) Grant through the Transportation Improvement Board (TIB) in the amount of $1,900,000.00 for the construction of Phases 2A, 2B and 3, and

WHEREAS, RICHLAND intends to install utility pipelines in Gage Boulevard under the construction contract for Phase 2A; and

WHEREAS, KENNEWICK is the lead agency for the PROJECT, and

WHEREAS, a supplement to the JOINT AGREEMENT is required for the construction of Phases 2A, 2B and 3, and

WHEREAS, a supplement to the JOINT AGREEMENT is required in order for KENNEWICK administer the UCP Grant, and

NOW THEREFORE, by virtue of RCW 47.28.140 and in consideration of the mutual covenants, conditions, and terms contained herein, the said PARTIES hereby enter into this SUPPLEMENT No. 1 to the JOINT AGREEMENT as follows:

I **GENERAL** – The section is hereby supplemented with the following:

1) KENNEWICK, as agent acting for and on the behalf of the PARTIES, agrees to:

   a) prepare the construction prospectus to obligate the UCP funds on behalf of RICHLAND.
   b) Prepare contract documents for the construction and include drawings and specifications for RICHLAND'S utility pipelines.
   c) Contract for construction of Phase 2A within calendar year 2006, and for Phase 2B within calendar year 2007.
   d) administer the construction contracts for the completion of Phases 2A, 2B and 3.
   e) Provide a project manager to administer the construction contract for the improvements.
   f) administer grant reimbursement requests and closeout documentation.
   g) prepare billings for submittal to RICHLAND for reimbursement for costs not covered by grant funds.
   h) Provide quarterly reports to RICHLAND on the overall project financial status.
   i) provide construction inspection services for all work within KENNEWICK city limits.

2) RICHLAND agrees to:

   a) Pursue administrative transfer of the UCP funds to KENNEWICK.
   b) provide construction inspection services under the direction of KENNEWICK'S project manager for all work within RICHLAND city limits.

II **PAYMENT** - The section is hereby supplemented with the following:

Payment for construction costs, including construction inspection services, for Phases 2A and 2B of the PROJECT shall be by State and Federal grants. RICHLAND shall provide monthly billings, as required, to KENNEWICK itemizing Richland Public Works Department support costs, so these costs can be incorporated in the overall PROJECT costs and be reimbursed in accordance with State and Federal guidelines.

PROJECT costs are defined as all actual direct and related indirect costs, including but not limited to, roadway engineering, railway engineering, right-of-way acquisition, legal, administrative overhead, testing services, and costs related to or incidental to the Federal REV, STP or DIRECT ALLOCATION programs and the State UCP program.

Payment of construction costs for Phase 3 will be determined by a future supplemental agreement.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year first above written.

CITY OF KENNEWICK

James R. Beaver, Mayor

ATTEST:

Valerie Loffler, City Clerk

APPROVED AS TO FORM

John Ziobro, City Attorney

CITY OF RICHLAND

John C. Darrington, City Manager

ATTEST:

Cindy Johnson, City Clerk

APPROVED AS TO FORM

Thomas O. Lampson, City Attorney

CONTRACT NO. 91-01

JOINT AGREEMENT

CENTER PARKWAY EXTENSION – GAGE BOULEVARD TO TAPTEAL DRIVE

CITY OF RICHLAND – CITY OF KENNEWICK

SUPPLEMENT No. 2

This SUPPLEMENT No. 2 to the JOINT AGREEMENT, dated September 18, 2001, made and entered into this 7th day of February, 2012, between the City of Richland, (hereinafter called "RICHLAND") and the City of Kennewick (hereinafter called "KENNEWICK"), collectively hereinafter referred to as the "PARTIES".

WHEREAS, the PARTIES recognize the mutual benefits of improvements to Center Parkway; and

WHEREAS, the PARTIES previously entered into a JOINT AGREEMENT, dated September 18, 2001, that provided for the preliminary engineering and right-of-way acquisition for the construction of a new roadway extending Center Parkway from Gage Boulevard to Tapteal Drive, widening and improvements to Gage Boulevard from Center Parkway to Leslie Road, a new roundabout at Center Parkway and Gage Boulevard, a new traffic signal at Bellerive Drive and Gage Boulevard and associated improvements; and

WHEREAS, the PARTIES previously entered into SUPPLEMENT No. 1 dated February 27, 2006 that provided for the construction of Gage Boulevard, now complete, and to designate KENNEWICK to be the lead agency for the project; and

WHEREAS, the PARTIES desire to designate RICHLAND as the lead agency for the right of way acquisition, design and construction of Center Parkway from Gage Boulevard to Tapteal Drive; and

WHEREAS, the PARTIES desire to jointly support acquisition of additional funding needed to complete Center Parkway between Gage Boulevard and Tapteal Drive

NOW THEREFORE, by virtue of RCW 47.28.140 and in consideration of the mutual covenants, condition and terms contained herein, the said PARTIES hereby enter into this SUPPLEMENT No. 2 to the JOINT AGREEMENT as follows;

I GENERAL

1) RICHLAND, as agent and acting for and on the behalf of the PARTIES agrees to:

a. Purchase right-of-way for the construction of Center Parkway within RICHLAND and act as KENNEWICK's agent to complete right of way acquisition for parcels lying within KENNEWICK city limits.
b. Prepare grant funding applications needed to complete project funding, including application to the anticipated 2012 Benton Franklin Council of Governments federal funds distribution process.
c. Prepare environmental review documentation as required.
d. Prepare engineering designs, specifications and estimates
e. Prepare Washington State Utilities and Transportation (WUTC) petition, and required supporting documentation, to obtain an at-grade rail crossing authorization.
f. Submit construction and contract documents for review and approval by KENNEWICK for portions of the project lying with KENNEWICK city limits
g. Provide a project manager to administer the construction contract for the construction
h. Administer the construction contracts for the completion of the project
i. Administer grant reimbursement requests and closeout documentation
j. Prepare billings for submittal to KENENWICK for reimbursement for costs not covered by the grant funds
k. Provide periodic reports to KENNEWICK on the overall project financial status
l. Provide construction inspection services for all work within the project limits

2) KENNEWICK agrees to:

a. Support grant funding applications prepared by Richland for completion of this project. For the anticipated 2012 Benton Franklin Council of Governments federal funds distribution, or the first such distribution following execution of this agreement, KENNEWICK will support Center Parkway as the highest priority urban project for available distribution funds.
b. Execute right of way acquisition documents and WUTC documents as required to complete the project.

c. Provide construction inspection services under the direction of RICHLAND'S project manager, as needed, for work within KENNEWICK city limits.
d. Invoice Richland for grant eligible costs incurred during the project no later than 60 days following Richland's acceptance of the constructed improvements.

II PAYMENT

1) RICHLAND shall pay KENNEWICK for grant eligible costs incurred and invoiced by KENNEWICK from grant proceeds

CITY OF RICHLAND

Cynthia D. Johnson, City Manager

CITY OF KENNEWICK

Marie E. Mosley, City Manager

ATTEST:

Marcia Hopkins, City Clerk

ATTEST:

Valerie J. Loffler, City Clerk

APPROVED AS TO FORM:

Tom Lampson, City Attorney

APPROVED AS TO FORM:

Lisa Beaton, City Attorney

EXHIBIT B

RAILROAD CROSSING AGREEMENT

THIS AGREEMENT is entered into this 19 day of October, 2006 by and among the **CITY OF KENNEWICK**, a municipal corporation of the State of Washington, hereafter referred to as "Kennewick", the **CITY OF RICHLAND**, a municipal corporation of the State of Washington, hereafter referred to as "Richland", Kennewick and Richland shall hereafter be jointly referred to as "Cities" and the **PORT OF BENTON**, a municipal corporation of the State of Washington, hereafter referred to as "Port".

WHEREAS, the Port is the owner of the Southern Connection of the Hanford Railroad extending from Union Pacific Railroad track in Kennewick, Washington to Horn Rapids Road in the City of Richland, Washington, hereafter referred to as the "Port Railroad".

WHEREAS, the Port acquired the Port Railroad from the United States and a copy of the Indenture conveying the railroad to the Port is attached hereto as Exhibit 1.

WHEREAS, the Port has leased the Port Railroad to Tri-Cities & Olympia Railroad, L.L.C. (hereafter "TC&ORR"). A copy of this Agreement is attached hereto as Exhibit 2.

WHEREAS, the Kennewick owns The Center Parkway which is a public street within the City of Kennewick and the City wishes to extend this street and utilities across the Port Railroad in the location described on the attached Exhibit 3.

WHEREAS, the City of Kennewick has filed a petition with the Washington Utilities and Transportation Commission to acquire an at-grade crossing over the railroad lines owned by the Port and Union Pacific Railroad

WHEREAS, TC&ORR and Union Pacific are opposing the at-grade crossing for the extension of The Center Parkway.

WHEREAS, the parties wish to provide in this Agreement for the acquisition of easement across the Port Railroad and for the extension of roads and utilities across the Port Railroad, subject to the rights of TC&ORR.

NOW THEREFORE, it is hereby agreed among the parties as follows:

1. The Port hereby agrees to grant Kennewick an easement, in the form attached hereto as Exhibit 4, allowing the City to construct a railroad crossing for The Center Parkway and to extend associated utilities across the Port Railroad within the legal

description attached hereto as Exhibit 3 subject to the terms and conditions set forth in this Agreement.

2. The Cities acknowledge and agree that the easement is subordinate and subject to the rights of United States set forth in the Indenture attached as Exhibit 1. In the event the Port reconveys the Port Railroad to the United States or the United States takes possession or ownership of the Port Railroad, this Agreement will not be enforceable against the United States. If the Port Railroad is reconveyed to the United States for any reason, the reconveyance shall not be a breach of this Agreement and the Port shall not be liable to the Cities for any loss the Cities may incur as a result of such reconveyance.

3. The Cities acknowledge and agree that the easement is subject to the rights of TC&ORR set forth in the Lease Agreement attached as Exhibit 2. The Cities must obtain additional authority from TC&ORR, either by contract or by exercise of authority granted by law, for the extension of The Center Parkway, construction of the crossing, installation of equipment and maintenance and operation of the crossing and safety equipment.

4. All improvements constructed within the Port Railroad right of way and all equipment installed within the Port Railroad right of way shall be constructed or installed in accordance with the plans and specifications in compliance with all applicable federal codes and regulations, all State statutes and regulations and all local codes. At least thirty days prior to the commencement of construction, the Cities shall provide copies of the design documents to the Port and to TC&ORR for review. The Port and TC&ORR may review the documents to determine whether the design complies with the provisions of this Section. The Cities shall indemnify and hold the Port harmless from any liability, cost or expense related to the design, construction of improvements or installation of equipment and the Cities shall not allow liens or encumbrances attach to the Port property by reason of the Cities' activities within the Port Railroad right of way. The review of the design documents by the Port and TC&ORR shall not relieve the Cities of this obligation to indemnify the Port and it hold harmless.

5. The Cities shall maintain or provide for the maintenance of any improvements constructed within the Port Railroad right of way and equipment installed within the Port Railroad right of way, in compliance with all applicable federal codes and regulations, all State statutes and regulations and all local codes, as the same may now exist or as hereafter adopted. The Cities may contract with TC&ORR or its successor to provide for maintenance of the equipment or improvements.

6. In the event the railroad operations permanently cease or the switching operations are relocated and the Port agrees to allow the track or portions of the track to be removed, the Cities shall bear the cost of any approved alterations to Center Parkway or the railroad crossing equipment consistent with the standards set forth in Section 4 of this Agreement. The Cities shall indemnify and hold the Port harmless from any liability, cost or expense related to the design, construction of improvements or installation of

equipment and the Cities shall not allow liens or encumbrances attach to the Port property by reason of the Cities' activities within the Port Railroad right of way.

7. The Cities shall fund the maintenance of the safety equipment or warning devices which it constructs or installs within the Port Railroad right of way. The Cities shall provide all utilities and electrical power necessary to the safely operate the improvements and equipment in the Port Railroad right of way, in accordance with all applicable laws and regulations. The Cities shall indemnify and hold the Port harmless from any liability, cost or expense related to the maintenance and operation of the safety equipment and warning devices. The Cities may contract with TC&ORR or its successor for maintenance of the safety equipment.

8. In consideration of the grant of the easement by the Port to Kennewick, the Cities agree to indemnify and hold the Port, its employees and agents, harmless from and against all claims, damages, losses and expenses including attorney's fees, court costs and any costs of appeal, arising from any injury, death, or damage which may be sustained, or incurred by any person or property and which may directly or indirectly result from the Cities' use of the easement; the negligent act or omission of the Cities, their employees or agents; resulting from any act, omission, neglect or misconduct irrespective of whether claims, damages, losses or expenses were actually or allegedly caused wholly or in part through the negligence of any other person or party; or arising from any failure, neglect, act or omission by either City, its employees or agents with regard to any law, requirement, ordinance or regulation of any governmental authority. The scope of indemnity does not include claims referenced above that result solely from acts, omissions, neglect, or misconduct of the Port, its employees, or agents. In any and all claims against the Port, its employees or agents which are subject to this indemnity, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the City under the Washington Industrial Insurance Act, disability acts or other employee benefit acts.

9. This Agreement may be amended only by written agreement signed by all of the parties.

10. All notices and other communications provided for herein shall be validly given, made or served, in writing and delivered personally or sent by certified mail postage prepaid, to the addresses listed below:

CITY OF KENNEWICK
Kennewick City Manager
P.O. Box 6108
Kennewick, WA 99336

CITY OF RICHLAND:
Richland City Manager
P.O. Box 190
Richland, WA 99352

PORT
Executive Director
Port of Benton
3100 George Washington Way
Richland, WA 99352

Or to such other parties as designated in writing and delivered to the party receiving notice as provided herein.

11. This agreement will inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that the parties hereto may not assign this Agreement without the prior written consent of the non-assigning party, which may not be unreasonably withheld or delayed.

12. The foregoing terms and conditions and the attached exhibits and addenda represent the entire agreement between the Port and the City with respect to the subject matter and supersede all prior and contemporaneous agreements or understanding that parties may have. All pre-existing easements, crossing permits, or licenses with and among other parties shall remain unaffected by this agreement.

13. All questions concerning the interpretation or application of provisions of this agreement shall be decided according to the laws of the State of Washington. Venue of any action based on this agreement shall be Benton County Superior Court.

14. Should it become necessary to enforce any provision of this agreement by use of any court action or proceeding, the prevailing party shall be entitled to a reasonable attorney's fee, costs and expenses.

15. The waiver of the breach of any provision herein by either party shall in no way impair the right of either party to enforce that provision in any subsequent breach thereof.

DATED this 19 day of October, 2006.

CITY OF KENNEWICK

By: _____

Title: James R. Beaver, Mayor

Approved as to form:

_____
JOHN ZIOBRO,
Kennewick City Attorney

CITY OF RICHLAND

By: _____

Title: City Manager

Approved as to form:

_____
THOMAS O. LAMPSON
Richland City Attorney

PORT OF BENTON

By: _____
SCOTT D. KELLER
Executive Director

INDENTURE

STATE OF WASHINGTON §
§
COUNTY OF BENTON §

THIS INDENTURE is effective the 1st day of October 1998, between the UNITED STATES OF AMERICA, acting by and through the U.S. DEPARTMENT OF ENERGY, (the "Grantor") and the PORT OF BENTON, acting through its Board of Commissioners, (the "Grantee") (collectively, the "Parties").

WITNESSETH:

WHEREAS, Grantor has owned and maintained certain real property and improvements thereto in or proximate to Richland, Washington known as the Hanford 1100 Area (the "Real Property") and the Hanford Rail Line, Southern Connection (the "Railroad") and certain personal property appurtenant to said real property ("Personal Property); and

WHEREAS, Grantor has determined that it is in the best interest of the UNITED STATES OF AMERICA to convey said Real Property and Railroad to Grantee for the purpose of fostering economic development; and

WHEREAS, Grantor has the authority to sell, lease, grant, and dispose of said Real Property, Railroad, and Personal Property pursuant to the Atomic Energy Act of 1954, as amended, specifically Section 161(g) (42 U.S. Code § 2201(g)); and

WHEREAS, Grantor may need continued rail access to the Hanford Nuclear Reservation (the "Hanford Site") for so long as Grantor conducts operations at said site; and

WHEREAS, Grantee agrees to use said Real Property and Railroad to create economic and employment opportunities in the community served by the PORT OF BENTON; and

WHEREAS, Grantee agrees to provide Grantor continued rail access to the Hanford Site for as long as Grantee continues to maintain and/or operate the Railroad.

NOW THEREFORE, for the following consideration, the Parties agree as follows:

I. DESCRIPTION OF PROPERTY AND CONVEYANCE

A. Grantor owns and maintains Real Property and improvements thereto having an area of approximately 768 acres and containing 26 buildings, improved parking and other support areas, and grassy swales, which is described in Attachment A. Grantor also owns and maintains the Railroad and improvements thereto having an area of approximately 92 acres and linear track length of approximately 16 miles, which is described, in part, in Attachment B. Finally, Grantor owns Personal Property that is described in Attachment C. Grantor hereby grants, conveys, and forever quitclaims to Grantee, without warranty, either express or implied, said Real Property, Railroad, and Personal Property on an "as is" and "where is" basis and subject to certain terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and other conditions set forth in this instrument. The quitclaim deed (the "Deed") conveying said Real Property, Railroad, and Personal Property is attached (see Attachment D).

B. The descriptions of the Real Property, Railroad, and Personal Property set forth, respectively, in Attachments to this Indenture and any other information provided herein are based on the best information available to Grantor and believed to be correct, but an error or omission, including, but not limited to, the omission of any information available to Grantor or any other Federal

agency, shall not constitute grounds or reason for noncompliance with the terms of this Indenture or for any claim by Grantee against the UNITED STATES OF AMERICA including, without limitation, any claim for allowance, refund, deduction, or payment of any kind.

C. Grantor shall make reforms, corrections, and amendments to the Deed if necessary to correct such Deed or to conform such Deed to the requirements of applicable law.

II. CONSIDERATION

Grantor's conveyance is in consideration of the assumption by Grantee of all Grantor's maintenance obligations and its taking subject to certain terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and other conditions set forth in this instrument.

III. TITLE EVIDENCE

Grantee reserves the right to procure a title report and/or obtain a title insurance commitment issued by a licensed Washington Title insurer agreeing to issue to Grantee, upon recordation of the Deed, a standard owner's policy of title insurance insuring Grantee's good and marketable title to said Real Property and Railroad.

IV. COSTS OF RECORDATION

Grantee shall pay all taxes and fees imposed on this transfer and shall obtain at Grantee's expense and affix to the Deed such revenue and documentary stamps as may be required by Federal, State of Washington, and local laws and ordinances. The Deed and any security documents shall be recorded by Grantee in the manner prescribed by State of Washington and Benton County recording statutes.

V. EASEMENTS, RESTRICTIONS, AND LIMITATIONS

A. Grantor retains an easement, described in the Deed found at Attachment D, on the road known as Stevens Drive that extends north from the junction of Spengler Street to Horn Rapids Road (the "Road"). Grantee shall have a right of first refusal governing any conveyance in the Road by Grantor.

B. Grantee shall take title subject to all public utility and other easements on record, described in Attachment E, and any other zoning regulations and restrictions appearing on plats, in the Deed, or in any title report prepared to support this transfer of Real Property and the Railroad.

C. Grantor retains an easement, described in Attachment F, for Grantor's existing infrastructure, including telecommunications infrastructure, on the Real Property and Railroad. Grantee shall reasonably negotiate and convey no-cost new easements to support access to existing or new infrastructure of any type or to improve on said infrastructure.

D. Grantor shall have until March 31, 1999, to remove personal property not conveyed to Grantee and cultural artifacts described in Section XXIII. below from buildings on the Real Property and the Railroad and vacate any of the buildings in which it currently operates.

E. Grantee shall take title subject to the use permit, described in Attachment F, executed between the Home Depot and Grantor.

VI. LICENSES

A. Grantor reserves unto itself a no-cost license for whole or partial use of the buildings described in Attachment G and a parking lot for use by Grantor's Safeguards and Security Division to conduct

its "Emergency Vehicle Operations course". The term for these licenses also is listed in Attachment G, said licenses terminating upon: (i) early abandonment of licenses upon notification to Grantee; or (ii) expiration of licenses unless renewed. Renewal shall be in at Grantor's option for one-(1) year periods not to exceed a total of ten (10) periods, and Grantee shall presume that said options are exercised unless notice declining renewal is received within thirty (30) days or more of each license expiration. Grantor shall cooperate with Grantee in the event that Grantee has a commercial tenant for space licensed by Grantor, and to the extent practicable, abandon such license(s) if (i) such abandonment is in the best interest of the UNITED STATES OF AMERICA, and (ii) substitute space is made available by Grantee, if Grantor requires such space and it is not available within the Hanford Site.

B. Grantor's operations in those buildings and the parking lot in which it retains licenses shall be: (i) conducted in a neat and orderly manner so as not to endanger personnel or property of Grantee or Grantee's other licensees, lessees, and invitees; and (ii) in compliance with all applicable laws, regulations, rules, and ordinances. In the event that the buildings licensed to Grantor become unsuitable for occupancy for any reason, including damage, destruction, or collective wear and tear, Grantor reserves the right to restore the buildings during the term of the licenses.

C. Before expiration or prior termination of building licenses, Grantor shall restore the buildings or building interiors to the condition in which they were conveyed or to such improved condition as may have resulted from any improvement made therein by Grantee during license terms, subject to ordinary wear and tear for which Grantor is not liable hereunder.

D. Grantor shall be responsible for all utilities and maintenance associated with operations conducted in the building under license. In the event that partial building space is used, Grantor and Grantee shall agree on a suitable prorated amount for building utilities and maintenance that Grantor shall be responsible to pay to Grantee periodically.

E. Grantor reserves to the General Services Administration ("GSA") a license to site a double-wide trailer and use parking spaces and a portion of the parking lot for enclosed storage on the Real Property located south of building 1175 (address: 2565 Stevens Drive, Richland, Washington) to have and use until abandoned. GSA shall be responsible for all utilities and maintenance associated with operations conducted from its trailer.

F. Grantor reserves unto itself a no-cost license providing access to the Railroad for as long as Grantee maintains and/or operates said Railroad. Grantor shall pay published tariffs as applicable.

VII. CONDITION OF REAL PROPERTY AND MAINTENANCE OF RAILROAD

A. Grantor shall clean the Real Property to an "industrial use" standard prior to transfer under this Indenture and subsequent abandonment of licenses. All buildings, utilities, and other property conveyed will be transferred in "as is" and "where is" condition as at the signing hereof, without any warranty or guarantee, expressed or implied, of any kind or nature, except as otherwise expressly stated in this Indenture. Grantor shall not be obligated to repair, replace, or rebuild any structures if and when licenses are abandoned except when Grantor's use resulted in damages exceeding ordinary wear and tear. Except as provided for in Section VIII. below, Grantor shall not be responsible for any liability to Grantee or third persons arising from such condition of the Real Property. The failure of Grantee to inspect fully the Real Property or to be fully informed as to the condition thereof will not constitute grounds for any noncompliance with the terms of this Indenture.

B. For so long as Grantee continues to maintain and/or operate the Railroad (or Grantee's similarly situated successor(s)), Grantee shall maintain the Railroad, including all structures, improvements, facilities and equipment in which this instrument conveys any interest, at all times in safe and serviceable condition, to assure its efficient operation and use, provided, however, that such maintenance shall be required as to structures, improvements, facilities and equipment only during the useful life thereof, as determined jointly by Grantor and Grantee.

VIII. WARRANTIES AND REPRESENTATIONS

A. Grantor represents and warrants under its enabling legislation (the Atomic Energy Act of 1954, as amended) that: (i) it has the full capacity, power and authority to enter into this Indenture and the transactions contemplated herein; and (ii) the execution, delivery and performance by Grantor of this Indenture has been duly authorized and approved by all necessary governmental action on the part of Grantor.

B. Grantee represents and warrants that: (i) it is a political instrumentality of the State of Washington and duly organized under laws of the State of Washington; (ii) it has full capacity, power and authority to enter into and perform this Indenture and the continuing obligations contemplated herein; and (iii) the execution, delivery and performance by Grantee of this Indenture have been duly and validly authorized and approved by all necessary action on the part of Grantee.

C. Grantor represents that, to the best of Grantor's knowledge, there are no facts known to Grantor that materially affect the value and condition of the Real Property and Railroad that are not readily observable by Grantee or that have not been disclosed to Grantee. The Parties acknowledge that in the course of abandoning any licenses, Grantor may learn additional facts regarding the value and condition of the Real Property. Grantor shall identify such facts and disclose them to Grantee in a timely manner.

D. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA") Section 120(h)(1) (42 U.S. Code § 9620(h)(1)), and 40 U.S. Code of Federal Regulations Part 373, Grantor has made a complete search of its records concerning the Real Property and Railroad. These records indicate that hazardous substances, as defined by CERCLA Section 101(14), have been stored, disposed, or generated on the Real Property during the time Grantor owned said Real Property. Quantities of hazardous substances were released or disposed of on the Real Property during the course of ownership by Grantor, and the Real Property was listed on the National Priorities List by the Environmental Protection Agency ("EPA"). Said Real Property was remediated and removed from the National Priorities List in September 1996. Grantor agrees to meet all CERCLA obligations associated with the transfer of the Real Property now or in the future upon notice by Grantee.

E. All remedial actions necessary to protect human health and the environment with respect to any such hazardous substances remaining on the Real Property have been or will be taken before the date of transfer, and any additional remedial actions found to be necessary by regulatory authorities with jurisdiction over the Real Property or Railroad attributable to contamination of hazardous substances shall be conducted by Grantor at Grantor's expense.

IX. ASSIGNMENT OF LEASES AND CONTRACTS

A. Grantor hereby assigns Parts 1, 2, and 3 of the lease dated May 1, 1996, (see Attachment H) executed between Grantor and R.H. Smith Distributing Co., Inc. ("Smith") for fuel oil distribution from building 1172A. Grantee hereby accepts the obligations of Grantor under this lease in consideration of the payments by Smith for building 1172A operations, which are assigned herewith to Grantee. Grantor shall notify Smith of assignment.

B. Grantor hereby assigns the lease dated March 5, 1998, (see Attachment H) executed between Grantor and Livingston Rebuild Center, Inc. ("LRC") for equipment repair services in building 1171. Grantee hereby accepts the obligations of Grantor under this lease in consideration of the payments by LRC for building 1171, which are assigned herewith to Grantee. Grantor shall notify LRC of assignment.

C. Grantor hereby assigns two agreements, a supplemental agreement, and permit made among and by the Atomic Energy Agency (and its successors); Burlington Northern, Inc.; Oregon-Washington Railroad & Navigation Company; and Union Pacific Railroad Company governing access to the Railroad (see Attachment H). Grantee hereby accepts the obligations and considerations under this agreement and permit. Grantor shall notify successors Burlington Northern and Union Pacific of these assignments.

X. OTHER AGREEMENTS

A. No prior, present, or contemporaneous agreements shall be binding upon Grantor or Grantee unless specifically referenced in this Indenture. No modification, amendment, or change to this Indenture shall be valid or binding upon the Parties unless in writing and executed by representatives authorized to contract for the Parties.

B. Grantor on written request from Grantee may grant a release from any of the terms, reservations, restrictions and conditions contained in the Deed. Grantor may release Grantee from any terms, restrictions, reservations, licenses, easements, covenants, equitable servitudes, contracts, leases, and other conditions if Grantor determines that the Real Property and Railroad no longer serve the purposes for which they were conveyed or the Grantee determines that continued ownership of the Railroad is no longer economically viable. All or any portion of the Real Property or Railroad may be reconveyed to Grantor subject to the conditions detailed in Section XVII. below.

XI. NOTICES

Any notices required under this Indenture shall be forwarded to Grantor or Grantee, respectively, by Registered or Certified mail, return receipt requested, or by overnight delivery, at the following addresses:

Realty Officer
U.S. Department of Energy
Richland Operations Office
P.O. Box 550, G3-18
Richland, Washington 99352

Executive Director
Port of Benton
3100 George Washington Way
Richland, Washington 99352

XII. LIMITATION OF GRANTOR'S AND GRANTEE'S OBLIGATIONS

A. The responsibilities of Grantor, as described in this Indenture, are subject to: (i) the availability of appropriated program funds for remediation and operation of the Hanford Site; and (ii) the federal Anti-Deficiency Act (31 U.S. Code §§ 1341 and 1517).

B. Grantee shall, to the extent permitted under applicable law, indemnify and defend the United States against, and hold the UNITED STATES OF AMERICA harmless from, damages, costs, expenses, liabilities, fines, or penalties incurred by Grantor and/or third parties and resulting

from Grantee's activities on the Real Property and Railroad, or any part thereof, including releases or threatened releases of, or any other acts or omissions related to, any hazardous wastes, substances, or materials by Grantee and any subsequent lessee or owner of the Real Property or Railroad or any subdivision thereof, their officers, agents, employees, contractors, sublessees, licensees, or the invitees of any of them.

C. Grantee hereby releases the UNITED STATES OF AMERICA, and shall take whatever action may be required by Grantor to assure the complete release of the UNITED STATES OF AMERICA from any and all liability for restoration or other damage under the Deed or other agreement covering the use by Grantee or its licensees, invitees, and lessees of any Real Property transferred by this instrument.

D. Grantee's responsibilities for maintenance and operation of the Railroad under the terms of this Indenture are subject to the economic viability of the Railroad. Section XVII. below shall apply if Grantee determines that economic viability is impossible after ten (10) years.

XIII. RIGHT OF ACTION

The provisions of this Indenture are not intended to benefit third persons, and breach thereof shall not be the basis for a cause of action by such third person against either Grantor or Grantee.

XIV. DISPUTES

A. Except as otherwise provided in this Indenture, any dispute concerning a question of fact that is not disposed of by agreement between the Parties shall be submitted for decision by the Manager, U.S. Department of Energy, Richland Operations Office, or his successor in function ("Manager-RL). The Manager-RL shall, within twenty (20) days, mail or otherwise furnish a written decision to Grantee. The decision of the Manager-RL, shall be final and conclusive unless, within twenty (20) calendar days from the date of receipt of such copy, Grantee mails or otherwise furnishes to the Manager-RL, a written appeal addressed to the Associate Deputy Secretary for Field Management (FM-2). The decision of the Associate Deputy Secretary for Field Management (FM-2), this officer's successor, or the duly authorized representative for the determination of such appeals shall be presented in writing within twenty (20) calendar days from receipt of notice of appeal and shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute under this Section, Grantee shall proceed diligently with the performance of this Indenture in accordance with the decision of the Manager-RL.

B. This Section shall not preclude consideration of questions of law in correction with decisions provided for herein. Nothing in this Section, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

XV. PLANNING AND DEVELOPMENT

A. Grantor is aware that Grantee is acquiring the Real Property and Railroad for development for industrial use. Accordingly, Grantor agrees that it shall cooperate reasonably with Grantee and sign such documents and undertake such other acts, without incurring costs or liability, that are necessary for Grantee to complete the planning, zoning, and development of the Real Property and Railroad, the resale and marketing of any portion of the Real Property, and the formation and operation of special districts, metropolitan districts, and other quasi-governmental entities organized for the purpose of providing infrastructure facilities and services to or for the benefit of

the Real Property and Railroad.

B. Without incurring costs or liability, Grantor will cooperate reasonably with Grantee by signing such documents necessary for Grantee to apply to the Auditor and to the Treasurer of Benton County, Washington and to the Washington State Department of Revenue for tax valuation or abatement with regard to the Real Property that Grantee intends to sell. Upon request by Grantee, Grantor will execute and deliver to and in the name of Grantee one or more easements, accompanied by a legal description, for subsequent re-grant to local utility providers, for the purpose of installing new utility systems and relocating any existing systems, on any portion of the Real Property in which Grantor retains an interest. Other easements include, without limitation easements for ingress and egress and private utility lines required in connection with any portion of the Real Property and Railroad being conveyed. Such easement documents shall be in form and content satisfactory to Grantor and Grantee.

XVI. SUCCESSORS AND ASSIGNS

A. The covenants, provisions, and agreements contained herein shall in every case be binding on and inure to the benefit of the Parties hereto and their respective successors. The rights and responsibilities under this Indenture may not be assigned by Grantee within ten (10) years of the date of this Indenture without the written consent of Grantor, said consent not being unreasonably withheld.

B. Grantee shall not enter into any transaction that would deprive it of any of the rights and powers necessary to perform or comply with any or all of the terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions set forth herein, and if an arrangement is made for management or operation of the Real Property and Railroad by any agency or person other than Grantee, it shall reserve sufficient rights and authority to ensure that said Real Property and Railroad shall be operated and maintained in accordance with the terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions.

XVII. REVERSIONARY INTEREST

A. For the ten (10) years next following the effective date of this Indenture, in the event that any of the aforesaid terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions are not met, observed, or complied with by Grantee, whether caused by the legal inability of said Grantee to perform any of the obligations herein set out, or otherwise, the title, right of possession, and all other rights conveyed by the Deed to Grantee, or any portion thereof, shall at the option of Grantor revert to the UNITED STATES OF AMERICA in its then existing condition sixty (60) days following the date upon which demand to this effect is made in writing by Grantor or its successor, unless within said sixty (60) days such default or violation shall have been cured and all such terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions shall have been met, observed, or complied with, in which event said reversion shall not occur, and title, right of possession, and all other rights conveyed, except those that have reverted, shall remain vested in Grantee.

B. The Railroad shall be used and maintained for the purposes for which it was conveyed, and if said Railroad ceases to be used or maintained for such purposes, all or any portion of the Railroad shall, in its then existing condition, at the option of Grantor, revert to the UNITED STATES OF AMERICA. If Grantor notifies Grantee or its similarly situated successor(s) that rail service no longer is required, such reversionary interest shall terminate and Grantee shall be free to abandon or convert the use of any portion or all of the Railroad.

C. Grantee agrees that in the event Grantor exercises its option to revert all right, title, and interest in and to any portion of the Real Property or Railroad to the UNITED STATES OF AMERICA or Grantee voluntarily returns title to said Real Property and Railroad in lieu of a reverter, then Grantee shall provide protection to, and maintenance of said Real Property and Railroad at all times until such time as the title actually reverts or is returned to and accepted by the UNITED STATES OF AMERICA. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in 41 U.S. Code of Federal Regulations § 101-47.4913 in effect as of the date of the conveyance.

XVIII. USE OF REAL PROPERTY AND RAILROAD

Grantee shall use and maintain the Real Property and Railroad on fair and reasonable terms without unlawful discrimination. In furtherance of this condition (but without limiting its general applicability and effect) Grantee specifically agrees that: (i) it will establish such fair, equal, and nondiscriminatory conditions to be met by all users of the Real Property and Railroad, provided that Grantee may prohibit or limit any given type and kind of use if such action is necessary to promote safe operations; (ii) in its operation and the operation of the Real Property and Railroad, neither it nor any person or organization occupying space or facilities thereupon shall discriminate against any person or class of persons by reason of race, color, creed, sex, age, marital status, political affiliation or non-affiliation, national origin, religion, handicap or sexual orientation in the use of any of the facilities provided for the public; and (iii) that in any agreement, contract, lease, or other arrangement under which a right or privilege granted to any person, firm or corporation to conduct or engage in any lawful activity, Grantee shall insert and enforce provisions requiring the party to: (i) furnish said service on a fair, equal and nondiscriminatory basis to all users thereof; and (ii) charge fair, reasonable, and nondiscriminatory prices for each unit for service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

XIX. ACCESS

A. Subject to the provisions of Section V.A. above, Grantee shall, insofar as it is within its powers and to the extent reasonable, adequately protect the land access routes to the Real Property and Railroad. Grantee shall, either by the acquisition and retention of easements or other interests in or rights for the use of land or by adoption and enforcement of zoning regulations, prevent the construction, erection or alteration of any structure in the access routes to and from the Real Property and Railroad.

B. Grantor reserves the right of access to those portions of the Real Property and Railroad for the purpose of construction, installing, maintaining, repairing, operating, and/or removing utility, telecommunications, or well monitoring equipment over, under, across, and upon the Real Property and Railroad.

XX. SEVERABILITY

If the construction of any of the foregoing terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions recited herein as provisions or Attachments, or the application of the same as provisions in any particular instance is held invalid, the particular term, reservation, restriction, license, easement, covenant, equitable servitude, contract, lease, or condition in question shall be construed instead merely as conditions upon the breach of which Grantor may exercise its option to cause the title, interest, right of possession, and all other rights conveyed to Grantee, or any portion thereof, to revert to it. The application of such terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions as provisions elsewhere in the Indenture and the construction of the remainder of such terms, reservations, restrictions, licenses, easements, covenants, equitable servitudes, contracts, leases, and conditions as provisions shall not be affected thereby.

XXI. GRANTEE'S STATUS

Grantee shall remain at all times a political instrumentality of Benton County, State of Washington.

XXII. ENVIRONMENTAL DISCLOSURES

A. Lead-Based Paint Conditions.

1. Prior to use of any Real Property by children under seven (7) years of age, Grantee shall remove all lead-based paint hazards and all potential lead-based paint hazards from the said Real Property in accordance with all federal, State of Washington, and local lead-based paint laws, rules, regulations, and ordinances.

2. Grantee agrees to indemnify Grantor and the UNITED STATES OF AMERICA to the extent allowable under applicable law from any liability arising by reason of Grantee's failure to perform Grantee's obligations hereunder with respect to the elimination of immediate lead-based paint health hazards, the prohibition against the use of lead-based paint, and Grantee's responsibility for complying with applicable federal, State of Washington, and local lead-based paint laws, rules, regulations, and ordinances.

B. Presence of Asbestos.

1. Grantee is informed that the Real Property may be improved with materials and equipment containing asbestos-containing materials. The Due Diligence Assessment Report (see Attachment I) prepared by R.E. Morgan for Fluor Daniel Hanford, Inc. on August 28, 1998, discloses the condition and probable locations of asbestos-containing materials. Grantee is cautioned that unprotected or unregulated exposure to asbestos in product manufacturing and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration ("OSHA") and the EPA regulate asbestos because the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

2. Grantee is invited, urged, and cautioned to inspect the Real Property to ascertain the any asbestos content and condition and corresponding hazardous or environmental conditions relating thereto. Grantor shall assist Grantee in obtaining any authorization that may be required to carry out any such inspection. Grantee shall be deemed to have relied solely on its own judgement in assessing the overall condition of all or any portion of the Real Property, including without limitation, any asbestos hazards or concerns.

C. Presence of Polychlorinated Biphenyls. Except for the 1162 and 1163 facilities, buildings on the Real Property were constructed prior to the enactment of the Toxic Substances Control Act of 1976, as amended, (15 U.S. Code §§ 2601 – 2692) that banned the manufacture of polychlorinated biphenyls ("PCBs"). Fluorescent light fixtures may contain ballasts with trace amounts of PCBs. Spills from overheated ballasts and ballast management (e.g., removal from service) are subject to requirements found in 40 U.S. Code of Federal Regulations Part 761.

D. Grantor's Disclaimer.

1. No warranties, either express or implied, are given with regard to the condition of the Real Property including, without limitation, whether the Real Property does or does not

contain lead-based paint, asbestos, PCBs or petroleum residues attributable to past operations (see "Environmental Assessment for the Transfer of 1100 Area, Southern Rail Connection and Rolling Stock, Hanford Site, Richland, Washington," also contained in Attachment I) or is not safe for a particular purpose. The failure of Grantee to inspect or to be fully informed as to the condition of all or any portion of the Real Property shall not constitute grounds for any claim or demand for adjustment or noncompliance with the terms of this Indenture.

2. Grantor assumes no liability for damages for personal injury, illness, disability, or death to Grantee or to Grantee's successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Real Property, whether Grantee has properly warned or failed to properly warn the individuals(s) injured.

XXIII. CULTURAL ARTIFACTS AND HISTORIC STRUCTURES

A. Grantor conducted an inspection of the Real Property on February 3, 1998, in compliance with Part V, Paragraph C of the "Programmatic Agreement for the Built Environment," which states that the Grantor's Cultural Resources Program shall undertake a cultural assessment of the contents of historic buildings and structures to locate and identify artifacts that may have interpretive or educational value as exhibits for local, State of Washington, or national museums. Said assessment has been completed, and artifacts identified are listed in Attachment J.

B. Grantor and Grantee shall jointly execute a Memorandum of Understanding ("MOU") with the Washington State Department of Community, Trade, and Economic Development, Office of Archeology and Historic Preservation that will address cultural resource issues associated with the Real Property and Railroad. After joint negotiation of an acceptable MOU, Grantee shall be bound by the terms of said MOU for the purposes of cultural artifacts disposition and care under the terms of this Indenture.

IN WITNESS WHEREOF, the Parties, by and through their authorized representatives, have executed the foregoing Indenture on the date first written above.

United States of America by and through the U.S. Department of Energy
GRANTOR:

By: _____
Roger A. Jacob, Sr., Realty Officer, Richland Operations Office

Date: August 28, 1998

Witnessed by Notary Public: Dean K. Knuter State of Washington, County of Benton

My Commission Expires: July 04, 2001

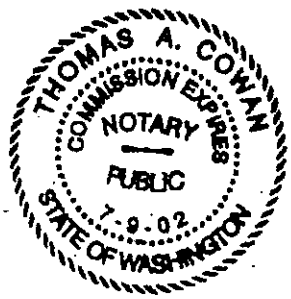
Port of Benton, Washington
GRANTEE:

By: Ben Bennett
Ben Bennett, Executive Director, Port of Benton, Washington

Date: September 25, 1998

Witnessed by Notary Public: Thomas A. Cowan

My Commission Expires: July 9, 2002



RAILROAD LEASE
Port of Benton-Tri-City Railroad Company

PARTIES:

LESSOR: PORT OF BENTON, a municipal corporation of the State of Washington, hereafter "Port".

TENANT: TRI-CITY RAILROAD COMPANY, L.L.C., a Washington limited liability company hereafter "Tenant".

RECITALS:

WHEREAS, the Port acquired the Southern Connection of the Hanford Railroad from the United States Department of Energy (hereafter "DOE") to prevent the closure of the railroad and to maintain railroad operations for economic development purposes.

WHEREAS, DOE conveyed the former 1100 Area to the Port to enable the Port to generate revenues to pay the costs of operation and maintenance of the railroad.

WHEREAS, the Port entered into an Operations and Maintenance Agreement with Livingston Rebuild Company dated October 1, 1998 which has been assigned to the Tenant and this agreement requires the Port to pay certain expenses related to the railroad, including insurance premiums, in excess of $100,000.00 per year and the Port has the responsibility for the inspection, maintenance and replacement of the bridges and overpasses.

WHEREAS, the Port has been required to pay for the replacement of a section of the railroad bridge which was destroyed by fire.

WHEREAS, the Port entered into a Building Lease with Livingston Rebuild Company for the railroad maintenance building in the Port's Manufacturing Mall (formerly DOE's 1100 Area), which Lease has been assigned to the Tenant.

WHEREAS, the parties wish to transfer the costs associated with the operation of the railroad, including the insurance and the responsibility for the inspection and maintenance of the bridges and overpasses to the Tenant.

WHEREAS, the Port has been required to respond to an inquiry by the Railroad Retirement Board concerning the Port's liability for pension payments as an railroad operator and the Port wants to avoid classification as a railroad operator.

WHEREAS, the Port wishes to transfer the responsibility for rail operations and for negotiating with major carriers to the Tenant and to relieve the Port of the responsibility for such activities; now therefore it is hereby agreed among the parties as follows:

AGREEMENTS:

1. LEASE. Port hereby leases to Tenant upon the terms, covenants and conditions contained herein, the real and personal property known as the Port of Benton Railroad Southern Connection and the 1171 Building (hereafter the "Property"). The real property is described on Attachment 1.

1.1 The Property consists of approximately 16 miles of railroad trackage and right of way extending from the Richland Connection in Kennewick, Washington to the Port of Benton's Manufacturing Mall in Richland, Washington, and generally bordered by Horn Rapids Road on the north, formerly known as the 1100 Area, including the tracks, bridges, trestles, crossings and maintenance equipment. The equipment and fixtures are more particularly described on Attachment 2 to this Agreement.

1.2 The Tenant has been operating the Port of Benton railroad and has occupied the 1171 Building since October, 1998 and is fully familiar with the Property and agrees to take the Property in its present condition, and subject to the restrictions contained in the Indenture between the United States of America and the Port, the amendments thereto, and the Quit Claim Deed from the United States of America, copies of which has been provided to the Tenant. The Tenant agrees to take the Property in its present condition without warranties. The Tenant is relying upon its own inspections of the Property to determine whether to enter into this Lease, and the Tenant is not relying upon any representation made by the Port, its employees or agents, except as specifically set forth in this Lease.

1.3 The Port may acquire trackage rights to use additional railroad tracks owned by DOE serving the Hanford Project. To the extent that the Port acquires additional trackage rights from the DOE, the Port will attempt to negotiate an agreement with the Tenant to add the track rights to this agreement, if permitted by the terms of any agreements with the United States and to the extent the terms of the agreement for trackage rights are acceptable to the Tenant. An agreement to add additional track to this agreement, may require the Tenant to pay additional fees to the Port based upon volume of traffic over the tracks. Provided, that the Port may cancel any agreement with the United States for trackage rights without any further obligation to Tenant. Provided, further, in the event the Port terminates its agreement with the United States for trackage rights, the Tenant shall be free to negotiate with the United States for the trackage rights.

1.4 The Port of Benton currently has a Memorandum of Agreement with DOE to use the track north of Horn Rapids Road to the Energy Northwest Generating Station site, which the Port agrees to allow the Tenant to utilize under the terms of this Lease, provided that the Tenant maintains the track as herein required. DOE has proposed a Memorandum of Agreement with the Port of Benton for use of the Hanford Railroad north of the Energy Northwest Generating Station. After the execution of the MOA by the Port and DOE, the Port will permit the Tenant to utilize additional track which is covered by the MOA, provided that the Tenant complies with the terms and conditions of the MOA and subject to the provisions of this Lease.

2. TERM. This lease shall run for a period of ten years commencing on the 1st day of August, 2002 and terminating on the 31st day of March, 2012.

2.1 The Tenant shall have the option to extend this Lease for two additional terms of ten years each after the expiration of the initial term and after the expiration of the first renewal term.

2.2 The option to extend this Lease shall be deemed to have been exercised unless the Tenant shall give the Port written notice of its intent not to exercise an option at least one hundred eighty (180) days prior to termination of the initial term or the expiration of the first renewal term.

2.3 The Tenant may only exercise the right to extend the term of this Lease if the Tenant is not in material default in the performance of the terms of this Lease at the time the Tenant exercises the option or at the time an option is deemed to be exercised under Section 2.2.

2.4 In the event the Tenant elects not to exercise the Lease extension as provided in this Section, then this Lease shall terminate and the Tenant shall have no further rights under the terms of the Lease.

3. RENT. Tenant shall pay rent, in advance on the first day of each month during the term of this lease, in the following amounts:

3.1 During the initial term of the lease, the parties have agreed that the monthly rental for the real property, railroad trackage, right of way and building more particularly described in Attachment 1, shall be $2,000.00, plus the applicable leasehold tax as hereafter provided.

3.2 In addition to the rent for the real property, the Tenant shall pay $2,000.00 per month as rent for the railroad maintenance and operation equipment owned by the Port and more particularly described on Attachment 2. The Tenant shall be responsible for the payment of any sales tax which may be payable as a result of the lease of equipment.

3.3 Rent payments shall be made payable to the Port of Benton and shall be paid at the Port offices at 3100 George Washington Way, Richland, Washington, or at such other address as the Port shall direct in writing.

3.4 In addition to the rent provided for herein, the Tenant shall pay the Leasehold Tax as required by the Revised Code of Washington Chapter 82.29A, as the statute may be hereafter amended. The Leasehold Tax shall be paid with each monthly installment of rent. The current leasehold tax rate is 12.84%.

3.5 Commencing five (5) years from the commencement date of this lease, and on every anniversary thereafter, the minimum rent set forth in sections 3.1 and 3.2 shall be increased in order to reflect the proportionate increase, if any, occurring between the commencement date and such adjustment date in the cost of living as indicated by the Consumer Price Index for Urban Consumers -Western US Average - All Items, as published by the U.S. Department of Labor's Bureau of Labor Statistics (the "Index"). Such adjustment shall be accomplished by multiplying the numerator of which shall be the Index level as of the January preceding the date of adjustment, and the denominator of which shall be the Index level as of the January preceding the Lease commencement date. Any adjustment of rent shall become effective immediately. In no event shall the rent be less than that specified in sections 3.1 and 3.2. If the index is discontinued, Landlord shall substitute a similar index of consumer prices.

3.6 Any rent payment not paid within ten days of the date upon which the Tenant receives notice that a payment is past due shall accrue interest on the unpaid rent at the rate of one and one-half percent of the late payment for each month or portion of month by which the payment is delayed.

4. CONDITION OF PROPERTY. The Tenant shall take the Property in its present condition, without warranties or representations by the Port except as set forth in this Lease. The Tenant shall be responsible for the maintenance and repair of the railroad maintenance and operation equipment owned by the Port and used by the Tenant pursuant to this Lease. In the event any of the Port equipment becomes inoperable or unusable for any reason the Port shall not be required to provide replacement equipment. If the equipment becomes obsolete or inoperable through no fault of the Tenant, the unusable equipment shall be returned to the Port and the rent shall be adjusted to account for the equipment which is no longer being used by the Tenant. This provision shall not apply to the equipment that becomes inoperable due to the Tenant's failure to properly maintain the equipment.

5. SECURITY. The Tenant shall provide a rent security in accordance with RCW 53.08.085 in an amount equal to the rent and Leasehold Tax to be paid during the initial year of this Lease.

6. TAXES AND ASSESSMENTS. Tenant shall pay all taxes assessed against the buildings and improvements owned by the Tenant and the other property of Tenant located upon the Property, promptly as the same become due. Tenant shall pay all assessments hereafter levied against the Property, or a portion thereof, during the term of this Lease, including assessments coming due to any special purpose governmental district; provided, however, if the assessment is payable in installments, whether or not interest shall accrue on the unpaid installments, the Tenant may pay the assessments in installments as they become due, provided

that the Tenant's obligation to pay the assessments levied during the term of the Lease, even though paid in installments, shall survive the termination or expiration of this Lease.

6.1 Tenant may contest the legal validity or amount of any taxes, assessments or charges which Tenant is responsible for under this Lease, and may institute such proceedings as Tenant considers necessary. If Tenant contests any such tax, assessment or charge, Tenant may withhold or defer payment or pay under protest but shall protect Port and the Property from any lien. Port appoints Tenant as Port's attorney-in-fact for the purpose of making all payments to any taxing authorities and for the purpose of contesting any taxes, assessments or charges.

7. USE. The Tenant shall use the Property for the operation and maintenance of railroad transportation facilities, for uses in conjunction with or reasonably connected to the permitted uses and for no other purposes except those approved in writing by the Port.

7.1 The Tenant's use, operations, and maintenance of the tracks shall comply with the provisions of the Quit Claim Deed and Indenture from the United States of America through which the Port acquired title to the property. In addition, the Tenant shall comply with all laws, rules and regulations applicable to the Tenant's use, operation and maintenance of the property. Any tariffs imposed upon the use of the railroad by the Tenant shall be reasonable in light of the use of the railroad and shall be subject to the review and approval of the Port, to insure compliance with the Port's agreements with the United States.

7.2 In the event the Department of Energy, or any user of the railroad files a complaint with the Port concerning the Tenant's rates, tariffs or operations, the Port will notify the Tenant of the complaint and will attempt to resolve the complaint through negotiations with the Tenant and the complainant.

7.2.1 If the complaint involves matters which are within the purview of National Surface Transportation Board (NSTB), the Port will, to the extent applicable, utilize the rules of the NSTB to resolve the dispute.

7.2.2 If the Port is unable to resolve the complaint which is within the jurisdiction of the NSTB and which the NSTB will accept for resolution, the complaint shall be referred to the NSTB, if permitted by the terms and conditions of the Indenture and the Quit Claim Deed.

7.2.3 Complaints which can not be referred to the NSTB, shall be resolved pursuant to the terms and conditions of this Lease.

7.3 The Port acquired title to the Property by conveyances from the United States of America. The Tenant covenants that it will not use the Property in any manner which would subject the Property to forfeiture under the provisions of the above-described Indenture or quit claim deed.

7.4 The Tenant shall not take any actions which will amend, modify, terminate or invalidate any existing contracts which the Port has with any other railroad carrier, without the

Port's prior written consent. The Tenant shall continue to provide railroad access to areas currently served by the railroad unless the Port and Tenant mutually agree that such access is no longer practicable.

8. MAINTENANCE OF PROPERTY. Throughout the term of this Lease, Tenant, at its sole cost and expense, shall maintain the Property and all improvements and fixtures then existing thereon in good condition and repair, subject to reasonable wear and tear, and in accordance with all applicable covenants, laws, rules, ordinances, and regulations of governmental agencies applicable to the maintenance and operation of the railroad, provided, however, that the Port shall be responsible for the maintenance of the roof and the exterior walls of the 1171 Building. The Tenant will maintain the equipment described on Attachment 2 in good working condition and repair, ordinary and usual wear and tear excepted.

8.1 Tenant will provide for regular inspections of the railroad bridges, spans and overpasses by certified personnel. The inspections will comply with the requirements of CFR 49 and any other applicable laws and regulations to maintain the railroad as a Class 3 railroad. Tenant will promptly repair any conditions which require repair or replacement in order to comply with applicable rules and regulations. The obligation to maintain the railroad shall include the maintenance, repairs or replacements of the bridges, spans and overpasses and the maintenance, repair and replacement of the tracks which cross the bridges, spans and overpasses. In the event the Port assigns trackage rights to the Tenant pursuant to agreements with DOE, and the Tenant accepts the trackage rights, the Tenant agrees to assume the obligation to maintain the additional track in accordance with the terms and conditions of the agreement which the Port has entered into with DOE.

8.2 Any repairs or maintenance which is necessary for safety or the protection of life and property shall be done as soon as possible. Tenant shall promptly report any such conditions to the Port.

8.3 Tenant will provide for regular inspections and maintenance of the railroad crossings and the crossing signals by certified personnel. The inspections will comply with CFR 49 and any applicable law and regulations. The crossings and crossing signals shall be maintained in at least their present condition.

8.4 Tenant will provide all of the labor and materials necessary to maintain, repair or replace any of the railroad as required to meet the conditions of this contract.

8.5 Tenant shall be responsible for the maintenance of the equipment during the term of this agreement and shall insure the equipment against loss or damage. Upon the termination of this agreement or if Tenant determines that the equipment is no longer needed for maintenance of the railroad, Tenant shall return the equipment to the Port in its present condition, reasonable wear and tear excepted.

8.6 In the event the equipment becomes unavailable for use due to obsolescence or for any other reason, Tenant shall provide sufficient equipment to fulfill its obligations under the terms of this agreement.

8.7 The equipment shall be used only for the maintenance and operation of the railroad and for no other purpose without the prior written consent of the Port and an use agreement which provides for payment for the use of the equipment.

8.8 The Port shall retain title to the equipment and the Port may dispose of any of the equipment which is not needed for the maintenance of the railroad.

9. *CONDITIONS OF CONSTRUCTION.* Before any construction, reconstruction or alteration of the improvements on the Property, except for interior improvements or non-structural modifications is commenced and before any building materials have been delivered to the Property in connection with such construction, reconstruction or alteration by Tenant or under Tenant's authority, Tenant shall comply with all the following conditions or procure Port's written waiver of the following condition or conditions:

9.1 Tenant shall deliver to Port, for its approval, one set of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice as such in the State of Washington including, but not limited to, preliminary grading utility connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas, and landscaping, all sufficient to enable Port to make an informed judgment about the design and quality of construction. All improvements shall be constructed within the exterior property lines of the Property provided that required work beyond the Property on utilities, access, and conditional use requirements will not violate this provision. Tenant shall permit Port to use the plans without payment for purposes relevant to and consistent with this Lease.

9.2 The Port shall examine the plans and specifications for the purpose of determining reasonable compliance with the terms and conditions of this Lease, the Protective Covenants and compatibility with the overall design and use. Approval will not be unreasonably withheld. Approval or disapproval shall be communicated to the Tenant, and disapproval shall be accompanied by specification in reasonable detail of the grounds for disapproval; provided that Port's failure to disapprove the initial construction plans within fourteen (14) days or subsequent construction plans within thirty (30) days after delivery to Port shall be considered to be approval.

9.3 Tenant shall prepare final working plans and specifications substantially conforming to preliminary plans previously approved by the Port, submit them to the appropriate governmental agencies for approval, and deliver to Port one complete set as approved by the governmental agencies.

9.4 Tenant shall notify Port of its intention to commence the initial construction at least fourteen days before commencement of any such work or delivery of any

materials. The notice shall specify the approximate location and nature of the intended improvements. During the course of construction, Port shall have the right to post and maintain on the Property any notices of non-responsibility provided for under the applicable law, and to inspect the Property at all reasonable times.

9.5 Except as specifically provided in this Lease, Port makes no covenant or warranties respecting the condition of the soil or subsoil or any other condition of the Property.

9.6 Once work is begun, Tenant shall, with reasonable diligence, complete all construction of improvements. Construction required at the inception of the Lease shall be completed and ready for use within eighteen (18) months after commencement of construction, provided that the time for completion shall be extended for so long as the Tenant is prevented from completing the construction due to delays beyond the Tenant's control; but failure, regardless of cause, to commence construction within eighteen (18) months from the commencement date of the Lease shall, at Port's election exercised by thirty days written notice, terminate this Lease. All work shall be performed in a workmanlike manner, substantially comply with the plans and specifications required by this Lease, and comply with all applicable governmental permits, laws, ordinances, and regulations.

9.7 Tenant shall pay the cost and expense of all Tenant's improvements constructed on the Property. Tenant shall not permit any mechanic's, or construction liens to attach to the Property. Tenant shall not permit any mechanics', materialmen's, contractors' or subcontractors' lien arising from any work of improvement performed by or for the Tenant to be enforced against the Property, however it may arise. Tenant may withhold payment of any claim in connection with a good faith dispute over the obligation to pay, so long as Port's Property interests are not jeopardized. Tenant shall defend and indemnify Port against all liability and loss of any type arising out of the construction of improvements on the Property by Tenant. Unless caused by the Port, its agents, contractors, and invitees, Tenant shall reimburse Port for all sums paid according to this paragraph, together with the Port's reasonable attorneys' fees and costs plus interest on those sums at the legal rate.

9.8 On completion of the construction of any improvements, additions or alterations, covered by this Section 9, Tenant shall give Port notice of all structural or material changes in plans or specifications made during the course of the work and shall at that time supply Port with drawings accurately reflecting all such changes. Changes which are non-structural or which do not substantially alter the plans and specifications as previously approved by the Port do not constitute a material change.

10. OWNERSHIP OF IMPROVEMENTS. All improvements constructed on the Property by Tenant as permitted by this Lease shall be owned by Tenant until termination of this Lease. Upon the termination of this Lease for any reason, any buildings, improvements or trade fixtures installed on the Property shall become the property of the Port. Provided, however, in the event, the Tenant has failed to maintain the Property as required by this Lease, or the Property is contaminated by toxic or hazardous materials as the result of the actions of the Tenant or its successors, such that in any event the value of the improvements is less than the cost of removal,

remediation or renovation to bring the Property into compliance, then the Port may require the Tenant to remove any improvements or trade fixtures installed by the Tenant. The Tenant shall repair, at Tenant's expense, any damage to the Property resulting from such removal.

10.1 The equipment and fixtures on the property which belong to the Port shall remain the property of the Port and the Tenant shall be required to maintain the Port-owned equipment and fixtures during the term of this Agreement. The equipment and fixtures owned by the Port shall be returned to the Port upon the termination of this Agreement, reasonable wear and tear excepted.

11. ASSIGNMENT AND SUBLETTING. Tenant shall neither assign, sublet nor transfer its interest in this Lease, in whole or in part, to any person or entity, without Port's prior written consent. Each sublease for any portion of the premises in addition to the reference to Section 7 of this lease, shall specifically advise the subtenant that the sublease is subject to the reverter contained in the deed and indenture from the United States to the Port of Benton. No assignment or sublease of the Lease shall relieve the Tenant of its obligations under this Lease.

12. INSURANCE. Throughout the term, at Tenant's sole cost and expense, Tenant shall keep or cause to be kept in force, for the mutual benefit of Port and Tenant, comprehensive broad form railroad liability insurance (including a contractual liability endorsement) against claims and liability for personal injury, death or property damage arising from the use, operation, maintenance, occupancy, misuse, or condition of the Property and improvements, with limits of liability of at least $5,000,000 and with deductibles in such amounts as may be reasonably acceptable to the Port. The Port shall be an additional insured on such policies.

12.1 RAILROAD PROPERTY INSURANCE. Throughout the term of the Lease, at Tenant's sole cost and expense, the Tenant shall keep or cause to be kept in force, for the mutual benefit of the Port and the Tenant, property insurance insuring all of the tracks, bridges, trestles, crossing and other improvements, fixtures, equipment and all of the railroad property subject to this lease against loss or damage from any cause, with the Port named as the owner of the insured property. The property shall be insured for its actual replacement value with such deductibles as are acceptable to the Port.

12.2 BUILDING PROPERTY INSURANCE. The Port shall maintain property insurance insuring the improvement known as the 1171 Building described in Attachment 1 against loss or damage from fire, flood, wind, or other natural disasters, with the Port named as the owner of the insured property. The property shall be insured for its actual replacement value with such deductibles as are acceptable to the Port. The Tenant shall maintain insurance coverage on the Tenant's property, fixtures and equipment located on the premises.

12.3 PROOF OF COMPLIANCE. The Tenant shall provide the Port with Certificates of Insurance showing the coverages and deductibles. All property insurance which the Tenant is required to maintain on the Port's property shall name the Port as the owner of the property and shall insure the Port's interest in the property. The Tenant shall deliver to Port, in the manner required for notices, a copy or certificate of all insurance policies required by this

Lease. Tenant shall include a provision in each of its insurance policies requiring the insurance carrier to give Port at least ninety (90) days prior written notice before such policy terminates. Tenant shall not substantially modify any of the insurance policies required by this Lease without giving at least ninety (90) days prior written notice to Port.

13. INDEMNIFICATION. The Tenant shall indemnify and hold the Port harmless from all liability, claims, damages, losses, or costs, including attorney fees, arising out of any claim, suit, action, or legal proceedings brought against the Port by any party alleged to have resulted from the Tenant's use, operation, maintenance or occupation of the railroad or any portion of the premises or any of Tenant's activities incidental thereto, or any breach or default in the performance of any of the terms or conditions of the Tenant's obligations under this lease agreement.

14. DEFAULT.

14.1 EVENTS OF DEFAULT. Each of the following events shall be a default by Tenant and a breach of this Lease.

14.1.1 The breach of any of the terms or conditions of the Lease Agreement

14.1.2 The failure or refusal to pay when due any installment of rent or other sum required by this Lease to be paid by Tenant, or the failure to perform as required or conditioned by any other covenant or condition of this Lease.

14.1.3 The appointment of a receiver to take possession of the Property or improvements, or of Tenant's interest in the leasehold estate or of Tenant's operations on the Property for any reason, unless such appointment is dismissed, vacated or otherwise permanently stayed or terminated within sixty days after the appointment.

14.1.4 An assignment by Tenant for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt; or for extending time for payment, adjustment or satisfaction of Tenant's liability; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervision are dismissed, vacated, or otherwise permanently stayed or terminated within sixty days after the assignment, filing, or other initial event.

14.2 NOTICE. As a precondition to pursuing any remedy for an alleged default by Tenant, Port shall give written notice of default to Tenant, in the manner herein specified for the giving of notices. Each notice of default shall specify the alleged event of default and the intended remedy.

14.3 TENANT'S RIGHT TO CURE. If the alleged default is nonpayment of rent, taxes, or other sums to be paid by Tenant as provided in this Lease, Tenant shall have ten

(10) days after receipt of written notice to cure the default. For the cure of any other default, Tenant shall have thirty days after receipt of written notice to cure the default, provided, however, that if it takes more than thirty (30) days to cure a default, the Tenant shall not be in default if it promptly undertakes a cure and diligently pursues it.

14.4 TIME OF THE ESSENCE. Time is of the essence of this Lease, and for each and every covenant or condition which must be performed hereunder.

15. PORT'S REMEDIES. If any default by Tenant continues uncured after receipt of written notice of default and the period to cure as required by this Lease, for the period applicable to the default, subject to the provisions of Section 13, the Port has the following remedies in addition to all other rights and remedies provided by law or equity to which Port may resort cumulatively or in the alternative:

15.1 Without terminating this Lease, Port shall be entitled to recover from Tenant any amounts due hereunder, or any damages arising out of the violation or failure of Tenant to perform any covenant, condition or provision of this Lease.

15.2 Port may elect to terminate this Lease and any and all interest and claim of Tenant by virtue of such lease, whether such interest or claim is existing or prospective, and to terminate all interest of Tenant in the Property and any improvements or fixtures thereon (except trade fixtures). In the event this Lease is terminated, all obligations and indebtedness of Tenant to Port arising out of this Lease prior to the date of termination shall survive such termination. In the event of termination by Port, Port shall be entitled to recover immediately as damages the total of the following amounts:

15.2.1 The reasonable costs of re-entry and reletting, including, but not limited to, any expenses of cleaning, repairing, altering, remodeling, refurbishing, removing, Tenant's property or any other expenses incurred in recovering possession of the Property or reletting the Property, including, but not limited to, reasonable attorney's fees, court costs, broker's commissions and advertising expense.

15.2.2 The loss of rental on the Property accruing until the date when a new tenant has been or with the exercise of reasonable diligence could have been, obtained.

15.3 Port may re-enter the Property and take possession thereof and remove any persons and property by legal action or by self-help and without liability for damages, and Tenant shall indemnify and hold the Port harmless from any claim or demand arising out of such re-entry and removal of persons and property. Such re-entry by the Port shall not terminate the Lease or release the Tenant from any obligations under the Lease. In the event Port re-enters the Property for the purpose of reletting, Port may relet all or some portion of the Property, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of a period of rent-free occupancy or other rental concession, and Port may not be required to relet to any tenant which Port may reasonably consider objectionable.

15.4 In the event Port relets the Property as agent for Tenant, Port shall be entitled to recover immediately as damages the total of the following amounts.

15.4.1 An amount equal to the total rental coming due for the remainder of the term of this Lease, computed based upon the periodic rent provided for herein and without discount or reduction for the purpose of adjusting such amount to present value of anticipated future payments, less any payments thereafter applied against such total rent by virtue of the new lease.

15.4.2 The reasonable costs of re-entry and reletting, including but not limited to, any expense of cleaning, repairing, altering, remodeling, refurbishing, removing Tenant's property, or any other expenses incurred in recovering possession of the Property or reletting the Property, including, but not limited to, attorneys' fees, court costs, broker's commissions and advertising expense.

15.5 All payments received by Port from reletting shall be applied upon indebtedness and damages owing to Port from Tenant, if any, and the balance shall be remitted to Tenant.

16. WAIVER. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Tenant other than default on the payment of that particular rental payment, regardless of Port's knowledge of the preceding breach at the time of accepting rent. Acceptance of rent or other payment after termination shall not constitute a reinstatement, extension or renewal of this Lease, or revocation of any notice or other act by Port.

17. ATTORNEYS' FEES. If either party brings any action or proceeding to enforce, protect or establish any right or remedy under this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing party. Arbitration is an action or proceeding for the purpose of this provision. The "prevailing party" means the party determined by the court or the arbitrator to most nearly have prevailed.

18. ACCESS BY PORT. Port, or Port's representatives and agents, shall have access to the Property at reasonable times and upon reasonable notice, for the purpose of inspecting the Property; provided that Port shall exercise all reasonable efforts not to unreasonably disturb the use and occupancy of the Property by Tenant.

19. RECORDING OF LEASE. Either party to this Lease may record the Lease with the Auditor of Benton County. In lieu of recording the entire Lease either party may record a memorandum of lease setting forth the legal description of the property, the parties and the term of the Lease, together with any additional information which the party deems to be relevant, and

as long as the information in the memorandum is accurate the other party agrees to sign the memorandum of lease.

20. HOLDING OVER. In the event Tenant shall hold over after the expiration or termination of this Lease, or at the expiration of any option term, such holding over shall be deemed to create a tenancy from month-to-month on the same terms and conditions of the lease except that the rental rate shall be adjusted as provided in Section 3 and the rent shall be prorated over a 365 day year and paid by Tenant each month in advance. The tenancy may be terminated by either party giving the other party thirty days written notice of the intent to terminate.

21. SECURITY FOR TENANT'S OBLIGATIONS. In addition to the security provided for in Section 5, in order to secure the prompt, full and complete performance of all of Tenant's obligations under this Lease, including but not limited to, Tenant's obligations to protect and indemnify Port from any liability subject to the lien, if any, of the holder of the first mortgage against the property, Tenant hereby grants to Port a security interest in and assigns to Port all of Tenant's right, title and interest in and to all rents and profits from the Property, all of the materials stored on the premises, and all permanent improvements constructed thereon, to secure the Tenant's obligations under this Lease. In the event Tenant defaults in any of its obligations hereunder, Port shall have the right at any time after the period for cure provided in paragraph 15.3, without notice or demand, to collect all rents and profits directly and apply all sums so collected to satisfy Tenant's obligations hereunder, including payment to Port of any sums due from Tenant. The assignment of rents to the Port shall be subordinate to any assignment of rents to a leasehold mortgagee for security purposes. Such remedy shall be in addition to all other remedies under this Lease. This security interest will not extend to the Tenant's business receivables other than rents and profits from the property, provided that this exception will not affect the enforcement or collection of any judgment obtained against the Tenant by the Port.

22. HAZARDOUS MATERIALS. Tenant shall not take or store upon the Property any hazardous or toxic materials, as defined by the law of the State of Washington or by federal law, except in strict compliance with all applicable rules, regulations, ordinances and statutes. Tenant shall comply with the Port's Hazardous Materials Communications Policy, but shall not be subject to the notice requirements thereof in connection with the installation, use, operation, or removal of usual office equipment including, without limitation, computers and photocopiers.

22.1 Tenant shall not permit any contamination of the Property. The Tenant shall immediately remove any contaminants or pollutants and shall promptly restore the Property, subject to any condition existing prior to the commencement of this Lease, which shall be the responsibility of the Port.

22.2 Tenant shall defend Port and hold it harmless from any cost, expense, claim or litigation arising from hazardous or toxic materials on the Property or resulting from the contamination of the Property, caused by the acts or omissions of the Tenant, its subtenants, employees, agents, invitees, or licensees, during the term of this Lease.

22.3 In the event of the termination of this Lease for any reason, the obligation of the Tenant to restore the Property and the obligation to indemnify the Port set forth above, shall survive the termination.

23. GENERAL CONDITIONS.

23.1 NOTICES. Any notices required or permitted to be given under the terms of this Lease, or by law, shall be in writing and may be given by personal delivery, or by registered or certified mail, return receipt requested, or by overnight courier, directed to the parties at the following addresses, or such other address as any party may designate in writing prior to the time of the giving of such notice, or in any other manner authorized by law:

Port: Port of Benton
3100 George Washington Way
Richland, Washington 99352

Tenant: Tri-City Railroad Company, L.L.C.
2355 Stevens Drive
P.O. Box 1700
Richland, WA 99352

Any notice given shall be effective when actually received, or if given by certified or registered mail, upon the recipient's receipt of a notice from the U. S. Postal Service that the mailed notice is available for pick up.

23.2 NONMERGER. If both Port's and Tenant's estates in the Property or the improvements or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except by the express election of the owner and the consent of the mortgagee or mortgagees under all mortgages existing upon the Property.

23.3 CAPTIONS AND TABLE OF CONTENTS. The Table of Contents of this Lease and the captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Lease or of any part or parts of this Lease.

23.4 EXHIBITS AND ADDENDA. All exhibits and addenda to which reference is made in this Lease are incorporated in the Lease by the respective references to them. References to "this Lease" includes matters incorporated by reference.

23.5 SUCCESSORS. Subject to the provisions of this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties. The Port agrees that if the Property is sold, assigned, or

conveyed, except for any conveyance to the United States, the Port will place a provision in any conveyance making the conveyance subject to the terms and conditions of this Lease. The Port represents, that if this Lease is recorded, any subsequent conveyance of the Property by the Port will be subject to the terms of this Lease, with the exception of any conveyance to the United States.

23.6 NO BROKERS. Each party warrants and represents that it has not dealt with any real estate brokers or agents in connection with this Lease. Each party will indemnify and hold the other harmless from any cost, expense or liability (including costs of suit and reasonable attorney fees) for any compensation, commission, or fees claimed by any broker or agent in connection with this Lease.

23.7 WARRANTY OF AUTHORITY. The persons executing and delivering this Lease on behalf of Port and Tenant each represent and warrant that each of them is duly authorized to do so and that the execution of this Lease is the lawful and voluntary act of the person on whose behalf they purport to act.

23.8 QUIET POSSESSION. The Port agrees that upon compliance with the terms and conditions of this Lease, the Tenant shall at all times have the right to the quiet use and enjoyment of the Property for the term of the Lease and any extensions.

23.9 LEASE CERTIFICATION. Upon the request of the Tenant the Port agrees to provide a written certification of the status of the Lease, to the best knowledge of the Port at the time of the certification, setting forth the following: I) whether the Lease is in full force and effect; ii) whether there have been any amendments or modifications to the Lease; iii) whether the Tenant is current in the payment of the rent and other charges under the terms of the Lease; iv) whether the Port is aware of any default or breach on the part of the Tenant.

23.10 PARTIAL INVALIDITY. If any provision of this Lease is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

23.11 CONSTRUCTION. The parties lease have reviewed this lease and have the opportunity to consult with their respective counsel. The lease shall not be deemed to be drafted by either party and the lease shall not be construed against either party as the drafter.

23.12 CONSENT. Whenever the consent or approval of a party to this Lease is required to be given by the terms of this Lease to the other party, such consent or approval shall not be unreasonably withheld or delayed.

DATED this 1st day of August, 2002.

PORT OF BENTON

TRI-CITY RAILROAD COMPANY, L.L.C.

Randolph Peterson
Manager

By: _____

By: _____
SCOTT D. KELLER

Executive Director
Title: _____

STATE OF WASHINGTON)
) ss.
County of Benton)

On this day, before me personally appeared Scott D. Keller to me known to be the Executive Director of Port of Benton Commission, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation.

GIVEN UNDER my hand and official seal this 1st day of August, 2002.

_____
NOTARY PUBLIC in and for the State of Washington, residing at Pasco, WA
My commission expires: June 25, 2003

STATE OF WASHINGTON)
) ss.
County of Benton)

On this day, before me personally appeared Randolph Peterson to me known to be the Manager of Tri-City Railroad Company, L.L.C., and acknowledged the said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

GIVEN UNDER my hand and official seal this 1st day of August, 2002.

NOTARY PUBLIC in and for the State of
Washington, residing at Pasco WA
My commission expires: Jan 25, 2003

PARCEL 8

A PORTION OF THE DEPARTMENT OF ENERGY HANFORD WORKS RAILROAD SPUR RIGHT OF WAY AS RECORDED UNDER AUDITORS FILE NUMBER 307015, RECORDS OF BENTON COUNTY, WASHINGTON, LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 9 NORTH, RANGE 29 EAST, W.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF TRACT B OF COLUMBIA CENTER ESTATES NUMBER 2 AS RECORDED IN LINE 14 OF PLATS, BEING A POINT ON THE SOUTHERLY RIGHT OF WAY OF SAID RAILROAD SPUR AND A POINT OF CURVE; THENCE ALONG A NON-RADIAL CURVE TO THE LEFT ALONG SAID SOUTHERLY RIGHT OF WAY, HAVING A CENTRAL ANGLE OF 03°02'28", A RADIUS OF 2342.34 FEET, A CHORD BEARING OF S64°18'23"E, AN ARC DISTANCE OF 124.31 FEET TO THE TRUE POINT OF BEGINNING; THENCE N01°50'14"E A DISTANCE OF 108.52 FEET TO A POINT ON THE NORTHERLY MARGIN OF SAID RAILROAD SPUR RIGHT OF WAY AND POINT OF CURVE; THENCE ALONG A NON-RADIAL CURVE TO THE LEFT ALONG SAID NORTHERLY RIGHT OF WAY HAVING A CENTRAL ANGLE OF 01°39'37", A RADIUS OF 2242.34 FEET, A CHORD BEARING OF S65°36'11"E, AN ARC DISTANCE OF 64.97 FEET; THENCE S01°50'14"W A DISTANCE OF 107.29 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF SAID RAILROAD SPUR AND POINT OF CURVE; THENCE ALONG A NON-RADIAL CURVE TO THE RIGHT ALONG SAID SOUTHERLY RIGHT OF WAY HAVING A CENTRAL ANGLE OF 01°34'41", A RADIUS OF 2342.34 FEET, A CHORD BEARING OF N66°36'57"W, AN ARC DISTANCE OF 64.51 FEET TO THE TRUE POINT OF BEGINNING.

SUBJECT TO RESERVATIONS, RESTRICTIONS, RIGHTS OF WAY AND EASEMENTS OF RECORD.

Exhibit 3 (Cont.)

0-00000253

000180

OWNERSHIPS

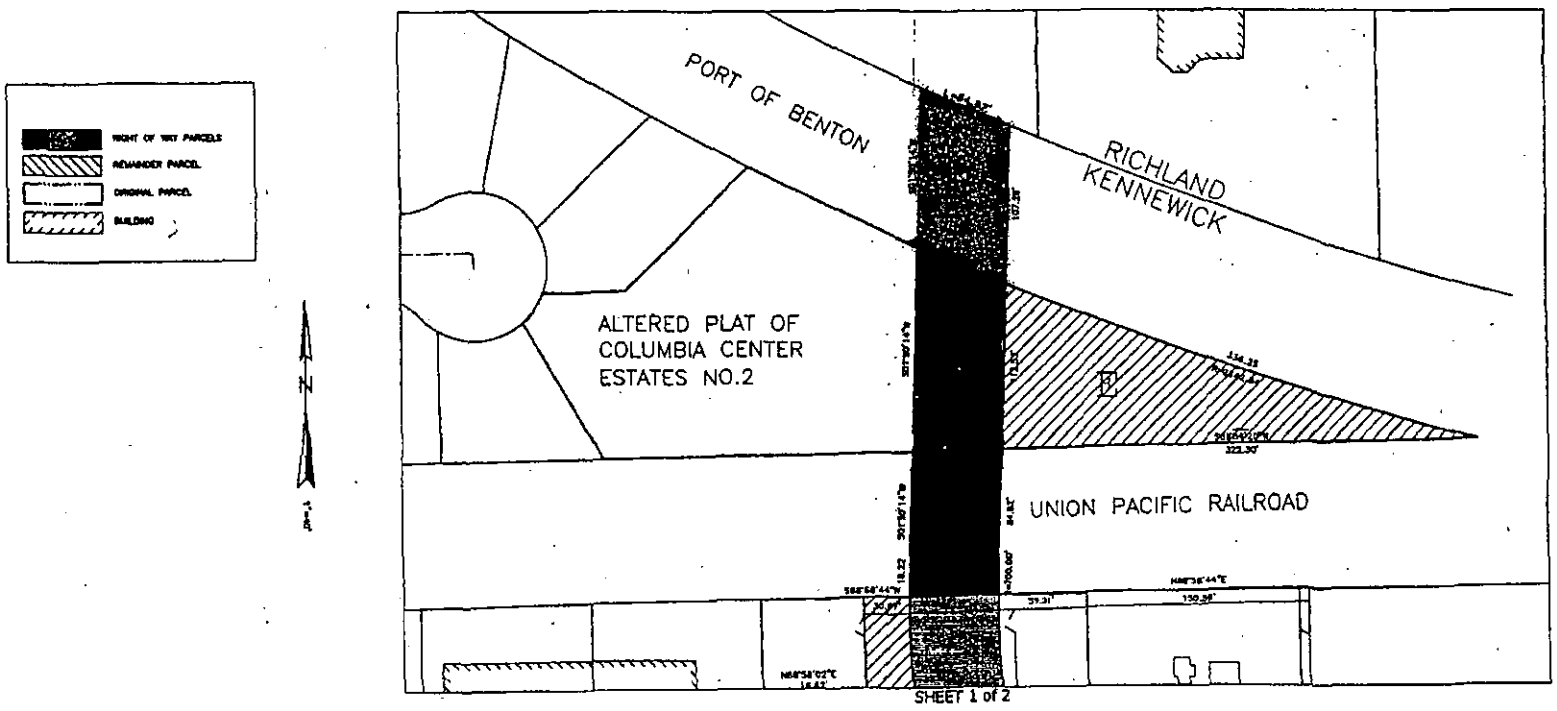
PARCEL	ORIGINAL PARCEL DESCRIPTION	TAX ID NUMBER And/or Plat Number	OWNERSHIP	BEFORE AREA (sf)	ROW ACQUISITION AREA (sf)	EASEMENT AREA (sf)	REMAINDER AREA (sf)	AFTER AREA (sf)	ACQUISITION TYPE
4	Railroad RIGHT-OF-WAY	APPROX.	UP RAILROAD	N/A		6,404		N/A	EASEMENT
1	TRACT B of Plat Alteration, CC Estates No.2	1-0099-306-0009-008 APPROX.	Columbia Center Estates Homeowners Assoc.	69,842 s	1,535		16,850	36,457 s	FEE
2									
3	Railroad RIGHT-OF-WAY	APPROX.	PORT OF BENTON	N/A		6,404		N/A	EASEMENT

NUMBERED PARCELS ARE REQUIRED FOR FEE RIGHT-OF-WAY.
LETTERED PARCELS ARE REMAINDERS.

CITY OF KENNEWICK, WA.

N. CENTER PARKWAY RIGHT-OF-WAY

SE 1/4 Section 30 Township 9 North Range 29 East, Willamette Meridian



RIGHT OF WAY PLAN

After recording return to:
Thomas A. Cowan
Cowan Walker, P.S.
P. O. Box 927
Richland, WA 99352

EASEMENT DEED

THE GRANTOR, **PORT OF BENTON,** a municipal corporation of the State of Washington, hereby quit claims, conveys and transfers to the Grantee, the **CITY OF KENNEWICK,** a municipal corporation of the State of Washington, an easement over, under and across the real estate situated in Benton County, Washington, more particularly described Exhibit 1.

This easement is granted for the purpose of constructing and installing a public street within the easement, including the right to construct, install, maintain, repair and replace roadways, curbs, gutters, sidewalks, landscaping within the easement.

The easement may be used for the installation of utilities, including water, sewer, phone, communications, electrical and gas transmission lines. All utilities shall be underground.

This easement is granted pursuant to a Railroad Crossing Agreement entered into between the Grantor and the Grantee. The use of this easement is subject to all the terms and conditions of the Railroad Crossing Agreement.

DATED on this ___ day of September, 2006.

PORT OF BENTON

By: _____
SCOTT D. KELLER,
Executive Director

STATE OF WASHINGTON)
) ss.
COUNTY OF BENTON)

On this day, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Scott D. Keller, to me known to be the Executive Director of the Port of Benton, a municipal corporation of the State of Washington that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the Port, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official hereto affixed this ___ day of September, 2006.

_____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission Expires: _____

KENNEWICK
WASHINGTON

RECEIVED
OCT 0 5 2006
CITY ATTORNEY

October 4, 2006

John C. Darrington
Richland City Manager
P. O. Box 190
Richland, WA 99352

Re: Center Parkway Extension - Joint Crossing Agreement

Dear Mr. Darrington:

At last night's City Council Meeting, the City of Kennewick approved the enclosed Crossing Agreement between the City of Kennewick, the City of Richland, and the Port of Benton. The City had intended to review this with you prior to the meeting. However, with the hearing date on October 19, 2006, it became important to get this matter approved by Council and leave enough time for the City of Richland to approve the Agreement before the hearing date.

This is the same Agreement that you provided your approval along with that of Tom Lampson and Pete Rogalsky on September 21, 2006. Please execute both originals and return them to me to present to the Port. If you would like John Ziobro to present this matter to your City Council at your next scheduled meeting, please let me know.

Very truly yours,

Robert R Hammond

ROBERT R. HAMMOND
City Manager

RRH/JSZ/bl

Enclosure

cc: John Ziobro
Russ Burtner

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Transcript Order Form

Proceeding Name: City of Kennewick v. Docket: TR-130499
and Umatilla County of Benton, Tri-City BNSF & Union Pacific Railroad Co.
Date: 6/4/2013 Location: Rm. 206

(✓) ALJ Only ( ) Commissioners presiding

Reporter (✓) On time ( ) Late _____

Time in hearing Arrived: 1:30 1:42 - 2:22pm Set with ALJ Adam Torem

( ) No transcript order

(X) Transcript needed: (X) Original & 1 ( ) Original & 5

( ) Continue prior order ( ) Other: _____

( ) Expedite: Delivery in ____ business days per _____

Presiding Officer _____ ADAM TOREM ALJ

Reporter Shelby Kay Finkbeiner Number of pages _____

Comments:

White: Reporter/billing **Canary:** Reporter **Pink:** Official File

0-000000257

000184

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499 ORDER 01 PREHEARING CONFERENCE ORDER; NOTICE OF HEARING **(Evidentiary Hearing Set for November 19-21, 2013, at 9:30 a.m.)**

1 **NATURE OF PROCEEDING.** This proceeding arises out of a petition from the City of Kennewick (City or Petitioner) filed with the Washington Utilities and Transportation Commission (Commission) on April 8, 2013, to construct a highway-rail grade crossing at Center Parkway in the City of Kennewick.

2 **CONFERENCE.** The Commission convened a prehearing conference in this docket at Olympia, Washington, on Tuesday, June 4, 2013, before Administrative Law Judge Adam E. Torem, whom the Commission appoints as presiding officer in this matter.

3 **APPEARANCES.** P. Stephen DiJulio and Jeremy Eckert, Seattle, WA, represent petitioner City of Kennewick; Mr. DiJulio and Mr. Eckert also represent intervenor City of Richland. Thomas A. Cowan, Richland, WA, represents respondent Port of Benton. Paul J. Petit, Richland, WA, and Brandon L. Johnson, Walla Walla, WA, represent respondent Tri-City & Olympia Railroad (TCRY). Tom Montgomery and Kelsey Endres, Seattle, WA, represent respondent Burlington Northern Santa Fe Railway Company (BNSF). Carolyn Larson, Portland, OR, represents respondent Union Pacific Railroad Company (UPRR). Steven W. Smith, Assistant Attorney General, Olympia, WA, represents the Commission's regulatory staff (Commission

Staff or Staff).[1] Contact information for the parties' representatives is attached as Appendix A to this order.

4 **INTERVENTION.** On May 31, 2013, the City of Richland filed a written motion to intervene in the proceeding. No party questioned the City of Richland's substantial interest in this matter or objected to its motion. The Commission finds that the City of Richland's motion demonstrated a substantial interest in this proceeding and that the City of Richland's participation will be in the public interest. The City of Richland's motion to intervene is granted.

5 **DISCOVERY.** TCRY's answer to the City of Kennewick's petition requested that the Commission make discovery available under Washington Administrative Code (WAC) 480-07-400 – 425. No party objected to that request. Pursuant to WAC 480-07-400(2)(b)(iv), the Commission finds that the needs of the case may require discovery and makes the discovery rules available to all parties. However, *the parties shall not schedule depositions without advance approval of the presiding officer.* The Commission urges the parties to work cooperatively together to avoid having to bring discovery disputes forward for formal resolution. **The discovery cutoff date is Friday, October 11, 2013**; all data requests must be issued and served by this date.

6 **SEPA REVIEW.** The City of Kennewick represented at the prehearing conference that it previously concluded the necessary State Environmental Policy Act (SEPA) review for the proposed crossing. The City of Kennewick issued a Mitigated Determination of NonSignificance (MDNS) in 2003 and the proposed crossing is also addressed in the City of Kennewick's Comprehensive Plan. The City of Kennewick will confirm to the Commission that its decade-old MDNS remains legally sufficient.

[1] In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

7 **PROCEDURAL SCHEDULE.** The parties agreed on, and the Commission adopts, the following procedural schedule:

Tuesday, September 3, 2013	Pre-Filed Testimony – Petitioner / Intervenor
Tuesday, October 1, 2013	Response Testimony – Respondents / Staff
Tuesday, October 22, 2013	Rebuttal & Cross-Answer Testimony – All
November 19-21, 2013	Evidentiary Hearing (beginning at 9:30 a.m.)
November 19 or 20, 2013	Public Hearing (beginning at 6:00 p.m.)
Friday, December 20, 2013	Simultaneous Post-Hearing Briefs

The procedural schedule is included in this Order as Appendix B.

8 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to electronically submit to the Commission all proposed cross-examination exhibits **by 3:00 p.m. on Tuesday, November 12, 2013**, and filed hard copies of the same **by noon on September 13, 2013**. Except as otherwise agreed between parties, proposed cross-examination exhibits must be served on all parties at the time they are filed with the Commission. Two copies must be furnished to the party sponsoring the witness the party intends to cross examine with the exhibits. Parties may waive the right to service of cross examination exhibits in whole or in part. This may be appropriate, for example, when a proposed exhibit has been previously furnished during the discovery process. Cross-examination exhibits must be accompanied by an exhibit list and must be organized according to the witness the party intends to cross examine with the exhibits. Cross-examination exhibits not conforming to these requirements may be rejected. Each party's cross-examination exhibit list must be filed with the Commission and served on all parties by 3:00 p.m. on November 12, 2013.

9 **PUBLIC COMMENT HEARING.** As noted above, the Commission will conduct a public comment hearing on **Tuesday, November 19, 2013 OR Wednesday, November 20, 2013, at approximately 6:00 p.m.** to afford members of the public an opportunity to present oral comments on the issues presented by this case. A separate notice will be issued setting forth the specific location in the City of Kennewick where the public comment hearing will be held and confirming the date and time.

10 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this matter commencing on **Tuesday, November 19, 2013, at 9:30 a.m.**, and continuing as required on Wednesday, November 20, 2013, and Thursday, November 21, 2013, at a location to be designated in the City of Kennewick. A separate notice will be issued setting forth the specific location of the evidentiary hearing and confirming the date and time.

11 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file an **original plus 6 copies** of all pleadings, motions, briefs, and other prefiled materials. These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

12 All filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive S.W. Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

13 An electronic copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to <records@utc.wa.gov >. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette, a flash drive, or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.

14 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Parties may submit documents electronically to the Commission on the filing deadline to expedite the filing process, but must file an original, plus 6 paper copies, of the documents with the Commission by 12:00 noon on the first business day following the filing deadline established in the procedural schedule. WAC 480-07-145(6). Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/efiling) or by e-mail to records@utc.wa.gov. Finally, to perfect

filing, parties must simultaneously provide e-mail courtesy copies of filings to the presiding administrative law judge at atorem@utc.wa.gov as well as to the parties to the proceeding.

15 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at 360-664-1355.

16 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective June 7, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

APPENDIX A

PARTIES' REPRESENTATIVES
DOCKET TR-130499

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
City of Kennewick Petitioner	P. Stephen DiJulio Jeremy Eckert Foster Pepper PLLC 1111 3rd Avenue, Suite 3400 Seattle, WA 98101	206-447-4400	206-447-9700	dijup@foster.com eckej@foster.com
	Peter Beaudry Public Works Director City of Kennewick 210 West 6th Avenue P.O. Box 6108 Kennewick, WA 99336-0108			Peter.beaudry@ci.kennewick.wa.us
City of Richland Intervenor	P. Stephen DiJulio Jeremy Eckert Foster Pepper PLLC 1111 3rd Avenue, Suite 3400 Seattle, WA 98101	206-447-4400	206-447-9700	dijup@foster.com eckej@foster.com
	Cindy Johnson, City Manager The City of Richland P.O. Box 190 Richland, WA 99352			
Port of Benton Respondent	Tom A. Cowan Cowan Moore Stam & Luke P.O. Box 927 Richland, WA 99352	509-943-2676	509-946-4257	tcowan@cowanmoore.com
	Scott D. Keller Port of Benton 3100 George Washington Way Richland, WA 99354			keller@portofbenton.com

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
TCRY Respondent	Paul J. Petit Tri-City & Olympia Railroad P.O. Box 1700 Richland, WA 99354	509-371-8313		paulpetit@tcry.com
	Brandon L. Johnson Minnick-Hayner, P.S. 249 West Alder P.O. Box 1757 Walla Walla, WA 99362	509-527-3500	509-527-3506	bljohnson@my180.net
	Rhett Peterson Tri-City & Olympia Railroad P.O. Box 1700 Richland, WA 99352			rhettwater@mac.com
BNSF Railway Respondent (Waiver on File)	Tom Montgomery Kelsey Endres Montgomery Scarp, PLLC 1218 Third Avenue, Suite 2700 Seattle, WA 98101	206-625-1801	206-625-1807	tom@montgomeryscarp.com kelsey@montgomeryscarp.com
	Richard Wagner Manager Public Projects BNSF Railway 2454 Occidental Avenue S. Suite 2D Seattle, WA 98134			Richard.wagner@bnsf.com
UPRR Respondent (Waiver on File)	Carolyn Larson Attorney at Law Dunn Carney Allen Higgins and Tongue LLP 851 SW Sixth Avenue, Suite 1500 Portland, OR 97204	503-224-6440	503-224-7324	cll@dunn-carney.com
	Terrel A. Anderson Manager Industry & Public Projects Union Pacific Railroad Co. 9451 Atkinson Street Roseville, CA 95747			taanders@up.com

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Commission Staff	Steven W. Smith Assistant Attorney General 1400 S. Evergreen Park Drive S.W. P.O. Box 40128 Olympia, WA 98504-0128	360-664-1225	360-586-5522	ssmith@utc.wa.gov

APPENDIX B
PROCEDURAL SCHEDULE
DOCKET TR-130499

EVENT	DATE
Direct Testimony Petitioner City of Kennewick and Intervenor City of Richland	Tuesday, September 3, 2013
Response Testimony Respondents and Staff	Tuesday, October 1, 2013
Discovery Cutoff	Friday, October 11, 2013
Rebuttal/Cross Answer Testimony All Parties	Tuesday, October 22, 2013
Cross-Examination Exhibits & List	Tuesday, November 12, 2013
Evidentiary Hearing	Tuesday, November 19, 2013 Wednesday, November 20, 2013 Thursday, November 21, 2013
Public Hearing	Tuesday, November 19, 2013 (evening) *OR* Wednesday, November 20, 2013 (evening)
Simultaneous Post-Hearing Briefs	Friday, December 20th, 2013

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PROOF OF SERVICE

DOCKET 130499

I HEREBY CERTIFY That I, as an employee of the Washington Utilities and Transportation Commission at Olympia, Washington, have served on 6/7/2013 the parties of record in this proceeding a true copy of the following document(s):

Order 01 - Prehearing Conference Order; Notice of Hearing (Evidentiary Hearing Set for November 19 - 21, 2013, at 9:30 a.m.)

The document(s) was/were mailed to each of the parties of record in this docket. Each envelope was addressed to the address shown in the official file, with the required first class postage, and deposited on this date in the United States mail in the City of Olympia, County of Thurston, State of Washington.

Lisa Wyse

Lisa Wyse, Supervisor, Records and Tariff Section

PARTIES OF RECORD AND OTHERS RECEIVING NOTICE

SERVED BY MAIL:

Ecket, Jeremy, Foster Pepper PLLC, 1111 3rd Avenue, STE, 3400, Seattle, WA, 98101

Anderson, Terrel, Union Pacific Railroad Company, 9451 Atkinson St., Roseville, CA, 95747

Petit, Paul J., Tri-City & Olympia Railroad, P.O. Box 1700, Richland, WA, 99354

Peterson, Rhett, Tri-City & Olympia Railroad, P.O. Box 1700, Richland, WA, 99352

Wagner, Richard, BNSF Railway Co., 2454 Occidental Ave S, STE, 2D, Seattle, WA, 98134

Smith, Steve, WUTC, P.O. Box 40128, Olympia, WA, 98504-0128

Larson, Carolyn, Dunn Carney Allen Higgins and Tongue LLP, 851 SW Sixth Avenue, STE, 1500, Portland, OR, 97204

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Beaudry, Peter M, City of Kennewick, 210 W. 6th Avenue, Kennewick, WA, 99336

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Johnson, Cindy, City of Richland, PO BOX 190, Richland, WA, 99352-0190

Endres, Kelsey, Montgomery Scarp MacDougall, PLLC, 1218 Third Avenue, STE, 2700, Seattle, WA, 98101

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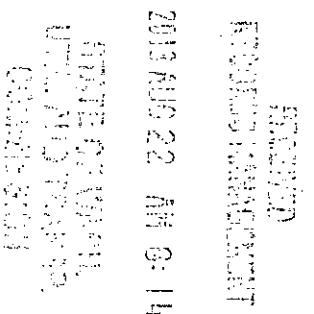
FOSTER PEPPER PLLC

Direct Phone (206) 447-4679
Direct Facsimile (206) 447-9700
E-Mail stubh@foster.com

August 20, 2013

BY EMAIL
AND BY U.S. MAIL



Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
P. O. Box 47250
Olympia, WA 98504-7250

Re: City of Kennewick, et al. v. Port of Benton, et al.
Docket TR-130499

Dear Director:

Enclosed is Petitioners' Response Regarding SEPA Compliance. The original and 6 copies are also being sent to you by U.S. mail.

Jeremy Eckert is the attorney representing the Petitioners. Jeremy's contact information is as follows:

Jeremy Eckert
eckej@foster.com
Phone: (206) 447-6284
Fax: (206) 749-2018

Hard Copy
RMS

0-000000269

Sincerely,

FOSTER PEPPER PLLC

/Helen M. Stubbert

Helen M. Stubbert
Legal Assistant to Jeremy Eckert

Enclosure
cc: Tom A. Cowan
Scott D. Keller
Paul J. Petit
Rhett Peterson
Brandon L. Johnson
Tom Montgomery
Kelsey Endres
Richard Wagner
Carolyn Larson
Terrell A. Anderson
Steven W. Smith
Judge Adam E. Torem

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PETITIONERS' RESPONSE REGARDING SEPA COMPLIANCE

1. INTRODUCTION

PETITIONERS, CITY OF KENNEWICK AND CITY OF RICHLAND ("Petitioners"), respond regarding the Petitioners' compliance with State Environmental Policy Act ("SEPA") procedural requirements. This response follows from the inquiry from the Administrative Law Judge and the Prehearing Conference Order, Section 6. As identified herein, the Petitioners have complied with all SEPA procedural requirements for the construction of a highway-rail grade crossing for the Center Parkway Extension project, which is the subject of this WUTC petition process. SEPA compliance remains legally sufficient.

ORIGINAL

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

2. BACKGROUND

The City of Richland and the City of Kennewick have entered into a joint agreement to complete the Center Parkway Extension project. Pursuant to the joint agreement, the City of Kennewick is responsible for preparing SEPA-related materials. On January 8, 2003, the Responsible Official for the City of Kennewick issued a mitigated determination of non-significance ("MDNS") for several Public Works Department projects, including the Center Parkway Extension project. The MDNS was based upon the Checklist dated August 28, 2002 (the "Checklist"). The MDNS and the Checklist also analyzed two other projects, including the widening of Gage Boulevard and adding a storm drain pipe from Steptoe east to Center Parkway. After the City issued the MDNS, the City completed the road widening and storm drain pipe projects. To date, the Center Parkway Extension is the only project that was reviewed under the Checklist, but not completed. The Petitioners' amended petition to the WUTC includes the Checklist and the MDNS threshold determination.

3. SEPA ADDENDUM

On July 26, 2013, the Responsible Official for the City of Kennewick issued an Addendum to the Checklist for Center Parkway Extension project. Pursuant to WAC 197-11-600(3), the City of Kennewick evaluated the checklist and issued the Addendum to update the information in the Checklist regarding non-significant impacts for substantially the same proposed action. Pursuant to WAC 197-11-706, an Addendum may be issued at any time during the SEPA process. The additional information and analysis provided in the Addendum found no change to the proposed Center Parkway Extension project or environmental assessment for the project.

Based upon the information provided in the Checklist and the Addendum, the Responsible Official determined that "there are no new or increased significant impacts that would result from the Project." Therefore, the Responsible Official concluded, "it is not

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necessary to issue a new threshold determination, and no new or additional mitigation is warranted."

Pursuant to WAC 197-11-625 and Kennewick Municipal Code 4.08.400, the City of Kennewick is not required to circulate the addendum. However, the Addendum is attached as a courtesy to the parties participating in this petition.

Respectfully submitted this 20th day of August, 2013.

FOSTER PEPPER PLLC

By: _____
P. Stephen DiJulio, WSBA #12921
Jeremy Eckert, WSBA #42596
Attorneys for Petitioners

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
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Addendum to the SEPA Checklist for

Center Parkway Extension

E.D. File # 02-95

This is an Addendum to the SEPA Checklist, dated August 28, 2002, for the proposal to extend Center Parkway from Gage Boulevard to Tapteal Drive (the "Checklist"). Pursuant to WAC 197-11-600(3), the Addendum is being used to update information in the Checklist regarding non-significant impacts for substantially the same proposed action. Pursuant to WAC 197-11-706, an Addendum may be issued at any time during the SEPA process. The additional information and analysis provided in this Addendum does not substantially change the proposed Center Parkway Extension.

BACKGROUND

On January 8, 2003, the Responsible Official for the City of Kennewick ("City") issued a mitigated determination of non-significance ("MDNS") for several Public Works Department projects, including the proposed Center Parkway Extension. The MDNS was based upon the Checklist dated August 28, 2002. The MDNS and the Checklist also analyzed two other projects, including the widening of Gage Boulevard and adding a storm drain pipe from Steptoe east to Center Parkway. Since the City issued the MDNS, the City has completed the road widening and storm drain pipe projects. To date, the Center Parkway Extension is the only project that was reviewed under the Checklist, but not completed. The City's Public Works Department prepared this Addendum to identify and analyze additional information that has become available since the preparation of the Checklist and the MDNS threshold determination.

ADDITIONAL INFORMATION

Through this Addendum, the following additional information is included in the Checklist:

Background.

The proposed project remains the extension of Center Parkway from Gage Boulevard to the south to Tapteal Drive on the north. The proposal includes a grade railroad crossing. The project has not changed. For the purposes of this Addendum, the remaining proposed actions constitute the "Project."

A.6. The Project is estimated to receive approval from the WUTC for the railway crossing in early 2014. After WUTC approval, the City will bid the work and begin construction.

A.10. WUTC approval is required for the railway crossing.

A.11. This is a joint project with the City of Richland to extend Center Parkway from Gage Boulevard to the south to Tapteal Drive on the north, including a grade railroad crossing. The Responsible Official incorporates by reference the Center Parkway Extension and Railroad Crossing Traffic Study prepared by J-U-B Engineers, dated March 20, 2013 ("Traffic Study"). The Traffic Study identifies the conditions with future roadway connections on Center Parkway. The Traffic

Study is available for review at:
http://www.ci.richland.wa.us/DocumentCenter/View/6872

Environmental Elements.

Environmental impacts identified in the Checklist related primarily to the widening of Gage Boulevard and the storm drain improvements. Nevertheless, the following is noted for the SEPA file #02-95 related to the Project.

B.3. The Project will not impact surface waters. The water elements identified in section 3(a)(1) through (3) in the Checklist are inapplicable to the Project.

B.4&5. The Project will not impact fish species. The animal elements identified in section 5 of the Checklist are inapplicable to the Project, as is the ESA Listed Salmonids Checklist.

8.h. The Project is not an "environmentally sensitive" area. The "environmentally sensitive" areas identified in section 8 of the Checklist are inapplicable to the Project.

14.a The Traffic Study identifies several benefits, including improved emergency response times. The Benton Franklin Council of Government's 2011 – 2032 Regional/Metropolitan Transportation Plan also includes the Project in the Regional Transportation Plan ("Transportation Plan"). The Responsible Official incorporates by reference the Transportation Plan. The Transportation Plan identifies transportation projects necessary for the Tri-Cities metropolitan area to achieve its identified transportation level of service. The Transportation Plan is available for review at: http://www.bfcog.us/RTP.html.

15.a. The Traffic Study demonstrates that the Project will improve emergency response times near the Project site.

ANALYSIS AND CONCLUSION

The Responsible Official has determined that the Project as described and analyzed in the Checklist and this Addendum does not substantially change the impacts identified in the Checklist, and there are no new or increased significant impacts that would result from the Project. Therefore, it is not necessary to issue a new threshold determination, and no new or additional mitigation is warranted. The original Checklist as modified by this Addendum constitutes SEPA compliance for the Project.

Gregory J. McCormick

Gregory McCormick, AICP
SEPA Responsible Official
Signed: July 26, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding by U.S. Postal Service, postage prepaid, and by email, to the parties identified below:

Tom A. Cowan Cowan Moore Stam & Luke P.O. Box 927 Richland WA 99352 *tcowan@cowanmoore.com*	Scott D. Keller Port of Benton 3100 George Washington Way Richland WA 99354 *keller@portofbenton.com*
Paul J. Petit General Counsel P.O. Box 1700 Richland WA 99352 *paulpetit@tcry.com*	Rhett Peterson Tri-City & Olympia Railroad Co. 10 North Washington St. Kennewick WA 99336 *Rhettwater@mac.com*
Brandon L. Johnson Minnick-Hayner, P.S. 249 West Alder P.O. Box 1757 Walla Walla WA 99362 *bljohnson@my180.net*	Tom Montgomery Kelsey Endres Montgomery Scarp, PLLC 1218 Third Ave., Ste. 2700 Seattle WA 98101 *tom@montgomeryscarp.com* *Kelsey@montgomeryscarp.com*
Richard Wagner Manager Public Projects BNSF Railway 2454 Occidental Ave. S., Ste. 2D Seattle WA 98134 *richardwagner@bnsf.com*	Carolyn Larson Dunn Carney Allen Higgins and Tongue LLP 851 SW Sixth Ave., Ste. 1500 Portland OR 97204 *cll@dunn-carney.com*
Terrell A. Anderson Manager, Industry & Public Projects Union Pacific Railroad Co. 9451 Atkinson St. Roseville CA 95747 *taanders@up.com*	Steven W. Smith Assistant Attorney General 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia WA 98504-0128 *ssmith@utc.wa.gov*

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A courtesy copy was also delivered, in the manner indicated, to:

Adam E. Torem
Administrative Law Judge
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia WA 98504-7250
atorem@utc.wa.gov

DATED this 20th day of August, at Seattle, Washington.

Helen M. Stubbert

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

SERVICE DATE

SEP 11 2013

STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • www.utc.wa.gov

September 11, 2013

NOTICE OF HEARING
(Set for November 19 – 21, 2013)
and
NOTICE OF PUBLIC COMMENT HEARING
(Set for November 20, 2013, at 6:00 p.m.)

Re: *City of Kennewick v. Port of Benton, Tri-City & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad*, Docket TR-130499

On June 7, 2013, the Washington Utilities and Transportation Commission (Commission) entered Order 01, Prehearing Conference Order; Notice of Hearing (Order 01) in the above-referenced matter.

Order 01 states that the Commission will hold an evidentiary hearing in this matter commencing on **Tuesday, November 19, 2013, at 9:30 a.m., and continuing as required on Wednesday, November 20, 2013, and Thursday, November 21, 2013**, at a location to be designated in the City of Kennewick. Order 01 also states that the Commission will conduct a public comment hearing on **Tuesday, November 19, 2013 or Wednesday, November 20, 2013, at 6:00 p.m.** to afford members of the public an opportunity to present oral comments on the issues presented by this case. The Commission now establishes the location for the evidentiary hearing. The Commission also establishes the date and location for a public comment hearing.

NOTICE IS HEREBY GIVEN That the Commission will hold an evidentiary hearing in this matter commencing on Tuesday, November 19, 2013, at 9:30 a.m., and continuing as required on Wednesday, November 20, 2013, and Thursday, November 21, 2013, in the Gallery Room, City of Richland Public Library, 955 Northgate Drive, Richland, Washington.

NOTICE IS FURTHER GIVEN That a public hearing in this matter will be held on Wednesday, November 20, 2013, from 6:00 p.m. to 9:00 p.m.,[1] in the Gallery Room, City of Richland Public Library, 955 Northgate Drive, Richland, Washington. The Commission will accept written comments until the record in this proceeding is closed.

ADAM E. TOREM
Administrative Law Judge

[1] Public comments will be accepted until 9:00 p.m. or until the last speaker has delivered his or her views on the matter, at which point the public comment hearing may be closed prior to 9:00

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PROOF OF SERVICE

DOCKET 130499

I HEREBY CERTIFY That I, as an employee of the Washington Utilities and Transportation Commission at Olympia, Washington, have served on 9/11/2013 the parties of record in this proceeding a true copy of the following document(s):

Notice of Hearing (Set for November 19 - 21, 2013) and Notice of Public Comment Hearing (Set for November 20, 2013, at 6:00 p.m.)

The document(s) was/were mailed to each of the parties of record in this docket. Each envelope was addressed to the address shown in the official file, with the required first class postage, and deposited on this date in the United States mail in the City of Olympia, County of Thurston, State of Washington.

Amanda Whipple, Customer Service Specialist 3

PARTIES OF RECORD AND OTHERS RECEIVING NOTICE

SERVED BY MAIL:

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Brown, Sally, WUTC, PO Box 40128, Olympia, WA, 98504-0128

NOTIFIED BY E-MAIL:

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Brown, Sally, WUTC, sbrown@utc.wa.gov

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 MOTION TO ADD EVIDENTIARY EXHIBITS BY THE CITY OF RICHLAND

Pursuant to WAC 480-07-375(1)(d), City of Richland and City of Kennewick, the "Petitioners," submit this motion to add evidentiary exhibits. Tri-City & Olympia Railroad Co. ("TCRY") submitted several cross-examination exhibits related to emergency response times and the Horn Rapids Industrial Park. In addition, since the parties submitted cross-examination exhibits, Utility and Transportation Commission ("UTC") staff have contacted Petitioners to clarify transportation-related level of service ("LOS") matters.

Petitioners request approval to submit the following six (6) exhibits to provide additional context to the Administrative Law Judge and the UTC regarding emergency response times, the Horn Rapids Industrial Park, and traffic-related LOS.

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Emergency Response Times:

1. Chief Baynes's, emergency response time calculations and associated emergency response time spreadsheet. Chief Baynes is Director of Fire and Emergency Services for the City of Richland.

   Proposed Exhibit No. RGB-3 or Cross Exhibit GAN-__-X.

Comprehensive Planning Documents Related to the Horn Rapids Industrial Park:

2. City of Richland Comprehensive Plan – Preface, PF-I to II (explaining the relevance of the City of Richland's Comprehensive Plan to future projects and economic development efforts).

   Proposed Exhibit No. RS-5 or GAN-__-X.

3. City of Richland Comprehensive Plan – Land Use Element, LU 2-3, and LU 3-1 to 2 (including Land Use Designations Map).

   Proposed Exhibit No. RS-6 or GAN-__-X.

4. City of Richland Comprehensive Plan – Economic Development Element, EC 2-1 to 2.

   Proposed Exhibit No. RS-7 or GAN-__-X.

5. City of Richland Horn Rapids Master Plan

   Proposed Exhibit No. RS-8 or GAN-__-X.

Traffic-Related Level of Service for Steptoe and Columbia Center Boulevard

6. Email from Kevin Jeffers to Kathy Hunter, dated November 13, 2013 re: LOS for Steptoe and Columbia Center Boulevard.

   Proposed Exhibit No. KJ-13 or GAN-__-X.

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Rather than bringing an oral motion at the hearing, as authorized under WAC 480-07-375(1)(d), Petitioners submit this written motion to add evidentiary exhibits prior to the hearing. Petitioners submit the proposed six exhibits on the morning of Friday, November 15, 2013, providing all parties to this petition at least three full days to review the material before the evidentiary hearing begins on Tuesday, November 19, 2013.

Dated this 15th day of November, 2013.

FOSTER PEPPER PLLC

By: _____
P. Stephen DiJulio, WSBA #12921
Jeremy Eckert, WSBA #42596
Attorneys for Intervenor, the City of Richland

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of this record in this proceeding by email. The parties of record are identified below:

City of Kennewick Peter Beaudry 210 West 6th Ave. P.O. Box 6108 Kennewick WA 99336-0108 *Peter.beaudry@ci.kennewick.wa.us*	Port of Benton Scott D. Keller 3100 George Washington Way Richland WA 99354 *keller@portofbenton.com*
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Washington Utilities and Transportation Commission 1300 S. Evergreen Park Dr. S.W. P.O. Box 47250 Olympia WA 98504-7250	Steven W. Smith Assistant Attorney General 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia WA 98504-0128 *ssmith@uts.wa.gov*

A courtesy copy was also delivered, in the manner indicated, to:

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Adam E. Torem
Administrative Law Judge
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia WA 98504-7250
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DATED this 15th day of November, 2013, at Seattle, Washington.

Becky Rogers

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The TCRR testimony documents led me to go a little deeper into some data we could find. The 2:48 response from KFD Station 63 surprised me when it showed up there. I did not notice it as much in the context of the JUB report.

We have looked at several addresses in the Tapteal area and then several addresses around the Mall By the Mall, PF Changs area off the existing Center Parkway (the route we will use with this crossing). Rather than mean times I looked at median times, knowing that there are always going to be outliers due to crews out of position or on other calls. My numbers here will also include turn out time, which is about 1 minute depending on the call type (Dress in full bunker gear or not). Here is what I see:

Tapteal addresses:

KFD (only 4 calls) median time = 7 minutes 20 seconds
RFD (38 calls) median time = 5 minutes 50 seconds

By the Mall addresses:

KFD (29 calls) median time = 4 minutes 12 seconds
RFD (10 calls) median time = 4 minutes 18 seconds

I don't like the data from KFD for Tapteal because there are too few numbers but even if we take the average of their best 2 times it is about 5 minutes and 50 seconds.

If we add some seconds for the greater distance once the responders cross over the new crossing and down into Tapteal we are still about one full minute better off and at the 5 minute (1 minute turnout and 4 minutes driving) standard we have for the City.

ADDRESSES NEAR THE MALL

RFD

01187	3/27 9:25	3/27 9:31	5.97	622	86		8108	GAGE	BLVD	63	637
05235	12/30 21:14	12/30 21:18	4.10	321	34	33	8108	GAGE	BLVD	63	637
01169	3/23 21:01	3/23 21:05	4.13	321	32		8108	GAGE	BLVD	63	637
02003	5/28 14:01	5/28 14:05	4.38	321	34	33	8108	GAGE	BLVD	63	637
02168	6/15 17:21	6/15 17:25	4.20	311	70		8108	GAGE	BLVD	63	637
			4.56								

00315	1/25 2:01	1/25 2:06	5.47	311	33		8110	GAGE	BLVD	63	637
00857	3/6 17:54	3/6 17:58	4.22	710	86	63	8110	GAGE	BLVD	72	637
03925	10/18 18:34	10/18 18:42	7.28	551	92		8110	GAGE	BLVD	63	637
03347	8/18 15:55	8/18 15:59	4.00	552	31		8110	GAGE	BLVD	71	637
			5.24								

00014	1/1 17:16	1/1 17:19	2.63	321	30		8300	GAGE	BLVD	63	637

4.68 MEAN
4.30 MEDIAN

KFD

01778	3/23 21:01	3/23 21:05	4.13	321	33	34	8108	GAGE	BLVD	63	637
07691	12/30 21:14	12/30 21:18	4.10	321	34		8108	GAGE	BLVD	63	637
04983	9/7 12:40	9/7 12:46	5.52	622	86		8108	GAGE	BLVD	63	637
04446	8/12 14:09	8/12 14:13	4.60	321	33	34	8108	GAGE	BLVD	63	637
01747	3/29 2:18	3/29 2:24	6.12	442	86		8108	GAGE	BLVD	63	637
01245	3/9 13:05	3/9 13:08	3.27	321	30		8108	GAGE	BLVD	63	637
06551	11/6 17:18	11/6 17:26	8.10	321	33	34	8108	GAGE	BLVD	63	637
01033	2/25 21:03	2/25 21:09	5.33	742	86		8108	GAGE	BLVD	63	637
03077	6/15 17:21	6/15 17:25	4.20	321	31		8108	GAGE	BLVD	63	637
01176	2/26 13:56	2/26 14:03	6.98	714	86	63	8108	GAGE	BLVD	63	637
02355	4/26 6:39	4/26 6:44	5.20	731	64	86	8108	GAGE	BLVD	63	637
02645	5/9 14:25	5/9 14:29	3.02	321	30		8108	GAGE	BLVD	63	637
00587	1/26 19:36	1/26 19:42	5.32	741	86	62	8108	GAGE	BLVD	63	637
02443	5/3 17:27	5/3 17:30	3.12	321	32		8108	GAGE	BLVD	63	637
			4.93								

00504	1/25 2:01	1/25 2:05	4.00	321	33		8110	GAGE	BLVD	63	637
01200	3/6 17:54	3/6 17:58	4.22	745	86		8110	GAGE	BLVD	63	637
05017	9/9 19:01	9/9 19:04	3.43	321	30		8110	GAGE	BLVD	63	637
05513	10/18 18:34	10/18 18:41	6.50	741	86	64	8110	GAGE	BLVD	63	637
03224	6/16 13:47	6/16 13:50	3.12	321	33	34	8110	GAGE	BLVD	63	637
06671	11/7 15:34	11/7 15:37	2.97	321	33	34	8110	GAGE	BLVD	63	637
07372	12/11 22:31	12/11 22:37	6.13	710	86	63	8110	GAGE	BLVD	63	637
00537	1/27 13:16	1/27 13:20	3.18	321	31		8110	GAGE	BLVD	63	637
02730	5/13 17:36	5/13 17:39	3.63	321	32		8110	GAGE	BLVD	63	637
			4.13								

04902	8/23 20:23	8/23 20:26	3.25	321	33	34	8200	GAGE	BLVD	63	637
01792	3/28 17:47	3/28 17:51	3.72	321	33		8220	GAGE	BLVD	63	637
			3.48								

3725	1	8/14 8:06	8/14 8:15	8.92	733	86		8236	Gage		63
3639	1	8/9 15:30	8/9 15:33	2.48	743	00		8236	Gage	BLVD	63
05850	1	9/29 22:40	9/29 22:55	14.40	622	86	1	8236	GAGE	BLVD	63	637

8.60

00016	1	1/1 17:11	1/1 17:19	7.77	321	30		8300	GAGE	BLVD	63	637

5.09 MEAN
4.20 MEDIAN

PREFACE

WHAT THIS DOCUMENT IS ABOUT

This document presents a new Comprehensive Plan for the City of Richland. The Plan is a guide for all future activities by City government.

The Comprehensive Plan is the result of a five-year development process. The City of Richland's Community Development Department and Physical Planning Commission spearheaded the process, which involved the participation of citizen groups and individuals from government agencies and the broader community.

WHAT IS A COMPREHENSIVE PLAN?

WHY WE PLAN

Cities and other government jurisdictions adopt comprehensive plans to serve as guides for future activities. A comprehensive plan does not carry the weight of law. Rather, it is a policy statement that points the way to a future in which the City of Richland thrives and maintains all the qualities its citizens value. The vision, goals and policies included in a plan are developed through extensive communication with a wide range of groups and individuals.

The City uses the policies in a comprehensive plan as a sort of yardstick for its future activities, particularly the crafting of ordinances that relate to zoning, land use, and development. The plan provides a consistent framework for legislative and administrative action, always steering the City toward the desired future and away from a patchwork of laws and rules that conflict with the vision or with one another.

WHAT'S IN A COMPREHENSIVE PLAN?

Every comprehensive plan must include key pieces to fulfill its purpose of providing a yardstick for future government activities. The following terms have special meanings in comprehensive planning, and it's important to understand their meaning and purpose:

Vision Statement -The Vision Statement is the target the City decides to aim for. It is a verbal picture of what Richland will be like at the end of the period covered by a comprehensive plan. An important part of future decision-making should be to ask, "Which of our choices will best help us become like the city described in the vision statement?"

Existing Conditions Inventory -We can't decide how to get from the present to our desired future without a clear picture of where we are today. That's why comprehensive plans must include a detailed inventory of the existing state of the City: How are our roads? Is our water system adequate to accommodate future growth? Do we have the parks and other recreation facilities to satisfy the community's desire for such public amenities?

Goals -If the Vision Statement defines the target for comprehensive planning, then goals are like individual points on the target. We set as goals the distinct achievements we hope for: Maintain

adequate and affordable housing; avoid traffic congestion; protect natural resources; ensure economic vitality. We have reached our vision if all our goals are accomplished.

Policies -Goals are what we want to accomplish; policies define how we accomplish them. For each goal established in a comprehensive plan, one or more policies define the steps that goal calls for. If we have a goal of protecting natural resources, for example, we might establish a policy that development shall be restricted on and near wetlands.

Planning Horizons - A comprehensive plan must define time frames for achieving its vision and goals. These time frames are called the planning horizons. In Washington State, comprehensive plans use both a six-year short-term planning horizon and a 20-year long-term planning horizon. The long-term planning horizon is the full period for achieving the vision in our Vision Statement. The short-term planning horizon is the period for which we can make more concrete plans for specific steps toward our goals.

These are the features that a comprehensive plan needs to include in order to act as our yardstick for the future. The comprehensive plan must apply these features to specific aspects of the City's life. The parts of a plan addressing each of these are commonly called "elements." Under State law, all Washington city and county comprehensive plans must address at least five specific "elements": *land use, transportation, utilities, capital facilities, and housing.* Each element includes an inventory of existing conditions as well as goals and policies specific to the element. In addition to the required five elements, the City of Richland has chosen to include an optional, economic development element, in this Comprehensive Plan.

The final feature of comprehensive plans in Washington is a Finance Plan. This is the proposal for specific capital improvements required over the short-term (six-year) planning horizon. It describes projects to be carried out, their estimated costs, a schedule for completing them, and a plan to pay for them.

HOW A COMPREHENSIVE PLAN IS USED

After the Richland City Council formally adopts the new Comprehensive Plan, steps can be taken to put the vision in place. Revisions to the City's zoning code, for example, will help achieve the goals laid out in the land use element. Formal approval of a six-year Capital Facilities Plan will earmark funds for improvement projects that will help achieve goals in many of the Plan elements.

Ordinances may be passed to achieve goals such as protection of the natural environment. The City may mount marketing programs in line with goals from the economic development element.

In short, over the 20-year planning horizon of the Plan, its contents will be referred to again and again as the City Council and various city departments make decisions on laws, rules, regulations, and programs. Always, the underlying motivation will be to see to it that the City of Richland in 20 years is as close as we can make it to the city of the future described in the Vision Statement. This is what the community said it wants during the lengthy development of the Comprehensive Plan, and it is what the Plan will continually help to bring about.

RULES FOR COMPREHENSIVE PLANS

WASHINGTON STATE GROWTH MANAGEMENT ACT

Policy 1 - The City will encourage new development consisting of a variety of land uses adjacent to existing development, which will take advantage of the existing infrastructure network.

Policy 2 - Where the service demands of proposed projects exceed the City's adopted level of services standards, the City will apply conditions on development approvals to ensure that adequate public services are provided in a reasonable time frame.

LU Goal 2. The City will promote industrial development to provide employment for its residents, and strengthen and expand the tax base through its land use policies.

Policy 1 - The City will accommodate a variety of industrial uses ranging from manufacturing and processing to technology and business parks.

Policy 2 - The City will create a "Business/Research Park" land use category to accommodate high tech business interests, research-oriented industrial development and corporate office development.

Policy 3 - The City will create innovative land use categories and zoning classifications to implement the economic development strategies.

Policy 4 - In areas where residential uses are in close proximity to industrial lands, the City shall develop land use regulations to protect the adjacent residential uses. Limitations on industrial uses and restrictions including such items as increased building setbacks, more stringent landscaping standards, restrictions on outdoor storage, architectural controls, outdoor lighting standards and appropriate access controls shall be implemented.

Policy 5 - The City will accommodate the continued use of the Port of Benton barging facilities in North Richland, while maintaining the current generally undeveloped condition of the shoreline area.

LU Goal 3. The City will promote commercial growth and revitalization that serves residents and strengthens and expands the tax base.

Policy 1 - The City will accommodate all types of commercial land uses including retail and wholesale sales and services, and professional services.

Policy 2 - The City will create new land use and zoning designations to facilitate both new development and redevelopment where required to implement the City's goals.

Policy 3 - The City will work to develop an attractive Central Business District and to revitalize declining commercial areas.

Policy 4 - The City will endeavor to locate neighborhood oriented commercial land uses in Neighborhood Activity Centers.

SECTION THREE

DESCRIPTION OF LAND USE

LAND USE UNDER THE COMPREHENSIVE PLAN

The Comprehensive Plan land use map (Figure LU-4) defines Richland's new UGA and establishes how land is to be used for development throughout the UGA. The Plan defines new categories of land uses. The land use designations of the Comprehensive Plan provide adequate land capacity within the existing city limits to accommodate projected growth. The UGA primarily allows for expansion of industrial development north of the city limits and the provision of urban levels of service to existing residents to the south.

The acreage devoted to each use is summarized below:

LAND USE DISTRIBUTION

Agriculture (AG) - This category includes uses devoted primarily to the tilling of soil, the raising of crops, horticulture, livestock, poultry, feed lots, and related commercial and industrial activities. It allows residential densities up to 1 dwelling unit per 5 acres.

Low Density Residential (LDR) - The LDR category includes single-family residential uses with an average density of 3.5 dwelling units per acre.

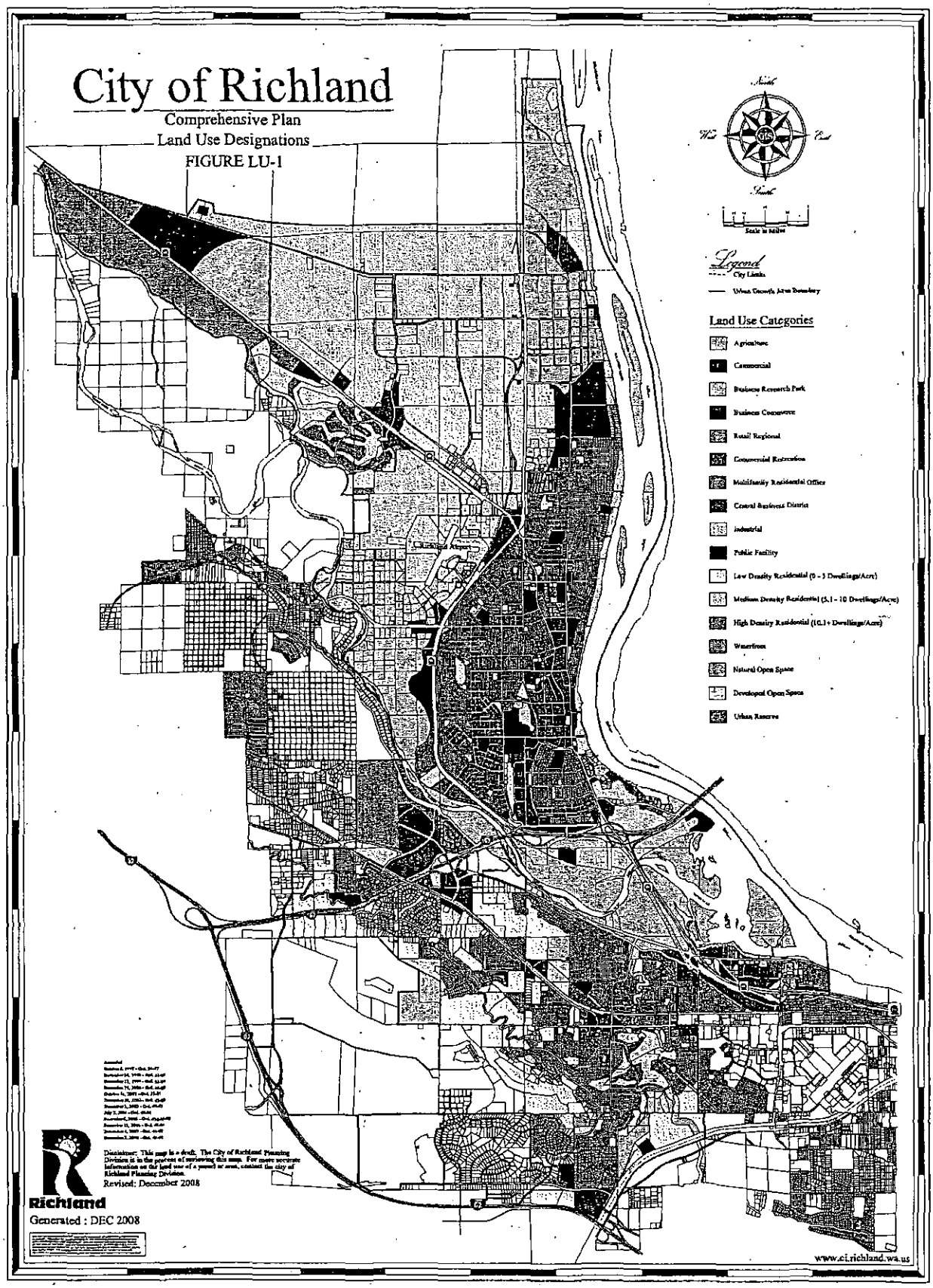
Medium Density Residential (MDR) - The MDR category includes single-family residential uses with an average density of 8 dwelling units per acre.

High Density Residential (HDR) - The HDR category includes multifamily residential uses with an average density of 15 dwelling units per acre. In transitional areas between more intensive commercial uses and lower density residential uses, limited office/institutional uses may also be located within the HDR designated areas.

Commercial (C) - The commercial land use category includes a variety of retail, wholesale, and office uses. Within this category are professional business offices, hotels, motels, and related uses. It also includes a variety of retail and service uses oriented to serving residential neighborhoods, such as grocery stores, hardware supply, and garden supply. Other commercial uses include automobile-related uses, and uses that normally require outdoor storage and display of goods. In transitional areas between more intensive commercial uses and lower density residential uses, high-density residential development may also be located within the Commercial designated areas.

Central Business District (CBD) - This classification includes a mix of residential, retail, service, and business uses, that provide for the daily convenience needs of on-site and nearby employees and residents. The purpose is to provide for pedestrian and transit-oriented high density employment and cultural uses together with limited complementary retail and higher density residential, and other compatible uses that enhance the Central Business District.

Waterfront (WF) - The Waterfront category includes a variety of water-oriented uses such as marinas, boat docks, resorts, mixed commercial/residential development, hotels, motels, and offices along the



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Columbia River shoreline. The intent is to bring significant development to the Columbia riverfront that is consistent with the City's vision and that incorporates public access recreational features and attractive and high quality development.

Industrial (I) - This category includes a variety of light and heavy manufacturing, assembly, and warehousing and distribution uses. It also includes uses devoted to the sale of retail and wholesale products manufactured on-site, and a variety of research and development uses for science-related activities.

Business/Research Park (BRP) - The Business/Research Park designation provides for a variety of office and research and development facilities in a planned business park setting. Permitted uses include science-related research and development and testing facilities; administrative offices for those uses; and other general office uses.

Public Facility (PF) - This category includes a variety of public and institutional uses including facilities operated by federal, state, county, municipal, or other government agencies; public educational institutions; public libraries; hospitals; cemeteries; and some developed parks.

Developed Open Space (OSD) - This category includes golf courses, federal power transmission and irrigation wasteway easements, private open space, riverfront parks, undeveloped parks, and parks intended for long-term open space.

TABLE LU-1 DISTRIBUTION OF LAND DESIGNATIONS UNDER THE COMPREHENSIVE PLAN

Land Use Designation	Within City Limits		Unincorporated Urban Growth Area		Total Acreage	
Agriculture	716	(2.84%)	0	(0.00%)	716	(2.34%)
Commercial	880	(3.49%)	180	(3.31%)	1,060	(3.46%)
Industrial	4,119	(16.35%)	1,039	(19.12%)	5,158	(16.84%)
Natural Open Space	2,271	(9.01%)	227	(4.18%)	2,498	(8.16%)
Developed Open Space	2,124	(8.43%)	144	(2.65%)	2,268	(7.40%)
Public Facility	1,063	(4.22%)	33	(0.61%)	1,096	(3.58%)
Low Density Residential	4,445	(17.64%)	695	(12.79%)	5,140	(16.78%)
Medium Density Residential	1,479	(5.87%)	0	(0.00%)	1,479	(4.83%)
High Density Residential	513	(2.04%)	0	(0.00%)	513	(1.67%)
Business Research Park	805	(3.19%)	383	(7.05%)	1,188	(3.88%)
Waterfront	143	(0.57%)	0	(0.00%)	143	(0.47%)
Urban Reserve	1,225	(4.86%)	0	(0.00%)	1,225	(4.00%)
Central Business District	226	(0.90%)	0	(0.00%)	226	(0.74%)
Island View Business Commerce	40	(0.16%)	0	(0.00%)	40	(0.13%)
Island View General Commercial	57	(0.23%)	0	(0.00%)	57	(0.19%)
Island View Commercial Recreation	51	(0.20%)	0	(0.00%)	51	(0.17%)
Island View Retail Regional	31	(0.12%)	0	(0.00%)	31	(0.10%)
Island View Multi-Family Residential	16	(0.06%)	0	(0.00%)	16	(0.05%)
Area in River	2,629	(10.43%)	152	(2.80%)	2,781	(9.08%)
Right of Way	2,364	(9.38%)	464	(8.54%)	2,828	(9.23%)
Undesignated*	0	(0.00%)	2,116	(38.95%)	2,116	(6.91%)
Total	25,197		5,433		30,630	

*Undesignated land refers to the 2,100 acre expansion of the City's Urban Growth Area that was granted to Richland through action of the Benton County Board of Commissioners in 2006. To date a comprehensive plan for this expanded Urban Growth Area has not yet been completed and so carries no specific land use designation(s) yet.

SECTION TWO

GOALS & STRATEGIES

In 2003, the City of Richland and its economic development partners, represented by the Strategic Plan Task Force, developed the Richland Economic Development Strategic Plan. The community changed since the City adopted the plan and many elements and actions of the plan are complete. A few of the major changes and accomplishment are noted below.

PNNL's Research Campus of the Future (Capabilities Replacement Project) and the associated development of a private sector research campus, in addition with the expansion of WSU-TC into a four-year institution, creates a real opportunity for a post-Hanford economy that has not been available before.

The implementation of development plans for Columbia Point, City View, Tapteal, and Horn Rapids residential eliminates the strategic nature of these developments and puts them in the mode of completion. While there is still room to develop, the strategic questions of why, what and how have been answered.

The increased urbanization of the downtown. With various developments pushing the skyline up, and increasing the population density of downtown Richland, there is an opportunity to revitalize Richland's Central Business District.

Richland is in the process of updating its Strategic Plan, provided below is the Goals and Strategies from the 2003 Economic Development Strategic Plan.

ED Goal 1: The economy of the City is diversified, consisting of a balanced mix of high technology companies, professional firms, office operations, retail trade, and tourism.

Strategy 1.1 Expand and improve business retention and expansion program to provide outreach and assistance to existing firms.

Strategy 1.2 Enhance Richland's ability to recruit new businesses and industries.

ED Goal 2: Richland is recognized nationally for the high level of R&D occurring at PNNL and for the entrepreneurial activity of numerous technology-based firms located in the community's technology parks and incubators.

Strategy 2.1 Form a Technology Task Force (TTF) to develop a detailed strategy for creating technology businesses in the City of Richland.

Strategy 2.2 Assist in creating experienced entrepreneurs and managers of entrepreneurial concerns.

Strategy 2.3 Identify sources of financing and to facilitate the availability of this financing to deserving firms.

Strategy 2.4 Enhance Richland's physical and business environment for technology-based companies.

Strategy 2.5 Lay groundwork to develop potential entrepreneurs.

ED Goal 3: Richland is known for its positive business environment and its strong technology base.

Strategy 3.1 Create a new and more positive image for the community. Reinforce this image by enhancing conditions within the community.

ED Goal 4: The telecommunications and information technology infrastructure in Richland supports the growth of New Economy business and industry in the City.

Strategy 4.1 The City, through its participation in TRIDEC's IT Task Force, will encourage the expansion of broadband fiber capabilities within its commercial areas as well expanding the number of service providers.

ED Goal 5: The economic development program and activity of the City of Richland works collaboratively with TRIDEC and the Tri-Cities Visitor and Convention Bureau to foster a successful regional economic development and marketing effort.

Strategy 5.1 Create a seamless, collaborative, low-cost and effective marketing effort designed to recruit new businesses, expand existing businesses, and build a positive national image.

ED Goal 6: Richland has established a sense of place that appeals to citizens of all ages. The City has become the entertainment and upscale retail center for the Tri-Cities with a range of retail and service businesses that meet the needs of local residents and visitors to the community.

Strategy 6.1 Stimulate the development of sophisticated retail and entertainment venues.

Strategy 6.2 Assist current retailers to enhance their skills and profit opportunities through training and enhanced networking approaches.

Strategy 6.3 Enhance the range of tourist attractions within the city.

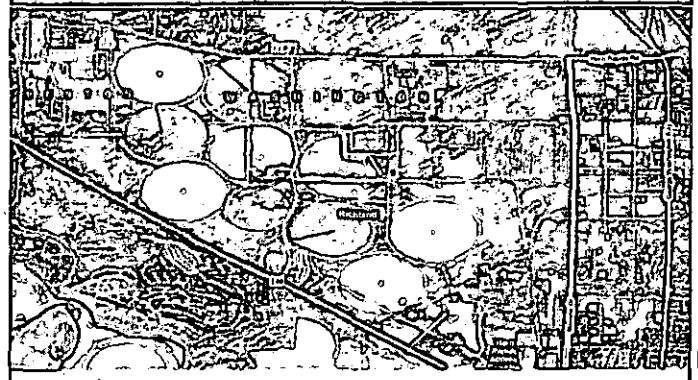
Strategy 6.4 Refine its planning and zoning process to facilitate upscale retail development and encourage infill in the Downtown and Uptown Districts.

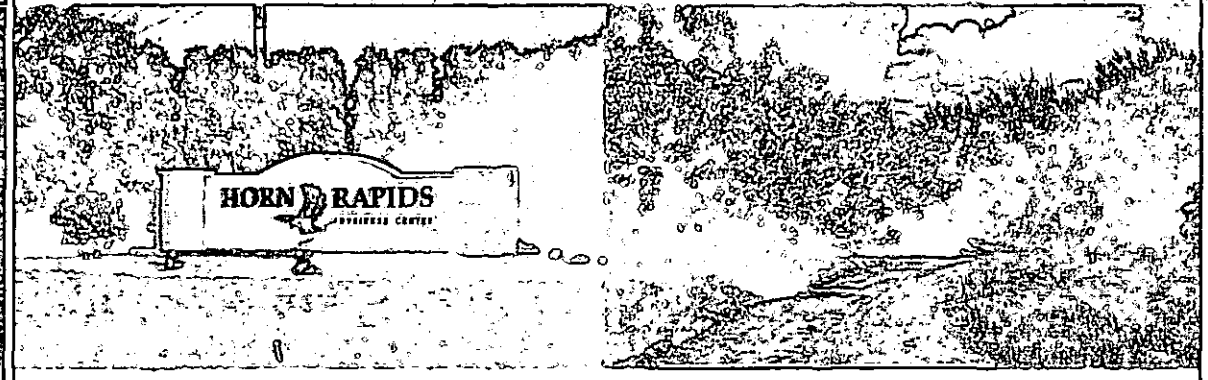
Strategy 6.5 Promote performing arts venues and activities.

APRIL 2011

CITY OF RICHLAND

HORN RAPIDS MASTER PLAN UPDATE





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1. Executive Summary

The Horn Rapids Master Plan (HRMP) area is an approximately 2,466 acre industrial and business center development serving as a gateway to the City of Richland, Washington (City). With outstanding transportation access, the HRMP has been envisioned as an employment center for the community and is anticipated to provide employment and business opportunities for the region. The area generally resembles a large triangle, bounded on the first side by Horn Rapids Road, on the second side by the Landfill and Twin Bridges Road and on the third side by State Route 240 (SR 240). The site hosts a variety of existing industrial and business center uses. The Hanford Nuclear Reservation, located to the north of the site, is the dominant land use in the area. The Horn Rapids residential planned community, comprising 835 acres, is the major land use to the south and west. The Columbia River lies about three miles to the east and the Yakima River is about one mile to the west. The Vicinity Map (Figure 1) shows the general location of the HRMP in relation to the Tri-Cities. The HRMP was initially adopted in 1995 and the changes in the region over the last 16 years highlight the need to re-evaluate how to better leverage the economic opportunity of this area as a burgeoning employment center.

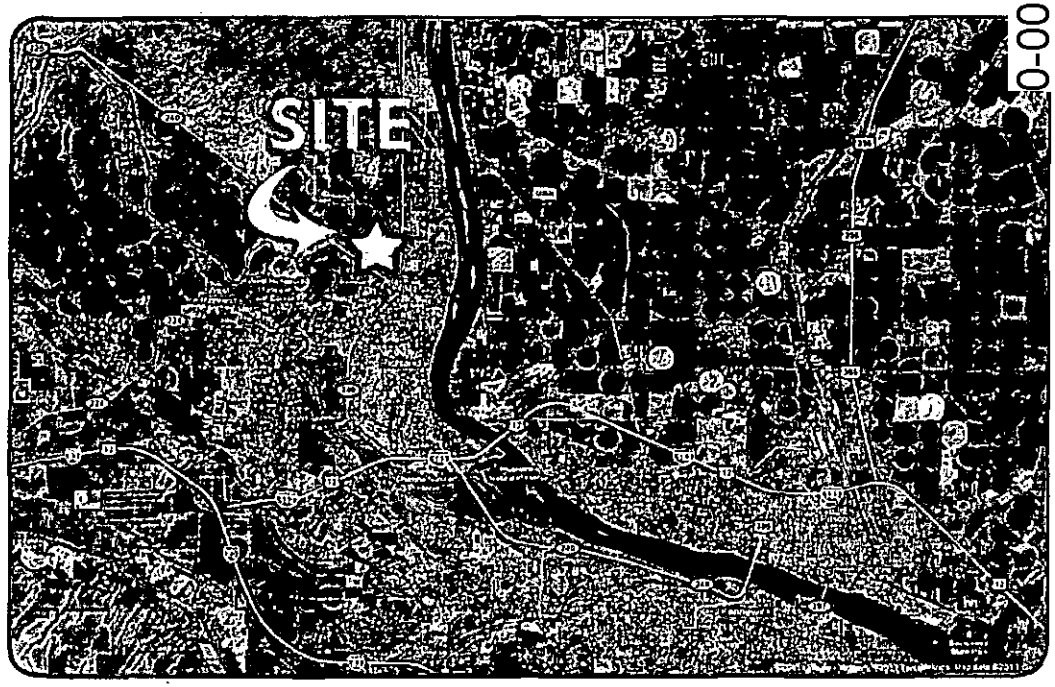

Figure 1: Vicinity Map

The City initiated the HRMP to assess existing land uses and infrastructure, evaluate the untapped potential that the site possessed, and provide some guidelines for future development. This plan looks at the opportunities and challenges associated with developing the site. It also aims to balance the land requirements of current and future industrial and business uses. Staff met with key stakeholders at several City departments, including Public Works, Development Services, Parks, Energy Services, Survey and Economic Development, as well as the Port of Benton to solicit input on the HRMP update. Through these meetings, current issues and concerns were identified and recommendations for the updated plan were established.

The HRMP envisions the area as an active and vital employment and economic center, attracting new development, reinvestment and employment. This is realized with attractive buildings and practical streetscapes that enhance the marketability of the area. These improvements also serve to reinforce its place as a gateway to the community of Richland. Further, the updated master plan recognizes the requirements of large industrial-scale businesses. The HRMP provides for large-acreage users and lays out a plan that assures functional circulation patterns are provided and associated infrastructure needs are sufficiently met.

Three specific focal areas emerged during our HRMP update discussions with stakeholders:

1) Road standards for circulation systems within the HRMP needed to be agreed upon and adopted as part of the update process. Providing this consistency will sustain transportation functions and establish predictability through the permitting processes.

2) Open space areas needed to be re-evaluated, both for suitability of location as well as for landscape design standards. The initial plan envisioned a more manicured campus style of development that does not reflect development that has occurred on the site and is not the best fit for the climate or the region.

3) Development standards needed to be devised for the project to assure consistent growth patterns and provide the City with continuing oversight as parcels are sold.

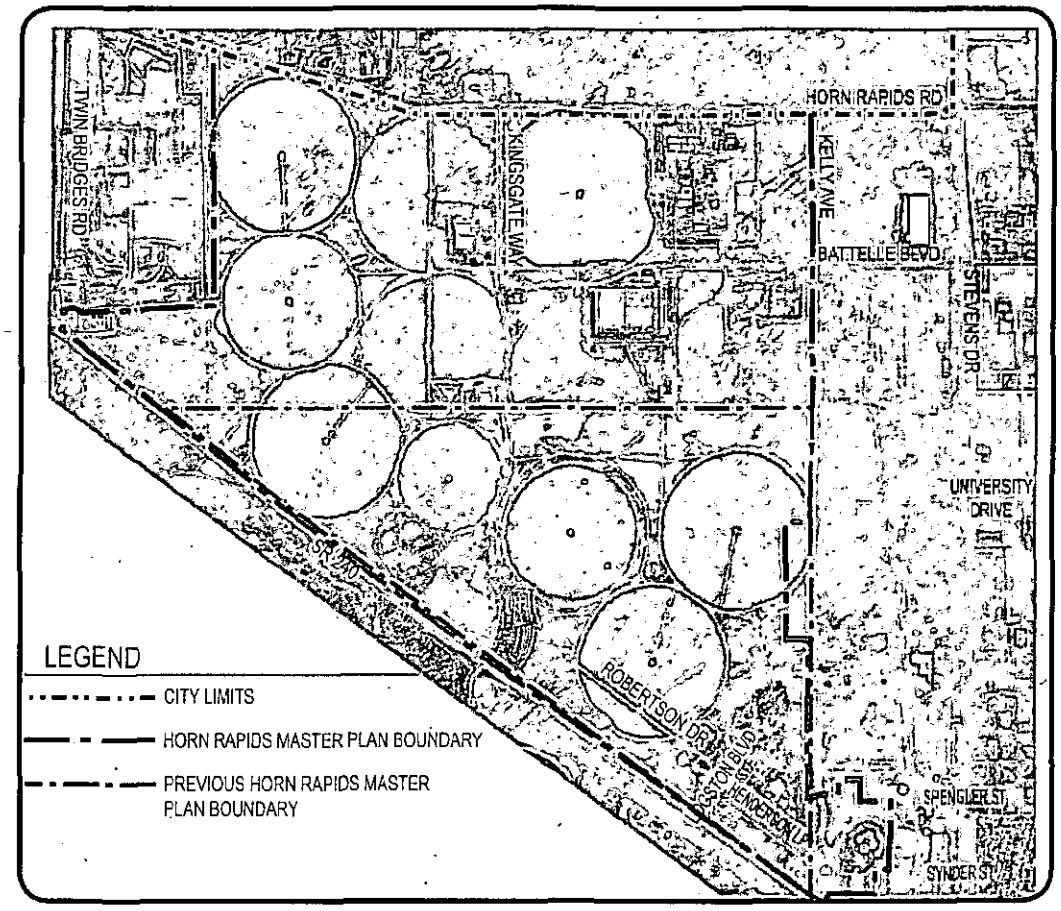

Figure 2: Study Area

1.1 Purpose of Plan

The HRMP supplements the Richland Comprehensive Plan and supersedes the previous Master Plan adopted in 1995. The HRMP presents the vision and policies related to the future development of properties within what is now the Horn Rapids Industrial Park and the Horn Rapids Business Center and consolidates this into one master plan for both areas.

In 1995, the City of Richland adopted a Master Plan to guide the development of the Business Center portion of the planning area. Since then, the master plan area has undergone significant changes. These include the development of business and industry onsite, as well as the associated infrastructure. This updated Plan adjusts for these changes as well input from current stakeholders. It addresses both the opportunities and constraints presented by the site and provides guidance for future development. It also ensures the needed infrastructure relates to adjacent properties and considers existing development on the site. Unlike the original plan, the update also includes the land in the Horn Rapids Industrial Park.

The HRMP represents a long term vision with flexible plan implementation approaches that respect market conditions and interests within the Plan's

anticipated 20 to 30 year build-out period. The Plan area is anticipated to continue to develop as a major employment center in Richland. In addi to employment center uses, the HRMP also provides open space and recreational amenities which will guide the development within this gate to the City.

It is anticipated that the Horn Rapids Business Center will continue to grow and provide solid tax revenue generation for the City by appealing companies and businesses associated with the Hanford Reservation as well as companies seeking a high quality business environment for their employees. Finally, supplemental planning and development efforts for the surrounding properties will also have an impact on how the Horn Rapids planning area ultimately builds out.

1.2 Planning Process

The update process began with interviews of key city staff responsible for transportation planning, energy services, survey, sanitary sewer, public water, storm facilities, development review and economic development. The goal of these meetings was to identify existing facilities, previous and ongoing issues as well as planned improvements for the area. Preliminary development alternatives were identified and a second round of stakeholder interviews was held.

Based on feedback received during the second round of stakeholder interviews, changes were made to the plan documents and prepared for review by the Planning Commission. The Planning Commission reviewed a draft of this plan in a public workshop on February 9, 2011.

2. Existing Conditions

The Study Area Plan (Figure 2) identifies the current status of the property as of the end of 2010. The HRMP is located on the north side of SR 240, about seven miles northwest of the City of Richland. The property, which is triangular shaped, consists of approximately 2,466 acres. As noted in the executive summary, the site is bounded on one side by Horn Rapids Road, on the second side by the Richland Landfill and the extension of Twin Bridges Road and on the third side by SR 240. The Hanford Nuclear Reservation is the dominant land user in the area and is located to the north and east of the site. The Horn Rapids residential master planned community, comprising of 835 acres, is the major land use to the south and west. The Columbia River lies about three miles to the east and the Yakima River is about one mile to the west. A legal description for the boundary can be found in Appendix A.

2.1 Land Use and Zoning

As seen in Figure 3: "City of Richland Zoning Map", zoning in the HRMP is primarily heavy and medium industrial with a small amount of general business. The surrounding area consists of a mix of neighborhood retail business, limited business, agriculture and multiple family residence.

Land Use Designations

The Land Use Plan contains four (4) separate land use designations which are identified below and illustrated in the Land Use Plan (Figure 4). These land use categories are intended to accommodate the City of Richland's ability to recruit new business opportunities. They are also anticipated to promote development which will provide employment for its residents and strengthen and expand its tax base. The following land use categories will be encouraged to implement sustainable development principles.

Industrial Land Use

The medium industrial use district (I-M) is a zone providing for

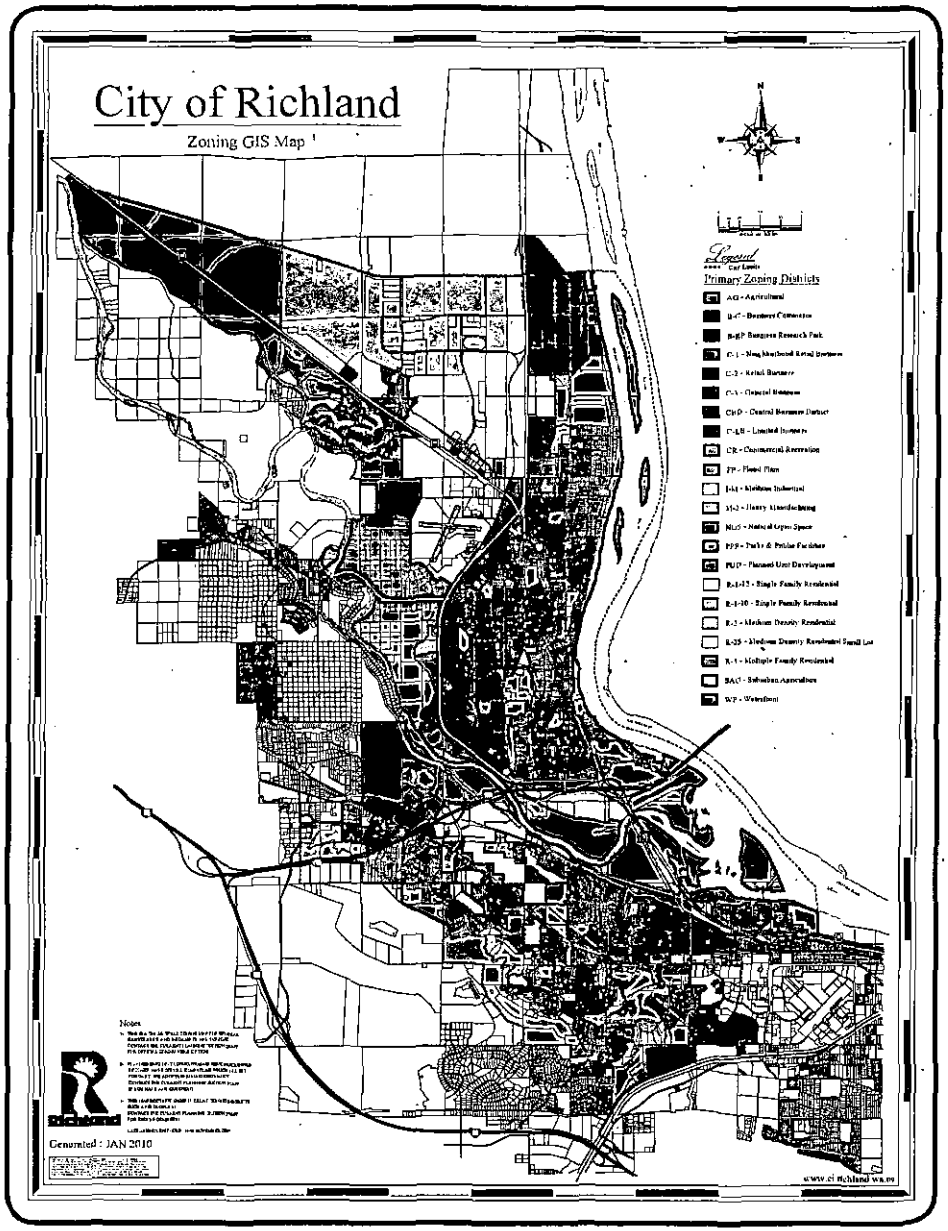

Figure 3: City of Richland Zoning Map

limited manufacturing, assembly, warehousing and distribution operations and retail and wholesale sales of products manufactured on the prem or products allied thereto; and administrative and research and development facilities for science-related activities and commercial uses that supportive and compatible with other uses allowed in the district. Regulations are intended to prevent frictions between uses within the dist and also to protect nearby residential districts. This zoning classification is intended to be applied to some portions of the City that are designa Industrial under the City of Richland Comprehensive Plan.

The heavy manufacturing district (M-2) is intended primarily for heavy manufacturing and other closely related uses. Regulations for this district are intended to provide protection principally against effects harmful to other districts. This zoning classification is intended to be applied to some portions of the City that are designated Industrial under the City of Richland Comprehensive Plan.

EcoPark

The area designated EcoPark on the Land Use Plan is intended to be developed under the Heavy Industrial code, but is specifically identified for uses that are compatible to the adjacent landfill.

Commercial Land Use

The general business use district (C-3) is intended to provide a use district for commercial establishments which require a retail contact with the public together with incidental shop work, storage and warehousing, or light manufacturing and extensive outdoor storage and display, and those retail businesses satisfying the essential permitted use criteria of the C-2 (Retail Business) use district. This zoning classification is intended to be applied to some portions of the City that are designated commercial under the City of Richland Comprehensive Plan.

Business Center Land Use

The Business Research Park use classification (B-RP) is intended to provide location for a range of business research and business park uses, including office and administrative uses, designed to be conducted wholly within enclosed buildings. It is also a purpose of this land use classification to protect a portion of the existing industrial land base for research park facility development, which provides high-technology employment opportunities. Light manufacturing uses that compliment the business park or research park use, may be permitted if pertinent to the primary use. The business research park zoning classification provides opportunities for employment in modern, attractive buildings on well-landscaped sites which may be close to residential areas.

Open Space

The Parks and Public Facilities district (PPF) is a use classification intended to provide areas for retention of public lands necessary for open spaces, parks, playgrounds, trails, and structures designed for public recreation and to provide areas for the location of buildings and structures for public education, recreation, and other public and semi-public uses.

The Natural Open Space district (NOS) is a use classification intended to provide area for the retention of publicly owned, natural open spaces, that due to their proximity to wetlands, shorelines, flood plains, or critical habitat areas are too sensitive for intensive use or development.

2.2 Capital Facilities, Public Services and Utilities

Transportation
Built transportation infrastructure in the vicinity of Horn Rapids includes road, railroad and bike lanes. SR 240 runs the length of the southeast boundary of the site. Horn Rapids Road travels the entire north boundary of the HRMP study area. Kingsgate Way bisects the site, connecting Horn Rapids Road and SR 240. The site is also served by rail which connects from the east. This rail, owned by The City of Richland connects to the Port of Benton owned rail lines to the east. This portion of the Port of Benton rail is operated by Tri-City and Olympia Railroad Company (TCRY). (See Figure 10: "Transportation Plan" for a graphic showing additional transportation infrastructure.)

Water
There are two existing pressures zones onsite, roughly divided by a north-south line approximately 1,200 feet east of Kingsgate Way. Pressure Zone 1 is below 600 feet and Pressure Zone 2 is above 600 feet. An existing 30-in diameter concrete lined steel water main runs northwest along SR 240 and the southern boundary of the site. This line connects to an existing 20-in diameter line across SR 240 to serve the residential community to the south. A booster pump station is located on the north side of SR 240 at the end of this main, near the northwest corner of Phase 1, providing the pressure for Pressure Zone 2 above 600 feet. This 30-in main also feeds a 16-in diameter in Logston Blvd and 10-in diameter main in Henderson Loop serving the developed portions of Phase 1.

An existing 16-in diameter line in Horn Rapids Road, 12-in diameter line in Battelle Blvd., and 20-in diameter line in Kingsgate Way serve existing properties in the industrial area. Of these, only the existing 16-in line in Horn Rapids Road is looped. The loop continues down Twin Bridges Road to the west of the landfill, turns east up Battelle Blvd., crosses southeast to Lowe Blvd, and turns southwest and crosses SR 240 to connect to the existing 20-in line through the residential master planned community mentioned previously. See Figure 6: "Water Plan" for additional existing water infrastructure.

Sanitary Sewer
There are three existing sanitary sewer basins onsite. An existing 12-in diameter sewer main in Kingsgate Way, 21-in main in Robertson Drive and 42-in main in Henderson Loop all drain to the southeast. The existing 16-in main in Battelle Blvd drains east to Stevens Drive. Tributary to this line is also an existing lift station at Areva that has been identified for decommissioning. Finally, an existing 18-in sewer line that crosses SR 240 at the southeast corner of the ball fields and drains to the residential master planned community south of SR 240. (See Figure 7: "Sewer Plan" for additional existing sewer infrastructure.)

Storm Facilities
The existing storm drainage systems onsite appear to utilize a combination of ditches and dispersed overland sheetflow. Existing roadways with curb-and gutter have curb-cuts or inlet pipes allowing stormwater runoff to drain into roadside ditches or swales.

Electricity
Power to the east side of the site is currently provided from two existing City of Richland substations. The Snyder substation supplies one feeder to

the southern and far western portion of the site, and can be expanded by two more feeders. The First Avenue substation provides two feeder the northeast and north central parts of the site, but can be expanded by an additional two feeders to accommodate heavier industrial power us There is a third existing substation located near the intersection of Stevens Drive and Horn Rapids Road, though this does not appear to serve an the future development contemplated in the Horn Rapids Master Plan. (Additional existing service is shown in Figure 9: "Electrical Plan".)

Other Plans – The Port of Benton

The Port of Benton owns land directly to the east of the HRMP. This land has been master planned for heavy industrial uses, similar in nature to those proposed in the industrial portions of the HRMP. Provisions have been made to extend a road stub for access as well as associated utilities.

3. Goals and Objectives

The HRMP goals and objectives focus on the City's vision for the Master Plan area. The HRMP is consistent with the Comprehensive Plan goals and policies. This alignment of goals will further encourage the HRMP goals in an area identified for employment growth. The new goals and objectives are listed below, following the Comprehensive Plan element goal most closely associated with it. These include goals pertaining to Land Use, Transportation, Public Facilities, Landscape and Open Space, and Economic Development.

Horn Rapids Master Plan Goals and Objectives

3.1 Land Use and Community Development

Comprehensive Plan Land Use Goal 2: The City will promote industrial development to provide employment for its residents, and strengthen and expand the tax base through its land use policies.

Goal 1: Create an attractive, well-designed industrial, office and commercial center consistent with the goals and policies set forth in the Richland Comprehensive Plan.

Objective 1.1 Adopt specific development standards for the HRMP that compliment the Richland Development Code and propose necessary amendments to the master plan to allow a mixture of light industrial, warehouse, related office, general office, and other ancillary uses.

Objective 1.2 Support the presence and further development of a mix of large and small industrial and business uses that meet employment density and wage targets.

Objective 1.3 Encourage a sustainable approach to site design. Development should follow the sustainability principles of equity, economic development, design, and environment.

Objective 1.4 Continue to support the development of the EcoPark portion of the site.

3.2 Transportation and Circulation

Goal 2: Develop an efficient and safe circulation system for private vehicles, commercial vehicles, emergency vehicles, pedestrians, and cyclists both into and throughout the HRMP area.

Objective 2.1 Develop and implement Road Standards as part of the Master Plan process.

Objective 2.2 Construct and improve street, pedestrian, and bicycle connections to allow for safe and efficient access throughout the Horn Rapids

Business Park.

Objective 2.3 Consider alternate road widths and or unique approaches to streetscape design to accommodate vehicle and bicycle transportat enhance pedestrian safety and encourage walkability where appropriate.

Objective 2.4 Identify an easement area for the future railroad loop.

3.3 Public Facilities and Services

Comprehensive Plan Utility Element Goal 1: The City will provide existing levels of service to current customers and establish policies to extend utility systems to meet new development requirements.

Goal 3: Ensure that new and existing development will be adequately served by municipal services and facilities.

Objective 3.1 Extend water, sewer and storm drainage systems in the area to support maximum development. Explore the viability of other financing options to fund infrastructure improvements.

Objective 3.2 Encourage the use of creative sustainable approaches to reducing runoff and managing stormwater such as rain gardens and rainwater collection for use in industrial operations and landscape maintenance as appropriate.

Objective 3.3 Preserve a parallel waterline for additional capacity and to irrigate crop circles

3.4 Landscape, Open Space and Recreation

Comprehensive Plan Land Use Goal 6: The City will protect and conserve its natural resources and critical lands and provide public access based on ability of the resource to support the use.

Goal 4: Provide for recreation, open space and landscaped areas by creating a cohesive open space plan.

Objective 4.1 Determine the amount of active recreational and passive open spaces necessary to meet the future needs of the business park and the community as a whole.

Objective 4.2 Encourage the preservation and enhancement of existing natural features.

Objective 4.3 Promote the use of native and drought tolerant landscaping material where possible.

Objective 4.4 Design location of trails, open space, and parks to incorporate areas of geological or environmental significance including steep slopes, wetlands, natural drainage patterns, and contours.

3.5 Economic Development

Richland has established a sense of place that appeals to citizens of all ages. The City has become the entertainment and upscale retail center for the Tri-Cities with a range of shopping and service business that meet the needs of local residents and visitors to the community.

Goal 5: Create a development plan which will protect and enhance long term economic and social interests.

Objective 5.1 Create an economic development climate that supports the existing business community and promotes new business opportunity.

Objective 5.2 Provide the necessary infrastructure to capture employment and industrial growth

Objective 5.3 Provide areas to accommodate a balance of intensity of uses which will enhance Richland's ability to recruit new business opportunities.

4. Land Use Plan and Zoning

4.1 Land Use Designations

The City of Richland zones that encompass the proposed Master Plan have been discussed previously under section "2. Existing Conditions".

Figure 4: "Land Use Plan" shows how these areas are allocated on the site.

The uses shown on the Land Use Plan are general in nature and reflect the existing underlying zoning designations. This Plan does not propose any changes to existing zoning.

4.2 Land Use Summary Table

Land Use Summary Table

Development in the HRMP is intended to provide an attractive employment and economic center, which will draw new development and employment to the area. The Land Use portion of the plan is essential in creating desirable forms of development that captures future growth. The Master Plan is intended to provide for large-acreage users as well as business and commercial uses, civic and open spaces, and other uses that strengthen the City of Richland's economic base. The Land Use Summary Table below provides an overall summary of the land uses with acreages.

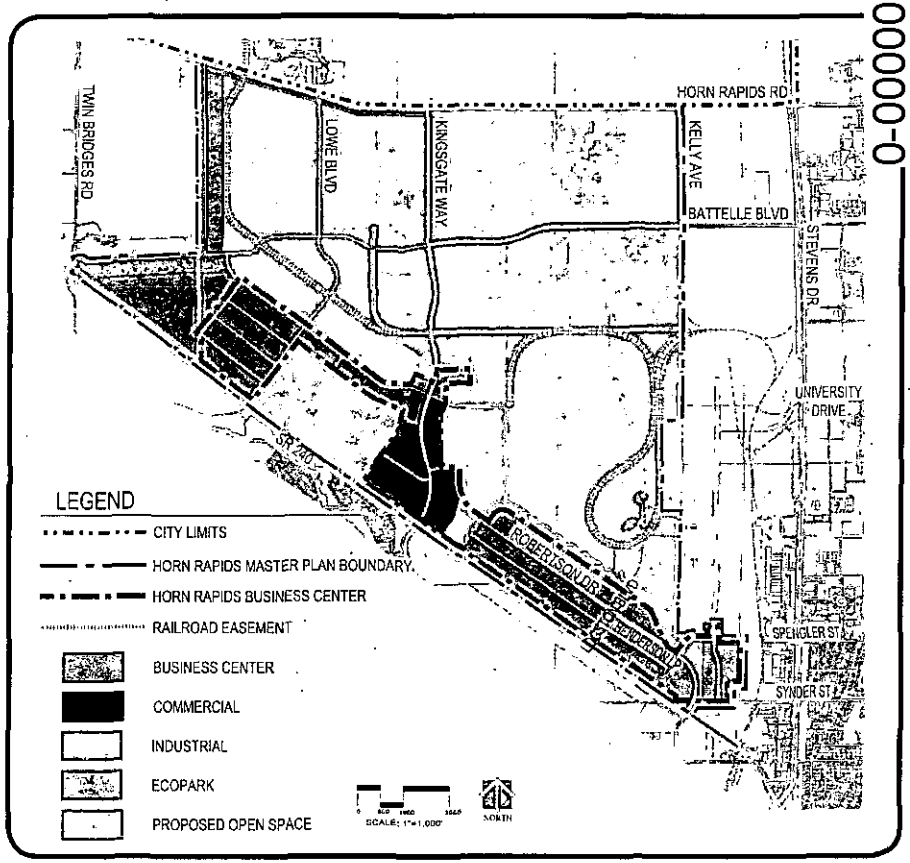

Figure 4: Land Use Plan

Table: Total Land Use Areas

Land Use Designation	Acres	Percent of Total
Business Center/Commercial	380	17%
Industrial	1533	68%
EcoPark	58	3%
Open Space	277	12%

4.3 Design Standards

In order to ensure that the HRMP achieves its potential and that proposed uses are fully integrated, design standards have been drafted to address key site design related issues. The Design Standards are included in Appendix B and include an Architectural Review process that requires applicants seek approval from the Horn Rapids Architectural Review Committee prior to issuance of a building permit. Such oversight will assure project compliance with the standards set forth in this section.

4.4 Sustainable Principles

The HRMP is intended to be developed with sustainable design principles that attract business with operational characteristics that limit their impacts on the natural environment. The HRMP seeks to reduce waste, pollution, energy use, and water consumption within the plan area. The area's sustainability strategy affects land use planning, public infrastructure, transportation, business operation practices, and area maintenance.

Below are guidelines that ensure future development and land use activities within the Master Plan area are more sustainable.

Waste Reduction

•Construction Waste: Encourage that site development and building construction are designed and managed to minimize the amount of materials used on a given project. Projects should seek to minimize waste sent to landfills and explore options to repurpose excess materials for local reuse. New development should utilize durable building materials with longer life spans.

•Recycling: Individual business operations should be planned and/or modified to ensure waste materials are sorted for recycling and reuse. Users should coordinate with local waste management haulers to ensure facilities and resources are adequate to accommodate the recyclable materials generated from the plan area. Examine options to consolidate recycling within the area.

•Composting: Require existing landscaping material and organic waste to be composted or reused. Explore options to provide composting on individual project sites; a central district facility, or collection by the local waste management hauler.

Pollution

•Local Materials: Encourage development projects to use locally available materials to reduce carbon emissions caused by transport. Ensure that local building codes and development standards do not otherwise require construction materials that are only available from far away origins.

•Stormwater Treatment/Water Quality: Require that stormwater generated from paved surfaces is adequately cleaned and purified before it is discharged into the natural system. Require water quality facilities for streets, parking areas, roof tops; treatment requirements are applicable to both public and private developments.

•Alternative Transportation: Create a transportation network and building pattern that encourages transit use, pedestrian and bicycle travel,

carpooling, and ridesharing. Develop a trail/multi-use path network to promote bicycle mobility.

•Landscaping and Tree Planting: Install native plant and tree species as part of all new development to offset carbon emissions. Explore opportuni to use vegetation in lieu of fence and wall construction.

Energy Conservation
•Solar Orientation: Individual development and buildings should be sited and oriented to capitalize on solar exposure to lessen energy demands related to lighting and heating.

•Landscaping for shade and cooling: Require landscaping along exterior building walls to provide shade and cooling.

•Daylighting buildings: Encourage the design of buildings with architectural features and utilize sunlight for interior illumination. Ensure that public structures in parks and recreational areas include daylighting elements to offset energy consumption.

•Solar/Wind Harvesting: Explore opportunities to install solar and wind harvesting elements on large buildings to offset energy consumption and to capitalize on their large surface coverage. Explore opportunities to use solar and wind harvesting devices in large openspaces.

Water Conservation
•Native/Drought Tolerant Landscaping: Limit landscaping material to native or climate adapted plant species.

•Rain Water Harvesting: Encourage the collection of rain water for irrigation purposes. Consider the design and construction of harvesting facilities for recreation and other public areas.

•Water Efficient Utilities: Require buildings and recreational facilities to be constructed with water efficient utilities (i.e. toilets, sinks, showers, etc.).

4.5 EcoPark Overview

The area designated EcoPark on the Land Use Plan (Figure 4) is intended to be developed under the Heavy Industrial code, but is specifically identified for uses that are compatible and complementary to the adjacent landfill. Currently, several businesses are operating in this area and the HRMP seeks to formally recognize this developing business node. The HRMP identified appropriate access to facilitate future expansion of EcoPark uses and to assure orderly development of the node. A strip of Open Space is located between the access road and the landfill in order to recognize an existing utility easement that is located on the site.

The HRMP encourages the siting of appropriate businesses in this area and creates a conceptual plan for infrastructure provision as the area builds out. A rail easement will be reserved along the backside of the EcoPark lots to allow for maximum flexibility for future development. Being that rail is a rapidly changing element of the industrial environment, the City wishes to provide suitable locations for this type of business. The City understands that the demands may change as the industry evolves.

5. Parks, Trails, and Open Space

Parks, Trails, and Open Space Analysis

The HRMP provides comprehensive planning for parks, trails and open space. This plan provides a variety of recreational opportunities within the Master Plan as well as connections to the surrounding community.

The aim of the Parks, Trails and Open Space Plan is to address the goals of the City's Comprehensive Plan. This includes the objectives of the City's Recreation, Open Space, and Historical Site Policies as well as Environmental Policies.

In order for in the HRMP to fulfill the intentions of the City's Comprehensive Plan, it is essential that the proposed trails and open spaces be fully integrated to existing infrastructure. The trails in the HRMP link directly to existing on-street bike paths on Kingsgate Way and Battelle Blvd. Additionally, they tie into the existing Class I trail and on-street bike path on Stevens Drive. The proposed trail on SR 240 directly aligns with proposed connections to both the northwest and the southeast of the HRMP. (See Figure 5: "Parks, Trails and Open Space Plan".)

The trails in the open space plan connect key destinations in Horn Rapids. The Richland Babe Ruth Complex as well as the proposed community park and sports complex are accessible by trail. The main industrial roads have a separated trail paralleling them.

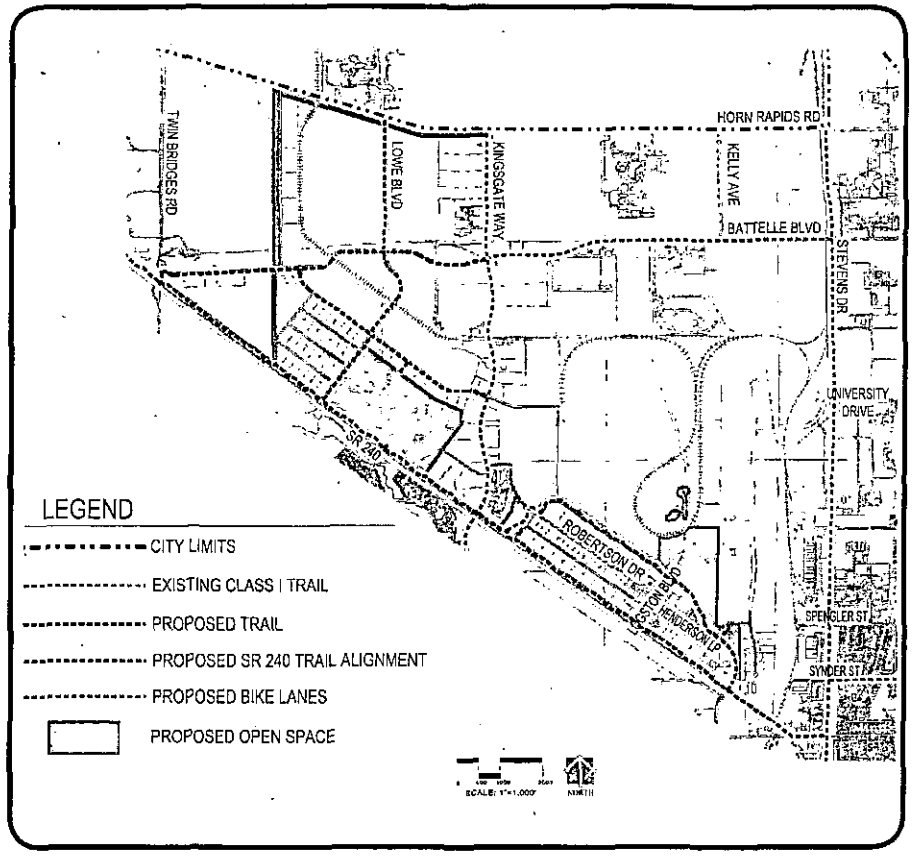

Figure 5: Parks, Trails and Open Space Plan

Throughout the HRMP, numerous trail loops have been developed. These loops provide users opportunity and variety. Trails will encircle the existing and proposed business centers as well as the larger industrial areas.

One of the functions of the trail as it passes to the north of the existing Horn Rapids Business Center is to define the boundary between the existing Business Center and the proposed Industrial Center to the north. This trail will provide recreational opportunities for employees working in Horn Rapids as well as residents of nearby communities.

Several additional factors influence the design and layout of the trails and open spaces. One important consideration is the natural character of the site, including slope and aspect. From numerous locations along the trails, visitors can enjoy open vistas of surrounding hills.

The desire to preserve natural site features also aids in determining the siting of trails and open space. To the northeast of the existing business cen open space helps protect an existing wetland. The trail is routed around the edges of the wetland area to the greatest extent possible. Other than trail itself, this area is left undeveloped to the greatest extent possible. In this way, visitors have access to a diversity of ecological environments.

A typical section of trail paralleling the road includes a 14 foot wide asphalt trail shouldered by a 16 foot vegetated stormwater swale and a 15 f utility easement. The swale and the utility easement serve to buffer the trail from the road and other site development.

Trails traveling through the larger tracts of open space wind through undeveloped corridors ranging from 100 to 500 feet in width. A typical segment of this trail includes native undisturbed vegetation as well as replanted native upland steppe vegetation.

The extension of utilities from Logston Boulevard northward requires that the disturbed portion of the wetland be mitigated. This mitigation occurs in land set aside as open space near the existing wetland. It is comprised of native wetland and transitional species plantings and is described in further detail in "Section 8: Wetland Impacts & Mitigation".

6. Utilities

Utility Analysis

The HRMP area includes several sites that are ready for development as demonstrated on the existing utility plans as well as the availability of other infrastructure necessary to serve the site. Full build-out can be accommodated with key investments in sewer, water, rail, water and the other utility systems provided for in this Section.

6.1 WATER

The water system that will serve Horn Rapids consists of two pressure zones (see Figure 6: "Water Plan"). Pressure zone 1 will be below 600 feet and pressure zone 2 will be above 600 feet.

Water lines are proposed in all of the major proposed roadways including 12-in DI in Lowe Boulevard and along the west side of the EcoPark. There is uncertainty as to the required size of the proposed water lines, especially in the industrial area where there is the potential for a high water-user such as a processing facility. Therefore, prior to final decision on pipe sizing, some limited modeling effort will need to take place using expected demands based on property acreage and type of use. The size of the existing lines in the Kingsgate area are based on similar modeling which was conducted during the preparation of the Comprehensive Plan, and can likely serve as a model for this effort. The water system will be designed and constructed to provide for the demand of development as well as the minimum fire flow rates as required by the City of Richland Building Codes and Fire Marshall.

Additionally, a proposed 8-in stub is provided at the south end of the Port of Benton property as well as a proposed 12-in stub at the northwest corner for looping purposes

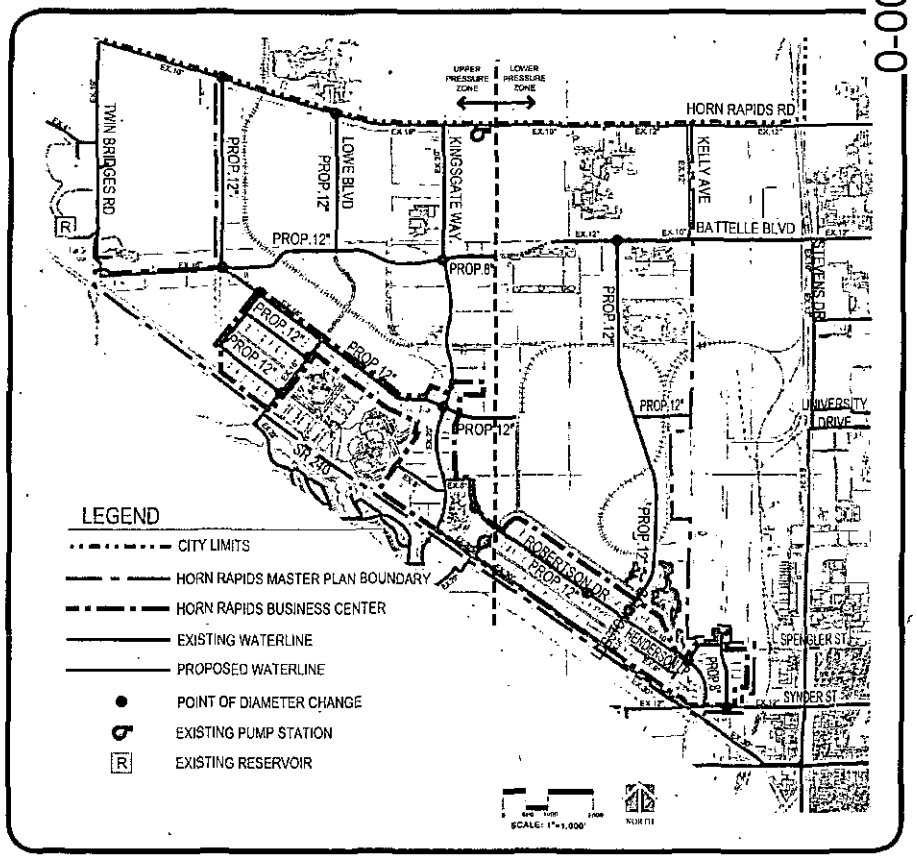

Figure 6: Water Plan

6.2 SANITARY SEWER

Wherever possible, all sanitary sewer improvements will be constructed in the public right-of-way. Where construction in the public right-of-way is not possible, they will be provided an access and maintained easement. In general, Business Center roadways contain an 8-in diameter sewer main, while Industrial roadways contain a 12-in diameter sewer main. Deviations from this standard can be seen in Figure 7: "Sewer Plan". Sanitary sewer infrastructure will be installed with each Phase of the Business Center and as needed in the Industrial area. There is an existing 12-in diameter sewer main in Kingsgate Way, 21-in main in Robertson Drive and an existing 42-in main in Henderson Loop. Phases 1 and 2 of the Business Center as well as the majority of the Industrial lands will be served by collectors and laterals connected to this system. Phase 3 of the Business Center will be collected in a proposed 12-in in Lowe Blvd., and drain into a proposed 18-in main running southeast along SR 240 just south of Phase 2, and ultimately into the residential master planned community south of SR 240.

During construction of Business Center Phase 1, a 24-in diameter sewer main will be also constructed from Areva, near the northeast corner of Horn Rapids, south to the stub of Logston Blvd. This sewer main will be located in an easement, and is designed to allow the existing life-station at Areva to be decommissioned. This line will also provide future sanitary sewer service to properties east of Kingsgate Way. A portion of the 24-in sewer line to Areva will be located in a wetland area. An access road as well as appropriate wetland mitigation will need to be provided for that work. (See Figure 7: "Sewer Plan")

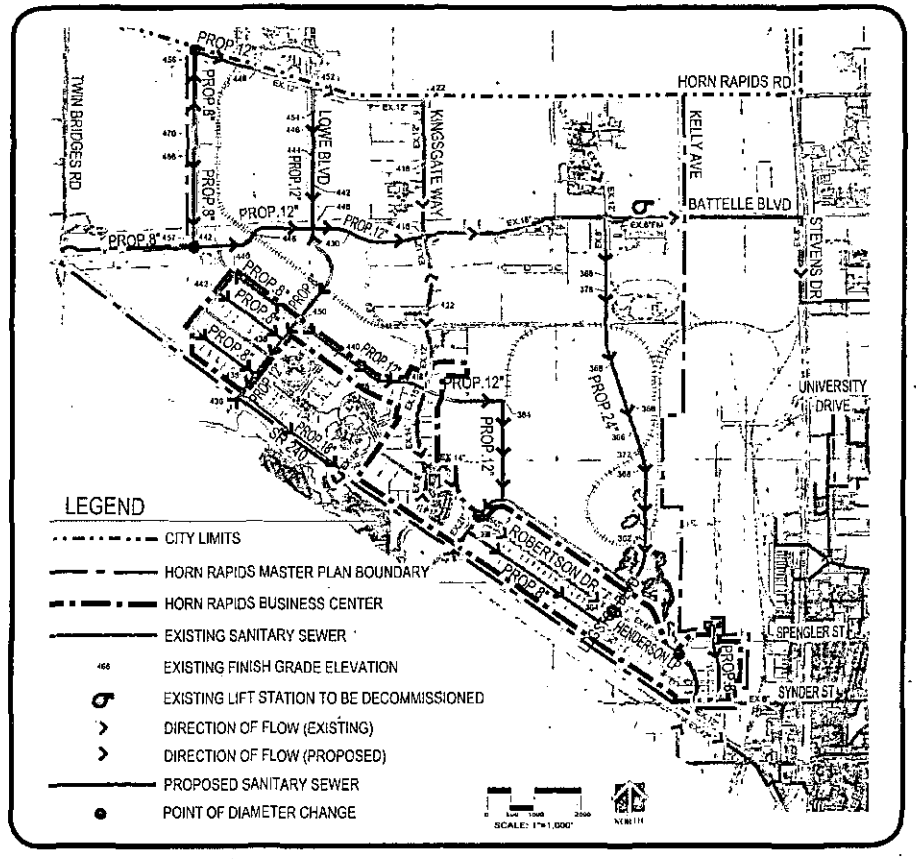

Figure 7: Sewer Plan

It is important that impacts to the identified wetlands be minimized where possible. Unfortunately, the proposed 24-in diameter sewer main must run a significant distance at a flat slope. This constraint limits the number of bends and manholes which can be placed in the sewer line. As part of this study, several alternatives were evaluated. It was determined that complete avoidance of the wetlands was difficult or impossible while maintaining gravity flow. However, there are existing disturbances within the wetlands (i.e. existing roads / trails) which could be used to lessen wetland impacts. These options will be evaluated more closely during design, when more detailed field information is available. The ultimate goal will be to provide a gravity sewer solution while minimizing wetland impacts.

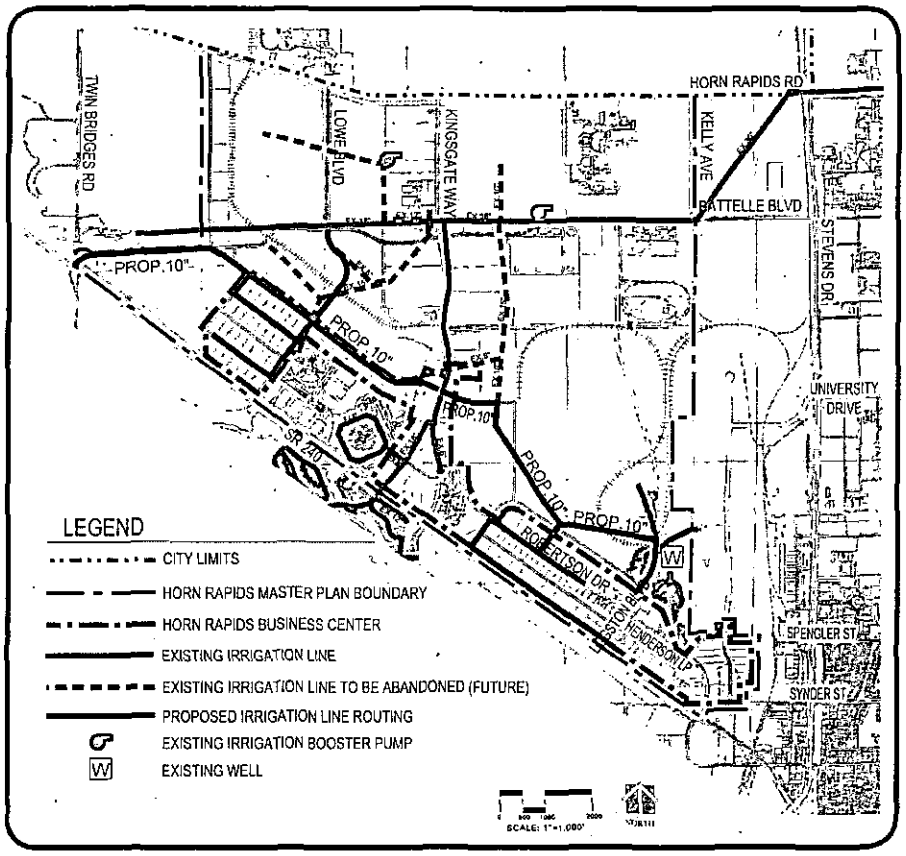

Figure 8: Irrigation Plan

6.3 IRRIGATION

Irrigation water may be distributed from two different sources wh would serve separate systems (see "Irrigation Plan" Figure 8). primary source is the existing agricultural system which is currently u to irrigate crop circles in what will be the industrial park. These water rights may be used for the irrigation of developed lots, specifically in the business park area. Irrigation in the industrial park is not anticipated due to the significantly lower road and frontage standards for this land use. A second available source of irrigation water is an existing well located northeast of the intersection of Robertson Drive and Logston Boulevard. This source may be used to serve the Phase 1 Business Center on a separate system, or interconnected with the primary system to provide additional water. New irrigation lines will be constructed per the Irrigation Plan. For the purposes of the cost estimate it was assumed that only the existing primary irrigation system would be used. The portions of the existing irrigation system no longer required may be abandoned in place or removed and disposed of as needed. The phasing of the cost estimate also assumes that Phase 1 A commercial area will be temporarily served the by the existing 12-in line used to irrigate the crop circle there, and that line will be abandoned only after the construction of the proposed 10" line up to University Drive. It is assumed this permanent connection will be constructed with the Phase 1B improvements.

At this time M&S has not conducted a full accounting of the acres of water right available to Horn Rapids development, but due to the nature of developed properties they are likely more than sufficient to accommodate all future irrigation needs. There may be some possibility of converting the excess irrigation water right to domestic water right to add to the City's existing water system, but that is well outside of the scope of this work.

6.4 STORMWATER

Stormwater runoff from the roadways will be handled in grass-lined swales which shall not only collect and treat the stormwater, but detain it for infiltration or evaporation. Stormwater runoff from individual properties shall be handled onsite and treated either through oil-water separators or grass-lined biofiltration swales prior to infiltration. Due to high infiltration rates in this area and low rainfall, quantity of runoff is not considered an issue; however low-points where large volumes of runoff would tend to pond in the case of catastrophic system failure should have an outfall to low undeveloped land.

6.5 ELECTRICAL

The power for Horn Rapids will be supplied from two existing and one future City of Richland substations (see Figure 9 "Electrical Plan"). The Snyder substation will supply three feeders and the University Drive substation will supply four feeders to serve the east half of the project. A new substation with 4-5 feeders will be constructed near the southwest corner of Allvac-Richland to serve primarily the new industrial users on the west side of Horn Rapids. A new 115KV transmission like will be located in a 100' wide north-south corridor along the west side of the EcoPark and down across SR 240 to a second new substation planned to serve future development on the south side of SR 240. (See Figure 9: "Electrical Plan")

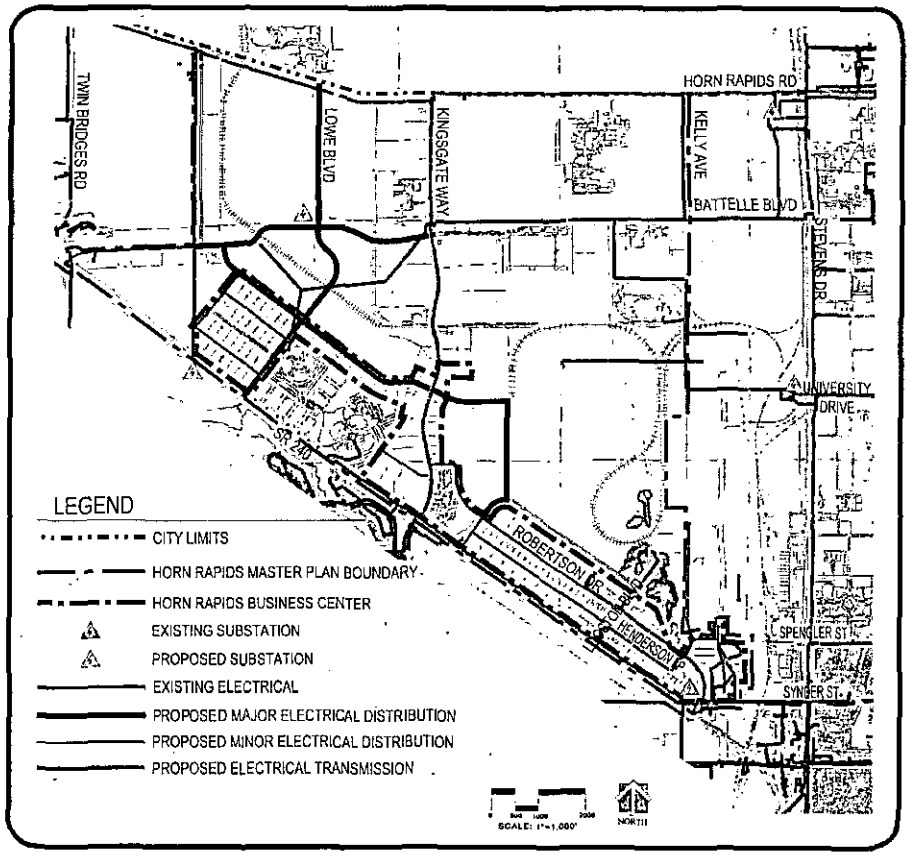

Figure 9: Electrical Plan

6.6 NATURAL GAS

There is an existing 4-in natural gas line in Robertson Avenue, an existing 8-in line in SR 240, and an existing 8-in line in Kingsgate Way. Included in the lineal footage road costs is the assumption that conduit for natural gas will be included in the utility easement. No separate plan is provided.

6.7 TELECOMMUNICATIONS

Business center and Industrial tenants have a wide range of potential telecommunications infrastructure needs. Included in the lineal footage road costs it is assumed that conduit for telecommunications infrastructure will be included in the utility easement and no separate

plan is provided.

6.8 TYPICAL UTILITY SECTION

All of the streets shall have utilities placed in the general locations shown in the section below (see "Transportation Plan", Figure 10). A utility easement is provided on both sides of Industrial and Business Center roadways sections, immediately outside of the right-of-way, and shall be used for all underground electrical, telephone, cable T.V. and communications utilities as well as above-ground vaults or junction boxes. Under no circumstances will these be placed in the grass-lined swales.

7. Transportation

There is tremendous growth potential within the boundaries of the HRMP, with extensive pre-planning already undertaken to assure appropriate circulation systems. The Transportation Plan (Figure 10) identifies the transportation improvement projects that can be completed for continued growth.

7.1 Transportation Analysis

The road network plan and associated phasing of construction improvements has been designed to comply with the following policies of the Comprehensive Plan:

•The City should ensure that direct access is provided to property through the development of a network of collector and access streets, whose design would be as unobtrusive as possible to serve, rather than be the dominant feature of the area.

•The City should ensure that transportation facilities are designed to be aesthetically pleasing.

•The City should ensure the improvement of existing circulation systems to provide for maximum efficiency in vehicle movement.

•The City should encourage the development and enhancement of principle entrance ways into Richland.

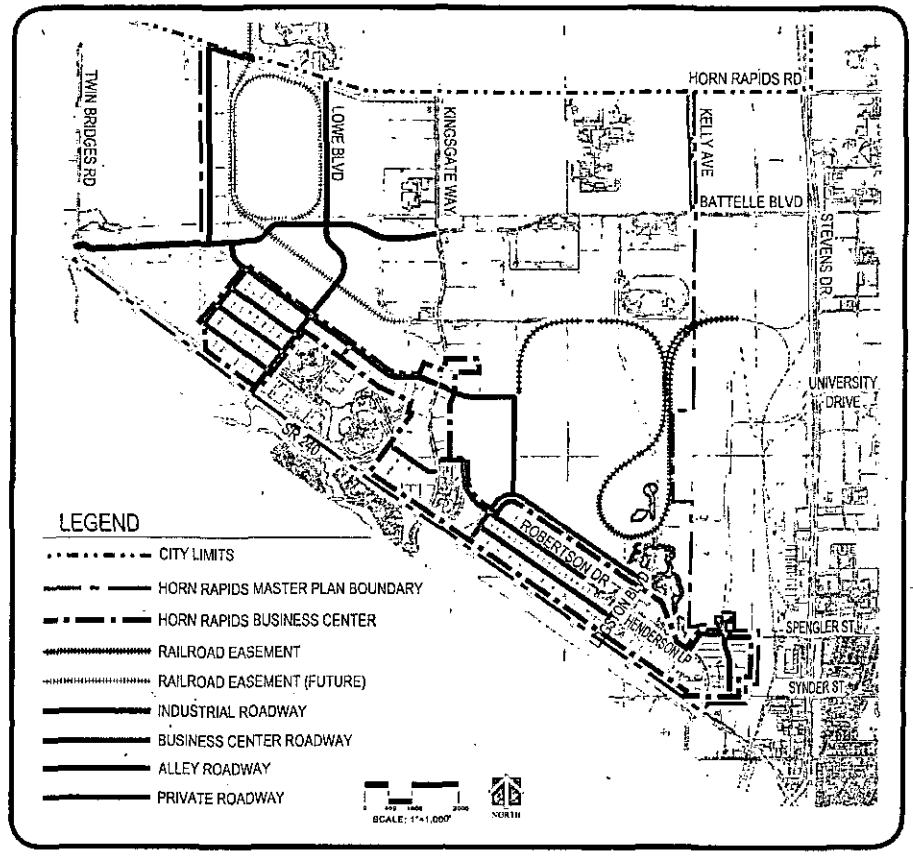

Figure 10: Transportation Plan

•The City should ensure that there is adequate access and transportation facilities should be provided to industrial sites.

•The City should ensure vehicular traffic to industrial sites is be routed away from the central business route.

The primary components of the existing road network serving Horn Rapids are SR 240 along the south boundary, Horn Rapids Road which runs along the north boundary, and Kingsgate Way a north-south principal arterial which runs between them roughly bisecting the property. Ultimately it is planned to extend Kingsgate Way to the south through the residential master planned community and connect to Van Giesen Street, thereby providing a new route to Van Giesen Street for Hanford-related traffic.

Additional access points to SR 240 will be limited to those approved by the Washington State Department of Transportation (WSDOT). Currently Robertson Avenue and Logston Boulevard provide access to SR 240 on the east for Phase 1. Additional connections of Lowe Boulevard and Univer Drive on the west side serving Phase 3 are proposed. WSDOT intersection spacing requirements for state highways should allow the connect of Lowe Boulevard without issue, however the connection of University Way on the far west corner of the property could pose an issue due to proximity to the existing intersection of Twin Bridges Road at the southwest corner of the Richland Landfill. This connectivity will require furth evaluation and coordination with WSDOT.

As part of the Master Plan, a series of internal collector streets are also proposed. These streets which will distribute traffic between the major roads, individual properties, and other internal streets would primarily serve the proposed Business Park. Two of these roadways, Robertson Avenue and Logston Boulevard, are extensions of existing streets. The remaining roadways are new alignments. Collectors are only proposed in the Business Center area so as to retain the maximum flexibility and parcel size within in the Industrial Park. However, it is likely that additional collector streets will be required as the Industrial Park develops.

7.2 Road Standards and Road Sections

Industrial Roadway Section

The proposed industrial roadway section shown below consists of an 85' right-of way with a three lane street and grass-lined swales on either side for collection and treatment of stormwater. The west or south side of the roadway has a 10' asphalt trail with 2' gravel shoulders for pedestrian and bicycle connectivity. A 15' utility easement is located on both sides of the street, immediately outside of the right-of-way. (See Figure 11: "Industrial Roadway Section")

Business Center Roadway Section

The proposed business center roadway section shown below consists of a 75' right-of way, three lane street with monolithic curb and gutter and grass-lined swales on both sides for collection and treatment of stormwater. Stormwater will be routed to the swales through curb-cuts. The east or north side of the roadway has a 6' concrete sidewalk. A 10' utility easement is located on both sides of the street, immediately outside of the right-of-way. (See Figure 12: "Business Center Roadway Section")

Alley Section

The proposed alley section shown below consists of a 69' right-of way, three lane street with monolithic curb and gutter and grass-lined swales on both sides for collection and treatment of stormwater. Stormwater will be routed to the swales through curb-cuts. There is no sidewalk or trail associated with the alley. A 10' utility easement is located on both sides of the street, immediately outside of the right-of-way. (See Figure 13: "Alley Section")

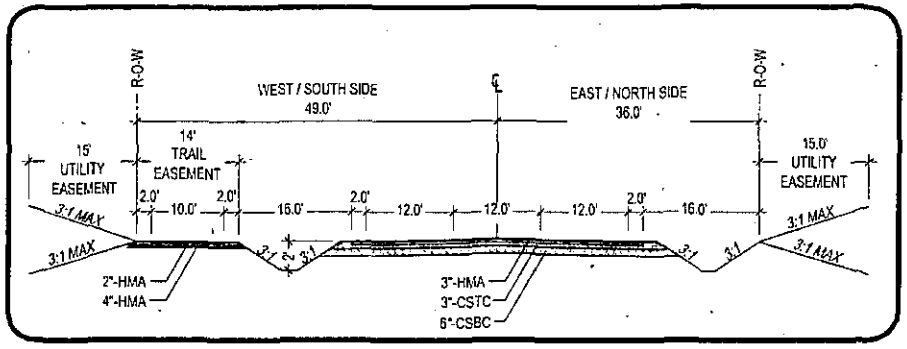

Figure 11: Industrial Roadway Section

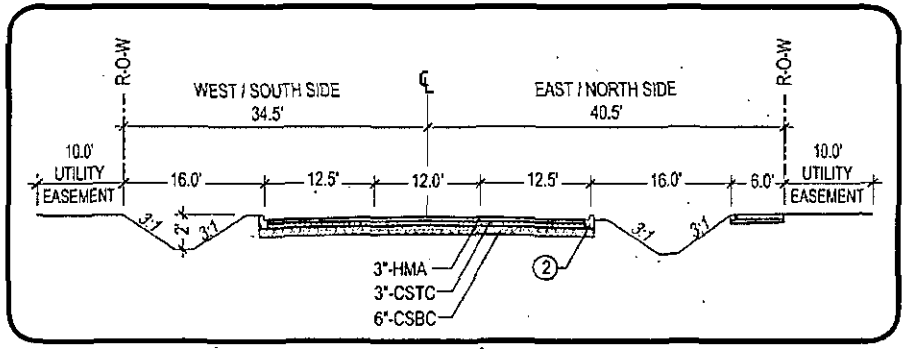

Figure 12: Business Center Roadway Section

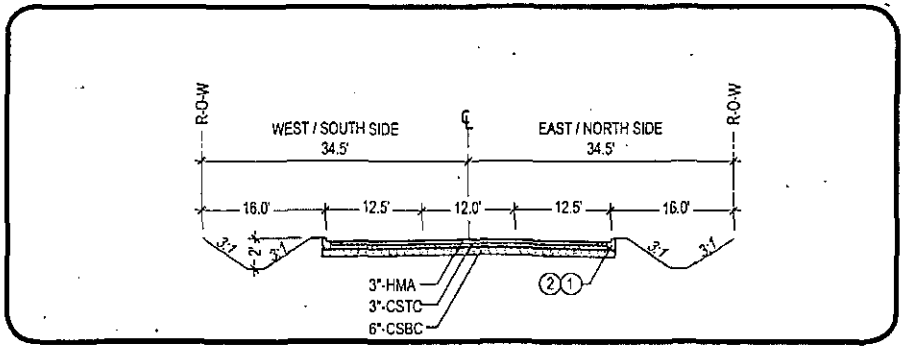

Figure 13: Alley Section

7.3 RAILROAD

Rail will be extended from the existing spur west of Kingsgate Way at the southeast corner of the WHECO property. The new spur will be approximately 1.5 miles in length and will run northwest, paralleling the proposed extension of University Drive, before turning north along the eastern edge of the EcoPark and terminating just south of Horn Rapids Road. Railroad crossing will be constructed on the proposed Lowe Boulevard and Battelle Boulevard. (see Yellow, "Proposed Rail Line (Future)" in Figure 14).

A railroad loop will also be constructed on the south side of the existing private rail between the existing rail line and the Port of Benton Property. This new loop will be approximately 0.3 miles wide (east-west) and 0.7 miles long (north-south), with the easternmost end on the Horn Rapids Master Plan boundary. (see Red, "Proposed Rail Line" in Figure 14).

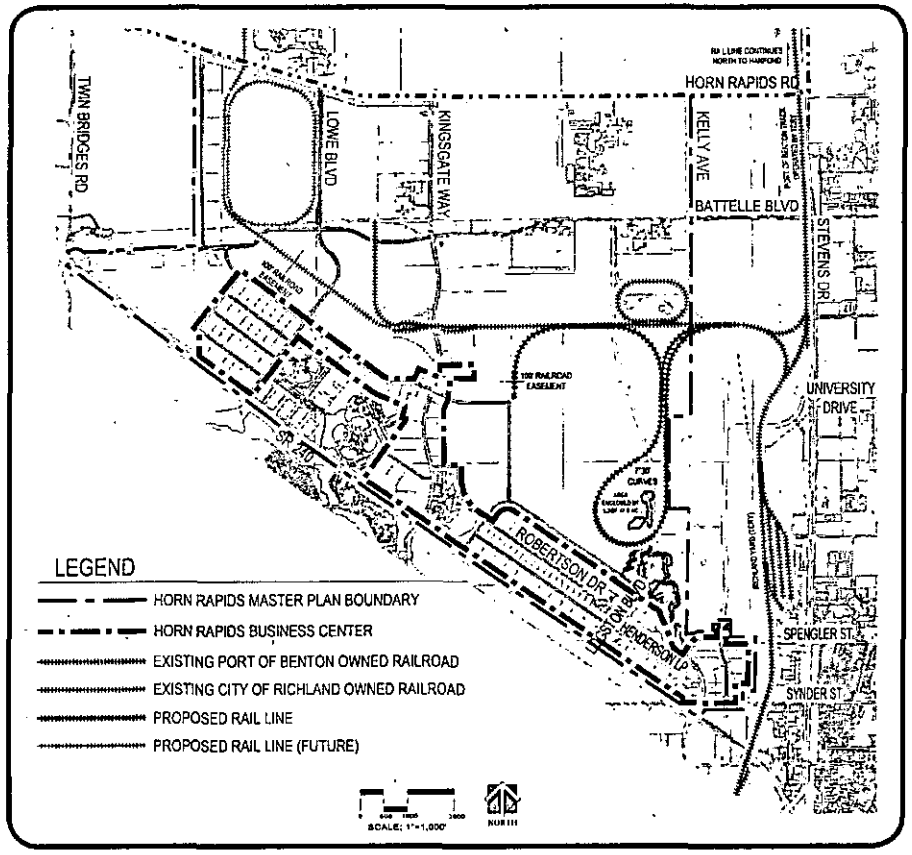

Figure 14: Railroad Infrastructure Plan

8. Wetland Impacts and Mitigation

Nine separate wetlands were previously identified and delineated within the HRMP. These consist of Category II and III depressional wetlands, all containing similar hydrophytic vegetation, hydric soils, and hydrology. The proposed water and sanitary sewer utility alignment will impact two wetlands, Wetlands D and F, and their associated wetland buffers. Impacts consist of excavating a 3.5 ft trench in the wetlands to install water and sanitary sewer utilities. Once the trenching is complete, a 12-foot maintenance road will be installed over the utility alignment. The estimated impact to these wetlands is 4,932 sq ft to Wetland D (rated as Category II) and 34 sq ft to Wetland F (rated as Category III). The proposed alignment for Logston Boulevard will impact the buffer area of Wetland J. The estimated impact to this buffer area is 9,856 sq ft. (See Figure 15: "Wetland Impacts and Mitigation Plan")

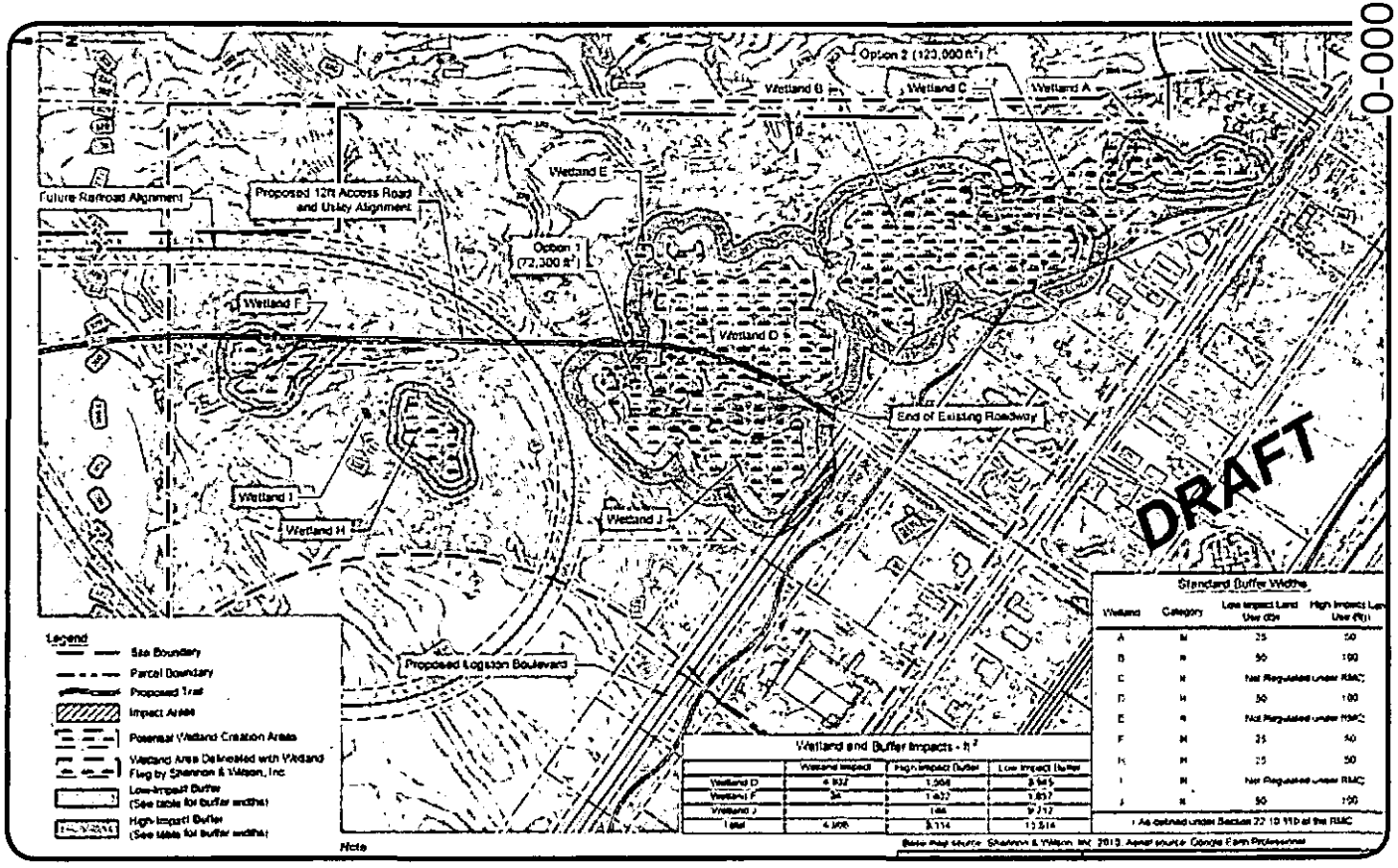

Figure 15: Wetland Impacts and Mitigation Plan

The land use pattern minimizes wetland and buffer impacts. Logston Boulevard was re-designed to avoid all impacts to the wetlands. Alternate alignments for the utilities were considered, however, due to property locations and utility access requirements impacts were unavoidable. The site has already proven to be favorable for wetland creation due to the high water table and easy colonization by native hydrophytic vegetation. This allows for flexible, onsite, in-kind mitigation that can be tailored to meet mitigation requirements. Our recommendation for mitigation is to create Category II forested wetland area by connecting the southern end of Wetland D to Wetland J. Due to the current condition of the wetlands, wetland

enhancement alone is not expected to adequately mitigate for the anticipated loss of wetland area and functions. These impacts will require 14,864 sq ft of wetland creation for mitigation as required under RMC Section 22.10.130. Buffer mitigation can be accomplished by additional wetland creation and/or incorporating invasive species control in the buffer areas near the mitigation site.

Under the Richland Municipal Code (RMC Section 22.10.120), Washington Department of Ecology (Ecology) regulations unavoidable impacts must be mitigated by providing compensation. These wetlands have been determined by the US Army Corps of Engineers (USACE) to be isolated and therefore not subject to USACE regulation; however they will be regulated by the City and Ecology. As the current project plans will have permanent impacts to the wetland area, it is anticipated that wetland and buffer mitigation will be required by the City and Ecology.

9. Infrastructure Costs

General concepts for the provisions of basic infrastructure are illustrated and described in the previous sections. These infrastructure concepts are meant to inform and guide future development decisions; however, in all likelihood, the final design will vary from these concepts. Therefore, the rough cost estimates based on the Plan's concepts provide information to inform what one approach would look like and might cost in today's dollars. These Cost Estimates can be found in Appendix C. Figure 16 sets out a conceptual phasing plan associated with the Cost Estimates providing for logical project boundaries that can respond to market demands.

This estimate represents an engineer's opinion of costs based on the conceptual Master Plan, assumptions of unit prices, and past experiences. It does not represent a guaranteed development cost.

Utilities were generally estimated on a per lineal foot basis, inclusive of all tees, connections, valves, poles, backfill, excavation and other appropriate items incidental to the utility line. Two new substations are included in the Industrial estimate as directed by the West Richland power engineers. Cost-sharing and alternative funding mechanisms may be pursued for these large capital improvements.

Three road sections are proposed with the Master Plan update. These are Industrial, Business Center, and Alley. The costs for each were developed from measured material quantities and unit prices (in 2010 dollars), then converted to an average cost per lineal foot of roadway. These average costs were used in the estimates for each section for ease of approximation. All rail crossings were assumed to be at-grade. Any other rail crossing configuration would add substantial additional costs.

The Cost Estimate is divided into five sections:

•Phase 1A – Business Center east of Kingsgate Way to the eastern boundary of the Master Plan.

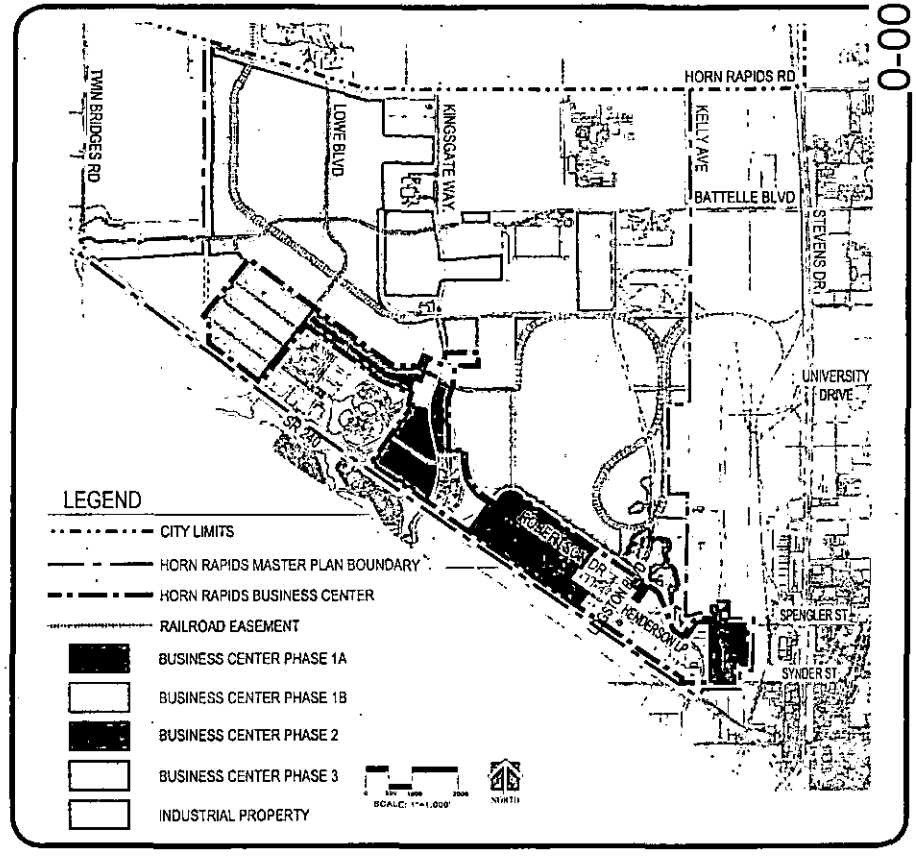

Figure 16: Cost Estimate Plan

Table: Proposed Development Areas

Land Use Designation	Acres	Percent of Total
Business Center	259	20%
Industrial Property	1006	80%

•Phase 1B – Other Phase 1 development not shared by the Business Center such as the sewer main to Areva and associated pump-station decommissioning.

•Phase 2 – Business Center west of Kingsgate Way and east of Lowe Blvd.

•Phase 3 – Business Center west of Lowe Blvd. to the western boundary of the Master Plan at Twin Bridges Road.

•Industrial – All Industrial lands including potential rail improvements.

The Industrial land development costs are included together as a separate phase, however this is not intended to indicate that these improvements will be built at once or the order in which they will be constructed relative to the Business Center Phases. This estimate is only intended to capture all of the costs associated with the full build-out of all industrial lands. It it assumed that the improvements will be built as needed, as users come to the park.

The total development cost for Phases 1A, 2, and 3 of the Business Center (including hard costs, engineering, permitting, construction administration, etc.) were divided across developable acres served to yield an anticipated cost per developable square foot. This number can inform future lot prices. The development cost for business Center Phase 1B, though constructed concurrently with Phase 1A, is allocated to the Industrial lands in the cost per developable acre calculations as those improvements serve industrial lands.

10. Implementation

10.1 Economic Development Strategy

Over the life of the HRMP, many important decisions will be made. These choices will impact how development evolves and the specific phasing of improvements. A range of ways to fund the basic infrastructure, with site specific infrastructure connections being the responsibility of the developer of the individual sites, could be available to the City, for example:

-Public/Private Development Agreements: New development agreements between the City and a developer specifying financing needs and responsibilities for infrastructure needs that serve a wider area than the developer is contemplating.

-Tax Increment Financing (TIF) or Local Revitalization Financing (LRF). This is a method of distributing property tax collections within designated areas to finance infrastructure improvements within these designated areas. Under the TIF method, infrastructure is financed by the incremental increase in tax revenue that is made possible by infrastructure improvement within the designated area. The City has been successful in obtaining an allocation under the State's current LRF program.

-Grant Opportunities: While no specific grant opportunities have been identified that would be a good match for needed improvements in the HRMP, over the build out period of development, grant opportunities will likely emerge. HRMP includes aspects that should make it attractive for grants that promote economic development, especially in these current times of economic recession

-Local Improvement District (LID): The City can work with purchasers/developers to establish a local improvement district which includes an agreed upon repayment schedule based on agreed upon equitable criteria; the City sells bonds to cover the costs of infrastructure to be built within the district, and the owners/developers pay off the bonds through regular payments usually over a 10 to 20 year period.

Appendix A - HRMP Boundary Legal Description

HORN RAPIDS - R.A.I.S.E DESCRIPTION

A PORTION OF LAND LYING IN SECTIONS 14,15,16,17,19,20,21,22,23,26,27,28 AND 34, ALL WITHIN TOWNSHIP 10 NORTH, RANGE 28 EAST, W.M., CITY OF RICHLAND, STATE OF WASHINGTON, BEING DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT BEING THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY SR-240 AND THE NORTH SECTION LINE OF SECTION 34, SAID POINT ALSO BEING THE NORTH QUARTER CORNER OF SAID SECTION 34; THENCE NORTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 16,200 FEET MORE OR LESS TO THE EASTERLY RIGHT-OF WAY LINE OF TWIN BRIDGES ROAD; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE TO THE NORTH LINE OF SAID SECTION 19; THENCE EASTERLY ALONG SAID NORTH LINE OF SECTION 19, 2 FEET MORE OR LESS TO THE COMMON SECTION CORNER OF SECTIONS 17, 18, 19 & 20; SAID SECTION CORNER BEING ON THE SOUTH LINE OF THAT PROPERTY KNOW AS THE CITY OF RICHLAND LANDFILL, AND THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 20 BEARS NORTH 86°37'55" EAST A DISTANCE OF 2618 FEET MORE OR LESS; THENCE CONTINUING ALONG SAID PROPERTY LINE THE FOLLOWING FIVE COURSES;

1. EASTERLY ALONG THE NORTHERLY SECTION LINE OF SECTION 20 A DISTANCE OF 100.00 FEET TO A POINT IN A CHAIN LINK FENCE;

2. THENCE LEAVING SAID SECTION LINE ALONG SAID CHAIN LINK FENCE SOUTH 03°19'06" EAST A DISTANCE OF 399 FEET MORE OF LESS TO THE CORNER THEREOF:

3. THENCE CONTINUING ALONG SAID CHAIN LINK FENCE AND EXTENDING BEYOND A CORNER THEREIN, NORTH 86°40'54" EAST A DISTANCE OF 2,497 FEET MORE OR LESS TO THE SOUTHERLY PROJECTION OF THE NORTH-SOUTH CENTERLINE OF SECTION 17 THROUGH THE SAID NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 20:

4. THENCE NORTH 00°15'25" WEST A DISTANCE OF 400.91 FEET ALONG SAID SOUTHERLY PROJECTION TO SAID NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 20:

5. THENCE CONTINUING NORTH 00°15'25" WEST A DISTANCE OF 3809.00 FEET MORE OR LESS TO THE SOUTHERLY RIGHT-OF-WAY LINE OF HORN RAPIDS ROAD; THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE THEREOF A DISTANCE OF 3,700 FEET MORE OR LESS TO AN ANGLE POINT THEREIN;

THENCE EASTERLY, CONTINUING ALONG THE SOUTH RIGHT-OF-WAY LINE THEREOF A DISTANCE OF 9,300 FEET MORE OR LESS TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF STEVENS DRIVE; THENCE NORTHERLY ALONG THE WESTERLY LINE THEREOF A DISTANCE OF 2,700 FEET MORE OR LESS TO A POINT ON THE WESTERLY PROJECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF A ROAD KNOWN AS GEORGE WASHINGTON WAY AS SHOWN ON RECORD OF SURVEY 3673, SAID COUNTY SURVEY RECORDS; THENCE SOUTHEASTERLY ALONG SAID NORTHERLY LINE THEREOF A DISTANCE OF 3,800 FEET MORE OR LESS TO A POINT THE NORTH BOUNDARY OF THAT TRACT OF LAND CONVEYED TO THE PORT OF BENTON, AS DESCRIBED IN QUIT CLAIM DEED FROM THE U.S.A. TO THE PORT OF BENTON, RECORDED IN AUDITOR'S FILE NO. 521608, RECORDS OF BENTON COUNTY: THENCE EASTERLY ALONG SAID NORTH BOUNDARY A DISTANCE OF 1,667.00 FEET MORE OR LESS TO THE ORDINARY HIGH WATER LINE OF THE COLUMBIA

RIVER: THENCE SOUTHERLY ALONG SAID WATER LINE A DISTANCE OF 8,200 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SECTION 24; THENCE WESTERLY ALONG SAID SOUTH LINE A DISTANCE OF 85.00 FEET MORE OR LESS TO THE COMMON SECTION CORNER OF SECTIONS 23, 24, 25 & 26 BEING ON THE CENTERLINE OF SPROUT ROAD AS SHOWN IN RECORD OF SURVEY 1199; THENCE CONTINUING ALONG SAID CENTERLINE AND THE SOUTH LINE OF SECTION 23 A DISTANCE 2,765 FEET MORE OR LESS TO THE CENTERLINE OF SAID GEORGE WASHINGTON WAY; THENCE NORTHERLY ALONG SAID CENTERLINE OF GEORGE WASHINGTON WAY 532 FEET MORE OR LESS TO THE EASTERLY PROJECTED CENTERLINE OF CURRY ROAD AS SHOWN ON RECORD OF SURVEY 4048 (CURRY STREET); THENCE WESTERLY ALONG SAID PROJECTED CENTERLINE A DISTANCE OF 1,009 FEET MORE OR LESS TO A POINT ON THE WEST BOUNDARY OF "PARCEL A" AS DEPICTED IN RECORD OF SURVEY 4104; SAID POINT ALSO BEING ON THE CAMP HANFORD LINE; THENCE SOUTHERLY ALONG A PORTION OF THE WEST LINE OF "PARCEL A" AND ALONG THE CAMP HANFORD LINE A DISTANCE OF 2,940 FEET MORE OR LESS TO AN ANGLE POINT MARKED BY A BRASS DISK, "CH-10-1"; SAID ANGLE POINT BEING ON THE WESTERLY LINE OF "PARCEL B" OF SAID RECORD OF SURVEY 4104; THENCE SOUTHWESTERLY CONTINUING ALONG SAID WESTERLY BOUNDARY A DISTANCE OF 1,600 FEET MORE OR LESS TO THE NORTH RIGHT-OF-WAY LINE OF SPENGLER STREET; THENCE WESTERLY ALONG SAID NORTH LINE A DISTANCE OF 1,500 FEET MORE OR LESS TO THE SAID WEST RIGHT-OF-WAY LINE OF STEVENS DRIVE; THENCE SOUTHERLY ALONG SAID WEST LINE A DISTANCE OF 1,300 FEET MORE OR LESS TO THE NORTH RIGHT-OF-WAY LINE OF SNYDER STREET; THENCE WESTERLY ALONG SAID NORTH LINE A DISTANCE OF 1,200 FEET MORE OR LESS TO THE WEST LINE OF A PARCEL OWNED BY THE PORT OF BENTON AS DESCRIBED IN DEED 2001-006829, RECORDS OF BENTON COUNTY, WASHINGTON; THENCE NORTHERLY ALONG SAID WEST LINE THEREOF A DISTANCE OF 1,300 FEET MORE OR LESS TO A SOUTHERLY LINE OF SAID PARCEL; THENCE WESTERLY ALONG SAID SOUTHERLY LINE A DISTANCE OF 1,350 FEET MORE OR LESS TO THE WEST LINE THEREOF; ALSO BEING A POINT ON THE EASTERLY LINE OF "TRACT A" AS SHOWN IN RECORD OF SURVEY 2056, SAID COUNTY RECORDS; THENCE SOUTH ALONG THE SOUTHERLY PROJECTION OF THE WEST LINE THEREOF A DISTANCE OF 240 FEET MORE OR LESS TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF ROBERTSON DRIVE; THENCE SOUTHEASTERLY, SOUTHERLY, AND SOUTHWESTERLY ALONG THE SAID RIGHT-OF-WAY LINE OF ROBERTSON DRIVE AND THE SOUTHWESTERLY PROJECTION THEREOF A DISTANCE OF 1,500 FEET MORE OR LESS TO THE NORTH LINE OF SAID SR240; THENCE NORTHWESTERLY ALONG THE NORTH LINE THEREOF A DISTANCE OF 340 MORE OR LESS TO THE SAID TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE RIGHT-OF-WAY FOR SAID GEORGE WASHINGTON WAY AND SPROUT ROAD.

THIS DESCRIPTION IS FOR PLANNING PURPOSES ONLY AND NOT TO BE USED IN THE TRANSFER OF REAL PROPERTY.

Appendix B - Development Standards

Horn Rapids Master Plan

Development Standards

City of Richland, Washington
January 2011

Table of Contents

I. Introduction

A. Purpose Statement

The City of Richland's Horn Rapids Business Center and Industrial Park is a unique property located at the north end of the City north of State Route 240, south of the Hanford Reservation and east of the Landfill and Twin Bridges Road. The Business Center portion of the master planning area was established in 1995 and in 2011 the master plan was expanded to include all of the Business Center and the Industrial Park properties.

These Development Standards were created to govern new development and redevelopment within the Business Center located in the Horn Rapids Master Planning area. Application of these Standards will attract new industry and jobs to the site and ensure that development within the boundaries of the Horn Rapids Master Plan complies with the vision for the area.

B. Richland Municipal Code References

All references to the Richland Municipal Code (RMC) in these Development Standards are based on the RMC as current through January, 2011. Subsequent changes to the RMC may require amendments to these standards if deemed appropriate and necessary by the City Planning Commission and the Design Review Committee.

C. Relationship to Richland Municipal Code

Developments within the HRMP must comply with the relevant provisions of the RMC. Where these Development Standards do not address an item that is addressed in the RMC, the RMC standard(s) must be met.

D. Definitions

The following definitions apply to these Development Standards only; they are not intended to provide clarification of words or terms used in any other document or code.

1. Design Review Committee (DRC) – review body whose purpose is to ensure that development proposals within the HRMP comply with these Development Standards.
2. Heat Island Effect – the phenomenon of warmer temperatures being experienced in urban landscapes compared to adjacent rural or natural areas as a result of solar energy retention by constructed surfaces.
3. Nose-to-nose parking – a parking configuration where parking stalls facing each other share a common front line.
4. Redevelopment – the addition or replacement of impervious surfaces (including buildings) totaling 2,000 square feet or more on a site with 35% or more existing impervious coverage.
5. Required yard – also referred to as a "setback". A required yard is an area set aside along each property line in which structures are prohibited and landscaping or other such treatment is required.

E. Abbreviations

DRC = Design Review Committee
HRMP = Horn Rapids Master Plan
RMC = Richland Municipal Code

II. Procedures

A. Establishment of Design Review Committee (DRC)

1. Purpose. The Design Review Committee will be responsible for reviewing all proposed development and redevelopment within the HRMP for compliance with these Development Standards, which may include site inspection(s). The DRC may also choose to lessen or enhance certain standards on a case-by-case basis, depending on circumstances. The DRC will not issue development permits of any kind.

2. Limitations. Approval from the DRC does not constitute project entitlement. The DRC is an initial review body that determines if a project meets these Development Standards. The DRC has no authority to issue development permits of any kind. All proposed developments and redevelopments within the HRMP shall require review and approval by the City of Richland and other agencies as applicable. All permits authorizing development must be obtained from the City and other agencies as applicable prior to construction.

3. Timing. The City shall establish the DRC coincident with the adoption of the Horn Rapids Master Plan.

4. Membership. The DRC will be comprised of the Economic Director of the City of Richland or designee who have sufficient experience to review site planning; landscape design; stormwater management; and economic development. The DRC may also choose to include a design professional, under contract with the City.
5. Bylaws. The City shall adopt Bylaws for the DRC to further govern such items as its responsibilities, membership, and enforceability.

B. Application for DRC Review

1. Submittal Timing. All proposed projects within the HRMP must undergo review by and receive written approval from the DRC prior to a development application being submitted to the City of Richland or other applicable agency.

2. Minimum Submittal Requirements. The following items shall be submitted to the Economic Development Director or his/her designee, who will then forward the items to the DRC. The DRC retains the right to request additional information as it deems necessary.
   a. Site plan to include:
      i. Site size, dimensions, and north orientation.

ii. Location of all existing and proposed improvements, including (but not limited to) buildings, parking and circulation areas, driveways, sidewalks, setbacks, easements, trash enclosures, signs, stormwater facilities, and outdoor lighting. Existing conditions may be shown on a separate plan if preferred.

b. Landscape plan to include:
   i. Proposed landscape plantings, including size at planting and typical spacing.
   ii. Any proposed irrigation system.
c. Lighting plan showing location and type(s) of proposed lighting.
d. Architectural drawings, including floor plans, rendered elevations, and building materials and colors and pallets.
e. Details of features such as trash enclosures, fences, signs, outdoor lighting, and LID stormwater control measures.
f. A narrative explaining any special circumstances (if applicable).

3. Review Timelines. The DRC shall review and respond to the applicant within 15 calendar days of submittal. The DRC may approve the project, request additional information, or deny the project. If additional information is requested, the DRC shall review and respond to the additional information within 10 calendar days of submittal.

4. Appeals. All petitions are subject to the applicable provisions within the RMC.

C. Variances and Deviations

1. Generally. The DRC has discretion to grant variances and deviations to these Development Standards after review of a variance request. The DRC cannot grant variances to the requirements of the City of Richland or other applicable agencies.

2. Submittal Requirements. In addition to the submittal requirements listed in section II.B.2, variance and deviation requests shall include a written narrative explaining the reason the variance is necessary. Plans or exhibits may also be necessary, depending upon the nature of the request.

3. Approval Criteria. The DRC may approve a variance request if the applicant shows that the proposed standard provides an equivalent or greater benefit than the adopted standard, and that the overall project will still meet the Purpose Statement listed at section I.A of these Development Standards.

4. Review. The DRC shall review variances in the same timeframes as listed in section II.B.3. The DRC may approve, deny, or request additional information regarding a variance request.

D. Enforcement of Standards

1. The DRC, at its option, may treat any failure to comply with these Standards as a default, or in the alternative, may proceed as follows:

If, within 30 days of written notice to the tenant, tenant has not begun to repair or correct the deficiencies stated in the notice, the DRC may enter into a contract for the repair or correction of such deficiencies and the tenant shall reimburse the DRC for the costs of such repairs or corrections, plus 10% for the DRC's administrative expenses. Failure to pay such amounts within 10 days of invoice shall be deemed a default and subject to interest at the prime rate. The DRC reserves the right for itself or designees to enter upon the premises for the purpose of inspecting, repairing or correcting deficiencies.

III. Uses and Dimensions

A. Uses

1. The HRMP area is zoned for heavy industrial and business commercial uses. The current zoning of the property is M-2 Heavy Manufacturing, I-M Medium Industrial, and C-3 General Business. All proposed uses within the HRMP shall be either permitted, conditional, or prohibited as specified in the RMC Chapters 23.22 and 23.26.

B. Lot Requirements

1. Minimum lot area, minimum lot frontage, maximum lot coverage, yard requirements, and maximum height shall be as set forth in RMC as specified in the underlying zoning code.

C. City Codes

1. Development standards contained herein apply to all development within the HRMP area in addition to, not instead of, the design standards and specifications contained in the RMC.

IV. Development Standards

A. Access and Circulation

1. Applicability. This section shall apply to all new development and all redevelopment, including building and parking lot expansions, within the HRMP. Redevelopment is defined as the addition or replacement of impervious surfaces (including buildings) totaling 2,000 square feet or more on a site with 35% or more existing impervious coverage.

2. Vehicle Access Standards.
   a. General Policy. Vehicle access shall be provided from abutting rights-of-way and/or private roadways to each lot within the HRMP.
   b. Joint Access.
      i. Joint Access. Tenants may design and utilize joint accesses, where feasible, for adjacent sites within the HRMP in order to minimize the total number of driveways.

ii. DRC Review. The DRC shall review proposed joint accesses between parcels. The DRC will recommend approval of proposed joint access. iii. Reciprocal Access Agreement. The applicant shall submit to the DRC and the City of Richland a reciprocal access agreement or other legal covenant running with the land to formalize the joint access prior to commencement of construction. The agreement must be signed by all affected property owners or tenants, shall be notarized, and shall be recorded with the County Auditor prior to construction.

3. Rail.
   a. Intent. The City recognizes that potential tenants may desire access to rail for movement of freight and manufactured products. Therefore, it is the City's intent to provide rail access in the HRMP as feasible and to minimize road crossings.
   b. Right-of Way/Easements. The City shall designate and set aside right-of-way or easements for future rail lines and rail access as indicated in within the HRMP.
   c. Location. Areas for loading and unloading of rail cars shall be in the rear of lots, except where the only access to a rail line is in a location other than the rear of the lot.

B. Parking and Loading

1. Applicability. This section shall apply to all new development and all redevelopment within the HRMP. Developments shall provide at least the minimum number of required off-street parking stalls as required by the RMC, at all times. Any parking variances or exceptions above and beyond those required by the RMC must also be reviewed and approved by the DRC.

2. Parking Lot Design & Location.
   a. Location. Parking shall be provided on the same lot as the use, except when a shared parking agreement is in place.
   b. Exception for Shared Parking. Parking may be permitted as part of a shared parking lot with an adjacent property, subject to DRC review and city approval. In such cases, a shared parking agreement signed by all involved property owners and/or tenants shall be submitted to the DRC and the City of Richland. The agreement shall be notarized and recorded with the County Auditor's office prior to construction. A reciprocal access agreement may also be required.
   c. Surface Material. In order to enhance the aesthetic characteristics of development within the HRMP, all off-street parking and maneuvering areas are required to be comprised of an all-weather hard surface such as asphalt or concrete. Pervious pavement and pervious pavers are allowed. The DRC may permit other materials to be used on a case-by-case basis. Additionally, the DRC will allow the front 2' of parking stalls to be landscaped with groundcover plants, so long as the vehicle is prevented from overhanging into a required yard by a curb or wheel stop.

5. Required Loading.
   a. Commercial, industrial, public utilities, and other similar uses as determined by the DRC shall provide loading berths as follows:

Gross Floor Area (square feet)	Number of Required Loading Berths
Less than 5,000 sf	0
5,000 to 29,999 sf	1
30,000 to 99,999 sf	2
100,000+ sf	3

   b. Office buildings, public buildings, schools, and other similar uses as determined by the DRC shall provide loading berths as follows:

Gross Floor Area (square feet)	Number of Required Loading Berths
Less than 30,000 sf	0
30,000 to 99,999 sf	1
100,000+ sf	2

6. Loading Dimensions. Loading berths within the HRMP are required to be at least 12' wide, 35' long, and have a minimum vertical clearance of 14'.

7. Loading Area Surfacing. All loading berths and adjacent vehicle maneuvering areas are required to be comprised of an all-weather hard surface such as asphalt or concrete. Pervious pavement and pervious pavers are encouraged. The DRC may permit other materials to be used on a case-by-case basis.

C. Solid Waste Storage

1. Applicability. All buildings and uses within the HRMP are required to set aside areas for the collection and storage of solid waste.

2. Amount of Storage Required.
   a. Office, Industrial, and Institutional Buildings. Office, industrial and institutional buildings and similar uses as determined by the DRC shall provide a minimum storage area of 10 square feet plus 4 square feet per 1,000 square feet of gross floor area or fraction thereof. For example, a 10,000 square foot building would require 10 square feet plus 40 square feet (4 square feet per 1,000 square feet of floor area), for a total of 50 square feet for solid waste storage containers.
   b. Commercial Buildings. Commercial buildings and similar uses as determined by the DRC shall provide a minimum storage area of 10 square feet plus 10 square feet per 1,000 square feet of gross floor area or fraction thereof. For example, a 10,000 square foot building would require 10 square feet plus 100 square feet (10 square feet per 1,000 square feet of floor area), for a total of 110 square feet for solid waste storage containers.

3. Solid Waste Storage Design & Location.
   a. Design.
      i. Receptacle Size. The applicant shall contact the City of Richland Solid Waste Division for information regarding the dimensions of the receptacles, in order to best design the solid waste storage area to accommodate those receptacles and to provide adequate access to those receptacles.
      ii. Screening Materials. Applicants are encouraged to use materials that are harmonious with the building materials of the primary use for screening the solid waste storage area. Solid waste screening must be at least 70% opaque where visible from a right-of-way or abutting property. Examples of acceptable materials include block walls, masonry walls, wood or metal fences. Chain link fences are permitted so long as they include slats or are screened with landscaping as described in section III.C.3.a.iv. Gates are acceptable for screening so long as they are at least 70% opaque. Solid waste screening will be reviewed by the DRC.
      iii. Shared Use Storage Areas. The DRC must review and approve the use of a shared solid waste storage area for multiple uses. In such cases, the applicable screening standards must still be met, except that the storage area does not need to be screened from the buildings that share its use.
      iv. Landscape Screening. When chain link fences without slats are used to enclose a solid waste storage area, a minimum 6' high landscape screen (size at planting) must be provided around the outside of the fence, except for the side from which the storage area is accessed. Landscape screening of solid waste storage areas shall consist of evergreen plantings, such as arborvitae, to be approved by the DRC.
   b. Location. Solid waste storage requirements can be met with one or more locations, including both interior and exterior areas, subject to review by the DRC.

D. Outdoor Storage

1. Requirements. Outdoor storage areas may be located in the rear and side yards, but shall not extend into landscape setback areas. In no even shall outdoor storage occur within 35 feet of the front property line.

2. Fencing. Outdoor storage areas may be fenced. All proposed fencing in the HRMP shall be reviewed by the DRC.

3. Screening and Buffering. Outdoor storage areas shall be screened from adjacent properties, with a partially site obscuring screen such as a slatted chain link fence or equivalent landscape screen. The screening shall be a minimum 6' in height.

E. Streets and Frontages

1. Street Standards.
   a. Industrial Street Design. In general, new public streets within the Horn Rapids Industrial Park as designated in the Horn Rapids Master Plan shall be designed and constructed per Figure 8 below. All applicable street improvements along a project's frontage shall be completed prior to occupancy of the proposed building. Where a sidewalk will be located on only one side of the street, the DRC shall determine on which side the sidewalk shall be placed.
   b. Business Center Street Design. In general, new public streets within the Horn Rapids Business Center as designated in the Horn Rapids Master plan shall be designed and constructed per Figure 9 below. All applicable street improvements along a project's frontage shall be completed prior to occupancy of the proposed building.
   c. Alleys. All proposed alleys within the Horn Rapids Business Center shall be constructed per Figure 10 below. The DRC will determine when access from an alleyway is appropriate.

2. Street Standards

Figure 4: Business Center Street Section

Figure 5: Alley Section

3. Street Lighting.
   a. General Provisions. Street lights shall be required along all streets within the HRMP, whether public or private. Street light design and location shall be to City of Richland Standards. All street lights shall be shielded to prevent undue light pollution. Acorn style lights are not allowed. Unless otherwise approved by the DRC, cobra head style street lights shall be used.

F.Signs

1. Applicability. Signs are an important element contributing to the identity of the HRMP and are intended to add to the aesthetic appeal of the area. The use of signage shall be coordinated with landscape and building elements and shall complement the overall design of the project. Consistent colors materials and typography for all signs will contribute to the visual quality of the HRMP. This section shall apply to all new signs proposed within the HRMP. Approvals from the DRC and the City of Richland are required prior to installation of new signage.

2. Permitted Signs. Signs within the HRMP shall be governed by the provisions of RMC. All signs will be professionally manufactured out of durable materials. No more than one sign per street frontage shall be permitted, unless specifically authorized under RMC. All signs will be reviewed by the DRC.

4. Prohibited Signs. Flashing and rotating signs: billboards; roof signs; temporary signs, including but not limited to banners, reader boards, and A-frames; signs placed on fences; signs painted on exterior surfaces of any building and vehicles used as signs are not permitted.

3. Location and Design Standards. All signs shall be integrated with the architectural and landscape design of the HRMP and shall be in scale with their surroundings. Sign design and location shall be governed by the provisions of the RMC.

G. Stormwater Control

All new development and redevelopment within the HRMP will be required to provide stormwater control in accordance with the applicable provisions of the RMC.

H. Architectural

1. Applicability. The provisions of this section shall apply to all new structures (as defined by the Richland Municipal Code) and modifications to existing structures within the HRMO. Architectural plans shall be submitted to the DRC for review and approval.

2. Architectural Style.
   a. Contemporary Styles. The use of contemporary architectural styles is strongly encouraged. . Pole buildings are not allowed in the HRMP.
   b. Materials. Buildings can be constructed of concrete tilt up panels, brick, natural stone, or wood. Metal buildings are allowed in general. However, due to the need to control the aesthetics of the HRMP from the access roads and trails, metal buildings visible from these areas must include a higher standard of materials and architectural design. The DRC will review building design and retain the right to deny construction of a metal building in those locations if the visual impact is deemed unacceptable.

3. Building Exteriors.
   a. Materials, Colors, and Details. High quality building materials of a permanent low-maintenance type shall be used on all exterior walls of a building. Design and color shall be used consistently throughout each site. The use of two or more exterior colors is strongly encouraged to enhance the building. All exterior colors and materials shall enhance the visual quality of the HRMP and shall be approved by the DRCb. Articulation/Relief. The use of such features as parapets, canopies, and fascias is an option and is encouraged to break up large, uniform wall surfaces. Such features shall be in proportion to wall height and building mass.
   c. Metal-Clad Buildings. Metal-clad buildings are allowed in general. Metal buildings will be reviewed by the DRC to ensure that high structural and aesthetic standards are maintained, especially highly visible building sites.

4. Use of Solar Panels. The installation of solar panels is permitted as long as they are not highly visible or cause glare from roads, trails, and adjacent properties. Solar panel usage can provide "off the grid" energy and reduce the visual scale of the rooftop. The installation of solar panels may also be an effective means to screen rooftop equipment.

I. Site Landscaping

1. Applicability. In order to enhance the aesthetics within the HRMP, landscaping shall be required for all new development and redevelopment. Development and redevelopment proposals shall comply with the standards of this section.
2. Screening and Buffering. All landscaping, screening and buffering shall comply with the provisions of the RMC. The DRC may impose additional landscape, buffer or screening standards, to areas adjacent to the wetland or park areas, to assure compatibility between uses. Recommendations will be provided by the DRC on a case by case basis.
3. Survival. Appropriate measures shall be taken, e.g., installations of watering systems, to assure landscaping success. If plantings fail to survive, it is the responsibility of the property owner to replace them.

J. Fencing

1. Perimeter Fencing. To enhance the visual appeal of the HRMP from off-site properties, fencing along the perimeter boundaries of the HRMP shall be of a consistent type, height, and material(s) as designated by the DRC. All proposed fencing in the HRMP shall be reviewed by the DRC.

2. Internal Fencing.
   a. Requirements. Fencing is not required between properties internal to the HRMP. However, where fencing between properties is proposed, the fencing shall at a minimum be made of chain link and shall be 6' in height above finished grade.
   b. Additional Height or Security. If additional fence height or security measures (such as lights or barbed wire) are desired, applicants may request approval for such measures from the DRC and the City of Richland.
   c. Solid Fences. The DRC may approve the use of solid fences (100% opaque) in lieu of landscape screening in side and rear yards. When such fences are approved, the interior yards must still be planted with groundcover plants or turf. No fence shall be located in the front yard.

K. Site Lighting

1. Applicability. All new development and redevelopment within the HRMP shall include appropriate lighting for parking and pedestrian circulation areas, at a minimum. Tenants may also choose to light outdoor work and storage areas, subject to DRC approval.

2. General Provisions. Site lighting design and location shall be to City of Richland Standards. All lighting shall be shielded to prevent undue light pollution. Acorn style lights are not allowed.

3. Timed Lighting. In order to limit light pollution, the City encourages tenants to install external lights that are timed to shut off after normal working hours, so long as safety is not impeded.

Appendix C - Cost Estimate

Horn Rapids Conceptual Master Plan

1.00		**Industrial Roadway Section**			
0.72	TN	Furnish and Install HMA Class PG 64-28 (3" Thick)	$ 76.00	$	55
0.45	TN	Furnish and Install Crushed Surfacing Top Course (3" Thick)	$ 16.50	$	7
0.90	TN	Furnish and Install Crushed Surfacing Base Course (6" Thick)	$ 16.50	$	15
66.00	SF	Subgrade Prep	$ 0.20	$	13
2.00	SF	Furnish and Install Crushed Surfacing Top Course Shoulder (3" Thick) ($16.50/TO	$ 0.21	$	0
1.00	LF	Striping	$ 0.60	$	1
1.00	LF	Power	$ 60.00	$	60
2.00	LF	Stormwater Swale (Includes Earthwork, Seeding, Placement, Etc)	$ 4.25	$	9
1.00	LS	Street Lights (Every 300')	$ 16.67	$	17
1.00	LF	Fiber	$ 15.00	$	15
1.00	LF	Other Dry Utilities	$ 30.00	$	30
0.12	TN	Trail-Furnish and Install HMA Class PG 64-28 (2" Thick)	$ 85.00	$	10
0.20	TN	Trail-Furnish and Install Crushed Surfacing Top Course (4" Thick)	$ 20.00	$	4
9.44	CY	Earthwork (3' Depth Over Full ROW Width)	$ 6.00	$	57
				$	293 per LF

1.00		**Business Center Roadway Section**			
0.65	TN	Furnish and Install HMA Class PG 64-28 (3" Thick)	$ 76.00	$	49
0.45	TN	Furnish and Install Crushed Surfacing Top Course (3" Thick)	$ 16.50	$	7
0.90	TN	Furnish and Install Crushed Surfacing Base Course (6" Thick)	$ 16.50	$	15
66.00	SF	Subgrade Prep	$ 0.20	$	13
2.00	LF	Furnish and Install Concrete Curb and Gutter	$ 10.00	$	20
6.00	SF	6' Wide (4" conc.) Sidwalk w/base	$ 6.00	$	36
1.00	LF	Striping	$ 0.60	$	1
1.00	LF	Power	$ 60.00	$	60
0.00	LF	Fiber	$ 15.00	$	-
2.00	LF	Stormwater Swale (Includes Earthwork, Seeding, Placement, Etc)	$ 4.25	$	9
1.00	LS	Street Lights (Every 300')	$ 16.67	$	17
1.00	LF	Other Dry Utilities	$ 30.00	$	30
9.44	CY	Earthwork (3' Depth Over Full ROW Width)	$ 6.00	$	57
				$	314 per LF

1.00		**Alley Section**			
0.65	TN	Furnish and Install HMA Class PG 64-28 (3" Thick)	$ 76.00	$	49
0.45	SF	Furnish and Install Crushed Surfacing Top Course (3" Thick)	$ 16.50	$	7
0.90	SF	Furnish and Install Crushed Surfacing Base Course (6" Thick)	$ 16.50	$	15
43.00	SF	Subgrade Prep	$ 0.20	$	9
2.00	LF	Furnish and Install Concrete Curb and Gutter	$ 10.00	$	20
1.00	LF	Power	$ 60.00	$	60
2.00	LF	Stormwater Swale (Includes Earthwork, Seeding, Placement, Etc)	$ 4.25	$	9
9.44	CY	Earthwork (3' Depth Over Full ROW Width)	$ 6.00	$	57
				$	169 per LF

Business Center Phase 1 A

	Unit	Description of Work	Unit Price	
		Administration		
1	LS	Equipment Mobilization (5%)	$ 179,394.37	$ 179,394
1	LS	Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	$ 71,757.75	$ 71,758
1	LS	Construction Bonds and Permits (1%)	$ 35,878.87	$ 35,879
				$ 287,031
		Roads		
7,033	LF	Business Center Roadway Section	$ 314.00	$ 2,208,362
3,469	LF	Alley Section	$ 169.00	$ 586,261
				$ 2,794,623
		Non-Road Work		
92	AC	Misc Site Work (Includes Utility Stubs and Basic Cleanup for Sale as Needed)	$ 2,000.00	$ 184,120
				$ 184,120
		Open Space		
8.7	AC	Open Space	$ 1,000.00	$ 8,747
25.8	AC	Open Space (240 Trail Alignment)	$ 1,000.00	$ 25,764
				$ 34,510
2,162	LF	**Trail**		
260	TN	Furnish and Install HMA Class PG 64-28 (2" Thick)	$ 85.00	$ 22,120
432	SF	Furnish and Install Crushed Surfacing Top Course (4" Thick)	$ 20.00	$ 8,648
30,268	SF	Subgrade Prep	$ 0.20	$ 6,054
8	EA	Bollards	$ 800.00	$ 6,400
8,648	SF	Restoration along Trail in Open Space	$ 0.35	$ 3,027
				$ 46,249
		Utilities		
		Utility Misc		
10	EA	Pothole Existing Utilities	$ 200.00	$ 2,000
		Sewer		
360	LF	24" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 45.00	$ 16,200
4,846	LF	8" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 17.50	$ 84,805
13	EA	48" San. Manholes (Approx 400' Spacing)	$ 2,350.00	$ 30,550
2	EA	Connection to Ex. Main	$ 1,500.00	$ 3,000
		Water		
4	EA	Hot-tap Existing	$ 2,500.00	$ 10,000
3,177	LF	12" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 40.00	$ 127,080
2,657	LF	8" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 66,425
		Irrigation		
1	EA	Tap Existing Irrigation	$ 1,500.00	$ 1,500
7,473	LF	10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 186,825
				$ 528,385

(1) SUBTOTAL CONSTRUCTION	$	**3,587,887.31**
(2) Administration		**287,030.98**
(3) Planning Level Contingency (25%)	$	**968,729.57**
(4) SUBTOTAL CONSTRUCTION (1+2+3)	$	**4,843,647.87**
(5) Contractor General Overhead and Profit (10%)	$	**484,364.79**
(6) Tax (8.3% of (4+5))	$	**442,225.05**
(7) Construction Total (4+5+6)	$	**5,770,237.70**

PROFESSIONAL SERVICES				
1	LS	Engineering	$ 774,984	$ 774,984
1	LS	Environmental Permitting	$ 251,152	$ 251,152
1	LS	Construction Staking	$ 53,818	$ 53,818
1	LS	Construction Administration	$ 107,637	$ 107,637
SUBTOTAL				$ 1,187,591

COST PER ACRE		
Total (6 + Professional Services)	$	6,957
Developable Acres Served		92.01
Cost per Developable Acre	$	75,620
Cost per Developable Square Foot	$	1.74

Business Center Phase 1 B

	Unit	Description of Work	Unit Price	
		Administration		
1	LS	Equipment Mobilization (5%)	$ 225,442.47	$ 225,442
1	LS	Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	$ 90,176.99	$ 90,177
1	LS	Construction Bonds and Permits (1%)	$ 45,088.49	$ 45,088
				$ 360,708
		Roads		
7,743	LF	Business Center Roadway - Logston Boulevard	$ 314.00	$ 2,431,302
				$ 2,431,302
		Open Space		
11.1	AC	Open Space	$ 1,000.00	$ 11,057
				$ 11,057
5,890	LF	**Trail**		
709	TN	Furnish and Install HMA Class PG 64-28 (2" Thick)	$ 85.00	$ 60,263
1,178	SF	Furnish and Install Crushed Surfacing Top Course (4" Thick)	$ 20.00	$ 23,560
82,460	SF	Subgrade Prep	$ 0.20	$ 16,492
8	EA	Bollards	$ 800.00	$ 6,400
23,560	SF	Restoration along Trail in Open Space	$ 0.35	$ 8,246
				$ 114,961
		Mitigation		
143,005	SF	Mitigation for Logston Extension	$ 5.00	$ 715,025
				$ 715,025
		Utilities		
		Sewer		
1	LS	Decomissioning Pump Station	$ 10,000.00	$ 10,000
8,893	LF	24" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 45.00	$ 400,185
3,829	LF	12" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 21.00	$ 80,409
32	EA	48" San. Manholes (Approx 400' Spacing)	$ 2,350.00	$ 75,200
2	EA	Connection to Ex. Main	$ 1,500.00	$ 3,000
1	EA	60" Std. MH @ Ex. Main	$ 5,000.00	$ 5,000
		Water		
3	EA	Hot-tap Existing	$ 2,500.00	$ 7,500
11,544	LF	12" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 40.00	$ 461,760
		Irrigation		
1	EA	Tap Existing Irrigation	$ 1,500.00	$ 1,500
7,678	LF	10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 191,950
				$ 1,236,504

(1) SUBTOTAL CONSTRUCTION	$ 4,508,849.47
(2) Administration	360,707.96
(3) Planning Level Contingency (25%)	$ 1,217,389.36
(4) SUBTOTAL CONSTRUCTION (1+2+3)	$ 6,086,946.79
(5) Contractor General Overhead and Profit (10%)	$ 608,694.68
(6) Tax (8.3% of (4+5))	$ 555,738.24
(7) Construction Total (4+5+6)	$ 7,251,379.71

PROFESSIONAL SERVICES					
1	LS	Engineering	$ 973,911	$	973,911
1	LS	Environmental Permitting	$ 315,619	$	315,619
1	LS	Construction Staking	$ 67,633	$	
1	LS	Construction Administration	$ 135,265	$	
SUBTOTAL				$	1,492,429

Total (6 + Professional Services)	$ 8,743,809

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Business Center Phase 2

Unit		Description of Work	Unit Price		
		Administration			
1	LS	Equipment Mobilization (5%)	$ 108,515.22	$	108,515
1	LS	Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	$ 43,406.09	$	43,406
1	LS	Construction Bonds and Permits (1%)	$ 21,703.04	$	21,703
				$	173,624
		Roads			
5,313	LF	Industrial Roadway - University Way, Lowe Blvd	$ 293.00	$	1,556,709
				$	1,556,709
		Non-Road Work			
55	AC	Misc Site Work (Includes Utility Stubs and Basic Cleanup for Sale as Needed)	$ 2,000.00	$	110,800
				$	110,800
		Open Space			
25.8	AC	Open Space (240 Trail Alignment)	$ 1,000.00	$	25,764
				$	25,764
416	LF	**Trail**			
50	TN	Furnish and Install HMA Class PG 64-28 (2" Thick)	$ 76.00	$	3,806
83	SF	Furnish and Install Crushed Surfacing Top Course (4" Thick)	$ 20.00	$	1,664
5,824	SF	Subgrade Prep	$ 0.20	$	1,165
4	EA	Bollards	$ 800.00	$	3,200
1,664	SF	Restoration along Trail in Open Space	$ 0.35	$	582
				$	10,417
		Utilities			
		Utility Misc			
4	EA	Pothole Existing Utilities	$ 200.00	$	800
		Sewer			
2,707	LF	18" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 35.00	$	94,745
4,985	LF	12" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 21.00	$	104,685
20	EA	48" San. Manholes (Approx 400' Spacing)	$ 2,350.00	$	47,000
2	EA	Connection to Ex. Main	$ 1,500.00	$	3,000
		Water			
2	EA	Hot-tap Existing	$ 2,500.00	$	5,000
3,224	LF	12" Ductile Iron Water Main (Includes 2-16" x 12" Tees, all valves, TB, etc.)	$ 40.00	$	128,960
		Irrigation			
2	EA	Tap Existing Irrigation	$ 1,500.00	$	3,000
3,177	LF	10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$	79,425
				$	466,615

(1) SUBTOTAL CONSTRUCTION	$ **2,170,304.35**
(2) Administration	**173,624.35**
(3) Planning Level Contingency (25%)	$ **585,982.17**
(4) SUBTOTAL CONSTRUCTION (1+2+3)	$ **2,929,910.87**
(5) Contractor General Overhead and Profit (10%)	$ **292,991.09**
(6) Tax (8.3% of (4+5))	$ **267,500.86**
(7) Construction Total (4+5+6)	$ **3,490,402.82**

PROFESSIONAL SERVICES					
1	LS	Engineering	$ 468,786	$	468,786
1	LS	Environmental Permitting	$ 151,921	$	151,921
1	LS	Construction Staking	$ 32,555	$	32,555
1	LS	Construction Administration	$ 65,109	$	65,109
SUBTOTAL				$	**718,371**

COST PER ACRE	
Total (6 + Professional Services)	$ 4,[illegible]
Developable Acres Served	0-000000355
Cost per Developable Acre	$ 84,058
Cost per Developable Square Foot	$ 1.93

Business Center Phase 3

	Unit	Description of Work	Unit Price	
		Administration		
1	LS	Equipment Mobilization (5%)	$ 160,983.22	$ 160,983
1	LS	Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	$ 64,393.29	$ 64,393
1	LS	Construction Bonds and Permits (1%)	$ 32,196.64	$ 32,197
				$ 257,573
		Roads		
1,715	LF	Industrial Roadway - University Way	$ 293.00	$ 502,495
6,635	LF	Business Center Roadway Section	$ 314.00	$ 2,083,390
				$ 2,585,885
		Non-Road Work		
57	AC	Misc Site Work (Includes Utility Stubs and Basic Cleanup for Sale as Needed)	$ 2,000.00	$ 114,700
				$ 114,700
		Open Space		
17.3	AC	Open Space (240 Trail Alignment)	$ 1,000.00	$ 17,299
				$ 17,299
		Utilities		
		Utility Misc		
5	EA	Pothole Existing Utilities	$ 200.00	$ 1,000
		Sewer		
4,998	LF	8" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 17.50	$ 87,465
13	EA	48" San. Manholes (Approx 400' Spacing)	$ 2,350.00	$ 30,550
2	EA	Connection to Ex. Main	$ 1,500.00	$ 3,000
		Water		
3	EA	Hot-tap Existing	$ 2,500.00	$ 7,500
4,921	LF	12" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 40.00	$ 196,840
		Irrigation		
1	EA	Tap Existing Irrigation	$ 1,500.00	$ 1,500
6,957	LF	10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 173,925
				$ 501,780

(1) SUBTOTAL CONSTRUCTION	**$ 3,219,664.33**
(2) Administration	**257,573.15**
(3) Planning Level Contingency (25%)	**$ 869,309.37**
(4) SUBTOTAL CONSTRUCTION (1+2+3)	**$ 4,346,546.85**
(5) Contractor General Overhead and Profit (10%)	**$ 434,654.69**
(6) Tax (8.3% of (4+5))	**$ 396,839.73**
(7) Construction Total (4+5+6)	**$ 5,178,041.26**

PROFESSIONAL SERVICES				
1	LS	Engineering	695,447.50	$ 695,447
1	LS	Environmental Permitting	225,376.50	$ 225,377
1	LS	Construction Staking	48,294.97	$ 48,295
1	LS	Construction Administration	96,589.93	$ 96,590
SUBTOTAL				**1,065,708.89**

COST PER ACRE	
Total (6 + Professional Services)	**$ 6,243,750**
Developable Acres Served	
Cost per Developable Acre	$ 0-000000356
Cost per Developable Square Foot	$ 2.50

Industrial

Unit		Description of Work	Unit Price	
		Administration		
1	LS	Equipment Mobilization (5%)	$ 1,050,861.00	$ 1,050,861
1	LS	Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	$ 420,345.00	$ 420,345
1	LS	Construction Bonds and Permits (1%)	$ 210,173.00	$ 210,173
				$ 1,681,379
		Roads		
19,467	LF	Industrial Roadway	$ 293.00	$ 5,703,831
				$ 5,703,831
		Open Space		
49	AC	Open Space	$ 1,000.00	$ 49,220
				$ 49,220
		Railroad		
15,228	LF	New Track (Southeast Industrial Loop)	$ 150.00	$ 2,284,200
2,513	LF	New Track (Southeast Industrial Spur)	$ 150.00	$ 376,950
16,461	LF	New Track (Northwest Industrial Loop and Extension to Horn Rapids)	$ 150.00	$ 2,469,150
3	EA	At-Grade Crossing (Includes Concrete Planks, Rey-Laying the Tracks, Control Arms, Bungalow, Etc)	$ 400,000.00	$ 1,200,000
				$ 6,330,300
		Utilities		
		Utility Misc		
10	EA	Pothole Existing Utilities	$ 200.00	$ 2,000
		Sewer		
9,286	LF	12" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 21.00	$ 195,006
5,979	LF	8" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 17.50	$ 104,633
39	EA	48" San. Manholes (Approx 400' Spacing)	$ 2,350.00	$ 91,650
6	EA	Connection to Ex. Main	$ 1,500.00	$ 9,000
		Water		
4	EA	Hot-tap Existing	$ 2,500.00	$ 10,000
12,495	LF	12" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 40.00	$ 499,800
1,119	LF	8" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 27,975
		Irrigation		
4	EA	Tap Existing Irrigation	$ 1,500.00	$ 6,000
6,312	LF	10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 157,800
		Power Transmission		
2	EA	New Substation	$ 3,750,000.00	$ 7,500,000
7,000	LF	OH Transmission	$ 40.00	$ 280,000
2,500	LF	OH Distribution	$ 20.00	$ 50,000
				$ 8,933,864

(1) SUBTOTAL CONSTRUCTION	**$ 21,017,214.68**
(2) Administration	**1,681,379.00**
(3) Planning Level Contingency (25%)	**$ 5,674,648.42**
(4) SUBTOTAL CONSTRUCTION (1+2+3)	**$ 28,373,242.10**
(5) Contractor General Overhead and Profit (10%)	**$ 2,837,324.21**
(6) Tax (8.3% of (4+5))	**$ 2,590,477.00**
(7) Construction Total (3+4+5)	**$ 33,801,043.31**

PROFESSIONAL SERVICES				
1	LS	Engineering	4,539,718.74	$ 4,539,719
1	LS	Environmental Permitting	1,471,205.03	$ 1,471,205
1	LS	Construction Staking	315,258.22	$ 315,258
1	LS	Construction Administration	630,516.44	$ 630,516
SUBTOTAL				6,956,698.42

COST PER ACRE	
Total (6 + Professional Services)	**40,757,741.74**
Additional Total for Phase 1B Improvements	**8,743,760**
Total Cost of Improvements Allocated to Serve Industrial Lands	**49,501,501**
Developable Acres Served	938.56
Cost per Developable Acre	$ 52,742
Cost per Developable Square Foot	$ 1.21

Appendix D - Resolution No. 51-11

COPY

RESOLUTION NO. 51-11

A RESOLUTION of the City of Richland adopting the updated Horn Rapids Master Plan for the continued development of the Horn Rapids Industrial Park and Horn Rapids Business Center.

WHEREAS, on February 5, 1995 the Richland City Council adopted Resolution 8-95, approving the Horn Rapids Business Center Master Plan; and

WHEREAS, the Horn Rapids Business Center Master Plan neither reflects current market considerations nor does it provide for future development; and

WHEREAS, the proposed update of the Horn Rapids Master Plan was developed in consultation with city staff from Public Works, Energy Services, Planning, Economic Development and Parks and Recreation; and

WHEREAS, the proposed update of the Horn Rapids Master Plan was presented to the Richland Planning Commission at workshop on February 9, 2011 and March 9, 2011 where the plan was updated to indicate that the utilities along the Logston right-of-way would be realigned to minimize impacts to the wetlands while retaining a gravity fed sewer system; and

WHEREAS, the proposed update was presented to the Richland Planning Commission at their April 27, 2011 regular meeting where the Commission made a motion to recommend that Council adopt the Horn Rapids Master Plan; and

WHEREAS, the proposed update was presented to the Richland Economic Development Committee on March 28, 2011 and on May 16, 2011 where the Committee made a motion to recommend that Council adopt the Horn Rapids Master Plan; and

WHEREAS, the proposed update was presented to the Richland Parks and Recreation Commission at their April 14, 2011 meeting for comment; and

WHEREAS, the proposed update was presented to the Horn Rapids Home Owners Association Board of Directors on April 21, 2011, the presentation of which was advertised to the general membership of the Association and where at least 35 residents attended the meeting; and

WHEREAS, the proposed update has been available on the City's web site and open for comment for 90 days; and

WHEREAS, the proposed update to the Horn Rapids Master Plan provides a plan and guidelines for the future development of the Horn Rapids Industrial Park and the Horn Rapids Business Center given current market conditions.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Richland, Washington that the update to the Horn Rapids Master Plan is adopted and replaces the February 5, 1995 Master Plan in its entirety.

BE IT FURTHER RESOLVED that the Horn Rapids Master Plan provides a guide to developing the Horn Rapids Industrial Park and Horn Rapids Business Center, but actual development of this area will be subject to changing market conditions and other development requirements and will be modified from time to time with no further regulatory process other than that which may be required by law.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

ADOPTED by the City Council of the City of Richland, at a regular meeting on the 6th day of September, 2011.

JOHN FOX
Mayor

ATTEST:

MARCIA HOPKINS
City Clerk

APPROVED AS TO FORM:

THOMAS O. LAMPSON
City Attorney

Jeremy Eckert

From: Kevin Jeffers <Kmje@deainc.com>
Sent: Wednesday, November 13, 2013 10:34 PM
To: Hunter, Kathy (UTC)
Cc: Jeremy Eckert
Subject: RE: LOS for Steptoe and Columbia Center Boulevard

Kathy –

I have conferred with Spencer Montgomery and John Deskins. To answer your question, the Steptoe and Columbia Center Blvd. have LOS issues, as identified below:

Columbia Center Boulevard at Quinault intersection
Currently: Eastbound left-turn movement is LOS E; Overall LOS C.
By 2028: Eastbound left-turn movement will be LOS F; Overall LOS F

Steptoe at Gage Intersection
Currently: Southbound left-turn movement is LOS F; Overall LOS E
By 2028: Three out of four left-turn movements would be LOS F; Overall LOS E.

To address the LOS issues (in addition to achieving other LOS standards, such as emergency response times), the City's Comp Plan calls for the construction of the crossing that is the subject of this petition. The crossing is also included in the Benton Franklin COG Transportation Model. In other words, this petition is an act in comprehensive planning – the City has identified transportation-related issues and it is implementing its comprehensive plan to address those issues.

Kevin Jeffers
O: 253-250-0674
C: 360-280-5570
DEA x20674

From: Hunter, Kathy (UTC) [mailto:khunter@utc.wa.gov]
Sent: Wednesday, November 13, 2013 12:14 PM
To: Kevin Jeffers
Subject: LOS for Steptoe and Columbia Center Boulevard

Kevin,

Thanks for tracking down the LOS information for Steptoe and Columbia Center Boulevard. If possible, could I get the information via email. I may want to use this information when I testify and in order to do this, it needs to be written and subject to being shared with all parties.

Thanks for your help.

Kathy Hunter, Deputy Assistant Director, Transportation Safety
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250

Olympia, WA 98504-7250

Office Telephone: (360) 664-1257
Cell: (360) 701-1612
Fax: (360) 586-1150

Nov. 20, 2013

City of Kennewick v. Port of Benton, Tri-C & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad TR-130499

Washington Utilities and Transportation Commission
SIGN-IN SHEET (Kennewick)

Name (please print)	**Are you representing an organization?** **If so, please name the company or organization.** **If you are not on the mailing list for this filing, and would like to be, please provide your mailing address *and* e-mail address, if you have one.**	**Do you want to speak at th hearing?** **Please indicate Yes or No**
Brian Malley	Benton-Franklin COG	Yes
Laurie McCoy		NO
John Haste	Port of Benton	NO

0-000000363 1 2

000290

Washington Utilities and Transportation Commission
SIGN-IN SHEET (Kennewick)

City of Kennewick v. Port of Benton, Tri-C & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad TR-130499

0-000000364 2 2

000291

Name (please print)	**Are you representing an organization?** **If so, please name the company or organization.** **If you are not on the mailing list for this filing, and would like to be, please provide your mailing address *and* e-mail address, if you have one.**	**Do you want to speak at th hearing?** **Please indicate Yes or No**
Preston Ramsey	FBA Land Holdings pkramsey@msn.com	Yes
Kim Shugart	TRI-CITIES VISITOR + CONVENTION BUREAU	YES
Bill King	City of Richland	No

Tri-City & Olympia Railroad Company
2579 Stevens Drive
PO Box 1700
Richland, Washington, 99354
Telephone: (509) 371-8313, Ex. 307
Fax: (509) 582-4964

Paul J. Petit
General Counsel

December 19, 2013

STEVEN V. KING
Executive Director and Secretary
P.O. Box 40128
1300 S. Evergreen Park Drive SW
Olympia, Washington 98504-0128

RE *City of Kennewick v. Port of Benton, et al*
Docket # TR-130499

Post Hearing Brief of Respondent Tri-City & Olympia Railroad Co

Dear Mr. King:

I am enclosing the original and six copies (three hole punched) of Post Hearing Brief of Respondent Tri-City & Olympia Railroad Co.

If you have any questions please do not hesitate to contact me.

Sincerely,

Paul J. Petit
General Counsel

enc
CRP

Brandon L. Johnson
Minnick-Hayner, P.S.
P.O. Box 1757
Walla Walla, WA 99362
(509) 527-3500

Paul J. Petit
MT Bar No. 3051
General Counsel
Tri-City Railroad Company, LLC
d/b/a Tri-City & Olympia Railroad
P.O. Box 1700
Richland, WA 99352
(509) 727-6982

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK and CITY OF RICHLAND Petitioners vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD CO., BNSF RAILWAY and UNION PACIFIC RAILROAD Respondents.	DOCKET NO. TR-130499-P POST HEARING BRIEF OF RESPONDENT TRI-CITY & OLYMPIA RAILROAD CO.

TABLE OF CONTENTS

Respondent Tri-City & Olympia Railroad Co. ("TCRY") submits this Post Hearing Brief in opposition to the Petition by the Cities of Richland and Kennewick ("Cities") seeking an order from this Commission authorizing the construction of an at-grade crossing of the Port of Benton rail line at Center Parkway.

THE PENDING PETITION IS BARRED BY RES JUDICATA

The Cities previously sought to construct an at-grade crossing at the same Center Parkway location. TCRY opposed that Petition. After a full hearing before a Commission Administrative Law Judge, the Cities' Petition was denied. (Docket TR-040664, Order 04 /TR-050967, Order 02, Initial Order Denying Petition (Jan 26, 2007)) As noted in the Commission's Notice of Finality, no party petitioned for administrative review of the initial order and as a result, pursuant to RCW 80.01.060(3), the ALJ Initial Order became final on February 15, 2007. (Docket TR-040664/TR-050967, Notice of Finality (Jan 26, 2007)) No party pursued further review of the ALJ Order.

In *Lejeune v. Clallam County*, 64 Wash.App. 257, 264-265, 823 P.2d 1144 (1992) the Court held:

> Res judicata, modernly called claim preclusion ... applies to quasi-judicial decisions by administrative tribunals as well as to judicial decisions by courts. *State v. Dupard*, 93 Wash.2d 268, 274, 609 P.2d 961 (1980); *Miller v. St. Regis Paper Co.*, 60 Wash.2d 484, 485, 374 P.2d 675 (1962).

In *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wash.2d 22, 891 P.2d 29 (1995) the Court clarified the application of res judicata to administrative

adjudications. The *Hilltop* Court first reiterated the Washington res judicata standard quoting from *Rains v. State*, 100 Wash.2d 660, 663, 674 P.2d 165 (1983)

> Res judicata occurs when a prior judgment has a concurrence of identity in four respects with a subsequent action. There must be identity of (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made.

Hilltop at 35.

Here, there is no doubt that on its face the pending Petition involves the same subject matter (crossing at Center Parkway), cause of action (WUTC Petition) and persons, parties and qualities. Therefore, if the pending and prior Petitions were judicial proceedings, res judicata would bar the pending claim.

However, the *Hilltop* Court focused on the identity of subject matter and cause of action in quasi-judicial administrative proceedings and adopted the following rule: "Thus, we hold that a second application may be considered if there is a substantial change in circumstances or conditions relevant to the application or a substantial change in the application itself." *Hilltop* at 33.

Here, the Commission Staff testimony attempts to create such "substantial changes" by noting the difference in rail activities and the failure of the Cities to submit substantial evidence on public need for the crossing in the first proceeding. (Ex. KH-1 T. 27:5-28:16) That testimony identified the deficiencies in Cities' presentation in the prior proceeding: failure to articulate an acute public need and inability to describe the specific safety features to be installed. That testimony also

addressed the claimed "changed circumstances" noting that in the prior proceeding the crossing was proposed over four tracks rather than the two in the pending matter and that three railroads previously conducted switching operations at this location. The Staff rationale failed to consider the fact that one of the tracks over which the crossing is planned is a "passing track" essential to rail operations. (See, below)

TCRY respectfully submits that the deficiencies in the Cities evidence in the prior proceeding should not excuse it from application of the doctrine of res judicata. In *Hilltop,* (at 33-34) the applicant was allowed to avoid the res judicata bar by substantially altering the nature of the use it was proposing in the second application:

> The second application for the conditional use permit substituted a fundamentally different kind of structure, completely rerouted the access road to the site, significantly increased setbacks, and changed the number and kind of antennae. We hold these changes in both design and function in the second application together constitute "a substantial change in the application".

Here, the proposed crossing is fundamentally identical to that previously rejected. There has been no essential change to the proposed use. There was no evidence adduced that the reduction in the number of tracks had any significant impact on the safety of the newly proposed crossing. Instead, the Staff testimony attempts to distinguish the prior proceeding by noting that the Cities there failed to provide any evidence of the specific crossing plan, safety devices or acute public need.

The fundamental repose policy of res judicata would be significantly undermined if a party is allowed to bring successive quasi-judicial proceedings

pointing to its complete failure to adduce evidence in the prior case as a substantial change of circumstances.

For that reason, this Petition should be dismissed as barred by res judicata.

THE CITIES HAVE FAILED TO DEMONSTRATE THE REQUISITE PUBLIC NEED FOR THE PROPOSED CROSSING

RCW 81.53.020 requires that "All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, when practicable, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so."

Here, the Cities have failed to demonstrate either a public need for the proposed at-grade crossing or that a grade-separated crossing is not "practicable."

The Cities rely on claimed enhanced emergency response times to establish a public need for the crossing. However, the evidence adduced by the Cities fails to establish the lack of reasonable alternate access for public emergency services, (Ex. GAN-1T. 5:8-6:17) fails to show that the traffic volume changes identified as resulting from the proposed crossing will have a significant beneficial impact on the level of service (Ex. GAN-1T. 7:1-8:3) and fails to identify the effect of traffic queues resulting from trains (especially unit trains) moving through the crossing (Ex. GAN-1T. 8:4-11).

In addition, the Cities' evidence fails to demonstrate that construction of the proposed crossing would have any significant beneficial effect in completing the road grid network as it can only provide access to Tapteal Drive (Ex. GAN-1T. 9:22-10-10) and fails to demonstrate that the proposed crossing would improve current and future

road capacities by significant diversion of traffic volumes from the neighboring arterials – Columbia Center Boulevard and Steptoe Street. (Ex. GAN-1T. 10:17-11:10)

In addition, the testimony provided by emergency response witnesses is based on assumptions regarding traffic congestion on the proposed crossing as opposed to traffic congestion on the existing parallel roadways and alternative emergency response routes. (Ex. GAN-2T. 3:2-24) It also fails to address the fact that without the proposed crossing, both the Kennewick and Richland Fire Department response times fall within the "4 minutes 90 percent of the time" standard of the NFPA (Ex. GAN-2T. 4:2-20) fails to consider appropriate data in computing accident rates (Ex. GAN-2T. 3:22-4:7) and is based on unsupportable assumptions regarding lack of school bus routes over the proposed crossing. (Ex. GAN-2T. 5:8-14)

Finally, the evidence adduced by the Cities fails to analyze capacity issues on parallel roadways comparing delays on Center Parkway to those on parallel routes (Ex. GAN-2T. 6:4-6), gives no consideration to the likely substantial increase in rail traffic as affecting whether the route over the proposed crossing would provide reliable emergency access (Ex. GAN-2T. 6:7-10) and fails to document that the proposed crossing will reduce emergency response time for 90 percent of incidents. (Ex. GAN-2T. 6:10-11)

For these reasons, the Cities have failed to demonstrate any reasonable need for the subject crossing, let alone a need which would outweigh the potential risks inherent in an at-grade crossing.

THE PROPOSED CROSSING SHOULD NOT BE ALLOWED TO BLOCK OR CAUSE DISCONTINUANCE OF TCRY'S PASSING TRACK

In their Petition, the Cities sought authorization to construct an at-grade crossing traversing two active rail tracks at the Center Parkway location – a mainline track and a passing track. This trackage, belonging to the Port of Benton and leased to TCRY, is used by TCRY, the Union Pacific Railroad ("UPRR") and BNSF Railway Co. ("BNSF").

The design drawings submitted with the Petition demonstrated that the crossing sought to be constructed would have effectively blocked the passing track by center medians and rendered it unusable, thereby depriving the railroads of the only effective means for trains to pass each other on the track. (See, "Center Parkway At-Grade Crossing Design," Sheets 3 and 4 of 6, attached to Petition herein)

On September 25, 2013 in their Petitioners' Response to UTC Staff Requests Nos. 2-4, Cities advised Staff that their "preferred approach is to remove the siding track as part of the project, making the crossing over only one track." (Ex. KJ-13-X. 1:23-24) In support of that request, Cities have supplied only the following speculation wholly unsupported by any evidence:

> The use of the siding today is infrequent. The only practical use of the siding track is for long-term storage of rail cars not required by a shipper, or to store on-track equipment and rail cars used for track maintenance, or to hold railcars that are found to be defective by a train crew (aka bad-ordered) while en route. (Ex. KJ-13-X. 2:14-9)

The evidence at hearing contradicts this speculation by the Cities. As demonstrated by Ex. JD-27-X, the track which the Cities call a "siding" is in actuality a passing track, with switches to the east and west of the proposed crossing. Thus the

track is clearly not simply a "siding" but rather a track which was installed and is used for the specific purpose of allowing trains to pass each other. Without such passing capability, rail operations on the track would be significantly hindered. There was no evidence that any other passing track exists between on the Port of Benton railroad south of the TCRY yard.

In addition, the substance of the live testimony of Randolph V. Peterson demonstrates not only that this passing track is essential to railroad operations, but that its importance will increase with anticipated increase in both normal train and unit train (100+ cars) traffic in the future.

This anticipated traffic increase is born out by evidence of three factors. First, the City of Richland has sold to ConAgra Foods Lamb Weston a parcel of land for the purpose of constructing a substantial automated cold storage food warehouse which will be served by rail on the subject track resulting in a substantial increase in rail traffic. (Ex. JD-9-X) Second, the City of Richland has leased a land parcel to a developer for the purpose of constructing a 1.5 mile rail loop to be serviced by unit trains. Once operative, this facility will substantially increase the number of unit trains utilizing the Port of Benton track. (Ex. KJ-14-X) The presence of unit trains in addition to other train traffic on this rail will dramatically increase both the use of and need for the passing track at this location. Third, TCRY has documented the substantial anticipated increase in its own traffic. (Ex. RVP-3-X). When combined with the increased traffic described above, TCRY's own projected traffic increase mandates the need that the passing track remain in operation.

It is impossible to calculate the precise extent of this increase in rail traffic and change in the nature of rail traffic by increasing the number of mile-long unit trains which will run through the proposed crossing. However, the evidence clearly supports that conclusion that this increase and change will occur. (See, Ex. JD-37-X. Video of Tangent Rail presentation to Richland City Council re planned speed increase on the Port of Benton rail dated Nov. 5, 2013; Ex. JD-38-X, City of Richland presentation to Port of Benton re planned rail developments dated November 13, 2013; Ex. JD-39-X. Video – television news interview by Mr. Bill King, City of Richland, re new rail loop and live testimony of Mr. King regarding that interview to the effect that uses of the new rail loop will include container unit trains as well as grain trains)

The importance of the passing track to railroad operations at present and the increased importance of that track as traffic increases and more unit trains utilize the subject track is borne out by the testimony of Randolph V. Peterson. As Mr. Peterson noted, "that passing track is a very important part of our railroading" and in effect will become more important in the future.

In analyzing the proposed crossing, UTC Staff assumed that the passing track "would remain." (Ex. KH-1T. 24:19) Therefore, the Staff recommendation that the crossing be allowed, and its analysis of the factor supporting that conclusion, are based on assumption that the passing track "would remain." (Ex. KH-1. 8-28)

In Ex. KJ-13-X, the Cities contend that "the best outcome for this project" would removal of either the switch east of the proposed crossing or the entire passing

track. That is clearly not the outcome recommended by UTC Staff and an outcome which should not be ordered here.

Having clearly addressed this issue, the UTC Staff recommendation should be given full deference and, if the Petition is granted, the crossing should be constructed over both existing tracks.

Further, removing or shortening the passing track would significantly impair its ability to be used for its intended purpose, be beyond the powers of the Commission and result in a discontinuance of an existing railroad right of way which can only be effected by action of the Surface Transportation Board.

TCRY is a common carrier pursuant to Lease and Operation Exemption issued by the Surface Transportation Board ("STB") in June, 2000. (Ex. RVP-1T, 3:1-5) As a common carrier, TCRY is subject to the exclusive and plenary jurisdiction of the STB. (UPRR and BNSF, who operate on the same line, as Class I railroads are without question common carriers also subject to the same STB jurisdiction.)

As the Court noted in *Railroad Ventures, Inc. v. STB,* 299 F. 3d. 523, 529 (6th Cir. 2002), after the ICC ceased to exist, effective January 1, 1996, pursuant to the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. §§ 10101-16106 (1997), ("The Act") authority over abandonment of railroad lines passed to the STB as the STB is now "the federal agency over transportation by railroad." Thus, of the functions transferred "authority over abandonment proceedings was "transferred to the STB in the Department of Transportation." Id. At 529, quoting from *Consolidated Rail Corp. v. STB*, 93 F. 3d 793, 794 (D.C. Cir. 1996)

If a railroad line falls within its jurisdiction, the STB's authority over abandonment and discontinuance is both exclusive and plenary. Id. at 529, citing *Preseault v. ICC*, 484 U.S. 1, 8, 110 S. Ct. 914, 108 L. Ed. 2d 1 (1990) "A line owner may "'abandon any part of its railroad lines,' 49 U.S.C. § 10903(d)(1), but cannot do so without the permission of the STB." Id. at 531.

Because TCRY, BNSF and UPRR are all common carriers, discontinuance of a rail line, or a portion thereof, may be ordered only by the STB. See 49 U.S.C. § 10903(a)(1)(A), requiring authorization of the STB regarding either discontinuance of abandonment of "any part" of a common carrier's railroad lines. Although the Act does not define "railroad line" it does define "railroad" to include "a switch, spur, track . . . used or necessary for transportation." 49 U.S.C. § 10102(6)(C).

Abandonment or discontinuance of the passing track thus can only be accomplished by an order of the STB which has sole and exclusive jurisdiction of that subject matter.

That conclusion is supported by both federal law and Washington law. In addressing this issue in *Ocean Spray Cranberries, Inc. v. Doyle*, 81 Wn. 2d 146, 151, 500 P.2d 79, 82 (1972), the Washington Supreme Court noted that:

> The question of whether a particular stretch of rail is a line of railroad or is an extended line of railroad, or is a spur, industrial, team, switching or side track, is a mixed question of law and fact to be determined judicially rather than administratively.

The *Ocean Spray* Court cited as controlling in this regard *New Orleans Terminal Co. v. Spencer*, 366 F.2d 160, 166 (5th Cir. 1966), cert. denied, 386 U.S. 942, 87 S.Ct. 974, 17 L.Ed.2d 873 (1967). In that case, the Court found:

> The use of the tracks as passing tracks, for the temporary storage of cars and for occasional switching operations does not make them any the less 'lines of railroad' since they are used substantially in the through movement of freight.

Id. at 166.

There is no question that the passing track is "used substantially in the through movement of freight." (Ex. RVP-1 T. 4:1-2: "TCRY's active run-through siding . . . is used by TCRY for its train management, including interchange." In addition, as noted in the live testimony of Randolph V. Peterson, this passing track is essential to the safety and efficiency of rail operations.)

Therefore, any order of the Commission requiring abandonment or discontinuance of operations on the passing track would invade the exclusive jurisdiction of the STB.

Further, we find no Washington statute granting the Commission the authority to require discontinuance or abandonment of interstate rail. Although RCW 81.53 addressing railroad crossings is replete with provisions regarding the road at the crossing, no provision of that statute authorizes the Commission to order disposition of an existing interstate rail line.

Instead, disposition of railroad property, in addition to being subject to the exclusive jurisdiction of the STB is outside the Commission's jurisdiction under

Washington law. For example, in *Ocean Spray*, the Court considered whether a sale of property to a railroad was within the jurisdiction of the Commission. In concluding that it was not, the Court noted that the statutory provisions regarding "transfer of property" specifically excepted companies of the type designated by RCW 81.12.010. *Ocean Spray* at 152. At the time *Ocean Spray* was decided, the language of RCW 81.12.010 excluded Commission jurisdiction of common carriers subject to regulation by the ICC. In its current form, RCW 81.12.010 excludes "common carriers subject to regulation by . . . the United States department of transportation."

TCRY is a common carrier subject to regulation by not one, but two arms of the U.S. Department of Transportation – the STB and the Federal Railroad Administration. As such, the Commission is without jurisdiction to oversee or order any transfer of property of TCRY including the subject track in which it holds a leasehold interest through at least 2022. (Ex. RVP-1 T. 3:1-6)

CONCLUSION

For the foregoing reasons, TCRY respectfully requests a determination that the pending Petition be deemed barred as a matter of law by res judicata. Should the Petition be granted, TCRY asserts that under no circumstances should any Order be entered which requires discontinuance of the passing track at this location and that the Commission Staff's recommendation that the crossing be constructed over the two existing tracks be adopted as the decision herein.

Dated this 19th day of December, 2013.

TRI-CITY & OLYMPIA RAILROAD

By: _____

Paul J. Petit
One of Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served this day by email and by U.S. Postal Service on all parties of record in this proceeding to the parties identified below:

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DATED this 19th day of December, 2013, at Kennewick, Washington.

Christine Photides

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December 20, 2013

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
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RE: *City of Kennewick - Petition to Construct a Highway-Rail Grade Crossing, Center Parkway, Kennewick, WA*
Docket TR-130499

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and six copies of Commission Staff's Post-Hearing Brief, and Certificate of Service.

Sincerely,

Steven W. Smith

STEVEN W. SMITH
Assistant Attorney General

SWS/emd
Enclosures
cc: Parties w/enc.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499 POST-HEARING BRIEF OF COMMISSION STAFF

TABLE OF CONTENTS

I. INTRODUCTION

1 This matter is before the Commission on the petition of the City of Kennewick ("the City"). The City seeks to extend Center Parkway between Gage Boulevard in Kennewick and Tapteal Drive in Richland. The extension proposes the construction of an at-grade crossing over two sets of tracks leased by the Tri-City and Olympia Railway ("TCRY") from the Port of Benton. BNSF Railway and Union Pacific Railroad also operate on the tracks. The Commission Staff ("Staff") submits this post-hearing brief in support of the City's petition.

II. STAFF RECOMMENDATION

2 Staff recommends that the City's petition be granted. Ex. KH-1T at 3. Staff witness Kathy Hunter participated in a diagnostic review of the proposed crossing in December, 2012. The purpose of that diagnostic review was to discuss the proposal and evaluate the proposed crossing to determine what measures could be taken to make it safe, if approved as an at-grade crossing. A review team typically considers factors such as the crossing configuration and physical characteristics, vehicle and train traffic patterns and operation at the crossing, the traffic approach zones, and control devices. KH-1T at 5. Relevant to the objections raised by TCRY, the participants in the diagnostic review anticipated that further industrial development at Horn Rapids could increase the number or length of trains using the branch line. Ex. KH-5, at 2. Ms. Hunter used information gained from that diagnostic review in analyzing the City's petition. Ex. KH-1T at 7.

3 In her testimony, Ms. Hunter explained how the proposed crossing would meet the guidelines in two publications of the U. S. Department of Transportation: *Guidance on Traffic Control Devices at Highway-Grade Crossings*, and *Railroad-Highway Grade*

Crossing Handbook. Ex. KH-1T at 14-15; Ex. KH-9; Ex. KH-10. Both documents include public necessity, convenience, and safety as factors to be considered. As discussed in greater detail below, these are factors the Commission has articulated in recent at-grade crossing orders.

4 Ms. Hunter compared the current petition with a 2006 petition to construct a crossing at the same location.[1] The ALJ order denying the petition was not appealed to the Commission. Ms. Hunter summarized the major differences between that petition and the petition in this docket. In the earlier petition there were four active tracks at the proposed crossing, while only two tracks remain today: the Port of Benton's main line and a siding track.[2] Three railroads conducted switching at the crossing site at the time of TR-040664. Today, only TCRY conducts switching at the proposed crossing location. In the earlier petition, the City was vague about any safety devices it would install at the crossing. By contrast, as described below, the City will install state-of-the-art safety devices at the site of the proposed crossing. Finally, in the current petition, the City produced extensive evidence of the improved access and emergency response times that the new crossing will provide to emergency responders and the improved outcomes for cardiac, trauma, accident, and fire victims. Ex. KH-1T at 27-28.

5 In recommending approval of the petition, Ms. Hunter also fully reviewed the petition and the evidence and testimony of the City filed in support of that petition. That evidence and testimony is discussed next.

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[1] *City of Kennewick v. Union Pacific Railroad,* Docket TR-040664 (January 2007).

[2] It is not uncommon to have two tracks at a grade crossing even where passenger trains frequently operate. TR. 271-72, Kathy Hunter.

Randolph Peterson initially testified that the siding track is used very frequently as a passing track when two trains are in the area of the crossing. Tr. 381. However, Ex. RVP-9-X is a series of 31 photographs showing tanker cars stored on the second track at Center Parkway continuously for the six weeks prior to the hearing. Mr. Peterson later conceded that train cars can be stored at the second track for months at a time. Tr. 410.

III. EVIDENCE OF THE CITY OF KENNEWICK IN SUPPORT OF THE PETITION

A. Practicality of a Grade Separation at the Crossing.

6 As a threshold matter, the Commission can approve an at-grade crossing only if it determines that a separation of grades is impractical. RCW 81.53.020. The evidence presented at the hearing indicates that it would not be practical to construct a grade-separated crossing at the tracks at Center Parkway. Staff witness Kathy Hunter summarized the evidence on this issue in her testimony. Ex. KH-1T at 9-10.

7 First there is the cost. Jeff Peters, City of Richland's (Richland) transportation and development manager, estimated that an at-grade crossing would cost $250,000, while a grade-separated crossing would cost between $15 million and $200 million, depending on the option selected. Ex. JP-1T at 3. Second, there are limitations related to the topography at the site. Rick Simon, Richland's development services manager, described the differences in topography between the north and south sides of the rail line. Ex. RS-1T at 6. Susan Grabler, a consultant with David Evans and Associates, Inc., explained that the topography at the proposed crossing and the grade of a separated crossing would make a grade-separated crossing impractical at this location. Ex. SKG-1T at 6. Kevin Jeffers, another consultant with the Evans firm, testified in detail about the existing conditions at the proposed crossing, design criteria for the crossing, and cost estimates in concluding that grade separation is not practical. Ex. KMJ-1T at 9-1.

8 Staff witness Hunter reviewed 12 factors to consider when determining whether a grade-separated crossing is appropriate. These factors are listed in the U. S. Department of Transportation publication *Railroad-Highway Grade Crossing Handbook*. None of those factors exist in the case of the proposed crossing. Ex. KH-1T at 10-12; Ex. KH-7. Ms.

Hunter agreed with the testimony of the other witnesses that a grade-separated crossing would be impractical at the proposed site. Ex. KH-1T at 12.

9 The evidence in the record provides ample support for finding that a grade-separated crossing is not practical at the location of the proposed crossing. No party offered any evidence supporting the practicality of constructing a grade-separated crossing at the site.

B. Measures to Moderate the Inherent and Site Specific Dangers of the Crossing.

10 Since it is not practical to grade-separate the crossing, the City proposes to install a number of safety devices. The safety devices include shoulder mounted flashing lights and gates, audible bells, non-traversable raised medians, and constant warning train detection. Ex. JP-1T at 3. These automated warning devices will provide consistent warning of not less than 20 seconds to motorists using the crossing of an approaching train. The gates will prevent vehicles from entering the crossing during activation. The raised median will limit a motorist's ability to drive around the downed gates. Ex. SKG-1T at 5-6.

11 In addition to these safety measures, other factors will contribute to the safety of the crossing. The maximum legal operating speed of the trains is 25 miles per hour and the road speed is 30 miles per hour. Ex. KH-1T at 13. The Center Parkway extension will be a two-way, three lane road, which will cross the tracks at a ninety degree angle, with vertical curves that meet industry standards. The average daily traffic (ADT) will be 7,000 vehicles. Ex. KMJ-1T at 3-4, 8.

12 The volume of train traffic at the proposed crossing is low. In response to Staff data requests, the three railroads using the line were asked how many trains per day they operate at the site of the proposed crossing. BNSF responded that it currently operated one train per day with an average length of six cars. Ex. RVP-2X. TCRY responded that it operated two

to four trains each weekday with an average length of 15 cars. Ex. RVP-3X. The Union Pacific Railroad Co. ("UP") responded that it occasionally runs unit trains over the site of the proposed crossing, but has not done so in 2013. UP estimated that it operated 12 trains over the site in the last four and a half years. Ex. RVP-4X.

13 Kevin Jeffers calculated the current track usage at 3.2 trains per weekday. Even using TCRY data, which appears to be significantly overestimated, he calculated the average at 5.02 trains per weekday. Ex. KMJ-10TR at 6. In addition to overstating current track usage, TCRY projected a continuous annual growth rate in train traffic of 20 percent per year. Ex. RVP-01T at 4. Mr. Jeffers testified that such an average growth rate is "unusual and speculative over an extended time period." A more realistic and typical annual growth rate would be 5 percent. KMJ-10TR at 7. Even when the Horn Rapids loop is developed, it will have the maximum capacity for an average of 2.5 unit trains a week or a total of five trips. Tr. 369-70, Gary Ballew; Ex. JD-38X at 11. As noted, the participants in the diagnostic review considered the impact of the Horn Rapids industrial development on the number and length of trains on the line. Ex.-KH-5, at 2.

14 Three of the four quadrants from which sight distances are measured at a crossing do not meet the minimum standards presented in the state Department of Transportation design manual for grade crossings. Ex. KH-1T at 13. However, the deficient sight distances are mitigated by the installation of active warning devices at the crossing. These measures are consistent with the WSDOT design manual, which calls for the installation of active warning devices where recommended sight distances cannot be achieved. Ex. KH-1T at 13-14; Tr. 263-64, Kathy Hunter.

15 Because of these safeguards and crossing characteristics, the accident rate at the crossing is expected to be low: one accident per 6.9 years by one estimate (Ex. KMJ-1T at 7) and .018701 per year by another. (Ex. KH-1T at 26.)[3] Neither the UTC nor the Federal Railroad Administration data bases show any accidents at the adjacent Steptoe Street at-grade crossing. (TR. 270).

C. Emergency Response Times.

16 There was extensive testimony regarding the coordination between the fire and law enforcement departments of Kennewick and Richland. Fire, police, and medic units are routinely dispatched across jurisdictional boundaries to respond to incidents.

17 Richard Baynes, the director of fire and emergency services for Richland, testified that the fire chiefs of those two cities and of Benton County Fire District No. 1 have their administrative offices in one facility on Gage Boulevard in Kennewick. Ex. RGB -1T at 2. Chief Baynes and Neil Hines, the Chief of the Kennewick Fire Department, both testified that Kennewick, Richland, and three fire districts have an interlocal agreement which is the basis for several joint collaborative programs. Kennewick and Richland have an "Automatic Aid Agreement" that applies to the site of the proposed crossing. Under that agreement, the Richland Fire Station No. 72 on Gage is the first to respond to the area on the north side of the proposed crossing and the Kennewick Fire Station No. 63 on Quinault is the first to respond to the area south of the proposed crossing. And each station is the first responder into the other station's area when the other is already assigned to an incident. Ex. RGB -1T at 3; NH-1T at 2.

[3] Ms. Hunter calculated her estimate using the Federal Railroad Administration accident predictor model. Mr. Jeffers calculated his estimate using the methodology in the *Railroad-Highway Grade Crossing Handbook.*

18 Chris Skinner, the Chief of Police for the City of Richland, and Kenneth Hohenberg, the Chief of Police for the City of Kennewick, explained the collaboration between the law enforcement of the two cities. If a police officer is in need of assistance, the closest police car will respond without regard to jurisdiction. Ex. CS-1T at 2-3; Ex. KMH-1T at 2.

19 These collaborative efforts reduce emergency response times. Seconds are important in assuring more positive outcomes for trauma, cardiac and stroke victims as well as in responding to fires. Ex. RGB-1T at 4; NH-1T at 3. Consequently, the impact on first responders is an important consideration to Staff in reviewing petitions to either open or close a crossing. Tr. 275, Kathy Hunter. The new crossing provides a faster response route into the area of Tapteal in Richland via Gage Boulevard. The JUB traffic study included in the petition noted a 48 second reduction from the Kennewick Fire Station No. 63 and a one minute 24 second reduction from the Richland Fire Station No.72 into that area. Ex. RGB-1T at 4. The JUB study did not include the "turnout" time in calculating response times. Tr. 219, Spencer Montgomery. Chief Baynes did review some actual response times into the Tapteal area. Records of the City of Richland indicate that the proposed crossing would reduce response time an average of one minute into the Tapteal area from either the Kennewick Station No. 63 or the Richland Station No. 72. Tr. 103-106; Ex. GAN -18X.

20 For emergency response purposes, the more diverse the response routes the better. Tr. 119, Richard Baynes. An alternative crossing will help traffic by taking some of the traffic off of the Steptoe and Columbia Center Boulevard (CCB) crossings. Tr. 82, John Deskins, Tr. 234-35, Spencer Montgomery. Also the addition of an alternate crossing will afford first responders another response route in the event that the Steptoe or CCB crossings

are obstructed by traffic congestion or an accident.[4] Ex. RGB-1T at 4; NH-1T at 3; Tr.108-109, Richard Baynes. The addition of the new crossing could be even more valuable when unit trains use the rail lines and block other crossings.[5] Ex. RGB-1T at 4-5, Tr. 108-09, Richard Baynes.

21 The benefit of Center Parkway is further enhanced by the characteristics of the adjacent crossings. They are regional arterials prone to periods of heavy traffic congestion and other challenges. Chief Baynes described how CCB and the north side of the Steptoe at Gage intersection are effectively one way streets due to center roadway barriers. Emergency responders have limited ability to get around traffic congestion by crossing into the oncoming lanes. It is easier for emergency vehicle to move vehicles out of the way when approaching head on instead of from behind. Ex. RGB-1T at 4-5; TR. 106, Richard Baynes. Access from northbound CCB into Tapteal involves four traffic signals and a series of turns and travel across an elevated loop down a fairly steep slope that significantly slows responses in that direction. Ex. RGB-1T at 4; Tr. 106, Richard Baynes.; Ex. SM-1TR at 5.

22 By contrast, the Center Parkway crossing would be a local roadway with lighter traffic patterns, simpler routes, and would be an emergency responder's first choice to access the Tapteal/ Center Parkway area. Ex. RGB-T at 6; Ex. NH-1T at 4-5; Tr. 98-99, Chris Skinner.

D. Traffic Improvement.

23 The petition is the result of comprehensive transportation planning. Ex. JD-1TR at 2. The Center Parkway crossing has been a part of Richland's comprehensive plan since

[4] Exhibit JD-3 shows crash data for CCB at Quinault Avenue and at Canal Drive. The data show the danger of pedestrian-to-vehicle and vehicle-to-vehicle crashes around the mall. There were 154 accidents at CCB at Quinault in 11.5 years and 165 accidents at CCB and Canal Drive in 12 years.

[5] It is not uncommon to have two or more at-grade crossings in close proximity in Benton County. Tr. 272, Kathy Hunter.

2006 and a part of the transportation improvement program prior to that. Tr. 58, Rick Simon. The crossing will establish a complete road network and provide relief to the north and south traffic congestion in the area. Ex. RS-1T at 8. The crossing will provide a link between the retail and commercial properties on Tapteal and those located in the Columbia Center Mall and the Gage Boulevard retail and commercial area. Ex. NH-1T at 3.

24 The crossing will also improve the circulation around the Columbia Center Mall and surrounding area. During the holiday shopping season, the roads around the mall become congested and some mall entrances have to be closed to reduce the traffic jams that occur on the CCB side. Better access to the backside of the mall would reduce some of this pressure because the roundabout on Gage is better suited to handle traffic. In addition, some motorists use the ring road within the mall from the roundabout at Center parkway and Gage to cut through the mall to get to CCB. This vehicle traffic encounters pedestrian traffic using the parking aisles. The mall ring road is a private road that was never intended for this traffic. Ex. JD-1T at 3-4; Ex. JD-1TR at 3.

IV. ARGUMENT

A. The Legal Standard for At-Grade Crossing Does Not Require a Showing of a Need that is Acute.

25 RCW 81.53.030 provides that where it is not practical to construct a grade separated crossing, the Commission may grant or deny a petition to construct an at-grade crossing. The statute does not include any standards for the exercise of this discretion. The Commission's approach has been to balance the need for an at-grade crossing against any dangers that remain after the installation of safety devices.

26 In the 2007 initial order for the Center Parkway crossing, *City of Kennewick v. Union Pacific Railroad*, Docket TR-040664, Order 06,[6] the ALJ quoted from an earlier Commission decision[7] explaining a three step analysis for an at-grade crossing petition. First, the petitioner must demonstrate that the inherent and site-specific dangers are moderated to the extent possible by the installation of safety devices. Second, the petitioner must show that there is an acute public need for the crossing that outweighs that moderated danger. Finally, the petitioner must demonstrate that a grade separated crossing is impractical.

27 Although the Commission used the term "acute public need" in the *Town of Tonasket* order, the Commission also explained that its task was to weigh the evidence of "public need and convenience" against the dangers of a proposed crossing.[8] The Commission determined that the need for the crossing did not outweigh the danger that would result from its opening, and therefore, that the crossing "is not in the public interest and is not required by the public convenience and necessity."[9] The term "acute public need" does not appear in the State Supreme Court case cited by the Commission in *Tonasket*.[10]

28 Although later orders continue to weigh the need for the crossing against its dangers, that need is no longer described as acute. Two years later, in *Burlington Northern Railroad Co. v. City of Ferndale*,[11] a petition to close a crossing, the Commission described the

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[6] The docket was consolidated with *City of Kennewick v. Port of Benton and Tri-City & Olympia Railroad*, Docket TR-050967.
[7] *Town of Tonasket*, Docket TR-921371 (1993).
[8] *Id.* at 4.
[9] *Id.* at 16.
[10] *Department of Transportation v. Burlington Northern Railroad Co.*, 35 Wn. 2d. 247, 254, 212 P. 2d 829 (1949).
[11] TR-940330 (1995).

balancing process as follows: "The question, then, is whether the public convenience and need outweighs the danger of the crossing so that it should nevertheless remain open."[12]

29 Nor do more recent Commission decisions use the term "acute public need." For example, the Commission has granted at-grade crossing petitions on a showing of "good cause" by the petitioners.[13] In other cases the Commission granted petitions to construct a new at-grade crossing where to do so was "reasonable" and "consistent with the public interest."[14] Other decisions approved the construction at-grade crossings "for good cause shown" and where "consistent with the public interest."[15]

30 Moreover, the need proffered to justify at-grade crossings in several of these petitions cannot be characterized as acute. For example, in *Clark County v. Columbia Basin Railroad*, TR-110492 (2011), Clark County petitioned to construct an at-grade crossing to complete a recreational trail in order to increase tourism and provide safe recreational opportunities. Trains were not operating along the tracks, but might in the future. The Commission approved the new crossing "for good cause shown" and, thus, implicitly determined that a mere recreational purpose can establish the requisite need.

31 In *City of Pullman*, TR-100041 (May 2010), the City sought approval to construct an at-grade pedestrian crossing to connect one neighborhood with a business district, another neighborhood, and a path system. No more than one train a week traveled on the track at ten

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[12] *Id.* at 4.
[13] *City of Pullman*, TR-100041 (May 2010); *Puget Sound and Pacific Railroad Co.*, TR-050524 (April 2005); *Port of Pasco v. BNSF*, TR-060456 (June 2006); *Port of Centralia v. Puget Sound and Pacific Railroad Co.*, TR -061232 and TR-0611233 (September 2006); *Port of Woodland v. City of Woodland*, TR-091202; September 2009); *City of Puyallup*, TR-070591 (January 2009); *Clark County v. Columbia Basin Railroad*, TR-110492 (April 2011).
[14] *City of Marysville*, Docket TR-111147 (July 2011); *Benton County*, TR-112127 (February 2012); *City of Pasco*, TR-121467 (January 2013); *City of Auburn*, TR-121883 (December 2012).
[15] *Port of Moses Lake*, TR-100072, TR-100073, TR-100075, TR-100076 (January 2010).

miles per hour. The need was hardly acute, yet the danger at the crossing was also low. The Commission found good cause to grant the petition.

32 In *City of Pasco*, TR-121467 (January 2013), the Commission approved a petition for an at-grade crossing. The need for the crossing was to attract tenants to an expanding industrial park. And in *Benton County*, TR-112127 (February 2012), the County sought an at-grade crossing to provide access to 300 acres of industrial land. The Commission granted both of these petitions as reasonable and consistent with the public interest. By contrast, the initial order in the prior petition to construct a crossing at Center Parkway concluded that "while economic development is definitively a positive goal for these cities, it does not rise to the level of acute public need."[16]

33 In short, recent Commission orders on at-grade crossings have not turned on a showing of acute public need. Even a purely recreational need has sufficed. The Commission still balances the need against the hazards of a crossing after the installation of safety devices. This balancing is implicit in the process necessary to reach conclusions of reasonableness, good cause, and consistency with the public interest.

34 Staff witness Kathy Hunter testified that, regardless of the term used to describe the balancing approach, the City has met its burden. Tr. 281-82. The need for the crossing is reflected particularly in the testimony of the first responders for Kennewick and Richland, but also in the testimony of other witnesses for the petitioner. In addition, a full array of safety devices will be installed at the crossing. The need for the crossing outweighs any residual dangers remaining after the installation of those safety devices.

[16] TR-040664, Order 06, at 10-11.

B. Res Judicata Does Not Preclude the City's Petition.

35 Res judicata, or claim preclusion, prevents the second assertion of the same claim between the same parties. The doctrine applies to proceedings held before an administrative agency acting in its quasi-judicial capacity on claims that are properly before it. *Hilltop Terrace Ass'n v. Island County*, 126 Wn. 22, 30-31, 891 P. 2d 29 (1995).

36 For res judicata to apply the prior and subsequent claims must share the same (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claims are made. The subject matters are not identical if they differ substantially. Thus, a second application for a similar proposal can be considered if there is a substantial change in circumstances. *Hilltop Terrace* at 32.

37 The first element is absent in this petition. The current proceeding is not a second opportunity for the City to put on a different case about the same crossing. The last petition was litigated in 2006. Since then changes have occurred at the proposed crossing site. Those changes are the removal of two tracks at the site so that today there are two active tracks instead of four. And today only one railroad conducts switching operations at the crossing site. At the time of the last petition, three railroads conducted switching at the site. These changes are such that this petition is, in effect, one to open a different crossing although at the same site as the prior petition.

38 These are not just marginal differences between the prior and current petitions. The four tracks and the magnitude of the switching operations at the proposed crossing were cited as critical factors by the ALJ in her denial of the earlier petition. TR-040664, Order 06, at ¶ 19-20 and 39 (Finding of Fact No. 11). These differences are a substantial change in

circumstances from the prior petition. Therefore, res judicata does not bar the City's current petition to open the crossing at Center Parkway.

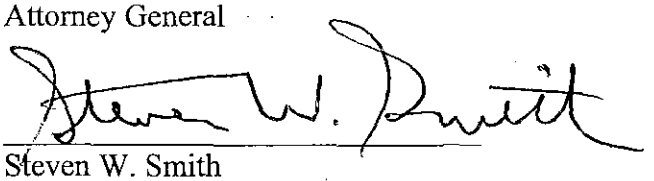
V. CONCLUSION

39 For the foregoing reasons, the Staff supports the City's petition and recommends that it be granted.

DATED this 20th day of December, 2013.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

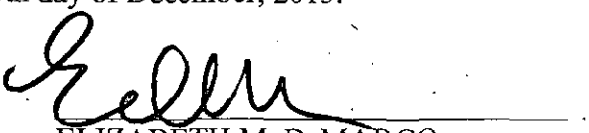


Steven W. Smith
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

Docket TR-130499
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Post-Hearing Brief upon the persons and entities listed on the Service List below via e-mail and by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 20th day of December, 2013.



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December 20, 2013

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
P. O. Box 47250
Olympia, WA 98504-7250

Dear Washington Utilities and Transportation Commission:

Please accept this cover letter for Docket TR-130499.

Petitioners, City of Kennewick and City of Richland, submit an original and six copies of their post-hearing brief.

Very truly yours,

FOSTER PEPPER PLLC

P. Stephen DiJulio, WSBA #12921
Jeremy Eckert, WSBA # 42596
Attorneys for City of Richland and City of Kennewick

Enclosures

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 POST-HEARING BRIEF OF THE CITIES OF KENNEWICK AND RICHLAND

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1. INTRODUCTION

The evidentiary support for the Center Parkway crossing of Port of Benton tracks set out in the Petition and heard by the Commission[1] is effectively uncontested. The City of Richland and the City of Kennewick, with the independent analysis of UTC staff, demonstrated the public interest and lack of practical alternatives required under Chapter 81.53 RCW. The Center Parkway crossing north to Tapteal Drive has been part of city, county and regional planning, consistent with the Growth Management Act, for nearly two decades. The only qualified public safety officers to testify provided the foundation for critical response times supported by the Project. Substantial numbers of regional and community groups and individuals support the Petition. And, TCRY admits "the City's [Richland] interest in facilitating well designed urban transportation improvements, including rail, vehicle, and pedestrian facilities."[2]

Together with the admission by TCRY at the hearing that it does not oppose a crossing of the track and the siding, and the remaining record before the UTC, the Petition should be granted.

2. REQUESTED RELIEF

The City of Richland and the City of Kennewick ("Petitioners") respectfully request approval of the at-grade Center Parkway Crossing. The Petitioners designed the proposed crossing to cross the existing track and parallel siding track.[3] At the evidentiary hearing, Mr. Peterson admitted that Tri-City Railroad ("TCRY") did not oppose the crossing so long as the existing siding remains.[4] The Petitioners accept this admission and, following UTC approval, are prepared to construct the crossing over both the rail line and the siding. To the

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[1] Washington Utilities and Transportation Commission, or "UTC."
[2] RVP-7-X.
[3] KH-3. The tracks are owned by the Port of Benton and operated by Tri-City Railway (Tri-City & Olympia Railroad Company, or "TCRY").
[4] Transcript ("TR") 414-418. The siding is referenced by TCRY (apparently for the first time in these proceedings) as a "passing" track. The previous 2005 petition described the second track as a passing track used for the express purpose of interchanging cars with BNSF and UPRR . Docket No. TR-040664, Order 6 / TR-050967 Order 2, para. 17 at Exhibt JP-9-X. Exhibits JP-7-X and JP-8-X show that the railroads have ceased to use Richland Junction for interchange.

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extent that there remain contested issues regarding the planned crossing, Petitioners provide the following supporting authority.

3. SUMMARY OF ARGUMENT

The UTC applies a balancing test under state law for at-grade crossing petitions, as set forth in RCW 82.51.020 and .030. The proposed Center Parkway crossing satisfies the UTC's balancing test. A grade-separated crossing is not practicable. There are no alternatives. Petitioners provided uncontested evidence that the proposed crossing does not meet federal (or any other) warrant for a grade-separated crossing.[5] And the Petitioners provided uncontested evidence that a grade-separated crossing is at least 60 times more expensive than the proposed crossing.[6]

The record also shows that the public need for the proposed crossing outweighs any potential danger of the proposed crossing. While the UTC estimated one incident per 53.4 years at this crossing,[7] public health officials and transportation engineers testified that the crossing would provide an alternative access route and reduce emergency response times, thereby providing a better chance of survival for trauma, cardiac, and stroke patients, when service delivery is "tuned to count seconds."[8] Public benefits associated with this crossing also include integration and completion of a long-planned component to the regional traffic grid, congestion relief, and completion of infrastructure to support planned community (and economic) development.

Even should it be necessary to apply the outdated three-step analysis for at-grade crossings, the record before the UTC shows an "acute public need." However, this standard is no longer applicable to jurisdictions that plan under the Growth Management Act, where

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[5] TR 321-325.
[6] JP-1T at 3.
[7] KH-1T at 26:21.
[8] RGB-1T at 4:4-7.

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transportation system planning is subject to a systematic, comprehensive and public planning process.

4. THE PROJECT AND PRIOR PETITION

Unlike the previous petition filed in 2005 (decided in 2007),[9] the planning process for this Petition followed the 2006 comprehensive planning update process (together with more detailed design work and elimination of two track crossings). Through this process, the Petitioners engaged the public and other governmental agencies to revise, further study the proposed crossing, and to analyze potential transportation alternatives. Following this process, the Petitioners engaged J-U-B Engineers and David Evans & Associates ("DEA") to further study and design the proposed crossing.[10]

DEA designed the crossing in conformance with all relevant state and federal safety and engineering standards. The DEA's team included Susan Grabler and Kevin Jeffers, P.E., together with a combined 59 years' experience in railroad safety. Mr. Jeffers' experience includes 15 years at WSDOT, and Ms. Grabler's experience includes 24 years at Union Pacific Railroad Company's public project group, where she managed hundreds of projects similar to the Center Parkway crossing.[11]

Once constructed, the Center Parkway Crossing will allow the Petitioners to achieve the level of service ("LOS") for emergency services and transportation, accommodate planned growth,[12] support planned community (and economic) development, and implement approved capital improvement plans. As the record demonstrates, the proposed crossing will (1) provide an alternative access route for first responders, thereby reducing emergency response times that currently exceed the stated LOS; (2) provide congestion relief in a planned attempt to reduce documented crashes near the Columbia Center Mall; (3) provide infrastructure to encourage

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[9] JP-9-X.
[10] JP-1T at 4.
[11] SKG-1T at 2; KJ-1T at 2.
[12] By 2030, the City of Richland's population is projected to increase by 68% and the City of Kennewick's population is projected to increase by 56%. GAN-2-X.

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community development; and (4) complete the long-planned roadway network in this area on the Petitioners' common border.

As described above, and as the UTC files show, this Petition is a different application than the 2005 petition. Because of the changes to the Petition itself and the new circumstances surrounding the Petition, there is nothing to preclude UTC consideration. *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wn.2d 22, 33, 891 P.2d 29 (1995) ("thus, we hold that a second application may be considered if there is a substantial change in circumstances or conditions to the application or a substantial change in the application itself").[13]

UTC proceedings regarding contested crossings often show multiple parties in opposition. Here, the showing of community support is overwhelming (and one-sided). Entities and individuals supporting the crossing include: the Tri-City Regional Chamber of Commerce, representing nearly 1,300 private and non-profit members; Port of Kennewick; Tri-City Development Council; the Benton-Franklin Council of Governments; Tri-Cities Visitor and Convention Bureau; elected officials; and numerous businesses and individuals.[14] The proposed crossing is further supported by the State, as shown by the project funding from the Washington State Community Economic Revitalization Board, the Surface Transportation Program Regional Competitive Fund, and the Transportation Improvement Board.[15]

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[13] In *Hilltop Terrace*, our Supreme Court concluded that res judicata was inapplicable to a second application, to construct a cellular tower, after an earlier application had been denied. The "substantial change" in the second application accepted by the Court was to construct the proposed cellular tower as a single pole, rather than the previously proposed steel lattice tower. All other elements of the application remained the same. *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wn.2d at 27.

[14] Public Comment Exhibit.

[15] JP-2; JP-3.

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5. LEGAL STANDARD

5.1 State Law Recognizes a Balancing of Interests for At-Grade Crossings

RCW 81.53.020 and .030 provide the UTC with certain authority to grant petitions for opening at-grade crossings when a grade-separated crossing is not practicable.[16] To determine whether a separated grade crossing is practicable, the UTC considers a non-exclusive list of factors, including (1) amount and character of travel on the railroad and on the highway; (2) the grade and alignment of the railroad and the highway; (3) the cost of separating grades; (4) the topography of the county; and (5) all other circumstances naturally involved in such an inquiry. RCW 81.53.020.[17] The statute and UTC regulations[18] do not define the "other circumstances," thereby allowing the UTC to determine the relevant "other circumstances" for each at-grade crossing petition. But, as discussed below, this statute cannot be read in isolation from other state laws governing planning and transportation system development.

The Commission applies a balancing process in approving at-grade crossings. In *Whatcom County v. Burlington Northern Railroad Company*, Docket Nos. TR-1725 and TR-1726 (December 1985), the Commission found need for an at-grade crossing proposal applying numerous factors, similar to those presented by the Petition for the Center Parkway crossing:

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[16] The Petitioners are arguably exempt from this petition process. RCW 81.53.240 exempts first-class cities from the at-grade crossing petition process. The City of Richland is a first-class city, and the City of Kennewick is a code city. State law provides that code cities have the same authority as first-class cities. RCW 35A.11.020: "The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of the state, and not specifically denied to code cities by law. Nevertheless, the Petitioners believe UTC review and approval worthwhile.

[17] RCW 81.53.020 states: All railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under the same, when practicable, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the commission to do so. All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, **when practicable**, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so: PROVIDED, That this section shall not be construed to prohibit a railroad company from constructing tracks at grade across other tracks owned or operated by it within established yard limits. **In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.** (Emphasis supplied.)

[18] WAC 480-62-150.

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> Such needs which have been found appropriate include the lack of a reasonable alternate access; the lack of a reasonable alternate access for public emergency services; and the insufficiency of alternate grade crossings, perhaps because of traffic in excess of design capacity.[19]

5.1.1 The Center Parkway Project Satisfies the Balancing Test – UTC's Current Application of State Law.

Within this statutory framework, the UTC has pronounced various approaches to evaluate at-grade crossing petitions. In recent **uncontested** petitions, the UTC's analysis of "other circumstances" was limited to the proposed safety measures at the proposed crossing.[20] In recent **contested** petitions, the UTC has relied upon a balancing test, summarized by Administrative Law Judge Dennis Moss as follows:

> The Commission, in practice, addresses two principal questions when considering whether to authorize construction of an at-grade crossing, which, by its nature, poses risks for motorists and pedestrians not present at grade-separated crossings:
> A. Whether a grade-separated crossing is practicable considering cost and engineering requirements and constraints.
>
> B. Whether there is a demonstrated public need for the crossing that outweighs the hazards inherent in an at-grade configuration.[21]

At the evidentiary hearing, Ms. Hunter correctly testified that the UTC has recently relied upon a balancing test, and that the UTC continued to rely upon a balancing test for this petition.[22] The record before the UTC in this matter demonstrates conclusively that the Center Parkway crossing satisfies the balancing test.

5.1.2 The Center Parkway Project Satisfies the Three-Step Analysis – UTC's Outdated Application of State Law.

Prior to the UTC's current practice, the UTC referenced a three-step process to analyze at-grade crossing petitions under RCW 81.53.020 and .030 (including use of the phrase "acute

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[19] Cited with approval in *Town of Tonasket*, Docket No. TR-921371 (1993), applying the older "acute need" standard.
[20] *City of Pasco*, Docket No. TR-121467, Order 1 (2013); *Benton County*, Docket No. TR-112127, Order 1 (2012); *Washington State Dept. of Transp.*, Docket No. TR-121230, Order 1 (2012); *City of Marysville*, Docket No. TR-111147, Order 1 (2011); Clark County, Docket No. TR-110492, Order 1 (2011); City of Pullman, Docket No. TR-100041, Order 1 (2010); *The Port of Moses Lake*, Docket TR-100072 (2010).
[21] *Benton County*, Docket No. TR-100572, Order 06 at 13 (2011).
[22] TR 274.

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public need"). First, the UTC operated under the premise that all at-grade crossings are dangerous.[23] Second, the UTC analyzed whether the inherent and site-specific dangers of the crossing are moderated to the extent possible with modern design and signals, and when there is an acute public need which outweighs the resulting danger of the crossing. Third, the UTC considered the factors set forth in RCW 81.53.020 to .030.

The UTC appears to have articulated this three-step approach in the 1985 Order for *Whatcom County*, Docket No. TR-1725 and TR-1726 (1985), and this approach was later used in other orders.[24] To be clear, a showing of "acute public need" and an alternatives analysis are not required under RCW 81.53.020 or .030. However, even were this three-step approach applied, the record in support of the Center Parkway Petition demonstrates satisfaction of that approach, as well.

5.2 The Growth Management Act Requires That State Agencies Comply with Local Comprehensive Plans

The Legislature adopted the Growth Management Act (Chapter 36.70A RCW, "GMA") in 1990 and 1991, five years **after** the UTC issued its *Whatcom County* order. The UTC's current balancing test, as described by Ms. Hunter and shown in the cited decisions, is consistent with the GMA, whereas the UTC's previous three-step analysis used in *Whatcom County* is not.[25]

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[23] This premise is based upon 1938 tort action against a railroad company for the death of an automobile passenger who died when the car struck the side of a train at an at-grade crossing. *Reines v. Chicago, Milwaukee, St. Paul & Pacific R.R.*, 195 Wash. 146, 80 P.2d 406 (1938).

[24] In the *Town of Tonasket* petition, the UTC expanded its analysis to include an analysis of potential crossing alternatives not presented by petitioners.[24] In both *Whatcom County* and *Town of Tonasket*, the UTC provided a list of non-exclusive items that demonstrated public need for railway crossings, including "the lack of reasonable alternative access; the lack of a reasonable alternative access for public emergency services; and the insufficiency of alternative grade crossings."[24] *Town of Tonasket*, Docket No. TR-921371, Order Denying Review at 9 (1993).

[25] GMA-related issues were not briefed in the 1993 *Town of Tonasket* order, or the previous Center Parkway order issued in 2007.

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Coordinated planning is the cornerstone of the GMA.[26] The GMA requires most local governments, such as the Petitioners, to adopt comprehensive plans following early and continuous public participation.[27] The GMA then mandates that local governments implement the comprehensive plans through capital investments and development regulations.[28] To ensure consistency between local and state government programs, RCW 36.70A.103 requires state agencies, such as the UTC, to comply with local governments' comprehensive plans: "State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter."[29]

However, not all jurisdictions plan under the GMA.[30] Therefore, it may be appropriate for the UTC to apply the three-step approach when non-GMA jurisdictions submit a petition, as it did in the 1993 *Town of Tonasket* proceeding. In that proceeding, it was apparent that the Town did not consider other alternatives to the proposed at-grade crossing, and the UTC denied the petition. In contrast, for GMA planning jurisdictions, RCW 36.70A.103 prohibits the UTC from engaging in a *Town of Tonasket* alternatives analysis, because that analysis was required for and completed through the GMA comprehensive planning process.

6. GMA REQUIRES INTEGRATED PLANNING

It is uncontested that the Petitioners plan under the GMA, and are further mandated through the GMA to prepare and update comprehensive plans.[31] The Petitioners' comprehensive plans must be consistent with the Benton-Franklin Council of Governments 2011-2032

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[26] RCW 36.70A.010.
[27] RCW 36.70A.140.
[28] RS-1T at 2; JD-1T at 2-4.
[29] While not relevant to these proceedings, the complete cite is:
State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter except as otherwise provided in RCW 71.09.250 (1) through (3), 71.09.342, and 72.09.333. The provisions of chapter 12, Laws of 2001 2nd sp. sess. [GMA]do not affect the state's authority to site any other essential public facility under RCW 36.70A.200 in conformance with local comprehensive plans and development regulations adopted pursuant to chapter 36.70A RCW.
[30] For example, Okanogan County and the Town of Tonasket do not plan under GMA.
[31] RS-1T at 2; JD-1T at 2; GAN-6-X; GAN-13-X.

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Regional/Metropolitan Transportation Plan ("Regional Transportation Plan"). This Regional Transportation Plan sets priorities for determining which projects are most important on a regional level.[32] TCRY's opposition to the Center Parkway crossing was not informed by any analysis of the Petitioners' extensive comprehensive planning efforts.[33] And TCRY did not participate in the City of Richland's 2006 comprehensive plan update.[34] Nonetheless, TCRY acknowledges the importance of comprehensive planning: "TCRY recognizes the City's [Richland] interest in facilitating well designed urban transportation improvements, including rail, vehicle, and pedestrian facilities."[35]

6.1 Regional Comprehensive Planning Mandates the Center Parkway Crossing

For years, the Center Parkway project has been part of Petitioners' planning. In 1997, the City of Kennewick's planning efforts identified the need for the crossing. And, since 2006, the at-grade Center Parkway Crossing has been identified as an essential capital improvement in (1) the City of Richland Comprehensive Plan,[36] (2) the City of Kennewick Comprehensive Plan,[37] and (3) the Regional Transportation Plan.[38] Recognizing the regional significance of this project, the Center Parkway Crossing has received funding from the State through the Washington State Community Economic Revitalization Board, the Surface Transportation Program Regional Competitive Fund, and the Transportation Improvement Board.[39] By Petitioners' agreement, the City of Richland is the lead agency for this regional effort and the Center Parkway crossing Petition.[40]

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[32] RS-1T at 7-8.
[33] GAN-1T at 3 (Mr. Norris only reviewed Mr. Simon's reference to the City of Richland's comprehensive plan, not the comprehensive plan itself); GAN-1TR at 2; RVP-1T; SM-1TR at 3.
[34] RS-1T at 3; TCRY also did not substantively participate in the planning process for the Regional Transportation Plan. Exhibit RVP-5-X contains the entire record of TCRY's participation in the Regional Transportation Plan.
[35] RVP-7-X; TR 413.
[36] RS-2 at T 5-4 ("Center Parkway from Tapteal to Gage: Construct 3-lane road").
[37] GAN-7-X at 58 to 59.
[38] RS-4 at H-3 ("Center Parkway Extension – Gage to Tapteal").
[39] JP-2; JP-3.
[40] JP-1T; JP-4.

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6.1.1 Center Parkway Crossing Is Required for Public Health and Safety Level of Service.

The record demonstrates that the Center Parkway Crossing is a necessary capital improvement for the Petitioners to achieve their stated level of service in these rapidly growing communities.[41] The Petitioners establish certain levels of service ("LOS") standards in order to provide adequate services at a consistent level, as follows: **Fire**: Five-minute response time;[42] **Emergency Medical Response:** Four-minute response time;[43] and **Police:** 1- 5-minute average for high priority calls.[44]

Exhibit GAN-3-X shows response times exceeding established LOS for service into this area: 7:44 for emergency responders, 6:27 for structure fire, and 8:03 for all other incidents. These figures mirror the uncontested data presented by Chief Baynes in Exhibit GAN-18-X, which similarly show fire and emergency medical responders regularly failing to achieve the established LOS.[45] The JUB Report provides the only other data in the record regarding response times, and this report concluded that the Center Parkway Crossing reduces the response times by Kennewick Fire Station 3 and Richland Fire Station 72 to property near the north of the Center Parkway crossing by 30% and 24%, respectively.[46]

6.1.2 Center Parkway Crossing Is Required for Transportation Level of Service.

The uncontested record is clear that the Center Parkway Crossing is also a necessary capital improvement for the Petitioners to achieve their stated LOS for signalized intersections.[47]

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[41] GAN-2-X.
[42] GAN-6-X at 79.
[43] GAN-6-X at 79. The City of Richland does not list a LOS for emergency medical responders.
[44] GAN-4X. The City of Kennewick does not list a LOS for police.
[45] Chief Banyes further described his methodology in TR 103.
[46] JP-5-X. Mr. Montgomery testified that the response times in the JUB Report did not include time spent at traffic signals or behind traffic to provide a similar evaluation technique for existing route and the proposed route. TR at 218-219.
[47] Exhibit GAN-17-X shows Eastbound Columbia Center Boulevard at Quinault currently at LOS E (for left-turn movements), and by 2028 the intersection will be LOS F (*i.e.*, fail) for all movements. Southbound Steptoe at Gage is currently LOS F. Mr. Norris' testimony fails to consider that the Center Parkway Crossing is already included in the regional transportation model used to determine LOS. JD-1T at 2-3.

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The JUB Report demonstrates that the Center Parkway Crossing will address failing intersection LOS. In response to a TCRY data request, Petitioners provided that data to TCRY supporting the JUB Report's findings that the Center Parkway Crossing will alleviate current stresses on the failing, or near-failing, intersections in the vicinity of the proposed crossing.[48] Further, upon receipt of JUB's analysis (now Exhibit GAN-20-X), UTC rules afforded TCRY the opportunity to submit subsequent data requests to Petitioners, requesting further explanation of the Petitioners' analysis. The record shows that TCRY did not present contrary data, despite the opportunity. [49] This is consistent with TCRY's failure to participate in any of the planning activities, including the UTC's diagnostic meeting on December 11, 2012.[50]

6.2 Horn Rapids Planning Is Part of Integrated Planning, including Center Parkway

In addition to the Center Parkway Crossing, the Horn Rapids project is also a component of the City of Richland's Comprehensive Plan.[51] Both the Center Parkway Crossing and the Horn Rapids projects are set forth as key strategies to promote economic development within an integrated transportation system. The City's vision is to encourage rail yard activities at Horn Rapids, while using the proposed Center Parkway Crossing to reduce vehicular congestion, thereby improving the region's multi-modal transportation network. As Mr. Montgomery testified, "The transportation system works as a whole. If the region cannot move cars, then it also cannot move trucks. If the system cannot move trucks, then there are delays in loading and unloading rail freight."[52] Accordingly, the City's track use agreements with BNSF and UPRR

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[48] GAN-19-X; JP-5-X.

[49] Mr. Norris carefully chose his words. He did not claim that there was no "acute public need" for the Center Parkway crossing. He said only that the Petitioners' record had not shown such need. TR 316. Perhaps had he read the record provided to him, his testimony may have had some credibility. Since he did not, his testimony cannot be considered credible.

[50] KH-5.

[51] GAN-16-X at 4 ("the [Horn Rapids Master Plan Update] supplements the Richland Comprehensive Plan and supersedes the previous Master Plan adopted in 1995). *Also see*, GAN-15-X, establishing the City of Richland's economic development policies, which are consistent with the Horn Rapids Master Plan.

[52] SM-1TR at 3.

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for the Horn Rapids area are consistent with the comprehensive plans,[53] as is the November 19, 2013 City Council's action that furthered the Horn Rapids project.[54]

7. CENTER PARKWAY CROSSING SATISFIES STATUTORY STANDARDS FOR AN AT-GRADE CROSSING

Consistent with UTC's balancing test,[55] the evidence demonstrates that the Center Parkway Crossing petition does not warrant a grade-separated crossing, considering engineering requirements, cost and constraints. The evidence also demonstrates that the public need for the crossing outweighs any dangers of an at-grade configuration.

7.1 A Separated-Grade Crossing Is Not Warranted

It is undisputed that the proposed crossing does not require grade separation. No warrant under the U.S. Department of Transportation's *Railroad-Highway Grade Crossing Handbook* for highway-rail grade crossings is met, or even present. The section titled "Grade Separation" provides that "Highway-rail grade crossing should be considered for grade separation or otherwise eliminated across the railroad right of way whenever one or more of the following [11] conditions exist."[56] During cross-testimony, neither Mr. Norris[57] nor Mr. Peterson[58] identified any condition applicable to this Petition that would trigger a separated-grade crossing. Mr. Jeffers, Ms. Grabler, and Ms. Hunter agree.[59]

Ms. Grabler, Mr. Jeffers, and Mr. Deskins explained why the topography of the land at the proposed crossing made a separated-grade crossing impracticable.[60] The DEA Grade

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[53] JP-7-X; JP-8-X (eliminating use of the Richland Junction by these railroads).
[54] KJ-14-X.
[55] Or any other application of stator standards.
[56] KJ-2 at 151.
[57] TR 321-325.
[58] TR at 402-405, 396 (demonstrating other locations where TCRY holds trains within the vicinity of the proposed crossing); KH-10 (stating that at-grade crossings should not be permitted "where railroad operation **requires** temporarily holding trains" at the crossing). There was no showing of such a requirement.
[59] KJ-1 at 1; KJ-1T; SG-1T at 3; KH-1T at 10-12.
[60] SKG-1T at 6; KJ-1T at 9; JD-1T at 6.

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Separation evaluation documents this analysis.[61] TCRY's argument that the City should condemn land to create an underpass at the proposed crossing fails to consider that RCW 81.53.020 mandates that the UTC consider cost when determining whether a grade separation is practicable. The record contains undisputed evidence that a separated grade crossing would cost between $15 million and $200 million. An at-grade crossing, with all safety devices, can be installed for approximately $250,000.[62] Grade separation is not warranted. The public convenience and necessity demand an at-grade crossing.

7.2 Limited Potential for Dangers from the Proposed Crossing

Advances in engineering and safety standards have made highway traffic collisions rare occurrences at grade crossings.[63] The Railroad-Highway Grade Crossing Handbook states: "Highway traffic collisions are a statistically rare event."[64] Petitioners conservatively calculated incidents at 0.145 accidents per year, or one accident per 6.9 years.[65] The UTC calculated the incidents at 0.018701 per year, or one accident per 53.4 years.[66] Although TCRY provided no calculations for this crossing, Mr. Peterson testified,[67] and TCRY data shows that no train-car collision has occurred at a TCRY-owned or –operated grade crossing.[68] UTC staff confirmed this fact.[69] Because of the planned active warning devices, these calculations do not change, whether there are one or two sets of tracks at the crossing.[70]

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[61] KJ-6.)
[62] JP-1T at 3.
[63] KH-4 at 70.
[64] *Id.*
[65] KJ-1T at 7.
[66] KH-1T at 26:21.
[67] TR 399 (Mr. Peterson testified that TCRY reports all incidents to UTC, and Ms. Hunter at TR 270:7-10 testified that UTC records show no incidents at UTC-owned or –operated grade crossings).
[68] GAN-11-X. The much busier and complicated Steptoe crossing to the immediate west of the planned Center Parkway crossing is only on example.
[69] TR 270:7-10.
[70] KH-1T at 24:14; TR at 161-162

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7.2.1 Amount and Character of Travel.

Petitioners' incident calculations are based upon six trains per day and 7,000 vehicles per day, with train speeds not exceeding 35 miles per hour and road speed of 30 miles per hour.[71] The UTC's incident calculations are based upon four trains per day and 7,000 vehicles per day, with train speeds of 25 miles per hour and road speed of 30 miles per hour.[72] In contrast to this infrequently used track (with addition of the Center Parkway crossing), UTC evidence showed that there are "many examples" of multiple track at-grade crossings, and that these crossings are "very common" with instances of a combined 60 freight trains, unit trains, and passenger trains per day running through downtown areas at 40 to 70 miles per hour.[73] The Center Parkway crossing, with infrequent trains, will nevertheless be fully guarded with the identified safety features.

Track usage is currently estimated at 3.2 to 5.02 trains per weekday.[74] By 2030, assuming an annual five-percent (5%) growth rate, approximately 5.48 trains will use the track per weekday.[75] 5.48 trains per day accounts for, and is consistent with, any additional rail traffic that will result from the proposed Horn Rapids Industrial Development. Mr. Ballew testified that, under the "maximum, most optimistic development scenario," the Horn Rapids Industrial Development will result in a total of five new unit trains per week (two and a half in and two and a half out), or one per day.[76] Finally, Mr. Jeffers provided testimony explaining why a five-percent annual growth rate provides the UTC with more reliable data than TCRY's unsupported claim of a 20% annual growth rate. This is particularly so considering that TCRY's own data

[71] KJ-1T at 7:11-20; KJ-7 at 2-3.
[72] KH-1T at 23:15-23.
[73] TR 271-272.
[74] KJ-10TR; KJ-11; KJ-12. As stated by Mr. Montgomery, "we studied a different crossing of this line 12 years ago, and the number of trains at that time was four. And today we have three to four. So it hasn't changed much." TR at 232.
[75] KJ-10TR; KJ-11; KJ-12.
[76] TR 370.

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show a *decrease* in TCRY's total railcar traffic from 2,060 railcars in 2011 to 1,999 railcars in 2012.[77]

The Petitioners' agreements with BNSF and UPRR have eliminated all Class I railroad switching operations at the proposed crossing. The agreements' express purpose was to "improve vehicular and traffic movement in the area."[78] The proposed crossing crosses only one local track and a siding[79] (not four tracks), providing another difference between this Petition and the 2005 Petition.

Mr. Montgomery's analysis demonstrated that the crossing will be blocked less than 1% of the time.[80] The JUB Study and Mr. Montgomery's testimony demonstrated that vehicular queuing raises no valid issue for this crossing.[81]

7.2.2 As Safe Guarded, Sight Distance Standards Met for Crossing.

The UTC testified that the installation of active warning signals will mitigate for the sight distances at this crossing.[82] No evidence was presented to the contrary. Three of the four intersection directions have sufficient sight distance for non-active crossing devices. Further, the WSDOT Design Manual recognizes that "it is often difficult and impractical" to achieve optimal sight distance. The WSDOT Design Manual also directs the Petitioners to "evaluate installation of active devices at any location where adequate sight distances cannot be provided."[83] Mr. Jeffers' testimony shows that "Line of sight doesn't become an issue for the driver because they'd have flashing lights and a gate coming down in front of them."[84] In addition to including active devices at the proposed crossing, Mr. Jeffers testified that the roadway in the area of the

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[77] KJ-11TR at 6-9; TR 144-145, 189-191, 194-195; RVP-3-X (see p. 5 of Respondent's Response to Petitioners' Data Request).
[78] JP-7-X; JP-8-X (eliminating use of the Richland Junction by these railroads).
[79] RVP-9-X.
[80] SM-1TR at 5:7.
[81] SM-1TR at 6:15-26.
[82] KH-1T at 14:3-4.
[83] KH-8 at 1350-3.
[84] TR at 162:11-13.

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proposed crossing will be on tangent (aka "straight") roadway, thereby maximizing the sight distance of approaching vehicles.[85]

7.3 The Safety Measures of the Proposed Crossing Over Two Tracks

The safety measures for the new crossing are those typically found at crossings throughout Washington state and North America.[86] A visual depiction of the safety measures is set forth in Exhibit KH-3.[87] The measures on each side of the roadway include four flashing lights, two facing north and two facing south, mounted on a single vertical mast that will also include an audible bell and two "crossbuck" signs (MUTCD Sign Type R15-1); "Number of Tracks" sign (R15-2), again one set facing north and the other facing south; and a traffic gate on each side of the roadway prior to the crossing. The flashing lights, bells and gates are activated automatically by an approaching train, with lights and bells starting first, followed by the gates descending in front of approaching vehicles.

The beginning of the activation sequence will be electronically controlled such that the control device will measure the speed of the approaching train and will start the warning devices at a per-set time before the train arrives. This is commonly referred to as "constant warning."

The gates will stay down and the lights will continue to flash as long as a train is within the roadway. If the train stops before reaching the roadway, the flashing lights will continue and the gate will stay down for a prescribed period of time before "timing out" and ending the warning cycle. If a second train approaches on a second track as the first train is clearing the crossing, and the system recognizes the second train will arrive within the pre-set time, the lights will continue to flash and the gates will stay down.

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[85] KJ-1 at 8:4-6.

[86] The following described safety features are reviewed in the following elements of the record: Petition; KJ-1T; KH-1T at 8; SKG-1T at 4; KH-1T at 23-24; KJ-8. The previous petition did not include adequate safety design. To address this issue, Petitioners hired Ms. Grabler and Mr. Jeffers, railroad professionals with over 59 years' experience to design the safety features that will be implemented at the crossing. JP-1T at 4:4-8.

[87] This exhibit depicts Center Parkway crossing two tracks.

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In addition to the active warning devices, the roadway will have a raised curb and center median to keep vehicles from driving around the lowered gates. The roadway profile for the crossing is contoured to prevent a low-slung vehicle from becoming high-centered. Typical advance warning signs and roadway striping for a grade crossing are included.

The active warning system, as well as the signage and striping, complies with the Manual on Uniform Traffic Control Devices.[88] The roadway profile complies with the recommendations of the AASHTO *A Policy on Design of Highway and Streets*, and the American Railway Engineering and Maintenance-of-way Association's *Manual for Railway Engineering*, 2013, to avoid creating a "humped" crossing.[89] There was no evidence in the record that any safety issue was overlooked.

The record contains **no** evidence that raises **any** objection to the safety measures that will be implemented at the crossing. *See, e.g.*, Gary Norris's testimony, TR at 285-334; GAN-1T; GAN-1TR (Mr. Norris did not question any of the safety features designed for the crossing). Instead, Mr. Norris's misguided testimony focused on "acute public need," which is an irrelevant standard to this petition.

7.4 Public Need Requires Center Parkway Crossing

The proposed crossing advances public need as identified in the Petitioners' respective comprehensive plans and in the Regional Transportation Plan, including:

1. Protecting public health and safety by achieving emergency response times;
2. Providing congestion relief and reducing traffic accidents near the crossing;
3. Providing infrastructure to encourage economic development; and
4. Completing the roadway network.

[88] KJ-3.
[89] KJ-4.

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The public need for the proposed crossing is also demonstrated in the public comments, all of which support the proposed crossing.[90]

7.4.1 Center Parkway Crossing Required for Public Health and Safety: Emergency Response Times.

Chief Baynes, Chief Skinner, Chief Hines, and Chief Hohenberg (collectively, the "Chiefs") presented evidence demonstrating the need for the Center Parkway Crossing.[91] The Chiefs are acutely aware of the critical importance of response times, with their service delivery "tuned to count seconds."[92] The Chiefs are even more aware of these seconds, as first responders fail to achieve established LOS,[93] which threatens the survival of trauma, cardiac, and stroke patients.[94] The record shows conclusively that the failure to achieve LOS is based on existing traffic congestion[95] and the existing transportation grid, which includes a series of slow right-hand-turns for the Kennewick Fire Station 3.[96] These challenges will be exacerbated by projected population growth and related vehicle traffic.

To address these issues, comprehensive planning documents demand construction of the Center Parkway Crossing.[97] Chief Baynes estimates that the proposed crossing will reduce response time by a minute, which can be the difference between life and death for a patient.[98] The JUB Report also concludes that the crossing will reduce emergency response times.[99]

The record contains no other viable alternative route. The proposed route in Exhibit GAN-19-X, prepared by Mr. Norris, who has no experience as a first responder and who has not

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[90] Public Comment Exhibit.
[91] Chief Baynes: RGB-1T, RGB-2TR; Chief Skinner: CS-1T, CS-2TR; Chief Hines: NH-1T, NH-2TR; Chief Hohenberg: KMH-1T, KMH-2TR. Through the Automatic Aid Program, the City of Richland and the City of Kennewick provide expedient response services based upon service availability, not jurisdiction. RGB-1T at 3:4; TR at 93, 109.
[92] RGB-1T at 4:4-7
[93] GAN-3-X; GAN-18-X.
[94] GAN-3-X; RGB-18-X; RGB-1T at 4:4-7.
[95] TR at 106.
[96] TR at 106-107.
[97] RS-1T at 5; RS-2 at T 5-4; GAN-7-X at 58 to 59; RS-4 at H-3.
[98] TR at 107:15. On cross-examination, Mr. Norris testified that one element of Target Zero was response times. TR at 329:12-14.
[99] KJ-5 at 6.

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provided emergency services in this area, fails for several reasons. First, the proposed route does not include Kennewick Fire Station 3, which is an essential component of the region's Automatic Aid Program. Second, the proposed route fails to address the slow right-hand turns that slow Kennewick Fire Station 3's response times, as Judge Torem experienced during his driving tour. Finally, emergency services using the route would be slowed by the numerous lights and stop signs. Mr. Norris's unfamiliarity with emergency services and this area became apparent when he could not identify the number of lights or stop signs along the route.[100] Regardless, the Petitioners fully vetted their alternatives analysis with the Chiefs and the public during the Petitioners' comprehensive planning process and the ensuing seven-year planning and design process from the 2006 comprehensive plan update to the submittal of this Petition.[101] TCRY would have learned of the faults of its proposed route had TCRY participated in the comprehensive planning process.

Although it is undisputed that the crossing will be blocked "less than 1% of the time,"[102] or, put another way, "a miniscule portion of the day," the Chiefs acknowledge that the crossing will be blocked intermittently to accommodate the occasional train.[103] That is why the Chiefs describe the planned crossing as providing first responders with an *alternative* to reach the desired destination. As described by Chief Baynes, "the more routes into the areas we have, the better ... ideally we can have a choice of routes."[104] Chief Baynes also testified to the *increased* importance of the proposed crossing if additional unit trains were to run along the track.[105] The testimony of Mr. Montgomery, a transportation engineer who is an area resident and very familiar with the Tri-Cities,[106] also explained that the proposed at-grade crossing would allow emergency vehicles driving northward on Center Parkway to identify whether a train was

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[100] TR at 312:2:9.
[101] RGB-1T at 5-6; CS-1T at 3-4; NS-1T at 4; KMH-1T at 3; RS-1T at 7:10-11; JD-1T at 5-6.
[102] SM-1TR at 5:7.
[103] TR at 234:8-13.
[104] TR 108:15-16, 20-21.
[105] TR at 131:4-11.
[106] TR at 211-212.

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blocking the crossing. If that occurred, the emergency vehicle could use the roundabout for redirection to an alternative route.[107]

7.4.2 Center Parkway Crossing Required for Congestion Relief and to Reduce Traffic Accidents Near the Crossing.

Mr. Deskins' testimony shows that the proposed crossing will relieve failing or near failing intersections, thereby reducing crashes near the Columbia Center Mall.[108] These intersections are regularly within the top five crash locations in the City of Kennewick.[109] In response to the submitted crash data,[110] TCRY's expert witness replied: "The majority of these crashes are not injury crashes, only like an average of three injury (sic) per year and four at the other, at the Canal Street intersection."[111] TCRY seems to be taking the indefensible position that an average seven documented injuries per year at these intersections does not present a critical transportation planning issue, while simultaneously arguing against the crossing because it may result in one incident per 6.9 years (or one incident per 53.4 years, relying upon the UTC's analysis). This exercise in transportation planning, as explained by John Deskins, demonstrates why "0" in the Target 0 program is not the relevant legal standard for this petition:

> We all want traffic crashes and fatalities to be zero. But if "zero" was the decision-making standard, which it is not, we would paralyze our transportation system. Transportation planning is based upon minimizing risk and efficiently moving people and goods. This petition does both ...[112]

Rail crossing analysis cannot ignore the consequences of not providing a crossing. RCW 81.52.020.

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[107] TR at 230. Spencer Montgomery also testified that under existing conditions, emergency vehicles approaching the at-grade crossing on Steptoe commit to that route and have no opportunity to reverse course if the crossing is blocked. *Id.*

[108] JD-1T at 4. The JUB Report further supports Mr. Deskins' testimony. KJ-5T at 6. Also see section 6.1.2 of this brief.

[109] JD-1T at 4.

[110] JD-3T.

[111] TR at 90:6-11.

[112] JD-2TR at 4:3-9.

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7.4.3 Center Parkway Crossing Required to Provide Infrastructure to Support Community and Economic Development.

The Center Parkway Crossing provides infrastructure to encourage community and economic development. Mr. Montgomery testified to the importance of addressing congestion to ensure an integrated multi-modal transportation system, where trucks are able to service railways.[113] As such, the proposed crossing is consistent with and advances the proposed Horn Rapids Industrial Park, which will rely upon truck service.[114] The JUB Report identified the crossing as providing access to nearly 60 acres of land that has utilities and collector roadway access, but lacks direct access to the commercial area south of the railway.[115]

7.4.4 Center Parkway Crossing Required to Complete the Roadway Network.

The Center Parkway Crossing also completes the regional roadway network. This crossing is the final step in a series of transportation projects to improve the functionality of the network by providing a north-south connection in the existing grid system.[116]

8. THE CENTER PARKWAY CROSSING SATISFIES ANY POTENTIAL STANDARD UNDER RCW 81.53.020.

In addition to satisfying the UTC's balancing test, UTC staff testified that this petition also satisfies the UTC's outdated three-step analysis.[117] Here, the record before the UTC shows that the proposed crossing addresses a lack of reasonable alternative access for public emergency services. That record also demonstrates the insufficiency of alternative grade crossings. Either of these elements is sufficient to demonstrate an "acute public need" under older UTC orders.[118] While this standard is now irrelevant for jurisdictions planning under the GMA, the Petition and supporting record nevertheless meet that standard. As the UTC recognizes, the key term in

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[113] SM-1TR at 3.
[114] TR at 373, 405
[115] KJ-5 at 6.
[116] KJ-5 at 5.
[117] TR at 281:14-25, 282:1-7.
[118] *E.g.*, Whatcom County, Docket No. TR-1725 and TR-1726; Town of Tonasket, Docket No. TR-921371.

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RCW 81.53.02 is "practicable."[119] There is no practical alternative to an at-grade crossing for Center Parkway. With the safety mitigation and limited track use (now and in the future) the statutory standard directs approval of the Petition.

9. CONCLUSION

Consistent with RCW 81.53.020 and .030, a separated grade crossing is not practicable at Center Parkway. Recent UTC decisions recognize the following actions as providing a public benefit: expansion of an industrial park,[120] access to land for economic development purposes,[121] **or** the expansion of pedestrian and bicycle trails.[122] As demonstrated through this Petition and the supporting record of documentary and testimonial evidence, the proposed Center Parkway crossing advances far more public benefits than the above-listed projects. Railroad professionals with extensive industry experience designed the at-grade crossing to exceed federal and state safety standards. There is nothing in the record to show to the contrary.

The Petitioners having met their burden, and consistent with the UTC Staff recommendation, the proposed at-grade Center Parkway Crossing between the City of Kennewick and the City of Richland should be approved.

Respectfully submitted this 20th day of December, 2013.

FOSTER PEPPER PLLC

By: _____

P. Stephen DiJulio, WSBA #12921
Jeremy Eckert, WSBA #42596
Attorneys for Petitioners

[119] TR at 281.
[120] City of Pasco, Docket TR-121467.
[121] Port of Moses Lake, Docket TR-100072; Benton County, Docket TR-112127.
[122] City of Pullman, Docket TR-100041; Clark County, Docket TR-110492.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of this record in this proceeding by email. The parties of record are identified below:

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A courtesy copy was also delivered, in the manner indicated, to:

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DATED this 20th day of December, 2013, at Seattle, Washington.

Helen Stubbert

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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	)	DOCKET TR-130499 ORDER 02 INITIAL ORDER DENYING PETITION TO OPEN AT-GRADE RAILROAD CROSSING

BACKGROUND

1 On April 8, 2013, the City of Kennewick filed with the Washington Utilities and Transportation Commission (Commission) a petition to construct a highway-rail grade crossing at Center Parkway, Kennewick, Washington and remove an existing railroad siding. On May 31, 2013, the City of Richland petitioned to intervene in support of this petition.

2 On June 4, 2013, the Commission held a prehearing conference in Olympia, Washington, before Administrative Law Judge Adam E. Torem. At that time, the Commission granted intervenor status to the City of Richland and adopted a procedural schedule for this docket.

3 At the prehearing conference, the City of Kennewick indicated compliance with the State Environmental Policy Act (SEPA) by its 2003 completion of a SEPA checklist for the Center Parkway Extension project and subsequent issuance of a Mitigated Determination of NonSignificance (MDNS). On July 26, 2013, the City of Kennewick updated its previous environmental assessment and prepared an Addendum to its SEPA checklist. On August 20, 2013, the City of Kennewick confirmed to the Commission that all SEPA compliance work was complete.

4 The Commission conducted evidentiary hearings on November 19-20, 2013, and a public comment hearing on November 20, 2013, in Richland, Washington. Judge Torem performed a site visit and toured the area on November 21, 2013. The parties simultaneously filed written post-hearing briefs on December 20, 2013.

5 *Representatives.*[1] P. Stephen DiJulio and Jeremy Eckert, Foster Pepper PLLC, Seattle, represent petitioner City of Kennewick and intervenor City of Richland (Cities). Paul J. Petit, Richland, represents respondent Tri-City & Olympia Railroad (TCRY). Steven W. Smith, Assistant Attorney General, Olympia, represents the Commission's regulatory staff (Commission Staff or Staff).[2]

EVIDENCE

A. Center Parkway and Surroundings

6 Center Parkway is a minor arterial roadway in Kennewick. As currently constructed, its northbound traffic moves into a roundabout intersection with Gage Boulevard and cannot proceed further north to Tapteal Drive.[3] As part of their comprehensive plans, the Cities intend to connect Tapteal Drive in Richland with Gage Boulevard in Kennewick by extending Center Parkway northward.[4] In order to accomplish this; Center Parkway would cross two sets of railroad tracks owned by the Port of Benton.[5]

7 Seven years ago, the Commission denied the City of Kennewick's original petition to construct this at-grade crossing.[6] At that time, extending Center Parkway northward would have required crossing four sets of tracks. However, in 2011, the City of Richland completed negotiations with the Union Pacific Railroad Company (UPRR) and Burlington Northern Santa Fe Railway Company (BNSF) to relocate their switching operations from the area, allowing removal of the two UPRR spur tracks.[7]

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[1] The following parties appeared at the prehearing conference but did not participate in any other portion of the proceedings: Thomas A. Cowan, Richland, represents respondent Port of Benton. Tom Montgomery and Kelsey Endres, Seattle, represent respondent Burlington Northern Santa Fe Railway Company (BNSF). Carolyn Larson, Portland, OR, represents respondent Union Pacific Railroad Company (UPRR).

[2] In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

[3] Exh. JP-5-X, at 2-3 (overview maps of area).

[4] Exh. JP-1T, 2:11-24; *see also* Exh. JP-2, Exh. JP-3, and Exh. JP-4.

[5] *See* Exh. KH-2 (aerial view of surrounding area) and Exh. KH-3 (crossing configuration).

[6] *See* Docket TR-040664, *City of Kennewick v. Union Pacific Railroad*, Order 06, Initial Order Denying Petition; Docket TR-050967, *City of Kennewick v. Port of Benton and Tri-City & Olympia Railroad*, Order 02, Initial Order Denying Petition (January 26, 2007) (2007 Order).

[7] Exh. JP-6-X (UPRR) and Exh. JP-7-X (BNSF).

8 Commercial and retail properties dominate the area surrounding the proposed crossing. As shown in Figure 1,[8] the Columbia Center Mall, a major regional shopping center, is located immediately southeast of the proposed crossing, bordered by Center Parkway (west side), Quinault Street (south side), and Columbia Center Boulevard (east side). The Mall's northern boundary abuts Port of Benton and UPRR railroad tracks that connect at Richland Junction, just east of the proposed crossing.

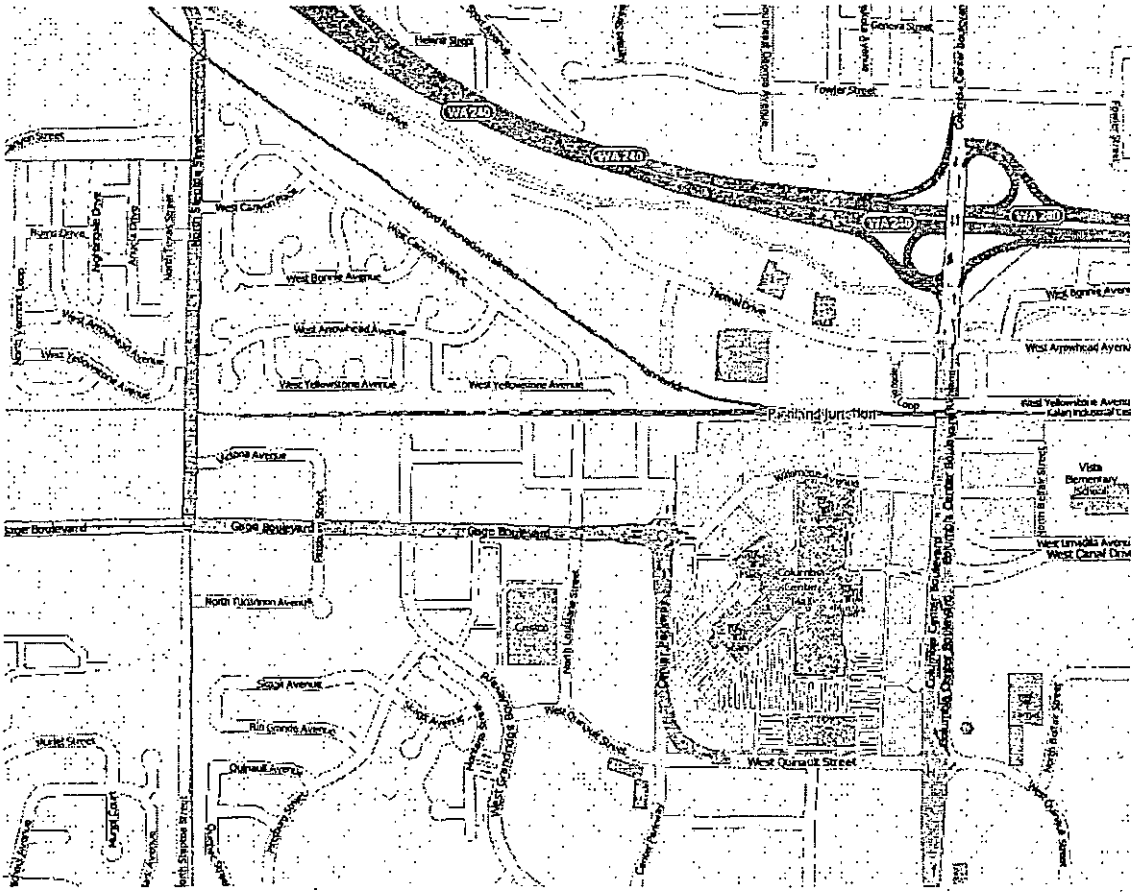

Figure 1. Overview Map of Area (including old UPRR spur track, now removed)

9 North of the proposed crossing, Tapteal Drive provides access to a hotel and various retail, commercial and undeveloped properties located in a mile-long pocket of land below Highway 240. The proposed Center Parkway crossing would provide a more direct connection from this area to the Columbia Center Mall.[9]

10 Road access between these two areas now exists where Tapteal Drive intersects Columbia Center Boulevard, approximately 0.4 miles east of the proposed crossing.

[8] Aerial imagery of the area is provided by Exhs. JD-27-X, JD-28-X, JD-29-X, and JD-30-X.

[9] *See* Petition at 8; *see also* Exh. RS-1T, 8:20 – 9:2 and Exh. JD-1T, 3:6 – 4:20.

Columbia Center Boulevard has a grade-separated overpass to cross the UPRR mainline track; however, as this section of the roadway is divided, northbound traffic accessing Tapteal Drive must make a series of right turns to loop up and over the major arterial roadway (Tapteal Loop). Alternatively, Tapteal Drive meets Steptoe Street approximately 0.7 miles west of the proposed crossing. From there, southbound motorists currently pass through a regular at-grade crossing to connect with Gage Boulevard, another major arterial roadway that provides eastbound access to the mall area via the current roundabout intersection with Center Parkway.[10]

B. Rail Operations at Richland Junction

11 TCRY is a rail carrier conducting interstate rail operations through Kennewick and Richland. TCRY leases the track west and north of Richland Junction from the Port of Benton; BNSF and UPRR also operate on this track. Randolph V. Peterson, Managing Member of TCRY, explained that the second set of tracks immediately west of Richland Junction allows trains to meet and pass when entering or exiting the area. According to Mr. Peterson, this passing track is "absolutely essential" because TCRY makes frequent, if not daily, use of that facility.[11] When no passing operations are scheduled, TCRY also uses the second track as a siding to store idle freight cars.[12]

12 Mr. Peterson estimates that TCRY presently operates 10 to 20 freight trains each week on the mainline track that passes through the Richland Junction. BNSF operates another 10 freight trains each week and, on occasion, UPRR operates a "unit train," a mile-long freight train consisting of approximately 100 to 120 cars all carrying the same cargo. No passenger trains operate on this track. Mr. Peterson testified that the combined annual train traffic through the Richland Junction increased from nearly 4,500 railcars in 2012 to over 5,100 railcars in 2013.[13] Mr. Peterson expects further

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[10] *See* Exh. JP-5-X, at 2-3. In 2009, the Commission granted the City of Richland's petition to realign the Tapteal-Steptoe intersection atop the at-grade crossing to create Washington's first-ever roundabout intersection with a rail line running through the middle. *See* Exh. GAN-10-X, Docket TR-090912, *City of Kennewick v. Tri-City & Olympia Railroad*, Order 01, Order Granting Petition to Reconstruct the Steptoe Street Highway-Rail Grade Crossing and Modify Active Warning Devices (July 2, 2009). Although the Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan projected this construction to begin in 2012, the City has not yet initiated any construction work. *See* Exh. RS-4, at 16 (Steptoe Street Phase 3).

[11] Peterson, TR. 381:5 – 383:15.

[12] The Cities contend TCRY makes only sparing use of the passing track. *See* Exh. KJ-13-X, at 2. The Cities argued that several tank cars present on the siding during the evidentiary hearing had not been moved for days or even weeks. Peterson, TR. 405:14 – 410:19; *see also* Exh. RVP-9-X.

[13] Exh. RVP-1T at 3-4; *see also* Exh. RVP-3-X at 1-3. The Cities estimate current train traffic to be appreciably lower, between 3.2 to 5.02 trains per weekday, or 2,310 total railcars moved by TCRY annually. *See* Exhs. KJ-10T-R, KJ-11, and KJ-12; *see also* Jeffers, TR. 143:1 – 146:25.

increases in train traffic because of TCRY's continued growth and new commercial developments in the Horn Rapids Industrial Park that will be served by rail.[14]

13 Gary Ballew, the City of Richland's Economic Development Manager, testified that the Richland City Council recently approved a series of development agreements to construct a rail loop of sufficient size to service unit trains in the Horn Rapids area.[15] Mr. Ballew expects this new rail loop will be operational by summer 2015 and able to process the equivalent of two and a half unit trains per week (approximately one unit train entering or leaving the facility each day).[16] Mr. Ballew also testified that Richland has entered real estate and development agreements with ConAgra Foods to build an automated cold storage warehouse in the Horn Rapids area served by a separate smaller loop track.[17] Mr. Ballew expects an average of 30 rail cars each week will come and go from ConAgra's facility.[18]

14 All trains traveling to the Horn Rapids area must pass through the Richland Junction and cross the proposed Center Parkway extension.[19] Considering the expected increase train traffic across Richland Junction, TCRY contends that the passing track will become even more essential and perhaps need to be extended to accommodate longer trains.[20] Mr. Peterson testified that he opposes the new Center Parkway crossing because rail operations could regularly require freight trains to block the crossing, occasionally for lengthy periods of time.[21]

C. Grade Separation

15 Grade separation refers to the method of aligning the junction of two or more surface transportation rights-of-way at different heights (grades) to avoid conflicts or disruption of traffic flows as they cross each other. In the case of highway-rail junctions, underpasses, overpasses, or bridges are the most common forms of grade

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[14] Exh. RVP-1T at 5-6; *see also* Exh. GAN-16-X.

[15] Richland's rail loop will be approximately 8400 feet in total length. Ballew, TR. 354:25 – 357:22; *see also* Exhs. JD-37-X, JD-38-X, JD-39-X, KJ-14-X; and King, TR. 334:1 – 336:15 and 337:21 – 340:16.

[16] Ballew, TR. 358:2-12, 364:15 – 365:3, 369:21 – 370:6, 375:4 – 376:24; *see also* Exh. JD-38-X.

[17] Ballew, TR. 342:23 – 345:15; *see also* Exhs. JD-9-X, JD-10-X, and JD-11-X.

[18] Ballew, TR. 345:16 – 346:17 and 373:6-14.

[19] Ballew, TR. 346:22 – 347:8; *see also* Jeffers, TR. 173:10-19.

[20] Post-Hearing Brief of Respondent Tri-City & Olympia Railroad Co. at 9; *see also* Jeffers, TR. 154:24 – 159:12.

[21] Peterson, TR. 414:23 –418:5.

separated crossings. The Cities presented evidence contending that grade separation is not warranted at the proposed crossing site because of roadway characteristics, accident prediction models, and cost.

16 Rick Simon, Development Services Manager for the City of Richland, testified that constructing a grade-separated crossing at Center Parkway is not feasible due to differences in topography on the north and south sides of the rail line.[22] Susan Grabler, a railroad engineer from David Evans and Associates, Inc. (DEA), explained that roadway geometry at Center Parkway and the close proximity of Columbia Center Boulevard make grade separation impracticable.[23] Ms. Grabler pointed out that a grade-separation project would require increasing the steepness of the track approaching the crossing from the existing one percent grade to something greater than two percent, exceeding the operational capabilities of most trains now using that track.[24] Kevin Jeffers, a DEA associate working with Ms. Grabler, determined that grade separation would require either replacement of the existing rail bridge over Columbia Center Boulevard (to the east) or elimination of existing access to the hotel immediately north of the crossing due to the depth of the undercrossing.[25]

17 Ms. Grabler also testified that the expected average daily traffic (ADT) on the Center Parkway extension would not justify grade separation. The Federal Highway Administration (FHWA) Railroad-Highway Grade Crossing Handbook establishes a threshold of 100,000 ADT to require grade separation at an urban crossing.[26] The Cities estimate that Center Parkway's traffic will reach only 7,000 ADT by 2033, much lower than the FHWA threshold.[27] This low traffic volume contributes to a low predicted accident frequency rate, further reducing justification for grade separation. Using an FHWA model, Mr. Jeffers predicted that the crossing's accident frequency would be 0.145 accidents per year, or 1 accident every 6.9 years.[28] Kathy Hunter, testifying for Commission Staff, analyzed a similar crossing in Prosser and forecast an even lower likelihood of accidents at the proposed Center Parkway crossing.[29]

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[22] Exh. RS-1T, 6:17-23.

[23] Exh. SKG-1T, 3:13-20; *see also* Grabler, TR. 205:21 – 206:13.

[24] Exh. SKG-1T, 6:11-23; *see also* Exh. KJ-1T, 9:7-19.

[25] Exh. KJ-1T, 4:12-17.

[26] Exh. KJ-2, at 11 (*see* paragraph 6.a.iv).

[27] Exh. SKG-1T, 3:21-25; *see also* Exh. KJ-1T, 6:14-20.

[28] Exh. KJ-1T, 7:11-20; *see also* Exh. KJ-2 (at 4-8) and Exh. KJ-7 (at 2-3).

[29] Exh. KH-1T, 24:21 – 26:22; *see also* Exh. KH-12. Ms. Hunter's calculation predicts 0.018701 collisions per year, or one accident every 53.5 years.

18 Jeff Peters, Transportation and Development Manager for the City of Richland, testified that constructing the proposed at-grade crossing would cost approximately $250,000. Mr. Peters estimated that a grade-separated crossing for Center Parkway would cost between $15 million and $200 million.[30] Mr. Jeffers identified four different design options for a grade-separated crossing within that price range, each requiring extensive retaining walls due to excavation depths of 20 feet or more for the roadway or, alternatively, fill depths under the tracks in equivalent amounts.[31]

19 Commission Staff concurred with the Cities that grade separation is not warranted at this location.[32] Noting the low traffic volumes and determining that train crossings would be infrequent, Ms. Hunter endorsed the Cities' proposal to mitigate the dangers of an at-grade crossing through installation of active warning devices, to include advanced signage, flashing lights, audible bell, automatic gates, and a raised median to prevent drivers from going around the gates.[33] Staff believes these measures adequately moderate the dangers presented by the proposed at-grade crossing.[34]

D. Public Need for Proposed Crossing

20 The Cities seek to complete a planned network of roadways and address traffic issues in the area by extending Center Parkway from Tapteal Drive to Gage Boulevard. The Center Parkway extension project has been included in the Cities' comprehensive planning process since 2006.[35] The project is also noted for funding in the Benton-Franklin Council of Governments Regional Transportation Plan.[36] According to the Cities, extending Center Parkway to Tapteal Drive and constructing the necessary at-grade crossing will decrease emergency vehicle response times, reduce the amount of accidents near the Columbia Center Mall, and improve traffic circulation in an important commercial area.[37]

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[30] Exh. JP-1T, 3:1-8.

[31] Exh. KJ-1T, 10:3-13; *see also* Exhs. KJ-6 and KJ-7 and Jeffers, TR. 195:8 – 201:2.

[32] Exh. KH-1T, 8:1 – 12:9.

[33] Exh. KH-1T, 21:15 – 24:19; *see also* Exhs. KH-3 and KH-9.

[34] Exh. KH-1T, 27:1-3.

[35] Deskins, TR. 58:7-15; *see also* Exhs. RS-2, RS-3, GAN-2-X, GAN-3-X, GAN-4-X, GAN-6-X, GAN-7-X at 2, GAN-13-X, GAN-14-X, and GAN-15-X.

[36] *See* Exhs. RS-4, GAN-8-X, and GAN-9-X. The Executive Summary of the Regional Transportation Plan only discusses current congestion on Gage Boulevard in Kennewick being relieved in future years by extension of the Steptoe Street Corridor. The Plan has no specific discussion of anticipated benefits from extending Center Parkway. Exh. RS-4 at 6.

[37] Exh. JD-1T, 5:1-21; *see also* Exh. KJ-5.

1. Emergency Response Times

21 The Cities' police and fire departments have each established response time objectives for arriving at emergency incidents or high priority calls. In Richland, the police department has a one-to-five minute average response goal for high priority calls.[38] Similarly, Richland's Fire & Emergency Services first responders seek to arrive at incidents within five minutes or less from time of dispatch, 90 percent of the time.[39] Kennewick's fire response goal is five minutes and the emergency medical response goal is four minutes, each for 90 percent of events.[40]

22 The Cities' emergency response providers support each other and respond to each other's calls for help.[41] The Cities and three local fire districts signed a Master Interlocal Partnership and Collaboration Agreement in 2010 that includes an "automatic aid agreement" for prioritizing and sequencing certain aid calls.[42] The Cities' emergency service providers all agree that extending Center Parkway from Gage Boulevard to Tapteal Drive will improve emergency response times in the area. However, none of these witnesses testified that any of the Cities' emergency services providers were not routinely meeting their response time objectives.

23 Richland Chief of Police Chris Skinner explained that police response times are sometimes difficult to evaluate because officers are often already deployed in the community and can be responding from varied distances.[43] Chief Skinner testified that extending Center Parkway would provide better access for his officers, providing them a potentially faster alternative route to choose from when responding to emergency calls.[44] Kennewick Chief of Police Kenneth Hohenberg testified similarly.[45] Neither police chief conducted or consulted specific studies to support their claims of faster response times if the proposed crossing was opened.[46]

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[38] Exh. RS-1T, 5:11-12; *see also* Exh. GAN-4-X.

[39] Exh. RS-1T, 5:5-11; *see also* Exh. GAN-3-X.

[40] Exh. GAN-6-X at 2.

[41] Exh. CS-1T, 3:12-14 and KMH-1T, 2:10-15; *see also* Skinner, TR. 93:19 – 94:5.

[42] Exh. NH-1T, 2:13-25, and Exh. RGB-1T, 2:18—3:15. *See also* Baynes, TR. 109:4 – 110:15.

[43] Skinner, TR. 87:20 – 88:17.

[44] Exh. CS-1T, 4:1-6.; *see also* TR. Skinner, 95:4-8.

[45] Exh. KMH-1T, 3:1-21.

[46] Skinner, TR. 95:4-14; Hohenberg, TR. 138:11-25.

24 Kennewick Fire Chief Neil Hines testified that the best emergency response routes for fire and medical units are on "straight arterial-type roadways providing the most direct route with the least amount of traffic, traffic control systems, intersections, and turns to negotiate."[47] Without a direct connection between Gage Boulevard and Tapteal Drive, Kennewick emergency responders must travel north of the Mall via Columbia Center Boulevard or Steptoe Street, routes that are less direct, occasionally burdened with heavy traffic, and with multiple intersections and numerous turns to negotiate. According to Chief Hines, improving response times by even a few seconds could significantly impact the outcome for a patient in a critical event.[48] Richland Fire & Emergency Services Director Richard Baynes testified that the Center Parkway extension would provide a viable north-south route for fire and medical units if the primary routes on Steptoe Street or Columbia Center Boulevard were obstructed, growing in value as the Tapteal area continues its development.[49]

25 In support of their petition, the Cities submitted a traffic study completed by JUB Engineers, Inc. (JUB Study).[50] Using the hotel on Tapteal Drive and Center Parkway as an example, the JUB Study claimed that extending Center Parkway northward would reduce the response distance from the City of Kennewick's fire station to this point by one-third of a mile and reduce the response time from 2 minutes, 48 seconds, down to only 2 minutes. Coming from the Richland Fire Station, the JUB Study found that the response distance would be reduced by almost two-thirds of a mile and reduce response time from 5 minutes, 42 seconds, down to 4 minutes, 18 seconds.[51] Chief Baynes reviewed the response times in the JUB Study against his Department's records and calculated that "there's about a minute difference between accessing Tapteal via the proposed crossing versus the traditional routes."[52]

26 Gary Norris, a traffic engineer hired by TCRY, questioned whether the JUB Study should be relied upon to demonstrate a public need for extending Center Parkway and opening an at-grade crossing. Mr. Norris pointed out that the above-noted 2 minute,

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[47] Exh. NH-1T, 3:15-18.

[48] *Id.* at 3:18-24.

[49] Exh. RGB-1T, 4:12-22.

[50] Exh. KJ-5; *see also* Petition.

[51] Exh. KJ-5, at 9; Exh. JP-5-X, at 1. Exh. KJ-5 provides a vicinity map showing the locations of both fire stations on page 7. Chief Hines stated his agreement with the JUB Study's response times. *See* Exh. NH-1T, 3:15.

[52] Baynes, TR. 105:16-18; *see also* Baynes, TR. 107:13-15 and Exh. GAN-18-X. However, Chief Baynes noted that the 2:48 response time could not include the firefighters' turnout time, as it would only be possible under optimum driving conditions (averaging 28 miles per hour) and probably could not be replicated during heavier daytime traffic. Baynes, TR. 123:4 – 124:13.

48 second response time to the hotel already meets the Cities' goal for response times by a wide margin. Further, Mr. Norris contends that the JUB Study fails to consider that existing or increased future train traffic may make the new roadway unavailable for reliable emergency response.[53]

27 Acknowledging the possibility of a train blocking the Center Parkway crossing, Chief Baynes explained "the more routes into areas we have, the better" number of alternatives there are for working around such problems.[54] Even so, Chief Baynes conceded that a unit train could block traffic at both the existing Steptoe Street crossing and the proposed Center Parkway crossing for lengthy periods of time, delaying emergency response times even longer if a fire or medical unit committed to a particular crossing before knowing the train's direction of travel.[55]

28 Mr. Norris presented an alternate response route from the Richland Fire Station to the hotel that avoided the potentially congested intersection of Steptoe Street and Gage Boulevard and would not require crossing a rail line at-grade. Mr. Norris contended that his alternate route over existing streets would take less than four minutes and perhaps be advantageous because it avoided potential delays from traffic and trains.[56]

29 Mr. Norris asserted that the JUB Study does not document an existing lack of reasonable alternate access for public emergency services.[57] Mr. Simon, Richland's Development Services Manager, conceded that he did not know if there were any areas in the City of Richland where meeting emergency response objectives would be improved by construction of the proposed Center Parkway crossing.[58]

2. Accident Reduction

30 The Cities also contend that opening the Center Parkway crossing would reduce traffic on Columbia Center Boulevard and therefore the number of accidents on that route and also remove the temptation for drivers to use the Mall's ring road as a through-route, endangering pedestrians.[59] Mr. Deskins likened the new Center

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[53] Exh. GAN-1T, 5:1 – 6:17.

[54] Baynes, TR. 108:9 – 109:3 and 119:9-11.

[55] Baynes, TR. 114:1 – 120:12; *see also* TR. 130:3 – 132:1.

[56] Norris, TR. 308:7 – 309:19; *see also* Exh. GAN-19-X. Mr. Norris calculated response speed to be approximately 28 miles per hour, the same as that relied upon in the Cities' JUB Study. Norris, TR. 310:8 – 312:16.

[57] Exh. GAN-1T, 5:1-16.

[58] Simon, TR. 60:13 – 61:5.

[59] Exh. JD-1T, 4:1-20 and Exh. JD-2TR, 2:23 – 3:4; *see also* Exh. SM-1TR, 6:9-12.

Parkway crossing to "connecting the parking lots between two popular businesses so that drivers don't have to enter the busier city street to travel between the two."[60]

31 Mr. Deskins provided an exhibit listing 12 years of crash data for two Columbia Center Boulevard intersections: Quinault Avenue and Canal Drive.[61] Going back to 2001, the intersection reports show 154 total crashes at Quinault Avenue and 165 total crashes at Canal Drive.[62] According to Mr. Deskins, opening the Center Parkway crossing on the other side of the Mall would reduce traffic at these intersections and "should ultimately reduce crashes" at these locations.[63] Spencer Montgomery, a transportation specialist with JUB Engineers, explained that JUB did not perform a study to support this conclusion because "if you reduce the traffic volume on a road, and it has a certain accident rate, then you will reduce the number of accidents."[64]

3. Mitigation of Traffic Congestion

32 In compliance with the Growth Management Act (GMA), the Transportation Element of Richland's Comprehensive Plan adopts standards and threshold levels of service (LOS) for the City's intersections. The LOS scale goes from A to F, measuring the length of delay a vehicle will experience at a signalized intersection. Richland's threshold LOS for acceptable delay is LOS D, a delay of 35-55 seconds; any intersection rated worse (E or F) is considered deficient.[65]

33 The Cities presented evidence that Columbia Center Boulevard is one of the busiest roadways in the region and that Steptoe Street could occasionally be congested at peak hours.[66] Further, the roadways around Columbia Center Mall can become extremely congested during the holiday shopping season in late November and early December.[67] According to the JUB Study, extending Center Parkway to Tapteal Drive will relieve some of this traffic congestion, but the study provides no further explanation of how the proposed crossing will achieve this result.[68]

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[60] Exh. JD-1T, 4:5-7.

[61] Exh. JD-3.

[62] *Id.* at 7 and 14.

[63] Exh. JD-2TR, 3:8-14.

[64] Montgomery, TR. 222:14-23.

[65] Exh. RS-2 at 17-19; *see also* Exh. RS-1T, at 4-5 (generalized explanation of LOS).

[66] Exh. KJ-5, at 9.

[67] Exh. JD-1T, 3:6-26.

[68] Montgomery, TR. 219:2-12 (acknowledging that the JUB Study provides no data or explanation of the methodology used to arrive at its conclusions).

34 JUB's Mr. Montgomery estimated that 7,000 vehicles per day would make use of the new Center Parkway crossing, some coming from Columbia Center Boulevard and some coming from Steptoe Street.[69] The JUB Study predicts that in 20 years, opening the Center Parkway crossing will decrease the afternoon peak hour volumes on those streets by 210 and 310 vehicles, respectively.[70] The JUB Study makes no further predictions on how opening Center Parkway would improve LOS ratings at surrounding intersections currently suffering congestion issues.[71]

35 Mr. Simon testified that "one way to reduce congestion is to increase the number of access routes between any two points" and contended "the extension of Center Parkway would provide an important link, not only for emergency vehicle response, but also to reduce overall traffic congestion."[72] As to LOS levels, Mr. Simon testified that Tapteal Drive was not currently operating at a deficient level,[73] but two other intersections south of the railroad tracks were identified as deficient: Columbia Center Boulevard at Quinault[74] and Steptoe Street at Gage Boulevard.[75] When asked to explain the effect of extending Center Parkway on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault, Mr. Simon stated "I'm not sure that I can."[76] Even though he had not seen any data or traffic studies to inform his opinion, Mr. Simon also asserted that a Center Parkway crossing

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[69] Montgomery, TR. 222:24 – 225:6; see also Exh. KJ-5, at 11.

[70] Exh. KJ-5, at 13, 17, and 19; *see also* Exh. GAN-1T, 7:13-19.

[71] The JUB Study claims that after construction of the proposed crossing, the Center Parkway / Tapteal Drive intersection would operate a LOS C for northbound left turns and LOS B for northbound right turns. Exh. KJ-5, at 14.

[72] Exh. RS-1T, 5:22-25.

[73] Simon, TR. 61:18-22.

[74] According to information provided to Kevin Jeffers by John Deskins and Spencer Montgomery, the intersection of Columbia Center Boulevard and Quinault Street is deficient because the eastbound left-turn movement is currently LOS E, degrading to LOS F by 2028. The overall intersection is currently LOS C, but expected to degrade to LOS F by 2028. *See* Exh. GAN-17-X.

[75] According to that same information, the intersection of Steptoe Street and Gage Boulevard is deficient because the southbound left-turn movement is currently LOS F, with three out of four left-turn movements degrading to LOS F by 2028. The overall intersection is currently LOS E and expected to remain at that level in 2028. *See* Exh. GAN-17-X.

[76] Simon, TR. 67:1-13. Mr. Simon conceded that other than the JUB Study, he had no other evidence to support his opinion. Simon, TR. 62:16 – 63:6 (referring to the intersection of Columbia Center Boulevard and Quinault Street).

could improve the deficient LOS at the Steptoe Street and Gage Boulevard intersection by allowing some traffic to divert to the proposed crossing.[77]

36 Mr. Deskins, the City employee most familiar with the City's traffic modeling simulation, conceded that he did not perform an LOS analysis specifically focused on the result of installing the proposed crossing at Center Parkway.[78] Mr. Deskins also acknowledged that he did not attempt to consider or model potential delays from trains at the proposed crossing or at the existing Steptoe Street crossing.[79]

DISCUSSION AND DETERMINATIONS

A. Res Judicata Does Not Bar the Cities' Petition

37 TCRY argues that the Commission's 2007 Order denying the City of Kennewick's request to construct an at-grade crossing at Center Parkway precludes the Cities from pursuing a subsequent petition seeking the same relief.[80] According to TCRY, the prior and current petitions are "fundamentally identical" in seeking an at-grade crossing at the same location.[81]

38 The Cities differentiate their current petition from the one put forward in 2005: they followed comprehensive planning update procedures adopted in 2006, completed extensive engineering and design studies, and worked with stakeholders to eliminate two track crossings from the project.[82] Commission Staff agrees that removal of two track crossings and the related reduction in rail switching operations at the site present a substantial change in circumstances.[83]

39 In administrative proceedings, the doctrine of res judicata limits repeated submissions of applications involving the same subject matter.[84] In order to apply res judicata, repeat applications must have the same (a) subject matter, (b) cause of action, (c) persons and parties, and (d) quality of the persons for or against whom the claims

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[77] Simon, TR. 67:14 – 69:22.

[78] Deskins, TR. 78:4-7; *see also* Deskins, TR. 73:4-12.

[79] Deskins, TR. 79:2 – 81:8. Mr. Deskins stated that because he was focused on specific intersection LOS ratings, the impact of delays from trains at the crossings "didn't concern me."

[80] Post-Hearing Brief of Respondent Tri-City & Olympia Railroad Co. at 3:5 – 6:3.

[81] *Id.* at 5:16-17.

[82] Petitioners' Post-Hearing Brief at 3-4.

[83] Post-Hearing Brief of Commission Staff at 13-14.

[84] *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wn.2d 22, 31, 891 P.2d 29 (1995).

are made.[85] Second applications that present a substantial change in circumstances or conditions are permitted.[86]

40 There is no dispute that the Center Parkway crossing is proposed for the same site and the same use previously rejected in the 2007 Order. However, the Cities have negotiated with BNSF and UPRR to remove their switching tracks from the area, reducing the number of tracks involved from four down to two. This alone is a significant change from the prior circumstances. Further, the record supporting the current petition is substantially different than that created seven years ago: the Cities presented updated traffic studies, additional detail regarding emergency response needs in the area, and much more detailed information about safety mitigation measures and warning devices to be installed at the proposed crossing. In addition to these substantial factual differences, the 2007 Order suggested that the Commission would consider a second application.[87]

41 The Commission finds that the Cities' current petition presents a substantially different situation from that considered by the Commission seven years ago. The Commission determines that res judicata does not bar the Cities' current petition.

B. The Growth Management Act is Not Dispositive

42 The Cities contend that state agencies are mandated to comply with local land use plans adopted under the Growth Management Act.[88] Therefore, the Cities argue that their regional comprehensive planning process "mandates" the Center Parkway crossing in order for the Cities to achieve their stated LOS for emergency response times and traffic flow at signalized intersections.[89] According to the Cities, the GMA prohibits the Commission from evaluating public need, alternatives for opening a proposed railroad crossing, or even whether the proposed crossing will function in the matter claimed by the Cities. Taken to its logical end point, the Cities' argument

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[85] *Id.* at 32, citing *Rains v. State*, 100 Wn.2d 660, 663, 674 P.2d 165 (1983).

[86] *Id.* at 32-33.

[87] 2007 Order at 10, ¶ 23 (". . .the petitions could be denied without further discussion. However, it may provide some guidance to Kennewick for future filings to consider the second prong of the legal standard.").

[88] Petitioners' Post-Hearing Brief at 7-12. The Cities cite specifically to RCW 36.70A.103's mandate that "[s]tate agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter." *Id.* at 8, n. 29.

[89] Petitioners' Post-Hearing Brief, at 9-11.

would require the Commission to approve any at-grade crossing planned for in a local jurisdiction's comprehensive planning process.[90]

43 We disagree that a land use planning statute deprives the Commission of its statutory authority to regulate public safety at rail crossings. We do not dispute that the GMA requires cities such as Richland and Kennewick to plan for future growth and make efforts at intergovernmental coordination.[91] However, a jurisdiction's comprehensive planning obligations under the GMA do not substitute for meeting the standards set out in RCW 81.53. The GMA and RCW 81.53 both address transportation safety issues, but from wholly different perspectives on public policy. In order to maintain the integrity of both statutes within the overall statutory scheme, the GMA must be read together and in harmony with RCW 81.53.[92] We find that the Cities must comply with the requirements of both statutes.

44 The Commission's statutory responsibility to protect the public from the dangers inherent to all at-grade crossings is independent of the Cities' obligation to plan under the GMA. The Commission retains and will exercise its authority to determine whether the proposed crossing satisfies the requirements of RCW 81.53.

C. Standards for Commission Approval of Rail Crossings

45 RCW 81.53.020 prohibits construction of at-grade crossings without prior authorization from the Commission. The statute requires that crossings be grade-separated "when practicable" and provides that:

> In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.

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[90] *Id.* at 8. In essence, the Cities argue that the GMA invalidated the Commission's ruling in *In re Town of Tonasket v. Burlington Northern Railroad Company*, Docket TR-921371 (December 1993) (*Tonasket*), at least for GMA planning jurisdictions.

[91] RCW 36.70A.070(6)(a)(v) requires the transportation element of a growth management plan to include intergovernmental coordination efforts.

[92] *Philippides v. Bernard*, 141 Wn.2d 376, 385, 88 P.2d 939 (2004), *citing State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974) ("In ascertaining legislative purpose, statutes which stand in pari materia are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes.").

If a grade crossing is authorized, RCW 81.53.030 allows the Commission to require installation and maintenance of proper signals or other devices to ensure public safety.

46 The Commission answers three key questions when evaluating a petition to authorize construction of a new at-grade crossing:

1) Considering engineering requirements and cost constraints, is grade-separation practicable?

2) Have inherent and site-specific hazards been moderated to the extent possible?

3) Is there a demonstrated public need for the crossing that outweighs the risks of opening the at-grade crossing?[93]

The Cities carry the burden of proof for each of these issues. Absent the required showing of impracticability of grade separation, moderation of risks, and a sufficient demonstration of public need, the Commission will not authorize the Cities to open a new at-grade crossing at Center Parkway.

1. Practicability of Grade Separation

47 By its nature, an at-grade crossing poses hazards for motorists, pedestrians, and railroad operators that are not present at grade-separated crossings. Washington courts have deemed at-grade crossings to be inherently dangerous.[94] In determining whether the Commission will require grade separation, RCW 81.53.020 requires an evaluation of

- the amount and character of travel on the railroad and on the highway;
- the grade and alignment of the railroad and the highway;
- the cost of separating grades;
- the topography of the country; and
- all other circumstances and conditions naturally involved in such an inquiry.

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[93] *See In re Town of Tonasket v. Burlington Northern Railroad Company*, Docket TR-921371 (December 1993) (*Tonasket*); *see also Burlington Northern Railroad Company v. City of Ferndale*, Docket TR-940330 (March 1995).

[94] *See Reines v. Chicago, Milwaukee,, St. Paul & Pacific R. Co.*, 195 Wn. 146, 150, 80 P.2d 406, 407 (1938); *State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County*, 5 Wn.2d 95, 104,104 P.2d 764 (1940); *Department of Transportation v. Snohomish County*, 35 Wn.2d 247, 250-51 and 257, 212 P.2d 829, 831-32 and 835 (1949).

In addition to these statutory factors, Commission Staff relies on the U.S. Department of Transportation's Federal Railroad Administration Railroad-Highway Grade Crossing Handbook (FRA Handbook) when considering "other circumstances and conditions" for grade separating a roadway from a railroad right-of-way, such as predicted accident frequency and vehicle delay times.[95]

48 Mr. Deskins and Mr. Montgomery testified that Center Parkway is expected to carry up to 7,000 vehicles per day by the year 2033. Mr. Peterson and Mr. Jeffers estimated that rail traffic may grow from the current high of five trains per weekday to perhaps double that amount in the foreseeable future. According to the FRA Handbook, traffic levels this low do not mandate grade separation, even in an urban setting.[96]

49 Mr. Simon, Ms. Grabler, and Mr. Jeffers all testified to the infeasibility of constructing a grade-separated crossing due to roadway alignment, topography, and cost considerations. Further, Mr. Jeffers and Ms. Hunter determined that accidents at the proposed crossing would be uncommon and infrequent. Finally, the JUB Study provided assurances that lowered crossing gates associated with normal rail operations would not result in vehicle queues extending into nearby intersections.

50 The Commission finds that the amount and character of travel on the railroad and on Center Parkway do not justify grade separation. Further, there is no evidence in the record disputing the engineering infeasibility of constructing a grade-separated crossing at Center Parkway. Finally, there is no serious dispute in the record that a grade-separated crossing would be tremendously more expensive than the proposed at-grade crossing. Therefore, considering engineering requirements and cost constraints, the Commission determines that a grade-separated crossing is not practicable at Center Parkway.

2. Moderation of Risk

51 If grade separation is impracticable, the Commission evaluates whether inherent and site-specific hazards at a proposed at-grade crossing have been moderated to the extent possible. As noted above, the risks of an accident at the proposed crossing are relatively low considering current and projected train traffic and predicted levels of

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[95] Exh. KH-7 and Exh. KJ-2 at 11. The FRA Handbook echoes the statute's requirement to consider the levels of train traffic, train speeds, and levels of auto traffic, and posted speed limits. The FRA Handbook also states that "[i]f a new access is proposed to cross a railroad where railroad operation requires temporarily holding trains, only grade separation should be considered." *See* Exh. KH-10.

[96] *See* Norris, TR. 321:10 – 325:5.

vehicle traffic. However, the existence of a second set of tracks and limited sight distances from some approaches to the crossing present a risk for motorists.

52 The Cities' petition includes crossing design specifications intended to mitigate the dangers of the at-grade crossing with active warning devices. Specifically, the Cities propose to install advanced signage, flashing lights, an audible bell, automatic gates, and a raised median strip designed to prevent drivers from going around lowered gates.

53 Commission Staff performed a diagnostic review of the proposed crossing design configuration and determined that the Cities' planned safety devices specifically address the hazards presented by the proposed Center Parkway at-grade crossing.[97] There is no evidence in the record disputing Staff on this determination.

54 We concur with Commission Staff that the petition's proposed advance and active warning devices would moderate the risks presented by this crossing to the extent possible at this site, even with motorists crossing two sets of tracks.

3. Demonstration of Public Need

55 The Commission will not approve construction of a new at-grade crossing without a demonstration of public need that outweighs the hazards inherent in the at-grade configuration. Petitioners must provide evidence of public benefits, such as improvements to public safety or improved economic development opportunities.[98]

56 In the City of Kennewick's prior petition to construct an at-grade crossing at this same location, the Commission determined that Kennewick failed to demonstrate "acute public need" and denied the petition.[99] The 2007 Order concluded that a city's goal to encourage economic development did not rise to the level of an acute public need, noting that economic development was already occurring along Tapteal Drive even without the proposed crossing.[100] The 2007 Order also concluded that traffic mitigation might constitute an acute public need, but only if alternate crossings were insufficient to accommodate traffic. The traffic study presented seven years ago

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[97] Exh. KH-5.

[98] *See Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions ¶¶ 33-37 (Feb. 15, 2011).

[99] 2007 Order, ¶¶ 24-26.

[100] *Id.* ¶ 25.

showed only a *de minimis* level of traffic diversion to Center Parkway and did not prove the nearby alternate crossings insufficient to handle the entire traffic flow.[101]

57 The Cities and Staff argue that the 2007 Order relied upon an outdated and overly stringent "acute public need" standard. They contend that in recent years the Commission has approved opening other at-grade crossings using a balancing test, weighing the need for the crossing against any dangers remaining after installation of safety devices.[102] The Cities and Staff cite several orders approved through the Commission's open meeting process, none of which presented the complexities involved in this matter.[103]

58 We agree with the Cities and Staff that the statute does not require a showing of "acute public need" to justify opening a new at-grade crossing. Nevertheless, no party petitioned for review of the 2007 Order and, until now, we have not had an opportunity to revisit the Center Parkway crossing. RCW 81.53 does not prohibit the Commission from approving approve new at-grade crossings, but mere convenience or a *de minimis* showing of need will not suffice. As Staff points out, we are obligated to balance public need against the hazards presented by a new crossing.[104] The Cities similarly concede that the Commission must determine "whether there is a

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[101] *Id.* ¶ 26.

[102] Petitioners' Post-Hearing Brief at 5-7, n. 20, and Post-Hearing Brief of Commission Staff at 9-12; *see also* Hunter, TR. 273:16 – 277:22. Staff also points out that while the FRA Handbook discourages opening new crossings, it recognizes that consideration of public necessity, convenience, safety, and economics will factor into individual decisions. According to the Handbook, "new grade crossings, particularly on mainline tracks, should not be permitted unless no other alternatives exist and, even in those instances, consideration should be given to closing one or more existing crossings." *See* Exh. KH-10.

[103] The Cities cited open meeting dockets that were all uncontested and did not benefit from a thoroughly developed evidentiary record. The only case with any persuasive value resulted in a net closure of crossings, trading two existing passively protected private at-grade crossings in the City of Marysville for one new public crossing with active warning devices (Docket TR-111147). None of the other approved new crossings were in urban areas where over 7,000 vehicles per day were expected to cross tracks currently traveled by five or more trains per day (in one case, the Commission approved a new crossing to divert approximately 400 commercial vehicles per day away from residential roadways and across a single set of tracks traveled by up to two trains per day (Docket TR-112127); in two other cases, the Commission approved installing new industrial rail lines across very lightly traveled roadways in order to promote industrial growth (the road in Docket TR-100072 had only 150 vehicles per day and the road in Docket TR-121467 had less than 1600 vehicles per day); and in two other cases, the Commission approved new pedestrian-only crossings across lightly used tracks (Docket TR-100041 had one weekly freight train and Docket TR-110492 had no active railroading operations)).

[104] Post-Hearing Brief of Commission Staff at 12, ¶ 33.

demonstrated public need for the crossing that outweighs the hazards inherent in an at-grade configuration."[105]

59 In this case, the Cities attempt to demonstrate public need by arguing improvements to public safety through faster emergency response times, reduced accident rates around the Columbia Center Mall, and relief of traffic congestion at nearby intersections with deficient levels of service. As explained below, the evidence in the record does not support the Cities' arguments that opening the Center Parkway crossing will create such improvements or alleviate existing traffic problems.

a) Emergency Response Times

60 The Cities contend that the proposed crossing will improve emergency response times. However, the evidence in the record demonstrates that the Cities' police and fire departments are generally meeting the response time objectives established in their respective comprehensive plans. Although the Cities point out individual statistics where response times have occasionally exceeded these goals,[106] the Cities' emergency responders are not regularly failing to achieve their established LOS. We recognize that improving emergency medical response times by even a few seconds could significantly impact the outcome for some patients, but the Cities introduced no evidence of a public need for faster response times and did not adequately explain how the Center Parkway extension would contribute to improved public safety.

61 Even if the Cities' emergency response time LOS levels were deficient, there is insufficient evidence in the record to demonstrate that opening a crossing at Center Parkway would solve this problem. Richland's comprehensive planning documents do not focus on building more roadways to solve response time deficiencies. Instead, the capital facilities element of Richland's GMA documents discuss building additional fire stations closer to areas needing better response times.[107]

62 Chief Baynes, Chief Skinner, and Chief Hohenberg all testified that more choices and more alternatives are always better for emergency responders. However, this new access route between Gage Boulevard and Tapteal Drive may prove to be an illusory option if rail traffic increases according to even the most conservative estimates made

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[105] Petitioners' Post-Hearing Brief at 6, citing *Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions (February 15, 2011) at ¶ 29.

[106] Petitioners' Post-Hearing Brief at 10, citing to Exhs. GAN-3-X and GAN-18-X. Chief Baynes provided little, if any, context for additional response time data he provided in Exh. GAN-18-X. *See* Baynes, TR. 103:5 – 105:21, 121:13 – 125:6 and Norris, TR. 295:6 – 297:16.

[107] *See* Exhs. GAN-3-X and GAN-4-X.

part of the record in this case. The potentially shorter response times that might be possible to a very limited area of south Richland with this new at-grade crossing are not sufficient to demonstrate public need.

b) Reduced Accident Rates

63 The Cities also argued that a public need exists to open the Center Parkway crossing because doing so would reduce traffic accident rates at two Columbia Center Boulevard intersections. However, neither the JUB Study nor the Cities' traffic engineering witnesses provided any data or studies to support this assertion.

64 Mr. Deskins provided raw data on the number of vehicle collisions over a decade's time but analysis on how or why these accidents occurred. Mr. Montgomery offered only unconfirmed notions that reducing traffic levels would reduce accident rates. The record has no persuasive evidence connecting improved traffic safety on Columbia Center Boulevard to opening a new roadway that will regularly be blocked by rail traffic.

c) Relief of Traffic Congestion

65 Similarly, the Cities presented evidence showing that busy intersections in the vicinity of the Mall were approaching deficient LOS levels during peak travel times. Traffic waits for left turn signals at two intersections feeding into the Mall are already one level below the acceptable LOS D. We do not dispute that the Cities must find a way to resolve traffic congestion patterns in this area, but the Cities offered no persuasive evidence that opening a crossing at Center Parkway would materially contribute to this desired result:

- The JUB Study made no specific findings about how a crossing at Center Parkway would impact deficient LOS ratings at congested intersections.
- Mr. Simon was unable to explain the effect of extending Center Parkway on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault.
- Mr. Deskins failed to conduct any LOS analysis focused on the installation of a crossing at Center Parkway and never factored train delays into any of the models he did consider.

66 The record does not conclusively link extending Center Parkway to any improvement in traffic flow at congested intersections in the immediate area. At best, the record demonstrates that opening the proposed at-grade crossing will make public travel

more convenient between the Tapteal Drive area and the Columbia Center Mall. It is certainly possible that opening a new roadway will divert traffic away from existing overcrowded intersections, but supposition alone is not sufficient to demonstrate public need. The Cities failed to demonstrate that opening the proposed Center Parkway crossing would reduce traffic congestion around the Mall or at the intersection of Gage Boulevard and Steptoe Street.

4. Balancing of Public Need Against Hazards of At-Grade Crossings

67 The Cities failed to demonstrate public need for the proposed crossing, leaving nothing to balance against the inherent hazards of an at-grade crossing. Even if public convenience were sufficient to demonstrate public need, we find that it does not outweigh the hazards of an at-grade crossing.

68 By its nature, opening a new at-grade crossing at Center Parkway would increase risk to motorists by creating another opportunity to interact with freight trains. Motorists who might deviate from Columbia Center Boulevard's grade-separated crossing in order to access the Tapteal Road area would trade safe and undelayed passage over the UPRR tracks for a potentially faster route that comes with a risk of collision. The active safety measures proposed to be installed at the crossing would mitigate, but would not eliminate, such risk.

69 The Cities' justifications for the crossing do not outweigh the risk. At most, the evidence demonstrates that, on occasion, a police, fire, or ambulance response *might* be faster if the Center Parkway crossing was available and no trains were blocking traffic. Some drivers also would find the option to use Center Parkway more appealing to enter or depart the north side of the Columbia Center Mall than Gage Boulevard, particularly during the busy holiday shopping season. Such slight benefits do not overcome the law's strong disfavor for at-grade crossings. Accordingly, the Commission should deny the Cities' petition for failure to demonstrate a public need for the proposed crossing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

70 Having discussed above in detail the evidence received in this proceeding regarding all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts and conclusions, incorporating by reference pertinent portions of the preceding detailed discussion:

71 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate railroad

crossings, and has jurisdiction over the parties and subject matter of this proceeding.

72 (2) The City of Richland and the City of Kennewick are governmental entities authorized by law to petition the Commission pursuant to RCW 81.53.020 for authority to construct an at-grade railroad crossing where it is not practicable to construct a grade-separated crossing and there is a public need for such a crossing that outweigh its inherent risks.

73 (3) Res judicata does not bar the Commission from ruling on the Cities' petition because it is sufficiently different from the City of Kennewick's prior petition.

74 (4) Comprehensive planning under the Growth Management Act does not relieve the Cities from complying with RCW 81.53.

75 (5) A grade-separated crossing at the proposed project site is not practicable because of engineering requirements and cost constraints.

76 (6) The risks of an accident at the proposed crossing are relatively low considering current and projected train traffic, predicted levels of vehicle traffic, and plans to install active warning devices and other safety measures.

77 (7) The Cities' emergency responders are meeting or exceeding the response time objectives established in the Cities' comprehensive plans.

78 (8) The Center Parkway extension may assist the Cities' emergency responders by providing an alternative route for responding to incidents in the vicinity of Columbia Center Mall, but only when trains are not blocking the intersection.

79 (9) The Cities did not produce sufficient evidence to demonstrate that the Center Parkway extension would reduce accident rates in the area or improve traffic flow at congested intersections surrounding the Columbia Center Mall.

80 (10) The Cities failed to demonstrate sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing.

81 (11) The Commission should deny the City of Richland's and City of Kennewick's petition for authority to construct an at-grade crossing at the proposed extension of Center Parkway.

ORDER

THE COMMISSION ORDERS:

82 (1) The petition filed by the City of Kennewick and joined in by the City of Richland is denied.

83 (2) The Commission retains jurisdiction to enforce the terms of this order.

Dated at Olympia, Washington, and effective February 25, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PROOF OF SERVICE

DOCKET 130499

I HEREBY CERTIFY That I, as an employee of the Washington Utilities and Transportation Commission at Olympia, Washington, have served on 2/25/2014 the parties of record in this proceeding a true copy of the following document(s):

Order 02 - Initial order denying petition to open at-grade railroad crossing.

The document(s) was/were mailed to each of the parties of record in this docket. Each envelope was addressed to the address shown in the official file, with the required first class postage, and deposited on this date in the United States mail in the City of Olympia, County of Thurston, State of Washington.

Lorri Targus, Customer Service Specialist 3

PARTIES OF RECORD AND OTHERS RECEIVING NOTICE

SERVED BY MAIL:

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NOTIFIED BY E-MAIL:

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March 14, 2014

Mr. Steven King
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, Washington 98504-7250

SUBJECT: CITY OF KENNEWICK DOCKET TR-130499

Dear Mr. King:

We are writing to request active participation by you and your rail safety division staff in the upcoming review of Docket TR-130499. The initial order in this case is very disappointing to us. We have personal knowledge of the extensive community support and planning that calls for completion of the Center Parkway project and approval of the Cities' petition for a new at-grade railroad crossing required for its completion.

Richland and Kennewick's population growth has led the state over the past decade and is forecast to continue to do so for the foreseeable future. This growth has and will strain the capacity of the regional transportation network and of other municipal services, such as emergency responders. The Cities have collaborated both locally and regionally to adopt plans for transportation and emergency response. For most of the past two decades, adopted plans have included the Center Parkway link between Tapteal Drive and Gage Boulevard as the final segment of the street network in one of the highest volume travel areas in the Tri-Cities.

In addition to the necessary improvements to transportation services and emergency response capabilities the Cities planning for economic vitality is at stake. The Cities' land use plans identify undeveloped commercial and retail properties near the proposed Center Parkway that are not adequately served. Development of these properties to their highest and best use is in the region's economic and fiscal best interest. Completion of the street network, including Center Parkway, is vital to fulfillment of those plans and the communities' vitality.

The Cities have expended enormous energy and resources aligning support and resolving concerns for this last incomplete street segment with the result that several state and regional agencies have provided grant funds to support its completion. These agencies include the Washington State Department of Transportation, the Washington State Transportation Improvement Board, and the Benton-Franklin Council of Governments, our area's Regional

Transportation Planning Organization. Significant costs in local funds from the Cities have achieved agreements with Union Pacific Railroad and Burlington Northern Santa Fe Railroad to allow the street to be completed, including the at-grade crossing.

Support for this project is nearly unanimous in our communities and includes the general public, public safety officials, business interests, and elected officials. The only known opposition to the petition and project comes from the Tri-City and Olympia Railroad, a lease operator of a regional industrial spur track owned by the Port of Benton. The Port, as the track owner, does not oppose the crossing and has provided the easement needed to complete the crossing.

We believe the WUTC railroad safety division staff correctly analyzed the petition. We support their testimony indicating that the Cities' petition should be approved. We are asking that you thoughtfully consider initiating an appeal of the initial order in support of your staff's analysis of this case.

If you elect to not initiate an appeal by staff, we strongly encourage the WUTC staff to actively support the Cities' position before the Commission. Failure to do so would effectively abandon your staff's diligent and thoughtful analysis of this case with potentially devastating results for local and regional planning as well as railroad safety.

Thank you for your consideration.

Sincerely,

Sharon Brown
State Senator
8th Legislative District

Bradley Klippert
State Representative
8th Legislative District

Larry Haler
State Representative
8th Legislative District

Mike Hewitt
State Senator
16th Legislative District

Maureen Walsh
State Representative
16th Legislative District

cc: Kennewick City Council
Richland City Council

FOSTER PEPPER PLLC

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E-Mail EckeJ@foster.com

March 17, 2014

By Electronic Mail and Federal Express

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, Washington, 98504-7250

RE: Petition for Administrative Review: *City of Kennewick – Petition to Construct a Highway-Rail Grade Crossing, Center Parkway, Kennewick, WA.*
Docket TR-130499, Order 02.

Dear Commissioners:

The City of Kennewick and the City of Richland submit their Petition for Administrative Review of Initial Order for Docket TR-130499. The Initial Order applies a legal standard for at-grade crossing petitions that does not conform to controlling law or the UTC's interpretation of controlling law. Without action by the Commission, the Initial Order will create an unlawful and dangerous precedent that, as demonstrated in the attached petition, will put lives at risk.

This submittal includes the following: (1) Petition for Administrative Review; (2) a copy of the Initial Order Denying Petition to Open At-Grade Railroad Crossing, TR-130499, Order 02; (3) a proposed form of order.

Sincerely,

FOSTER PEPPER PLLC

Jeremy Eckert

Enclosures
cc: Parties *(by email)*

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 CITIES OF KENNEWICK AND RICHLAND PETITION FOR ADMINISTRATIVE REVIEW ORAL ARGUMENT REQUESTED

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1. INTRODUCTION

The Initial Order applies a legal standard for at-grade crossing petitions that does not conform to controlling law or the UTC's[1] interpretation of controlling law. Without action by the Commission, the Initial Order will create an unlawful and dangerous precedent that, as documented in this petition, will put lives at risk.

The Initial Order correctly concluded that the City of Kennewick and the City of Richland ("Cities"), satisfied the first two questions that the Administrative Law Judge ("ALJ") applied to evaluate an at-grade crossing petition for the Center Parkway crossing:

1) "A grade-*separated* crossing at the proposed project site is not practicable because of engineering requirements and cost constraints;"[2] and

2) "The risks of an accident at the proposed crossing are relatively low considering the current and projected train traffic, predicted levels of vehicular traffic, and plans to install active warning devices and other safety measures."[3]

However, the ALJ denied the petition because he concluded, "the Cities failed to demonstrate public need to outweigh the inherent risks presented by the proposed at-grade crossing."[4] Despite uncontested evidence in the record, the ALJ incorrectly determined that "The Cities failed to demonstrate public need for the proposed crossing, leaving nothing to balance against the inherent hazards of an at-grade crossing."[5] Neither the evidence nor the law supports the ALJ's conclusions.

Uncontested evidence demonstrates that the public need for the crossing outweighs the speculative risk of opening the at-grade crossing. The UTC calculated the risks of opening the proposed at-grade crossing, concluding that it would result in 0.018701 collisions per year, **or**

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[1] Washington Utilities and Transportation Commission, or "UTC," or "Commission."
[2] Initial Order at ¶ 75 (emphasis added). *Also see,* Initial Order ¶¶ 47-50.
[3] Initial Order at ¶ 76. Also see ¶¶51-54.
[4] Initial Order at ¶ 80.
[5] Initial Order at ¶ 67.

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one accident every 53.5 years.[6] Therefore, under the legal standard cited by the ALJ, the ALJ must approve the petition if the Cities demonstrate that the public need for the crossing outweighs the potential for one accident every 53.5 years.

Uncontested evidence shows that the Center Parkway crossing demonstrates the public need to improve failing emergency response times. All of the emergency responders agree that the Cities' failure to achieve emergency response times places lives at risk. Uncontested evidence also shows that the Center Parkway crossing demonstrates many other public needs, including: relieving traffic congestion, reducing traffic accidents, promoting economic development, and completing a long-planned regional transportation network.

The public needs are cumulative, but the uncontested evidence regarding only emergency response times demands the UTC's approval of the crossing. For example, to protect the public health and safety, the City of Richland (as many communities providing emergency medical response) has established its level of service ("LOS") at a **maximum 5-minute response time** for its emergency responders to arrive at incidents.[7] The City of Kennewick has established its LOS at a **maximum 4-minute response time** for emergency responders.[8] The record contains undisputed facts that the Cities are failing to achieve this emergency response time in this area.[9] The Director of Fire and Emergency Services for the City of Richland testified that the Richland Fire Department's median response time for the Tapteal Drive area is **5 minutes 50 seconds**, and that the Kennewick Fire Department's median response time to Tapteal Drive is **7 minutes 50 seconds**.[10] The record shows conclusively that existing disconnected transportation network and traffic congestion result in the Cities' failure to achieve its emergency response times.[11] The

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[6] Exh. KH-1T 25:7-23:7.
[7] Exh. RS-1T, 5:11-12, see also Exh. GAN-4-X.
[8] Exh. GAN-6-X at 2.
[9] Exhs. GAN-3-X, GAN-18-X.
[10] Exh. GAN-18-X, TR 103:1:17-105-21 (describing the facts and conclusions in GAN-18-X). Consistent with GAN-18-X, the City of Richland's comprehensive plan shows emergency response times at 7 minutes 44 seconds for EMS. GAN-3-X.
[11] TR. 105:222-107:14

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Center Parkway crossing provides a direct connection to Tapteal Drive, which will improve emergency response times to the Tapteal Drive area by 30% and 24% from Kennewick Fire Station 3 and Richland Fire Station 72, respectively.[12] The proposed crossing will reduce response times by "approximately a minute."[13]

The failure to achieve the emergency response times presents a critical safety issue for the residents and businesses of the City of Kennewick and the City of Richland. An "improvement [in response times] of mere seconds may significantly impact the outcome for critical events related to a medical emergency or fire."[14] And, the "fire service is acutely aware of the criticality of response times and their impact on outcomes, particularly for trauma, cardiac, and stroke patients, and wildland fires. Our service delivery is tuned to count seconds saved from dispatch through to arrival at the patient/fire/rescue."[15]

Despite this conclusive evidence, the Initial Order denied the proposed crossing. Creating a troubling precedent, the Initial Order stated: "Although the Cities point out individual statistics where response times have occasionally exceeded these goals [*i.e.*, less than five-minute response time], the Cities' emergency responders are not **regularly failing** to achieve their established LOS."[16] This is not the legal standard.[17]

The Cities demonstrated that they are not meeting their adopted level of service standards and that emergency response issues will continue to worsen with time. The Cities also demonstrated other public needs, including: relieving traffic congestion, reducing traffic accidents, promoting economic development, and completing a regional transportation network.

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[12] Exh. JP-5-X.
[13] TR 107:15 (testimony of Richland's Director of Fire and Emergency Services).
[14] Exh. NH-1T, 3:15-18 (testimony of City of Kennewick Fire Chief).
[15] Exh. RGB-1T, 4:4-7 (testimony of Richland's Director of Fire and Emergency Services).
[16] Initial Order ¶ 60. A primary purpose for this petition is to begin the permitting, bidding, and construction process for the crossing so that the Cities will never regularly fail to achieve emergency response times, which, as the record conclusively demonstrates, would place lives at risk.
[17] Hypothetically, if this decision becomes UTC's new standard, how does a petitioner demonstrate "**regularly failing**" emergency response times? For example, must a petitioner present data showing a 30-percent failure rate? A 60-percent failure rate? Is a death that is attributed to a failed emergency response time necessary?

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No law requires the Cities to demonstrate "regularly failing" emergency response times in order to receive UTC approval for a crossing that will reduce emergency response times, especially when the proposed crossing poses a risk of one incident every 53.5 years. The petition should be approved. The uncontested evidence demonstrates that public need for the crossing outweighs the speculative risk of opening the at-grade crossing.

2. PETITION AND RELIEF REQUESTED

The Cities petition the Washington Utilities and Transportation Commission ("Commission") for review of the INITIAL ORDER DENYING PETITION TO OPEN AT-GRADE RAILROAD CROSSING dated February 25, 2014 (the "Initial Order").[18] A copy of the Initial Order is included with this appeal as Exhibit A. The Cities file this petition pursuant to WAC 480-07-825 within 20 days of service of the Initial Order, and it is timely pursuant to WAC 480-07-825(2).

The Cities request that the Commission APPROVE the at-grade Center Parkway crossing. The Cities also request that the Commission revise the Initial Opinion so that it does not create a dangerous precedent that places public safety at risk. Because of the critical safety issues at stake, the Cities request oral argument, pursuant to WAC 480-07-825(6).[19]

3. BACKGROUND

By 2030, the City of Richland's population is projected to increase by 68% and the City of Kennewick's population is projected to increase by 56%.[20] This projected growth will place increased demands upon the Cities' existing transportation network. To accommodate the projected growth, the Cities have engaged in local and regional transportation planning efforts. The Center Parkway crossing is a key element of the planned transportation network.

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[18] Docket TR-130499 Order 02 (2014).
[19] Written testimony is inadequate, as the Commission will likely have additional questions regarding the Initial Opinion's attempt to create an unprecedented and dangerous legal standard for at-grade crossings.
[20] Exh. GAN-2-X.

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The Center Parkway crossing north to Tapteal Drive has been part of city, county and regional planning, consistent with the Growth Management Act, for nearly two decades. The Center Parkway crossing is included in both Cities' comprehensive plans, and the regional transportation plan, and it is included *as if the Crossing already exists* in the regional transportation model.[21] The Center Parkway crossing demonstrates public need, including: (1) addressing documented failing emergency response times; (2) reducing accident rates; (3) relieving traffic congestion, thereby addressing the existing transportation issues for motorists and public transit and for the multi-modal shipment of freight through the Tri-Cities (*e.g.*, allowing trucks to access rail yards); (4) promoting economic development; and (5) satisfying the concurrency requirements of the Growth Management Act. All of these issues will become more pressing as the usage of the transportation network increases with Tri-Cities' growing population.

The evidentiary support for the Center Parkway crossing of Port of Benton tracks set out in the Petition and heard by the Commission is effectively uncontested. The Cities, with the independent analysis of UTC staff, agree that a separated grade crossing is not practicable, based upon the factors set forth in chapter 81.53 RCW and controlling agency interpretation of the law. The Cities' crossing design includes safety features **exceeding** typical engineering standards for such an intersection. The safety measures include a raised center median to provide a higher degree of protection from vehicles navigating around the warning gates. The at-grade crossing also includes more safety measures not typically found at crossings throughout Washington state and North America (*e.g.*, active warning devices).[22] The Cities' attention to safety devices further reduces any risk at the proposed crossing, and, therefore, the Cities and the UTC agree

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[21] TR 84:4-9.

[22] The proposed safety features are reviewed in the following elements of the record: Petition; KJ-1T; KH-1T at 8; SKG-1T at 4; KH-1T at 23-24; KJ-8. The Cities' previous petition did not include adequate safety design. To address this issue, Petitioners hired Ms. Grabler and Mr. Jeffers, railroad professionals with over 59 years' experience to design the safety features that will be implemented at the crossing. Exh. JP-1T at 4:4-8.

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that the petition demonstrates a public need for the crossing that outweighs the speculative risks of opening the at-grade crossing.

Elected officials, public safety officials, businesses, and substantial numbers of regional and community groups and individuals support the Petition.[23] The only party in this petition that does not fully support this petition is the Tri-City & Olympia Railroad ("TCRY"), which refused to engage in any aspect of the Cities' transportation planning[24] or the UTC's Diagnostic Meeting for this proposed crossing.[25] And even TCRY admits "the City's [Richland's] interest in facilitating well designed urban transportation improvements, including rail, vehicle, and pedestrian facilities."[26] And, at the hearing, TCRY admitted that **it does not oppose** a crossing of the track and the siding.[27]

The Initial Order states incorrectly that TCRY "opposes the new Center Parkway crossing because rail operations could regularly require freight trains to block the crossing, occasionally for lengthy periods of time."[28] The uncontested record shows that the crossing will be closed approximately one percent (1%) of the day,[29] further undermining the ALJ's findings. For this reason, and the remaining record before the UTC, the Petition should be granted.

4. SUMMARY OF ISSUES FOR ADMINISTRATIVE REVIEW

This Initial Order creates immediate health and safety issues for the Cities, and it also creates a dangerous precedent for future petitions to the UTC. The Initial Order is deficient in many regards:

(1) The Initial Order fails to defer to UTC's consistent interpretation of RCW 81.53.020 and .030;

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[23] Public Comment Exhibit.
[24] Exh. RS-1T 3.
[25] Exhs. KH-1T 7:9-11; KH-5 at 2 ("While invited, TCRY and Port did not have representatives in attendance.")
[26] Exh. RVP-7-X.
[27] TR. 414-418.
[28] Initial Order ¶14,citing TR 414:23-418:5.
[29] Exh. SM-1T 5:7.

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(2) The Initial Order violates RCW 36.70A.103;

(3) The Initial Order applies an incorrect legal standard to review the petition;

(4) The Initial Order incorrectly interprets evidence; and, for these reasons

(5) The Initial Order concludes with Findings of Fact and Conclusions that are not supported by fact, not supported by law, and create a dangerous precedent that places the public at risk, while limiting local government's ability to address identified health and safety issues.

This petition addresses each of these issues in the order outlined above.

5. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Cities assign error to ¶¶ 76, 77, 78, 79, 80, and 81 (respectively numbered: 6, 7, 8, 9, 10, and 11) because they are inconsistent with evidence and controlling law, as demonstrated throughout this petition and the evidentiary record. The Cities propose the following Findings of Fact and Conclusions of Law:

STRIKE ¶76; PROPOSED ¶: The inherent risk of the proposed at-grade crossing is low considering current and projected train traffic, predicted levels of vehicle service, and plans to install active warning devices and other safety measures. After the construction of the crossing, the UTC calculates the risk at one incident every 53.5 years.

STRIKE ¶77; PROPOSED ¶: The Cities have demonstrated that they are failing to achieve established emergency response times, placing the public at risk.

STRIKE ¶78; PROPOSED ¶: The Center Parkway crossing will assist emergency responders by providing an alternative route for responding to incidents on Tapteal Drive and in the vicinity of Columbia Center Mall. The Cities have also demonstrated that the proposed Center Parkway extension will reduce emergency response times.

STRIKE ¶ 79. Delete – unnecessary.

STRIKE ¶ 80; PROPOSED ¶: The Cities presented sufficient evidence to demonstrate that the public need outweighs any risks presented by the at-grade crossing at this location.

STRIKE ¶ 81; PROPOSED ¶: The Commission approves the City of Richland's and the City of Kennewick's petition for authority to construct an at-grade crossing at the proposed extension of Center Parkway.

STRIKE ¶ 82; PROPOSED ¶ The petition filed by the City of Kennewick and joined in by the City of Richland is approved.

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6. LEGAL STANDARD

The Cities' proposed Findings of Fact and Conclusions of Law are consistent with UTC's application of RCW 81.53.020 and .030 and the ALJ's admission that the UTC applies a balancing test to evaluate at-grade crossing petitions. To ensure that the UTC does not inadvertently establish a new and dangerous precedent, the Cities assign error to the Initial Opinion's statement of legal standard of review for at-grade crossing petitions. The Initial Order fails to apply the correct legal standard, because it does not defer to the UTC's consistent position on "public need" used to evaluate petitions for an at-grade crossing.

6.1 The ALJ Failed to Defer to UTC's Consistent Interpretation of the Law.

The Cities assign error to ¶¶ 45-46, 58-59. As background, RCW 81.53.020 and .030 provide the UTC with certain authority over certain petitions for opening at-grade crossings when a grade-separated crossing is not practicable.[30] To determine whether a separated grade crossing is practicable, the UTC must consider a non-exclusive list of statutory factors, including (1) amount and character of travel on the railroad and on the highway; (2) the grade and alignment of the railroad and the highway; (3) the cost of separating grades; (4) the topography of the county; and (5) all other circumstances naturally involved in such an inquiry. RCW 81.53.020.[31] The statute does not define the term, "other circumstances," thereby allowing the

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[30] The Petitioners do not waive any jurisdictional argument regarding the Cities' exemption from this petition process. RCW 81.53.240 exempts first-class cities from the at-grade crossing petition process. The City of Richland is a first-class city, and the City of Kennewick is a code city. State law provides that code cities have the same authority as first-class cities. RCW 35A.11.020: "The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of the state, and not specifically denied to code cities by law." Nevertheless, the Petitioners believe UTC review and approval worthwhile.

[31] RCW 81.53.020 states: All railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under the same, when practicable, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the commission to do so. All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, **when practicable**, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so: PROVIDED, That this section shall not be construed to prohibit a railroad company from constructing tracks at grade across other tracks owned or operated by it within established yard limits. **In determining whether a separation of grades is practicable, the commission shall take into consideration the**

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UTC to determine the "other circumstances," so long as such a determination is consistent with the governing statute.

Within this statutory framework, the UTC applies a balancing test, summarized by Administrative Law Judge Dennis Moss as follows:

> The Commission, in practice, addresses two principal questions when considering whether to authorize construction of an at-grade crossing, which, by its nature, poses risks for motorists and pedestrians not present at grade-separated crossings:
>
> A. Whether a grade-separated crossing is practicable considering cost and engineering requirements and constraints.
>
> B. Whether there is a demonstrated **public need** for the crossing that outweighs the hazards inherent in an at-grade configuration.[32]

At the evidentiary hearing, UTC's Deputy Assistant Director[33] testified that the UTC interprets "public need" to be synonymous with the following terms: "good cause shown, reasonable, consistent with public interest, public convenience and necessity."[34] Undisputed testimony shows that the UTC has consistently applied this standard to recent at-grade crossing petitions.[35] UTC also testified that "public need" does *not* mean "acute public need."[36] To be clear, the "acute public need" standard is not required under RCW 81.53.020 or .030, which authorizes the UTC to examine "all other circumstances," and a showing of "acute public need" is not required by the UTC.

The ALJ must defer to an agency's consistent interpretation of an ambiguous statute. *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 77, 11 P.3d 726 (2000) ("Where a

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amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry. (Emphasis supplied.)

[32] *Benton County*, Docket No. TR-100572, Order 06 at 13 (2011) (emphasis added).

[33] Ms. Hunter has worked for the Commission for 24 years. Since 2008, she has been responsible for all of the UTC's rail safety staff and for either directly working, or directing the work of, all rail safety dockets. Exh. KH-1T at 1:12-23.

[34] TR. at 277:21-22.

[35] TR. at 279:20-23; 273:23-25 to 274:1-2.

[36] TR. at 273:23-25 to 274:1-2. "Acute public need" was first used in the 1985 Order for *Whatcom County v. Burlington Northern Railroad Company*, and cited in other orders, including the 1993 Order for *Town of Tonasket v. Burlington Northern Railroad Company*, Docket No. TR-921371, Order Denying Review at 4 (1993).

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statute is within the agency's special expertise, the agency's interpretation is accorded great weight; provided the statute is ambiguous."). And, the ALJ conceded that "the statute does not require a showing of acute public need."[37] But, the ALJ, contrary to controlling law, analyzed the "public need" of the petition by relying upon an unarticulated standard that can only have exceeded the UTC's consistent position that "public need" is synonymous with "good cause shown, reasonable, consistent with public interest, public convenience and necessity."[38]

6.2 The Initial Order's New and Unprecedented Legal Standard is Ambiguous and Dangerous.

Without Commission action, the Initial Order will create a precedent that the UTC cannot approve an at-grade crossing for public safety (and other) reasons unless the petitioner demonstrates "regularly failing" emergency response times when the UTC identifies the proposed risk of the crossing at less than two incidents per century. The record clearly demonstrates that "mere seconds" may significantly influence the outcomes of emergency response events,[39] and this petition demonstrates that the proposed crossing will improve emergency response times by 30% and 24% from Kennewick Fire Station 3 and Richland Fire Station 72, respectively.[40]

The application of the "regularly failing" standard is absurd. Under the Initial Order, apparently the first step in the petition process is for the Cities to compile a record that

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[37] Initial Order at ¶ 58.

[38] TR at 277:21-22. For example, in ¶ 57, footnote 102 of the Initial Order, the ALJ appears to improperly rely upon the USDOT Railroad-Highway Grade Crossing Handbook ("Handbook") to create a new and elevated standard of review for at-grade crossings. Significantly, the USDOT and UTC have not promulgated any rule to adopt the Handbook as a dispositive regulation in this petition for an at-grade crossing (*see e.g.*, WAC 480-62-999). In addition, the Initial Order fails to acknowledge that the Handbook qualifies its statement with the term: "***Generally***, new grade crossings ...." The Handbook also sets forth circumstances when the Handbook would consider an at-grade crossing to be warranted (*e.g.*, "when no other viable alternative exists"). The Handbook contemplates new at-grade crossings solely to "provide access to any land development." Ex. KH-10. Undisputed testimony also demonstrates that the Handbook also lists "public necessity, convenience, and safety as factors to be considered." Exh. KH-1T 15:7-10.

[39] Exh. NH-1T 3:15-18.

[40] Exh. JP-5-X.

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demonstrates "regularly failing" emergency services.[41] Then, the Initial Order will apparently allow the Cities to file a petition with the UTC, wait approximately one year for the completion of the process, bid the project, permit the project, and construct the project.[42] And, during this multi-year process, the Cities' residents will remain at risk because the Cities are "regularly failing" to provide basic health and safety services to its citizens. This is not the law. RCW 81.53.020 does not create a legal standard that places lives at risk when the risk of intersection conflicts at the proposed at-grade crossing is speculative.

6.3 The Initial Order Violates RCW 36.70A.103.

The Cities assign error to ¶¶ 42-46. The Growth Management Act provides for more than planning at a local level.[43] It is a comprehensive program for the integration of local regional and state planning for the benefit of an entire community, and all of its systems, including rail and roads. See RCW 36.70A.070 (including identification of state and local needs.). And, "state agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter ..." RCW 36.70A.103. The Initial Order fails to conform to this mandate. That Order properly concludes that Center Parkway crossing is included in the City of Kennewick's comprehensive plan, the City of Richland's comprehensive plan, and the Benton-Franklin Council of Government's Regional Transportation Plan.[44] But the Order then ignores such planning.

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[41] Initial Order ¶ 60. Under the ALJ's "regularly failing" standard, would the petition need to include evidence demonstrating deaths or near deaths attributable to failed response times?

[42] The application of the Initial Order's new and unprecedented legal standard is equally absurd. For example, how would the UTC define "regularly failing"?

[43] RCW 36.70A.010: "The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth."

[44] Initial Order ¶ 20.

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The Commission need not address this issue in order to reach its decision. The Petition and evidence showing public need is clear. However, to preserve this issue, the Cities assign error and propose correct findings to the following provisions of the Initial Order.

6.4 Petitioners' Proposed Decision and Determinations.

The Cities provide the following proposed amendments to subsection B. and C. of the Initial Order's section titled "Evidence:"

Delete ¶¶ 42-46 and ¶¶ 58-59. Insert the following:

B. LEGAL STANDARD FOR AT-GRADE CROSSING PETITIONS THAT IMPROVE EMERGENCY RESPONSE TIMES

¶ RCW 81.53.020 requires the UTC to approve a petition for an at-grade crossing prior to its construction. The statute requires that crossings be grade-separated "when practicable."

¶ To determine whether a separated grade crossing is practicable, the UTC must consider a non-exclusive list of statutory factors, including (1) amount and character of travel on the railroad and on the highway; (2) the grade and alignment of the railroad and the highway; (3) the cost of separating grades; (4) the topography of the county; and (5) all other circumstances naturally involved in such an inquiry. RCW 81.53.020. The statute does not define the term, "other circumstances."

¶ The Administrative Law Judge must defer to the UTC's interpretation of RCW 81.53.020, which includes the term, "other circumstances."[45]

¶ Previously, the UTC has relied upon the following analysis for at-grade crossing petitions:

> The Commission, in practice, addresses two principal questions when considering whether to authorize construction of an at-grade crossing, which, by its nature, poses risks for motorists and pedestrians not present at grade-separated crossings:
>
> A. Whether a grade-separated crossing is practicable, considering cost and engineering requirements and constraints.
>
> B. Whether there is a demonstrated **public need** for the crossing that outweighs the hazards inherent in an at-grade configuration.[46]

¶ Consistent with RCW 81.52.020, the UTC may not approve a petition for an at-grade crossing if it does not satisfy factor (A): "Whether a grade-separated crossing is practicable, considering cost and engineering requirements and constraints." The statute explicitly contemplates these factors.

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[45] *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 77, 11 P.3d 726 (2000).
[46] *Benton County*, Docket No. TR-100572, Order 06 at 13 (2011) (emphasis added).

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¶ The UTC may not approve a petition for an at-grade crossing unless it also satisfies factor (B). However, unlike factor (A), the term "public need" as used in (B) is not explicitly listed as a factor in RCW 81.52.020.

¶ The UTC has previously determined that the term "public need" is consistent with the terms "good cause shown, reasonable, consistent with public interest, public convenience and necessity."[47]

¶ To demonstrate public need, a petitioner may demonstrate how the proposed crossing will reduce emergency response times or address future identified emergency response time level of service issues. As required under the UTC's analysis, the UTC will weigh this demonstration of public need against the identified dangers of the proposed crossing.

¶ A petitioner may also submit other evidence to demonstrate "public need." The UTC will weigh this evidence on a case-by-case basis.

¶ To demonstrate public need, the petitioner is not required to demonstrate that it is "regularly failing" emergency response times. Such a requirement would be dangerous, and this standard is not required by RCW 81.53.020 or .030, and the UTC has not applied this standard in any previous petition.

¶ The Cities carry the burden of proof for each on these issues.

7. THE EVIDENCE DEMONSTRATES THE PUBLIC NEED FOR THE CROSSING

The evidence demonstrates the public need for the project. The evidence section in the Initial Order is deficient because it incorrectly cites evidence, fails to make a finding of fact that reconciles conflicting evidence,[48] or disregards uncontested evidence. The Cities assign error to the following paragraphs:

7.1 Rail Operations at Richland Junction.

The Cities assign error to ¶ 11. At the hearing, TCRY (apparently for the first time in these proceedings) attempted to label the siding track as a "passing track." The previous 2005 petition described the second track as a passing track used for the express purpose of interchanging cars with BNSF and Union Pacific Railroad.[49] All Class I railroads, including BNSF and UPRR, have ceased to use Richland Junction for interchange.[50]

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[47] TR 277:21-22.
[48] WAC 480-07-820(1)(a) requires the ALJ to "dispose of the merits in a proceeding ..."
[49] Docket No. TR-040664, Order 6 / TR-050967 Order 2, ¶ 17 at Exhibit JP-9-X. AT TR 152:10-18, Kevin Jeffers conclusively demonstrative that the siding track is not long enough to be used as a passing

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At the hearing, the Cities impeached Mr. Peterson, the President of TCRY, who testified that the TCRY makes "very frequent" use of the so-called "passing track."[51] On cross-examination, the Cities presented Mr. Peterson with a series of photographs that depicted the same car sitting on the siding track from October 3, 2013 to November 15, 2013.[52] Mr. Peterson then stated that the cars in the photos were not owned by TCRY. Impeaching his own testimony regarding the "very frequent" use of the siding track, Mr. Peterson stated "They [the cars on the siding track] can sit there for months."[53]

Curiously, the ALJ summarized Mr. Peterson's testimony as if this evidence did not exist. Paragraph 11 of the Initial Order states TCRY makes "frequent, if not daily, use of the facility." Contrary evidence notwithstanding, this ALJ summary is directly in conflict with Mr. Peterson's uncontested testimony:

> Q: Mr. Peterson, I want to go to your direct testimony regarding the use of the Richland junction facility as a passing track. You recognize that it's not used every day, isn't that correct?
>
> A: Correct.[54]

The UTC should not permit its proceedings to ignore uncontested evidence. The City proposes a correct finding, as follows.

STRIKE ¶ 11; PROPOSED ¶: TCRY is a rail carrier conducting interstate rail operations through Kennewick and Richland. TCRY leases the track west and north of Richland Junction from the Port of Benton; BNSF and UPRR also operate on this track, although these Class I railroads have ceased to interchange at the Richland Junction.[55] The second track is a siding track, which is primarily used for the storage of idle freight cars.[56] TCRY concedes that idle freight cars may sit on the siding track "for months."[57]

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track for one unit train while another unit train passes. Ex. JD-27-X (showing a 1,916.13 foot line that extends well beyond the extent of the existing siding track).

[50] Exhibits JP-7-X; JP-8-X.

[51] TR. 381:16-17.

[52] Exh. RVP-9-X; TR. 405:7-410:19.

[53] TR. 410:12-17.

[54] TR. 405:14-18.

[55] Exhd. JP-7-X; JP-8-X.

[56] Exh. RVP-9-X; TR. 405:7-410:19.

[57] TR. 410:12-17.

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The Cities assign error to ¶12. Throughout the at-grade crossing petition process, TCRY presented UTC with inconsistent and inflated track usage data. The Cities identified these inconsistencies and presented credible evidence by railroad industry experts demonstrating fault with TCRY's figures.[58]

For example, TCRY reported to **UTC** (in response to UTC's data request) that it moves 2 to 4 trains per weekday, with an average length of "roughly 15 cars per train."[59] TCRY reported to **Cities** (in response to the Cities' data request) that it is projected to move a total of 2,310 railcars over the crossing in 2013.[60] These figures are inconsistent, and TCRY provided inaccurate data either to the UTC or the Cities. 2,310 cars divided by 15 cars per train = 154 trains for 2013.[61] 154 divided by 52 weeks = 2.96 trains per week divided by 5 weekdays per week = TRCY runs 0.59 trains per weekday in one direction, or 1.18 cars per weekday, if loaded cars go in one direction over the crossing and cross again in the other direction empty. This calculation is inconsistent with TCRY's other assertion that it runs an average of "two (2) to four (4) trains per weekday." [62]

BNSF and UPRR are the only other track users. BNSF reported to UTC that it runs one train per day, with an average length of six cars per train.[63] UPRR reported to UTC that it ran no trains in 2013, although it has moved 12 unit trains between 80-100 cars per train over the past 4.5 years.[64]

Based upon the railroads' submitted data, Kevin Jeffers' pre-filed testimony concluded that track usage is estimated at 3.2 to 5.02 trains per weekday (at most optimistic levels), or

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[58] Exh. KJ-10TR 4:9-9:13.
[59] Exh. RVP-3-X 4:7-10 (TCRY's response to **UTC's** data request).
[60] Exh. RVP-3-X 4:10-20 (TCRY's response to **Cities'** data request).
[61] Exh. KJ-10TR 4:9-26.
[62] These inconsistencies are further identified in Kevin Jeffers's pre-filed testimony at Exh. KMJ-10T 4:10-25.
[63] Exh. RVP-2-X (BNSF's response to UTC's data request).
[64] Exh. RVP-4-X (UPRR's response to UTC's data request). The track usage data is summarized in Exh. KJ-10TR.

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approximately 1,159 to 1,833 trains per year.[65] Yet, the Initial Order cites Mr. Peterson's unsupported assertion "that the combined annual train traffic through the Richland Junction increased from nearly 4,500 railcars in 2012 to over 5,100 railcars in 2013." The ALJ clearly erred in his consideration of the evidence.

Consistent with TCRY's tendency to inflate track usage, Mr. Peterson also provided the wildly ambitious growth targets of TCRY's use of the railway, claiming that he anticipates an unprecedented growth rate of "approximately 20% each year."[66] Mr. Peterson's assertion is not supported by any data and it is completely inconsistent with industry-accepted growth standards.[67]

To assist the UTC in evaluating the actual usage of the railway, the Cities also prepared exhibits KJ-11 and KJ-12, which depict (1) the current track usage, (2) projected track usage using an industry-accepted 5% growth rate, and (3) projected track usage relying upon TCRY's unrealistic 20% annual growth rate.[68] These exhibits are further described in KJ-10TR at 4:9-9:13. As a result, the evidence here requires a finding, as follows:

STRIKE ¶ 12; PROPOSED ¶: TCRY, BNSF, and UPRR are the only railroads that operate on this track. No passenger trains operate on this track. In response to UTC and the Cities' data requests, the railways submitted their actual track usage summarized in Exhibit KJ-10TR at 4:1-8. BNSF reported to UTC that it runs one train per day, with an average length of six cars per train. UPRR reported to UTC that it ran zero trains in 2013, although it has moved 12 unit trains between 80-100 cars per train over the past 4.5 years.[69] TCRY reported inconsistent track usage figures. TCRY reported to UTC that it moves 2 to 4 trains per weekday, with an average length of "roughly 15 cars per train." TCRY reported to Cities (via the Cities' data request) that it is projected to move a total of 2,310 railcars over the crossing in 2013.[70] Based upon these figures, the UTC estimates track usage at 3.2 to 5.02 trains per weekday, or approximately 1,159 to 1,833 trains per year.[71] The UTC agrees with the Cities that an annualized 5% rate of growth is the railway industry standard, which should apply here. The UTC disagrees with TCRY's assertion

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[65] Exhs. KJ-10TR 4-7; KJ-11; KJ-12.
[66] Exh. RVP-1T 5:5.
[67] Exh. KJ-10TR 7:2-18.
[68] Exh. KJ-11 depicts average trains per weekday based upon car counts provided by TCRY's data request. Exhibit KJ-12 depicts average trains per week based upon train counts provided by TCRY. This analysis is needed because TCRY provided the UTC with inconsistent car and train counts.
[69] Exh. KJ-10TR 5:23-6:7.
[70] Exh. RVP-3-X 4:10-20.
[71] Exhs. KJ-10TR 4-7; KJ-11; KJ-12.

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that annual train traffic through Richland Junction was 4,500 railcars in 2012 and 5,100 railcars in 2013. The UTC further disagrees with TCRY's projected 20% annual growth rate.

The Cities assign error to ¶ 13. In addition to the Center Parkway crossing, the Horn Rapids project is also a component of the City of Richland's Comprehensive Plan.[72] Both the Center Parkway crossing and the Horn Rapids projects are set forth as key strategies to promote economic development within an integrated transportation system. The City's vision is to encourage rail yard activities at Horn Rapids, while using the proposed Center Parkway Crossing to reduce vehicular congestion, thereby improving the region's multi-modal transportation network. As the Cities' transportation consultant demonstrated, "The transportation system works as a whole. If the region cannot move cars, then it also cannot move trucks. If the system cannot move trucks, then there are delays in loading and unloading rail freight."[73]

Track usage is currently estimated at 3.2 to 5.02 trains per weekday.[74] By 2030, assuming an annual five-percent (5%) growth rate, approximately 5.48 trains will use the track per weekday.[75] 5.48 trains per day accounts for, and is consistent with, any additional rail traffic that will result from the proposed Horn Rapids Industrial Development. The City of Richland's Economic Development manager explained that, under the "maximum, most optimistic development scenario," the Horn Rapids Industrial Development will result in a total of five new unit trains per week (two and a half in and two and a half out), or one per day.[76] All rail usage data used to evaluate the Center Parkway crossing petition accounts for any increased rail traffic

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[72] Exh. GAN-16-X 4 ("the [Horn Rapids Master Plan Update] supplements the Richland Comprehensive Plan and supersedes the previous Master Plan adopted in 1995). *Also see*, GAN-15-X, establishing the City of Richland's economic development policies, which are consistent with the Horn Rapids Master Plan.

[73] Exh. SM-1TR 3.

[74] Exhs. KJ-10TR; KJ-11; KJ-12. As stated by Mr. Montgomery, "we studied a different crossing of this line 12 years ago, and the number of trains at that time was four. And today we have three to four. So it hasn't changed much." TR at 232.

[75] Exhs. KJ-10TR; KJ-11; KJ-12.

[76] TR. 370.

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attributed to the Horn Rapids Industrial Development.[77] The evidence should reflect this undisputed record:

STRIKE ¶ 13; PROPOSED ¶: Gary Ballew, the City of Richland's Economic Development Manager, testified that the Richland City Council recently approved a series of development agreements to construct a rail loop of sufficient size to service unit trains in the Horn Rapids area.[78] Mr. Ballew expects this new rail loop will be operational by summer 2015 and able to process the equivalent of two and a half unit trains per week (approximately one unit train entering or leaving the facility each day).[79] Mr. Ballew also testified that Richland has entered real estate and development agreements with ConAgra Foods to build an automated cold storage warehouse in the Horn Rapids area served by a separate smaller loop track.[80] Mr. Ballew expects an average of 30 rail cars each week will come and go from ConAgra's facility.[81] All rail usage data used to evaluate the Center Parkway crossing petition accounts for any increased rail traffic attributed to the Horn Rapids Industrial Development.[82]

The Cities assign error to ¶ 14. For the reasons set forth in the assignment of error for ¶ 11, the Cities assign error to the use of the term "passing track" in ¶ 14. Further, the Initial Order cites only Mr. Peterson's opposition to the blockage of the crossing, without citing the uncontested evidence that the crossing will be blocked less than one percent (1%) of the day.[83] Such facts are necessary for the Commission to make an informed decision in this petition. The following correctly reflects the record:

STRIKE ¶ 14; PROPOSED: All trains traveling to the Horn Rapids area must pass through the Richland Junction and cross the proposed Center Parkway extension.[84] All Class I railroads, including BNSF and UPRR, have ceased to use Richland Junction for interchange.[85] The record is unclear whether TCRY uses the siding for anything more than the storage of cars. Mr. Peterson testified that he opposes Center Parkway crossing because rail operations could regularly require freight trains to block the crossing.[86] The evidence demonstrates that the crossing will be blocked approximately one percent (1%) of the day.[87]

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[77] Exh. KJ-11.
[78] Richland's rail loop will be approximately 8400 feet in total length. Ballew, TR. 354:25 – 357:22; *see also* Exhs. JD-37-X, JD-38-X, JD-39-X, KJ-14-X, and King, TR. 334:1 – 336:15 and 337:21 – 340:16.
[79] Ballew, TR. 358:2-12, 364:15 – 365:3, 369:21 – 370:6, 375:4 – 376:24; *see also* Exhibit JD-38-X.
[80] Ballew, TR. 342:23 – 345:15; *see also* Exhs. JD-9-X, JD-10-X, and JD-11-X.
[81] Ballew, TR. 345:16 – 346:17 and 373:6-14.
[82] Exh. KJ-11.
[83] Exh. SM-1TR 5:7.
[84] Ballew, TR. 346:22 – 347:8; *see also* Jeffers, TR. 173:10-19.
[85] Exh. JP-7-X; JP-8-X.
[86] Peterson, TR. 414:23 –418:5.
[87] Exh. SM-1TR 5:7.

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7.2 Public Need Demonstrated.

The Cities assign error to ¶ 20. The uncontested record demonstrates that all relevant transportation plans and comprehensive plans support the Center Parkway crossing. Since 2006, the at-grade Center Parkway Crossing has been an essential public facility in (1) the City of Richland Comprehensive Plan,[88] (2) the City of Kennewick Comprehensive Plan,[89] and (3) the Regional Transportation Plan.[90] Recognizing the regional significance of this project, the Center Parkway Crossing has received funding from the State through the Washington State Community Economic Revitalization Board, the Surface Transportation Program Regional Competitive Fund, and the Transportation Improvement Board.[91] But, the findings of public need by these state agencies apparently are of little interest to the ALJ's consideration of public need.

The Cities measure their transportation-related Level of Service through a traffic model prepared by Benton-Franklin Council of Governments ("COG"). The Center Parkway crossing is a funded project in the COG's Regional Transportation Plan,[92] and the COG's transportation model includes Center Parkway crossing **as if the Crossing exists** in the regional transportation model.[93] The record demonstrates further that the Council of Governments, therefore, recognizes the public benefits of the proposed Crossing through its traffic modeling.

The ALJ has no factual basis to include footnote 36 that questions the planning foundation for the Center Parkway crossing. The record contains only two elements of the COG's Regional Transportation Plan: the Preface/Executive Summary and Exhibit H, which lists contemplated traffic improvement projects. These sections would not include any discussion of the merits of specific projects. By dismissing all state, regional, county and other planning, the Initial Order is clearly in error. The following properly summarizes the evidence:

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[88] Exh. RS-2 at T 5-4 ("Center Parkway from Tapteal to Gage: Construct 3-lane road").
[89] Exh. GAN-7-X at 58 to 59.
[90] Exh. RS-4 at H-3 ("Center Parkway Extension – Gage to Tapteal").
[91] Exh. JP-2; JP-3.
[92] Exhs. RS-4, GAN-8-X, GAN-9-X.
[93] TR. 84:4-12.

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STRIKE ¶ 20; PROPOSED ¶: The Cities seek to complete a planned network of roadways and address traffic issues in the area by extending Center Parkway from Tapteal Drive to Gage Boulevard. Since 2006, the at-grade Center Parkway Crossing has been identified as an essential capital improvement in (1) the City of Richland Comprehensive Plan,[94] (2) the City of Kennewick Comprehensive Plan,[95] and (3) the Regional Transportation Plan.[96] Recognizing the regional significance of this project, the Center Parkway Crossing has received funding from the State through the Washington State Community Economic Revitalization Board, the Surface Transportation Program Regional Competitive Fund, and the Transportation Improvement Board.[97] Extending Center Parkway to Tapteal Drive and constructing the at-grade crossing will decrease emergency vehicle response times,[98] reduce the amount of accidents near the Columbia Center Mall, and improve traffic circulation in an important commercial area.[99]

STRIKE FOOTNOTE 36: PROPOSED FOOTNOTES: Insert the footnotes included in proposed ¶ 20.

The Cities assign error to ¶ 22. The record contains undisputed facts that the Cities are failing to achieve established emergency response times.[100] The Richland Fire Department's median response time for Tapteal addresses is **5 minutes 50 seconds**, and the Kennewick Fire Department's median response time for Tapteal addresses is **7 minutes 50 seconds**.[101] Consistent with this testimony, the City of Richland's comprehensive plan shows emergency response times at 7 minutes 44 seconds for EMS.[102] The last sentence of ¶ 22 is not relevant to the UTC's legal standard, and it fails to properly present undisputed evidence.

STRIKE ¶22; PROPOSED ¶: The Cities' emergency response providers support each other and respond to each other's calls for help.[103] The Cities and three local fire districts signed a Master Interlocal Partnership and Collaboration Agreement in 2010 that includes an "automatic aid agreement" for prioritizing and sequencing certain aid calls.[104] The Director of Fire and Emergency Services for the City of Richland's uncontested evidence shows that the Richland Fire Department's median response time for Tapteal addresses is 5 minutes 50 seconds, and that the Kennewick Fire Department's median response time for Tapteal addresses is 7 minutes 50

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[94] Exh. RS-2 at T 5-4 ("Center Parkway from Tapteal to Gage: Construct 3-lane road").
[95] Exh. GAN-7-X at 58 to 59.
[96] Exh. RS-4 at H-3 ("Center Parkway Extension – Gage to Tapteal").
[97] Exh. JP-2; JP-3.
[98] Exh. JP-5-X; tr 107:15.
[99] Exh. JD-1T 3:2-4, 5:11-21.
[100] Exhs. GAN-3-X, GAN-18-X.
[101] Exh. GAN-18-X, TRs 103:1:17-105-21 (Chief Baynes described the facts and findings in GAN-18-X). Consistent with Exh. GAN-18-X, the City of Richland's comprehensive plan shows emergency response times at 7 minutes 44 seconds for EMS.
[102] Exh. GAN-3-X.
[103] Exhs. CS-1T, 3:12-14 and KMH-1T, 2:10-15; *see also* Skinner, TR. 93:19 – 94:5.
[104] Exh. NH-1T, 2:13-25, and Exh. RGB-1T, 2:18—3:15. *See also* Baynes, TR. 109:4 – 110:15.

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seconds.[105] This testimony is based upon data prepared by the City of Richland Fire Department.[106] The City of Richland's comprehensive plan shows emergency response times at 7 minutes 44 seconds for EMS.[107]

The Cities assign error to ¶ 23. The uncontested evidence shows conclusively that the crossing advances the public interest. The "Center Parkway connection provides a clear improvement to access and police response capability."[108] The two alternative routes (on Columbia Center Boulevard and Steptoe) are inadequate:

> In an emergency requiring response to the Columbia Center Mall area or a location on Tapteal Drive, a police officer responding via Columbia Center Boulevard without the connectivity provided by Center Parkway would have approximately three quarters of a mile trip navigating at least two complex intersections and the frequently congested railroad undercrossing.[109] In the same incident the officer responding via Steptoe Street would have an approximately two mile trip requiring navigation of approximately five complex intersections and a potentially blocked at-grade crossing. In contrast, the Center Parkway route would provide access within less than half a mile and only one roundabout intersection and the proposed at-grade crossing that will never function as a busy commuting route.[110]

And, the Center Parkway connection "would improve emergency response between the two cities as well as provide other alternatives for quicker response to each entity."[111]

The evidence of public safety response times is from on-the-ground experience in the City of Richland and the City of Kennewick. For example, Chief Hohenberg has served as a City of Kennewick Police Officer since 1978. He has served in a variety of assignments, including being a first responder and being assigned to the patrol division.[112] Failing to recognize this history and expertise, paragraph 23 in the Initial Order fails to properly characterize the Police Chiefs' testimony. The Cities propose the following:

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[105] Exh. GAN-18-X, TRs 103:1:17-105-21 (describing the facts and findings in GAN-18-X). Consistent with GAN-18-X, the City of Richland's comprehensive plan shows emergency response times at 7 minutes 44 seconds for EMS.
[106] Exh. GAN-18-X.
[107] Exh. GAN-3-X.
[108] Exh. CS-1T 4:20-23 (testimony of Police Chief Skinner).
[109] The railroad crossing on Columbia Center Boulevard is a grade-separated crossing. Chief Skinner's testimony is demonstrating that the intersection is car-congested, *not* train-congested.
[110] Exh. CS-1T4:13-19 (testimony of Chief Hohenberg).
[111] Exh. KMH-1TR 3:2-7.
[112] Exh. KMH-1TR 2:5-8.

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PROPOSED ¶ 23 The uncontested evidence from Richland Chief of Police Skinner showed that "the Center Parkway connection provides a clear improvement to access and police response capability."[113] The uncontested evidence from Kennewick Chief of Police Hohenberg showed that "The proposed project would improve emergency response between the two cities as well as provide other alternatives for quicker response to each entity."[114] Police response times are sometimes difficult to evaluate because officers are often already deployed in the community and can be responding from varied distances.[115]

The Cities assign error to ¶ 24. The Cities' First Responders repeatedly stressed the challenges presented by the existing unconnected road network. The record shows conclusively that existing disconnected transportation network and traffic congestion result in the Cities' failure to achieve its emergency response times.[116] For example, Chief Baynes described the challenges in responding to an emergency at Tapteal Drive from Kennewick Fire Station #3, located to the east of Columbia Center Mall:

> From the station, the fire truck must go through a controlled intersection and turn right onto Colombia Center Boulevard, "which is essentially a one way street because it's center divided. And one of the challenges in a center divided road is you get jammed up. It's a lot easier to move vehicles out of your way when you're coming at them head on versus behind them."[117]
>
> Then the fire truck must make a series of complicated right-hand turns "on a fairly steep slope."
>
> Finally, the fire trucks make a left hand turn onto Tapteal.[118]

Chief Baynes then described the emergency route over the proposed crossing, which involves crossing Columbia Center Boulevard to reach Quinault, turning right at a roundabout onto Center

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[113] Exh. CS-1T 4:20-23.
[114] Exh. KMH-1TR 3:2-7.
[115] TR. 87:20 – 88:17 (testimony of Chief Skinner).
[116] TR 105:222-107:14.
[117] On cross-examination, Chief Baynes further described how the center-divided road causes congestion and reduces emergency response times. TR. 129:19-25. The Cities' traffic consultant also discusses the challenges presented by the divided roadway. Exh. SM-1TR 5:8-12.
[118] TR. 105:22-107:2.

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Parkway, and proceeding on Center Parkway to Tapteal.[119] This route is more direct, involves only one controlled intersection, and does not include any one-way or center-divided roads.

The Center Parkway crossing will reduce emergency response times to Tapteal by "approximately a minute."[120] A minute is substantial for emergency response, when seconds count.[121] The reduction of response time is further supported by the JUB Report, concluding that the Center Parkway Crossing reduces the response times by Kennewick Fire Station 3 and Richland Fire Station 72 to property near the north of the Center Parkway crossing by 30% and 24%, respectively.[122]

The uncontested evidence clearly shows that "an improvement [in response times] of mere seconds may significantly impact the outcome for critical events related to a medical emergency or fire."[123] And, the "fire service is acutely aware of the criticality of response times and their impact on outcomes, particularly for trauma, cardiac, and stroke patients, and wildland fires. Our service delivery is tuned to count seconds saved from dispatch through to arrival at the patient/fire/rescue."[124]

The Initial Order mischaracterizes the evidence by failing to identify the challenges presented by the divided Columbia Center Boulevard. The Initial Order also fails to highlight the significant risk that delayed emergency response times pose to the public. Here is an accurate statement of the uncontested evidence:

STRIKE ¶24: PROPOSED ¶: The best emergency response routes for fire and medical units are similar to the characteristics of Center Parkway, *i.e.*, a two-way, straight arterial-type roadways providing the most direct route with the least amount of traffic, traffic control systems, intersections, and turns to negotiate.[125] Without a direct connection between Gage Boulevard and Tapteal Drive, Kennewick emergency responders must travel north of the Mall via Columbia

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[119] TR. 107:7:12.
[120] TR. 107:15 (testimony of Chief Baynes).
[121] Exhs. RGB-1T, 4:4-7; NH-1T, 3:15-18.
[122] Exh. JP-5-X. Mr. Montgomery testified that the response times in the JUB Report did not include time spent at traffic signals or behind traffic to provide a similar evaluation technique for existing route and the proposed route. TR. at 218-219.
[123] Exh. NH-1T, 3:15-18 (testimony of Chief Hines)
[124] Exh. RGB-1T, 4:4-7 (testimony of Chief Baynes)
[125] Exh. NH-1T, 3:15-18.

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Center Boulevard or Steptoe Street, routes that are less direct, occasionally burdened with heavy traffic, and with multiple intersections and numerous turns to negotiate. According to Chief Hines, improving response times by even a few seconds could significantly impact the outcome for a patient in a critical event.[126] Richland Fire & Emergency Services Director Richard Baynes shows "The fire service is acutely aware of the criticality of response times and their impact on outcomes, particularly for trauma, cardiac, and stroke patients, and wildland fires. Our service delivery is tuned to count seconds saved from dispatch through to arrival at the patient/fire/rescue."[127] The Center Parkway extension would provide a viable north-south route for fire and medical units if the primary routes on Steptoe Street or Columbia Center Boulevard were obstructed, growing in value as the Tapteal area continues its development.[128]

The Cities assign error to ¶ 25. In addition to the uncontested evidence from emergency response, the transportation study ("JUB Study") concluded that the Center Parkway Crossing would reduce the response times by Kennewick Fire Station 3 and Richland Fire Station 72 to property near the north of the Center Parkway crossing by 30% and 24%, respectively.[129] Spencer Montgomery, a transportation planner, prepared the JUB Study. In addition to his 23 years of transportation planning experience, Mr. Montgomery was born and raised in the Tri-Cities, and he has worked professionally on transportation issues in the Tri-Cities for the past 13 years.[130]

The uncontested evidence from Mr. Montgomery showed that the response times in the JUB Report did *not* include emergency responder turnout time, time spent at traffic signals, or behind traffic, to provide a similar evaluation technique for the existing route and the proposed route.[131] The Initial Order improperly relied upon the response time listed in the JUB, while failing to recognize that the relevant fact is the *percentage decrease* in time. A correct finding is proposed as follows:

STRIKE ¶25: PROPOSED ¶: In support of their petition, the Cities also submitted a traffic study completed by JUB Engineers, Inc. (JUB Study).[132] The JUB Study concluded that the Center Parkway Crossing would reduce emergency response times by Kennewick Fire Station 3 and Richland Fire Station 72 to property near the north of the Center Parkway crossing by 30%

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[126] *Id.* at 3:18-24.
[127] Exh. RGB-1T, 4:4-7.
[128] Exh. RGB-1T, 4:12-22.
[129] Exh. JP-5-X.
[130] TR. 211:24-25.
[131] TR. at 218:13-219:1.
[132] Exh. KJ-5; *see also* Petition.

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and 24%, respectively.[133] Spencer Montgomery, a transportation planner with J-U-B ENGINEERS, Inc., prepared the JUB Study. In addition to his 23 years of transportation planning experience, Mr. Montgomery was born and raised in the Tri-Cities, and he has worked professionally on transportation issues in the Tri-Cities for the past 13 years.[134] The JUB Report did *not* include emergency responder turnout time, time spent at traffic signals, or behind traffic, to provide a similar evaluation technique for the existing route and the proposed route.[135]

The Cities assign error to ¶ 26. At the hearing, Spencer Montgomery demonstrated why the Center Parkway crossing provides a "more reliable and quicker route for emergency responders" when compared to the existing routes.[136]

First, any first responder traveling on Gage or north on Center Parkway would have the ability to view whether or not the crossing was blocked, and take an alternative route.[137] An emergency responder may travel to a closed crossing at the existing at-grade crossing at Steptoe Street. However, at Steptoe Street, the first responder cannot see the closed crossing "until you come over the hill and see the crossing, and at that point, a fire truck isn't going to be able to turn around. Whereas with this direction [*i.e.*, the Center Parkway crossing] a fire truck could turn around."[138]

Second, the alignment of the road to the tracks allows emergency responders to view the crossing upon approach: "they would know which direction the train was going and which way to go from there. Whereas today, they have no option."[139] The Center Parkway crossing provides necessary improvements for public safety response.

Finally, the record contains undisputed evidence that the crossing will be closed less than one percent (1%) of the day to accommodate train traffic.[140] Mr. Montgomery testified that this closure rate "is not significant enough closing to merit particular attention from emergency

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[133] Exh. JP-5-X.
[134] TR. 211:24-25.
[135] TR. at 218:13-219:1.
[136] TR. 229:4.
[137] TR. 229:21-25.
[138] TR. 230:8-11.
[139] TR. 230:23-25.
[140] TR. 231:5-6; Exh. SM-1TR 5:7.

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response vehicles to alert their route of travel.[141] Mr. Montgomery reached this conclusion based upon the track usage data submitted by BNSF, UPRR, and TCRY.[142] At the hearing, Mr. Montgomery clearly articulated that, even under TCRY's wildly inflated growth projections, the crossing would be closed less than three percent (3%) of the day.[143] Mr. Montgomery concluded that this closure will not have any measurable impact upon the Cities' ability to provide emergency services because "if it was a regular intersection with a traffic signal, it could be closed, you know, for regular traffic operations.... The intersection of Steptoe and Gage has a red light for one approach all day long. I'm saying that it's insignificant to say that the train, the train event closing the crossing to emergency is insignificant."[144] This uncontested evidence cannot be ignored in the determination of sufficient need.

Mr. Montgomery could make these conclusions, in part, because of his personal experience in the Tri-Cities. It should be further noted that TCRY's expert witness, Mr. Norris, has no relevant experience in at-grade railway crossings,[145] did not attend the UTC Diagnostic Meeting,[146] and does not have first-hand experience with the Cities' transportation network.[147] Paragraph 26 is also misleading because it cites the JUB Report's response times, which, for reasons described above, are irrelevant to this analysis. The evidence here demonstrates the following as a proper finding:

STRIKE ¶ 26; PROPOSED ¶: Gary Norris, a traffic engineer hired by TCRY, questioned the JUB Study. The Cities addressed Mr. Norris's concerns with uncontested evidence. The purpose of the JUB Study is to demonstrate that the proposed crossing will reduce existing emergency response times, not to demonstrate actual response times, Mr. Montgomery testified that the JUB Report did *not* include emergency responder turnout time, time spent at traffic signals, or behind traffic to provide a similar evaluation technique for existing route and the proposed route.[148] The record clearly demonstrates that the Cities are failing to achieve

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[141] Exh. SM-1TR 5:6-8.
[142] TR. 231:17-232:20.
[143] TR 233:18-20. This figure was further supported by track usage data submitted by BNSF, UPRR, and TCRY. TR. 234:8-18.
[144] TR. 233:22-234:3.
[145] Exh. GAN-1T2:22-3:3.
[146] Exh. KH-5 at page 1.
[147] TR. 313:3.
[148] TR. 218:13-219:1.

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emergency LOS.[149] The Center Parkway crossing will provide a viable route for emergency responders.[150] Uncontested evidence also shows that the existing crossing will be closed one percent (1%) of the day under current conditions, and it is highly unlikely that it will be closed more than three percent (3%) of day time under track usage figures submitted by the railroads.[151] Of course this proposed finding is also consistent with the undisputed UTC analysis regarding the minimum number of anticipated accidents (one for every 53.5 years for an at-grade Center Parkway crossing).

The Cities assign error to ¶ 27. For the reasons set forth in the assignment of error to ¶ 26, this evidentiary finding overstates the significance of a railway closure that is documented to be approximately one percent (1%) of the day. More accurately:

STRIKE ¶ 27; PROPOSED ¶: Acknowledging the possibility of a train blocking the Center Parkway crossing, Chief Baynes explained "the more routes into the areas we have, the better."[152] Although it is possible for a train to block the crossing, Mr. Montgomery testified to the difference between this at-grade crossing and the existing at-grade crossing on Steptoe. Unlike Steptoe where the emergency responders must commit to the crossing, the presence of the roundabout south of the proposed Center Parkway crossing allows emergency responders to view the crossing, and to use the roundabout to take another approach to the incident site if the crossing is closed.[153] This is not an insurmountable issue, as the record demonstrates that the crossing is projected to be closed less than one percent (1%) of the day.[154]

The Cities assign error to ¶ 28. The record does not include any viable alternative to the Center Parkway crossing for emergency vehicles. At the hearing, Mr. Norris, TCRY's witness, presented a proposed crossing that begins at Richland Fire Station 72, turns left onto Leslie Road, continues to Columbia Park Trail, crosses an existing grade-separated crossing, turns right at N. Steptoe, and then requires a left turn onto Tapteal.[155] For many reasons, Mr. Norris's proposed route fails to present a viable alternative, casting doubt on Mr. Norris's basic understanding of the project area:

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[149] Exhs. GAN-18-X; GAN-3-X.
[150] TR. 218:13-219:1.
[151] TR. 233:18-20. This figure was further supported by track usage data submitted by BNSF, UPRR, and TCRY. TR 234:8-18.
[152] TR. 108:9-109:3 and 119:9-11.
[153] TR. 229:21-25; 230:8-11.
[154] TR. 231:5-6, SM-1TR.
[155] Exh. GAN-19-X.

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TCRY's proposed route does not include the Kennewick Fire Station 3. The proposed route provides no solution to the access issues described by Chief Baynes (discussed at ¶ 24 in this petition), which results in the documented 7 minute 20 second median response time from Kennewick Fire Station 3 to Tapteal addresses.[156] Accordingly, TCRY's proposed alternative route will do nothing to improve emergency response times from this station.

TCRY's proposed route will not improve emergency response times from the Richland Fire Station 72. Mirroring the JUB Study's methods, Mr. Norris calculated response times to be "under four minutes," but, when pressed, Mr. Norris conceded that his study did not account for turnout time, time spent at traffic signals, or behind traffic.[157] Mr. Norris did not provide any data that depicted the calculated actual emergency response time with this information.

Mr. Norris could not identify the number of controlled intersections along the proposed route, which would have an impact on actual emergency response times.[158]

As a result, the proper finding is as follows:

STRIKE ¶28; PROPOSED ¶: No party presented a viable alternative to the Center Parkway crossing during the petition process. TCRY's proposed route fails to provide a viable alternative, because, among other reasons, it fails to address any of the identified issues associated with responses from Kennewick Fire Station 3.[159]

The Cities assign error to ¶ 29. For the reasons stated in response to ¶ 28, TCRY failed to identify any viable alternative to the Cities' proposed crossing. Nothing in RCW 81.53.020 or .030 or UTC precedent requires the Cities to prove a negative, *i.e.*, that no other alternative to the proposed crossing exists. At the hearing, TCRY's attorney attempted to trap Mr. Simon by

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[156] Exh. GAN-18-X.
[157] TR. 312:10-16.
[158] TR. 312:2-9.
[159] *See e.g.*, the route proposed in Exh. GAN-19-X solely including Richland Fire Station 73.

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asking specific emergency-response-related issues.[160] Mr. Simon appropriately stated that he could not answer those questions, deferring to those with specific expertise in that area, such as Chief Baynes, Chief Hines, Chief Hohenburg, Chief Skinner, and Mr. Montgomery. Answering those questions, the uncontested testimony of Chief Baynes and Mr. Montgomery demonstrates that the Tapteal Drive area is not serviced within the Cities' established emergency response time LOS, and that the Center Parkway crossing will improve response times to this area.[161] The Initial Order misconstrues the evidence. An appropriate synthesis of the uncontested record is provided below:

STRIKE ¶ 29; PROPOSED ¶: TCRY questioned whether any area in the City of Richland is not serviced within the City of Richland's emergency response time performance objective.[162] The uncontested testimony of Chief Baynes and Mr. Montgomery demonstrates that Tapteal Drive is not serviced within the Cities' established emergency LOS, and that the Center Parkway crossing will improve response times to this area.[163] Evidence also demonstrates that the Cities are failing to achieve established emergency response times in areas near the Columbia Center Mall, and that the Center Parkway crossing will also improve emergency response times to this area.[164]

8. THE SAFETY MEASURES AND THE SPECULATIVE RISK OF THE PROPOSED CROSSING

No party to this petition contests the UTC's calculation of risk for the proposed crossing at one incident every 53.5 years.[165] The Center Parkway crossing presents only a speculative risk, in part because the Cities' crossing design includes safety features **exceeding** typical engineering standards for such an intersection.

8.1 The Safety Features of the Proposed Crossing.

A visual depiction of the safety measures is set forth in Exhibit KH-3.[166] The measures on each side of the roadway include four flashing lights, two facing north and two facing south, mounted on a single vertical mast that will also include an audible bell and two "crossbuck"

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[160] TR. 61:1-4.
[161] Exhs. GAN-18-X; JP-5-X; TR 107:15.
[162] TR. 61:1-4.
[163] Exhs. GAN-18-X; JP-5-X; TR 107:15.
[164] Exh. GAN-18-X.
[165] Exh. KH-1T- 25:7-27:3.
[166] This exhibit depicts Center Parkway crossing two tracks.

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signs (MUTCD Sign Type R15-1); "Number of Tracks" sign (R15-2), again one set facing north and the other facing south; and a traffic gate on each side of the roadway prior to the crossing. The flashing lights, bells and gates are activated automatically by an approaching train, with lights and bells starting first, followed by the gates descending in front of approaching vehicles.

The beginning of the activation sequence will be electronically controlled such that the control device will measure the speed of the approaching train and will start the warning devices at a per-set time before the train arrives. This is commonly referred to as "constant warning."

The gates will stay down and the lights will continue to flash as long as a train is within the roadway. If the train stops before reaching the roadway, the flashing lights will continue and the gate will stay down for a prescribed period of time before "timing out" and ending the warning cycle. If a second train approaches on a second track as the first train is clearing the crossing, and the system recognizes the second train will arrive within the pre-set time, the lights will continue to flash and the gates will stay down.

In addition to the active warning devices, the roadway will have a raised curb and center median to keep vehicles from driving around the lowered gates. The roadway profile for the crossing is contoured to prevent a low-slung vehicle from becoming high-centered. Typical advance warning signs and roadway striping for a grade crossing are included.

The active warning system, as well as the signage and striping, complies with the Manual on Uniform Traffic Control Devices.[167] The roadway profile complies with the recommendations of the AASHTO *A Policy on Design of Highways and Streets*, and the American Railway Engineering and Maintenance-of-way Association's *Manual for Railway Engineering*, 2013, to avoid creating a "humped" crossing.[168] There was no evidence in the record that any safety issue was overlooked.

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[167] Exh. KJ-3.
[168] Exh. KJ-4.

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The record contains **no** evidence that raises **any** objection to the safety measures that will be implemented at the crossing. *See, e.g.*, Gary Norris's testimony, TR at 285-334; GAN-1T; GAN-1TR (Mr. Norris did not question any of the safety features designed for the crossing). At the hearing, Kathy Hunter, UTC's Deputy Assistant Director, Transportation and Safety, conclusively demonstrated how the proposed active warning devices measures separate the traveling public from the crossing.[169]

8.2 The Speculative Risk of the Proposed Crossing.

The Cities assign error ¶ 17. The UTC concluded the potential risk for the crossing is one incident every 53.5 years, based upon (1) the proposed crossing's safety measures, (2) actual data for similar at-grade crossings, and (3) the Federal Railroad Administration's Accident Predictor Model, the accepted measure for calculating risk as set forth in the existing data for comparable crossings.[170]

The UTC's review of other at-grade crossings data demonstrates that there have been no incidents involving trains and pedestrians and trains and vehicles at any TCRY-operated intersection, including the existing at-grade crossings in the vicinity of the Center Parkway crossing.[171] In her pre-filed testimony, Ms. Hunter describes, in detail, how she calculated the speculative risk of the crossing by strictly adhering to the Federal Railroad Administration's Accident Predictor Model.[172] Ms. Hunter's testimony conclusively demonstrates why the UTC's calculation is more accurate than Mr. Jeffers's conservative calculation. The UTC's calculations are based upon *actual* data, while the only other submitted risk calculation is based upon *theoretical, projected* data.[173] TCRY submitted no crash projection data, and the Cities concur with the UTC's analysis. The Initial Order fails to properly represent the uncontested evidence. The only calculation that relies upon actual data demonstrates that the speculative risk for the

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[169] TR. 263:18-23, 264:10-13, 265:6-9.
[170] Exh. KH-12.
[171] TR. 269:24-270:10.
[172] Exh. KH-1T 25:7-27:3.
[173] Exh. KH-1T 25:10-21.

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Center Parkway crossing is one incident every 53.5 years. A determination of speculative risk that is consistent with uncontested evidence is as follows:

STRIKE ¶ 17; PROPOSED ¶: Ms. Grabler also testified that the expected average daily traffic (ADT) on the Center Parkway extension would not justify grade separation. The Federal Highway Administration (FHWA) Railroad-Highway Grade Crossing Handbook establishes a threshold of 100,000 ADT to require grade separation at an urban crossing.[174] The Cities estimate that Center Parkway's traffic will reach only 7,000 ADT by 2033, much lower than the FHWA threshold.[175] This low traffic volume contributes to a low predicted accident frequency rate, further reducing justification for grade separation. Kathy Hunter, testifying for Commission Staff, analyzed historical TCRY crash data[176] and similar crossings. Based upon a forecast using the Federal Railroad Administration Accident Predictor Model,[177] Ms. Hunter determined that the proposed crossing presented a speculative risk of one accident every 53.5 years.[178]

9. THE PUBLIC NEED FOR THE CENTER PARKWAY CROSSING OUTWEIGHS ANY RISK (I.E., LESS THAN TWO INCIDENTS PER CENTURY) OF THE PROPOSED CROSSING

The Cities have conclusively demonstrated that the public need for the crossing outweighs the risks of opening the at-grade crossing. The record shows that the Cities are failing to achieve their emergency response times.[179] The record also shows that the Cities are failing to achieve emergency response times by **minutes**, *not* just seconds.[180] A life is at risk every time the Cities fail to respond promptly to an emergency call.[181] The Center Parkway crossing's ability to improve the Cities' emergency response times[182] demonstrates a "public need," especially when the UTC defines "public need" as "good cause shown, reasonable, consistent with public interest, public convenience and necessity."[183]

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[174] Exh. KJ-2, at 11 (*see* paragraph 6.a.iv).
[175] Exh. SKG-1T, 3:21-25; *see also* Exh. KJ-1T, 6:14-20.
[176] TR. 269:24-270:10; Exh. KH-1T 25:7-22.
[177] Exh. KH-12.
[178] Exh. KH-1T 26:20-22.
[179] Exhs. GAN-18-X, GAN-3-X.
[180] GAN-3-X; GAN-18-X. *See e.*g., the emergency response times from Kennewick Fire Station 3 to Tapteal addresses in GAN-18-X.
[181] Exhs. NH-1T, 3:15-18; GRB-1T, 4:4-7.
[182] TR. 107:15, JP-5-X.
[183] TR. 277:21-22.

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The Cities have a combined population of over 100,000 residents, and that population will increase by thousands over the next five years.[184] Exhibit GAN-18-X shows 42 responses to emergency responses to the Tapteal Drive area and 37 emergency responses near Columbia Center Mall, demonstrating that residents and businesses routinely call and rely upon the Cities for emergency assistance near the proposed crossing.[185]

Under the controlling standard of review, the UTC must approve the Cities' petition when the Cities demonstrate that the public need for the crossing outweighs one incident every 53.5 years.[186] The record provides the Commission with ample evidence that the Cities have achieved this standard solely by relying upon the Cities' emergency response time evidence.

9.1 Improved Emergency Response Times Demonstrates a Public Need.

The Cities assign error to ¶59. As demonstrated throughout this petition, uncontested evidence demonstrates that the Center Parkway crossing will reduce emergency response times.[187] No law requires the Cities to demonstrate that they are "regularly failing" to achieve their established LOS. The ALJ applied an improper legal standard and improperly weighed the uncontested evidence to reach his conclusion set forth in ¶ 59. The evidence demands a different finding, as proposed here:

STRIKE ¶59; PROPOSED ¶ In this case, the Cities demonstrate public need by providing uncontested evidence that the Center Parkway crossing will address immediate public safety issues through improved emergency response times. The Cities also demonstrate reduced accident rates around the Columbia Center Mall, relief of traffic congestion at nearby intersections with deficient levels of service, increased opportunities for economic development, and the need to complete a connected transportation system. As explained in greater detail below, the evidence in the record shows that the Center Parkway crossing demonstrates a public need.

The Cities assign error to ¶ 60. As demonstrated through this petition, no law requires the Cities to demonstrate that they are "regularly failing" to achieve their established LOS.

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[184] Exh. GAN-2-X.
[185] Exh. GAN-18-X; TR 103:1:17-105-21 (describing the facts and conclusions in GAN-18-X).
[186] Exh. KH-1T 24:21 – 26:22; *see also* Exh. KH-12.
[187] Exh. JP-5-X; TR. 107:15.

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STRIKE: 60; PROPOSED ¶: The record shows that the Cities are failing to achieve their emergency response times.[188] The record also shows that the Cities are failing to achieve emergency response times by **minutes**, *not* seconds.[189] A life is at risk every time the Cities fail to respond promptly to an emergency call.[190] The Center Parkway crossing's ability to improve the Cities' emergency response times[191] demonstrates a "public need," especially when the UTC defines "public need" as "good cause shown, reasonable, consistent with public interest, public convenience and necessity."[192]

The Cities assign error to ¶ 61. There is ample evidence that opening a crossing at Center Parkway would provide a public need. For example, the JUB Report demonstrates the crossing will reduce emergency response times by 30% and 24% from Kennewick Station 3 and Richland Fire Station 72, respectively.[193] The new crossing would reduce emergency response times by "approximately one minute." These findings are supported by studies and by logic.[194] The new route represents a better alignment for emergency responders to access Tapteal addresses and addresses near the Columbia Center Mall, both of which have documented failing LOS for emergency services.[195] Further, the ALJ's suggestion that the Cities must build new fire stations to address failing emergency response times is absurd and not supported by any evidence. The document cited by the ALJ as support for this conclusion explicitly states that emergency response times are based upon an efficient transportation system:

> The transportation system also has an effect on the LOS of fire and emergency services. ***In order to keep response times low, the Fire Department depends upon an efficient transportation system in good repair.*** The layout of streets, their width and condition, and secondary access routes directly affect response times. Since these considerations are building into future City LOS standards, **it is assumed that future transportation improvements will promote more efficient fire and emergency service activities.**[196]

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[188] Exha. GAN-18-X, GAN-3-X.
[189] Exha. GAN-3-X; GAN-18-X. *See e.*g., the emergency response times from Kennewick Fire Station 3 to Tapteal addresses in Exh. GAN-18-X.
[190] Exhs. NH-1T, 3:15-18; GRB-1T, 4:4-7.
[191] TR. 107:15, Exh. JP-5-X.
[192] TR. 277:21-22.
[193] Exh. JP-5-X.
[194] TR. 105-107, TR. 229:4.
[195] Exh. GAN-18-X.
[196] Exh. GAN-3-X at CF 5-3 (second paragraph on the page)

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In other words, the Cities' planning documents recognize that a new fire station can be effective only if the existing transportation system is effective. To create an effective transportation system, the Cities' planning documents also explicitly include the Center Parkway crossing as a necessary transportation improvement.[197]

STRIKE ¶61; PROPOSED ¶: There is ample evidence that opening a crossing at Center Parkway would provide a public need. An effective emergency response network requires an effective transportation system.[198] The Center Parkway crossing is a planned transportation project that will improve the regional transportation network.[199] For example, the JUB Report demonstrates the crossing will reduce emergency response times by 30% and 24% from Kennewick Station 3 and Richland Fire Station 72, respectively.[200] Chief Baynes testified that the new crossing would reduce emergency response times by "approximately one minute." These findings are supported by studies and by logic.[201] The new route represents a better alignment for emergency responders to access Tapteal addresses and addresses near the Columbia Center Mall, both of which have documented failing LOS for emergency services.[202]

The Cities assign error to ¶ 62. Evidence depicts that the crossing will be closed one percent (1%) of the day and up to three percent (3%) of the day under the most optimistic rail traffic scenarios.[203] Mr. Norris's unsupported assertion provides no support for the final two sentences of ¶ 62. As a result, that paragraph must be revised:

STRIKE ¶ 62; PROPOSED ¶: The Center Parkway crossing will provide a more reliable and quicker route for emergency responders, as crossing closures are not anticipated to exceed three percent (3%) of the day.[204] Chief Baynes, Chief Skinner, and Chief Hohenberg all testified that more choices and more alternatives are always better for emergency responders, and the evidence demonstrates that the crossing will improve the Cities' emergency response times.

The Cities assign error to ¶¶ 67-69. As described throughout this petition, the evidence demonstrates that the Cities have a significant public need for the Center Parkway crossing. Paragraphs 67 to 69 are inconsistent with both substantial and uncontested evidence.

STRIKE ¶ 67; PROPOSED ¶: The Cities demonstrated public need for the proposed crossing. Evidence shows that improved emergency response times improve the chances of survival for

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[197] Exhs. GAN-7-X at 59; GAN-9-X.
[198] Exh. GAN-3-X.
[199] Exhs. GAN-7-X at 59; GAN-9-X.
[200] Exh. JP-5-X.
[201] TR. 105-107, TR. 229:4.
[202] Exh. GAN-18-X.
[203] Exh. SM-1TR 5:7; TR. 233:18-20.
[204] TR. 233:18-20.

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trauma, cardiac, and stroke patients.[205] As the Cities continue to grow, additional and more frequent demands will be placed upon the Cities' first responders.

STRIKE ¶ 68; PROPOSED ¶: The Center Parkway crossing includes improved safety measures to protect the public, including advance pavement markings, warning signs, gates and lights, which will be designed with constant warning time devices for motorists, and a traffic island that will act as a median separator.[206] The UTC calculates that the crossing poses a risk of one incident per 53.5 years.[207]

STRIKE ¶ 69; PROPOSED ¶: The Commission finds that the Cities' demonstrated public need outweighs the inherent hazards of an at-grade crossing.

9.2 Other Public Needs.

It is unnecessary for the Commission to review the merits regarding accident rates and relief of traffic congestion. However, to preserve the issue for appeal, the Cities assign error to ¶¶ 33, 36, and 63-66, below, as described in greater detail in section 9 of this petition, and include the following finding that is consistent with the legal standard for at-grade crossing petitions:

PROPOSED ¶: Because the Commission finds that the emergency response times satisfy the public need requirement, and that the public need outweighs the risks of the proposed crossing, it is unnecessary for the Commission to review the evidence submitted regarding traffic congestion, accident reduction, economic development, and a completed transportation network.

10. THE PETITION INCLUDES ADDITIONAL PUBLIC NEED

In addition to improving failing emergency response times, the record and the Initial Order include additional evidence documenting the additional "public need" for the crossing. This evidence is cumulative, further supporting the Cities' petition. Although unnecessary for the purpose of demonstrating adequate public need, the Cities assign error to evidence and findings regarding accident reduction, mitigation of traffic congestion (¶¶ 33, 36, and 63-66). The Cities also propose the following finding of fact and conclusion:

PROPOSED (FINDINGS OF FACT AND CONCLUSIONS OF LAW) ¶: The Cities have demonstrated that the Center Parkway crossing will provide additional public needs, including:

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[205] Exhs. RGB-1T 4:4-7; NH-1T 3:15-18.
[206] Exhs. KH-1T 21:15-23:23; KJ-1T 8:1-9:4; SKG-1T 5:15-6:9
[207] Exh. KH-1T 26:15-23; Initial Order ¶ 17, footnote 29.

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relieving traffic congestion, reducing traffic accidents, promoting economic development, and completing a regional transportation network.

However, the Commission should not need to reach the merits of these issues, as the petition should be granted based upon the merits of the emergency response time evidence.

10.1 The Center Parkway Crossing Will Reduce Traffic Congestion.

The Initial Order cites evidence demonstrating that the Center Parkway crossing will address a public need by reducing traffic congestion, providing a benefit to emergency responders and to the public who use the Cities' roadways. The Initial Opinion misconstrues the uncontested evidence.

The Cities assign error to ¶ 33. The uncontested record demonstrates that the intersections near the proposed crossing are congested and either failing or near failing the Cities' level of service for transportation.[208] The JUB Report demonstrates that the Center Parkway crossing will alleviate traffic congestion: "Center Parkway has been planned to provide relief to both Columbia Center Boulevard as well as Steptoe Street, consistent with the philosophy of providing collector roadways parallel and in between arterial roadways."[209] This finding is supported by documentation and analysis.[210] Mr. Montgomery provided this documentation and analysis to TCRY in response to a TCRY data request to "Produce copies of all documents pertaining to, supporting, analyzing, reviewing or reporting on the assertions made in the document entitled "Center Parkway Extension and Railroad Crossing Traffic Study, March 2013 [i.e., the JUB Report] ..." Upon receipt of JUB's analysis (now Exhibit GAN-20-X), UTC rules afforded TCRY the opportunity to submit subsequent data requests to Petitioners, requesting further explanation of the Petitioners' analysis. The record shows that TCRY did not present contrary data, despite the opportunity.

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[208] Exh. GAN-17-X. TCRY did not contest this level of service transportation data.
[209] Exh. KJ-5 at 6.
[210] Exh. GAN-20-X.

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Mr. Deskins, the City of Kennewick's transportation engineer, agreed with the JUB Report's conclusions: "I would expect [the Center Parkway crossing] would reduce the congestion and improve level of service. Because it does give alternatives for people to use through-traffic movements, which again are usually less congested then the left-turn movements."[211] The uncontested evidence demonstrates that the Center Parkway crossing advances a public need by reducing congestion at failing intersections.

STRIKE ¶ 33; PROPOSED ¶: The Cities presented evidence that many of the intersections near the proposed crossing are congested and failing to achieve the Cities' stated level of service.[212] The roadways around Columbia Center Mall can become even more congested during the holiday shopping season in late November and early December.[213] "Center Parkway has been planned to provide relief to both Columbia Center Boulevard as well as Steptoe Street, consistent with the philosophy of providing collector roadways parallel and in between arterial roadways."[214]

The Cities assign error to ¶¶ 36 and 65-66. The JUB Study and Mr. Montgomery's testimony demonstrated that vehicular queuing raises no valid issue for this crossing.[215] Mr. Montgomery's uncontested testimony demonstrates that traffic stopped at a railway crossing will not back into any controlled crossing. Footnote 79 mischaracterizes the evidence. Mr. Deskins was testifying that *queues* "didn't concern him,"[216] and that assertion is supported by uncontested evidence in the record. Further, the regional transportation model is programmed to determined times as if the Center Parkway crossing already exists. In other words, the model already recognizes the transportation benefits of the proposed crossing. As a result, a proper evidentiary finding is as follows:

STRIKE ¶ 36; PROPOSED ¶: The JUB Study and uncontested evidence shows that the crossing does not present any queueing issues for the proposed crossing.[217] Although Mr. Deskins, the City employee most familiar with the City's traffic modeling simulation, conceded that he did not perform an LOS analysis specifically focused on the result of installing the proposed

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[211] TR. 76:2-7.
[212] Exhs. KJ-5, at 6, 9; GAN-20-X; GAN-17-X; TR 76:2-7.
[213] Exhs. JD-1T, 3:6-26.
[214] Exh. KJ-5 *at 6.*
[215] Exh. SM-1TR at 6:15-26.
[216] Mr. Deskins was answering the question set forth at TR. 79:2-3.
[217] Exh. SM-1TR at 6:15-26.

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crossing at Center Parkway,[218] the modeling program includes the Center Parkway crossing in the region transportation model, as it the Crossing already exists.

STRIKE ¶¶ 65 and 66; PROPOSED ¶ The Center Parkway demonstrates a public need by reducing congestion. To demonstrate a public need, it is not necessary for the Cities to conclusively show a failing transportation LOS. Satisfying the UTC's "public need" criteria, the Cities demonstrated that several intersections are congested and that the crossing will provide congestion relief.[219]

10.2 The Center Parkway Crossing Will Reduce Traffic Accidents Near Columbia Center Mall.

Mr. Deskins' testimony shows that the proposed crossing will relieve failing or near failing intersections, thereby reducing crashes near the Columbia Center Mall.[220] These intersections are regularly within the top five crash locations in the City of Kennewick.[221] In response to the submitted crash data,[222] TCRY's expert witness replied: "The majority of these crashes are not injury crashes, only like an average of three injury (sic) per year and four at the other, at the Canal Street intersection."[223] The Initial Order seems to be taking the indefensible position that an average seven documented injuries per year at these intersections does not present a critical public need.

The Cities assign error to ¶¶ 63 and 64 because they do not conform to the undisputed evidence:

STRIKE ¶¶ 63 and 64; PROPOSED ¶: The Center Parkway crossing demonstrates public need by reducing traffic accidents near Columbia Center Mall. Since 2001, intersection report data demonstrates over 300 accidents.[224] The record contains no evidence that refutes Mr. Montgomery's explanation that "if you reduce the traffic volume on a road and it has a certain accident rate, then you will reduce the number of accidents."[225] The Commission concludes that the Center Parkway crossing will reduce accidents near the Columbia Center Mall.

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[218] Deskins, TR. 78:4-7; *see also* Deskins, TR. 73:4-12.
[219] Exh. GAN-17-X, Simon TR. 67:14-69:22.
[220] Exh. JD-1T at 4. The JUB Report further supports Mr. Deskins' testimony. Exh. KJ-5T at 6.
[221] Exh. JD-1T at 4.
[222] Exh. JD-3T.
[223] TR. at 90:6-11.
[224] Exh. JD-3.
[225] TR. 222:14-23.

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10.3 The Center Parkway Crossing Will Provide Infrastructure to Support Community and Economic Development.

The Center Parkway Crossing provides infrastructure to encourage community and economic development. Mr. Montgomery testified to the importance of addressing congestion to ensure an integrated multi-modal transportation system: "The transportation system works as a whole. If the region cannot move cars, then it also cannot move trucks. If the system cannot move trucks, then there are delays in loading and unloading rail freight."[226] The JUB Report also identified the crossing as providing access to nearly 60 acres of land that has utilities and collector roadway access, but lacks direct access to the commercial area south of the railway.[227] The Initial Order fails to include this undisputed evidence that further demonstrates the public need for the crossing.

PROPOSED NEW ¶. The Cities demonstrated that the Center Parkway crossing demonstrates public need by promoting economic development through encouraging multi-modal transportation in the region and by creating direct access to developable land.[228]

10.4 The Center Parkway Crossing Will Complete the Roadway Network.

Finally, the Center Parkway Crossing also completes the regional roadway network. This crossing is the final step in a series of transportation projects to improve the functionality of the network by providing a north-south connection in the existing grid system.[229]

PROPOSED NEW ¶. The Cities demonstrated that the Center Parkway crossing demonstrates public need by completing the roadway network.[230]

11. SUMMARY

Despite lack of real opposition from any party or any non-party to the Center Parkway crossing; despite the provision of the fullest extent of traffic safety devices; despite the uncontested evidence that a grade-separated crossing is not practicable; despite the uncontested

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[226] Exh. SM-1TR 3.
[227] Exh. KJ-5 at 6. The USDOT Railroad-Highway Grade Crossing Handbook explicitly considers authorizing at-grade crossings solely to "provide access to any land development. Exh. KH-10.
[228] Exhs. SM-1TR at 3; KJ-5 at 6.
[229] Exh. KJ-5 at 5.
[230] Exh. KJ-5 at 5.

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evidence of little risk of an accident at the crossing; despite decades of comprehensive planning at local, regional and state levels (including state funding); despite the uncontested evidence regarding reduction in accident rates in surrounding areas; and, despite the uncontested evidence that the Center Parkway crossing is necessary to provide critical emergency response times in the community, the Initial Order finds no public benefit to satisfy RCW 81.53.020. This was clear error.

The Cities have conclusively demonstrated the significant public need for the Center Parkway crossing. The Center Parkway crossing will improve emergency response times, improving the likelihood that lives will be saved in emergency circumstances that routinely arise in an area with 100,000 residents. The Center Parkway crossing will also reduce traffic congestion, reduce traffic accidents, promote economic development, and complete the Cities' roadway network. Each identified benefit of the crossing satisfies the UTC's interpretation of the term "public need." Together, those elements are overwhelming in application of the balancing test applied by the UTC. The demonstrated public need for the Center Parkway crossing outweighs its calculated risk of one accident every 53.5 years. The Cities have met their burden, and this Petition should be approved. A proposed form of order is submitted with this Petition for Administrative Review.

Respectfully submitted this 17th day of March, 2014.

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By: _____

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EXHIBIT A

[Service date February 25, 2014]

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	)	DOCKET TR-130499 ORDER 02 INITIAL ORDER DENYING PETITION TO OPEN AT-GRADE RAILROAD CROSSING

BACKGROUND

1 On April 8, 2013, the City of Kennewick filed with the Washington Utilities and Transportation Commission (Commission) a petition to construct a highway-rail grade crossing at Center Parkway, Kennewick, Washington and remove an existing railroad siding. On May 31, 2013, the City of Richland petitioned to intervene in support of this petition.

2 On June 4, 2013, the Commission held a prehearing conference in Olympia, Washington, before Administrative Law Judge Adam E. Torem. At that time, the Commission granted intervenor status to the City of Richland and adopted a procedural schedule for this docket.

3 At the prehearing conference, the City of Kennewick indicated compliance with the State Environmental Policy Act (SEPA) by its 2003 completion of a SEPA checklist for the Center Parkway Extension project and subsequent issuance of a Mitigated Determination of NonSignificance (MDNS). On July 26, 2013, the City of Kennewick updated its previous environmental assessment and prepared an Addendum to its SEPA checklist. On August 20, 2013, the City of Kennewick confirmed to the Commission that all SEPA compliance work was complete.

4 The Commission conducted evidentiary hearings on November 19-20, 2013, and a public comment hearing on November 20, 2013, in Richland, Washington. Judge Torem performed a site visit and toured the area on November 21, 2013. The parties simultaneously filed written post-hearing briefs on December 20, 2013.

5 *Representatives.*[1] P. Stephen DiJulio and Jeremy Eckert, Foster Pepper PLLC, Seattle, represent petitioner City of Kennewick and intervenor City of Richland (Cities). Paul J. Petit, Richland, represents respondent Tri-City & Olympia Railroad (TCRY). Steven W. Smith, Assistant Attorney General, Olympia, represents the Commission's regulatory staff (Commission Staff or Staff).[2]

EVIDENCE

A. Center Parkway and Surroundings

6 Center Parkway is a minor arterial roadway in Kennewick. As currently constructed, its northbound traffic moves into a roundabout intersection with Gage Boulevard and cannot proceed further north to Tapteal Drive.[3] As part of their comprehensive plans, the Cities intend to connect Tapteal Drive in Richland with Gage Boulevard in Kennewick by extending Center Parkway northward.[4] In order to accomplish this, Center Parkway would cross two sets of railroad tracks owned by the Port of Benton.[5]

7 Seven years ago, the Commission denied the City of Kennewick's original petition to construct this at-grade crossing.[6] At that time, extending Center Parkway northward would have required crossing four sets of tracks. However, in 2011, the City of Richland completed negotiations with the Union Pacific Railroad Company (UPRR) and Burlington Northern Santa Fe Railway Company (BNSF) to relocate their switching operations from the area, allowing removal of the two UPRR spur tracks.[7]

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[1] The following parties appeared at the prehearing conference but did not participate in any other portion of the proceedings: Thomas A. Cowan, Richland, represents respondent Port of Benton. Tom Montgomery and Kelsey Endres, Seattle, represent respondent Burlington Northern Santa Fe Railway Company (BNSF). Carolyn Larson, Portland, OR, represents respondent Union Pacific Railroad Company (UPRR).

[2] In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

[3] Exh. JP-5-X, at 2-3 (overview maps of area).

[4] Exh. JP-1T, 2:11-24; *see also* Exh. JP-2, Exh. JP-3, and Exh. JP-4.

[5] *See* Exh. KH-2 (aerial view of surrounding area) and Exh. KH-3 (crossing configuration).

[6] *See* Docket TR-040664, *City of Kennewick v. Union Pacific Railroad*, Order 06, Initial Order Denying Petition; Docket TR-050967, *City of Kennewick v. Port of Benton and Tri-City & Olympia Railroad*, Order 02, Initial Order Denying Petition (January 26, 2007) (2007 Order).

[7] Exh. JP-6-X (UPRR) and Exh. JP-7-X (BNSF).

8 Commercial and retail properties dominate the area surrounding the proposed crossing. As shown in Figure 1,[8] the Columbia Center Mall, a major regional shopping center, is located immediately southeast of the proposed crossing, bordered by Center Parkway (west side), Quinault Street (south side), and Columbia Center Boulevard (east side). The Mall's northern boundary abuts Port of Benton and UPRR railroad tracks that connect at Richland Junction, just east of the proposed crossing.

Figure 1. Overview Map of Area (including old UPRR spur track, now removed)

9 North of the proposed crossing, Tapteal Drive provides access to a hotel and various retail, commercial and undeveloped properties located in a mile-long pocket of land below Highway 240. The proposed Center Parkway crossing would provide a more direct connection from this area to the Columbia Center Mall.[9]

10 Road access between these two areas now exists where Tapteal Drive intersects Columbia Center Boulevard, approximately 0.4 miles east of the proposed crossing.

[8] Aerial imagery of the area is provided by Exhs. JD-27-X, JD-28-X, JD-29-X, and JD-30-X.

[9] *See* Petition at 8; *see also* Exh. RS-1T, 8:20 – 9:2 and Exh. JD-1T, 3:6 – 4:20.

Columbia Center Boulevard has a grade-separated overpass to cross the UPRR mainline track; however, as this section of the roadway is divided, northbound traffic accessing Tapteal Drive must make a series of right turns to loop up and over the major arterial roadway (Tapteal Loop). Alternatively, Tapteal Drive meets Steptoe Street approximately 0.7 miles west of the proposed crossing. From there, southbound motorists currently pass through a regular at-grade crossing to connect with Gage Boulevard, another major arterial roadway that provides eastbound access to the mall area via the current roundabout intersection with Center Parkway.[10]

B. Rail Operations at Richland Junction

11 TCRY is a rail carrier conducting interstate rail operations through Kennewick and Richland. TCRY leases the track west and north of Richland Junction from the Port of Benton; BNSF and UPRR also operate on this track. Randolph V. Peterson, Managing Member of TCRY, explained that the second set of tracks immediately west of Richland Junction allows trains to meet and pass when entering or exiting the area. According to Mr. Peterson, this passing track is "absolutely essential" because TCRY makes frequent, if not daily, use of that facility.[11] When no passing operations are scheduled, TCRY also uses the second track as a siding to store idle freight cars.[12]

12 Mr. Peterson estimates that TCRY presently operates 10 to 20 freight trains each week on the mainline track that passes through the Richland Junction. BNSF operates another 10 freight trains each week and, on occasion, UPRR operates a "unit train," a mile-long freight train consisting of approximately 100 to 120 cars all carrying the same cargo. No passenger trains operate on this track. Mr. Peterson testified that the combined annual train traffic through the Richland Junction increased from nearly 4,500 railcars in 2012 to over 5,100 railcars in 2013.[13] Mr. Peterson expects further

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[10] *See* Exh. JP-5-X, at 2-3. In 2009, the Commission granted the City of Richland's petition to realign the Tapteal-Steptoe intersection atop the at-grade crossing to create Washington's first-ever roundabout intersection with a rail line running through the middle. *See* Exh. GAN-10-X, Docket TR-090912, *City of Kennewick v. Tri-City & Olympia Railroad*, Order 01, Order Granting Petition to Reconstruct the Steptoe Street Highway-Rail Grade Crossing and Modify Active Warning Devices (July 2, 2009). Although the Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan projected this construction to begin in 2012, the City has not yet initiated any construction work. *See* Exh. RS-4, at 16 (Steptoe Street Phase 3).

[11] Peterson, TR. 381:5 – 383:15.

[12] The Cities contend TCRY makes only sparing use of the passing track. *See* Exh. KJ-13-X, at 2. The Cities argued that several tank cars present on the siding during the evidentiary hearing had not been moved for days or even weeks. Peterson, TR. 405:14 – 410:19; *see also* Exh. RVP-9-X.

[13] Exh. RVP-1T at 3-4; *see also* Exh. RVP-3-X at 1-3. The Cities estimate current train traffic to be appreciably lower, between 3.2 to 5.02 trains per weekday, or 2,310 total railcars moved by TCRY annually. *See* Exhs. KJ-10T-R, KJ-11, and KJ-12; *see also* Jeffers, TR. 143:1 – 146:25.

increases in train traffic because of TCRY's continued growth and new commercial developments in the Horn Rapids Industrial Park that will be served by rail.[14]

13 Gary Ballew, the City of Richland's Economic Development Manager, testified that the Richland City Council recently approved a series of development agreements to construct a rail loop of sufficient size to service unit trains in the Horn Rapids area.[15] Mr. Ballew expects this new rail loop will be operational by summer 2015 and able to process the equivalent of two and a half unit trains per week (approximately one unit train entering or leaving the facility each day).[16] Mr. Ballew also testified that Richland has entered real estate and development agreements with ConAgra Foods to build an automated cold storage warehouse in the Horn Rapids area served by a separate smaller loop track.[17] Mr. Ballew expects an average of 30 rail cars each week will come and go from ConAgra's facility.[18]

14 All trains traveling to the Horn Rapids area must pass through the Richland Junction and cross the proposed Center Parkway extension.[19] Considering the expected increase train traffic across Richland Junction, TCRY contends that the passing track will become even more essential and perhaps need to be extended to accommodate longer trains.[20] Mr. Peterson testified that he opposes the new Center Parkway crossing because rail operations could regularly require freight trains to block the crossing, occasionally for lengthy periods of time.[21]

C. Grade Separation

15 Grade separation refers to the method of aligning the junction of two or more surface transportation rights-of-way at different heights (grades) to avoid conflicts or disruption of traffic flows as they cross each other. In the case of highway-rail junctions, underpasses, overpasses, or bridges are the most common forms of grade

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[14] Exh. RVP-1T at 5-6; *see also* Exh. GAN-16-X.

[15] Richland's rail loop will be approximately 8400 feet in total length. Ballew, TR. 354:25 – 357:22; *see also* Exhs. JD-37-X, JD-38-X, JD-39-X, KJ-14-X, and King, TR. 334:1 – 336:15 and 337:21 – 340:16.

[16] Ballew, TR. 358:2-12, 364:15 – 365:3, 369:21 – 370:6, 375:4 – 376:24; *see also* Exh. JD-38-X.

[17] Ballew, TR. 342:23 – 345:15; *see also* Exhs. JD-9-X, JD-10-X, and JD-11-X.

[18] Ballew, TR. 345:16 – 346:17 and 373:6-14.

[19] Ballew, TR. 346:22 – 347:8; *see also* Jeffers, TR. 173:10-19.

[20] Post-Hearing Brief of Respondent Tri-City & Olympia Railroad Co. at 9; *see also* Jeffers, TR. 154:24 – 159:12.

[21] Peterson, TR. 414:23 –418:5.

separated crossings. The Cities presented evidence contending that grade separation is not warranted at the proposed crossing site because of roadway characteristics, accident prediction models, and cost.

16 Rick Simon, Development Services Manager for the City of Richland, testified that constructing a grade-separated crossing at Center Parkway is not feasible due to differences in topography on the north and south sides of the rail line.[22] Susan Grabler, a railroad engineer from David Evans and Associates, Inc. (DEA), explained that roadway geometry at Center Parkway and the close proximity of Columbia Center Boulevard make grade separation impracticable.[23] Ms. Grabler pointed out that a grade-separation project would require increasing the steepness of the track approaching the crossing from the existing one percent grade to something greater than two percent, exceeding the operational capabilities of most trains now using that track.[24] Kevin Jeffers, a DEA associate working with Ms. Grabler, determined that grade separation would require either replacement of the existing rail bridge over Columbia Center Boulevard (to the east) or elimination of existing access to the hotel immediately north of the crossing due to the depth of the undercrossing.[25]

17 Ms. Grabler also testified that the expected average daily traffic (ADT) on the Center Parkway extension would not justify grade separation. The Federal Highway Administration (FHWA) Railroad-Highway Grade Crossing Handbook establishes a threshold of 100,000 ADT to require grade separation at an urban crossing.[26] The Cities estimate that Center Parkway's traffic will reach only 7,000 ADT by 2033, much lower than the FHWA threshold.[27] This low traffic volume contributes to a low predicted accident frequency rate, further reducing justification for grade separation. Using an FHWA model, Mr. Jeffers predicted that the crossing's accident frequency would be 0.145 accidents per year, or 1 accident every 6.9 years.[28] Kathy Hunter, testifying for Commission Staff, analyzed a similar crossing in Prosser and forecast an even lower likelihood of accidents at the proposed Center Parkway crossing.[29]

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[22] Exh. RS-1T, 6:17-23.

[23] Exh. SKG-1T, 3:13-20; *see also* Grabler, TR. 205:21 – 206:13.

[24] Exh. SKG-1T, 6:11-23; *see also* Exh. KJ-1T, 9:7-19.

[25] Exh. KJ-1T, 4:12-17.

[26] Exh. KJ-2, at 11 (*see* paragraph 6.a.iv).

[27] Exh. SKG-1T, 3:21-25; *see also* Exh. KJ-1T, 6:14-20.

[28] Exh. KJ-1T, 7:11-20; *see also* Exh. KJ-2 (at 4-8) and Exh. KJ-7 (at 2-3).

[29] Exh. KH-1T, 24:21 – 26:22; *see also* Exh. KH-12. Ms. Hunter's calculation predicts 0.018701 collisions per year, or one accident every 53.5 years.

18 Jeff Peters, Transportation and Development Manager for the City of Richland, testified that constructing the proposed at-grade crossing would cost approximately $250,000. Mr. Peters estimated that a grade-separated crossing for Center Parkway would cost between $15 million and $200 million.[30] Mr. Jeffers identified four different design options for a grade-separated crossing within that price range, each requiring extensive retaining walls due to excavation depths of 20 feet or more for the roadway or, alternatively, fill depths under the tracks in equivalent amounts.[31]

19 Commission Staff concurred with the Cities that grade separation is not warranted at this location.[32] Noting the low traffic volumes and determining that train crossings would be infrequent, Ms. Hunter endorsed the Cities' proposal to mitigate the dangers of an at-grade crossing through installation of active warning devices, to include advanced signage, flashing lights, audible bell, automatic gates, and a raised median to prevent drivers from going around the gates.[33] Staff believes these measures adequately moderate the dangers presented by the proposed at-grade crossing.[34]

D. Public Need for Proposed Crossing

20 The Cities seek to complete a planned network of roadways and address traffic issues in the area by extending Center Parkway from Tapteal Drive to Gage Boulevard. The Center Parkway extension project has been included in the Cities' comprehensive planning process since 2006.[35] The project is also noted for funding in the Benton-Franklin Council of Governments Regional Transportation Plan.[36] According to the Cities, extending Center Parkway to Tapteal Drive and constructing the necessary at-grade crossing will decrease emergency vehicle response times, reduce the amount of accidents near the Columbia Center Mall, and improve traffic circulation in an important commercial area.[37]

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[30] Exh. JP-1T, 3:1-8.

[31] Exh. KJ-1T, 10:3-13; *see also* Exhs. KJ-6 and KJ-7 and Jeffers, TR. 195:8 – 201:2.

[32] Exh. KH-1T, 8:1 – 12:9.

[33] Exh. KH-1T, 21:15 – 24:19; *see also* Exhs. KH-3 and KH-9.

[34] Exh. KH-1T, 27:1-3.

[35] Deskins, TR. 58:7-15; *see also* Exhs. RS-2, RS-3, GAN-2-X, GAN-3-X, GAN-4-X, GAN-6-X, GAN-7-X at 2, GAN-13-X, GAN-14-X, and GAN-15-X.

[36] *See* Exhs. RS-4, GAN-8-X, and GAN-9-X. The Executive Summary of the Regional Transportation Plan only discusses current congestion on Gage Boulevard in Kennewick being relieved in future years by extension of the Steptoe Street Corridor. The Plan has no specific discussion of anticipated benefits from extending Center Parkway. Exh. RS-4 at 6.

[37] Exh. JD-1T, 5:1-21; *see also* Exh. KJ-5.

1. Emergency Response Times

21 The Cities' police and fire departments have each established response time objectives for arriving at emergency incidents or high priority calls. In Richland, the police department has a one-to-five minute average response goal for high priority calls.[38] Similarly, Richland's Fire & Emergency Services first responders seek to arrive at incidents within five minutes or less from time of dispatch, 90 percent of the time.[39] Kennewick's fire response goal is five minutes and the emergency medical response goal is four minutes, each for 90 percent of events.[40]

22 The Cities' emergency response providers support each other and respond to each other's calls for help.[41] The Cities and three local fire districts signed a Master Interlocal Partnership and Collaboration Agreement in 2010 that includes an "automatic aid agreement" for prioritizing and sequencing certain aid calls.[42] The Cities' emergency service providers all agree that extending Center Parkway from Gage Boulevard to Tapteal Drive will improve emergency response times in the area. However, none of these witnesses testified that any of the Cities' emergency services providers were not routinely meeting their response time objectives.

23 Richland Chief of Police Chris Skinner explained that police response times are sometimes difficult to evaluate because officers are often already deployed in the community and can be responding from varied distances.[43] Chief Skinner testified that extending Center Parkway would provide better access for his officers, providing them a potentially faster alternative route to choose from when responding to emergency calls.[44] Kennewick Chief of Police Kenneth Hohenberg testified similarly.[45] Neither police chief conducted or consulted specific studies to support their claims of faster response times if the proposed crossing was opened.[46]

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[38] Exh. RS-1T, 5:11-12; *see also* Exh. GAN-4-X.

[39] Exh. RS-1T, 5:5-11; *see also* Exh. GAN-3-X.

[40] Exh. GAN-6-X at 2.

[41] Exh. CS-1T, 3:12-14 and KMH-1T, 2:10-15; *see also* Skinner, TR. 93:19 – 94:5.

[42] Exh. NH-1T, 2:13-25, and Exh. RGB-1T, 2:18—3:15. *See also* Baynes, TR. 109:4 – 110:15.

[43] Skinner, TR. 87:20 – 88:17.

[44] Exh. CS-1T, 4:1-6.; *see also* TR. Skinner, 95:4-8.

[45] Exh. KMH-1T, 3:1-21.

[46] Skinner, TR. 95:4-14; Hohenberg, TR. 138:11-25.

24 Kennewick Fire Chief Neil Hines testified that the best emergency response routes for fire and medical units are on "straight arterial-type roadways providing the most direct route with the least amount of traffic, traffic control systems, intersections, and turns to negotiate."[47] Without a direct connection between Gage Boulevard and Tapteal Drive, Kennewick emergency responders must travel north of the Mall via Columbia Center Boulevard or Steptoe Street, routes that are less direct, occasionally burdened with heavy traffic, and with multiple intersections and numerous turns to negotiate. According to Chief Hines, improving response times by even a few seconds could significantly impact the outcome for a patient in a critical event.[48] Richland Fire & Emergency Services Director Richard Baynes testified that the Center Parkway extension would provide a viable north-south route for fire and medical units if the primary routes on Steptoe Street or Columbia Center Boulevard were obstructed, growing in value as the Tapteal area continues its development.[49]

25 In support of their petition, the Cities submitted a traffic study completed by JUB Engineers, Inc. (JUB Study).[50] Using the hotel on Tapteal Drive and Center Parkway as an example, the JUB Study claimed that extending Center Parkway northward would reduce the response distance from the City of Kennewick's fire station to this point by one-third of a mile and reduce the response time from 2 minutes, 48 seconds, down to only 2 minutes. Coming from the Richland Fire Station, the JUB Study found that the response distance would be reduced by almost two-thirds of a mile and reduce response time from 5 minutes, 42 seconds, down to 4 minutes, 18 seconds.[51] Chief Baynes reviewed the response times in the JUB Study against his Department's records and calculated that "there's about a minute difference between accessing Tapteal via the proposed crossing versus the traditional routes."[52]

26 Gary Norris, a traffic engineer hired by TCRY, questioned whether the JUB Study should be relied upon to demonstrate a public need for extending Center Parkway and opening an at-grade crossing. Mr. Norris pointed out that the above-noted 2 minute,

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[47] Exh. NH-1T, 3:15-18.

[48] *Id.* at 3:18-24.

[49] Exh. RGB-1T, 4:12-22.

[50] Exh. KJ-5; *see also* Petition.

[51] Exh. KJ-5, at 9; Exh. JP-5-X, at 1. Exh. KJ-5 provides a vicinity map showing the locations of both fire stations on page 7. Chief Hines stated his agreement with the JUB Study's response times. *See* Exh. NH-1T, 3:15.

[52] Baynes, TR. 105:16-18; *see also* Baynes, TR. 107:13-15 and Exh. GAN-18-X. However, Chief Baynes noted that the 2:48 response time could not include the firefighters' turnout time, as it would only be possible under optimum driving conditions (averaging 28 miles per hour) and probably could not be replicated during heavier daytime traffic. Baynes, TR. 123:4 – 124:13.

48 second response time to the hotel already meets the Cities' goal for response times by a wide margin. Further, Mr. Norris contends that the JUB Study fails to consider that existing or increased future train traffic may make the new roadway unavailable for reliable emergency response.[53]

27 Acknowledging the possibility of a train blocking the Center Parkway crossing, Chief Baynes explained "the more routes into areas we have, the better" number of alternatives there are for working around such problems.[54] Even so, Chief Baynes conceded that a unit train could block traffic at both the existing Steptoe Street crossing and the proposed Center Parkway crossing for lengthy periods of time, delaying emergency response times even longer if a fire or medical unit committed to a particular crossing before knowing the train's direction of travel.[55]

28 Mr. Norris presented an alternate response route from the Richland Fire Station to the hotel that avoided the potentially congested intersection of Steptoe Street and Gage Boulevard and would not require crossing a rail line at-grade. Mr. Norris contended that his alternate route over existing streets would take less than four minutes and perhaps be advantageous because it avoided potential delays from traffic and trains.[56]

29 Mr. Norris asserted that the JUB Study does not document an existing lack of reasonable alternate access for public emergency services.[57] Mr. Simon, Richland's Development Services Manager, conceded that he did not know if there were any areas in the City of Richland where meeting emergency response objectives would be improved by construction of the proposed Center Parkway crossing.[58]

2. Accident Reduction

30 The Cities also contend that opening the Center Parkway crossing would reduce traffic on Columbia Center Boulevard and therefore the number of accidents on that route and also remove the temptation for drivers to use the Mall's ring road as a through-route, endangering pedestrians.[59] Mr. Deskins likened the new Center

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[53] Exh. GAN-1T, 5:1 – 6:17.

[54] Baynes, TR. 108:9 – 109:3 and 119:9-11.

[55] Baynes, TR. 114:1 – 120:12; *see also* TR. 130:3 – 132:1.

[56] Norris, TR. 308:7 – 309:19; *see also* Exh. GAN-19-X. Mr. Norris calculated response speed to be approximately 28 miles per hour, the same as that relied upon in the Cities' JUB Study. Norris, TR. 310:8 – 312:16.

[57] Exh. GAN-1T, 5:1-16.

[58] Simon, TR. 60:13 – 61:5.

[59] Exh. JD-1T, 4:1-20 and Exh. JD-2TR, 2:23 – 3:4; *see also* Exh. SM-1TR, 6:9-12.

Parkway crossing to "connecting the parking lots between two popular businesses so that drivers don't have to enter the busier city street to travel between the two."[60]

31 Mr. Deskins provided an exhibit listing 12 years of crash data for two Columbia Center Boulevard intersections: Quinault Avenue and Canal Drive.[61] Going back to 2001, the intersection reports show 154 total crashes at Quinault Avenue and 165 total crashes at Canal Drive.[62] According to Mr. Deskins, opening the Center Parkway crossing on the other side of the Mall would reduce traffic at these intersections and "*should ultimately reduce crashes*" at these locations.[63] Spencer Montgomery, a transportation specialist with JUB Engineers, explained that JUB did not perform a study to support this conclusion because "if you reduce the traffic volume on a road, and it has a certain accident rate, then you will reduce the number of accidents."[64]

3. Mitigation of Traffic Congestion

32 In compliance with the Growth Management Act (GMA), the Transportation Element of Richland's Comprehensive Plan adopts standards and threshold levels of service (LOS) for the City's intersections. The LOS scale goes from A to F, measuring the length of delay a vehicle will experience at a signalized intersection. Richland's threshold LOS for acceptable delay is LOS D, a delay of 35-55 seconds; any intersection rated worse (E or F) is considered deficient.[65]

33 The Cities presented evidence that Columbia Center Boulevard is one of the busiest roadways in the region and that Steptoe Street could occasionally be congested at peak hours.[66] Further, the roadways around Columbia Center Mall can become extremely congested during the holiday shopping season in late November and early December.[67] According to the JUB Study, extending Center Parkway to Tapteal Drive will relieve some of this traffic congestion, but the study provides no further explanation of how the proposed crossing will achieve this result.[68]

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[60] Exh. JD-1T, 4:5-7.

[61] Exh. JD-3.

[62] *Id.* at 7 and 14.

[63] Exh. JD-2TR, 3:8-14.

[64] Montgomery, TR. 222:14-23.

[65] Exh. RS-2 at 17-19; *see also* Exh. RS-1T, at 4-5 (generalized explanation of LOS).

[66] Exh. KJ-5, at 9.

[67] Exh. JD-1T, 3:6-26.

[68] Montgomery, TR. 219:2-12 (acknowledging that the JUB Study provides no data or explanation of the methodology used to arrive at its conclusions).

34 JUB's Mr. Montgomery estimated that 7,000 vehicles per day would make use of the new Center Parkway crossing, some coming from Columbia Center Boulevard and some coming from Steptoe Street.[69] The JUB Study predicts that in 20 years, opening the Center Parkway crossing will decrease the afternoon peak hour volumes on those streets by 210 and 310 vehicles, respectively.[70] The JUB Study makes no further predictions on how opening Center Parkway would improve LOS ratings at surrounding intersections currently suffering congestion issues.[71]

35 Mr. Simon testified that "one way to reduce congestion is to increase the number of access routes between any two points" and contended "the extension of Center Parkway would provide an important link, not only for emergency vehicle response, but also to reduce overall traffic congestion."[72] As to LOS levels, Mr. Simon testified that Tapteal Drive was not currently operating at a deficient level,[73] but two other intersections south of the railroad tracks were identified as deficient: Columbia Center Boulevard at Quinault[74] and Steptoe Street at Gage Boulevard.[75] When asked to explain the effect of extending Center Parkway on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault, Mr. Simon stated "I'm not sure that I can."[76] Even though he had not seen any data or traffic studies to inform his opinion, Mr. Simon also asserted that a Center Parkway crossing

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[69] Montgomery, TR. 222:24 – 225:6; see also Exh. KJ-5, at 11.

[70] Exh. KJ-5, at 13, 17, and 19; *see also* Exh. GAN-1T, 7:13-19.

[71] The JUB Study claims that after construction of the proposed crossing, the Center Parkway / Tapteal Drive intersection would operate a LOS C for northbound left turns and LOS B for northbound right turns. Exh. KJ-5, at 14.

[72] Exh. RS-1T, 5:22-25.

[73] Simon, TR. 61:18-22.

[74] According to information provided to Kevin Jeffers by John Deskins and Spencer Montgomery, the intersection of Columbia Center Boulevard and Quinault Street is deficient because the eastbound left-turn movement is currently LOS E, degrading to LOS F by 2028. The overall intersection is currently LOS C, but expected to degrade to LOS F by 2028. *See* Exh. GAN-17-X.

[75] According to that same information, the intersection of Steptoe Street and Gage Boulevard is deficient because the southbound left-turn movement is currently LOS F, with three out of four left-turn movements degrading to LOS F by 2028. The overall intersection is currently LOS E and expected to remain at that level in 2028. *See* Exh. GAN-17-X.

[76] Simon, TR. 67:1-13. Mr. Simon conceded that other than the JUB Study, he had no other evidence to support his opinion. Simon, TR. 62:16 – 63:6 (referring to the intersection of Columbia Center Boulevard and Quinault Street).

could improve the deficient LOS at the Steptoe Street and Gage Boulevard intersection by allowing some traffic to divert to the proposed crossing.[77]

36 Mr. Deskins, the City employee most familiar with the City's traffic modeling simulation, conceded that he did not perform an LOS analysis specifically focused on the result of installing the proposed crossing at Center Parkway.[78] Mr. Deskins also acknowledged that he did not attempt to consider or model potential delays from trains at the proposed crossing or at the existing Steptoe Street crossing.[79]

DISCUSSION AND DETERMINATIONS

A. Res Judicata Does Not Bar the Cities' Petition

37 TCRY argues that the Commission's 2007 Order denying the City of Kennewick's request to construct an at-grade crossing at Center Parkway precludes the Cities from pursuing a subsequent petition seeking the same relief.[80] According to TCRY, the prior and current petitions are "fundamentally identical" in seeking an at-grade crossing at the same location.[81]

38 The Cities differentiate their current petition from the one put forward in 2005: they followed comprehensive planning update procedures adopted in 2006, completed extensive engineering and design studies, and worked with stakeholders to eliminate two track crossings from the project.[82] Commission Staff agrees that removal of two track crossings and the related reduction in rail switching operations at the site present a substantial change in circumstances.[83]

39 In administrative proceedings, the doctrine of res judicata limits repeated submissions of applications involving the same subject matter.[84] In order to apply res judicata, repeat applications must have the same (a) subject matter, (b) cause of action, (c) persons and parties, and (d) quality of the persons for or against whom the claims

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[77] Simon, TR. 67:14 – 69:22.

[78] Deskins, TR. 78:4-7; *see also* Deskins, TR. 73:4-12.

[79] Deskins, TR. 79:2 – 81:8. Mr. Deskins stated that because he was focused on specific intersection LOS ratings, the impact of delays from trains at the crossings "didn't concern me."

[80] Post-Hearing Brief of Respondent Tri-City & Olympia Railroad Co. at 3:5 – 6:3.

[81] *Id.* at 5:16-17.

[82] Petitioners' Post-Hearing Brief at 3-4.

[83] Post-Hearing Brief of Commission Staff at 13-14.

[84] *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wn.2d 22, 31, 891 P.2d 29 (1995).

are made.[85] Second applications that present a substantial change in circumstances or conditions are permitted.[86]

40 There is no dispute that the Center Parkway crossing is proposed for the same site and the same use previously rejected in the 2007 Order. However, the Cities have negotiated with BNSF and UPRR to remove their switching tracks from the area, reducing the number of tracks involved from four down to two. This alone is a significant change from the prior circumstances. Further, the record supporting the current petition is substantially different than that created seven years ago: the Cities presented updated traffic studies, additional detail regarding emergency response needs in the area, and much more detailed information about safety mitigation measures and warning devices to be installed at the proposed crossing. In addition to these substantial factual differences, the 2007 Order suggested that the Commission would consider a second application.[87]

41 The Commission finds that the Cities' current petition presents a substantially different situation from that considered by the Commission seven years ago. The Commission determines that res judicata does not bar the Cities' current petition.

B. The Growth Management Act is Not Dispositive

42 The Cities contend that state agencies are mandated to comply with local land use plans adopted under the Growth Management Act.[88] Therefore, the Cities argue that their regional comprehensive planning process "mandates" the Center Parkway crossing in order for the Cities to achieve their stated LOS for emergency response times and traffic flow at signalized intersections.[89] According to the Cities, the GMA prohibits the Commission from evaluating public need, alternatives for opening a proposed railroad crossing, or even whether the proposed crossing will function in the matter claimed by the Cities. Taken to its logical end point, the Cities' argument

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[85] *Id.* at 32, citing *Rains v. State*, 100 Wn.2d 660, 663, 674 P.2d 165 (1983).

[86] *Id.* at 32-33.

[87] 2007 Order at 10, ¶ 23 (". . .the petitions could be denied without further discussion. However, it may provide some guidance to Kennewick for future filings to consider the second prong of the legal standard.").

[88] Petitioners' Post-Hearing Brief at 7-12. The Cities cite specifically to RCW 36.70A.103's mandate that "[s]tate agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter." *Id.* at 8, n. 29.

[89] Petitioners' Post-Hearing Brief, at 9-11.

would require the Commission to approve any at-grade crossing planned for in a local jurisdiction's comprehensive planning process.[90]

43 We disagree that a land use planning statute deprives the Commission of its statutory authority to regulate public safety at rail crossings. We do not dispute that the GMA requires cities such as Richland and Kennewick to plan for future growth and make efforts at intergovernmental coordination.[91] However, a jurisdiction's comprehensive planning obligations under the GMA do not substitute for meeting the standards set out in RCW 81.53. The GMA and RCW 81.53 both address transportation safety issues, but from wholly different perspectives on public policy. In order to maintain the integrity of both statutes within the overall statutory scheme, the GMA must be read together and in harmony with RCW 81.53.[92] We find that the Cities must comply with the requirements of both statutes.

44 The Commission's statutory responsibility to protect the public from the dangers inherent to all at-grade crossings is independent of the Cities' obligation to plan under the GMA. The Commission retains and will exercise its authority to determine whether the proposed crossing satisfies the requirements of RCW 81.53.

C. Standards for Commission Approval of Rail Crossings

45 RCW 81.53.020 prohibits construction of at-grade crossings without prior authorization from the Commission. The statute requires that crossings be grade-separated "when practicable" and provides that:

> In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.

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[90] *Id.* at 8. In essence, the Cities argue that the GMA invalidated the Commission's ruling in *In re Town of Tonasket v. Burlington Northern Railroad Company*, Docket TR-921371 (December 1993) (*Tonasket*), at least for GMA planning jurisdictions.

[91] RCW 36.70A.070(6)(a)(v) requires the transportation element of a growth management plan to include intergovernmental coordination efforts.

[92] *Philippides v. Bernard*, 141 Wn.2d 376, 385, 88 P.2d 939 (2004), *citing State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974) ("In ascertaining legislative purpose, statutes which stand in pari materia are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes.").

If a grade crossing is authorized, RCW 81.53.030 allows the Commission to require installation and maintenance of proper signals or other devices to ensure public safety.

46 The Commission answers three key questions when evaluating a petition to authorize construction of a new at-grade crossing:

1) Considering engineering requirements and cost constraints, is grade-separation practicable?

2) Have inherent and site-specific hazards been moderated to the extent possible?

3) Is there a demonstrated public need for the crossing that outweighs the risks of opening the at-grade crossing?[93]

The Cities carry the burden of proof for each of these issues. Absent the required showing of impracticability of grade separation, moderation of risks, and a sufficient demonstration of public need, the Commission will not authorize the Cities to open a new at-grade crossing at Center Parkway.

1. Practicability of Grade Separation

47 By its nature, an at-grade crossing poses hazards for motorists, pedestrians, and railroad operators that are not present at grade-separated crossings. Washington courts have deemed at-grade crossings to be inherently dangerous.[94] In determining whether the Commission will require grade separation, RCW 81.53.020 requires an evaluation of

- the amount and character of travel on the railroad and on the highway;
- the grade and alignment of the railroad and the highway;
- the cost of separating grades;
- the topography of the country; and
- all other circumstances and conditions naturally involved in such an inquiry.

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[93] *See In re Town of Tonasket v. Burlington Northern Railroad Company*, Docket TR-921371 (December 1993) (*Tonasket*); *see also Burlington Northern Railroad Company v. City of Ferndale*, Docket TR-940330 (March 1995).

[94] *See Reines v. Chicago, Milwaukee,, St. Paul & Pacific R. Co.*, 195 Wn. 146, 150, 80 P.2d 406, 407 (1938); *State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County*, 5 Wn.2d 95, 104,104 P.2d 764 (1940); *Department of Transportation v. Snohomish County*, 35 Wn.2d 247, 250-51 and 257, 212 P.2d 829, 831-32 and 835 (1949).

In addition to these statutory factors, Commission Staff relies on the U.S. Department of Transportation's Federal Railroad Administration Railroad-Highway Grade Crossing Handbook (FRA Handbook) when considering "other circumstances and conditions" for grade separating a roadway from a railroad right-of-way, such as predicted accident frequency and vehicle delay times.[95]

48 Mr. Deskins and Mr. Montgomery testified that Center Parkway is expected to carry up to 7,000 vehicles per day by the year 2033. Mr. Peterson and Mr. Jeffers estimated that rail traffic may grow from the current high of five trains per weekday to perhaps double that amount in the foreseeable future. According to the FRA Handbook, traffic levels this low do not mandate grade separation, even in an urban setting.[96]

49 Mr. Simon, Ms. Grabler, and Mr. Jeffers all testified to the infeasibility of constructing a grade-separated crossing due to roadway alignment, topography, and cost considerations. Further, Mr. Jeffers and Ms. Hunter determined that accidents at the proposed crossing would be uncommon and infrequent. Finally, the JUB Study provided assurances that lowered crossing gates associated with normal rail operations would not result in vehicle queues extending into nearby intersections.

50 The Commission finds that the amount and character of travel on the railroad and on Center Parkway do not justify grade separation. Further, there is no evidence in the record disputing the engineering infeasibility of constructing a grade-separated crossing at Center Parkway. Finally, there is no serious dispute in the record that a grade-separated crossing would be tremendously more expensive than the proposed at-grade crossing. Therefore, considering engineering requirements and cost constraints, the Commission determines that a grade-separated crossing is not practicable at Center Parkway.

2. Moderation of Risk

51 If grade separation is impracticable, the Commission evaluates whether inherent and site-specific hazards at a proposed at-grade crossing have been moderated to the extent possible. As noted above, the risks of an accident at the proposed crossing are relatively low considering current and projected train traffic and predicted levels of

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[95] Exh. KH-7 and Exh. KJ-2 at 11. The FRA Handbook echoes the statute's requirement to consider the levels of train traffic, train speeds, and levels of auto traffic, and posted speed limits. The FRA Handbook also states that "[i]f a new access is proposed to cross a railroad where railroad operation requires temporarily holding trains, only grade separation should be considered." *See* Exh. KH-10.

[96] *See* Norris, TR. 321:10 – 325:5.

vehicle traffic. However, the existence of a second set of tracks and limited sight distances from some approaches to the crossing present a risk for motorists.

52 The Cities' petition includes crossing design specifications intended to mitigate the dangers of the at-grade crossing with active warning devices. Specifically, the Cities propose to install advanced signage, flashing lights, an audible bell, automatic gates, and a raised median strip designed to prevent drivers from going around lowered gates.

53 Commission Staff performed a diagnostic review of the proposed crossing design configuration and determined that the Cities' planned safety devices specifically address the hazards presented by the proposed Center Parkway at-grade crossing.[97] There is no evidence in the record disputing Staff on this determination.

54 We concur with Commission Staff that the petition's proposed advance and active warning devices would moderate the risks presented by this crossing to the extent possible at this site, even with motorists crossing two sets of tracks.

3. Demonstration of Public Need

55 The Commission will not approve construction of a new at-grade crossing without a demonstration of public need that outweighs the hazards inherent in the at-grade configuration. Petitioners must provide evidence of public benefits, such as improvements to public safety or improved economic development opportunities.[98]

56 In the City of Kennewick's prior petition to construct an at-grade crossing at this same location, the Commission determined that Kennewick failed to demonstrate "acute public need" and denied the petition.[99] The 2007 Order concluded that a city's goal to encourage economic development did not rise to the level of an acute public need, noting that economic development was already occurring along Tapteal Drive even without the proposed crossing.[100] The 2007 Order also concluded that traffic mitigation might constitute an acute public need, but only if alternate crossings were insufficient to accommodate traffic. The traffic study presented seven years ago

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[97] Exh. KH-5.

[98] *See Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions ¶¶ 33-37 (Feb. 15, 2011).

[99] 2007 Order, ¶¶ 24-26.

[100] *Id.* ¶ 25.

showed only a *de minimis* level of traffic diversion to Center Parkway and did not prove the nearby alternate crossings insufficient to handle the entire traffic flow.[101]

57 The Cities and Staff argue that the 2007 Order relied upon an outdated and overly stringent "acute public need" standard. They contend that in recent years the Commission has approved opening other at-grade crossings using a balancing test, weighing the need for the crossing against any dangers remaining after installation of safety devices.[102] The Cities and Staff cite several orders approved through the Commission's open meeting process, none of which presented the complexities involved in this matter.[103]

58 We agree with the Cities and Staff that the statute does not require a showing of "acute public need" to justify opening a new at-grade crossing. Nevertheless, no party petitioned for review of the 2007 Order and, until now, we have not had an opportunity to revisit the Center Parkway crossing. RCW 81.53 does not prohibit the Commission from approving approve new at-grade crossings, but mere convenience or a *de minimis* showing of need will not suffice. As Staff points out, we are obligated to balance public need against the hazards presented by a new crossing.[104] The Cities similarly concede that the Commission must determine "whether there is a

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[101] *Id.* ¶ 26.

[102] Petitioners' Post-Hearing Brief at 5-7, n. 20, and Post-Hearing Brief of Commission Staff at 9-12; *see also* Hunter, TR. 273:16 – 277:22. Staff also points out that while the FRA Handbook discourages opening new crossings, it recognizes that consideration of public necessity, convenience, safety, and economics will factor into individual decisions. According to the Handbook, "new grade crossings, particularly on mainline tracks, should not be permitted unless no other alternatives exist and, even in those instances, consideration should be given to closing one or more existing crossings." *See* Exh. KH-10.

[103] The Cities cited open meeting dockets that were all uncontested and did not benefit from a thoroughly developed evidentiary record. The only case with any persuasive value resulted in a net closure of crossings, trading two existing passively protected private at-grade crossings in the City of Marysville for one new public crossing with active warning devices (Docket TR-111147). None of the other approved new crossings were in urban areas where over 7,000 vehicles per day were expected to cross tracks currently traveled by five or more trains per day (in one case, the Commission approved a new crossing to divert approximately 400 commercial vehicles per day away from residential roadways and across a single set of tracks traveled by up to two trains per day (Docket TR-112127); in two other cases, the Commission approved installing new industrial rail lines across very lightly traveled roadways in order to promote industrial growth (the road in Docket TR-100072 had only 150 vehicles per day and the road in Docket TR-121467 had less than 1600 vehicles per day); and in two other cases, the Commission approved new pedestrian-only crossings across lightly used tracks (Docket TR-100041 had one weekly freight train and Docket TR-110492 had no active railroading operations)).

[104] Post-Hearing Brief of Commission Staff at 12, ¶ 33.

demonstrated public need for the crossing that outweighs the hazards inherent in an at-grade configuration."[105]

59 In this case, the Cities attempt to demonstrate public need by arguing improvements to public safety through faster emergency response times, reduced accident rates around the Columbia Center Mall, and relief of traffic congestion at nearby intersections with deficient levels of service. As explained below, the evidence in the record does not support the Cities' arguments that opening the Center Parkway crossing will create such improvements or alleviate existing traffic problems.

a) Emergency Response Times

60 The Cities contend that the proposed crossing will improve emergency response times. However, the evidence in the record demonstrates that the Cities' police and fire departments are generally meeting the response time objectives established in their respective comprehensive plans. Although the Cities point out individual statistics where response times have occasionally exceeded these goals,[106] the Cities' emergency responders are not regularly failing to achieve their established LOS. We recognize that improving emergency medical response times by even a few seconds could significantly impact the outcome for some patients, but the Cities introduced no evidence of a public need for faster response times and did not adequately explain how the Center Parkway extension would contribute to improved public safety.

61 Even if the Cities' emergency response time LOS levels were deficient, there is insufficient evidence in the record to demonstrate that opening a crossing at Center Parkway would solve this problem. Richland's comprehensive planning documents do not focus on building more roadways to solve response time deficiencies. Instead, the capital facilities element of Richland's GMA documents discuss building additional fire stations closer to areas needing better response times.[107]

62 Chief Baynes, Chief Skinner, and Chief Hohenberg all testified that more choices and more alternatives are always better for emergency responders. However, this new access route between Gage Boulevard and Tapteal Drive may prove to be an illusory option if rail traffic increases according to even the most conservative estimates made

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[105] Petitioners' Post-Hearing Brief at 6, citing *Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions (February 15, 2011) at ¶ 29.

[106] Petitioners' Post-Hearing Brief at 10, citing to Exhs. GAN-3-X and GAN-18-X. Chief Baynes provided little, if any, context for additional response time data he provided in Exh. GAN-18-X. *See* Baynes, TR. 103:5 – 105:21, 121:13 – 125:6 and Norris, TR. 295:6 – 297:16.

[107] *See* Exhs. GAN-3-X and GAN-4-X.

part of the record in this case. The potentially shorter response times that might be possible to a very limited area of south Richland with this new at-grade crossing are not sufficient to demonstrate public need.

b) Reduced Accident Rates

63 The Cities also argued that a public need exists to open the Center Parkway crossing because doing so would reduce traffic accident rates at two Columbia Center Boulevard intersections. However, neither the JUB Study nor the Cities' traffic engineering witnesses provided any data or studies to support this assertion.

64 Mr. Deskins provided raw data on the number of vehicle collisions over a decade's time but analysis on how or why these accidents occurred. Mr. Montgomery offered only unconfirmed notions that reducing traffic levels would reduce accident rates. The record has no persuasive evidence connecting improved traffic safety on Columbia Center Boulevard to opening a new roadway that will regularly be blocked by rail traffic.

c) Relief of Traffic Congestion

65 Similarly, the Cities presented evidence showing that busy intersections in the vicinity of the Mall were approaching deficient LOS levels during peak travel times. Traffic waits for left turn signals at two intersections feeding into the Mall are already one level below the acceptable LOS D. We do not dispute that the Cities must find a way to resolve traffic congestion patterns in this area, but the Cities offered no persuasive evidence that opening a crossing at Center Parkway would materially contribute to this desired result:

- The JUB Study made no specific findings about how a crossing at Center Parkway would impact deficient LOS ratings at congested intersections.
- Mr. Simon was unable to explain the effect of extending Center Parkway on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault.
- Mr. Deskins failed to conduct any LOS analysis focused on the installation of a crossing at Center Parkway and never factored train delays into any of the models he did consider.

66 The record does not conclusively link extending Center Parkway to any improvement in traffic flow at congested intersections in the immediate area. At best, the record demonstrates that opening the proposed at-grade crossing will make public travel

more convenient between the Tapteal Drive area and the Columbia Center Mall. It is certainly possible that opening a new roadway will divert traffic away from existing overcrowded intersections, but supposition alone is not sufficient to demonstrate public need. The Cities failed to demonstrate that opening the proposed Center Parkway crossing would reduce traffic congestion around the Mall or at the intersection of Gage Boulevard and Steptoe Street.

4. Balancing of Public Need Against Hazards of At-Grade Crossings

67 The Cities failed to demonstrate public need for the proposed crossing, leaving nothing to balance against the inherent hazards of an at-grade crossing. Even if public convenience were sufficient to demonstrate public need, we find that it does not outweigh the hazards of an at-grade crossing.

68 By its nature, opening a new at-grade crossing at Center Parkway would increase risk to motorists by creating another opportunity to interact with freight trains. Motorists who might deviate from Columbia Center Boulevard's grade-separated crossing in order to access the Tapteal Road area would trade safe and undelayed passage over the UPRR tracks for a potentially faster route that comes with a risk of collision. The active safety measures proposed to be installed at the crossing would mitigate, but would not eliminate, such risk.

69 The Cities' justifications for the crossing do not outweigh the risk. At most, the evidence demonstrates that, on occasion, a police, fire, or ambulance response *might* be faster if the Center Parkway crossing was available and no trains were blocking traffic. Some drivers also would find the option to use Center Parkway more appealing to enter or depart the north side of the Columbia Center Mall than Gage Boulevard, particularly during the busy holiday shopping season. Such slight benefits do not overcome the law's strong disfavor for at-grade crossings. Accordingly, the Commission should deny the Cities' petition for failure to demonstrate a public need for the proposed crossing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

70 Having discussed above in detail the evidence received in this proceeding regarding all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts and conclusions, incorporating by reference pertinent portions of the preceding detailed discussion:

71 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate railroad

crossings, and has jurisdiction over the parties and subject matter of this proceeding.

72 (2) The City of Richland and the City of Kennewick are governmental entities authorized by law to petition the Commission pursuant to RCW 81.53.020 for authority to construct an at-grade railroad crossing where it is not practicable to construct a grade-separated crossing and there is a public need for such a crossing that outweigh its inherent risks.

73 (3) Res judicata does not bar the Commission from ruling on the Cities' petition because it is sufficiently different from the City of Kennewick's prior petition.

74 (4) Comprehensive planning under the Growth Management Act does not relieve the Cities from complying with RCW 81.53.

75 (5) A grade-separated crossing at the proposed project site is not practicable because of engineering requirements and cost constraints.

76 (6) The risks of an accident at the proposed crossing are relatively low considering current and projected train traffic, predicted levels of vehicle traffic, and plans to install active warning devices and other safety measures.

77 (7) The Cities' emergency responders are meeting or exceeding the response time objectives established in the Cities' comprehensive plans.

78 (8) The Center Parkway extension may assist the Cities' emergency responders by providing an alternative route for responding to incidents in the vicinity of Columbia Center Mall, but only when trains are not blocking the intersection.

79 (9) The Cities did not produce sufficient evidence to demonstrate that the Center Parkway extension would reduce accident rates in the area or improve traffic flow at congested intersections surrounding the Columbia Center Mall.

80 (10) The Cities failed to demonstrate sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing.

81 (11) The Commission should deny the City of Richland's and City of Kennewick's petition for authority to construct an at-grade crossing at the proposed extension of Center Parkway.

ORDER

THE COMMISSION ORDERS:

82 (1) The petition filed by the City of Kennewick and joined in by the City of Richland is denied.

83 (2) The Commission retains jurisdiction to enforce the terms of this order.

Dated at Olympia, Washington, and effective February 25, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

EXHIBIT B – PROPOSED ORDER

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	)	DOCKET TR-130499 AMENDED ORDER 02 FINAL ORDER APPROVING PETITION TO OPEN AT-GRADE RAILROAD CROSSING

BACKGROUND

1 On April 8, 2013, the City of Kennewick filed with the Washington Utilities and Transportation Commission (Commission) a petition to construct a highway-rail grade crossing at Center Parkway, Kennewick, Washington and remove an existing railroad siding. On May 31, 2013, the City of Richland petitioned to intervene in support of this petition.

2 On June 4, 2013, the Commission held a prehearing conference in Olympia, Washington, before Administrative Law Judge Adam E. Torem. At that time, the Commission granted intervenor status to the City of Richland and adopted a procedural schedule for this docket.

3 At the prehearing conference, the City of Kennewick indicated compliance with the State Environmental Policy Act (SEPA) by its 2003 completion of a SEPA checklist for the Center Parkway Extension project and subsequent issuance of a Mitigated Determination of NonSignificance (MDNS). On July 26, 2013, the City of Kennewick updated its previous environmental assessment and prepared an Addendum to its SEPA checklist. On August 20, 2013, the City of Kennewick confirmed to the Commission that all SEPA compliance work was complete.

4 The Commission conducted evidentiary hearings on November 19-20, 2013, and a public comment hearing on November 20, 2013, in Richland, Washington. Judge

Torem performed a site visit and toured the area on November 21, 2013. The parties simultaneously filed written post-hearing briefs on December 20, 2013.

5 *Representatives.*[1] P. Stephen DiJulio and Jeremy Eckert, Foster Pepper PLLC, Seattle, represent petitioner City of Kennewick and intervenor City of Richland (Cities). Paul J. Petit, Richland, represents respondent Tri-City & Olympia Railroad (TCRY). Steven W. Smith, Assistant Attorney General, Olympia, represents the Commission's regulatory staff (Commission Staff or Staff).[2]

EVIDENCE

A. Center Parkway and Surroundings

6 Center Parkway is a minor arterial roadway in Kennewick. As currently constructed, its northbound traffic moves into a roundabout intersection with Gage Boulevard and cannot proceed further north to Tapteal Drive.[3] As part of their comprehensive plans, the Cities intend to connect Tapteal Drive in Richland with Gage Boulevard in Kennewick by extending Center Parkway northward.[4] In order to accomplish this, Center Parkway would cross two sets of railroad tracks owned by the Port of Benton.[5]

7 Seven years ago, the Commission denied the City of Kennewick's original petition to construct this at-grade crossing.[6] At that time, extending Center Parkway northward would have required crossing four sets of tracks. However, in 2011, the City of Richland completed negotiations with the Union Pacific Railroad Company (UPRR)

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[1] The following parties appeared at the prehearing conference but did not participate in any other portion of the proceedings: Thomas A. Cowan, Richland, represents respondent Port of Benton. Tom Montgomery and Kelsey Endres, Seattle, represent respondent Burlington Northern Santa Fe Railway Company (BNSF). Carolyn Larson, Portland, OR, represents respondent Union Pacific Railroad Company (UPRR).

[2] In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

[3] Exh. JP-5-X, at 2-3 (overview maps of area).

[4] Exh. JP-1T, 2:11-24; *see also* Exh. JP-2, Exh. JP-3, and Exh. JP-4.

[5] *See* Exh. KH-2 (aerial view of surrounding area) and Exh. KH-3 (crossing configuration).

[6] *See* Docket TR-040664, *City of Kennewick v. Union Pacific Railroad*, Order 06, Initial Order Denying Petition; Docket TR-050967, *City of Kennewick v. Port of Benton and Tri-City & Olympia Railroad*, Order 02, Initial Order Denying Petition (January 26, 2007) (2007 Order).

and Burlington Northern Santa Fe Railway Company (BNSF) to relocate their switching operations from the area, allowing removal of the two UPRR spur tracks.[7]

8 Commercial and retail properties dominate the area surrounding the proposed crossing. As shown in Figure 1,[8] the Columbia Center Mall, a major regional shopping center, is located immediately southeast of the proposed crossing, bordered by Center Parkway (west side), Quinault Street (south side), and Columbia Center Boulevard (east side). The Mall's northern boundary abuts Port of Benton and UPRR railroad tracks that connect at Richland Junction, just east of the proposed crossing.

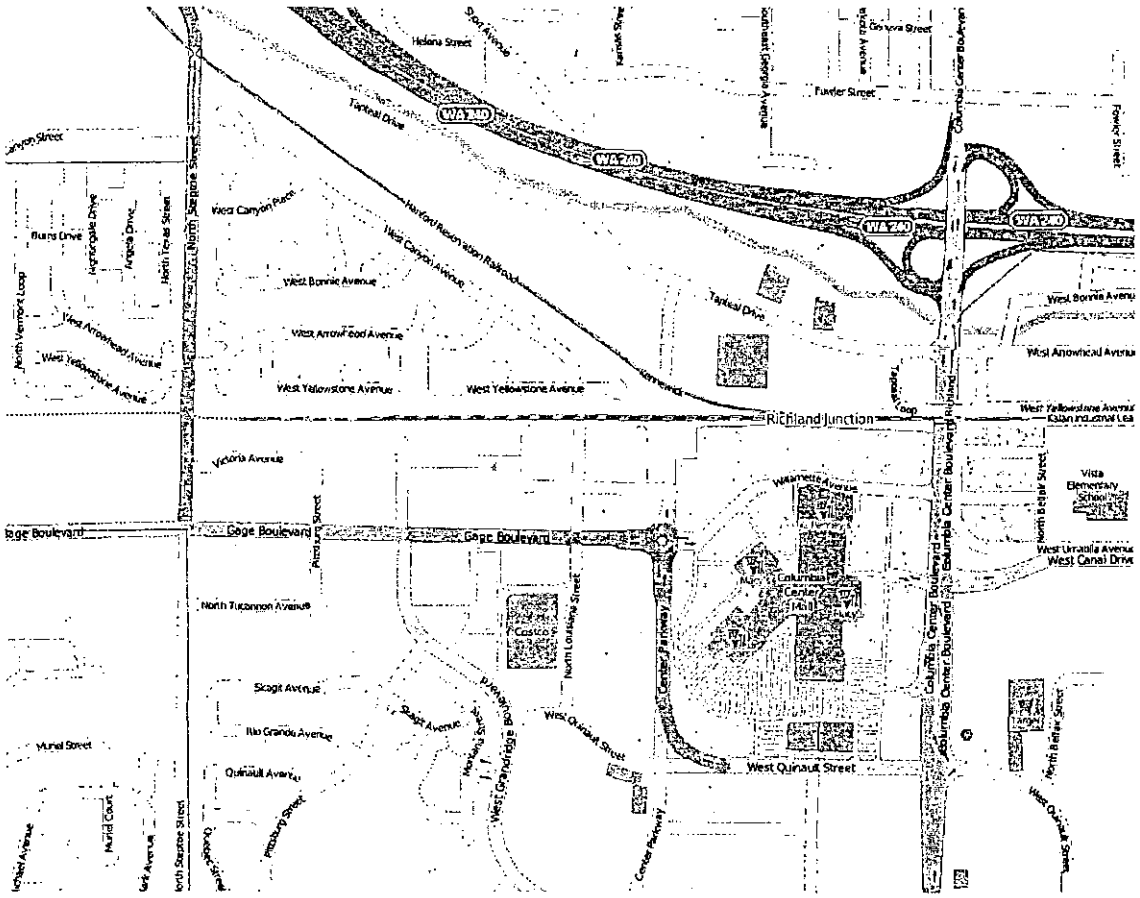

Figure 1. Overview Map of Area (including old UPRR spur track, now removed)

9 North of the proposed crossing, Tapteal Drive provides access to a hotel and various retail, commercial and undeveloped properties located in a mile-long pocket of land below Highway 240. The proposed Center Parkway crossing would provide a more direct connection from this area to the Columbia Center Mall.[9]

[7] Exh. JP-6-X (UPRR) and Exh. JP-7-X (BNSF).

[8] Aerial imagery of the area is provided by Exhs. JD-27-X, JD-28-X, JD-29-X, and JD-30-X.

[9] *See* Petition at 8; *see also* Exh. RS-1T, 8:20 – 9:2 and Exh. JD-1T, 3:6 – 4:20.

10 Road access between these two areas now exists where Tapteal Drive intersects Columbia Center Boulevard, approximately 0.4 miles east of the proposed crossing. Columbia Center Boulevard has a grade-separated overpass to cross the UPRR mainline track; however, as this section of the roadway is divided, northbound traffic accessing Tapteal Drive must make a series of right turns to loop up and over the major arterial roadway (Tapteal Loop). Alternatively, Tapteal Drive meets Steptoe Street approximately 0.7 miles west of the proposed crossing. From there, southbound motorists currently pass through a regular at-grade crossing to connect with Gage Boulevard, another major arterial roadway that provides eastbound access to the mall area via the current roundabout intersection with Center Parkway.[10]

B. Rail Operations at Richland Junction

11 TCRY is a rail carrier conducting interstate rail operations through Kennewick and Richland. TCRY leases the track west and north of Richland Junction from the Port of Benton; BNSF and UPRR also operate on this track, although these Class I railroads have ceased to interchange at the Richland Junction.[11] The second track is a siding track, which is primarily used for the storage of idle freight cars.[12] TCRY concedes that idle freight cars may sit on the siding track "for months."[13]

12 TCRY, BNSF, and UPRR are the only railroads that operate on this track. No passenger trains operate on this track. In response to UTC and the Cities' data requests, the railways submitted their actual track usage summarized in Exhibit KJ-10TR at 4:1-8. BNSF reported to UTC that it runs one train per day, with an average length of six cars per train. UPRR reported to UTC that it ran zero trains in 2013, although it has moved 12 unit trains between 80-100 cars per train over the past 4.5 years.[14] TCRY reported inconsistent track usage figures. TCRY reported to UTC that it moves 2 to 4 trains per weekday, with an average length of "roughly 15 cars per train." TCRY reported to

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[10] *See* Exh. JP-5-X, at 2-3. In 2009, the Commission granted the City of Richland's petition to realign the Tapteal-Steptoe intersection atop the at-grade crossing to create Washington's first-ever roundabout intersection with a rail line running through the middle. *See* Exh. GAN-10-X, Docket TR-090912, *City of Kennewick v. Tri-City & Olympia Railroad*, Order 01, Order Granting Petition to Reconstruct the Steptoe Street Highway-Rail Grade Crossing and Modify Active Warning Devices (July 2, 2009). Although the Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan projected this construction to begin in 2012, the City has not yet initiated any construction work. *See* Exh. RS-4, at 16 (Steptoe Street Phase 3).

[11] Exh. JP-7-X; JP-8-X.

[12] Exh. RVP-9-X; TR 405:7-410:19.

[13] TR. 410:12-17.

[14] Exh. KJ-10TR 5:23-6:7.

Cities (via the Cities' data request) that it is projected to move a total of 2,310 railcars over the crossing in 2013.[15] Based upon these figures, the UTC estimates track usage at 3.2 to 5.02 trains per weekday, or approximately 1,159 to 1,833 trains per year.[16] The UTC agrees with the Cities that an annualized 5% rate of growth is the railway industry standard, which should apply here. The UTC disagrees with TCRY's assertion that annual train traffic through Richland Junction was 4,500 railcars in 2012 and 5,100 railcars in 2013. The UTC further disagrees with TCRY's projected 20% annual growth rate.

13 Gary Ballew, the City of Richland's Economic Development Manager, testified that the Richland City Council recently approved a series of development agreements to construct a rail loop of sufficient size to service unit trains in the Horn Rapids area.[17] Mr. Ballew expects this new rail loop will be operational by summer 2015 and able to process the equivalent of two and a half unit trains per week (approximately one unit train entering or leaving the facility each day).[18] Mr. Ballew also testified that Richland has entered real estate and development agreements with ConAgra Foods to build an automated cold storage warehouse in the Horn Rapids area served by a separate smaller loop track.[19] Mr. Ballew expects an average of 30 rail cars each week will come and go from ConAgra's facility.[20] All rail usage data used to evaluate the Center Parkway crossing petition accounts for any increased rail traffic attributed to the Horn Rapids Industrial Development.[21]

14 All trains traveling to the Horn Rapids area must pass through the Richland Junction and cross the proposed Center Parkway extension.[22] All Class I railroads, including BNSF and UPRR, have ceased to use Richland Junction for interchange.[23] The record is unclear whether TCRY uses the siding for anything more than the storage of cars. Mr. Peterson testified that he opposes Center Parkway crossing because rail operations could regularly

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[15] Data request 4:10-19.

[16] Exh. KJ-10TR 4-7; KJ-11; KJ-12.

[17] Richland's rail loop will be approximately 8400 feet in total length. Ballew, TR. 354:25 – 357:22; *see also* Exhibits. Exhs. JD-37-X, JD-38-X, JD-39-X, KJ-14-X, and King, TR. 334:1 – 336:15 and 337:21 – 340:16.

[18] Ballew, TR. 358:2-12, 364:15 – 365:3, 369:21 – 370:6, 375:4 – 376:24; *see also* Exh. JD-38-X.

[19] Ballew, TR. 342:23 – 345:15; *see also* Exhs. JD-9-X, JD-10-X, and JD-11-X.

[20] Ballew, TR. 345:16 – 346:17 and 373:6-14.

[21] Exh. KJ-11.

[22] Ballew, TR. 346:22 – 347:8; *see also* Jeffers, TR. 173:10-19.

[23] Exhs. JP-7-X; JP-8-X.

require freight trains to block the crossing.[24] The evidence demonstrates that the crossing will be blocked approximately one percent (1%) of the day.[25]

C. Grade Separation

15 Grade separation refers to the method of aligning the junction of two or more surface transportation rights-of-way at different heights (grades) to avoid conflicts or disruption of traffic flows as they cross each other. In the case of highway-rail junctions, underpasses, overpasses, or bridges are the most common forms of grade separated crossings. The Cities presented evidence contending that grade separation is not warranted at the proposed crossing site because of roadway characteristics, accident prediction models, and cost.

16 Rick Simon, Development Services Manager for the City of Richland, testified that constructing a grade-separated crossing at Center Parkway is not feasible due to differences in topography on the north and south sides of the rail line.[26] Susan Grabler, a railroad engineer from David Evans and Associates, Inc. (DEA), explained that roadway geometry at Center Parkway and the close proximity of Columbia Center Boulevard make grade separation impracticable.[27] Ms. Grabler pointed out that a grade-separation project would require increasing the steepness of the track approaching the crossing from the existing one percent grade to something greater than two percent, exceeding the operational capabilities of most trains now using that track.[28] Kevin Jeffers, a DEA associate working with Ms. Grabler, determined that grade separation would require either replacement of the existing rail bridge over Columbia Center Boulevard (to the east) or elimination of existing access to the hotel immediately north of the crossing due to the depth of the undercrossing.[29]

17 Ms. Grabler also testified that the expected average daily traffic (ADT) on the Center Parkway extension would not justify grade separation. The Federal Highway Administration (FHWA) Railroad-Highway Grade Crossing Handbook establishes a threshold of 100,000 ADT to require grade separation at an urban crossing.[30] The Cities estimate that Center Parkway's traffic will reach only 7,000 ADT by 2033,

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[24] Peterson, TR. 414:23 –418:5.

[25] Exh. SM-1TR 5:7.

[26] Exh. RS-1T, 6:17-23.

[27] Exh. SKG-1T, 3:13-20; *see also* Grabler, TR. 205:21 – 206:13.

[28] Exh. SKG-1T, 6:11-23; *see also* Exh. KJ-1T, 9:7-19.

[29] Exh. KJ-1T, 4:12-17.

[30] Exh. KJ-2, at 11 (*see* paragraph 6.a.iv).

much lower than the FHWA threshold.[31] This low traffic volume contributes to a low predicted accident frequency rate, further reducing justification for grade separation. Kathy Hunter, testifying for Commission Staff, analyzed historical TCRY crash data[32] and similar crossings. Based upon a forecast using the Federal Railroad Administration Accident Predictor Model,[33] Ms. Hunter determined that the proposed crossing presented a speculative risk of one accident every 53.5 years.[34]

18 Jeff Peters, Transportation and Development Manager for the City of Richland, testified that constructing the proposed at-grade crossing would cost approximately $250,000. Mr. Peters estimated that a grade-separated crossing for Center Parkway would cost between $15 million and $200 million.[35] Mr. Jeffers identified four different design options for a grade-separated crossing within that price range, each requiring extensive retaining walls due to excavation depths of 20 feet or more for the roadway or, alternatively, fill depths under the tracks in equivalent amounts.[36]

19 Commission Staff concurred with the Cities that grade separation is not warranted at this location.[37] Noting the low traffic volumes and determining that train crossings would be infrequent, Ms. Hunter endorsed the Cities' proposal to mitigate the dangers of an at-grade crossing through installation of active warning devices, to include advanced signage, flashing lights, audible bell, automatic gates, and a raised median to prevent drivers from going around the gates.[38] Staff believes these measures adequately moderate the dangers presented by the proposed at-grade crossing.[39]

D. Public Need for Proposed Crossing

20 The Cities seek to complete a planned network of roadways and address traffic issues in the area by extending Center Parkway from Tapteal Drive to Gage Boulevard. Since 2006, the at-grade Center Parkway Crossing has been identified as an essential capital improvement in (1) the City of Richland Comprehensive Plan,[40] (2) the City of

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[31] Exh. SKG-1T, 3:21-25; *see also* Exh. KJ-1T, 6:14-20.

[32] TR 269:24-270:10; KH-1T 25:7-22.

[33] Exh. KH-12.

[34] KH-1T 26:20-22.

[35] Exh. JP-1T, 3:1-8.

[36] Exh. KJ-1T, 10:3-13; *see also* Exhs. KJ-6 and KJ-7 and Jeffers, TR. 195:8 – 201:2.

[37] Exh. KH-1T, 8:1 – 12:9.

[38] Exh. KH-1T, 21:15 – 24:19; *see also* Exhs. KH-3 and KH-9.

[39] Exh. KH-1T, 27:1-3.

[40] Exh. RS-2 at T 5-4 ("Center Parkway from Tapteal to Gage: Construct 3-lane road").

Kennewick Comprehensive Plan,[41] and (3) the Regional Transportation Plan.[42] Recognizing the regional significance of this project, the Center Parkway Crossing has received funding from the State through the Washington State Community Economic Revitalization Board, the Surface Transportation Program Regional Competitive Fund, and the Transportation Improvement Board.[43] Extending Center Parkway to Tapteal Drive and constructing the at-grade crossing will decrease emergency vehicle response times,[44] reduce the amount of accidents near the Columbia Center Mall, and improve traffic circulation in an important commercial area.[45]

1. Emergency Response Times

21 The Cities' police and fire departments have each established response time objectives for arriving at emergency incidents or high priority calls. In Richland, the police department has a one-to-five minute average response goal for high priority calls.[46] Similarly, Richland's Fire & Emergency Services first responders seek to arrive at incidents within five minutes or less from time of dispatch, 90 percent of the time.[47] Kennewick's fire response goal is five minutes and the emergency medical response goal is four minutes, each for 90 percent of events.[48]

22 The Cities' emergency response providers support each other and respond to each other's calls for help.[49] The Cities and three local fire districts signed a Master Interlocal Partnership and Collaboration Agreement in 2010 that includes an "automatic aid agreement" for prioritizing and sequencing certain aid calls.[50] The Director of Fire and Emergency Services for the City of Richland's uncontested evidence shows that the Richland Fire Department's median response time for Tapteal addresses is 5 minutes 50 seconds, and that the Kennewick Fire Department's median response time for Tapteal

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[41] Exh. GAN-7-X at 58 to 59.

[42] Exh. RS-4 at H-3 ("Center Parkway Extension – Gage to Tapteal").

[43] Exhs. JP-2; JP-3.

[44] Exh. JP-5-X; TR. 107:15.

[45] Exh. JD-1T 3:2-4, 5:11-21.

[46] Exh. RS-1T, 5:11-12; *see also* Exh. GAN-4-X.

[47] Exh. RS-1T, 5:5-11; *see also* Exh. GAN-3-X.

[48] Exh. GAN-6-X at 2.

[49] Exhs. CS-1T, 3:12-14 and KMH-1T, 2:10-15; *see also* Skinner, TR. 93:19 – 94:5.

[50] Exhs. NH-1T, 2:13-25; RGB-1T, 2:18—3:15. *See also* Baynes, TR. 109:4 – 110:15.

addresses is 7 minutes 50 seconds.[51] This testimony is based upon data prepared by the City of Richland Fire Department.[52] The City of Richland's comprehensive plan shows emergency response times at 7 minutes 44 seconds for EMS.[53]

23 The uncontested evidence from Richland Chief of Police Skinner showed that "the Center Parkway connection provides a clear improvement to access and police response capability."[54] The uncontested evidence from Kennewick Chief of Police Hohenberg showed that "The proposed project would improve emergency response between the two cities as well as provide other alternatives for quicker response to each entity."[55] Police response times are sometimes difficult to evaluate because officers are often already deployed in the community and can be responding from varied distances.[56]

24 The best emergency response routes for fire and medical units are similar to the characteristics of Center Parkway, *i.e.*, a two-way, straight arterial-type roadways providing the most direct route with the least amount of traffic, traffic control systems, intersections, and turns to negotiate.[57] Without a direct connection between Gage Boulevard and Tapteal Drive, Kennewick emergency responders must travel north of the Mall via Columbia Center Boulevard or Steptoe Street, routes that are less direct, occasionally burdened with heavy traffic, and with multiple intersections and numerous turns to negotiate. According to Chief Hines, improving response times by even a few seconds could significantly impact the outcome for a patient in a critical event.[58] Richland Fire & Emergency Services Director Richard Baynes shows "The fire service is acutely aware of the criticality of response times and their impact on outcomes, particularly for trauma, cardiac, and stroke patients, and wildland fires. Our service delivery is tuned to count seconds saved from dispatch through to arrival at the patient/fire/rescue."[59] The Center Parkway extension would provide a viable north-south route for fire and medical units if the primary routes on Steptoe Street or Columbia Center Boulevard were obstructed, growing in value as the Tapteal area continues its development.[60]

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[51] Exh. GAN-18-X, TR. 103:1:17-105-21 (describing the fixtures and findings in Exh. GAN-18-X). Consistent with GAN-18-X, the City of Richland's comprehensive plan shows emergency response times at 7 minutes 44 seconds for EMS.

[52] Exh. GAN-18-X.

[53] Exh. GAN-3-X.

[54] Exh. CS-1T 4:20-23.

[55] Exh. KMH-1TR 3:2-7.

[56] TR. 87:20 – 88:17 (testimony of Chief Skinner).

[57] Exh. NH-1T, 3:15-18.

[58] *Id.* at 3:18-24.

[59] Exh. RGB-1T, 4:4-7.

[60] Exh. RGB-1T, 4:12-22.

25 In support of their petition, the Cities also submitted a traffic study completed by JUB Engineers, Inc. (JUB Study).[61] The JUB Study concluded that the Center Parkway Crossing would reduce emergency response times by Kennewick Fire Station 3 and Richland Fire Station 72 to property near the north of the Center Parkway crossing by 30% and 24%, respectively.[62] Spencer Montgomery, a transportation planner with J-U-B ENGINEERS, Inc., prepared the JUB Study. In addition to his 23 years of transportation planning experience, Mr. Montgomery was born and raised in the Tri-Cities, and he has. worked professionally on transportation issues in the Tri-Cities for the past 13 years.[63] The JUB Report did *not* include emergency responder turnout time, time spent at traffic signals, or behind traffic to provide a similar evaluation technique for the existing route and the proposed route.[64]

26 Gary Norris, a traffic engineer hired by TCRY, questioned the JUB Study. The Cities addressed Mr. Norris's concerns with uncontested evidence. The purpose of the JUB Study is to demonstrate that the proposed crossing will reduce existing emergency response times, not to demonstrate actual response times, Mr. Montgomery testified that the JUB Report did *not* include emergency responder turnout time, time spent at traffic signals, or behind traffic to provide a similar evaluation technique for existing route and the proposed route.[65] The record clearly demonstrates that the Cities are failing to achieve emergency LOS.[66] The Center Parkway crossing will provide a viable route for emergency responders.[67] Uncontested evidence also shows that the existing crossing will be closed one percent (1%) of the day under current conditions, and it is highly unlikely that it will be closed more than three percent (3%) of day time under track usage figures submitted by the railroads.[68]

27 Acknowledging the possibility of a train blocking the Center Parkway crossing, Chief Baynes explained "the more routes into the areas we have, the better."[69] Although it is possible for a train to block the crossing, Mr. Montgomery testified to the difference between this at-grade crossing and the existing at-grade crossing on Steptoe. Unlike Steptoe where the emergency responders must commit to the crossing, the presence of the

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[61] Exh. KJ-5; *see also* Petition.

[62] Exh. JP-5-X.

[63] TR. 211:24-25.

[64] TR. at 218:13-219:1.

[65] TR. 218:13-219:1.

[66] Exhs. GAN-18-X; GAN-3-X.

[67] TR. 218:13-219:1.

[68] TR. 233:18-20. This figure was further supported by track usage data submitted by BNSF, UPRR, and TCRY. TR. 234:8-18.

[69] TR. 108:9-109:3 and 119:9-11.

roundabout south of the proposed Center Parkway crossing allows emergency responders to view the crossing, and to use the roundabout to take another approach to the incident site if the crossing is closed.[70] This is not an insurmountable issue, as the record demonstrates that the crossing is projected to be closed less than one percent (1%) of the day.[71]

28 No party presented a viable alternative to the Center Parkway crossing during the petition process. TCRY's proposed route fails to provide a viable alternative, because, among other reasons, it fails to address any of the identified issues associated with responses from Kennewick Fire Station 3.[72]

29 TCRY questioned whether any area in the City of Richland is not serviced within the City of Richland's emergency response time performance objective.[73] The uncontested testimony of Chief Baynes and Mr. Montgomery demonstrates that Tapteal Drive is not serviced within the Cities' established emergency LOS, and that the Center Parkway crossing will improve response times to this area.[74] Evidence also demonstrates that the Cities are failing to achieve established emergency response times near the Columbia Center Mall, and that the Center Parkway crossing will also improve emergency response times to this area.[75]

2. Accident Reduction

30 The Cities also contend that opening the Center Parkway crossing would reduce traffic on Columbia Center Boulevard and therefore the number of accidents on that route and also remove the temptation for drivers to use the Mall's ring road as a through-route, endangering pedestrians.[76] Mr. Deskins likened the new Center Parkway crossing to "connecting the parking lots between two popular businesses so that drivers don't have to enter the busier city street to travel between the two."[77]

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[70] TR. 229:21-25; 230:8-11.

[71] TR. 231:5-6, SM-1TR.

[72] *See e.g.*, the route proposed in Exh. GAN-19-X solely including Richland Fire Station 73.

[73] TR. 61:1-4.

[74] Exhs. GAN-18-X; JP-5-X; TR 107:15.

[75] Exh. GAN-18-X.

[76] Exhs. JD-1T, 4:1-20 and Exh. JD-2TR, 2:23 – 3:4; *see also* Exh. SM-1TR, 6:9-12.

[77] Exh. JD-1T, 4:5-7.

31 Mr. Deskins provided an exhibit listing 12 years of crash data for two Columbia Center Boulevard intersections: Quinault Avenue and Canal Drive.[78] Going back to 2001, the intersection reports show 154 total crashes at Quinault Avenue and 165 total crashes at Canal Drive.[79] According to Mr. Deskins, opening the Center Parkway crossing on the other side of the Mall would reduce traffic at these intersections and "should ultimately reduce crashes" at these locations.[80] Spencer Montgomery, a transportation specialist with JUB Engineers, explained that JUB did not perform a study to support this conclusion because "if you reduce the traffic volume on a road, and it has a certain accident rate, then you will reduce the number of accidents."[81]

3. Mitigation of Traffic Congestion

32 In compliance with the Growth Management Act (GMA), the Transportation Element of Richland's Comprehensive Plan adopts standards and threshold levels of service (LOS) for the City's intersections. The LOS scale goes from A to F, measuring the length of delay a vehicle will experience at a signalized intersection. Richland's threshold LOS for acceptable delay is LOS D, a delay of 35-55 seconds; any intersection rated worse (E or F) is considered deficient.[82]

33 The Cities presented evidence that many of the intersections near the proposed crossing are congested and failing to achieve the Cities' stated level of service.[83] The roadways around Columbia Center Mall can become even more congested during the holiday shopping season in late November and early December.[84] "Center Parkway has been planned to provide relief to both Columbia Center Boulevard as well as Steptoe Street, consistent with the philosophy of providing collector roadways parallel and in between arterial roadways."[85]

34 JUB's Mr. Montgomery estimated that 7,000 vehicles per day would make use of the new Center Parkway crossing, some coming from Columbia Center Boulevard and some coming from Steptoe Street.[86] The JUB Study predicts that in 20 years, opening

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[78] Exh. JD-3.

[79] *Id.* at 7 and 14.

[80] Exh. JD-2TR, 3:8-14.

[81] Montgomery, TR. 222:14-23.

[82] Exh. RS-2 at 17-19; *see also* Exh. RS-1T, at 4-5 (generalized explanation of LOS).

[83] Exh. KJ-5, at 6, 9; GAN-20-X; GAN-17-X; TR 76:2-7.

[84] Exh. JD-1T, 3:6-26.

[85] Exh. KJ-5 at 6.

[86] Montgomery, TR. 222:24 – 225:6; see also Exh. KJ-5, at 11.

the Center Parkway crossing will decrease the afternoon peak hour volumes on those streets by 210 and 310 vehicles, respectively.[87] The JUB Study makes no further predictions on how opening Center Parkway would improve LOS ratings at surrounding intersections currently suffering congestion issues.[88]

35 Mr. Simon testified that "one way to reduce congestion is to increase the number of access routes between any two points" and contended "the extension of Center Parkway would provide an important link, not only for emergency vehicle response, but also to reduce overall traffic congestion."[89] As to LOS levels, Mr. Simon testified that Tapteal Drive was not currently operating at a deficient level,[90] but two other intersections south of the railroad tracks were identified as deficient: Columbia Center Boulevard at Quinault[91] and Steptoe Street at Gage Boulevard.[92] When asked to explain the effect of extending Center Parkway on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault, Mr. Simon stated "I'm not sure that I can."[93] Even though he had not seen any data or traffic studies to inform his opinion, Mr. Simon also asserted that a Center Parkway crossing could improve the deficient LOS at the Steptoe Street and Gage Boulevard intersection by allowing some traffic to divert to the proposed crossing.[94]

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[87] Exh. KJ-5, at 13, 17, and 19; *see also* Exh. GAN-1T, 7:13-19.

[88] The JUB Study claims that after construction of the proposed crossing, the Center Parkway / Tapteal Drive intersection would operate a LOS C for northbound left turns and LOS B for northbound right turns. Exh. KJ-5, at 14.

[89] Exh. RS-1T, 5:22-25.

[90] Simon, TR. 61:18-22.

[91] According to information provided to Kevin Jeffers by John Deskins and Spencer Montgomery, the intersection of Columbia Center Boulevard and Quinault Street is deficient because the eastbound left-turn movement is currently LOS E, degrading to LOS F by 2028. The overall intersection is currently LOS C, but expected to degrade to LOS F by 2028. *See* Exh. GAN-17-X.

[92] According to that same information, the intersection of Steptoe Street and Gage Boulevard is deficient because the southbound left-turn movement is currently LOS F, with three out of four left-turn movements degrading to LOS F by 2028. The overall intersection is currently LOS E and expected to remain at that level in 2028. *See* Exh. GAN-17-X.

[93] Simon, TR. 67:1-13. Mr. Simon conceded that other than the JUB Study, he had no other evidence to support his opinion. Simon, TR. 62:16 – 63:6 (referring to the intersection of Columbia Center Boulevard and Quinault Street).

[94] Simon, TR. 67:14 – 69:22.

36 The JUB Study and uncontested evidence shows that the crossing does not present any queuing issues for the proposed crossing. [95] Although Mr. Deskins, the City employee most familiar with the City's traffic modeling simulation, conceded that he did not perform an LOS analysis specifically focused on the result of installing the proposed crossing at Center Parkway,[96] the modeling program includes the Center Parkway crossing in the regional transportation model, as it the Crossing already exists

DISCUSSION AND DETERMINATIONS

A. Res Judicata Does Not Bar the Cities' Petition

37 TCRY argues that the Commission's 2007 Order denying the City of Kennewick's request to construct an at-grade crossing at Center Parkway precludes the Cities from pursuing a subsequent petition seeking the same relief.[97] According to TCRY, the prior and current petitions are "fundamentally identical" in seeking an at-grade crossing at the same location.[98]

38 The Cities differentiate their current petition from the one put forward in 2005: they followed comprehensive planning update procedures adopted in 2006, completed extensive engineering and design studies, and worked with stakeholders to eliminate two track crossings from the project.[99] Commission Staff agrees that removal of two track crossings and the related reduction in rail switching operations at the site present a substantial change in circumstances.[100]

39 In administrative proceedings, the doctrine of res judicata limits repeated submissions of applications involving the same subject matter.[101] In order to apply res judicata, repeat applications must have the same (a) subject matter, (b) cause of action, (c) persons and parties, and (d) quality of the persons for or against whom the claims are made.[102] Second applications that present a substantial change in circumstances or conditions are permitted.[103]

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[95] Exh. SM-1TR at 6:15-26.

[96] Deskins, TR. 78:4-7; *see also* Deskins, TR. 73:4-12.

[97] Post-Hearing Brief of Respondent Tri-City & Olympia Railroad Co. at 3:5 – 6:3.

[98] *Id.* at 5:16-17.

[99] Petitioners' Post-Hearing Brief at 3-4.

[100] Post-Hearing Brief of Commission Staff at 13-14.

[101] *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wn.2d 22, 31, 891 P.2d 29 (1995).

[102] *Id.* at 32, citing *Rains v. State*, 100 Wn.2d 660, 663, 674 P.2d 165 (1983).

[103] *Id.* at 32-33.

40 There is no dispute that the Center Parkway crossing is proposed for the same site and the same use previously rejected in the 2007 Order. However, the Cities have negotiated with BNSF and UPRR to remove their switching tracks from the area, reducing the number of tracks involved from four down to two. This alone is a significant change from the prior circumstances. Further, the record supporting the current petition is substantially different than that created seven years ago: the Cities presented updated traffic studies, additional detail regarding emergency response needs in the area, and much more detailed information about safety mitigation measures and warning devices to be installed at the proposed crossing. In addition to these substantial factual differences, the 2007 Order suggested that the Commission would consider a second application.[104]

41 The Commission finds that the Cities' current petition presents a substantially different situation from that considered by the Commission seven years ago. The Commission determines that res judicata does not bar the Cities' current petition.

B. The Growth Management Act is Not Dispositive

42 The Cities contend that state agencies are mandated to comply with local land use plans adopted under the Growth Management Act.[105] Therefore, the Cities argue that their regional comprehensive planning process "mandates" the Center Parkway crossing in order for the Cities to achieve their stated LOS for emergency response times and traffic flow at signalized intersections.[106] According to the Cities, the GMA prohibits the Commission from evaluating public need, alternatives for opening a proposed railroad crossing, or even whether the proposed crossing will function in the matter claimed by the Cities. Taken to its logical end point, the Cities' argument would require the Commission to approve any at-grade crossing planned for in a local jurisdiction's comprehensive planning process.[107]

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[104] 2007 Order at 10, ¶ 23 (". . .the petitions could be denied without further discussion. However, it may provide some guidance to Kennewick for future filings to consider the second prong of the legal standard.").

[105] Petitioners' Post-Hearing Brief at 7-12. The Cities cite specifically to *RCW 36.70A.103's* mandate that "[s]tate agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter." *Id.* at 8, n. 29.

[106] Petitioners' Post-Hearing Brief, at 9-11.

[107] *Id.* at 8. In essence, the Cities argue that the GMA invalidated the Commission's ruling in *In re Town of Tonasket v. Burlington Northern Railroad Company*, Docket TR-921371 (December 1993) (*Tonasket*), at least for GMA planning jurisdictions.

"acute public need" and denied the petition.[119] The 2007 Order concluded that a city's goal to encourage economic development did not rise to the level of an acute public need, noting that economic development was already occurring along Tapteal Drive even without the proposed crossing.[120] The 2007 Order also concluded that traffic mitigation might constitute an acute public need, but only if alternate crossings were insufficient to accommodate traffic. The traffic study presented seven years ago showed only a *de minimis* level of traffic diversion to Center Parkway and did not prove the nearby alternate crossings insufficient to handle the entire traffic flow.[121]

57 The Cities and Staff argue that the 2007 Order relied upon an outdated and overly stringent "acute public need" standard. They contend that in recent years the Commission has approved opening other at-grade crossings using a balancing test, weighing the need for the crossing against any dangers remaining after installation of safety devices.[122] The Cities and Staff cite several orders approved through the Commission's open meeting process, none of which presented the complexities involved in this matter.[123]

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[119] 2007 Order, ¶¶ 24-26.

[120] *Id.* ¶ 25.

[121] *Id.* ¶ 26.

[122] Petitioners' Post-Hearing Brief at 5-7, n. 20, and Post-Hearing Brief of Commission Staff at 9-12; *see also* Hunter, TR. 273:16 – 277:22. Staff also points out that while the FRA Handbook discourages opening new crossings, it recognizes that consideration of public necessity, convenience, safety, and economics will factor into individual decisions. According to the Handbook, "new grade crossings, particularly on mainline tracks, should not be permitted unless no other alternatives exist and, even in those instances, consideration should be given to closing one or more existing crossings." *See* Exh. KH-10.

[123] The Cities cited open meeting dockets that were all uncontested and did not benefit from a thoroughly developed evidentiary record. The only case with any persuasive value resulted in a net closure of crossings, trading two existing passively protected private at-grade crossings in the City of Marysville for one new public crossing with active warning devices (Docket TR-111147). None of the other approved new crossings were in urban areas where over 7,000 vehicles per day were expected to cross tracks currently traveled by five or more trains per day (in one case, the Commission approved a new crossing to divert approximately 400 commercial vehicles per day away from residential roadways and across a single set of tracks traveled by up to two trains per day (Docket TR-112127); in two other cases, the Commission approved installing new industrial rail lines across very lightly traveled roadways in order to promote industrial growth (the road in Docket TR-100072 had only 150 vehicles per day and the road in Docket TR-121467 had less than 1600 vehicles per day); and in two other cases, the Commission approved new pedestrian-only crossings across lightly used tracks (Docket TR-100041 had one weekly freight train and Docket TR-110492 had no active railroading operations)).

~~65 Similarly, the Cities presented evidence showing that busy intersections in the vicinity of the Mall were approaching deficient LOS levels during peak travel times. Traffic waits for left turn signals at two intersections feeding into the Mall are already one level below the acceptable LOS D. We do not dispute that the Cities must find a way to resolve traffic congestion patterns in this area, but the Cities offered no persuasive evidence that opening a crossing at Center Parkway would materially contribute to this desired result:~~

- ~~The JUB Study made no specific findings about how a crossing at Center Parkway would impact deficient LOS ratings at congested intersections.~~
- ~~Mr. Simon was unable to explain the effect of extending Center Parkway on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault.~~
- ~~Mr. Deskins failed to conduct any LOS analysis focused on the installation of a crossing at Center Parkway and never factored train delays into any of the models he did consider.~~

~~66 The record does not conclusively link extending Center Parkway to any improvement in traffic flow at congested intersections in the immediate area. At best, the record demonstrates that opening the proposed at grade crossing will make public travel more convenient between the Tapteal Drive area and the Columbia Center Mall. It is certainly possible that opening a new roadway will divert traffic away from existing overcrowded intersections, but supposition alone is not sufficient to demonstrate public need. The Cities failed to demonstrate that opening the proposed Center Parkway crossing would reduce traffic congestion around the Mall or at the intersection of Gage Boulevard and Steptoe Street.~~

4. Balancing of Public Need Against Hazards of At-Grade Crossings

67 The Cities demonstrated public need for the proposed crossing. Evidence shows that improve emergency response times improves the chances of survival for trauma, cardiac, and stroke patients.[137] As the Cities continue to grow, additional and more frequent demands will be placed upon the Cities' first responders.

68 The Center Parkway crossing includes improved safety measures to protect the public, including advance pavement markings, warning signs, gates and lights, which will be designed with constant warning time devices for motorists, and a traffic island that will

[137] Exhs. RGB-1T 4:4-7; NH-1T 3:15-18.

act as a median separator.[138] The UTC calculates that the crossing poses a risk of one incident per 53.5 years.[139]

69 The Center Parkway crossing includes improved safety measures to protect the public, including advance pavement markings, warning signs, gates and lights, which will be designed with constant warning time devices for motorists, and a traffic island that will act as a median separated.[140] The UTC calculates that the crossing poses a risk of one incident per 53.5 years.[141]

NEW ¶: Because the Commission finds that the emergency response times satisfy the public need requirement, and that the public need outweighs the risks of the proposed crossing, it is unnecessary for the Commission to review the evidence submitted regarding traffic congestion, accident reduction, economic development, and a completed transportation network.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

70 Having discussed above in detail the evidence received in this proceeding regarding all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts and conclusions, incorporating by reference pertinent portions of the preceding detailed discussion:

71 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate railroad crossings, and has jurisdiction over the parties and subject matter of this proceeding.

72 (2) The City of Richland and the City of Kennewick are governmental entities authorized by law to petition the Commission pursuant to RCW 81.53.020 for authority to construct an at-grade railroad crossing where it is not practicable to construct a grade-separated crossing and there is a public need for such a crossing that outweigh its inherent risks.

73 (3) Res judicata does not bar the Commission from ruling on the Cities' petition because it is sufficiently different from the City of Kennewick's prior petition.

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[138] Exhs. KH-1T 21:15-23:23; KJ-1T 8:1-9:4SKG-1T 5:15-6:9

[139] Exh. KH-1T 26:15-23; Initial Order ¶ 17, footnote 29.

[140] Exhs. KH-1T 21:15-23:23; KJ-1T 8:1-9:4SKG-1T 5:15-6:9

[141] Exh. KH-1T 26:15-23; Initial Order ¶ 17, footnote 29.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of this record in this proceeding by email. The parties of record are identified below:

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WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK and CITY OF RICHLAND Petitioners vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD CO., BNSF RAILWAY and UNION PACIFIC RAILROAD Respondents.	DOCKET NO. TR-130499-P ANSWER OF RESPONDENT TRI-CITY & OLYMPIA RAILROAD CO. TO PETITION FOR ADMINISTRATIVE REVIEW

Table of Contents

I. INTRODUCTION

Respondent Tri-City & Olympia Railroad Co. ("TCRY") submits this Answer in opposition to the Petition for Administrative Review ("Petition") filed by the Cities of Richland and Kennewick ("Cities"). That Petition requests that this Commission review and overturn the Initial Order ("Order 02") entered by the Administrative Law Judge denying the Cities' "Petition to Construct a Highway-Rail Grade Crossing, Center Parkway" crossing of the Port of Benton rail line operated by TCRY. [1]

TCRY respectfully submits that the well-reasoned and fully supported ALJ decision in Order 02 be adopted as the Final Order herein and that the relief sought by the Cities' Petition for Administrative Review be denied. Following the statutory mandate, the ALJ concluded that the Cities had failed to show a public need for the proposed Center Parkway crossing.[2] Based on that conclusion, the ALJ ruled that "[t]he Cities failed to demonstrate public need for the proposed crossing, **leaving nothing to balance against the inherent hazards of an at-grade crossing**" and that even if public convenience alone were sufficient to show public need, it does not outweigh the hazards of an at-grade crossing. [3]

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[1] That "Petition to Construct" was filed by the City of Kennewick which identified itself as the "Road Authority" because the track sought to be crossed is within its municipal boundaries. (Petition, p. 6, Section 6, No. 3) The City of Richland (which borders but does not include the proposed crossing) filed a Motion to Intervene, claiming an interest in the pending Application. Respondent TCRY did not object to that Motion and leave was granted to Richland to intervene. (Order 01)

[2] Order 02, p. 20, ¶ 59 through p. 22 ¶ 66.

[3] Order 02, p. 22, ¶ 67 (Emphasis supplied).

The Cities ask that the Commission re-write Order 02. However, as shown here, their arguments have no merit, and that request should be rejected.

II. THE COMMISSION'S AUTHORITY IS NOT PRE-EMPTED BY CITIES' PLANS UNDER THE GROWTH MANAGEMENT ACT

The Administrative Law Judge ("ALJ") correctly summarized the Cities' argument in this regard as follows:

> The Cities contend that state agencies are mandated to comply with local land use plans adopted under the Growth Management Act. Therefore, the Cities argue that their regional comprehensive planning process "mandates" the Center Parkway crossing in order for the Cities to achieve their stated LOS for emergency response times and traffic flow at signalized intersections. According to the Cities, the GMA prohibits the Commission from evaluating public need, alternatives for opening a proposed railroad crossing, or even whether the proposed crossing will function in the manner claimed by the Cities.[4]

In Order 02, the ALJ properly rejected that argument which is based on the Cities' reading of RCW 36.70A.103 that "[s]tate agencies shall comply with the local comprehensive plans and development regulations and amendments" adopted pursuant to the GMA. The ALJ held:

> We disagree that a land use planning statute deprives the Commission of its statutory authority to regulate public safety at rail crossings. We do not dispute that the GMA requires cities such as Richland and Kennewick to plan for future growth and make efforts at intergovernmental coordination. However, a jurisdiction's comprehensive planning obligations under the GMA do not substitute for meeting the standards set out in RCW 81.53. The GMA and RCW 81.53 both address transportation safety issues, but from wholly different perspectives on public policy. **In order to maintain the integrity of both statutes within the overall statutory scheme, the GMA must be read**

[4] Order 02, p. 14, ¶ 42; *footnotes* omitted.

together and in harmony with RCW 81.53. We find that the Cities must comply with the requirements of both statutes.[5]

The ALJ's conclusion is unquestionably correct. RCW 81.53 is a specific statute regarding regulation of railroad crossings. As related to rail crossings, the GMA is, at best, a "general statute." In addition, RCW 36.70A.103, relied on by the Cities, does not specifically state that municipal planning under the GMA usurps the authority of the commission with respect to rail crossings referred to in such plans.

Assuming that both statutes address the same subject, a conflict exists only if the two cannot be harmonized. [6] The ALJ's ruling harmonizes these statutes. In the absence of harmony, RCW 81.53 as a specific statute supersedes the general statute RCW 36.70A.103 under Washington law.[7] Either way, the ALJ's conclusion that the GMA does not preempt the Commission's authority is correct and the Cities' argument is wrong.

III. ORDER 02 DOES NOT "FAIL TO DEFER TO THE UTC'S CONSISTENT INTERPRETATION OF RCW 81.53"

The ALJ did not apply an erroneous legal standard in evaluating the public need versus inherent risk calculus mandated by prior Commission rulings. Order 02 states this standard as follows:

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[5] Order 02, p. 15, ¶ 43; emphasis supplied; footnotes omitted.

[6] Statutes relating to the same subject "are to be read together as constituting a unified whole, to the end that a harmonious total statutory scheme evolves which maintains the integrity of the respective statutes." *State v. Wright*, 84 Wash.2d 645, 650, 529 P.2d 453 (1974) quoted with approval in *In re Estate of Kerr*, 134 Wn.2d 328, 337, 949 P.2d 810, 815 (1998).

[7] A specific statute will supersede a general one when both apply. *General Tel. Co. of Northwest, Inc. v. Utilities & Transp. Comm'n*, 104 Wash.2d 460, 464, 706 P.2d 625 (1985); *Waste Mgmt. of Seattle, Inc. v. Utilities & Transp. Comm'n*, 123 Wn.2d 621, 630, 869 P.2d 1034, 1039 (1994)

> The Commission will not approve construction of a new at-grade crossing without a demonstration of public need that outweighs the hazards inherent in the at-grade configuration. Petitioners must provide evidence of public benefits, such as improvements to public safety or improved economic development opportunities.[8]

Order 02 also states "We agree with the Cities and Staff that the statute does not require a showing of 'acute public need' to justify opening a new at-grade crossing."[9] The standard actually applied by the ALJ is identical to, and cites as support, the very decision that the Cities claim asserts the correct standard -- *Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions ¶ 33-37 (Feb. 15, 2011). The *Benton County* decision (at p. 14, ¶ 33) found such need in "[a]n overall improvement in public safety" and "improved economic development opportunities."

Here, the ALJ also noted that both the Cities and the Staff assert that the public need must outweigh the hazards presented by the crossing:

> RCW 81.53 does not prohibit the Commission from approving approve [sic] new at-grade crossings, but mere convenience or a *de minimis* showing of need will not suffice. As Staff points out, we are obligated to balance public need against the hazards presented by a new crossing. The Cities similarly concede that the Commission must determine "whether there is a demonstrated public need for the crossing that outweighs the hazards inherent in an at-grade configuration." [10]

Order 02 does exactly that – weighs the demonstrated public need against the inherent hazards. Thus the ALJ applied the exact legal standard argued for by both the

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[8] Order 02, p. 18, ¶ 55.
[9] Order 02, p. 19, ¶ 58.
[10] Order 02, p. 19-20, ¶ 58.

Staff and the Cities. Indeed, Cities concede that the ALJ articulated the correct standard but relied on an "unarticulated standard" which could only have exceeded the correct standard.[11] The ALJ's conclusion that the evidence taken as a whole does not demonstrate a public need that supports the proposed crossing, Order 02 applies the correct standard. Cities attempt to prove otherwise is an exercise in mind-reading and should be rejected.

In this regard, the Cities argue that the ALJ applied a *standard* which *requires* applicants to show that they are "regularly failing" to meet emergency response times. However, the public need analysis applied by the ALJ considers the totality of the evidence submitted by Cities and does not mandate a "regularly failing" standard at all. In addition, the Cities themselves elected to attempt to prove that they were "regularly failing" to meet emergency response times as one element of the public need for the crossing. Thus, Cities' attack on the ALJ as imposing an "absurd" standard is itself ludicrous.

IV. CITIES FAILED TO PROVE THE REQUISITE PUBLIC NEED FOR THE PROPOSED CROSSING

RCW 81.53.020 requires that "All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, when practicable, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so."

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[11] Petition, 10:3-6.

As Order 02 articulates, "[b]y its nature, an at-grade crossing poses hazards for motorists, pedestrians, and railroad operators that are not present at grade-separated crossings."[12] In this regard, the ALJ properly noted that: "Washington courts have deemed at-grade crossings to be inherently dangerous."[13] The pending Petition takes no issues with these principles. Cities do, however, argue that the calculated accident rate in essence eliminates the requirement to show public need and displaces the presumption that at-grade crossings are inherently dangerous. However, Cities cite no authority to support this conclusion.

Cities attempted to prove that "public need that outweighs the hazards inherent in the at-grade configuration" by relying on three factors which they claimed would result from the proposed crossing:

a) Improved emergency response times;

b) Reduced vehicle accident rates; and

c) Relief of traffic congestion.

In Order 02, the ALJ concluded that the Cities had failed to carry their burden of establishing the "public need" factors selected by the Cities as grounds for the Petition.

In ruling that the Cities had failed to demonstrate a "public need" based on these factors, the ALJ, in summary, grounded his conclusions on the following:

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[12] Order 02, p. 16, ¶ 47.

[13] Order 02, p. 16, ¶ 47 and fn. 94 in which the ALJ cites: *Reines v. Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 195 Wn. 146, 150, 80 P.2d 406, 407 (1938); *State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County*, 5 Wn.2d 95, 104,104 P.2d 764 (1940); *Department of Transportation v. Snohomish County*, 35 Wn.2d 247, 250-51 and 257, 212 P.2d 829, 831-32 and 835 (1949)

a. The Cities failed to show either a public need for faster response times or that opening a crossing at Center Parkway would solve any response times deficiencies.

b. The Cities failed to show that a Center Parkway crossing would reduce accident rates.

c. The Cities failed to show that a Center Parkway crossing would materially contribute to a reduction in congestion.

A. Cities Failed to Prove that the Center Parkway Crossing Would Produce Improved Emergency Response Times

The Cities relied on claimed enhanced emergency response times to establish a public need for the crossing. The ALJ correctly concluded that "the Cities introduced no evidence of a public need for faster response times and did not adequately explain how the Center Parkway extension would contribute to improved public safety"[14] and even if emergency response times were deficient "there is insufficient evidence in the record to demonstrate that opening a crossing at Center Parkway would solve this problem."[15]

Cities now argue that the record contains "undisputed facts that the Cities are failing to achieve this emergency response time in this area."[16] In support of that conclusion, Cities rely on two Exhibits -- GAN-3-X and GAN-18-X -- and a portion of the testimony of Chief Baynes.

Exh. GAN-3-X is a two-page excerpt from the City of Richland Comprehensive Plan which reports EMS response times of 7:44 "for only those

[14] Order 02, p. 20, ¶ 60.
[15] Order 02, p. 20, ¶ 61.
[16] Petition for Review, 2:15-16.

incidents in the city for the 2002-2003 study period."[17] Not only is this data stale by more than 10 years, there is no indication that these response times focus on the area which would be served by EMS vehicles negotiating a Center Parkway crossing – these are city-wide statistics. They do not prove that the Cities "are failing to achieve" the anticipated response times in the area which would be accessed by the proposed crossing. Further, as the ALJ noted, Richland proposed to enhance these response times by additional facilities and staffing, not construction of "alternate routes" for EMS response.[18]

Exh. GAN-18-X, consists of a compilation of response times for "several addresses" in the Tapteal area, around Mail by the Mall and PF Changs. As the ALJ noted, "Chief Baynes provided little, if any, context for additional response time data he provided" in this Exhibit.[19] In fact, rather than being "undisputed" as the City contends, the testimony of TCRY's traffic expert, Mr. Norris, asserts that the data contained in this GAN-18-X does not support Chief Baynes' conclusions regarding response time and is "more confusing than helpful."[20]

In addition, the testimony provided by emergency response witnesses is based on assumptions regarding traffic congestion on the proposed crossing as opposed to traffic congestion on the existing parallel roadways and alternative emergency

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[17] Ex GAN-3-X at CF 5-3.
[18] Order 02, p. 20. ¶ 61: " Instead, the capital facilities element of Richland's GMA documents discuss building additional fire stations closer to areas needing better response times."
[19] Order 02, p. 20, fn. 107.
[20] TR. 295:5-297:16.

response routes.[21] It also fails to address the fact that without the proposed crossing, both the Kennewick and Richland Fire Department response times fall within the "4 minutes 90 percent of the time" standard of the NFPA[22] and is based on unsupportable assumptions regarding lack of school bus routes over the proposed crossing.[23]

Thus, the Cities claim that they have proved that they are "failing to achieve" their EMS response time goals by undisputed evidence despite the fact that the evidence is both disputed and non-conclusive. In turn, they then attack the ALJ for adopting a "failing to achieve" standard when they chose and failed to demonstrate exactly that as a basis for the public need for the proposed crossing.

Cities argue that an alleged improvement in response times is demonstrated by the "JUB Study."[24] According to the City, this study "concluded that the Center Parkway Crossing would reduce the response times by Kennewick Fire Station 3 and Richland Fire Station 72 to property near the north of the Center Parkway crossing by 30% and 24%, respectively."[25] The unrebutted testimony of Mr. Norris debunks this conclusion by noting, "there is no documentation in the JUB report of the factors used in estimating emergency response times and no substantiation of its conclusions in this regard."[26] In addition, as Mr. Norris testified:

> The J-U-B study notes that the North Center Parkway Extension would improve emergency response times by about 30% to the Holiday Inn. However, this is a narrow focus. When comparing response times with and

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[21] Exh. GAN-1TR. 3:2-24.
[22] Exh. GAN-1TR. 4:2-20.
[23] Exh. GAN-1TR. 5:8-14.
[24] Exh. JP-5-X.
[25] Petition, 10:14-16.
[26] Exh. GAN-1TR. 3:19-24.

without connection, a more general focal point for the affected area should be used. The study should have considered, but did not consider, the entire service area and not one specific site.[27]

The evidence adduced by the Cities fails to establish the lack of reasonable alternate access for public emergency services,[28] fails to show that the traffic volume changes identified as resulting from the proposed crossing will have a significant beneficial impact on the level of service[29] and fails to identify the effect of traffic queues resulting from trains (especially unit trains) moving through the crossing.[30]

Finally, the evidence adduced by the Cities fails to analyze capacity issues on parallel roadways comparing delays on Center Parkway to those on parallel routes,[31] gives no consideration to the likely substantial increase in rail traffic as affecting whether the route over the proposed crossing would provide reliable emergency access[32] and fails to document that the proposed crossing will reduce emergency response time for 90 percent of incidents.[33]

B. Cities Failed to Prove That a Center Parkway Crossing Would Reduce Accident Rates

Cities argued a public need for the crossing based on the claim that it would reduce accident rates at two Columbia Center Boulevard intersections. Order 02 concluded that the Cities' evidence failed to substantiate any such anticipated

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[27] Exh. GAN-1T. 5:17-21.
[28] Exh. GAN-1T. 5:8-6:17.
[29] Exh. GAN-1T. 7:1-8:3.
[30] Exh. GAN-1T. 9:4-11.
[31] Exh. GAN-1TR. 6:4-6.
[32] Exh. GAN-1TR. 6:7-10.
[33] Exh. GAN-1TR. 6:10-11.

reduction: "However, neither the JUB Study nor the Cities' traffic engineering witnesses provided any data or studies to support this assertion."[34]

Accurately summarizing the Cities' expert witness testimony on this point, the ALJ concluded:

> Mr. Deskins provided raw data on the number of vehicle collisions over a decade's time but [no] analysis on how or why these accidents occurred. Mr. Montgomery offered only unconfirmed notions that reducing traffic levels would reduce accident rates. The record has no persuasive evidence connecting improved traffic safety on Columbia Center Boulevard to opening a new roadway that will regularly be blocked by rail traffic.[35]

Misconstruing this conclusion, the Cities argue that Order 02 "seems to be taking the indefensible position that an average seven documented injuries per year at these intersections does not present a critical public need." Of course, that is not at all what the ALJ concluded.

Instead, Order 02 focuses on the inadequacy of the Cities' expert testimony to document the conclusion that a Center Parkway crossing would reduce the number of accidents at any intersection. The ALJ noted that, in essence, these experts assumed that a Center Parkway crossing would reduce traffic at these intersections and further assumed that a reduction in traffic results in a reduction in accidents.

> Mr. Deskins provided an exhibit listing 12 years of crash data for two Columbia Center Boulevard intersections: Quinault Avenue and Canal Drive. Going back to 2001, the intersection reports show 154 total crashes at Quinault Avenue and 165 total crashes at Canal Drive. According to Mr. Deskins, opening the Center Parkway crossing on the other side of the Mall would reduce traffic at these intersections and —should ultimately reduce crashes at these locations. Spencer Montgomery, a transportation specialist with J-U-B

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[34] Order 02, p. 21, ¶ 63.
[35] Order 02, p. 21, ¶ 64

Engineers, explained that J-U-B did not perform a study to support this conclusion because —if you reduce the traffic volume on a road, and it has a certain accident rate, then you will reduce the number of accidents.[36]

Further, the ALJ noted that:

Motorists who might deviate from Columbia Center Boulevard's grade-separated crossing in order to access the Tapteal Road area would trade safe and undelayed passage over the UPRR tracks for a potentially faster route that comes with a risk of collision.[37]

In other words, even if the proposed crossing would reduce the risk of vehicle-to-vehicle collisions, it increases the risk of train to vehicle collisions. It does this by diverting traffic from the inherently safe grade-separated Columbia Center Boulevard to an inherently unsafe at-grade Center Parkway crossing.[38]

C. Cities Failed to Prove that the Proposed Crossing Would Result in Traffic Congestion Relief

Order 02 correctly concludes that ". . . the Cities offered no persuasive evidence that opening a crossing at Center Parkway would materially contribute . . ." to vehicle traffic congestion relief.[39] The ALJ based this conclusion on three facts:

a. The failure of the J-U-B Study to make specific findings to show that a Center Parkway crossing would have an impact on deficient LOS ratings at congested intersections.

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[36] Order 02, p. 11 ¶ 31 (footnotes omitted). The conclusions of the ALJ are fully supported by his citations to the record: Exh. JD-3, at 7 and 14; Exh. JD-2TR. 3:8-14; TR. 222:14-23.
[37] Order 02, p. 22, ¶ 68.
[38] Exh. GAN 1T. 7: 6-11. Mr. Norris there testified: "The crossing at Columbia Center Boulevard is a separated grade crossing. Steptoe has an at-grade crossing. Diversion of traffic from Columbia Center Boulevard to the proposed Center Parkway would have the effect of diverting traffic from a safer separated grade crossing to an inherently dangerous at-grade crossing. Diversion from Steptoe replaces one at-grade crossing with another with no net train/vehicle safety enhancement."
[39] Order 02, p. 21, ¶ 65.

b. The inability of the Cities' expert, Mr. Simon, to explain the effect of a Center Parkway crossing on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault.

c. The failure of the Cities' expert, Mr. Deskins, to conduct any LOS analysis focused on the effect of a Center Parkway crossing or consider train delays in any of the models he did consider.

There is ample evidence in the record to support each of these conclusions.

First, the ALJ is absolutely correct that the "JUB Study"[40] which purports to be a traffic study, in fact makes no findings to support a conclusion of reduced congestion at existing intersections. Instead, the JUB Study focuses on the LOS at the intersections which would be created by the Center Parkway crossing, identified in the Study as Center Parkway and Tapteal Drive and Center Parkway and Gage Boulevard. Demonstrating that the LOS at these intersections would be acceptable in no way demonstrates a reduction of congestion at *existing* intersections.[41]

Rather, as the testimony of TCRY's traffic expert, Mr. Norris, demonstrates:

> In order to present a better representation of congestion relief benefits (or lack thereof) of the North Center Parkway Extension, the intersection LOS and delay should be reported for several of the surrounding arterial intersections, with and without the North Center Parkway Extension. That data has not been provided.
>
> At a minimum, the report should document the LOS changes at intersections along the Columbia Center and Steptoe Street corridors with and without the proposed extension. This data has not been provided.[42]

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[40] The entire report entitled "Center Parkway Extension and Railroad Crossing, Traffic Study, March, 2013" prepared by J-U-B Engineers, Inc. attached to the Petition to Construct A Highway-Rail Grade Crossing, Center Parkway" file by the City of Kennewick.

[41] J-U-B Study at p. 11.

[42] Exh. GAN-1T. 8:19-9-3. Mr. Norris also testified that the JUB Study addresses LOS at only one intersection, Tapteal and Center Parkway – an intersection which would be open to through traffic from Center Parkway only if the proposed crossing were constructed. TR. 301:4-13. JUB therefore does not address LOS improvement at any existing intersection resulting from a Center Parkway crossing.

The ALJ was also correct in finding that Mr. Simon was unable to explain the effect of a Center Parkway crossing on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault, an existing intersection. As Order 02 states:

> As to LOS levels, Mr. Simon testified that Tapteal Drive was not currently operating at a deficient level, but two other intersections south of the railroad tracks were identified as deficient: Columbia Center Boulevard at Quinault and Steptoe Street at Gage Boulevard. When asked to explain the effect of extending Center Parkway on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault, Mr. Simon stated "I'm not sure that I can." Even though he had not seen any data or traffic studies to inform his opinion, Mr. Simon also asserted that a Center Parkway crossing could improve the deficient LOS at the Steptoe Street and Gage Boulevard intersection by allowing some traffic to divert to the proposed crossing.[43]

As the ALJ correctly noted, "Mr. Deskins, the City employee most familiar with the traffic modeling simulation, conceded that he did not perform and LOS analysis specifically focused on the result of installing the proposed crossing at Center Parkway.[44] When asked, "Did you run an analysis that specifically focused on the result of installation of a crossing at Center Parkway?" Mr. Deskins' answer was "No, I did not."[45]

Likewise, Mr. Deskins did not attempt to consider or model potential delays from trains either at the proposed Center Parkway crossing or the existing Steptoe

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[43] Order 02, p. 12-13, ¶ 35 (footnotes omitted). TR. 61:18-22, 62:16-63:6, 67: 1-13 and 67:14-69:22. The cited testimony supports the conclusions drawn by the ALJ.
[44] Order 02, p. 13, ¶ 36, citing the testimony at TR. 78:4-7 and 73:4-12.
[45] TR. 78:4-7.

Street crossing.[46] Indeed, the Cities have no evidence in the record on this point. The ALJ's conclusion in this regard is beyond dispute.

The testimony of Mr. Norris also highlights additional deficiencies in the Cities' evidence regarding claimed traffic congestion relief. As Mr. Norris testified, a Center Parkway crossing would have a minor effect on traffic on the most heavily traveled street in the area – Columbia Center Boulevard – a decrease of 210 vehicles per hour, which he describes as inconsequential considering the traffic volume at issue.[47] As Mr. Norris put it:

> According to our calculations, the volume change is less than 5%. A change of plus or minus five (5) percent is considered within the "margin of error" for traffic counts such that the impact of these volume changes would be undetectable in a typical traffic volume study.[48]

Further, there is no evidence that the traffic volume changes resulting from the proposed crossing will have a significant impact on arterial or intersection LOS because neither the J-U-B Study nor any other evidence identifies capacity deficiencies resulting from anticipated volume increases or presents an evaluation of traffic conditions without the proposed crossing.[49]

In addition, the Cities' evidence fails to demonstrate that construction of the proposed crossing would have any significant beneficial effect in completing the road

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[46] TR. 79:2-80:13. Mr. Deskins testified that he did not submit any simulation that takes into consideration the effect of a Center Parkway train crossing on the traffic on Gage Boulevard, Center Parkway or the surrounding area.
[47] Exh. GAN-1T. 8:4-11.
[48] Exh. GAN-1T. 8:8-12.
[49] Exh. GAN-1T. 7:20-8:2.

grid network as it can only provide access to Tapteal Drive[50] and fails to demonstrate that the proposed crossing would improve current and future road capacities by significant diversion of traffic volumes from the neighboring arterials – Columbia Center Boulevard and Steptoe Street.[51]

For all the foregoing reasons, Cities have failed to demonstrate any reasonable need for the subject crossing, let alone a need which would outweigh the potential risks inherent in an at-grade crossing.

V. WHILE REPRESENTING TO THE COMMISSION THAT RAIL TRAFFIC INCREASE WILL BE MINIMAL, THE CITY OF RICHLAND WAS FINALIZING PLANNED DEVELOPMENTS WHICH WILL SUBSTANTIALLY INCREASE RAIL TRAFFIC OVER THE PROPOSED CROSSING

Because the ALJ's conclusions of failure to demonstrate public need are more than adequately supported by the record, the Commission need look no further to affirm Order 02 in its entirety and reject the arguments raised in the Cities' Petition. However, TCRY demonstrated in detail the anticipated increase in rail traffic which would make a Center Parkway crossing even more dangerous.

Cities criticize the ALJ's conclusions regarding likely substantial increase in rail traffic over the proposed crossing. In reality, Cities evidence of minimal traffic increases is contradicted by the evidence of additional rail traffic which will result from developments *promoted by the City of Richland itself.* Thus, while seeking authority to construct this crossing, the City of Richland was taking dramatic steps

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[50] Exh. GAN-1T. 9:22-10-10.
[51] Exh. GAN-1T. 10:17-11:10.

which would result in increased rail traffic and thus increased risk of vehicle-train interaction, at the proposed Center Parkway crossing.

This anticipated traffic increase is born out by evidence of three factors. First, the City of Richland has sold to ConAgra Foods Lamb Weston a parcel of land for the purpose of constructing a substantial automated cold storage food warehouse which will be served by rail on the subject track resulting in a substantial increase in rail traffic not properly considered by the Cities.[52] Second, the City of Richland has leased a land parcel to a developer for the purpose of constructing a 1.5-mile rail loop to be serviced by 100+ railcar "unit trains." Once operative, this facility will substantially increase the number of unit trains utilizing the Port of Benton track.[53] The presence of unit trains in addition to other train traffic on this rail will result in increased rail traffic not taken into consideration by the Cities' evidence.

Third, TCRY has documented the substantial anticipated increase in its own traffic[54] including traffic to the existing rail loop on the Horn Rapids Spur. All rail traffic accessing ConAgra, the Richland Loop and the existing rail loop must travel over a Center Parkway crossing, if constructed.[55] The location and proposed

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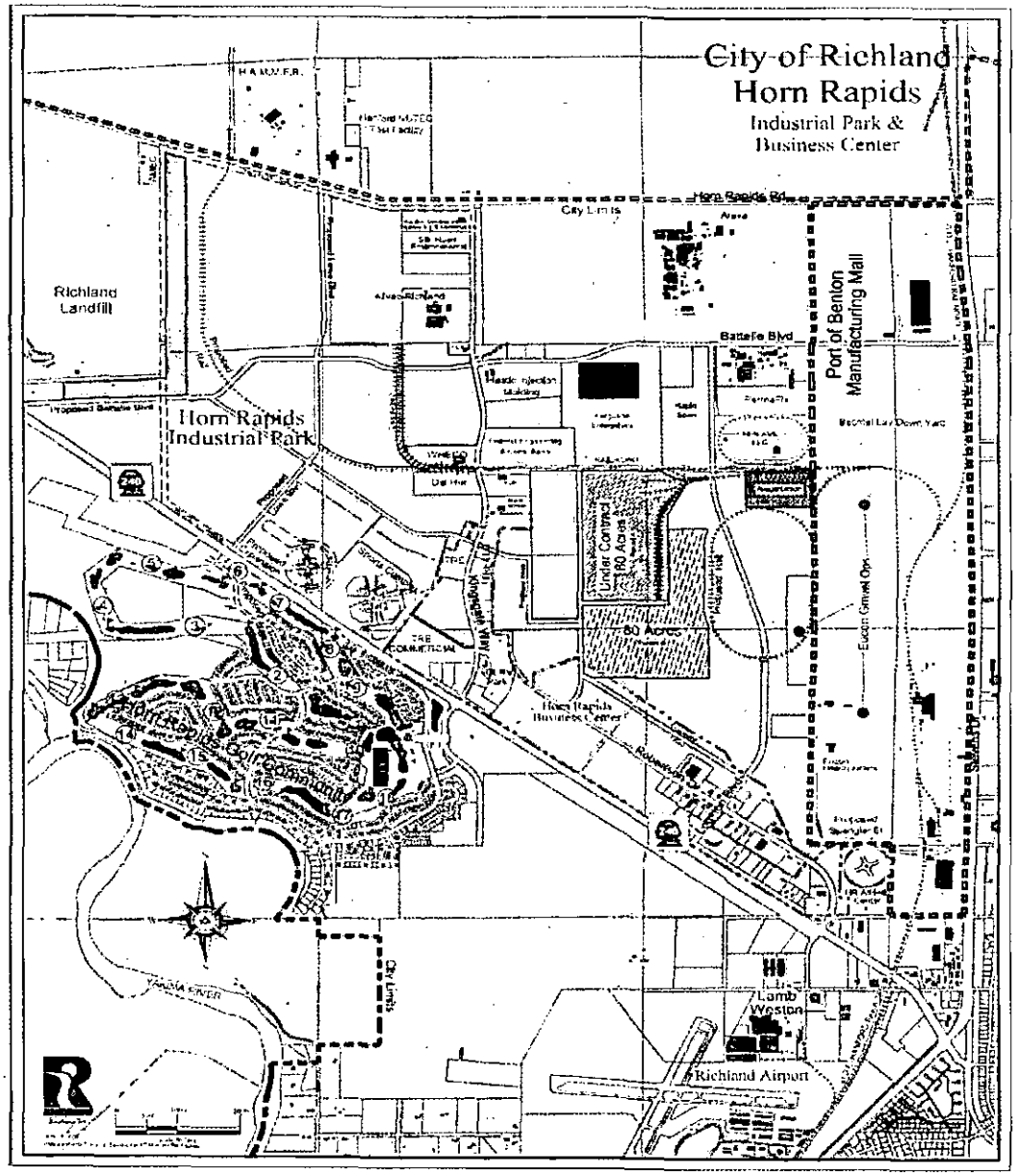
[52] Exh. JD-9-X and JD-10-X.
[53] Exh. KJ-14-X
[54] Exh. RVP-3-X
[55] These developments are located on the City of Richland's Horn Rapids Spur which, as is shown on the Exh. JD-10-X is accessed from what is labeled there as the "DOE Hanford Railroad" which is now the Port of Benton rail leased to TCRY. RVP-1T, 2:16-3:5. As Mr. Ballew admitted, the projected ConAgra facility can only be reached by trains travelling over the proposed Center Parkway crossing. TR. 346:22-347:8. As shown on Exh. JD-10-X, the same is true of trains travelling to the City of Richland loop and the existing 10 NWA, LLC loop.

configuration of these two facilities is shown here.[56]



The ConAgra facility is identified above as "Under Contract 80 Acres Parcel A" with an additional 80 acres under option.[57] The City of Richland Loop is depicted

[56] This Graphic generated by the City of Richland is a part of Exh. JD-10-X.

[57] TR. 343:2-10; 344:19-345:3. The contract is Exh. JD-9-X. TR. 344:8-15. ConAgra also has an option to purchase an additional 80 acres from the City of Richland at this site. TR. 345:4-7.

as "Proposed Rail" and is shown in greater detail as part of Exh. KJ-14-X. The existing rail loop is identified as "10 NWA, LLC."

The Cities' expert witness (Jeffers) providing evidence of anticipated rail traffic was not informed by the City of Richland regarding either the ConAgra project or the 1.5 mile rail loop and was provided no information regarding these planned facilities and thus, in effect, did not take these developments into consideration in projecting minimal increase in rail traffic over the proposed crossing.[58] Instead, this witness utilized a growth rate the he "felt was reasonable."[59]

Mr. Jeffers also was not provided any information regarding anticipated increase in rail traffic to the rail loop already in place on the Horn Rapids Spur and as a result, as to this traffic, admitted, "it would be hard to project anything."[60] He was not even asked to and did not perform a modeling analysis on the capacity of the rail line.[61]

A. City of Richland Rail Loop

While the hearing before the ALJ was in progress, the Richland City Council voted to approve a new 1.5 mile rail loop in the Horn Rapids Industrial Park connecting the Horn Rapids Spur to the Port of Benton railroad operated by TCRY.[62]

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[58] TR. 175:14-176:20. The City of Richland did not inform Mr. Jeffers of either development and he did not take the increased rail traffic generated by these developments into consideration in his computation of rail traffic. TR. 178:16-179:10. Indeed, Mr. Jeffers didn't understand that the ConAgra and rail loop developments were two separate projects. TR. 193:12-18.

[59] TR. 179:3-10.

[60] TR. 179:18-25.

[61] TR. 192:20-193:5.

[62] TR. 354:25-355:7; TR. 334:16-24, 335:19-24. TR. 2336:11-15

This loop is to be constructed on property leased by the City to a private business entity under a 15-year lease.[63] This 8400-foot rail loop will accommodate "unit trains" (trains over 100 railcars).[64] The purpose for this facility is to allow the delivery of unit trains and the transloading of their contents for transport elsewhere.[65] In addition, the City approved the sale of 25 acres of land at this location for the construction of facilities for transloading and other operations.[66] Under the terms of the Lease, the loop track is be built and operational within 18 months (i.e., by no later than the end of May, 2015) and the City expects that the facility will be online, operational and receiving unit trains within that time.[67]

The Lease requires that the operator allow access to the rail loop by both BNSF Railway Company and Union Pacific Railroad.[68] The Lease allows the delivery of a variety of products, including containerized goods for companies such as Wal-Mart, Target and Costco as well as fuels including ethanol and diesel, fertilizers, phosphates, metal goods, lumber and machinery.[69]

The City anticipates a substantial investment by the loop operator as well as the companies who will locate on the loop to handle these commodities.[70] This is part

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[63] TR. 355:21-356:10; TR. 336:1-10. A copy of the Lease is Exh. KJ-14-X. A copy of the City's presentation regarding the loop development is Exh. JD-38-X which shows the planned facility in detail.
[64] TR. 356:21-357:2.
[65] TR. 357:3-6.
[66] TR. 357:7-27; TR. 335:19-24.
[67] TR. 358:2-12; 364:15-20.
[68] TR. 362:18-23.
[69] Exh. KJ-14-X at 27-28. TR. 339:9-23;TR 358:13-359:2; 360:8-15. See also Exh. JD-39-X, a videotape of television interview with Bill King, Deputy City Manager describing potential uses of new rail loop including handling containerized products.
[70] TR. 360:18-361:9

of the City's plan to maximize use of the land within its industrial park for the economic benefit of the City.[71] Approximately one-half of the total of 2,000 acres comprising that industrial park remains available for development (not including the rail loop and ConAgra warehouse).[72]

There is no doubt that this development will generate additional rail traffic.[73] There are no limitations on the number of trains that this rail loop facility is allowed to accept.[74] The City's economic director, Mr. Ballew, testified, "we believe operationally the track will be limited to an average of two and a half trains per week."[75] However, neither Mr. Ballew nor any other City witness provided any data as the basis for that "belief."

In fact, with a substantial amount of land available for construction and no limit on the number of trains allowed to access the rail loop, it is apparent that the increase in rail traffic will be substantial. All of that rail traffic will travel over the proposed Center Parkway crossing.[76]

B. ConAgra Cold Storage Facility

The ConAgra facility is to be constructed on an 80-acre tract of property under contract for purchase from the City of Richland[77] and subject to a proposed site

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[71] TR. 361:10-20.
[72] TR. 374: 4-18.
[73] TR. 361:21-23.
[74] TR. 364:21-365:3.
[75] TR. 269:21-370:6
[76] See citations at fn. 27 above.
[77] TR. 343:2-10; 344:19-345:3. The contract is Exh. JD-9-X. TR. 344:8-15. ConAgra also has an option to purchase an additional 80 acres from the City of Richland at this site. TR. 345:4-7.

development agreement with the City of Richland.[78] This facility is to be serviced by rail.[79]

The City of Richland has conducted no study to determine the anticipated volume of rail traffic to this facility,[80] but concedes that there is no question that this facility would generate additional rail traffic, all of which would travel over the proposed crossing.[81]

It may be impossible to calculate the precise extent of this increase in rail traffic and change in the nature of rail traffic, including increasing the number of mile-long unit trains which will run through the proposed crossing. However, the evidence clearly supports the conclusion that this increase and change will occur.[82] And the Cities presented no evidence demonstrating that it has analyzed or projected the railcar traffic increase, but has instead relied on vague and unsubstantiated representations by others in its attempt to minimize the projected traffic increase. This evidence does not support granting the relief sought, as removal of the Center Parkway crossing once

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[78] TR. 343:16-344:7. The draft site development agreement is Exh. JD-10-X.

[79] TR. 345:13-15. Preliminary drawings show an extensive rail system to service this facility. See Exh. JD-11-X.

[80] TR. 345:23-346:2. The City has received an "initial estimate" of 30 railcars per week from a Dutch firm no longer associated with the project. TR. 346:13-21. There was no evidence that the City of Richland has itself studied the impact on train volume resulting from the ConAgra development and no further data was provided.

[81] TR. 346:22-347:8

[82] See, Exh. JD-37-X. Video of Tangent Rail presentation to Richland City Council re planned speed increase on the Port of Benton rail dated Nov. 5, 2013; Exh. JD-38-X, City of Richland presentation to Port of Benton re planned rail developments dated November 13, 2013; Exh. JD-39-X. Video – television news interview by Mr. Bill King, City of Richland, re new rail loop and live testimony of Mr. King regarding that interview to the effect that uses of the new rail loop will include container unit trains as well as grain trains.

constructed would be a virtual impossibility despite a dramatic increase in rail traffic and the likelihood of rail-vehicle interaction.

The evidence is also clear that the Cities failed to disclose these planned developments as part of the Petition for Construction and ignored or attempted to minimize their impact in projecting rail traffic in the proceedings before the ALJ.

C. Train Traffic Evidence Is Consistent With The ALJ's Findings and Provides No Support For Modification of Order 02

Cities attack TCRY's disclosure of rail traffic over the track at the proposed crossing site. However, Cities' argument is a false "gotcha" with no substance.

TCRY reported to the UTC that it operates 2-4 trains per weekday on this track. [83] In other words, TCRY stated that it operates a minimum of 2 trains per day and a maximum of 4. In fact, ignored by the Cities, TCRY clarified this estimate as follows:[84]

> TCRY operates each week day on this line, with trains traversing the proposed crossing location at least twice and on occasion four times per day.

TCRY also stated its average length of "roughly 15 cars per train." [85]

Cities now argue that these figures are inconsistent with what the Cities claim to be TCRY's disclosure that it *projected* a total railcar volume of 2,300 railcars in total in the year 2013.[86] The Cities argument in this regard is fallacious.

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[83] Exh. RVP 3-X, p.2 (of 12):2-3.
[84] Exh. RVP 3-X, p. 8 (of 12):13-14.
[85] Exh. RVP 3-X, p. 4:7(of 12):7-10.
[86] *Petition, p. 15:6-8.*

Cities use the rough averages for train length and the total for railcars handled to compute that TCRY runs only 2.96 trains per week.[87] That computation is directly refuted by TCRY's disclosure that it runs a minimum of 2 trains per day, not 3 trains per week, over the proposed Center Parkway crossing site. Further, the Cities argument is inconsistent with, and ignores the more specific data provided by TCRY.

Trains on the track at the Center Parkway site run two directions – inbound and outbound. Cities are wrong in relying on the 2,310 railcar number, as this was clearly identified by TCRY to represent count of cars handled, not car trips (which include both inbound and outbound movement of a car). As TCRY fully disclosed in its Response to UTC Staff Data Requests Nos. 2-5:[88]

> Please note that the summary numbers of railcars provided in Responses to [Petitioners'] Data Requests Nos. 21 and 22 reflect car count, which must be doubled to reflect number of trips over the rail at the proposed crossing. Therefore, for 2013, TCRY projects[89] a total of 4,620 railcar trips over the proposed crossing by its own trains and an additional 498 railcar trips over the proposed crossing by BNSF trains for a total of 5,118 railcars passing over the proposed crossing per year.

Using the Cities' computation formula, TCRY clearly disclosed data demonstrating that it operated at least 308 trains over the proposed crossing in 2013, not the 154 calculated by Cities.[90]

In yet a further attempt to compare apples to oranges, Cities states that the ALJ "erred in his consideration of the evidence" by including what it calls an "unsupported

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[87] Petition, p. 15:10-11.
[88] Part of Exh. RVP 3-X, p. 2 of 12: 10-14.
[89] TCRY's Response was made on September 23, 2013, projecting the total for the entire 2013 year. Exh. RFP 3-X.
[90] Even using that junk math, TCRY's average computes to 5.9 trains per week.

assertion 'that the combined annual train traffic through the Richland Junction [site of the proposed crossing] increased from nearly 4,500 railcars in 2012 to over 5,100 railcars in 2013.'" [91] It bases this argument on its calculated total track usage of by all railroads of 1,159 to 1,833 **trains, not railcars** per year at the proposed crossing site.

In addition, Cities conveniently ignore the fact that the ALJ did not base his findings on the specific number of trains which would use the crossing, and noted that the parties had presented conflicting evidence on this point.[92] Therefore, the ALJ did not err in any determination based on present train traffic.

Cities also take issue with TCRY's projection of anticipated growth of rail traffic (which was not quantified in any finding by the ALJ). Cities mischaracterize the evidence by stating that "[c]onsistent with TCRY's tendency to inflate track usage, Mr. Peterson also provided wildly ambitious growth targest of **TCRY's use of the railway**; claiming that he anticipates an unprecedented growth rate of 'approximately 20% each year."[93]

Cities is wrong. The growth rate identified by Mr. Peterson[94] is not for "TCRY's use of the railway" but for total rail traffic over the proposed crossing. That growth rate is not unsupported, as the Cities claim but is based on a detailed analysis

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[91] Petition, p. 16:1-4; Order 02, p. 4, ¶ 12.
[92] Order 02, p. 4, ¶ 12 and fn. 13 noting the argument made by Cities.
[93] Petition, p. 16:5-7.
[94] RVP-1T. Mr. Peterson testified: "Based on current business TCRY anticipated annual rail traffic increases of approximately 20% each year which would result in **total railcar traffic** over the proposed crossing in 2014 of more than 6,200 railcar trips per year. TCRY anticipates a dramatic increase in total train traffic, through this location in the next ten years due to a number of factors."

of factors specific to this rail line, not an average national industry growth statistic. The factors supporting that projection are clearly set forth in the record.[95]

Those factors tie directly to the rail facility developments described above as noted in the record:[96]

> TCRY anticipates a dramatic increase in the number of trains it operates and expects as similar increase in the number of trains which BNSF and UPRR operate through this location in the next ten years due to a number of factors, including:
>
> a. Anticipated growth in UPRR and TCRY business reflecting increases in daily train operations and unit train operations as a result of additional customers locating on the transload facility serviced by TCRY on the City of Richland's Horn Rapids Spur;
>
> b. Anticipated growth in BNSF, UPRR and TCRY railcar volumé as a result of likely construction of the ConAgra Lamb Weston cold storage warehouse facility described in the attached Response to Data Requests Nos. 21 and 22.
>
> c. Anticipated growth in BNSF, UPRR and TCRY railcar volume as a result of the likely construction of one or more "loop track" facilities off the Horn Rapids Spur.

D. Cities' Attack On TCRY's Characterization Of The Second Track At The Proposed Crossing Location As A "Passing Track" Is Erroneous

The proposed crossing would traverse two tracks at the Center Parkway location – TCRY's main line and an adjacent passing track. As demonstrated by Exh. JD-27-X, the track which the Cities call a "siding" is in actuality a passing track, with switches to the east and west of the proposed crossing. Thus the track is clearly not simply a "siding" but rather a track which was installed and is used for the specific purpose of allowing trains to pass each other.

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[95] Exh. RVP 1-T, 5:9-6-2 and Exh. RVP 3-X

[96] Exh. RVP 3-X, p. 2 (of 12): 16-3:5. These same factors are cited in TCRY's Response to Cities' Data Request, RVP 3-X, p. 8(of 12):21-9:14.

The Cities assault the findings in Order 02 at ¶ 11 as erroneous. This attack demonstrates the extent to which the Cities are reaching in an attempt to assign error. In pertinent part, ¶ 11 states:

> Randolph V. Peterson, Managing Member of TCRY, explained that the second set of tracks immediately west of Richland Junction allows trains to meet and pass when entering or exiting the area. According to Mr. Peterson, this passing track is "absolutely essential" because TCRY **makes frequent, if not daily, use of that facility.** When no passing operations are scheduled, TCRY also uses the second track as a siding to store idle freight cars.[97]

Cities assert that this finding is erroneous because, in other testimony Mr. Peterson (TCRY's Managing Member) agreed that TCRY did not use the **junction facility as a passing track** every day.[98] However, Order 02, ¶ 11 did not conclude that TCRY used the second track as a passing track every day. Rather, the ALJ concluded, correctly, that TCRY made frequent if not daily use of the facility – the track which would be crossed by the proposed Center Parkway. That finding is grounded on the unrebutted testimony of Mr. Peterson that the track is frequently used by TCRY in order to allow trains to pass and is "absolutely essential" to TCRY's operations.[99] The ALJ's finding in this regard is not erroneous and the Cities' attack on it is a waste of both time and paper.

In their Petition, the Cities state that the testimony of Kevin Jeffers was "conclusively demonstrative that the siding track is not long enough to be used as a passing track **for one unit train while another unit train passes.**"[100] This contention

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[97] Order 02, p. 4, ¶ 11. Footnotes omitted, emphasis supplied.
[98] TR. 405:14-18.
[99] TR. 381:8-383:15.
[100] TR. 152:10-18. Emphasis added.

is a red herring. At no time did TCRY claim that the existing passing track at Center Parkway would allow two 100+ car "unit trains" to pass each other. Significantly, there was no testimony to the effect that the typical 15-railcar train could not use the passing track to get out of the way of an oncoming train of similar length, or an oncoming unit train for that matter. Cities' evidence in this regard proves nothing.

Likewise, Cities' evidence regarding railcars parked on this passing track does not prove anything. There was no testimony addressing (and no admission by TCRY) that the presence of those parked cars prevented use of the passing track for its intended purpose. For example, there was no testimony that the positioning of these cars left no room for a train to pull onto this track or that TCRY was prevented from moving the parked cars out of the way as needed to accommodate use of the passing track. Further, and more to the point, TCRY's witness on this issue, its Managing Member, Mr. Peterson, was not asked whether the passing track had been used as such during the period that railcars were parked on it.

However, the bottom line on this attack by the City is simple – how and to what extent the second track at the Center Parkway location is used has no impact on the merits of the ALJ's decision in Order 02 – that the Cities failed to demonstrate a public need for the crossing.

VI. CONCLUSION

In light of the foregoing, TCRY respectfully requests that the Commission reject the request in the Petition that it re-write the sound, competent and thorough

determination by the ALJ in Order 02 that the Cities failed to demonstrate public need for the proposed crossing at all, let alone need which would outweigh the inherent hazards of a disfavored at-grade crossing.

Dated this 27th day of March 2014.

TRI-CITY & OLYMPIA RAILROAD

By: _____
Paul J. Petit
One of Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served this day by email and by U.S. Postal Service on all parties of record in this proceeding to the parties identified below:

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DATED this 27th day of March, 2014, at Kennewick, Washington.

Christine Photides

Bob Ferguson
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March 27, 2014

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *City of Kennewick - Petition to Construct a Highway-Rail Grade Crossing, Center Parkway, Kennewick, WA*
Docket TR-130499

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and six copies of Commission Staff's Answer to Cities of Kennewick and Richland Petition for Administrative Review, and Certificate of Service.

Sincerely,

STEVEN W. SMITH
Assistant Attorney General

SWS/emd
Enclosures
cc: Parties w/enc.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499 ANSWER OF COMMISSION STAFF TO CITIES OF KENNEWICK AND RICHLAND PETITION FOR ADMINISTRATIVE REVIEW

I. INTRODUCTION

1 As explained in greater detail in the Commission staff's (staff) testimony, exhibits, and post-hearing brief, the staff supports the City of Kennewick's (the city) petition to open the Center Parkway at-grade crossing. Staff agrees with the city that the city met its burden under the Commission's balancing test for opening at-grade crossings. Staff files this answer to respond only to the city's alternative arguments about the impact of the Growth Management Act and the application of chapter 81.53 RCW to code cities.

A. Impact of the Growth Management on the Commission's Jurisdiction

2 The city's petition for review raises an alternative argument under RCW 36.70A.103, a part of the Growth Management Act (GMA). That section provides that "state agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter...." The Center Parkway crossing is included in the comprehensive plans of both the cities of Kennewick and Richland and in the Benton-Franklin Council of Government's Regional Transportation

Plan.[1] Consequently, the city argues that the Initial Order denying the petition does not conform to this statutory directive.[2] While the city maintains that it is not necessary for the Commission to reach this issue in a final order, it preserves the issue for judicial review if the Commission does not reverse the Initial Order on the merits.[3]

3 The interplay between the GMA and a state agency's jurisdiction has been addressed in only one appellate case. In *Residents v. Site Evaluation Council*[4] the petitioners claimed that the GMA requires the State Energy Site Evaluation Council (EFSEC) to comply with Kittitas County's comprehensive land use plan and regulations. EFSEC argued that the statute it administers preempts the field of siting energy facilities. The state Supreme Court turned to the rules of statutory construction to resolve the conflict. First, a specific statute will prevail over a general statute. Where a general statute, if standing alone, would include the same matter as the specific statute and thus conflict with it, the specific statute will be viewed as an exception to the general statute, whether it was passed before or after the general law. Second, if the general statute was enacted after the specific statute, the courts construe the original specific statute as an exception to the general statute, unless expressly repealed.

4 Applying these rules, the Court found the facility siting statute to be the specific statute and the GMA to be the general one. The later-enacted GMA does not expressly repeal EFSEC's preemption power to site energy facilities.[5] Thus, the Court found that the facility siting statute was a specific exception to, and not superseded by, the GMA.

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[1] Initial Order at ¶ 20.
[2] Petition for Administrative Review at p. 11.
[3] Id. at p. 12.
[4] 165 Wn.2d 275, 197 P.3d 1153 (2008).
[5] Id. at 309-10.

5 Likewise, Chapter 81.53 RCW is a specific statue dealing with the discrete area of railroad crossings, while the GMA is a general statute applying "to the comprehensive planning and management of land within counties and cities.[6] The GMA was enacted after Chapter 81.53 RCW.[7] The GMA does not expressly repeal the Commission's specific authority to regulate railroad crossings. Therefore, the final Commission decision, whether granting or denying the petition, will not violate RCW 36.70A.103 as argued by the city.[8]

6 The Department of Commerce is responsible for adopting rules for criteria to assist counties and cities in adopting comprehensive plans and developmental regulations under the GMA.[9] Commerce rules construe RCW 36.70A.103, the statute cited by the city, "to require each state agency to meet local siting and building requirements when it occupies the position of an applicant proposing development.... This means that development of state facilities is subject to local approval procedures and substantive provisions, including zoning, density, setbacks, bulk and height restrictions."[10] Thus, Commerce appears to interpret the mandate in RCW 36.70A.103 to apply to state agencies when developing state facilities. In this proceeding, the Commission is not acting in that capacity.

7 In addition, the Commerce GMA rules note that comprehensive plans and development regulations take their place among existing laws that are neither repealed nor amended by the GMA. The relationship between the GMA and these existing laws "will have to be elaborated over time. The entire process of determining how the act fits into the

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[6] Id. at 310.
[7] Compare Laws of 1990, 1st ex. session, Chapter 17, and Laws of 1913, Chapter 30.
[8] While Chapter 81.53 RCW does not have an express preemption provision like the statute in *Residents v. Site Evaluation Council* case, the rules of statutory construction relied on by the Supreme Court in that case apply equally here.
[9] RCW 36.70A.190(4)(b).
[10] WAC 365-196-530(2).

overall legal framework will, of necessity, be an incremental one."[11] Finally, the Commerce rules provide that absent a clear statement of legislative intent or judicial interpretation, neither the GMA nor other statutes are presumed to be preemptive, but rather should be read together and construed as mutually consistent.[12]

8 Based on the *Residents v. Site Evaluation Council Case* and the Department of Commerce rules implementing the GMA, the Commission can rule on the city's petition without being in violation of the GMA.

B. RCW 34A.11.020 does not Exempt the City of Kennewick from the Grade Crossing Petition Process

9 The city of Kennewick is the petitioner in this proceeding.[13] The city is a code city under chapter 35A.11 RCW. In its petition, the city states that RCW 35A.11.020, discussed below, exempts the city from the grade-crossing petition process.[14]

10 RCW 35A.11.020 provides that "The legislative body of each code city shall have all the powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law." RCW 81.53.240 provides that, with one exception, chapter 81.53 RCW is not operative within the limits of first-class cities. Relying on the combination of these two statutes, the city argues that it is exempt from the grade-crossing process because first-class cities are.

11 However, RCW 81.53.240 is not a grant of authority to first-class cities; rather it is a geographical limitation on the jurisdiction of the Commission. While a first-class city may benefit from the limit on the Commission's jurisdiction, that benefit is only incidental to the

[11] WAC 365-196-700(1) and (4).
[12] WAC 365-196-705(2).
[13] City of Kennewick Petition to Construct a Highway-Rail Grade Crossing Center Parkway, filed April 8, 2013.
[14] While not waiving this jurisdictional argument, the city believes "UTC review and approval worthwhile." Petition for Administrative Review at p. 6, FN 30.

limitation and cannot be characterized as a grant of power to a first-class city. And there is nothing in RCW 81.53.240 that limits the Commission's jurisdiction within the limits of a code city such as Kennewick. Therefore, the city is not exempt from petitioning to the Commission to open a grade-crossing at Center Parkway.

II. CONCLUSION

12 As noted, staff supports the city of Kennewick's petition to open an at-grade crossing at Center Parkway. However, for the reasons explained above, staff disagrees with the city on the application of both the GMA and RCW 35A.11.020 to its petition.

DATED this 27 day of March, 2014.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

Steven W. Smith
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

Docket TR-130499
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Answer to Petition for Administrative Review upon the persons and entities listed on the Service List below via e-mail and by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 27th day of March, 2014.

ELIZABETH M. DeMARCO

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April 1, 2014

BY EMAIL AND FEDERAL EXPRESS

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Re: Petitioner's Reply Brief: City of Kennewick – Petition to Construct a Highway-Rail Grade Crossing, Center Parkway, Kennewick, WA
Docket TR-130499

Dear Commissioners:

The City of Kennewick and the City of Richland submit their Reply Brief for Docket TR-130499.

Sincerely,

FOSTER PEPPER PLLC

Jeremy Eckert

Enclosure
cc: Parties (by email)

Hard Copy

0-000000589

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 CITIES' REPLY IN SUPPORT OF COMMISSION REVIEW ORAL ARGUMENT REQUESTED

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1. INTRODUCTION

All parties to this petition agree that the UTC[1] must approve the Center Parkway Crossing if the public need for the crossing outweighs the potential for one accident every 53.5 years, *i.e.,* the calculated risk of the crossing.[2] Because the evidence demonstrates that the public need outweighs the speculative danger of the fully guarded crossing, UTC Staff has consistently supported the City of Kennewick and the City of Richland's ("Cities") petition. As concisely articulated in the UTC's Answer Brief: "Staff agrees with the city that the city met its burden under the Commission's balancing test for opening at-grade crossings."[3] The petition is not opposed by any Class I railroad that may traverse the proposed crossing, and TCRY's Managing Member testified that TCRY does not oppose the crossing.[4]

The evidence demonstrates that Center Parkway Crossing addresses a public need by improving emergency response times. For example, the JUB Report demonstrates that the crossing will **improve emergency response times by 30% and 24%** from Kennewick Fire Station 3 and Richland Fire Station 72, respectively.[5] The JUB Report and testimony showed that the improved emergency response times are representative for addresses on Tapteal Drive.[6] The JUB Report's conclusions are supported by pages of documentation and analysis, titled, in part, "Travel Time Calculations."[7] In addition to this supporting data, the testimony described the JUB Report's methodology at the hearing.[8] TCRY's assertion that Mr. Norris "debunked"[9]

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[1] Washington Utilities and Transportation Commission, or "UTC," or "Commission."
[2] The UTC calculated the risks of opening the proposed at-grade crossing, concluding that it would result in 0.018701 collisions per year, **or one accident every 53.5 years.** Exh. KH-1T 25:7-26:22.
[3] Answer of Commission Staff to Cities Petition for Administrative Review at 1 ¶ 1. Staff also agree that the Cities have met their burden under the Commission's outdated "acute public need" test for opening at-grade crossings. TR. 281:20-24.
[4] TR. 414-418.
[5] The JUB Report, Exh. KJ-5 at 6 ("Improve Emergency Response"). Spencer Montgomery, a transportation planner, prepared the JUB Study. In addition to his 23 years of transportation planning experience, Mr. Montgomery was born and raised in the Tri-Cities, and he has worked professionally on transportation issues in the Tri-Cities for the past 13 years. TR. 211:24-25; Exh. SM-1T 2:6-16.
[6] Exh. SM-1T 4:21-5:18.
[7] *See e.g.*, GAN-20-X, pages listed as UTC 001831-001834.
[8] TR. 217:7-219:1.

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the JUB Report is without merit, and unsupported by the record. Mr. Norris did not even consider the foundational data.. The JUB Report,[10] data supporting the JUB Report, [11] pre-filed testimony, [12] and testimony at the hearing[13] demonstrate conclusively that the proposed at-grade crossing will provide a public need by improving emergency response times.[14]

In addition to the JUB Report, the Cities' first responders unanimously testified that the proposed crossing would address a public need by providing a new and direct route to property on Tapteal Drive and an attractive alternative route for access to Gage Boulevard properties from the north, thereby improving emergency response times.[15] No other qualified first responder provided contrary testimony.[16] The Cities' first responders reached their conclusions based upon their on-the-ground experience, and the JUB Report further supports their conclusions.[17] Finally, all parties to this petition agree with the first responders' testimony that improved emergency response times will save lives.[18]

UTC Staff explicitly recognize improved emergency response times as being a "public need,"[19] and the Commission should approve this petition based solely upon the emergency response time evidence,[20] notwithstanding the additional public needs documented in the

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[9] Answer of Respondent 12:15.
[10] Exh. KJ-5 at 6 ("Improve Emergency Response").
[11] Exh. GAN-20-X, pages listed at UTC 001831-001834.
[12] Exh. SM-1T 4:21-5:18.
[13] TR. 217:7-219:1.
[14] The JUB Report's findings are further supported by the City of Richland's Fire Chief Baynes' testimony that the crossing would improve emergency response times by "approximately one minute." TR. 107:15.
[15] Exh. CS-1T 3:2-22 (City of Richland Police Chief Skinner testimony); Exh. NH-1T 3:12-4:13 (City of Kennewick Police Chief Hines testimony); Exh. RGB-1T 3:24-5:4 (City of Richland Fire Chief Baynes testimony); Exh. KMH-1T 3:1-10 (City of Kennewick Fire Chief Hohenberg testimony).
[16] TR. 310:3-7.
[17] Exh. KJ-5 at 6.
[18] Exh. NH-1T, 3:15-18; Exh. RGB-1T 4:4-7.
[19] TR. 280:6-10.
[20] UTC Staff explicitly recognize improved emergency response times as being a "public need." TR. 280:6-10. Evidence demonstrating improved emergency response times includes the following: Exh. KJ-5 at 6 (JUB Report); Exh. GAN-20-X (analysis supporting the findings in the JUB Report); Exh. SM-1TR 4:21-25 (Mr. Montgomery's pre-filed testimony regarding improved emergency response times); TR. 217:7-219:1 (Mr. Montgomery's testimony at the hearing); TR. 107:15 (Chief Baynes' testimony that the

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evidence. The law favors opening an at-grade crossing when demonstrated improved emergency response times outweigh the site specific risk of the proposed crossing (*i.e.*, one incident every 53.5 years).[21]

Without Commission action, the Initial Order will create a dangerous precedent by allowing the Administrative Law Judge ("ALJ") and Tri-City and Olympia Railroad ("TCRY") to change the UTC's accepted definition of "public need" to an elevated standard that has no basis in law or UTC precedent. All parties agree that the Cities must demonstrate a "public need." The Cities have satisfied this requirement with substantial evidence.[22] UTC staff testified that their independent analysis of the Cities' petition and testimony concluded that the demonstrated public need outweigh mitigated site-specific dangers of the proposed crossing.[23] However, without any authority, the ALJ and TCRY argue that evidence demonstrating improved emergency response times does not rise to the level of acceptable "public need" unless the Cities satisfy at least two additional criteria: (1) the Cities must also prove a negative by conclusively demonstrating that no other alternative exists to improve emergency response times,[24] and (2) the Cities must also prove that they are failing to achieve an unarticulated emergency response time standard.[25] This is neither the statutory standard, nor the Commission's standard for "public need."

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crossing will improve emergency response times by "approximately one minute."). *Also see* pre-filed testimony of **all** first responders in the area stating that the crossing will address a public need by improving emergency response times: CS-1T 3:2:22; NH-1T 3:12-4:13; RGB-1T 3:24-5:4; KMH-1T 3:1-10; Exh. CS-2T:11-22; Exh. KMH-2T 2:11-22; Exh. RBG-2T 2:11-3:20. *Also see* pre-filed testimony by other qualified professionals associated with the Center Parkway Crossing: Exh. JD-1T 4:22-25; RS-1T 6:1-7. *Also see* pre-filed testimony by UTC Staff: KH-1T 17:14-19:23.

[21] RCW 81.53.020.

[22] *See* the substantial evidence identified in footnote 19.

[23] KH-1T 28:13-16.

[24] Answer of Respondent 11:6-8; Initial Order 02 ¶ 61 (ALJ contesting that the Cities must build new fire stations to improve emergency response times), the absurdity of this conclusion is further analyzed at pp. 34-35 in the Cities' Petition for Review. *Also see* the absurdity of TCRY's suggested "alternative" route, further analyzed in pp. 27:14-28:19 of the Cities' Petition for Review.

[25] Answer of Respondent 11:6-8 (TCRY arguing that the Cities must demonstrate failure to achieve NFPA emergency response time standards); Initial Order 02 ¶ 61 (ALJ concluding that the Cities must "regularly fail" to achieve their LOS).

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The ALJ and TCRY's new definition of "public need" creates an unlawful standard that results, in part, in the Initial Order's absurd conclusion that the Cities presented no evidence of a public need.[26] And the unlawful standard is dangerous because, if adopted, it will prevent the UTC from timely approving the Cities' (and future petitioners') petitions to complete planned and funded transportation improvements that are needed to improve emergency response times and meet critical safety issues.

Under the UTC's **accepted** "public need" standard, a showing of public need only requires the petitioner to demonstrate improved emergency response times, or improve traffic flow, or reduction in traffic incidents, or improving access to services and developable land, or completing the roadway network.[27] Then, in determining whether to approve the petition, the Commission weighs the identified public need against the risk of the proposed crossing, which, the UTC calculated for this petition at one incident every 53.5 years. Although TCRY provided no calculations for this crossing, TCRY's Managing Member testified, and UTC data shows that no train-car collision has ever occurred at a TCRY-owned or –operated grade crossing.[28]

Significantly, TCRY's Response Brief does **not** contest evidence that the Center Parkway Crossing improves access to services and developable land,[29] and TCRY does **not** contest that the crossing will complete a roadway network,[30] thus providing additional uncontested "public need" grounds for the Commission to approve this petition.[31]

Finally, TCRY does not contest the following evidence and findings: (1) a grade separated crossing is not practicable;[32] (2) the Cities designed the crossing with safety features

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[26] Initial Order 02 ¶ 22.
[27] TR. 280:6-10.
[28] TR. 399 (Mr. Peterson testified that TCRY reports all incidents to UTC, and Ms. Hunter at TR. 270:7-10 testified that UTC records show no incidents at UTC-owned or –operated grade crossings).
[29] As demonstrated in section 3.2 of this Reply.
[30] As demonstrated in section 3.3 of this Reply.
[31] The Initial Order failed to analyze this evidence of public need.
[32] Initial Order 02 ¶ 75.

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that **exceed** typical engineering standards for such an intersection,[33] (3) that the calculated risk of the crossing is one incident every 53.5 years,[34] and (4) even under TCRY's inflated growth projections, the crossing will be closed less than three percent (3%) of the day and protected by the documented safety features.[35] Even assuming TCRY's inflated track usage data are correct (which it is not), the Cities have presented overwhelming evidence that the public need for the crossing outweighs the speculative risk of the proposed crossing. The Cities respectfully request that the Commission reject the ALJ's proposed conclusions, agree with its Staff, and APPROVE the Cities' at-grade crossing petition.

2. THE INITIAL ORDER FAILS TO DEFER TO THE UTC'S CONSISTENT INTERPRETATION OF THE LAW, CREATING A DANGEROUS NEW PRECEDENT

In violation of law, neither the ALJ, nor TCRY defer to the UTC's definition of "public need," which the UTC defines as "good cause shown, reasonable, consistent with public interest, public convenience and necessity."[36] Although the ALJ and TCRY concede that "acute public need" is not the controlling standard,[37] the ALJ and TCRY apply a new, elevated standard that is inconsistent with UTC's application of the term "public need." In fact, the ALJ and TCRY's application of "public need" establishes an unlawful standard that is even more challenging for a petitioner to achieve than the now outdated "acute public need" standard.

2.1 A Showing of "Public Need" Does Require the Cities to Prove A Negative, Demonstrating That No Other Alternative Exists.

Both ALJ and TCRY argue that the Cities emergency response data does not rise to the level of "public need" because, according to the ALJ and TCRY, other alternatives may be

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[33] Cities' Petition for Review 29:13-31:6; KH-3; KJ-4; TR. 263:18-23, 264:10-13, 265:6-9. *See* Initial Order 02 at ¶ 76. Also see ¶¶51-54.
[34] Exh. KH-1T 25:7-26:22. See, Initial Order 02 ¶ 17, footnote 29.
[35] TR. 233:18-20. This figure was further supported by track usage data submitted by BNSF, UPRR, and TCRY. TR. 234:8-18.
[36] TR. at 277:21-22; *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 77, 11 P.3d 726 (2000) ("Where a statute is within the agency's special expertise, the agency's interpretation is accorded great weight").
[37] Initial Order 02 ¶61.

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available. This approach applies the superseded "acute public need" standard that the UTC used in the *Town of Tonasket* petition to deny an at-grade crossing (there, the Town failed to analyze potential alternatives to the proposed crossing).[38] Here, the traffic data and all plans show that the alternatives are not sufficient.[39] The Initial Order and TCRY argue that Cities failed to analyze potential alternatives because the Cities could build additional fire stations closer to areas that require better response times, rather than constructing a direct route to serve those areas from the Cities' existing fire stations.[40] This analysis is truly unprecedented. In *Town of Tonasket*, the UTC directed the Town to analyze other crossing routes, while, here, the ALJ is directing Cities to build fire stations.[41] The ALJ's analysis is without any authority of law, and it is inconsistent with the UTC's accepted "public need" standard.

2.2 A Showing of "Public Need" Does Not Require the Cities to Prove that they are Failing to Achieve Emergency Response Time Standards.

To be clear, the Cities demonstrate public need because the Center Parkway Crossing will improve emergency response times, in addition to providing other documented public need. The Cities included data demonstrating the Cities' failure to achieve their established emergency response time level of service ("LOS") to demonstrate the critical need to build the crossing immediately. Under the accepted UTC standard, the Cities do not need to demonstrate failing emergency response times in order for the documented improved emergency response times to rise to the level of "public need."[42]

For the first time in this petition proceeding, TCRY concedes that Cities do not need to demonstrate failing LOS for emergency response times.[43] Then, curiously, TCRY's Answer

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[38] *Town of Tonasket*, Docket No. TR-921371, Order Denying Review (1993).
[39] *See e.g.*, Exhs. KMH-1T 3:12-21; NH-1T 4:15-23; RGB-1T 5:15-6:20; CS-1T 3:24-4:23.
[40] Initial Order 02 ¶ 61; Answer of Respondent 11:6-8; *also see* Answer of Respondent 13:3-4 ("... Cities fails to establish the lack of reasonable alternative access for public emergency services.").
[41] Initial Order 02 ¶ 61.
[42] TR. at 277:21-22; *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 77, 11 P.3d 726 (2000) ("Where a statute is within the agency's special expertise, the agency's interpretation is accorded great weight").
[43] Answer of Respondent 8:11-15.

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Brief argues that the Cities' evidence does not rise to a level of "public need" because the Cities have not demonstrated that they are failing to achieve National Fire Protection Standards for emergency response times.[44]

Further, the Cities are not "mindreading" when they correctly state that the Initial Order required the Cities to demonstrate "regularly failing" emergency response times. The Initial Order reads:

> The Cities introduced no evidence of a public need for faster response times and did not adequately explain how the Center Parkway extension would contribute to improved public safety.[45]

Just before this conclusion, the Initial Order states that it is necessary for the Cities to show "regularly failing" emergency response times in order to demonstrate a public need for faster response times:

> Although the Cities point out individual statistics where response times have occasionally exceeded [the Cities' emergency response time] goals, the Cities' emergency responders are not regularly failing to achieve their established LOS.[46]

The Commission must reject this unlawful standard that is inconsistent with UTC's accepted definition of public need.

Any requirement for the Cities to demonstrate failed emergency response times is dangerous and absurd.[47] The Cities' first responders unanimously testified that the Cities failure to achieve emergency response times places lives at risk.[48] RCW 81.53.020 does not require the City to demonstrate lives have been lost in order to demonstrate "public need."

2.3 The Accepted UTC Balancing Test.

Under the **accepted** UTC balancing test, the UTC will approve a petition for an at-grade crossing if the **public need** for the crossing outweighs the **site-specific dangers** of the

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[44] Answer of Respondent 12:1-3.
[45] Initial Order 02 ¶ 60.
[46] Initial Order 02 ¶ 60.
[47] See Cities Petition for review 10:8-11:7.
[48] *See e.g.*, Exhs. RGB-18-X; RGB-1T at 4:4-7.

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crossing.[49] There are two elements to this balancing test: "public need" and "site-specific dangers."

2.3.1 Demonstrating "Public Need" Under the UTC's Adopted Balancing Test.

UTC Staff defines public need as "good cause shown, reasonable, consistent with public interest, public convenience and necessity."[50] UTC Staff also provided non-exclusive examples of "public need" as including: "reduction time of emergency response, improving traffic flow around the proposed crossing location, improved access to services and developable land ..."[51] The ALJ and TCRY must defer to the agency's interpretation of the law.[52]

Under the UTC's **accepted** "public need" standard, a showing of public need only requires the petitioner to demonstrate improved emergency response times, or reduction in traffic congestion, or reduction in traffic incidents, or providing infrastructure to support community and economic development, or completing the roadway network.[53]

2.3.2 Quantifying the "Site-Specific Dangers" of the Proposed Crossing.

The UTC calculated the site-specific danger of the proposed crossing at one incident every 53.5 years. TCRY fails to acknowledge that advances in railway safety, as demonstrated in the safety features for the Center Parkway Crossing, have significantly reduced the inherent dangers of at-grade crossings. Lacking any recent legal authority, TCRY repeatedly cites case law from the **Great Depression** (1938) that involved a train-car collision at an at-grade crossing that was not protected by **any** signal light or warning devices.[54] The UTC recognizes that safety features for the proposed crossing may mitigate the site-specific safety issues for proposed at-grade crossings. Here, to mitigate the identified site-specific safety issues, the proposed crossing

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[49] RCW 81.53.020; RCW 81.53.030.
[50] TR. at 277:21-22.
[51] TR. 280:6-10.
[52] *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 77, 11 P.3d 726 (2000) ("Where a statute is within the agency's special expertise, the agency's interpretation is accorded great weight").
[53] *See e.g.*, TR. 280:6-10.
[54] Answer of Respondent 9:4, *citing Reines v. Chicago, Milwaukee, St. Paul & Pacific R.R Co.*, 195 Wash. 146, 149-49, 80 p.2d 406 (1938).

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includes **modern** (2014) safety features that **exceed** typical engineering standards for such crossings.[55]

The Cities acknowledge that UTC's calculation of the speculative site-specific danger does not eliminate the Cities burden to demonstrate public need. Yet, contrary to TCRY's assertion, the law **favors** at-grade crossings when the public need for the crossing outweighs the site-specific risk of the crossing.[56] That is why this petition process exists.

3. THE DEMONSTRATED PUBLIC NEED OUTWEIGHS THE SPECULATIVE RISK OF THE PROPOSED CROSSING

The Initial Order reached the unsupported conclusion that the Cities' presented no evidence of public need because the ALJ failed to defer to UTC's definition of "public need" and because the ALJ mischaracterized (or ignored) the evidence. When applying the accepted "public need" standard, the evidence demonstrates that the public needs are numerous, including: (1) improved emergency response times, (2) reduced traffic accidents, (3) completing the roadway network, (4) improved traffic flow, and (5) improved access to services and developable land. In contrast, UTC Staff analysis correctly concluded that the Cities satisfied all of the public need standards applicable to this petition. Staff have maintained this position during its pre-filed testimony,[57] at the hearing,[58] and now in this petition for review.[59] Because of the proposed crossing's speculative risk, each documented public need, by itself, provides the UTC with grounds to approve the Cities' petition.

3.1 The Cities Demonstrated that the Crossing will Improve Emergency Response Times.

Numerous exhibits demonstrate that the Crossing will improve emergency response times. For example, the JUB Report demonstrates that the crossing will **improve emergency**

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[55] Cities' Petition for Review 29:13-31:6; KH-3; KJ-4; TR. 263:18-23, 264:10-13, 265:6-9. *See* Initial Order 02 at ¶ 76. *Also see* ¶¶51-54.
[56] RCW 81.53.020; TR. 274:3-12 (explaining that the UTC supports at-grade crossings when the public need outweighs the site-specific dangers).
[57] KH-1T 13:19.
[58] TR. 218:14-219:8.
[59] Answer of Commission Staff to Petition 1 ¶ 1.

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response times by 30% and 24% from Kennewick Fire Station 3 and Richland Fire Station 72, respectively.[60] The JUB Report was prepared by a transportation planner with 23 years of relevant transportation planning experience. In contrast to Mr. Norris, TCRY's expert witness,[61] the JUB Report was prepared by a planner well familiar with the area surrounding the crossing: he was born and raised in the Tri-Cities, and he has worked professionally on transportation issues in the Tri-Cities for the past 13 years.[62]

The JUB Report demonstrates that the improved emergency response times are representative for addresses on Tapteal Drive. Addressing Mr. Norris's argument that the JUB Report improperly focused on response times to the Holiday Inn on Tapteal Drive, Mr. Montgomery explained, "Mr. Norris fails to understand that the Holiday Inn is representative of approximately half of the area shown and it was used for demonstrative purposes."[63]

The JUB Report's conclusions are supported by pages of documentation and analysis, titled, in part, "Travel Time Calculations."[64] At best, TCRY is misleading the Commission when it asserts that there is "no substantiation"[65] of the JUB Report's conclusions. Cities direct the Commission to the substantiation in Exhibit GAN-20-X (pages listed UTC 001831-001834). In addition to this supporting data and analysis, Mr. Montgomery further described the JUB Report's methodology at the hearing.[66] The JUB Report,[67] the data supporting the JUB Report, [68] Mr. Montgomery's pre-filed testimony, [69] and Mr. Montgomery's testimony at the hearing[70]

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[60] The JUB Report, Exh. KJ-5 at 6 ("Improve Emergency Response"). Spencer Montgomery, a transportation planner, prepared the JUB Study. In addition to his 23 years of transportation planning experience, Mr. Montgomery was born and raised in the Tri-Cities, and he has worked professionally on transportation issues in the Tri-Cities for the past 13 years. TR. 211:24-25.

[61] TCRY's expert witness, Mr. Norris, has no relevant experience in at-grade railway crossings, did not attend the UTC Diagnostic Meeting, and he does not have first-hand experience with the Cities' transportation network. Exh. GAN-1T 2:22-3:3; Exh. KH-5 at page 1; TR. 313:3.

[62] TR. 211:24-25.

[63] SM-1T 4:21-5:18.

[64] *See e.g.*, GAN-20-X, pages listed at UTC 001831-001834.

[65] Answer of Respondent 12:17.

[66] 217:7-219:1.

[67] The J-U-B Report, Exh. KJ-5 at 6 ("Improve Emergency Response").

[68] GAN-20-X, pages listed at UTC 001831-001834.

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definitively demonstrate that the proposed at-grade crossing will provide a public need by improving emergency response times.

The JUB Report's findings are further supported by the City of Richland's Fire Chief Baynes' testimony that the crossing **would improve emergency response times by "approximately one minute."**[71] In addition, the Cities' first responders unanimously testified that the proposed crossing would address a public need by providing a new and direct route to property on Tapteal Drive, thereby improving emergency response times.[72] All parties to this petition agree with the first responders' testimony that improved emergency response times will save lives.[73] No other qualified first responder provided contrary testimony.[74]

The evidence also demonstrates that the proposed crossing is a viable route for first responders because it will be closed less than one percent (1%) of the day to accommodate train traffic.[75] Mr. Montgomery testified that this closure rate "is not significant enough closing to merit particular attention from emergency response vehicles to alert their route of travel.[76] Mr. Montgomery reached this conclusion based upon the existing and projected track usage data submitted by BNSF, UPRR, and TCRY.[77] At the hearing, Mr. Montgomery clearly articulated that, even under TCRY's inflated growth projections, the crossing would be closed less than three percent (3%) of the day (this figure includes TCRY's information submitted in its

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[69] SM-1T 4:21-5:18.
[70] 217:7-219:1.
[71] TR. 107:15.
[72] CS-1T 3:2-22 (City of Richland Police Chief Skinner testimony); NH-1T 3:12-4:13 (City of Kennewick Police Chief Hines testimony); RGB-1T 3:24-5:4 (City of Richland Fire Chief Baynes testimony); KMH-1T 3:1-10 (City of Kennewick Fire Chief Hohenberg testimony).
[73] Exh. NH-1T, 3:15-18; RGB-1T 4:4-7.
[74] TR. 310:3-7.
[75] TR. 231:5-6; Exh. SM-1TR 5:7.
[76] Exh. SM-1TR 5:6-8.
[77] TR. 231:17-232:20.

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Response Brief).[78] Finally, Exhibit SM-1TR 6:15-26 explains why there are no queuing issues for the proposed crossing.

The ALJ clearly erred when he concluded that the Cities presented no evidence demonstrating public need.[79] TCRY has no basis for its false statement that Cities rely on only three pieces of evidence to demonstrate improved emergency response times.[80] The Cities demonstrate improved emergency response times with the following evidence:

- Exh. KJ-5 at 6 (JUB Report);
- Exh. GAN-20-X (Analysis supporting the findings in the JUB Report);
- Exh. SM-1T (Mr. Montgomery's pre-filed testimony regarding improved emergency response times);
- TR. 217:7-219:1 (Mr. Montgomery's testimony at the hearing);
- TR. 107:15 (Chief Baynes' testimony that the crossing will improve emergency response times by "approximately one minute");
- *Also see* pre-filed testimony of **all** first responders in the area stating that the crossing will address a public need by improving emergency response times: Exh. CS-1T 3:2-22; Exh. NH-1T 3:12-4:13; Exh. RGB-1T 3:24-5:4; Exh. KMH-1T 3:1-10; Exh. CS-2T:11-22; Exh. KMH-2T 2:11-22; Exh. RBG-2T 2:11-3:20;
- *Also see* pre-filed testimony of City Planning Staff: Exh. RS-1T 6:1-7;
- *Also see* pre-filed testimony of the Cities' public works staff: Exh. JD-1T 4:22-25;
- *Also see* pre-filed testimony by UTC Staff: KH-1T 17:14-19:23.

Considering the totality of the evidence, which includes Mr. Norris's unsubstantiated critique of the JUB Report, the evidence clearly demonstrates that the Center Parkway Crossing provides a public need that outweighs its speculative risk.

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[78] TR 233:18-20. This figure was further supported by track usage data submitted by BNSF, UPRR, and TCRY. TR. 234:8-18.
[79] Initial Order 02 ¶60.
[80] Answer of Respondent 10:17-20.

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3.1.1 The Cities' Critical Need to Construct the Crossing Immediately.

The Cities also presented evidence to demonstrate the critical need to construct the crossing immediately, because the Cities' first responders are failing to achieve emergency response time standards, thereby placing the public at risk.[81]

For example, Exhibit GAN-18-X documented 42 emergency responses to Tapteal Drive addresses.[82] For the 42 emergency responses to Tapteal Drive, the first responders failed to respond in less than four minutes in 35 events, and the first responders failed to respond in less than five minutes in 29 events. In other words, the Cities' have demonstrated that their first responders are failing to achieve emergency response times 83% of the time if the standard is four minutes, and the Cities' have demonstrated that their first responders are failing to achieve emergency response times 69% of the time if the standard is five minutes. The Cities have demonstrated that they achieve the ALJ's unlawful standard – **the Cities are, in fact, "regularly failing" to achieve LOS and NFPA emergency response standards.**[83] Lives are at risk, and they continue to remain at risk while this petition is pending before the Commission.

To be clear, the Cities do not need to demonstrate that they are failing to achieve LOS or NFPA emergency response time standards to demonstrate a "public need." Such a standard is dangerous. The Cities have demonstrated that the crossing will improve emergency response times, and the Cities provided supplemental data to demonstrate the immediate need for the crossing. Because the Cities have demonstrated that the proposed crossing will improve emergency response times, and because the site-specific risk is speculative, the Commission should approve the petition.

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[81] Exhs. GAN-20-X; GAN-3-X at CF 5-3.
[82] Exh. GAN-18-X; TR. 102:25-105-21 (describing the facts and conclusions in GAN-18-X).
[83] It remains unclear why TCRY's expert witness (Mr. Norris) fails to understand the critical public safety issue facing the Cities. Answer of Respondent 11:14-16. The response times for Tapteal addresses are clearly listed on the spreadsheet listed KFD at the top. Chief Baynes' narrative in GAN-18-X further describes the data.

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3.2 The Cities Demonstrated that the Crossing will Reduce Traffic Accidents.

The Center Parkway Crossing also provides a "public need" by reducing traffic accidents on Columbia Center Boulevard, satisfying the UTC's definition of "public need" as being "reasonable" or "good cause shown."[84] Cities demonstrated a reduction in traffic accidents by demonstrating that the new crossing will reduce the number of vehicles traveling on Columbia Center Boulevard, one of the most dangerous transportation corridors in the City.[85] For example, from 2001-2012, 154 accidents occurred at the Columbia Center Boulevard and Quinault intersection, resulting in 55 bodily injuries. Over this same period, 165 accidents occurred at the Columbia Center Boulevard and Canal Drive intersection, resulting in 65 bodily injuries.[86] TCRY's assertion that Colombia Center Boulevard is "inherently safe" is without merit.[87]

It is unclear what other information is needed to demonstrate that the Center Parkway Crossing will reduce traffic accidents. The Cities have provided the Commission with the following evidence: (1) 319 collisions occurred at just two intersections on Columbia Center Boulevard over a twelve year period;[88] (2) the collisions resulted in 120 bodily injuries; (3) the Center Parkway Crossing will divert 210 vehicles *per hour* away from documented dangers of Columbia Center Boulevard;[89] and (4) the risk of the proposed at-grade crossing is one incident every 53.5 years.[90] Applying the UTC's balancing test - if the proposed crossing reduces accidents on Columbia Center Boulevard *by just one accident every 53.4 years*, the public need for the crossing outweighs the site-specific risk of the crossing, which is calculated at one incident every 53.5 years. Because the Cities have demonstrated that the proposed crossing will reduce vehicle accidents on Columbia Center Boulevard, and because the site-specific risk of the crossing is speculative, the Commission should approve the petition.

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[84] TR. 277:21-22.
[85] Exh. JD-1T at 4. The JUB Report further supports Mr. Deskins' testimony. Exh. KJ-5T at 6.
[86] Exh. JD-3-X.
[87] Answer of Respondents 15:9.
[88] Exh. JD-3-X, further discussed in section 3.4 of this Reply.
[89] JUB Report, Exh. KJ-5 at 10.
[90] Exh. KH-1T 25:7-26:22

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3.3 The Cities Demonstrated that the Crossing will Complete the Long-Planned Roadway Network.

The Center Parkway Crossing also provides a "public need" by completing the regional roadway network, satisfying the UTC's definition of public need as being "reasonable" or "good cause shown."[91] This crossing is the final step in a series of transportation projects to improve the functionality of the network by providing a north-south connection in the existing grid system.[92] Since 2006, the at-grade Center Parkway Crossing has been identified as an essential capital improvement in (1) the City of Richland Comprehensive Plan,[93] (2) the City of Kennewick Comprehensive Plan,[94] and (3) the Regional Transportation Plan.[95] Recognizing the regional significance of this project, the Center Parkway Crossing has received funding from the State through the Washington State Community Economic Revitalization Board, the Surface Transportation Program Regional Competitive Fund, and the Transportation Improvement Board.[96] Significantly, TCRY does not contest this evidence.

As Mr. Montgomery testified, "The transportation system works as a whole. If the region cannot move cars, then it also cannot move trucks. If the system cannot move trucks, then there are delays in loading and unloading rail freight."[97] A complete roadway network will also increase mobility for citizens and for first responders, as demonstrated above. Because the Cities have demonstrated that the proposed crossing will complete the roadway network, and because the site-specific risk is speculative, the Commission should approve the petition.

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[91] TR. 277:21-22.
[92] JUB Report, Exh. KJ-5 at 5.
[93] Exh. RS-2 at T 5-4 ("Center Parkway from Tapteal to Gage: Construct 3-lane road").
[94] Exh. GAN-7-X at 58 to 59.
[95] Exh. RS-4 at H-3 ("Center Parkway Extension – Gage to Tapteal").
[96] Exh. JP-2; JP-3.
[97] Exh. SM-1TR at 3.

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3.4 The Cities Demonstrated that the Crossing will Improve Traffic Flow.

UTC Staff testified that "public need" includes "improving traffic flow around the proposed crossing location."[98] The JUB Report demonstrates that the Center Parkway crossing will provide this public need by decreasing traffic volumes on Colombia Center Boulevard by 210 vehicles per hour and by decreasing traffic volumes on Steptoe Street by 310 vehicles per hour.[99] Mr. Montgomery summarized the data: "Center Parkway has been planned to provide relief to both Columbia Center Boulevard as well as Steptoe Street, consistent with the philosophy of providing collector roadways parallel and in between arterial roadways."[100] Mr. Deskins, the City of Kennewick's transportation engineer, agreed with the JUB Report's conclusions.[101] Even TCRY concedes that the crossing would reduce traffic "on the most heavily traveled street in the area – Colombia Center Boulevard – a decrease of 210 vehicles per hour ..."[102] Like the ALJ, TCRY fails to acknowledge the documented traffic flow improvements on Steptoe Street.

The Cities demonstrated improved traffic flows with substantial data. At best, TCRY is misleading the Commission when it asserts that "data has not been provided" to support the improved traffic flow.[103] Cities direct the Commission to the data in Exhibit KJ-5, pages 8-9 (titled "Traffic Forecast and Operational Analysis), Exhibit KJ-5, Appendix (titled "Center Parkway Traffic Study – Traffic Forecast"), and Exhibit GAN-20-X (pages listed UTC 001813-001831).

Similar to emergency response time LOS data, Cities presented LOS data for failing intersections near the proposed crossing to demonstrate that the immediate need for the Center

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[98] TR. 280:6-10.
[99] JUB Report, Exh. KJ-5 at 10.
[100] JUB Report, Exh. KJ-5 at 6.
[101] TR. 76:2-7.
[102] Answer of Respondent 18:5-6.
[103] Answer of Respondent 16:16-17.

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Parkway Crossing.[104] TCRY's LOS-related arguments are without merit.[105] No authority requires the Cities to demonstrate failing LOS intersection data. Because the Cities have demonstrated that the proposed crossing will improve traffic flow, and because the site-specific risk is speculative, the Commission should approve the petition.

3.5 The Cities Demonstrated that the Crossing will Improve Access to Services and Developable Land.

UTC Staff testified that "public need" includes "improved access to services and developable land ..."[106] The JUB Report identifies the crossing as providing access to nearly 60 acres of land that has utilities and collector roadway access, but lacks direct access to the commercial area south of the railway.[107] The Initial Order fails to include this undisputed evidence that further demonstrates the public need for the crossing. Significantly, TCRY does not contest this evidence. Because the Cities have demonstrated that the proposed crossing will improve access to services and developable land, and because the site-specific risk is speculative, the Commission should approve the petition.

4. THE PETITION ACCOUNTS FOR ANY INCREASE IN RAIL TRAFFIC

The Center Parkway Crossing accounts for any increase in rail traffic, as described in section five of TCRY's Response Brief.

Coordinated Planning. The Cities coordinate all of their rail-related actions through comprehensive planning. The evidence demonstrates that Cities have thoughtfully planned and executed the identified rail-related economic development opportunities.[108] The evidence also demonstrates that the Cities have thoughtfully planned transportation improvements that are

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[104] Exh. GAN-17-X
[105] Answer of Respondent 15:11-16:5.
[106] TR. 280:6-10. Cities note that all parties agree that the "acute public need" standard is not applicable.
[107] Exh. KJ-5 at 6. The USDOT Railroad-Highway Grade Crossing Handbook explicitly considers authorizing at-grade crossings solely to "provide access to any land development. Exh. KH-10.
[108] GAN-16-X (demonstrating the economic development activities are considered in the Cities' comprehensive planning documents).

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necessary to accommodate economic development and a growing population.[109] TCRY has presented no evidence to demonstrate any other conclusion. The Cities' planning documents and actions demonstrate a comprehensive approach to accommodate regional growth.

Track Usage Data. Once again, TCRY presents the Commission with inaccurate track data.[110] To be clear, track usage is 3.2 to 5.02 trains per day, or approximately 1,159 to 1,839 trains per year.[111] In contrast to these calculations, TCRY asserts that annual train traffic through the Richland Junction was 4,500 railcars in 2012 and 5,100 rail cars in 2013.[112] Now, TCRY argues that its 20% annual growth rate applies across the board, not only to TCRY, but also to BNSF and to Union Pacific Railroad ("UPRR").[113] Information provided by BNSF and UPRR does not support TCRY's inflated track data or projected track data.[114] It is impossible for the railroads to sustain a 20% growth rate over numerous years.[115]

Regardless, the Cities address the remainder of TCRY's concerns as if its purported track data is correct, *i.e.*, assuming annual rail traffic of 20,000 railcars (taking TCRY's 5,100 railcars with a 20% growth rate over more than seven consecutive years). The inflated track data does not change the fact that the crossing will remain open at least 97% of the day,[116] and the site-specific risk of the crossing remains mitigated by safety features that exceed typical engineering standards for similar intersections.[117]

Minimal Railway Closure. Even using TCRY's inflated growth figures, the evidence demonstrates that the Center Parkway Crossing will be closed less than three percent (3%) of the

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[109] Exh. RS-2 at T-4 (City of Richland Comprehensive Plan, "Center Parkway from Tapteal to Gage: Construct 3-lane road"); Exh. GAN-7-X at 58-59 (City of Kennewick Comprehensive Plan); Exh. RS-4 at H-3 (Regional Transportation Plan, "Center Parkway Extension – Gage to Tapteal").

[110] For example, TCRY Managing Member, Mr. Peterson, impeaching his own testimony regarding the siding track. Cities' Petition for Review 14:1-7.

[111] Exhs. KJ-10TR 4-7; KJ-11; KJ-12.

[112] Initial Order 02 ¶ 12.

[113] Answer of Respondent 28:13-18.

[114] Exhs. RVP-2-X; RVP-4-X.

[115] TR.189:23-190:6.

[116] TR. 233:18-20.

[117] Cities' Petition for Review 29:13-31:6; KH-3; KJ-4; TR. 263:18-23, 264:10-13, 265:6-9. *See* Initial Order 02 at ¶ 76. *Also see* ¶¶51-54.

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day.[118] TCRY does not contest this figure. Mr. Montgomery calculated that it is more likely that the crossing will be closed approximately one percent (1%) of the day, based upon realistic track usage figures and projections, *i.e.*, applying an industry standard growth rate to data submitted by BNSF and Union Pacific Railroad.[119] The Cities have demonstrated that the Center Parkway Crossing will provide a reliable north-south connection. The Cities provide Mr. Montgomery's defense of his calculations during TCRY's cross-examination, below:

> **Q. What existing conditions are you referring to?**
>
> A. Well, actually -- actually, I reviewed the data request information from the different railroads that supplied the number of trains that are occurring there today. And based upon the number of weekly trains, I think there was a range provided of 10 to 20 TCRY trains and 10 BNSF weekly trains, which would give us a range of 20 to 30. Divide that by the number of days in the week, and you get three to four trains. And based upon the two minutes' closure time for each train, you do the math, it comes out to less than 1 percent of the minutes in a day that the crossing would be occupied.
>
> **Q. But your data in that regard did not take into consideration any likely increase in rail traffic over this line at Center Parkway, correct?**
>
> A. Not in the pre-filed [testimony]. But if we want to do a little bit of math, the statement from TCRY and some of the data you were going over with Mr. Jeffers earlier, I thought it was quite interesting that they were predicting the number of railcars, not the number of trains, but railcars. And the forecast that [TCRY] gave -- and I know of no studies that [TCRY] performed to identify that. It's really, I'll say, a wish list, supposedly. And the reason why I say that is because we studied a different crossing of this same line 12 years ago, and the number of trains at that time was four. And today we have three to four [trains]. So it hasn't changed much. Now, I understand, everybody would like more train traffic because it's good for economic development. But let's take [TCRY's] number of 20,000 railcars, and they think that a lot of these are going to occur in unit trains, which have at least a hundred cars in each one, that's a total -- and that's 20,000 per year was their [(TCRY's)] number. And that sounds like a really big number to me. And I thought, wow, 20,000 railcars, that's a lot of cars. There's only, I forget, I don't know what the number is today, but there's 2,000 or something. That's a huge increase.
>
> **Q. Per year?**
>
> A. Per year.
>
> **Q. Yeah.**

[118] TR. 233:18-20.
[119] Exh. SM-1T 5:7.

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A. But if there's a hundred railcars in a unit train, that's only 200 trains over the course of a year, that's less than one a day. And so the 1 percent of the time of the number of minutes in a day that the crossing would be closed, thus impacting the emergency response, might hold with one more train there a day. I mean, even doubling, I think, is pretty generous.

Q. But the assumptions you've made here is that all the increased traffic is going to be unit train traffic, number one; and, number two, all the unit train traffic is going to be TCRY traffic, correct?

A. In what I just spoke about, yes. But, okay, you want to cut it in half or whatever, it's still going to be a 2 or 3 percent of the minutes of a day that would be occupied, you know, making that crossing unavailable for anybody to use. And if it was a regular intersection with a traffic signal, it could be closed, you know, for regular traffic operations. You know, the intersection of Steptoe and Gage has a red light for one approach all day long. I'm saying it's insignificant to say that the train, the train event closing the crossing to emergency response is insignificant.

Q. It's insignificant without taking into consideration the fact that there are three railroads that can run on this line, UP, TCRY, BNSF? You understand that to be the case?

A. I understand there's three railroads operating there, and I understand the growth rates that they're using. And even if all of it came true, it -- it's still a miniscule portion of the day, and I don't think that it would influence the route that the emergency responders would take.

Q. But you don't have any actual numbers for the -- and you did not take into consideration any actual numbers for increase in BNSF and UP trains, whether they be unit trains or shorter trains?

A. Not in my pre-filed testimony, but we discussed that just now.

Q. I understand.[120]

Mr. Montgomery's testimony rebuts TCRY's attempt to demonstrate that increased track usage shifts the scales of UTC's balancing test.

No Change to the Crossing's Safety Features. The evidence also demonstrates that the crossing's safety features **exceed** typical engineering standards for such an intersection.[121] The Cities hired railway safety experts, Kevin Jeffers and Susan Grabler of David Evans Associates, to design the safety features for the proposed crossing, and the ALJ correctly concluded that "the

[120] TR. 231:16-234:19.

[121] Cities' Petition for Review 29:13-31:6; KH-3; KJ-4; TR. 263:18-23, 264:10-13, 265:6-9. *See* Initial Order 02 at ¶ 76. *Also see* ¶¶51-54.

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petition's proposed advance and active warning devices would moderate the risks presented by this crossing ..."[122] No track usage data presented by TCRY can undermine this finding. As required by the UTC, the Cities have demonstrated that they will mitigate the site-specific risk of the crossing. The ALJ, UTC Staff and the Cities agree that the Cities have properly mitigated the site-specific dangers of the proposed crossing.

In sum, section five of TCRY's Response does not demonstrate any decrease in the public need for the crossing, and it does not demonstrate any increase in the site-specific dangers of the proposed crossing.

5. THE COMMISSION SHOULD APPROVE THE PETITION BEFORE REACHING THE PRESERVED GROWTH MANAGEMENT ACT AND EXEMPTION ARGUMENTS

The Commission should approve this petition before reaching the Cities' preserved Growth Management Act and exemption arguments. However, both response briefs overlook a significant element of the law that requires a court to favor the most recently enacted statute:

> A court must, when possible, give effect to every word, clause and sentence in a statute. The goal is to avoid interpreting statutes to create conflicts between different provisions so that we achieve a harmonious statutory scheme. If there is an apparent conflict between two provisions, the **more specific** and **more recently enacted statue** is preferred.[123]

Here, the GMA statute (RCW 36.70A.103) was more recently enacted than the UTC statutes (RCW 81.53.020 and .030). [124]

---

[122] Initial Order 02 ¶¶ 54 and 76.

[123] *American Legion Post #149 v. Washington State Dept. of Health*, 164 Wn.2d 570, 585-86, 192 P.3d 306 (2008) (emphasis added).

[124] The Legislature enacted RCW 36.70A.103 in **1991** and amended it in **2001** and **2002**. The Legislature enacted RCW 81.53.020 in **1913** and amended it in **1961**. The Legislature enacted RCW 81.53.030 in **1913**. Cities acknowledge that in 2013, the Legislature modified the Revised Code of Washington to include gender neutral terms. As such, the term flagman was replaced with the term "flaggers." Washington State Law 2013 ch. 23 § 303. The Legislature also amended the statute in 1984 deleting the term "county commissioners" and replacing it with the term "legislative authority" and replacing the term "director of highways" with the term "secretary of transportation." These are not substantive terms that reflect the Legislature's policy decisions regarding the law.

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6. SUMMARY

The Commission must approve the Center Parkway Crossing because the demonstrated pubic need for the crossing outweighs its mitigated site-specific risk. The Cities have even achieved the ALJ's own elevated and unlawful standard. The evidence demonstrates that the Center Parkway Crossing would save lives[125] by improving the Cities' "regularly failing" [126] emergency response times to addresses on Tapteal Drive.[127]

The Cities also demonstrated other public needs, including: (1) reducing traffic accidents on Columbia Center Boulevard; (2) completing the roadway network, (3) improving traffic flows, and (4) improving access to services and developable land. The public need for any of these benefits outweighs the speculative risk of the proposed crossing.

As demonstrated with substantial evidence, the Cities have satisfied the accepted UTC balancing test. That is why UTC Staff have consistently supported the Cities' petition. In addition, no Class I railroad opposes this petition.

The ALJ clearly erred when he concluded that Cities presented no evidence of public need. The Cities respectfully request that the Commission agree with its Staff and APPROVE the Cities' at-grade crossing petition.

---

[125] Exhs. NH-1T 3:15-18; RGB-1T 4:4-7.

[126] Analyzed in Section 3.1.1 of this Reply.

[127] Exh. KJ-5 at 6 (JUB Report); Exh. GAN-20-X (Analysis supporting the findings in the JUB Report); Exh. SM-1T (Mr. Montgomery's pre-filed testimony regarding improved emergency response times); TR. 217:7-219:1 (Mr. Montgomery's testimony at the hearing); TR. 107:15 (Chief Baynes' testimony that the crossing will improve emergency response times by "approximately one minute"); *Also see* pre-filed testimony of **all** first responders in the area stating that the crossing will address a public need by improving emergency response times: Exh. CS-1T 3:2-22; Exh. NH-1T 3:12-4:13; Exh. RGB-1T 3:24-5:4; Exh. KMH-1T 3:1-10; Exh. CS-2T:11-22; Exh. KMH-2T 2:11-22; Exh. RBG-2T 2:11-3:20; *Also see* pre-filed testimony of City Planning Staff: Exh. RS-1T 6:1-7; *Also see* pre-filed testimony of the Cities' public works staff: Exh. JD-1T 4:22-25; *Also see* pre-filed testimony by UTC Staff: KH-1T 17:14-19:23.

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Respectfully submitted this 1st day of April, 2014.

FOSTER PEPPER PLLC

By: _____

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Jeremy Eckert, WSBA #42596
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I hereby certify that I have this day served this document upon all parties of this record in this proceeding by email. The parties of record are identified below:

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DATED this 1st day of April, 2014, at Seattle, Washington.

Erin Cline

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April 2, 2014

STEVEN V. KING
Executive Director and Secretary
Washington Utilities and Transportation Commission
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Olympia, Washington 98504-0128

RE *City of Kennewick v. Port of Benton, et al*
Docket # TR-130499
Respondent Tri-City Railroad Company's Motion to Strike "Cities Reply In Support of Commission Review"

Dear Mr. King:

I am enclosing the original and twelve copies (three hole punched) of Respondent's Motion to Strike "Cities Reply In Support of Commission Review" which was also served electronically on your office via email on April 02, 2014.

If you have any questions regarding the format please do not hesitate to contact me.

Sincerely,

Paul J. Petit
General Counsel

enc.
CRP

Paul J. Petit
MT Bar No. 3051
General Counsel
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d/b/a Tri-City & Olympia Railroad
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BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK and CITY OF RICHLAND Petitioners vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD CO., BNSF RAILWAY and UNION PACIFIC RAILROAD Respondents.	DOCKET NO. TR-130499-P RESPONDENT'S MOTION TO STRIKE "CITIES REPLY IN SUPPORT OF COMMISSION REVIEW"

I. RELIEF REQUESTED

RESPONDENT, TRI-CITY & OLYMPIA RAILROAD CO., ("TCRY") moves the Commission for an Order striking the "Cities Reply in Support of Commission Review" (herein, "Reply") on the ground that it was filed without authority under and in violation of WAC 480-07-825(5).

II. STATEMENT OF FACTS AND ISSUE

1. Petitioners filed their Petition for Administrative Review on March 17, 2014, seeking review of the Initial Order of the Administrative Law Judge entered herein (Order 02).
2. TCRY filed its Answer of Tri-City & Olympia Railroad Co. to Petition for Administrative Review on March 27, 2014 pursuant to the authority of WAC 480-07-825(5)(a).
3. That Answer did not challenge Order 02, or any portions of that Order, in any manner, but rather requested that the Commission enter 02 in its entirety as the Final Order in this matter.
4. WAC 480-07-825(5)(a) states that "A party has the right to reply **to new challenges to the order** that are raised under subsection (c) of this section" (480-07-825(5)(a)) but "otherwise has **no right to reply to an answer**." (480-07-825(5)(b)) Emphasis supplied.
5. Under WAC 480-07-825(5)(b), a party "may petition for leave to reply, citing new matters raised in the answer and stating **why those matters were not reasonably anticipated and why a reply is necessary**." Emphasis supplied.

6. On April 1, 2014, Petitioners filed the Reply which is the subject of this Motion.

7. As demonstrated, Petitioners did not have the right to file a Reply because there were no "new challenges to the order raised" in the Answer of TCRY.

8. Further, Petitioners did not file a Petition for leave to accept the Reply as required by WAC 480-07-825(5)(b) and their time for filing such Petition has expired under WAC 480-07-825(5)(c).

III. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Commission enter an Order striking the Cities Reply in Support of Commission Review as filed without authority and in violation of WAC 480-07-825(5).

Dated this 2nd day of April, 2014.

TRI-CITY & OLYMPIA RAILROAD

By: _____
Paul J. Petit
One of Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served this day by email and by U.S. Postal Service on all parties of record in this proceeding to the parties identified below:

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DATED this 2nd day of April, 2014, at Kennewick, Washington.

Christine Photides

FOSTER PEPPER PLLC

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April 3, 2014

BY EMAIL AND FEDERAL EXPRESS

Washington Utilities and Transportation Commission
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Re: Cities' Response to Respondent's Motion to Strike: City of Kennewick – Petition to Construct a Highway-Rail Grade Crossing, Center Parkway, Kennewick, WA Docket TR-130499

Dear Commissioners:

The City of Kennewick and the City of Richland submit their Response to Respondent's Motion to Strike for Docket TR-130499.

Sincerely,

FOSTER PEPPER PLLC

Jeremy Eckert

Enclosure
cc: Parties (by email)

Hard Copy

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 CITIES' RESPONSE TO RESPONDENT'S MOTION TO STRIKE

1. INTRODUCTION

The purpose of the UTC petition process is to provide the Commission with information so that the Commission can make an informed decision on issues that will affect the health and safety of the citizens of Washington state. Relying on a technicality, TCRY is attempting to deprive the Commission of information that is necessary to correct TCRY's numerous misrepresentations of facts and law.

The City of Kennewick and the City of Richland ("Cities") file this motion asking that the Commission accept the Cities' Reply in Support of Commission Review ("Cities' Reply Brief"). Cities substantially complied with all law and UTC regulations. The Reply Brief does not prejudice TCRY because all of the evidence cited in the Cities' Reply Brief is already in the record, and all of the material in the Reply Brief will be presented by Cities at oral argument.

2. STATEMENT OF FACTS AND ISSUE

2.1 On March 17, 2104, TCRY filed its Answer of Tri-City & Olympia Railroad Co. to Petition for Administrative Review ("TCRY's Answer Brief").

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2.2 In conformance with UTC regulations, the Cities filed the Cities' Reply in Support of Commission Review within five (5) days of TCRY's Answer Brief.

2.3 TCRY's Answer Brief argued that the Initial Order does not require the Cities to demonstrate "regularly failing" emergency service response times (See Initial Order 02 ¶ 60; TCRY's Answer Brief 8:11-15). On this basis alone, Cities have a right to reply to TCRY's Answer Brief. WAC 480-05-825(5)(a).

2.4 The law also favors allowing the Cities' Reply Brief into this administrative proceeding because the Cities have substantially complied with the objective of the statute. *See e.g., Ruland v. State*, 144 Wn. App. 263, 273-276, 182 P.3d 470 (2008).

2.5 The objective of this petition process is to provide the Commission with the information necessary to review the Initial Order.

2.6 The UTC's own regulations provide the Commission with broad authority to review information that is relevant to the proceeding, including, extending the five-day reply timeline. WAC 480-07-825(5)(c).

2.7 Here, the Cities' Reply Brief is necessary to correct the numerous factual and legal misrepresentations set forth in TCRY's Answer Brief. For example, TCRY has no basis for its statement that Cities rely on only three pieces of evidence to demonstrate emergency response times (TCRY's Answer Brief 10:17-20). In fact, Cities demonstrate improved emergency response times with the following evidence: Exh. KJ-5 at 6 (JUB Report); Exh. GAN-20-X (analysis supporting the findings in the JUB Report); Exh. SM-1T (Mr. Montgomery's pre-filed testimony regarding improved emergency response times); TR. 217:7-219:1 (Mr. Montgomery's testimony at the hearing); TR. 107:15 (Chief Baynes' testimony that the crossing will improve emergency response times by "approximately one minute"); *Also see* pre-filed testimony of all first responders in the area stating that the crossing will address a public need by improving emergency response times: Exh. CS-1T 3:2-22; Exh. NH-1T 3:12-4:13; Exh. RGB-1T 3:24-5:4; Exh. KMH-1T 3:1-10; Exh. CS-2T:11-22; Exh. KMH-2T 2:11-22;

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Exh. RBG-2T 2:11-3:20; *Also see* pre-filed testimony of City Planning Staff: Exh. RS-1T 6:1-7; *Also see* pre-filed testimony of the Cities' public works staff: Exh. JD-1T 4:22-25; *Also see* pre-filed testimony by UTC Staff: KH-1T 17:14-19:23.

2.8 TCRY is not prejudiced by the Commissions' acceptance of the Cities' Reply Brief. The Cities' Reply Brief contains no new evidence and it outlines the Cities' oral arguments, providing the Commission with written briefing on this important matter.

3. CONCLUSION

The UTC should deny TCRY's motion because the Cities have substantially complied with all applicable law. The purpose of the petition process is to provide the Commission with the information necessary to judge an Initial Order. As demonstrated in the Cities' Petition for Review, the Initial Order creates a dangerous precedent that places lives at risk. Here, the Commission should receive accurate information supported by the evidence so that it can make an informed decision.

Respectfully submitted this 3rd day of April, 2014.

FOSTER PEPPER PLLC

By: _____

P. Stephen DiJulio, WSBA #7139
Jeremy Eckert, WSBA #42596
Attorneys for Petitioners

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I hereby certify that I have this day served this document upon all parties of this record in this proceeding by email. The parties of record are identified below:

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DATED this 3rd day of April, 2014, at Seattle, Washington.

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SERVICE DATE

MAY 29 2014

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	)	DOCKET TR-130499 ORDER 03 FINAL ORDER GRANTING PETITION FOR ADMINISTRATIVE REVIEW

BACKGROUND

1 On April 8, 2013, the City of Kennewick filed with the Washington Utilities and Transportation Commission (Commission) a petition to construct a highway-rail grade crossing at Center Parkway, Kennewick, Washington and remove an existing railroad siding. On May 31, 2013, the City of Richland petitioned to intervene in support of the petition.

2 Three railroad companies move trains on the subject track, which is owned by the Port of Benton. Burlington Northern Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UPRR) filed waivers of hearing stating their agreement to the proposed crossing. The third railroad company that operates on these tracks, Tri-City & Olympia Railroad (TCRY), answered Kennewick's petition and requested a hearing. TCRY opposes the petition.

3 Commission Staff filed a memo on May 5, 2013, recommending that the Commission set this matter for hearing. The Commission conducted a prehearing conference on June 4, 2013, and on June 7, 2013, entered Order 01-Prehearing Conference Order; Notice of Hearing. Order 01 set a procedural schedule allowing three rounds of pre-filed testimony. The cities of Kennewick and Richland (collectively "Cities") filed direct testimony and exhibits on September

3, 2013. Staff filed responsive testimony supporting the petition on October 1, 2013. TCRY filed opposing testimony on October 2, 2013. Finally, the Cities and TCRY filed rebuttal testimony and exhibits on October 23, 2013.

4 The Commission conducted evidentiary hearings on November 19-20, 2013, and a public comment hearing on November 20, 2013, in Richland, Washington before Administrative Law Judge Adam Torem. Judge Torem performed a site visit and toured the area on November 21, 2013. The parties simultaneously filed written post-hearing briefs on December 20, 2013.

5 The Commission entered its Initial Order on February 25, 2014, denying Kennewick's petition. Kennewick and Richland filed a joint Petition for Administrative Review on March 18, 2014. The Cities ask for oral argument, which we find unnecessary to resolve their Petition for Administrative Review. Denying the Cities' request for oral argument causes them no prejudice.

6 TCRY filed an answer on March 27, 2014, opposing the joint petition. Staff also filed an answer on March 27, 2014, reiterating its support for the Cities' petition for authority to construct the subject rail crossing, but addressing the Cities' alternative arguments about the impact of the Growth Management Act (GMA) and the application of chapter 81.53 RCW to code Cities. Staff disagrees with the city on the application of both the GMA and RCW 35A.11.020 to its petition.

7 On April 1, 2014, Kennewick and Richland filed a "Reply in Support of Commission Review." TCRY filed a motion to strike the reply on April 3, 2014, arguing it failed to satisfy the requirements for such a pleading under WAC 480-07-825(a) and is procedurally deficient because the Cities did not seek leave to file a reply as required under WAC 480-07-825(5)(b). On April 4, 2014, the Cities filed a response to TCRY's motion to strike. The Commission grants TCRY's motion and will not consider the Cities' reply.[1]

[1] Contrary to what the Cities argue in their response to TCRY's motion, the Commission's procedural rules are not mere technicalities. Those who elect to practice before the Commission are expected to be familiar with and adhere to its procedural rules. Not only did the Cities fail to seek leave to file a reply, the reply itself does not meet the substantive requirements for such a pleading. It does not cite new matters raised by TCRY's answer and state why those matters were not reasonably anticipated or explain satisfactorily why a reply is necessary, all as required by the Commission's rule governing replies.

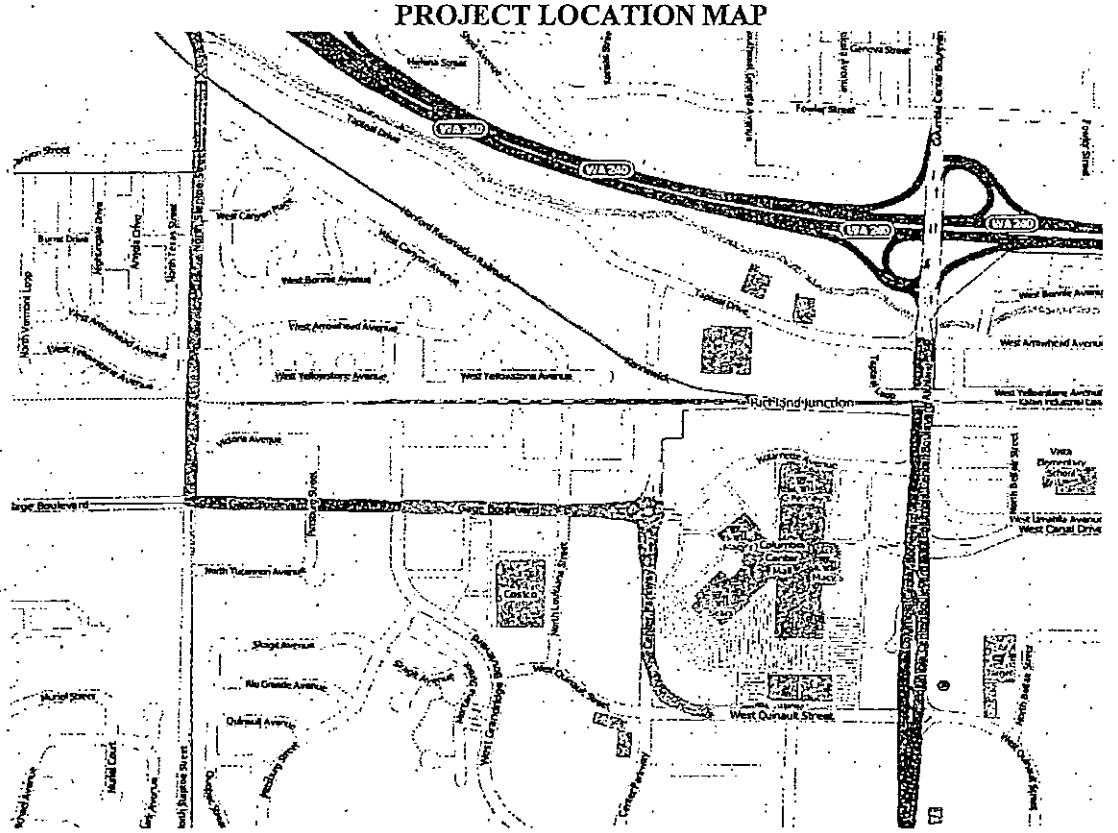
8 **APPEARANCES.** P. Stephen DiJulio and Jeremy Eckert, Foster Pepper PLLC, Seattle, represent the Cities. Paul J. Petit, Richland, represents respondent TCRY. Steven W. Smith, Assistant Attorney General, Olympia, represents the Commission's regulatory staff (Commission Staff or Staff).[2]

DISCUSSION

I. Description of Proposed At-Grade Railroad Crossing

9 The proposed crossing would be built at the intersection of an extension of Center Parkway in the City of Kennewick, and two tracks owned by the Port of Benton. The location and configuration of the proposed site are illustrated in Figure 1.

FIGURE 1
PROJECT LOCATION MAP



[2] In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

The Center Parkway extension would be from an existing roundabout in Kennewick, where the parkway intersects Gage Boulevard, continuing north to Tapteal Drive, a one-mile stretch of road connecting North Steptoe Street to the west, with Columbia Center Boulevard to the east, in Richland. There is a "T" intersection at both ends of this short roadway. There is an at-grade crossing on North Steptoe Street and a grade-separated crossing at Columbia Center Boulevard.

10 Tri-City and Olympia Railroad, BNSF Railway, and Union Pacific Railroad all operate trains over the so-called Hanford Reservation tracks at this location. Tri-City and Olympia Railroad uses a short, parallel spur at Richland Junction for switching and storage of rail cars, and opposes the Cities' petition, arguing the crossing would interfere with its operations. Both tracks are owned by the Benton County Port Authority. BNSF and UPRR have moved their switching operations since the Commission denied an earlier petition to open a crossing in this location and do not oppose the Cities' current petition.[3]

II. *Review of Initial Order*

11 The Initial Order analyzes Kennewick's petition using the framework in a 2011 Commission initial order approving another petition for an at-grade crossing in Benton County:

> The Commission, in practice, addresses two principal questions when considering whether to authorize construction of an at-grade crossing, which, by its nature, poses risks for motorists and pedestrians not present at grade-separated crossings:
>
> a) Whether a grade-separated crossing is practicable considering cost and engineering requirements and constraints.

[3] When the Cities petitioned to open a crossing at this same location in 2007, Tri-City and Olympia Railroad, BNSF and UPRR opposed the two petitions, which were consolidated for hearing. Staff also opposed the earlier petitions. At that time, there were four tracks and all three railroad companies conducted switching operations in the vicinity of the Richland Junction. The Commission denied the petitions in a single order. *See City of Kennewick v. Union Pacific Railroad*, Docket TR-040664,Order 06 and Docket TR-050967, Order 02, Initial Order Denying Petition[s] (January 26, 2007). The Initial Order in these dockets became final by operation of law on February 15, 2007.

b) Whether there is a demonstrated public need for the crossing that outweighs the hazards inherent in an at-grade configuration.[4]

We agree that we should evaluate the petition to determine whether a grade-separated crossing is practicable and whether a demonstrated public need for the crossing outweighs the hazards of an at-grade crossing. We agree with most of the Initial Order's findings and conclusions on these questions, but we conclude that a broader public need than the public safety concerns the parties advocate supports the petition.

A. Grade Separation and Inherent Risk

12 No one contests on review the Initial Order's finding that it is physically and financially impractical to build a grade-separated crossing in this instance:

> The amount and character of travel on the railroad and on Center Parkway do not justify grade separation. Further, there is no evidence in the record disputing the engineering infeasibility of constructing a grade-separated crossing at Center Parkway. Finally, there is no serious dispute in the record that a grade-separated crossing would be tremendously more expensive than the proposed at-grade crossing. Therefore, considering engineering requirements and cost constraints, the Commission determines that a grade-separated crossing is not practicable at Center Parkway.[5]

13 The Cities, however, propose to build an at-grade crossing designed to mitigate the inherent dangers to vehicles and pedestrians by using active warning devices and taking other measures. Specifically, the Cities propose to install advanced signage, flashing lights, an audible bell, automatic gates, and a raised median strip

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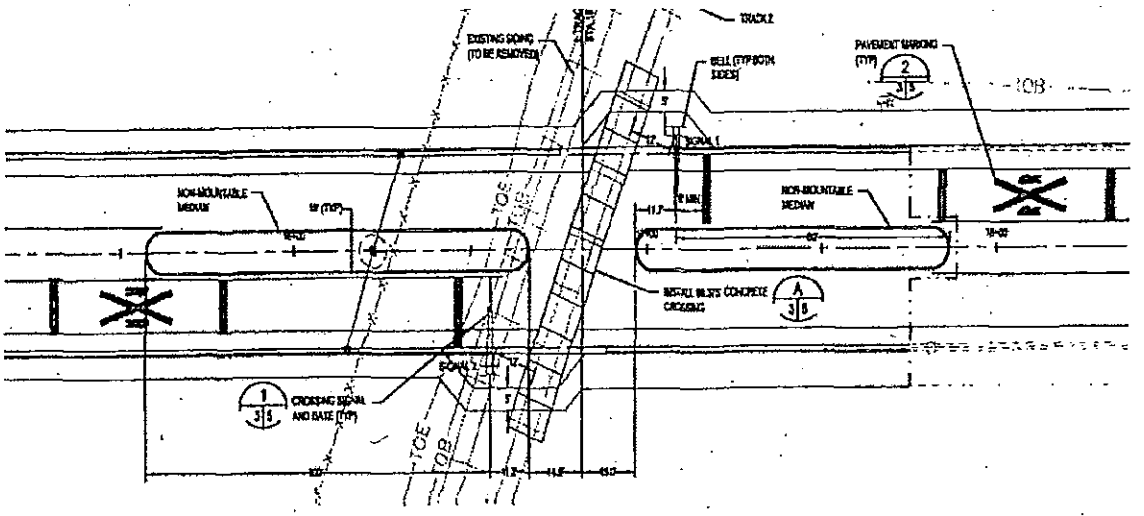
[4] *Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06 - Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions, ¶ 29 (Feb. 15, 2011) (citing: *In re Town of Tonasket v. Burlington Northern Railroad Company*, Docket TR-921371 (December 1993) and *Burlington Northern Railroad Company v. City of Ferndale*, Docket TR-940330 (March 1995). This Initial Order became final by operation of law on March 8, 2011.

[5] Initial Order ¶ 50.

designed to prevent drivers from going around lowered gates, as illustrated below in Figure 2.[6]

FIGURE 2
AT-GRADE CROSSING CONFIGURATION



14 Taken together, these measures significantly reduce the risks to motorists who might, in the absence of these measures, make inopportune efforts to cross the tracks when trains are present.[7] Even imprudent drivers will be effectively barred from crossing the tracks when the gates are closed next to concrete barrier medians. These same measures reduce the risk to pedestrian and bicyclist traffic

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[6] This illustration shows the removal of the 1900 foot siding track. However, in the face of Tri-City and Olympia Railroad's opposition, Staff's analysis of the site and consideration of its proposed safety features assumes that the second track remains in operation. Ms. Hunter testifies:

> The active warning devices consisting of advanced pavement markings and warning signs, gates and lights, and a traffic island that will act as a median separator, provide an adequate level of safety at the proposed crossing. In addition, the train and vehicle speeds and the volume of train and vehicle traffic at the site of the proposed crossing are fairly low, making the possibility of an accident less likely than crossings with higher speeds or increased traffic.

Exh. No. KH-1T at 23:15-20.

[7] Mr. Jeffers, a professional engineer, calculated the predicted accident rate to be 0.145 per year or 1 accident per 6.9 years. Exh. No. KMJ-1T at 7:11-20. The USDOT Accident Prediction Formula standard for requiring a grade-separated crossing is 0.5 accident per year. Exh. No. KH-1T at 11:18-20.

by alerting prudent travelers when it is unsafe for them to cross the tracks and making it more difficult for them to pass.[8]

B. Public Safety Need

15 The Initial Order determines that the Cities failed to carry their burden to show a "public need" for the crossing that outweighs the hazards inherent in the at-grade configuration that are present despite the relatively low-level risk of an accident. To establish public need petitioners must provide evidence of public benefits, such as improvements to public safety or improved economic development opportunities.[9]

16 Petitioners challenge this conclusion, focusing almost exclusively on asserted public safety benefits, largely in the form of improved response times from two local fire stations to the point where the planned Center Parkway extension would intersect Tapteal Drive. In other words, the Cities' principal claim of improved public safety is that emergency responders could get to a single point on a one-mile long, two-lane collector roadway with a "T" intersection at both ends more quickly than they can today. In addition, there is some evidence that completion of this project would reduce traffic on other roadways in the vicinity, relieving congestion and potentially reducing accidents. The Initial Order analyzes the evidence on this issue in detail that does not bear repeating here. It is sufficient for us to observe that we agree with the analysis, the findings, and the conclusion reached in the Initial Order that the benefits to public safety alleged by the Cities are too slight on their own to support the petition, even though the inherent risks are mitigated to a large extent by the project design.

17 If the feasibility of grade separation and public safety as a component of public need were our only concerns, we would end our discussion here and sustain the Initial Order. However, having studied the full record, we find reason to analyze this matter outside the narrow constraints of these two questions. We address in the next section of this Order an additional point of decision that we find determinative.

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[8] The planned road extension includes sidewalks and bike paths on both sides so it is clear some such traffic is expected. However, there is some evidence that pedestrian and bicycle traffic is expected to be light, and no evidence to the contrary. *See* Exh. No. KH-1T at 24:1-7.

[9] *See Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions ¶¶ 33-37 (Feb. 15, 2011).

C. Broader Public Need

18 The Cities argue that state agencies are mandated to comply with local land use plans adopted under the Growth Management Act (GMA).[10] They contend that their regional comprehensive planning process "mandates" the Center Parkway crossing in order for them to achieve their stated levels of service for emergency response times and traffic flow at signalized intersections.[11] According to the Cities, the GMA prohibits the Commission from evaluating public need, alternatives for opening a proposed railroad crossing, or even whether the proposed crossing will function in the matter claimed by the Cities. As the Initial Order observes:

> Taken to its logical end point, the Cities' argument would require the Commission to approve any at-grade crossing planned for in a local jurisdiction's comprehensive planning process.[12]

The Initial Order rejects the Cities' legal argument that the GMA somehow controls our determination of their petition under RCW 81.53for authority to construct the subject railroad crossing.

19 We agree with the Initial Order's determination that the GMA does not relieve the Commission from its statutory obligation to regulate public safety at rail crossings, including the one proposed here. The two statutes do not conflict with each other and the integrity of both statutes within the overall statutory scheme is preserved by reading the GMA together and in harmony with RCW 81.53.[13] The Initial Order ends its discussion of this issue without considering how this

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[10] Petitioners' Post-Hearing Brief at 7-12. The Cities cite specifically to RCW 36.70A.103's mandate that "[s]tate agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter." *Id.* at 8, n. 29.

[11] Petitioners' Post-Hearing Brief, at 9-11.

[12] Initial Order ¶ 42.

[13] *Philippides v. Bernard*, 141 Wn.2d 376, 385, 88 P.2d 939 (2004), *citing State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974) ("In ascertaining legislative purpose, statutes which stand in pari materia are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes.").

harmony should be achieved in the context of the facts presented in this case. We find it necessary to undertake this analysis on review.[14]

20 The proposed extension of Center Parkway has been part of Richland's and Kennewick's transportation planning for some time.[15] As summarized in the introduction to the Center Parkway Extension and Railroad Crossing Traffic Study completed for the city in March 2013 by JUB Engineers, Inc.:

> For several years the City of Richland has pursued the extension of Center Parkway to connect Gage Boulevard on the south to Tapteal Drive on the north. This effort has been challenging because of existing railroad lines that operate parallel to and in between Gage Boulevard and Tapteal Drive. There are multiple purposes for connecting Center Parkway which include:
>
> - Complete a grid network of functionally classified roadways.
> - Provide relief to congested arterial facilities.
> - Provide improved access to commercial areas and developable land.
> - Improve emergency response times.[16]

21 Following a detailed narrative, supported by appendices, the JUB Engineers, Inc. report summarizes the study's key findings, elaborating on the points above:

> This Traffic Study has been performed to describe the efforts put forth by the City of Richland and the City of Kennewick to complete a

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[14] In considering petitions for administrative review, the Commission conducts de novo review of the issues decided in an initial order. *See* RCW 34.05.464(4) ("The reviewing officer *shall* exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing").

[15] The Center Parkway extension project has been included in the Cities' comprehensive planning process since 2006. The proposed at-grade Center Parkway Crossing has been identified as an essential public facility in (1) the City of Richland Comprehensive Plan, (2) the City of Kennewick Comprehensive Plan, and (3) the Regional Transportation Plan. The proposed project has received funding from the State through the Washington State Community Economic Revitalization Board, the Surface Transportation Program Regional Competitive Fund, and the Transportation Improvement Board. Petition for Admin. Rev. at 19:2-9.

[16] Exh. *KJ-5 at page 1 of* JUB Traffic Study.

roadway network that includes the extension of Center Parkway in order to accommodate growth in the region. Four primary objectives have been discussed that document the needs and benefits of extending Center Parkway between Gage Boulevard and Tapteal Drive that include:

- Complete a grid network of functionally classified roadways -The completion of Center Parkway north of Gage Boulevard is merely one step of many to complete both a functionally classified network and a north-south component of a grid system to provide safe efficient movement of traffic into this area of the region.
- Provide relief to congested arterial facilities -Center Parkway has been planned to provide relief to both Columbia Center Boulevard as well as Steptoe Street, consistent with the philosophy of providing collector roadways parallel and in between arterial roadways.
- Provide improved access to commercial areas and developable land - nearly 60 developable acres of commercial land between the railroad and SR 240 which has desirable visibility will have improved access and will gain the synergy that commercial areas often seek.
- Improve emergency response times - a significant area will have improved emergency response times, some with nearly a 30% reduction.[17]

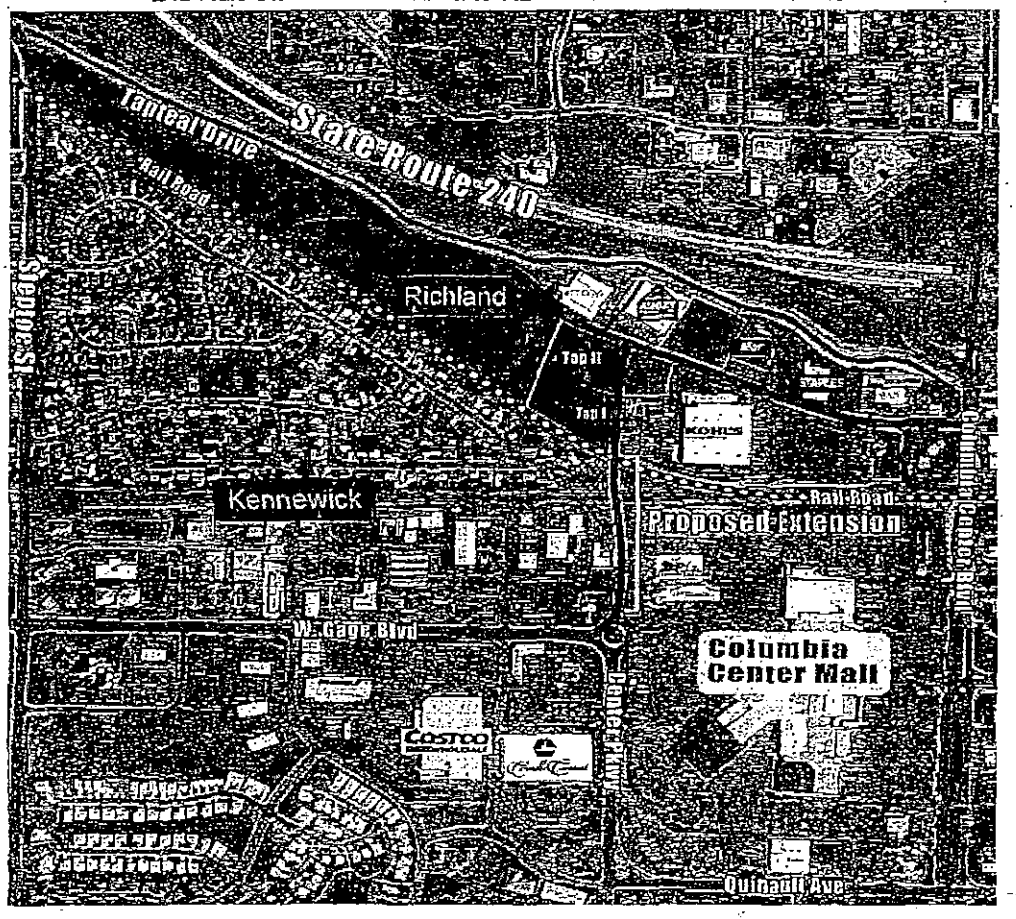
Economic Development

22 We determine that the Commission should consider public need for the proposed at-grade railroad crossing in the broader context of the several purposes discussed in the JUB transportation study, rather than with the narrower focus that the parties, and consequently the Initial Order, place on public safety. It is particularly important to give weight to the economic development interests considering that the Center Parkway extension would conveniently connect existing, complementary commercial developments in Richland and Kennewick,

[17] *Id.* at page 14 of JUB Traffic Study.

and would promote development of 60 acres of currently vacant commercial real estate along Tapteal Drive in Richland, as shown below in Figure 3.

FIGURE 3
DEVELOPMENT AND DEVELOPMENT POTENTIAL



23 The potential for additional development in this area is underscored by a public comment filed in this proceeding by a landowner, Preston K. Ramsey III, writing on behalf of FBA Land Holdings. FBA Land Holdings owns two undeveloped parcels bordered on the north by Tapteal Drive and on the west by the proposed Center Parkway Extension. These are labeled "Tap I" and "Tap II" in Figure 3. Mr. Ramsey comments that:

> The proposed street extension of Center Parkway across railroad tracks currently leased by TCRY literally would create a new bridge between two highly interdependent communities in terms of transportation, economics, land use as well as the traffic patterns and habits of the

> approximate 25,000 people who live, work and otherwise travel through this area daily.[18]

24 Similarly, another public comment filed by Brian Malley, Executive Director of the Benton-Franklin Council of Governments, the Metropolitan Planning Organization for the Tri-City metropolitan area, emphasizes community expectations with respect to the proposed Center Parkway extension:

> In addition to easing congestion, this proposed link provides connectivity to two adjacent retail areas that are separated only by the tracks that divide them. The Tri-City area has, and continues to, grow at impressive rates. Planning and encouraging alternate modes, such as bike/ [pedestrian]/ transit will be a crucial step toward alleviating future congestion. At this time, there simply is no option between these two retail areas that does not require the use of a car to negotiate the roadways to travel between. Additionally, a connection in this location may well contribute to the tax base, as Tapteal area businesses have suffered through marginal access for years, with no reasonable link to the adjacent retail areas to the south.[19]

Deference to Local Government

25 In addition to economic benefits, the Commission as a matter of policy should give some deference to the Cities' transportation and land use planning goals, as these are matters of local concern and within the jurisdictional authority of the Cities. Indeed, it is worth considering that if the City of Richland was the petitioner for this project, instead of Kennewick, it would be exempt from the Commission's jurisdiction.[20] RCW 81.53.240 exempts first-class cities from the

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[18] Public Comment Exhibit (Written comment submitted December 9, 2013).

[19] Public Comment Exhibit (Written comment submitted November 20, 2013).

[20] The Cities note in their petition for administrative review that:

> The Petitioners do not waive any jurisdictional argument regarding the Cities' exemption from this petition process. RCW 81.53.240 exempts first-class cities from the at-grade crossing petition process. The City of Richland is a first-class city, and the City of Kennewick is a code city. State law provides that code cities have the same authority as first-class cities. RCW 35A.11.020: "The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of the state, and not specifically denied to code cities by law." Nevertheless, the Petitioners believe UTC review and approval worthwhile.

at-grade crossing petition process. The City of Richland is a first-class city.[21] This exemption has been present in the law in one form or another since 1909. It is reasonable to infer its passage into law was largely a reflection of the state Constitution giving deference to local jurisdictions on matters that are deemed best left to local control.[22] Planning and designing intra-urban transportation networks that will best serve the public's needs in the jurisdictional boundaries of the state's larger Cities fall squarely into this category.[23] Although Kennewick is not legally exempt from our jurisdiction, it is consistent with legislative policies implementing Constitutional home rule that the Commission give significant weight to the evidence concerning the Cities' perspective that the Center Parkway extension is important to transportation planning and economic development in both jurisdictions.

26 There is additional public comment in the record of this proceeding from various community leaders that focuses on these points and illustrates the local

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Petition for Administrative Review at 8, footnote 30.

Staff argues that because RCW 81.53.240 is a limitation on Commission jurisdiction, not a grant of authority to first-class cities, RCW 35A.11.020 does not apply. We see no need to resolve this legal argument in this case. We consider the underlying purpose of the exemption as part of the policy context in which the Commission should evaluate the evidence.

[21] The Washington Constitution, adopted in 1889, directed the legislature to provide for the incorporation of cities and established that cities with population of 20,000 or more could frame a charter for their own government. Wash. Const., Art. XI, Sec. 10. The 1890 legislature established a classification scheme and provided that charter cities are "first class cities" with the broad powers generally associated with "home rule" concepts. Efforts toward greater local self-government powers as the state has become more urban led to amendment of the state Constitution in 1964, lowering the population threshold for charter cities to 10,000 and to legislation in 1994 that similarly lowered the population threshold for first class city designation to 10,000. *See* Amendment 40, Wash. Const., Art. XI, Sec. 10 and; RCW 35.01.010. In 1967, the legislature enacted a new municipal code (Ch. 119, Laws of 9167, Ex. Sess.), effective July 1, 1969, that gave cities the option of becoming a "code city" with generally the same powers as first class cities. *See* RCW 35A.11.020. Kennewick is such a code city.

[22] Wash. Const., Art. XI, Sec. 10 (cities and towns with population greater than 20,000 could frame a charter for their own government). Amendment 40, in 1964, allowed any city with 10,000 or more inhabitants to frame a charter, subject to the state's general laws. In this sense, RCW 81.53.240, is consistent with the general scheme of government in Washington that gives broad "home rule" powers to first class cities.

[23] Richland's population is greater than 50,000 and that of Kennewick greater than 75,000. The Tri-cities metropolitan area, including Pasco and surrounding urban and suburban areas is more than 250,000.

importance of recognizing the broader public policy environment. Carl F. Adrian, president of the Tri-City Development Council, for example, comments that:

> This at-grade railroad crossing on Center Parkway is a well-planned necessary component of our region's transportation system. The project will dramatically improve traffic movement between two important and growing commercial areas in Richland and Kennewick.
>
> . . . Completion of Center Parkway between Tapteal Drive and Gage Boulevard is a long-standing element of a carefully developed transportation system plan. That planning has included careful consideration of the safety implications in the planned road and at-grade railroad crossing.[24]

27 Comments from the Tri-City Regional Chamber of Commerce and the Port of Kennewick also support the proposed project on the bases that it is an important feature in a long-planned transportation network that will contribute to commercial development while reducing traffic congestion and promoting public safety in the project vicinity.[25]

III. Conclusion

28 The Initial Order fairly weighs the evidence and argument presented in the post-hearing briefs, and reaches a legally sustainable result. The Cities' almost exclusive focus on improved response times for first responders on a point-to-point basis as the principal benefit demonstrating "public need" does not weigh persuasively against even the demonstrated low level of "inherent risk" at the proposed crossing. Nor are the Cities' legal arguments that their comprehensive planning processes under the Growth Management Act mandate Commission approval persuasive. However, considering evidence the parties largely ignored that shows additional public benefits in the form of enhanced economic development opportunities, and considering the broader public policy context that gives a degree of deference to local jurisdictions in the areas of transportation and land use planning, we determine that the Cities' petition for administrative review

[24] Public Comment Exhibit (Written comment submitted November 20, 2013).

[25] *Id.* (Tri-City Regional Chamber of Commerce written comment submitted November 25, 2013; Port of Kennewick written comment submitted December 6, 2013).

should be granted and their underlying petition for authority to construct the proposed at-grade crossing should be approved.

FINDINGS AND CONCLUSIONS

29 We endorse certain of the findings and conclusions in the Initial Order, and restate them below. In addition, we modify certain of the Initial Order's findings and conclusions to make them consistent with the discussion in this Order. Finally, we add new findings and conclusions based on our de novo review of the record.

30 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate railroad crossings, and has jurisdiction over the parties and subject matter of this proceeding.

31 (2) The City of Kennewick is a governmental entity authorized by law to petition the Commission pursuant to RCW 81.53.020 for authority to construct an at-grade railroad crossing where it is not practicable to construct a grade-separated crossing and there is a public need for such a crossing that outweighs its inherent risks.

32 (3) Res judicata does not bar the Commission from ruling on the Cities' petition because it is sufficiently different from the City of Kennewick's prior petition.

33 (4) Comprehensive planning under the Growth Management Act does not relieve the Cities from complying with RCW 81.53. The Commission, however, considers the Cities' planning as part of the policy context in which it evaluates a proposed at-grade rail crossing in the commercial center of the urban area.

34 (5) A grade-separated crossing at the proposed project site is not practicable because of engineering requirements and cost constraints.

35 (6) The risks of an accident at the proposed crossing are relatively low considering current and projected train traffic, predicted levels of vehicle traffic, and engineering plans that include active warning devices and other safety measures.

36 (7) The Center Parkway extension may assist the Cities' emergency responders by providing an alternative route for responding to incidents in the vicinity of Columbia Center Mall, when trains are not blocking the intersection.

37 (8) The Center Parkway extension, including the proposed at-grade railroad crossing, is a long-planned and important component of the Cities' transportation system. The project will improve traffic movement between two important and growing commercial areas in Richland and Kennewick, thus promoting economic development.

38 (9) The record includes substantial competent evidence showing sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing.

39 (10) The Commission should grant the City of Richland's and City of Kennewick's petition for authority to construct an at-grade crossing at the proposed extension of Center Parkway.

ORDER

THE COMMISSION ORDERS:

40 (1) The Petition for Administrative Review filed by the City of Kennewick and joined in by the City of Richland is granted.

41 (2) The Initial Order entered in this proceeding on February 25, 2014, is reversed to the extent it would deny the City of Kennewick's petition to construct a highway-rail grade crossing at Center Parkway, Kennewick, Washington. The Commission authorizes construction of the proposed crossing.

42 (3) The Commission retains jurisdiction to enforce the terms of this order.

Dated at Olympia, Washington, and effective May 29, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. 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 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PROOF OF SERVICE

DOCKET 130499

I HEREBY CERTIFY That I, as an employee of the Washington Utilities and Transportation Commission at Olympia, Washington, have served on 5/29/2014 the parties of record in this proceeding a true copy of the following document(s):

Order 03 - Final Order granting petition for administrative review.

The document(s) was/were mailed to each of the parties of record in this docket. Each envelope was addressed to the address shown in the official file, with the required first class postage, and deposited on this date in the United States mail in the City of Olympia, County of Thurston, State of Washington.

Lisa Wyse, Supervisor, Records and Tariff Section

PARTIES OF RECORD AND OTHERS RECEIVING NOTICE

SERVED BY MAIL:

Ecket, Jeremy, Foster Pepper PLLC, 1111 3rd Avenue, STE, 3400, Seattle, WA, 98101

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Peterson, Rhett, Tri-City & Olympia Railroad, P.O. Box 1700, Richland, WA, 99352

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Larson, Carolyn, Dunn Carney Allen Higgins and Tongue LLP, 851 SW Sixth Avenue, STE, 1500, Portland, OR, 97204

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NOTIFIED BY E-MAIL:

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Paul J. Petit
General Counsel
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June 9, 2014

STEVEN V. KING
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 40128
1300 S. Evergreen Park Drive SW
Olympia, Washington 98504-0128

RE *City of Kennewick v. Port of Benton, et al*
Docket # TR-130499
Respondent Tri-City Railroad Company's
PETITION FOR RECONSIDERATION OF FINAL ORDER, PETITION FOR REHEARING AND PETITION FOR STAY OF ORDER

Dear Mr. King:

I am enclosing for filing the original and twelve copies (three hole punched) of Respondent's PETITION FOR RECONSIDERATION OF FINAL ORDER, PETITION FOR REHEARING AND PETITION FOR STAY OF ORDER which was also filed electronically with the Commission on June 9, 2014.

If you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,

Paul J. Petit
General Counsel

enc.

Paul J. Petit
MT Bar No. 3051
General Counsel
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WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK and CITY OF RICHLAND Petitioners vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD CO., BNSF RAILWAY and UNION PACIFIC RAILROAD Respondents.	DOCKET NO. TR-130499 PETITION FOR RECONSIDERATION OF FINAL ORDER, PETITION FOR REHEARING AND PETITION FOR STAY OF ORDER

Table of Contents

I. INTRODUCTION

This Petition by Respondent Tri-City & Olympia Railroad Co. ("TCRY") constitutes the following:

- A Petition for Reconsideration of the Final Order ("Order 03" entered by the Commission on May 29, 2014) requesting that the Commission reconsider and reverse the Order for the grounds stated herein. That Petition is made pursuant to RCW 34.05.470 and WAC 480-07-870 and asserts that the Order is erroneous as a matter of law, rejected the well-founded factual and legal determination of the Order 02 herein (the "Initial Order") and deprived TCRY of its rights to procedural due process to oppose the evidence relied upon and legal conclusions contained in Order 03 which were never articulated or relied upon by the Petitioners, Cities of Richland and Kennewick ("Cities").
- A Petition for Rehearing requesting that the Commission vacate Order 03 and mandate further proceedings in which the Cities are required to produce substantive evidence, rather than anecdotal public comment, which actually supports the conclusions relied upon in Order 03 and overcomes the well-founded factual and legal determinations contained in the Initial Order which Order 03 claims to endorse. That Petition is made pursuant to RCW 80.04.200 and WAC 480-07-870 and requests either further proceedings before the Commission or a remand to the Administrative Law Judge for proceedings in which the Cities would

be required to produce additional evidence to carry their burden of proof as to issues on which the Initial Order found they had failed. That hearing would also allow TCRY to produce evidence and legal argument to counter those arguments never articulated or relied upon by the Cities either in the Hearing or on Petition for Administrative Review, but relied upon by the Commission in entering Order 03.

- A Petition to Stay pursuant to RCW 80.01.040 and WAC 480.07.860, requesting an order staying the effect of Order 03 pending the proceedings sought in the Petition for Reconsideration and the Petition for Rehearing.

Although TCRY is the operating railroad on the section of track where the crossing would be constructed, both the Union Pacific Railroad ("UPRR") and BNSF Railway Co. ("BNSF") also conduct operations on the same rail. The unrebutted evidence at hearing demonstrated that rail traffic over the proposed crossing will increase dramatically in the near future.

Once installed, this crossing will not be removed. As a result, the "inherent danger" of collisions between motor vehicles and trains will increase. The Initial Order, in findings Order 03 purports to embrace, determined that the public need did not outweigh this risk to public safety. Order 03 jettisons the findings of the Initial Order, honed after a full hearing on the merits. Instead, Order 03 in essence concludes that the interest of public safety is subordinate to the "broader public need" which consists solely of allowing private developers to profit by enhanced access and .

deference to local government which has made every effort to mislead the Commission regarding the extent of future rail traffic and thus the likelihood of disastrous collisions at this crossing.

For these reasons, the relief sought in this Petition should be granted.

II. HISTORY OF PROCEEDINGS BY THE CITY SEEKING AN AT-GRADE CROSSING AT CENTER PARKWAY.

The City of Kennewick initially sought authorization for an at-grade crossing at Center Parkway by Petitions filed by in 2004 and 2005. (Docket TR-0406644 and TR-050967) which were consolidated for Hearing. These Petitions were heard by Administrative Law Judge ("ALJ") Clark on October 19 and 20, 2006. TCRY, BNSF and UPRR all opposed those Petitions.

On January 26, 2007, ALJ Clark entered an Initial Order[1] ("2007 Order") which denied the City of Kennewick the right to construct the requested at-grade crossing. There is no dispute that the location of the at-grade crossing sought in the prior proceeding is identical to the location at which the Cities sought to construct an at-grade crossing in this proceeding. There is also no dispute that the proposed crossing sought in the current proceeding is wholly within the City of Kennewick, and not in the City of Richland.[2]

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[1] Order 06 in Docket TR-040664 and Order 02 in Docket TR-050967.

[2] That "Petition to Construct" was filed by the City of Kennewick which identified itself as the "Road Authority" because the track sought to be crossed is within its municipal boundaries. (Petition, p. 6, Section 6, No. 3) The City of Richland (which borders but does not include the proposed crossing) filed a Motion to Intervene, claiming an interest in the pending Application. Respondent TCRY did not object to that Motion and leave was granted to Richland to intervene. (Order 01)

The 2007 Order correctly articulated the Commissions' authority to regulate the safety of grade crossings under RCW 81.53, and noted that RCW 81.53.020 "disfavors at-grade crossings premised on the theory that all at-grade crossing are dangerous.[3] As the 2007 Order (¶ 20) noted:

> The law disfavors at-grade crossings because certain risks are inherent. In such crossings, trains and vehicles are in close proximity and there is the risk of a vehicle/train encounter, a pedestrian/train encounter, emergency vehicle delays, and general traffic delays. (Footnote Omitted)

The 2007 Order (¶ 10) properly articulated the standard to be applied by the Commission in ruling on a Petition which seeks to construct an inherently dangerous at-grade crossing:

> [T]he Commission will direct the opening of a grade crossing within its jurisdiction when the inherent and the site-specific dangers of the crossing are moderated to the extent possible with modern design and signals and when there is an acute public need which outweighs the resulting danger of the crossing. Such needs which have been found appropriate include the lack of a reasonable alternate access for public emergency services; and the sufficiency of alternate grade crossings, perhaps because of traffic in excess of design capacity.[4]

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[3] 2007 Order at p. 4, citing RCW 81.53.020; *Reines v. Chicago, Milwaukee, St. Paul & Pacific R.R.*, 195 Wash. 146,150, 80 P.2d 406 (1938).

[4] Citing *Town of Tonasket*, Docket No. TR-921371 (1993) and *Reines*.

As the 2007 Order noted (¶ 24), the Cities had argued in that proceeding that construction of a Center Parkway crossing would facilitate new commercial and retail development on the Richland side of the crossing, improve traffic circulation, relieve traffic congestion and provide greater accessibility to retail business on the Kennewick side of the crossing. However, the 2007 Order (¶ 25) concluded that there was substantial evidence of economic development on the Richland side of the crossing and thus "economic development in this area is occurring without the proposed crossing."

But most importantly, the 2007 Order (¶ 25) stated unequivocally: ". . . while economic development is definitely a positive goal for these cities, **it does not rise to the level of an acute public need**" necessary to justify an inherently dangerous at-grade crossing. (Emphasis supplied)

The 2007 Order (¶ 26) also concluded that the *de minimis* diversion of traffic flow proved by the Cities did not support the conclusion that "alternate crossings are insufficient to accommodate traffic." As the 2007 Order concluded (¶ 26) found:

> Alleviating traffic congestion is a positive goal. However, the *de minimis* level of traffic diversion anticipated by Kennewick does not appear to be an effective means to accomplish that goal. Moreover, the two alternate crossings at Columbia Center Boulevard and Steptoe Street appear adequate to accommodate this level of traffic and both alternate crossings are within 0.6 miles or less of the proposed Center Parkway crossing. Therefore, Kennewick did not meet its burden of proof on the second prong of the legal standard.

Those same two alternate crossings within .6 miles of the proposed Center Parkway crossing are still in place, with the Columbia Center grade-separated crossing being only .38 miles from the proposed crossing.[5] Further, as is apparent from the Initial Order, the Cities have again failed to carry their burden of proof on this issue.

The City of Kennewick did not file a Petition for Administrative Review of the 2007 Order denying the Petition which therefore became final.

III. ORDER 03 REVERSES THE INITIAL ORDER WITHOUT RATIONALE, ANALYSIS OR REASON

In the face of the adverse ruling in the 2007 Order, the Cities filed[6] the present Petition in April, 2013. Order 02 (the "Initial Order") was entered after a full hearing before the ALJ and the submission of voluminous evidence.

In Order 03 (¶ 15-16), the Commission properly characterized the arguments made by the Cities as follows:

> The Initial Order determines that the Cities failed to carry their burden to show a "public need" for the crossing that outweighs the hazards inherent in the at-grade configuration that are present despite the relatively low-level risk of an accident. To establish public need petitioners must provide evidence of public benefits, such as improvements to public safety or improved economic development opportunities.

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[5] In the current Petition (p. 8, ¶ 10), the Cities again acknowledged that the grade separated crossing at Columbia Center is only 1950 feet (.37 miles) from the proposed crossing.

[6] That "Petition to Construct" was filed by the City of Kennewick which identified itself as the "Road Authority" because the track sought to be crossed is within its municipal boundaries. (Petition, p. 6, Section 6, No. 3) The City of Richland (which borders but does not include the proposed crossing) filed a Motion to Intervene, claiming an interest in the pending Application. Respondent TCRY did not object to that Motion and leave was granted to Richland to intervene. (Order 01)

Petitioners challenge this conclusion, focusing almost exclusively on asserted public safety benefits, largely in the form of improved response times from two local fire stations to the point where the planned Center Parkway extension would intersect Tapteal Drive. **In other words, the Cities' principal claim of improved public safety is that emergency responders could get to a single point on a one-mile long, two-lane collector roadway with a "T" intersection at both ends more quickly than they can today.** In addition, there is some evidence that completion of this project would reduce traffic on other roadways in the vicinity, relieving congestion and potentially reducing accidents. The Initial Order analyzes the evidence on this issue in detail that does not bear repeating here. **It is sufficient for us to observe that we agree with the analysis, the findings, and the conclusion reached in the Initial Order that the benefits to public safety alleged by the Cities are too slight on their own to support the petition, even though the inherent risks are mitigated to a large extent by the project design.** (Emphasis supplied)

Thus, as Order 03 acknowledges, the Cities failed to carry their burden of proof. The Cities also failed to argue the two grounds upon which the Commission has now based its decision. As a result, TCRY had no occasion to present contrary evidence, cross examine the witnesses asserting such evidence or counter the arguments which the Commission has now adopted as the bases for Order 03. TCRY was thus deprived of its fundamental right to due process – to confront both the arguments and the facts in support of those arguments – because the Cities presented neither.

Having accepted the Initial Order as correct, the Order 03 nonetheless goes on to create two new factors upon which it based its decision. Order 03, while accepting all parts of the Initial Order, injects for the first time in this proceeding the concept of "Broader Public Need" with two components – economic development and deference to local government. The Commission uses these concepts, never argued by the Cities, to sweep aside the determination of the ALJ who heard the evidence and was able to observe the demeanor and credibility of the witnesses, allowing the Cities to prevail without ever putting TCRY on notice of the arguments that the Commission now uses to impose a significant burden on TCRY and the public by reversing the Initial Order.

As we demonstrate below, credible evidence that the construction of this crossing would promote economic development was never presented by the Cities or argued by them as a factor for allowing this crossing. In addition, as is evident from the following, the Cities' argument that they were entitled to construct the crossing without Commission approval was rejected by both the ALJ and the Commission. Yet, by creating a new controlling factor --the concept of "deference to local government" – the Commission has effectively granted the Cities the unilateral power to construct at-grade crossings, while rejecting the argument that approval of this crossing is required by statutory mandate.

In addition, Order 03 ignores the fact that the Cities have wholly distorted the process for determining the risk arising from the crossing they seek. While arguing that the dangers are miniscule based on conservative estimates of rail traffic on the

line being crossed, the City of Richland has facilitated massive rail projects on its own property which will substantially increase the amount of rail traffic at this crossing and thus magnify the risks that the Cities seek to minimize. Given their attempt to distort the facts to achieve their intended goal, the Cities are not entitled to any "deference" in this proceeding.

Finally, in Order 03, the Commission has elevated anecdotal information from public comment regarding property development to arrive at a conclusion, never argued by the Cities, that installation of the proposed crossing would promote economic development. Heeding the prior precedent of the 2007 Order and other decisions of the Commission, the Cities avoided evidence regarding economic development entirely. Having failed to put on such evidence, the Cities deprived TCRY of the opportunity to present contrary evidence and to confront and cross-examine the witnesses providing such "evidence."

The well-reasoned and fully supported ALJ decision in the Initial Order was endorsed by the Commission in Order 03. Following the statutory mandate, the ALJ concluded that the Cities had failed to show a public need for the proposed Center Parkway crossing.[7] Based on that conclusion, the Initial Order ruled that "[t]he Cities failed to demonstrate public need for the proposed crossing, **leaving nothing to balance against the inherent hazards of an at-grade crossing**" and that even if

[7] Initial Order, ¶¶ 59 - 66.

public convenience alone were sufficient to show public need, it does not outweigh the hazards of an at-grade crossing. [8]

The Commission should reconsider its decision and affirm the Initial Order or, at a minimum, grant a factual and legal re-hearing before an administrative law judge in which the Cities are required to prove that economic development outweighs the inherent risk of an at-grade crossing and that the Cities are entitled to any "deference" in that calculus in light of the conduct of the City of Richland.

IV. THE CITIES ARE ENTITLED TO NO "DEFERENCE" BECAUSE WHILE REPRESENTING TO THE COMMISSION THAT RAIL TRAFFIC INCREASE WILL BE MINIMAL, THE CITY OF RICHLAND WAS FINALIZING DEVELOPMENTS WHICH WILL SUBSTANTIALLY INCREASE RAIL TRAFFIC OVER THE PROPOSED CROSSING

TCRY demonstrated in detail the anticipated increase in rail traffic which would make a Center Parkway crossing even more dangerous. That evidence abrogated the predicted accident rate calculated by the Cities' only witness on this issue, because that rate was based on the distorted rail traffic evidence assumed by the Cities without consideration of the impact of the very real looming traffic increases.[9]

The Cities' evidence of minimal traffic increases is contradicted by the evidence of additional rail traffic which will result from developments *promoted by the City of Richland itself* on property of the City of Richland. Thus, while seeking authority to construct this crossing and minimizing the risk of that crossing, the City of Richland was taking dramatic steps which will result in a substantial increase of rail

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[8] Initial Order, ¶ 67 (Emphasis supplied).

[9] As noted in Order 03 (p. 6, fn. 7) that witness, Mr. Jeffers, a professional engineer, calculated the predicted accident rate to be 0.145 per year or 1 accident per 6.9 years. Exh. No. KMJ-1T at 7:11-20.

traffic, and thus an increasing risk of vehicle-train collisions, at the proposed Center Parkway crossing.

In light of this sleight of hand and failure of candor, the City of Richland is entitled to no "deference" from the Commission, especially where a decision which could impact the lives of hundreds of citizens through rail accidents is at issue.

This anticipated traffic increase is real and substantial. First, the City of Richland has sold to ConAgra Foods Lamb Weston a parcel of land for the purpose of constructing a substantial automated cold storage food warehouse which will be served by rail on the subject track resulting in a substantial increase in rail traffic not properly considered by the Cities.[10] Second, the City of Richland has leased a land parcel to a developer for the purpose of constructing a 1.5-mile rail loop to be serviced by 100+ railcar "unit trains." Once operative, this facility will substantially increase the number of unit trains utilizing the Port of Benton track.[11] The presence of unit trains in addition to other train traffic on this rail will result in increased rail traffic not taken into consideration by the Cities' evidence.

Third, TCRY has documented the substantial anticipated increase in its own traffic[12] including traffic to the existing rail loop on the Horn Rapids Spur. All rail traffic accessing ConAgra, the Richland Loop and the existing rail loop must travel over a Center Parkway crossing, if constructed.[13] TCRY presented this evidence in

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[10] Exh. JD-9-X and JD-10-X.
[11] Exh. KJ-14-X
[12] Exh. RVP-3-X
[13] These developments are located on the City of Richland's Horn Rapids Spur which, as is shown on the Exh. JD-10-X is accessed from what is labeled there as the "DOE Hanford Railroad" which is now

full at the hearing resulting in the entry of the Initial Order and restated it in its Answer to the Petition for Administrative review.[14]

The Cities' expert witness (Jeffers) providing evidence of anticipated rail traffic was not informed by the City of Richland regarding either the ConAgra project or the 1.5 mile rail loop and was provided no information regarding these planned facilities and thus, in effect, did not take these developments into consideration in projecting minimal increase in rail traffic over the proposed crossing.[15] Instead, this witness utilized a growth rate the he "felt was reasonable."[16]

Mr. Jeffers also was not provided any information regarding anticipated increase in rail traffic to the rail loop already in place on the Horn Rapids Spur and as a result, as to this traffic, admitted, "it would be hard to project anything."[17] He was not even asked to and did not perform a modeling analysis on the capacity of the rail line.[18]

A. City of Richland Rail Loop

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the Port of Benton rail leased to TCRY. RVP-1T, 2:16-3:5. As Mr. Ballew admitted, the projected ConAgra facility can only be reached by trains travelling over the proposed Center Parkway crossing. TR. 346:22-347:8. As shown on Exh. JD-10-X, the same is true of trains travelling to the City of Richland loop and the existing 10 NWA, LLC loop.

[14] See, Answer to Petition for Administrative Review, pp. 19-26.

[15] TR. 175:14-176:20. The City of Richland did not inform Mr. Jeffers of either development and he did not take the increased rail traffic generated by these developments into consideration in his computation of rail traffic. TR. 178:16-179:10. Indeed, Mr. Jeffers didn't understand that the ConAgra and rail loop developments were *two separate* projects. TR. 193:12-18.

[16] TR. 179:3-10.

[17] TR. 179:18-25.

[18] TR. 192:20-193:5.

While the hearing before the ALJ was in progress, the Richland City Council voted to approve a new 1.5 mile rail loop in the Horn Rapids Industrial Park connecting the Horn Rapids Spur to the Port of Benton railroad operated by TCRY.[19] This loop is to be constructed on property leased by the City to a private business entity under a 15-year lease.[20] This 8400-foot rail loop will accommodate "unit trains" (trains over 100 railcars).[21] The purpose for this facility is to allow the delivery of unit trains and the transloading of their contents for transport elsewhere.[22] In addition, the City approved the sale of 25 acres of land at this location for the construction of facilities for transloading and other operations.[23] Under the terms of the Lease, the loop track is to be built and operational within 18 months (by May, 2015) and the City expects that the facility will be online, operational and receiving unit trains within that time.[24]

The Lease requires that the operator allow access to the rail loop by both BNSF Railway Company and Union Pacific Railroad.[25] The Lease allows the delivery of a variety of products, including containerized goods for companies such as Wal-

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[19] TR. 354:25-355:7; TR. 334:16-24, 335:19-24. TR. 2336:11-15

[20] TR. 355:21-356:10; TR. 336:1-10. A copy of the Lease is Exh. KJ-14-X. A copy of the City's presentation regarding the loop development is Exh. JD-38-X which shows the planned facility in detail.

[21] TR. 356:21-357:2.

[22] TR. 357:3-6.

[23] TR. 357:7-27; TR. 335:19-24.

[24] TR. 358:2-12; 364:15-20.

[25] TR. 362:18-23.

Mart, Target and Costco as well as fuels including ethanol and diesel, fertilizers, phosphates, metal goods, lumber and machinery.[26]

The City anticipates a substantial investment by the loop operator as well as the companies who will locate on the loop to handle these commodities.[27] This is part of the City's plan to maximize use of the land within its industrial park for the economic benefit of the City.[28] Approximately one-half of the total of 2,000 acres comprising that industrial park remains available for development (not including the rail loop and ConAgra warehouse).[29]

There is no doubt that this development will generate additional rail traffic.[30] There are no limitations on the number of trains that this rail loop facility is allowed to accept.[31] The City's economic director, Mr. Ballew, testified, "we believe operationally the track will be limited to an average of two and a half trains per week."[32] However, neither Mr. Ballew nor any other City witness provided any data as the basis for that "belief."

In fact, with a substantial amount of land available for construction and no limit on the number of trains allowed to access the rail loop, it is apparent that the

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[26] Exh. KJ-14-X at 27-28. TR. 339:9-23;TR 358:13-359:2; 360:8-15. See also Exh. JD-39-X, a videotape of television interview with Bill King, Deputy City Manager describing potential uses of new rail loop including handling containerized products.
[27] TR. 360:18-361:9
[28] TR. 361:10-20.
[29] TR. 374: 4-18.
[30] TR. 361:21-23.
[31] TR. 364:21-365:3.
[32] TR. 269:21-370:6

increase in rail traffic will be substantial. All of that rail traffic will travel over the proposed Center Parkway crossing.[33]

B. ConAgra Cold Storage Facility

The ConAgra facility is to be constructed on an 80-acre tract of property under contract for purchase from the City of Richland[34] and subject to a proposed site development agreement with the City of Richland.[35] This facility is to be serviced by rail.[36]

The City of Richland has conducted no study to determine the anticipated volume of rail traffic to this facility,[37] but concedes that there is no question that this facility would generate additional rail traffic, all of which would travel over the proposed crossing.[38]

Therefore, the evidence clearly supports the conclusion that a substantial increase in rail traffic and change in the nature of rail traffic, including increasing the number of mile-long unit trains which will run through the proposed crossing, will occur.[39] The Cities presented no evidence demonstrating that they analyzed or

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[33] See citations at fn. 13 above.
[34] TR. 343:2-10; 344:19-345:3. The contract is Exh. JD-9-X. TR. 344:8-15. ConAgra also has an option to purchase an additional 80 acres from the City of Richland at this site. TR. 345:4-7.
[35] TR. 343:16-344:7. The draft site development agreement is Exh. JD-10-X.
[36] TR. 345:13-15. Preliminary drawings show an extensive rail system to service this facility. See Exh. JD-11-X.
[37] TR. 345:23-346:2. The City has received an "initial estimate" of 30 railcars per week from a Dutch firm no longer associated with the project. TR. 346:13-21. There was no evidence that the City of Richland has itself studied the impact on train volume resulting from the ConAgra development and no further data was provided.
[38] TR. 346:22-347:8
[39] See, Exh. JD-37-X. Video of Tangent Rail presentation to Richland City Council re planned speed increase on the Port of Benton rail dated Nov. 5, 2013; Exh. JD-38-X, City of Richland presentation to Port of Benton re planned rail developments dated November 13, 2013; Exh. JD-39-X. Video – television news interview by Mr. Bill King, City of Richland, re new rail loop and live testimony of Mr.

projected the railcar traffic increase, but instead relied on vague and unsubstantiated representations by others in an attempt to minimize the expected traffic increase. This evidence does not support granting the relief sought, as removal of the Center Parkway crossing once constructed would be a virtual impossibility despite a dramatic increase in rail traffic and the likelihood of rail-vehicle impacts.

The evidence is also clear that the Cities failed to disclose these planned developments as part of the Petition for Construction and ignored or attempted to minimize their impact in projecting rail traffic in the proceedings before the ALJ. That conduct entitles the Cities to no "deference" before this Commission and wholly distorts the calculus of balancing public need against inherent risk – "whether there is a demonstrated public need for the crossing which outweighs the hazards inherent in an at-grade crossing." [40]

V. CITIES FAILED TO PROVE THE REQUISITE PUBLIC NEED FOR THE PROPOSED CROSSING

RCW 81.53.020 requires that "All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, when practicable, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so."

King regarding that interview to the effect that uses of the new rail loop will include container unit trains as well as grain trains.

[40] *Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06 - Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions, ¶ 29 (Feb. 15, 2011) (citing: In re Town of Tonasket v. Burlington Northern Railroad Company, Docket TR-921371 (December 1993) and *Burlington Northern Railroad Company v. City of Ferndale*, Docket TR-940330 (March 1995).

As the Initial Order articulates, "[b]y its nature, an at-grade crossing poses hazards for motorists, pedestrians, and railroad operators that are not present at grade-separated crossings."[41] In this regard, the Initial Order properly noted that: "Washington courts have deemed at-grade crossings to be inherently dangerous."[42]

The Cities attempted to prove a "public need that outweighs the hazards inherent in the at-grade configuration" by relying on three benefits which they claimed would result from the proposed crossing:

a) Improved emergency response times;

b) Reduced vehicle accident rates; and

c) Relief of traffic congestion.

The Initial Order concluded that the Cities had failed to carry their burden of establishing the "public need" factors selected by the Cities as grounds for the Petition. In ruling that the Cities had failed to demonstrate a "public need" based on these factors, the Initial Order, in summary, grounded its conclusions on the following:

a. The Cities failed to show either a public need for faster response times or that opening a crossing at Center Parkway would solve any response times deficiencies.

b. The Cities failed to show that a Center Parkway crossing would reduce accident rates.

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[41] Initial Order, ¶ 47.

[42] Initial Order, ¶ 47 and p. 16 fn. 94 which cites: *Reines v. Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 195 Wn. 146, 150, 80 P.2d 406, 407 (1938); *State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County*, 5 Wn.2d 95, 104,104 P.2d 764 (1940); *Department of Transportation v. Snohomish County*, 35 Wn.2d 247, 250-51 and 257, 212 P.2d 829, 831-32 and 835 (1949)

c. The Cities failed to show that a Center Parkway crossing would materially contribute to a reduction in congestion.

Order 03 took no issue with these conclusions of the Initial Order. Order 03 also rejected the argument the Cities' argument that land use plans under the Growth Management Act ("GMA") "mandated" the Center Parkway crossing, agreeing with the conclusion of the Initial Order (¶ 42) that:

> Taken to its logical end point, the Cities' argument would require the Commission to approve any at-grade crossing planned for in a local jurisdiction's comprehensive planning process.

Having agreed that the Initial Order was correct on this issue, Order 03 then, under the guise of "harmonizing" the statutory scheme of the Growth Management Act with the mandate of RCW 81.53, capitulates entirely to what it calls the "findings" of the March 2013 report by JUB engineers, Inc. ("JUB Report").

In reality, what Order 03 calls "harmonizing" amounts to a total rejection of the factual and legal findings of the Initial Order. Order 03 lists the following elements of the JUB Report that it finds persuasive. These "findings," fly in the face of the well-founded conclusions of the Initial Order, all of which Order 03 approves.

Order 03 identifies the following factors as supporting its conclusion that the "broader public need" justifies approval of the crossing, despite the fact that all of these rationales were rejected by the Initial Order:

- The fact that the proposed Center Parkway has been included in the GMA since 2006.
- The desirability of completing a grid network.

- Providing relief to congested arterial facilities – that Center Parkway would provide traffic relief to both Columbia Center Boulevard (an inherently safe grade-separated crossing) and Steptoe Street.
- Improving emergency response times.

As the finder of fact, the ALJ in the Initial Order examined in detail whether the Cities had provided evidence sufficient to carry their burden of proving that a Center Parkway crossing would improve Emergency Response Times (¶¶ 21-29), would result in accident reduction (¶¶ 30- 31) or mitigate traffic congestion through establishment of a completed grid network (¶¶ 32-36).

The Initial Order rejected the findings of the JUB Report cited by Order 03 on each of these items. Order 03 overturns the Initial Order without finding any issue with its propriety, but instead acknowledging its accuracy. That result amounts to a wholesale subversion of the adjudicative process.

A. Insufficient Evidence of Improved Emergency Response Times

With respect to improved emergency response times, the Initial Order found:

- "[T]he evidence in the record demonstrates that the Cities' police and fire departments are generally meeting the response time objectives established in their respective comprehensive plans. Although the Cities point out individual statistics where response times have occasionally exceeded these goals, the Cities' emergency responders are not regularly failing to achieve their established LOS. We recognize that improving emergency medical response times by even a few seconds could significantly impact the outcome for some

patients, **but the Cities introduced no evidence of a public need for faster response times and did not adequately explain how the Center Parkway extension would contribute to improved public safety."** (Initial Order, ¶ 60; Emphasis supplied.)

- "Even if the Cities' emergency response time LOS levels were deficient, **there is insufficient evidence in the record to demonstrate that opening a crossing at Center Parkway would solve this problem.** Richland's comprehensive planning documents do not focus on building more roadways to solve response time deficiencies. Instead, the capital facilities element of Richland's GMA documents discuss building additional fire stations closer to areas needing better response times." (Initial Order, ¶ 61; Emphasis supplied.)
- "[T]his new access route between Gage Boulevard and Tapteal Drive may prove to be an illusory option if rail traffic increases according to even the most conservative estimates made part of the record in this case. **The potentially shorter response times that might be possible to a very limited area of south Richland with this new at-grade crossing are not sufficient to demonstrate public need."** (Initial Order, ¶ 62; Emphasis supplied.)

B. Insufficient Evidence of Reduced Accident Rates

With respect to reduced accident rates, the Initial Order concluded:

- "The Cities also argued that a public need exists to open the Center Parkway crossing because doing so would reduce traffic accident rates at two Columbia Center Boulevard intersections. **However, neither the JUB Study nor the**

Cities' traffic engineering witnesses provided any data or studies to support this assertion. (Initial Order, ¶ 63; Emphasis supplied.)

- "Mr. Deskins provided raw data on the number of vehicle collisions over a decade's time but analysis on how or why these accidents occurred. Mr. Montgomery offered only unconfirmed notions that reducing traffic levels would reduce accident rates. **The record has no persuasive evidence connecting improved traffic safety on Columbia Center Boulevard to opening a new roadway that will regularly be blocked by rail traffic."** (Initial Order, ¶ 64; Emphasis supplied.)

C. Insufficient Evidence of Traffic Congestion Relief

With respect to relief of traffic congestion, the Initial Order found:

- [T]he **Cities offered no persuasive evidence that opening a crossing at Center Parkway would materially contribute to this desired result:**
  - **The JUB Study made no specific findings about how a crossing at Center Parkway would impact deficient LOS ratings at congested intersections.**
  - Mr. Simon was unable to explain the effect of extending Center Parkway on the LOS E for eastbound left turns at the intersection of Columbia Center Boulevard and Quinault.
  - Mr. Deskins failed to conduct any LOS analysis focused on the installation of a crossing at Center Parkway and never factored train

delays into any of the models he did consider." (Initial Order, ¶ 65; Emphasis supplied.)

- **"The record does not conclusively link extending Center Parkway to any improvement in traffic flow at congested intersections in the immediate area.** At best, the record demonstrates that opening the proposed at-grade crossing will make public travel more convenient between the Tapteal Drive area and the Columbia Center Mall. **It is certainly possible that opening a new roadway will divert traffic away from existing overcrowded intersections, but supposition alone is not sufficient to demonstrate public need. The Cities failed to demonstrate that opening the proposed Center Parkway crossing would reduce traffic congestion around the Mall or at the intersection of Gage Boulevard and Steptoe Street.** (Initial Order, ¶ 66; Emphasis supplied.)

Thus Order 03, while purporting to approve these findings in the Initial Order, actually rejects and reverses each one. It does so without reason or analysis (as would be required in a *de novo* review), but rather by elevating the conclusions of the JUB Report over the adjudicated determination in the Initial Order. Order 03 engages in no rational review of the Initial Order which would support that action. In so doing, Order 03 simply stands the adjudicative process on its head. That action is an affront to the administrative process and a grievous injustice.

VI. ORDER 03 WAS DECIDED SOLELY ON THE BASIS OF A CLAIMED BENEFIT TO "ECONOMIC DEVELOPMENT" IN IMPROVED ACCESS TO 60 ACRES OF LAND

Order 03 (¶22) states that:

> We determine that the Commission should consider public need for the proposed at-grade railroad crossing in the broader context of **the several purposes discussed in the JUB transportation study, rather than with the narrower focus that the parties, and consequently the Initial Order, place on public safety.** (Emphasis supplied)

As demonstrated above, the Initial Order rejected each of the "purposes" identified in the JUB Report (except the economic development benefit which was never argued by the City or quantified by the JUB Report.) In overturning the Initial Order without addressing its factual or legal underpinnings, Order 03 thus elevates economic interests of "60 developable acres of commercial land" above the statutory standard applied without fail by the Commission in *prior* proceedings.

The Initial Order concluded that the Cities failed at every turn to prove that the claimed public benefits they argued outweighed the risks to public safety. Order 03 takes no issue with that well-reasoned decision.

Instead, in Order 03 jettisons those public safety interests in favor of economic development, in essence reading out of existence the statutory presumption that at-grade crossings are inherently dangerous and the standard of proof which the Cities were required to meet.

The Commission does this by relying on public comment from interested property holders which was not part of the evidentiary record. The Cities had the opportunity to put on evidence that the crossing would benefit such individuals and

entities. It chose not to. In doing so, the Cities shielded that "evidence" from the "engine of truth" of cross examination and from the critical examination and review by the ALJ. As the Initial Order noted, public comment in open meetings does not rise to the level of a "thoroughly developed evidentiary record."[43]

It is certainly appropriate for the Commission to gather public comment and to rely on it exclusively **in the absence of an evidentiary record**. However, it is wholly inappropriate for the Commission to elevate anecdotal information submitted outside the evidentiary record to a position of "evidence" in the adjudicative proceeding. Beyond that, it is an outrage for the Commission to pretend to embrace the findings of fact and conclusions of law in the Initial Order, while at the same time basing its decision solely on such anecdotal information to contradict the actual evidence at the hearing.

VI. CONCLUSION

By Order 03, the Commission abandons its function as the guardian of public safety with respect to an inherently dangerous at-grade crossing. It does so by focusing solely on the economic benefit to parties interested in developing a single 60 acre parcel, to the detriment of the public put at risk by inevitable train-vehicle collisions – a risk that will increase in the coming years as a direct result of the actions of the City of Richland.

[43] Initial Order, p. 19, fn. 102.

At the same time, Order 03 imposes upon TCRY and the other railroads using this track, without legitimate reason, the burden of increased liability and the stigma of blame for the inevitable accidents which will occur at this crossing.

In light of the foregoing, TCRY requests that the Commission abandon Order 03 which re-writes the sound, competent and thorough determination in the Initial Order that the Cities failed to demonstrate public need for the proposed crossing at all, let alone need which would outweigh the inherent hazards of a disfavored at-grade crossing. TCRY requests that the Commission do so by:

a) Granting the Petition for Reconsideration, vacating Order 03 and entering a Final Order approving the Initial Order herein; or

b) Granting the Petition for Rehearing and ordering further adjudicatory proceedings, either before the Commission or before an ALJ, in which the Cities are required to provide actual evidence of economic benefit to meet their burden of proof.

TCRY also requests that the Commission grant its Petition for Stay of the Final Order pending the decision of the Commission on the Petition for Reconsideration and the outcome of the proceedings ordered in granting the Petition for Reconsideration and the Petition for Rehearing.

Dated this 9th day of June, 2014.

TRI-CITY & OLYMPIA RAILROAD

By: _____
Paul J. Petit, Its Attorney

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served this day by email and by U.S. Postal Service on all parties of record in this proceeding to the parties identified below:

P. Stephen DiJulio Jeremy Eckert Foster Pepper PLLC 1111 3rd Avenue, Ste. 3400 Seattle, WA 98101 *dijup@foster.com* *eckej@foster.com*	Peter Beaudry Public Works Director City of Kennewick 210 West 6th Avenue P.O. Box 6108 Kennewick, WA 99336-0108 Peter.beaudry@ci.kennewick.wa.us
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A courtesy copy email was also sent to:

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DATED this 9th day of June, 2014, at Kennewick, Washington.

Paul J. Petit

Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Utilities and Transportation Division
1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

June 11, 2014

Steven V. King, Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *City of Kennewick - Petition to Construct a Highway-Rail Grade Crossing, Center Parkway, Kennewick, WA*
Docket TR-130499

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and one copy of a Notice of Substitution of Counsel, and Certificate of Service.

Sincerely,

MICHAEL A. FASSIO
Assistant Attorney General

MAF/emd
Enclosures
cc: Parties w/enc.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY, UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499 NOTICE OF SUBSTITUTION OF COUNSEL

1 TO: STEVEN V. KING, Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington, 98504-7250; and

2 TO: PARTIES OF RECORD.

3 PLEASE TAKE NOTICE THAT THE UNDERSIGNED is hereby substituted for Steven W. Smith, as counsel for the Staff of the Washington Utilities and Transportation Commission in the above-entitled matters.

4 YOU ARE REQUESTED and directed to serve all future motions, notices, pleadings, and other papers in this proceeding on MICHAEL A. FASSIO, Office of the Attorney General, P.O. Box 40128, Olympia, WA 98504-0128, Phone: (360) 664-1192, Fax: (360) 586-5522, email: mfassio@utc.wa.gov.

Dated this 11th day of June, 2014.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

Michael A. Fassio

MICHAEL A. FASSIO
Assistant Attorney General
Counsel for Washington Utilities and Transportation Commission

Docket TR-130499
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Notice of Substitution of Counsel upon the persons and entities listed on the Service List below via e-mail and by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 11th day of June, 2014.

ELIZABETH M. DeMARCO

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June 16, 2014

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *City of Kennewick - Petition to Construct a Highway-Rail Grade Crossing, Center Parkway, Kennewick, WA*
Docket TR-130499

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and six copies of Commission Staff's Response to Tri-City Railroad Company's Petition for Rehearing and Petition for Stay, and Certificate of Service.

Sincerely,

MICHAEL A. FASSIO
Assistant Attorney General

MAF/emd
Enclosures
cc: Parties w/enc.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499 RESPONSE OF COMMISSION STAFF TO TRI-CITY RAILROAD COMPANY'S PETITION FOR REHEARING AND PETITION FOR STAY

I. INTRODUCTION

1 In accordance with WAC 480-07-375 ("Motions"), Commission Staff ("Staff") files this response solely to Tri-City and Olympia Railroad Co.'s ("TCRY") Petition for Rehearing and Petition for Stay, filed on June 9, 2014.[1]

2 As previously explained in more detail in Staff's testimony, exhibits, and post-hearing brief, Staff supports the City of Kennewick's petition to open the Center Parkway at-grade crossing.

3 The rehearing statute, RCW 81.04.200, provides that a public service company affected by a Commission order may petition for rehearing after two years from the date the order was entered,[2] although the Commission has discretion to permit the filing at any time. Among the statutory grounds for a petition for rehearing are: changed conditions since the issuance of the order, or a result of the order injuriously affecting the petitioner which was

[1] Procedural rules for petitions for reconsideration are separately contained in WAC 480-07-850.
[2] Or, six months, if the order is complied with and if it "shall not be reviewed." RCW 81.04.200.

not considered or anticipated at the former hearing, or that the effect of the order has been such as was not contemplated by the Commission or the petitioner, or for any good and sufficient cause which for any reason was not considered and determined in the former hearing. A petition for rehearing is akin to an application for adjudication under RCW 34.05.413, and the Commission may deny the application under RCW 34.05.416.[3] TCRY's petition for rehearing does not appear to demonstrate the statutory grounds for rehearing set out under RCW 81.04.200. For example, TCRY does not allege changed conditions since the order was issued, nor does the order, in granting the City's petition to open the crossing, provide a consequence that was not anticipated by the parties at the former hearing.

4 Rather, TCRY seeks rehearing to present, or require the City present, additional evidence bearing particularly on the issue of public need for the crossing. The parties had a full opportunity to present such evidence at hearing and address any evidence and arguments put forth by other parties. The Commission's Order 03 addressed public need. Staff believes that the evidenciary record was both considerable and sufficiently developed for the Commission to properly decide on the merits of the City's petition, and in doing so the Commission evaluated that full record. Rehearing for the purpose of submitting additional evidence, which would likely involve a new adjudicative proceeding, is unnecessary. For these reasons, Staff does not support TCRY's petition for rehearing.

5 Staff takes no position on TCRY's petition for a stay of Order 03 pending the outcome of its separate petition for reconsideration.

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[3] *See*, ie, Order M.V.G. No. 1533, *In re application GA-868 of Sure-Way Incineration, Inc.*, Commission Decision and Order Denying Petition for Alteration; Rejecting Petition for Rehearing at page 7 (February 13, 1992).

II. CONCLUSION

6 As explained above, Staff does not support TCRY's petition for rehearing, and takes no position on TCRY's petition for stay.

DATED this 16th day of June, 2014.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

MICHAEL A. FASSIO
Assistant Attorney General
Counsel for Washington Utilities and Transportation Commission Staff

Docket TR-130499
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Response to Petition for Rehearing and Petition for Stay upon the persons and entities listed on the Service List below via e-mail and by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 16th day of June, 2014.

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June 16, 2014

BY EMAIL AND FEDERAL EXPRESS

Washington Utilities and Transportation Commission
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Re: Petitioner's Reply Brief
Docket TR-130499

Dear Commissioners:

The City of Kennewick and the City of Richland submit their Response Brief to Tri-City & Olympia Railroad Petition for Rehearing and Petition for Stay of Order.

Sincerely,

FOSTER PEPPER PLLC

Jeremy Eckert

Enclosure
cc: All parties (by email)

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 CITIES' RESPONSE TO TRI-CITY & OLYMPIA RAILROAD CO's PETITION FOR REHEARING AND PETITION FOR STAY OF ORDER

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1. INTRODUCTION

Order 03 correctly determined that that the cumulative evidentiary record demonstrates public need for the proposed at-grade Center Parkway Crossing ("Crossing") outweighs its speculative risk.[1] Order 03 also harmonizes provisions of the Growth Management Act (RCW 37.70A.103) with the Utility and Transportation Commission's ("UTC's") statutory requirement to review at-grade crossing petitions (Ch. 81.53 RCW).[2] Substantial evidence and submitted briefing supports Order 03, and Tri-City & Olympia Railroad Co. ("TCRY") had multiple opportunities throughout this petition process to produce evidence and to brief any legal argument to address any finding or conclusion stated in Order 03. TCRY's petitions for a rehearing and a stay should be denied.[3]

The Commission recognizes that the JUB Report articulates the needs and benefits of the Crossing.[4] Order 03 cites the JUB Report's conclusion that the Crossing will provide a public need by, in part, "provid[ing] improved access to commercial areas and developable land."[5] The Commission noted that previous UTC Orders support the public need for economic development as identified in the JUB Report[6] and the need for economic development is "**underscored**" by public comments.[7] TCRY cross-examined the JUB Report's author at that hearing.[8] The Cities consistently cited all of the identified public needs identified in the JUB Report in the Cities' post hearing brief[9] and the Cities' petition for review.[10] Public comments that underscore the JUB Report's findings cited in Order 03 were submitted prior to the date TCRY submitted its

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[1] Order 03, ¶ 38.
[2] Order 03, ¶ 33.
[3] Pursuant to UTC rules, this response does not address any aspect of TCRY's petition for reconsideration.
[4] Order 03, ¶ 22.
[5] Order 03, ¶ 20-21, citing Exh. KJ-5 at 1, 14.
[6] Order 03, ¶ 15 n.9, *citing Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06.
[7] Order 03, ¶ 23.
[8] TR. 210-236.
[9] *See e.g.*, 21:1-2, beginning a section titled "Center Parkway Crossing Required to Provide Infrastructure to Support Community and Economic Development".
[10] *See e.g.*, 40:1-2, beginning a section titled: "The Center Parkway Crossing Will Provide Infrastructure to Support Community and Economic Development."

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post-hearing brief.[11] TCRY chose **not** to brief legal argument and chose **not** to contest evidence that the Crossing improves access to services and developable land.[12]

Order 03 also correctly identified that regional and comprehensive plans support the Crossing.[13] To address the outstanding issue of harmonizing the GMA and chapter 81.53 RCW, the UTC concluded: "Comprehensive planning does not relieve the Cities from complying with RCW 81.53, but that the Commission will consider the Cities' planning as a part of the policy context in which it evaluates a proposed at-grade crossing in the commercial center of an urban area."[14] This is a reasoned conclusion that harmonizes existing law.

Responding to Judge Torem's request for briefing on "the legal basis of his decision,"[15] Cities substantially briefed the legal standard in its post-hearing brief[16] and in its petition for review.[17] This briefing addressed integrating GMA with Chapter 81.53 RCW, comprehensive planning requirements for GMA cities, and statutory exemptions for first class cities. TCRY chose **not** to brief these issues.

In addition to **not** providing responsive briefing, TCRY also did **not** contest that the admitted evidence demonstrates that the Crossing is supported by the Cities' comprehensive planning.[18] At the October 2013 hearing, TCRY cross-examined witnesses that demonstrated how the Crossing is a long-planned and important component of the Cities' transportation system.[19] Public comments that underscore the Crossing's planning background cited in Order

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[11] Post-hearing briefs were due on December 20, 2013. The latest economic development comment cited in Order 03 was submitted on December 9, 2013.
[12] TCRY's Post Hearing Brief at 6-7.
[13] Order 03, ¶ 20, n. 15.
[14] Order 03, ¶ 33, Findings and Conclusions #4.
[15] TR. 432:15-18.
[16] *See e.g.*, Cities' Post Hearing Brief, Sections 5 and 6.
[17] *See e.g.*, Cities' Petition for Review, Section 6.
[18] Order 03 cited the Petition for Admin. Rev. at 19:2-9, which cites exhs RS-2, GAN-7-X, RS-4, JP-3, GAN-8X, and GAN-9-X. Additional evidence documents the planning process supporting the Crossing, including the following pre-filed testimony: RS-1T, JD-1T, JD-2TR, and JP-1T.
[19] The witnesses included the City of Richland's Planning Director (TR. 57-71), the City of Richland's Transportation & Development Manager (TR. 49-56), the City of Kennewick's Transportation Engineer

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03 were part of the record prior to the date TCRY submitted its post-hearing brief.[20] Cities' briefing extensively cited the Crossing's planning background.[21]

The record contains substantive and substantial briefing and evidence supporting Order 03. TCRY is mistaken about the record when it now argues that it must receive a new hearing "to produce evidence and legal argument to counter those arguments never articulated or relied upon by the Cities."[22] TCRY had the opportunity to present evidence, to cross-examine witnesses, to respond to any public comments, and to make legal argument to address any issue addressed in Order 03. In addition to the record not supporting TCRY's petitions, a rehearing would cause substantial hardship to the Cities by imposing additional legal cost on the petitioners that fully participated in this adjudication. More significantly, a rehearing and stay would also delay the long-planned Crossing that will provide economic development, transportation, and safety benefits to the community. The Diagnostic Meeting for this Crossing (which TCRY did not attend) occurred more than one and a half years ago.[23] For these reasons, the Commission should deny TCRY's petition for rehearing and deny the petition for stay.

2. RULES AUTHORIZING THIS REPLY

Cities acknowledge that they may not file a reply to TCRY's petition for **reconsideration** unless requested by the Commission. WAC 480-07-850(3). To conform to the UTC's procedural rules, this reply solely addresses TCRY's petition for rehearing and petition for stay. WAC 480-07-850(3) is inapplicable to these petitions.

The Cities are authorized to file this written reply pursuant to WAC 480-07-375. TCRY's petition for a rehearing and petition for a stay are "motions" pursuant to the definition in WAC 480-07-375(1) ("A party's written or oral request for commission action in the context of

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(TR. 71-85), the City of Richland's Economic Development Manager (TR. 342-377), and the City of Richland's Deputy City Manager (TR. 334-340).

[20] Post-hearing briefs were due on December 20, 2013. The latest comprehensive planning comment cited in Order 03 was submitted on December 6, 2013.

[21] *See e.g.*, Cities' post hearing brief at 8:16-9:19; Cities' petition for review at 11:8-12:3.

[22] TCRY's petition for recondition of final order, petition for rehearing, and petition for stay at 4:3-4.

[23] Exh. KJ-8. The Diagnostic Meeting occurred on December 11, 2012.

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an adjudicative proceeding is a 'motion.'"). This petition remains in the context of an adjudicative proceeding. *See*, Ch. 480.07 WAC; Part III Adjudicative Proceeding; Subpart E: Orders and Post-order Process (demonstrating that this petition is now in the post-order setting of the adjudication). The Cities' response is filed within five business days of TCRY's motions, and it is timely pursuant to WAC 480-07-375(4).

3. THE COMMISSION SHOULD DENY TCRY'S REQUEST FOR A REHEARING

3.1 The Record Includes Substantive and Substantial Evidence Demonstrating the Public Need Outweighing the Crossing's Speculative Risk.

The Commission should deny TCRY's petition for a rehearing because the record is well developed and the substantive evidence of public need for the crossing outweighs its speculative risk. Order 03 explains from that record that broader public need includes the exact elements that the JUB Report analyzed, including: (1) complete a grid network of functionally classified roadways; (2) provide relief to congested arterial facilities; (3) provide improved access to commercial areas and developable land; and (4) improve emergency response times[24] ("We determine that the Commission should consider public need for the proposed at-grade railroad crossing in the broader context of several purposes discussed in the JUB transportation study ..."[25]). TCRY requests a rehearing in which the Cities "would be required to produce additional evidence to carry their burden of proof."[26] But, the admitted evidence already demonstrates public need for the Crossing, and that need outweighs the calculated risk of the crossing.[27]

3.1.1 The record demonstrates that the Crossing will complete a grid network of functionally classified roadways.

The Crossing provides a public need by completing the regional roadway network. This Crossing is the final step in a series of transportation projects to improve the functionality of the

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[24] Order 03, ¶ 20.
[25] Order 03, ¶ 22.
[26] Petition for Recondition of Final Order, Petition for Rehearing, and Petition for Stay at 4:3-4.
[27] The UTC calculated the risks of opening the proposed at-grade crossing, concluding that it would result in 0.018701 collisions per year, **or one accident every 53.5 years.** Exh. KH-1T 25:7-26:22. TCRY does *not contest this finding.* Because of the proposed safety features, the Commission correctly determined that "even imprudent drivers will effectively be barred from crossing the tracks ..." Order 03, ¶ 14.

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network by providing a north-south connection in the existing grid system.[28] Order 03 correctly identified that the Crossing provided public need by completing a grid network of functionally classified roadways.[29] No further hearing is needed to address established evidence.

3.1.2 The record demonstrates that the Crossing will provide relief to congested arterial facilities.

The JUB Report demonstrates that the Crossing will provide relief to congested arterial facilities by decreasing traffic volumes on Colombia Center Boulevard by 210 vehicles per hour and by decreasing traffic volumes on Steptoe Street by 310 vehicles per hour.[30] Mr. Montgomery summarized the data: "Center Parkway has been planned to provide relief to both Columbia Center Boulevard as well as Steptoe Street, consistent with the philosophy of providing collector roadways parallel and in between arterial roadways."[31]. Order 03 correctly identified that the Crossing provided public need by providing relief to congested arterial facilities.[32] The record needs no further amplification.

3.1.3 The record demonstrates that the Crossing will provide improved access to commercial areas and developable land.

Order 03 correctly identified that the Crossing provides a public need by improving access to commercial areas and developable land. Evidence of this fact is set forth in page 6 of the JUB Report, which explains that access to nearly 60 acres of land that has utilities and collector roadway access, but lacks direct access to the commercial area south of the railway.[33] Order 03 also correctly determined that voluminous public comments underscore the years of comprehensive planning that occurred to accommodate economic development. TCRY improperly urges the Commission to ignore the public's voice in this proceeding. WAC 480-07-

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[28] Exhs. JUB Report, Exh. KJ-5 at 5; RS-2 at T 5-4 ("Center Parkway from Tapteal to Gage: Construct 3-lane road"); Exh. GAN-7-X at 58 to 59; Exh. RS-4 at H-3 ("Center Parkway Extension – Gage to Tapteal"); Exh. JP-2; JP-3; Exh. SM-1TR at 3.
[29] Order 03 ¶¶ 26-27.
[30] JUB Report, Exh. KJ-5 at 10.
[31] JUB Report, Exh. KJ-5 at 6.
[32] Order 03 ¶¶ 26-27.
[33] Exh. KJ-5 at 6.

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498 expressly authorizes public comment to allow the Commission to "receive an illustrative exhibit that expresses public sentiment concerning the pending matter." Public comment ended prior to the due date for post-hearing briefs. TCRY had every opportunity to reply to any submitted comment.

Order 03 also correctly identified that economic development provides a public need that the Commission may consider. At the hearing, UTC Staff testified that "public need" includes "improved access to services and developable land ..."[34] UTC orders acknowledge that economic development serves a public need.[35] Despite the admitted record and the Cities' submitted briefing, TCRY did **not** brief this area of law and did **not** contest the economic development evidence. Order 03 correctly identified that the Crossing provided public need by promoting economic development.[36] It is now too late to argue that further hearing is needed.

3.1.4 The record demonstrates that the Crossing will improve emergency response times.

The record demonstrates that the Crossing is a viable route for first responders because it will be closed less than one percent (1%) of the day to accommodate train traffic.[37] This closure rate "is not significant enough closing to merit particular attention from emergency response vehicles to alert their route of travel."[38] This conclusion is based on the existing and projected track usage data submitted by BNSF, UPRR, and TCRY.[39] Even under TCRY's inflated growth projections, the crossing would be closed less than three percent (3%) of the day (this figure

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[34] TR. 280:8.
[35] *See Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions ¶ 33-37 (February 15, 2011).
[36] Order 03 ¶¶ 22-24, 37.
[37] TR. 231:5-6; Exh. SM-1TR 5:7. *See also*, Exh. KJ-5 at 6.
[38] Exh. SM-1TR 5:6-8.
[39] TR. 231:17-232:20.

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includes TCRY's information submitted in its Response Brief).[40] Finally, Exhibit SM-1TR 6:15-26 explains why there are no queuing issues for the proposed crossing.

The Cities demonstrate improved emergency response times with the following evidence:

- Exh. KJ-5 at 6 (JUB Report);
- Exh. GAN-20-X (Analysis supporting the findings in the JUB Report);
- Exh. SM-1T (Mr. Montgomery's pre-filed testimony regarding improved emergency response times);
- TR. 217:7-219:1 (Mr. Montgomery's testimony at the hearing);
- TR. 107:15 (Chief Baynes' testimony that the crossing will improve emergency response times by "approximately one minute");
- *Also see* pre-filed testimony of **all** first responders in the area stating that the crossing will address a public need by improving emergency response times: Exh. CS-1T 3:2-22; Exh. NH-1T 3:12-4:13; Exh. RGB-1T 3:24-5:4; Exh. KMH-1T 3:1-10; Exh. CS-2T:11-22; Exh. KMH-2T 2:11-22; Exh. RBG-2T 2:11-3:20;
- *Also see* pre-filed testimony of City Planning Staff: Exh. RS-1T 6:1-7;
- *Also see* pre-filed testimony of the Cities' public works staff: Exh. JD-1T 4:22-25;
- *Also see* pre-filed testimony by UTC Staff: KH-1T 17:14-19:23.

Considering the totality of the evidence, Order 03 correctly included improved emergency response times as one element of "broader public need."[41] After the development of this extensive record, no further hearing is needed.

3.2 The Cities' Critical Need to Construct the Crossing Immediately.

The Cities oppose a rehearing and a stay because the cumulative evidence demonstrates the immediate need for the crossing. The Cities agree that the Commission should make its decision based upon "broader public need." The Cities extensively outline the evidence of

[40] TR 233:18-20. This figure was further supported by track usage data submitted by BNSF, UPRR, and TCRY. TR. 234:8-18.
[41] Order 03 ¶ 22.

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emergency response times because the Cities' first responders are failing to achieve emergency response time standards,[42] thereby placing the public at risk.[43] A rehearing or a stay would further delay the implementation of the Crossing that will provide significant transportation, safety, and economic development improvements for businesses and residents in the Tri-Cities.

4. THE RECORD DEMONSTRATES THAT THE CITIES HAVE ACCOUNTED FOR ANY INCREASE IN TRACK USAGE.

The Crossing, and the record in this case, accounts for any increase in rail traffic.

4.1 Coordinated Planning. The Cities coordinate all of their rail-related actions through comprehensive planning. The evidence demonstrates that Cities have thoughtfully planned and executed the identified rail-related economic development opportunities.[44] The evidence also demonstrates that the Cities have thoughtfully planned transportation improvements that are necessary to accommodate economic development and a growing population.[45] TCRY has presented no evidence to demonstrate any other conclusion. The Cities' planning documents and actions demonstrate a comprehensive approach to accommodate regional growth.

4.2 Track Usage Data. The record already contains extensive evidence of track usage, including the unsubstantiated and speculative TCRY claims.[46] Regardless, even inflated track data does not change the fact that the crossing will remain open at least 97% of the day,[47]

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[42] Exhibit GAN-18-X documented 42 emergency responses to Tapteal Drive addresses. For the 42 emergency responses to Tapteal Drive, the first responders failed to respond in less than four minutes in 35 events, and the first responders failed to respond in less than five minutes in 29 events. The Crossing provides a direct connection to Tapteal Drive addresses that will be open at least 97% of the day.

[43] Exhs. GAN-20-X; GAN-3-X at CF 5-3.

[44] GAN-16-X (*see e.g.* p. 4 demonstrating the economic development activities are considered in the Cities' comprehensive planning documents: "The [Horn Rapids Master Plan] supplements the Richland Comprehensive Plan and supersedes the previous Master Plan adopted in 1995.").

[45] Exh. RS-2 at T-4 (City of Richland Comprehensive Plan, "Center Parkway from Tapteal to Gage: Construct 3-lane road"); Exh. GAN-7-X at 58-59 (City of Kennewick Comprehensive Plan); Exh. RS-4 at H-3 (Regional Transportation Plan, "Center Parkway Extension – Gage to Tapteal").

[46] For example, TCRY Managing Member, Mr. Peterson, impeaching his own testimony regarding the *siding track*. Cities' Petition for Review 14:1-7.

[47] TR. 233:18-20.

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and the site-specific risk of the crossing remains mitigated by safety features that exceed typical engineering standards for similar intersections. [48]

4.3 No Change to the Crossing's Safety Features. The record also demonstrates that the crossing's safety features **exceed** typical engineering standards for such an intersection.[49] No track usage data presented by TCRY can undermine this finding.[50] As required by the UTC, the Cities have demonstrated that they will mitigate the site-specific risk of the crossing. The Cities, UTC Staff, ALJ, and the Commission agree that the Cities have properly mitigated the site-specific dangers of the proposed crossing.

In sum, TCRY's attempt to identify increased rail traffic does not demonstrate any decrease in the public need for the crossing, nor does it demonstrate any increase in the site-specific dangers, or any basis for rehearing.

5. HARMONIZING GMA AND CHAPTER 81.53 RCW

Order 03 properly harmonizes RCW 36.70A.103 and chapter 81.53 RCW. The Order is consistent with UTC's previous application of law that places the burden on the petitioner to demonstrate public need ("Comprehensive planning under the Growth Management Act does not relieve the Cities from complying with RCW 81.53."). [51] Then, to harmonize the statutes, Order 03 grants "some deference"[52] or a "degree of deference"[53] to planning jurisdictions when the Commission evaluates public need. The "degree of deference" applies when the identified public need is associated with the Cities' transportation and land use planning goals, because

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[48] Cities' Petition for Review 29:13-31:6; KH-3; KJ-4; TR. 263:18-23, 264:10-13, 265:6-9. *See* Initial Order 02 at ¶ 76. *Also see* ¶¶51-54.

[49] Cities' Petition for Review 29:13-31:6; KH-3; KJ-4; TR. 263:18-23, 264:10-13, 265:6-9. *See* Initial Order 02 at ¶ 76. *Also see* ¶¶ 51-54.

[50] Lacking evidence or any recent legal authority, TCRY repeatedly cites case law from the Great Depression (1938) that involved a train-car collision at an at-grade crossing that was not protected by any signal light or warning devices. TCRY's Petition at 6:4 n. 3. The UTC recognizes that safety features for the proposed crossing may mitigate the site-specific safety issues for proposed at-grade crossings. Here, to mitigate the identified site-specific safety issues, the proposed crossing includes modern (2014) safety features that exceed typical engineering standards for such crossings.

[51] Order 03, ¶ 33.

[52] Order 03, ¶ 25.

[53] Order 03, ¶ 28.

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"these are matters of local concern and within the jurisdictional authority of the Cities."[54] The Commission should deny TCRY's petition for a rehearing on this matter because it correctly harmonizes law. Further, Order 03 is supported by admitted evidence; TCRY chose not to brief conflict of law issues identified in the Cities' post-hearing brief and in Cities' petition for review;[55] and, the Order is consistent with the Commission's authority to rely on the record.

6. CONCLUSION

Order 03 is founded on a record and legal issues that were briefed in the adjudicative process, and Order 3 is supported by substantial evidence. TCRY had many opportunities to present evidence and to present legal arguments. Yet, throughout the adjudicative process TCRY did **not** provide requested briefing regarding legal standards; did **not** contest evidence that the Crossing improves access to services and developable land; and, TCRY did **not** contest that the Crossing will complete a roadway network. And, TCRY did **not** contest the following evidence and findings: (1) a grade separated crossing is not practicable;[56] (2) the Cities designed the Crossing with safety features that **exceed** typical engineering standards for such an intersection;[57] (3) that the calculated risk of the Crossing is one incident every 53.5 years;[58] and (4) even under TCRY's inflated growth projections, the Crossing will open more than 97% of the day and protected by the documented safety features.[59] In light of the record and the Commission's careful consideration of that record, no further hearing is warranted.

TCRY's petition for rehearing and petition for stay are without merit. The record does not need "additional evidence," as claimed by TCRY. Meanwhile, the Cities' long-planned Crossing that has significant transportation, safety, and economic development implications

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[54] Order 03, ¶ 25.
[55] *See e.g.*, Cities' Post Hearing Brief, Sections 5 and 6; Cities' Petition for Review, Section 6.
[56] Initial Order 02 ¶ 75.
[57] Cities' Petition for Review 29:13-31:6; KH-3; KJ-4; TR. 263:18-23, 264:10-13, 265:6-9. *See* Initial Order 02 at ¶ 76. Also see ¶¶51-54.
[58] Exh. KH-1T 25:7-26:22. *See*, Initial Order 02 ¶ 17, footnote 29.
[59] TR. 233:18-20. This figure was further supported by track usage data submitted by BNSF, UPRR, and TCRY. TR. 234:8-18.

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remains on hold while the UTC once again addresses TCRY's refuted arguments. Cities urge the Commission to deny TCRY's petition for a rehearing and petition for stay.

Respectfully submitted this 16th day of June, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of this record in this proceeding by email. The parties of record are identified below:

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A courtesy copy was also delivered, in the manner indicated, to:

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DATED this 16th day of June, 2014, at Seattle, Washington.

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SERVICE DATE

JUN 24 2014

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	)	DOCKET TR-130499 ORDER 04 DENYING PETITION FOR RECONSIDERATION, PETITION FOR STAY, AND PETITION FOR REHEARING

MEMORANDUM

I. Background and Procedural History

1 The City of Kennewick (Kennewick) filed a petition with the Washington Utilities and Transportation Commission (Commission) on April 8, 2013, seeking approval to construct a highway-rail at-grade crossing as part of a project to extend Center Parkway from an existing roundabout in Kennewick, where the parkway intersects Gage Boulevard, continuing north to intersect Tapteal Drive in the City of Richland (Richland). On May 31, 2013, Richland petitioned to intervene in support of Kennewick's petition.

2 Three railroad companies move trains on the subject track, which is owned by the Port of Benton. Burlington Northern Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UPRR) filed waivers of hearing stating their agreement to the proposed crossing. The third railroad company, Tri-City & Olympia Railroad (TCRY), answered Kennewick's petition and requested a hearing. TCRY opposes the proposed crossing.

3 The Commission's regulatory staff (Staff) supports Kennewick's petition.[1]

4 Following evidentiary hearings on November 19-20, 2013, a public comment hearing on November 20, 2013, in Richland, Washington, and briefing by the parties, the Commission entered Order 02, its Initial Order, on February 25, 2014, denying Kennewick's petition. Kennewick and Richland (Cities) filed a joint Petition for Administrative Review on March 18, 2014.

5 TCRY filed an answer on March 27, 2014, opposing the joint petition for review. Staff also filed an answer on March 27, 2014, reiterating its support for the Cities' petition for authority to construct the subject rail crossing, but addressing the Cities' alternative arguments about the impact of the Growth Management Act (GMA) and the application of chapter 81.53 RCW to code Cities. Staff disagrees with the city on the application of both the GMA and RCW 35A.11.020 to its petition.

6 The Commission entered Order 03-Final Order Granting Petition for Administrative Review, reversing Order 02, on May 29, 2014. TCRY filed its joint Petition for Reconsideration of Final Order, Petition for Rehearing, and Petition for Stay of Order on June 9, 2014. Staff and the Cities responded on June 1, 2014, opposing TCRY's Petition for Rehearing and Petition for Stay of Order.

II. Petitions for Reconsideration, Rehearing, and Stay

7 TCRY argues that "Order 03 reverses the Initial Order without rationale, analysis or reason."[2] TCRY focuses initially on the fact that Order 03, our Final Order Granting Petition for Administrative Review, states that:

> We agree with the analysis, the findings, and the conclusion reached in the Initial Order that the benefits to public safety alleged by the Cities

[1] In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

[2] TCRY Petition at 8:7-8.

> are too slight on their own to support the petition, even though the inherent risks are mitigated to a large extent by the project design.[3]

TCRY ignores, however, that the key operative phrase in the quoted sentence, italicized here, explains that the "benefits to public safety alleged by the Cities *are too slight on their own* to support the petition."[4] Order 03 follows immediately with the point that:

> If the feasibility of grade separation and public safety as a component of public need were our only concerns, we would end our discussion here and sustain the Initial Order. However, having studied the full record, *we find reason to analyze this matter outside the narrow constraints of these two questions.* We address in the next section of this Order an additional point of decision that we find determinative.[5]

The emphasized language in the quote above succinctly describes the Commission's responsibility when reviewing an Initial Order, whether on its own motion[6] or, as in this case, in response to a petition for administrative review filed by a party.[7] The Administrative Procedure Act describes this responsibility as follows:

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[3] Order 03 ¶ 16. The project is designed to mitigate the inherent dangers to vehicles and pedestrians by using active warning devices and taking other measures. Specifically, the Cities propose to install advanced signage, flashing lights, an audible bell, automatic gates, and a raised median strip designed to prevent drivers from going around lowered gates, as illustrated in Order 03. *Id.* ¶ 13 Figure 2 At-Grade Crossing Configuration. Ms. Hunter testifies for Staff that she believes these safety features "are sufficient to moderate, to the extent possible, any danger that may exist at the crossing." Indeed, Ms. Hunter, comparing the proposed Center Parkway crossing to an existing crossing with similar characteristics and using the Federal Railroad Administration accident predictor model to determine the probability of an accident at the proposed crossing is .018701 percent for any one-year period.

[4] *Id.* at 9:14-15 (quoting from Order 03 ¶ 15 (emphasis added)). The Cities and the Initial Order focus attention on the question whether the crossing would result in incremental improvements to public safety by, for example, improving first responder times in the area. We agree with the Initial Order's determination that the incremental increases in public safety the Cities allege are too slight on their own to support their petition, but we also are mindful of the Initial Order's finding and agreement "with Commission Staff that the petition's proposed advance and active warning devices would moderate the risks presented by this crossing to the extent possible at this site."

[5] Order 03 ¶ 16 (italics added for emphasis).

[6] *See* RCW 34.0.464(1)(a).

[7] *See* RCW 34.05.464(1)(b).

> The officer reviewing the initial order (including the agency head reviewing an initial order) is, for the purposes of this chapter, termed the reviewing officer. The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer upon notice to all the parties. In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officer's opportunity to observe the witnesses.[8]

In other words, administrative review under the APA is *de novo*, as noted in Order 03.[9] The independent nature of this *de novo* review is emphasized further in the next section of RCW 34.05.464, which states that: "The reviewing officer shall personally consider the whole record or such portions of it as may be cited by the parties."[10]

8 Despite these clear statements of the law governing review, TCRY grounds its Petition with an argument that the Commission is limited in its consideration on review to points expressly argued by a party seeking review:

> Order 03, while accepting all parts of the Initial Order, injects for the first time in this proceeding the concept of "Broader Public Need" with two components – economic development and deference to local government. The Commission uses these concepts, never argued by the Cities, to sweep aside the determination of the ALJ who heard the evidence and was able to observe the demeanor and credibility of the witnesses, allowing the Cities to prevail without ever putting TCRY on notice of the arguments that the Commission now uses to impose a significant burden on TCRY and the public by reversing the Initial Order.[11]

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[8] RCW 34.05.464(4).

[9] Order 03 ¶19, footnote 14.

[10] RCW 34.05.464(5).

[11] Petition at 10:1-10. This is in apparent reference to ¶ 11 in Order 03, where we say:

> We agree that we should evaluate the petition to determine whether a grade-separated crossing is practicable and whether a demonstrated public need for the

TCRY, misses several fundamental points. Contrary to what TCRY argues, we did not accept in Order 03 "all parts of the Initial Order" and, indeed, found it focused too narrowly on the evidence and argument concerning public safety. The concept of broader public need reflects both the Commission's overarching obligation to exercise its jurisdictional duties in the public interest and, in the case at hand, to look beyond public safety[12] to other aspects of public need as demonstrated in the record of this proceeding. The Commission did not "sweep aside" the ALJ's determination in Order 02; it found the parties' arguments and the ALJ's analysis too focused on a single issue and, following a review of the full record, found reasons to "enter a final order disposing of the proceeding" differently than did the ALJ in his Initial Order.[13] Finally, the Commission does not make "arguments"; it makes decisions and these are announced through its orders. At every stage, parties have the right to challenge the Commission's determinations in its orders, as TCRY has done here in its Petition for Reconsideration. There simply is no issue of "notice" here. TCRY has not been deprived of any process to which it is due.

9 In addition to making its threshold argument that the Commission erred in Order 03 by taking a broad view of the record on review, considering facts and policy issues not addressed in the Initial Order, TCRY argues concerning two substantive matters salient to the Commission's decision on review: 1) the benefits to economic development that Order 03 weighs as a component of the public need analysis; 2) our policy determination that, while not controlling,[14] some deference should be given to the Cities' transportation and land use planning goals when the Commission evaluates public need.

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crossing outweighs the hazards of an at-grade crossing. We agree with most of the Initial Order's findings and conclusions on these questions, but we conclude that a broader public need than the public safety concerns the parties advocate supports the petition.

[12] This is not to say that we *ignore* public safety as a factor. We consider specifically, for example, that Staff's support for the proposed crossing is predicated largely on Ms. Hunter's safety analysis, as discussed above. *See supra* ¶ 7 footnote 3.

[13] *See* RCW 34.05.464(7) and WAC 480-07-825(9).

[14] The Cities argue the GMA may override our authority under RCW 81.53. The Initial Order rules to the contrary and we find no reason to address the question further. *See* Order 02 ¶¶ 42-44.

10 Much of TCRY's argument related to these matters simply rehashes points made in the Initial Order related to public safety. TCRY misleadingly and incorrectly argues that Order 03 "overturns the Initial Order without finding any issue with its propriety [, amounting] to a wholesale subversion of the adjudicative process."[15]

11 What TCRY ignores is that our Order on review examines the question of public need in terms of economic development as an important factor in addition to public safety.[16] We also consider the evidence in the context of policy considerations not addressed in the Initial Order. While we agree with the Initial Order that the public safety benefits demonstrated by the evidence are too slight on their own to support a determination of public need that outweighs inherent risk, when coupled with evidence of economic development benefits the balance shifts. In addition, while the ALJ's role does not necessarily require consideration of the broader policy implications of the Commission's adjudicative orders, the Commissioners' role requires this inquiry. Thus, in Order 03 we determined that:

> In addition to economic benefits, the Commission as a matter of policy should give some deference to the Cities' transportation and land use planning goals, as these are matters of local concern and within the jurisdictional authority of the Cities. . . . Although Kennewick is not legally exempt from our jurisdiction, it is consistent with legislative policies implementing Constitutional home rule that the Commission give significant weight to the evidence concerning the Cities' perspective that the Center Parkway extension is important to transportation planning and economic development in both jurisdictions.[17]

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[15] Petition for Reconsideration at 21:11-14.

[16] *See Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions ¶¶ 33-37 (Feb. 15, 2011) ("Considering both the improvement in public safety in the community and the greater economic development prospects in Benton County that will result from the proposed project, the Commission determines that there is a demonstrated public need for the crossing that outweighs the hazards inherent in an at-grade configuration.").

[17] Order 03 ¶ 25.

We thus harmonize the state's Growth Management Act (GMA) with our statute requiring Commission approval of at-grade railroad crossings, except in first-class cities such as Richland,[18] which are expressly exempt from our jurisdiction.[19]

12 TCRY's objection that in thus harmonizing the two statutes "the Commission has effectively granted the Cities the unilateral power to construct at-grade crossings, while rejecting the argument that approval of this crossing is required by statutory mandate" is misplaced and, indeed, flatly erroneous. Order 03 simply recognizes that the Commission should consider and give some weight to the Cities' transportation and urban development planning when evaluating the issue of public need.

13 In addition to these arguments, TCRY devotes considerable portions of its Petition to arguments that are at best tangential to the bases for our decision in Order 03. In argument filling over seven pages of its twenty-nine page Petition for Reconsideration, TCRY argues "the Cities are entitled to no 'deference'" because conflicting evidence in the record concerning the potential for increases in train traffic over time is the product of "sleight of hand and failure of candor" by Richland in working with its witnesses and presenting its case before the ALJ. We find no support in the record for this unfortunate assertion. In any event, we do not question in Order 03 the Initial Order's finding that:

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[18] We note in Order 03 that Richland's population is greater than 50,000 and that of Kennewick greater than 75,000. Both are qualified to be first-class cities but Kennewick has opted to be a code city instead. The Tri-cities metropolitan area, including Pasco and surrounding urban and suburban areas is more than 250,000. *Id.* footnote 23. *See also Id.* footnotes 20-22.

[19] In our order on review we say that:

> We agree with the Initial Order's determination that the GMA does not relieve the Commission from its statutory obligation to regulate public safety at rail crossings, including the one proposed here. The two statutes do not conflict with each other and the integrity of both statutes within the overall statutory scheme is preserved by reading the GMA together and in harmony with RCW 81.53. The Initial Order ends its discussion of this issue without considering how this harmony should be achieved in the context of the facts presented in this case. We find it necessary to undertake this analysis on review.

Id. ¶ 19 (citing *Philippides v. Bernard*, 141 Wn.2d 376, 385, 88 P.2d 939 (2004), *citing State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974) ("In ascertaining legislative purpose, statutes which stand in pari materia are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes.")).

> The risks of an accident at the proposed crossing are relatively low considering current and projected train traffic, predicted levels of vehicle traffic, and plans to install active warning devices and other safety measures.[20]

Moreover, the only discussion of deference in Order 03 bears no relation whatsoever to our weighing of the evidence concerning the balance between claimed improvements in public safety and the inherent or demonstrated risk of an accident at the proposed crossing. Instead, as discussed above, we determined as a matter of policy that it is appropriate for the Commission to give some deference to the Cities' transportation and land use planning goals when evaluating the question of public need.

In simple terms, TCRY's argument in this regard misses the mark by a wide margin.

14 TCRY also discusses at length proceedings addressing Kennewick's 2004 and 2005 petitions for authority to construct and at-grade crossing at Center Parkway. These petitions were consolidated and in 2007 the Commission entered an Initial Order denying them.[21] TCRY's discussion of the 2007 order in its Petition for Reconsideration essentially is a collateral attack on the Initial Order's determinations that these earlier proceedings do not bar Kennewick's petition here under the doctrine of *res judicata*[22] and do not properly articulate the standard the Commission applies in cases such as this one.[23] We have no need to address these points raised by TCRY.

15 In sum, we find nothing in TCRY's lengthy Petition that persuades us to reconsider the Commission's determinations in Order 03, to reopen the record and rehear the matter, or to stay the effectiveness of the order. We conclude here that we should deny TCRY's joint Petition for Reconsideration of Final Order, Petition for Rehearing, and Petition for Stay of Order.

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[20] Order 02 ¶ 76; Order 03 ¶ 35.

[21] *City of Kennewick v. Union Pacific Railroad*, Docket TR-040664, Order 06 and Docket TR-050967, Order 02, Initial Order Denying Petition[s] (January 26, 2007). The Initial Order in these dockets became final by operation of law on February 15, 2007. We note that the Commission does not consider Initial Orders precedential.

[22] *See* Order 02 ¶¶ 37-41.

[23] *Id.* ¶ 58.

ORDER

THE COMMISSION ORDERS:

16 (1) TCRY's Petitions for Reconsideration, Rehearing and Stay are denied.

17 (2) The Commission retains jurisdiction to enforce the terms of this Order.

Dated at Olympia, Washington, and effective June 24, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PROOF OF SERVICE

DOCKET 130499

I HEREBY CERTIFY That I, as an employee of the Washington Utilities and Transportation Commission at Olympia, Washington, have served on 6/24/2014 the parties of record in this proceeding a true copy of the following document(s):

Order 04 - Denying petition for reconsideration, petition for stay, and petition for rehearing.

The document(s) was/were mailed to each of the parties of record in this docket. Each envelope was addressed to the address shown in the official file, with the required first class postage, and deposited on this date in the United States mail in the City of Olympia, County of Thurston, State of Washington.

Lorri Targus, Customer Service Specialist 3

PARTIES OF RECORD AND OTHERS RECEIVING NOTICE

Mailed to Parties of Record via First Class mail.

SERVED BY MAIL:

Wagner, Richard, BNSF Railway Co., 2454 Occidental Ave S, STE, 2D, Seattle, WA, 98134

Beaudry, Peter M, City of Kennewick, 210 W. 6th Avenue, Kennewick, WA, 99336

Johnson, Cindy, City of Richland, PO BOX 190, Richland, WA, 99352-0190

Cowan, Tom A, Cowan Moore Stam & Luke, PO BOX 927, Richland, WA, 99352

Larson, Carolyn, Dunn Carney Allen Higgins and Tongue LLP, 851 SW Sixth Avenue, STE, 1500, Portland, OR, 97204

DiJulio, P. Stephen, Foster Pepper & Shefelman PLLC, 1111 3rd Avenue, STE, 3400, Seattle, WA, 98101-3299

Ecket, Jeremy, Foster Pepper PLLC, 1111 3rd Avenue, STE, 3400, Seattle, WA, 98101

Johnson, Brandon L, Minnick-Hayner, P.S., 249 West Alder; P.O. Box 1757, Walla Walla, WA, 99362-0348

Montgomery, Tom, Montgomery Scarp MacDougall, PLLC, 1218 Third Avenue, STE, 2700, Seattle, WA, 98101

Endres, Kelsey, Montgomery Scarp MacDougall, PLLC, 1218 Third Avenue, STE, 2700, Seattle, WA, 98101

Keller, Scott D, Port of Benton, 3100 George Washington Way, Richland, WA, 99352

Petit, Paul J., Tri-City & Olympia Railroad, P.O. Box 1700, Richland, WA, 99354

Peterson, Rhett, Tri-City & Olympia Railroad, P.O. Box 1700, Richland, WA, 99352

Anderson, Terrel, Union Pacific Railroad Company, 9451 Atkinson St., Roseville, CA, 95747

Fassio, Michael, WUTC, PO Box 40128, Olympia, WA, 98504-0128

Brown, Sally, WUTC, PO Box 40128, Olympia, WA, 98504-0128

NOTIFIED BY E-MAIL:

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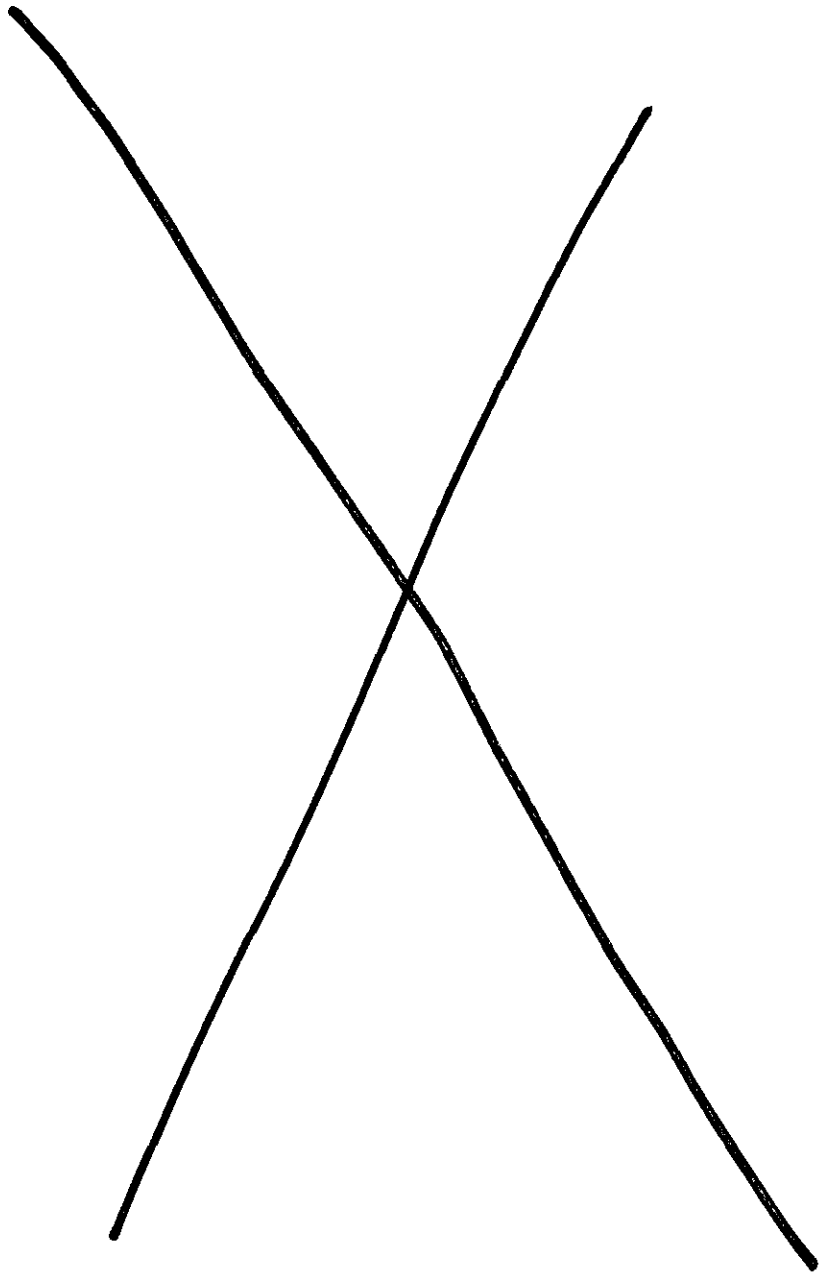

City of Kennewick and City of Richland v. Port of Benton, Tri-City & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad (Center Parkway)

FINAL EXHIBIT LIST

Docket TR-130499

#	SPONSORING PARTY/WITNESS	O	A/R	DESCRIPTION
---	City of Kennewick	--	A	Petition to Construct Highway-Rail Grade Crossing (12 pgs)
	City of Kennewick & City of Richland			
RGB-1T	**Richard Grant Baynes,** Fire & Emergency Services Director, Richland	✓	A	Pre-Filed Testimony (7 pgs)
RGB-2TR	Richard Grant Baynes	✓	A	Pre-Filed Rebuttal Testimony (4 pgs)
JP-1T	**Jeff Peters,** Transportation & Development Manager, Richland	✓	A	Pre-Filed Testimony (4 pgs)
JP-2	Jeff Peters	✓	A	Joint Agreement – Center Parkway Extension, Gage Boulevard to Tapteal Drive (2 pgs)
JP-3	Jeff Peters	✓	A	Joint Agreement – Center Parkway Extension, Gage Boulevard to Tapteal Drive – Supplement No. 1 (2 pgs)
JP-4	Jeff Peters	✓	A	Joint Agreement – Center Parkway Extension, Gage Boulevard to Tapteal Drive – Supplement No. 2 (2 pgs)
JP-5-X	Tri-City & Olympia RR Co.	✓	A	2013 JUB Report Emergency Response Times with Maps (3 pgs)
JP-6-X	Tri-City & Olympia RR Co.	✓	A	Track Use Agreement between City of Richland and UPRR dated April 6, 2011 (20 pgs)
JP-7-X	Tri-City & Olympia RR Co.	✓	A	Track Use Agreement between City of Richland and BNSF dated January 5, 2011 (19 pgs)
JP-8-X	Tri-City & Olympia RR Co.	✗	N/O	Real Estate Purchase and Sale Agreement between City of Richland and 10 N. Washington Avenue, LLC, dated May 8, 2008 (10 pgs)
JP-9-X	Tri-City & Olympia RR Co.	✗	N/O	Docket TR-040664, Order 04 /TR-050967, Order 02, *Initial Order Denying Petition* (Jan 26, 2007) (16 pgs)

City of Kennewick and City of Richland v. Port of Benton, Tri-City & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad (Center Parkway)

FINAL EXHIBIT LIST

Docket TR-130499

	City of Kennewick & City of Richland (cont.)			
CS-1T	**Chris Skinner,** Chief of Police, Richland	✓	A	Pre-Filed Testimony (5 pgs)
CS-2TR	Chris Skinner	✓	A	Pre-Filed Rebuttal Testimony (3 pgs)
RS-1T	**Rick Simon,** Development Services Manager, Richland	✓	A	Pre-Filed Testimony (9 pgs)
RS-2	Rick Simon	✓	A	City of Richland Comprehensive Plan – Transportation Element (28 pgs)
RS-3	Rick Simon	✓	A	City of Richland Comprehensive Plan – Capital Facilities Element (28 pgs)
RS-4	Rick Simon	✓	A	Benton-Franklin Council of Governments Regional Transportation Plan – Preface/Executive Summary/Appendix H (47 pgs)
NH-1T	**Neil Hines,** Fire Chief, Kennewick	✓	A	Pre-Filed Testimony (5 pgs)
NH-2TR	Neil Hines	✓	A	Pre-Filed Rebuttal Testimony (3 pgs)
JD-1T	**John Deskins,** Traffic Engineer, Kennewick	✓	A	Pre-Filed Testimony (7 pgs)
JD-2TR	John Deskins	✓	A	Pre-Filed Rebuttal Testimony (4 pgs)
JD-3	John Deskins	✓	A	Intersection Reports – Columbia Ctr Blvd @ Quinault Avenue and @ Canal Drive (14 pgs)
JD-4-X	Tri-City & Olympia RR Co.	✗	N/O	Rail Map with Crossings Marked (7 pgs)
JD-5-X	Tri-City & Olympia RR Co.	✗	N/O	Drawing – Industry Track Installation Conceptual Plan, dated May 3, 2010 (1 pg)
JD-6-X	Tri-City & Olympia RR Co.	✗	N/O	Drawing – Proposed Commodities Transfer Facility, dated August 4, 2010 (1 pg)

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City of Kennewick and City of Richland v. Port of Benton, Tri-City & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad (Center Parkway)

FINAL EXHIBIT LIST

Docket TR-130499

	City of Kennewick & City of Richland (cont.) **John Deskins, Traffic Engineer, Kennewick (cont.)**			
JD-7-X	Tri-City & Olympia RR Co.	✗	N/O	Award Letter re Loop Track Project from WSDOT to Mr. Rogalsky, City of Richland Public Works Director, dated July 11, 2011 (1 pg)
JD-8-X	Tri-City & Olympia RR Co.	✗	N/O	City of Richland Council Agenda Coversheet re Horn Rapids Purchase & Sale Agreement with Lamb Weston, dated November 1, 2011 (4 pgs)
JD-9-X	Tri-City & Olympia RR Co.	✓	A	Purchase and Sale Agreement (signed) between City of Richland and ConAgra Foods Lamb Weston, dated December 20, 2011 (21 pgs)
~~JD-10-X~~	~~Tri-City & Olympia RR Co.~~	~~✓~~	~~A~~	~~DRAFT Horn Rapids Site Development Agreement, dated Jun 14, 2012 (22 pgs)~~
JD-11-X	Tri-City & Olympia RR Co.	✓	A	Drawings – UPRR Horn Rapids Industrial Lead Track, dated July 11, 2012 (3 pgs)
JD-12-X	Tri-City & Olympia RR Co.	✗	N/O	Gary Ballew e-mail – Proviso language for rail loan, dated April 22, 2013 (1 pg)
JD-13-X	Tri-City & Olympia RR Co.	✗	N/O	Richland Economic Development Committee Meeting Minutes, dated June 24, 2013 (4 pgs)
JD-14-X	Tri-City & Olympia RR Co.	✗	N/O	Gary Ballew e-mail – Moving forward with Horn Rapids Project, dated July 10, 2013 (1 pg)
JD-15-X	Tri-City & Olympia RR Co.	✗	N/O	Richland Economic Development Committee Meeting Agenda, dated July 22, 2013 (9 pgs)
JD-16-X	Tri-City & Olympia RR Co.	✗	N/O	Richland Economic Development Committee Meeting Minutes, dated July 22, 2013 (5 pgs)
JD-17-X	Tri-City & Olympia RR Co.	✗	N/O	Richland Economic Development Committee Meeting Agenda, dated August 26, 2013 (5 pgs)
JD-18-X	Tri-City & Olympia RR Co.	✗	N/O	Richland Economic Development Office Memo re: Commodities Plus – Land Lease, Land Purchase & Infrastructure Financing, dated August 19, 2013 (3 pgs)
JD-19-X	Tri-City & Olympia RR Co.	✗	N/O	Dennis Kyllo e-mail re Richland Loop demurrage, dated August 19, 2013 (3 pgs)

City of Kennewick and City of Richland v. Port of Benton, Tri-City & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad (Center Parkway)

FINAL EXHIBIT LIST

Docket TR-130499

	City of Kennewick & City of Richland (cont.) **John Deskins**, Traffic Engineer, Kennewick *(cont.)*			
JD-20-X	Tri-City & Olympia RR Co.	✗	N/O	Dennis Kyllo e-mail re rail topography, dated August 20, 2013 (13 pgs)
JD-21-X	Tri-City & Olympia RR Co.	✗	N/O	Dennis Kyllo e-mail re rail management plan, dated August 21, 2013 (1 pg)
JD-22-X	Tri-City & Olympia RR Co.	✗	N/O	Richland Economic Development Committee Meeting Minutes, dated August 26 2013 (11 pgs)
JD-23-X	Tri-City & Olympia RR Co.	✗	N/O	Dennis Kyllo e-mail re approved items for Loop, dated August 27, 2013 (2 pgs)
JD-24-X	Tri-City & Olympia RR Co.	✗	N/O	Dennis Kyllo e-mail re draft lease – redline, dated August 27, 2013 (28 pgs)
JD-25-X	Tri-City & Olympia RR Co.	✗	N/O	Gary Ballew e-mail re ConAgra Concept Plan, dated August 30, 2013 (3 pgs)
JD-26-X	Tri-City & Olympia RR Co.	✗	N/O	City Council Workshop re Rail Loop, dated October 22, 2013 (6 pgs)
JD-27-X	Tri-City & Olympia RR Co.	✓	*Stip*	Aerial View – Existing Passing Track (1 pg)
JD-28-X	Tri-City & Olympia RR Co.	✓	A	Aerial View – Potential Passing Track (1 pg)
JD-29-X	Tri-City & Olympia RR Co.	✓	*Stip*	Aerial View – Distance from Proposed Crossing to Columbia Center (1 pg)
JD-30-X	Tri-City & Olympia RR Co.	✓	A	Aerial View – Distance from Proposed Crossing to Steptoe Crossing (1 pg)
JD-31-X	Tri-City & Olympia RR Co.	✗	N/O	Richland Economic Development Committee Meeting Minutes, dated October 28 2013 (2 pgs)
JD-32-X	Tri-City & Olympia RR Co.	✗	N/O	Petitioners' Response to Respondent's Second Data Request, dated September 11, 2013 (5 pgs)
JD-33-X	Tri-City & Olympia RR Co.	✗	N/O	Respondent TCRY's Second Data Request to Petitioners, dated August 27 , 2013 (6 pgs)
JD-34-X	Tri-City & Olympia RR Co.	✗	N/O	Documents Produced in Response to TCRY Second Data Request No. 8 (14 pgs)
JD-35-X	Tri-City & Olympia RR Co.	✗	N/O	Documents Produced in Response to TCRY Second Data Request No. 13 (20 pgs)

City of Kennewick and City of Richland v. Port of Benton, Tri-City & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad (Center Parkway)

FINAL EXHIBIT LIST

Docket TR-130499

	City of Kennewick & City of Richland (cont.) **John Deskins**, Traffic Engineer, Kennewick *(cont.)*			
JD-36-X	Tri-City & Olympia RR Co.	✗	N/O	Horn Rapids Rail Loop Discussion Paper (3 pgs)
JD-37-X	Tri-City & Olympia RR Co.	✓	*Stip*	Video – Tangent Rail presentation to Richland City Council re planned speed increase on Port of Benton rail, dated Nov 5, 2013 (DVD)
JD-38-X	Tri-City & Olympia RR Co.	✓	A	City of Richland presentation to Port of Benton re planned rail developments, dated Nov 13, 2013 (12 pgs)
JD-39-X	Tri-City & Olympia RR Co.	✓	A	Video – television news interview by Mr. Bill King, City of Richland, re new rail loop (DVD)
KMH-1T	**Kenneth M. Hohenberg**, Chief of Police, Kennewick	✓	A	Pre-Filed Testimony (4 pgs)
KMH-2TR	Kenneth M. Hohenberg	✓	A	Pre-Filed Rebuttal Testimony (3 pgs)
SKG-1T	**Susan K. Grabler**, Railroad Engineer, David Evans & Associates, Inc.	✓	A	Pre-Filed Testimony (8 pgs)
KJ-1T	**Kevin Jeffers**, Associate, David Evans & Associates, Inc.	✓	A	Pre-Filed Testimony (12 pgs)
KJ-2	Kevin Jeffers	✓	A	Excerpts from Federal Highway Administration (FHWA) Railroad-Highway Grade Crossing Handbook -- Revised Second Edition 2007 (pp. i, 54-58, 128-29, and 151-52) (12 pgs)
KJ-3	Kevin Jeffers	✓	A	Excerpt from FHWA Manual on Uniform Traffic Control Devices for Streets and Highways – 2009 Edition (pp. 772-773)

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City of Kennewick and City of Richland v. Port of Benton, Tri-City & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad (Center Parkway)

FINAL EXHIBIT LIST

Docket TR-130499

	City of Kennewick & City of Richland (cont.) **Kevin Jeffers,** Associate, David Evans & Associates, Inc. *(cont.)*			
KJ-4	Kevin Jeffers	✓	A	Excerpt from American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual of Railway Engineering, Volume 1 (2 pgs)
KJ-5	Kevin Jeffers	✓	A	Traffic Study – Center Parkway Extension and Railroad Crossing (March 2013) (20 pgs)
KJ-6	Kevin Jeffers	✓	A	Grade Separation Evaluation – Center Parkway Extension (March 25, 2013) (6 pgs)
KJ-7	Kevin Jeffers	✓	A	Grade Separation Evaluation – Center Parkway Extension – Appendix (3 pgs)
KJ-8	Kevin Jeffers	✓	A	Diagnostic Review – Meeting Notes from December 11, 2012 (3 pgs)
KJ-9	Kevin Jeffers	✓	A	City of Richland Ordinance No. 40-06 (9 pgs)
KJ-10TR	Kevin Jeffers	✓	A	Pre-Filed Rebuttal Testimony (10 pgs)
KJ-11	Kevin Jeffers	✓	A	Track Usage Data – Actual/Projected (1 pg)
KJ-12	Kevin Jeffers	✓	A	Track Usage Data – Actual/Projected (1 pg)
KJ-13-X	Tri-City & Olympia RR Co.	✓	A	Petitioners' Responses to Staff Data Requests Nos. 2-5 (8 pgs)
KJ-14-X	Tri-City & Olympia RR Co.	✓	A	Horn Rapids Rail Loop – Documents presented to Richland City Council on 19 Nov 2013 (79 pgs)
SM-1TR	**Spencer Montgomery,** Transportation Planner, J-U-B Engineers	✓	A	Pre-Filed Rebuttal Testimony (7 pgs)

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City of Kennewick and City of Richland v. Port of Benton, Tri-City & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad (Center Parkway)

FINAL EXHIBIT LIST

Docket TR-130499

	Tri-City & Olympia Railroad Company			
GAN -1T	**Gary A. Norris,** DN Traffic Consultants, Preston, WA	✓	A	Pre-Filed Testimony (13 pgs)
GAN -1TR	Gary A. Norris	✓	A	Pre-Filed Rebuttal Testimony (6 pgs)
GAN -2-X	Cities of Kennewick & Richland	✓	A	City of Richland Comprehensive Plan, Population Projections (LU 4-1) (1 pg)
GAN -3-X	Cities of Kennewick & Richland	✓	A	City of Richland Comprehensive Plan, Capital Facilities Element: Fire & Emergency Service Facilities (CF5-3 to 5-4) (2 pgs)
GAN -4-X	Cities of Kennewick & Richland	✓	A	City of Richland Comprehensive Plan, Capital Facilities Element: Police Service Facilities (CF 6-4) (1 pg)
GAN -5-X	Cities of Kennewick & Richland	✗	N/O	City of Richland Comprehensive Plan: Transportation Element, Table T-8 (T 5-3 to 5-4) (2 pgs)
GAN -6-X	Cities of Kennewick & Richland	✓	A	City of Kennewick Comprehensive Plan – Technical Document: Capital Facilities Plan, pages 66 and 79-80 (3 pgs)
GAN -7-X	Cities of Kennewick & Richland	✓	A	City of Kennewick Comprehensive Plan – Technical Document: Infrastructure pages 58-59 (2 pgs)
GAN -8-X	Cities of Kennewick & Richland	✓	A	Excerpts from Benton-Franklin Council of Governments 2011-2032Regional Transportation Plan (12 pgs)
GAN -9-X	Cities of Kennewick & Richland	✓	A	Appendix H from Benton-Franklin Council of Governments 2011-2032Regional Transportation Plan (35 pgs)
GAN -10-X	Cities of Kennewick & Richland	✓	A	Docket TR-090912, Order 01, *Order Granting Petition to Reconstruct Steptoe Street Highway-Rail Grade Crossing and Modify Active Warning Devices* (July 2, 2009) (5 pgs)
GAN -11-X	Cities of Kennewick & Richland	✓	A	TCRY Response to Data Request No. 12 re public health or safety incidents (1 pg)
GAN -12-X	Cities of Kennewick & Richland	✗	N/O	Record of WUTC on accidents (nc 0-000000720 Steptoe Crossing

City of Kennewick and City of Richland v. Port of Benton, Tri-City & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad (Center Parkway)

FINAL EXHIBIT LIST

Docket TR-130499

	Tri-City & Olympia Railroad Company (cont.) **Gary A. Norris**, DN Traffic Consultants, Preston, WA *(cont.)*			
GAN -13-X	Cities of Kennewick & Richland	✓	A	Excerpt from City of Richland Comprehensive Plan – Preface (PF-I to PF-II) (2 pgs)
GAN -14-X	Cities of Kennewick & Richland	✓	A	Excerpt from City of Richland Comprehensive Plan – Land Use (LU 2-3, LU 3-1 to 3-2) (4 pgs)
GAN -15-X	Cities of Kennewick & Richland	✓	A	Excerpt from City of Richland Comprehensive Plan – Economic Development (EC 2-1 to EC 2-2) (2 pgs)
GAN -16-X	Cities of Kennewick & Richland	✓	A	City of Richland – Horn Rapids Master Plan Update, dated April 2011 (61 pgs)
GAN -17-X	Cities of Kennewick & Richland	✓	A	E-mail from Kevin Jeffers to Kathy Hunter re LOS left-turn data for intersections of Columbia Ctr Blvd & Quinault and Steptoe & Gage, dated November 13, 2013 (2 pgs)
GAN -18-X	Cities of Kennewick & Richland	✓	A	Chief Baynes' emergency response time calculations and supporting spreadsheets (3 pgs)
GAN -19-X	Tri-City & Olympia RR Co.	✓	A	Proposed alternate fire response route from Richland Fire Stn 72 to avoid RR x-ings (1 pg)
GAN -20-X	Tri-City & Olympia RR Co.	✓	A	City of Richland's Response to TCRY Data Requests Nos. 16 & 17 re traffic study data (24 pgs)
RVP-1T	**Randolph V. Peterson**, Managing Member, Tri-City & Olympia Railroad	✓	A	Pre-Filed Testimony (6 pgs)
RVP-2-X	Cities of Kennewick & Richland; Commission Staff	✓	A	BNSF Responses to Staff Data Requests Nos. 2-5 (2 pgs)
RVP-3-X	Cities of Kennewick & Richland; Commission Staff	✓	A	TCRY Responses to Staff Data Requests Nos. 2-5 (12 pgs)
RVP-4-X	Cities of Kennewick & Richland; Commission Staff	✓	A	UPRR Responses to Staff Data Requests Nos. 2-5 (2 pgs)

City of Kennewick and City of Richland v. Port of Benton, Tri-City & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad (Center Parkway)

FINAL EXHIBIT LIST

Docket TR-130499

	Tri-City & Olympia Railroad Company (cont.) **Randolph V. Peterson,** Managing Member, TCRY *(cont.)*			
RVP-5-X	Cities of Kennewick & Richland	✓	A	TCRY's participation in Benton-Franklin Council of Governments Comprehensive Planning (21 pgs)
RVP-6-X	Cities of Kennewick & Richland	✓	A	TCRY public awareness announcement (1 pg)
RVP-7-X	Cities of Kennewick & Richland	✓	A	Agreement to provide engineering for modified RR crossing at Steptoe Street, dated June 2, 2008, and amendment dated September 2009 (6 pgs)
RVP-8-X	Cities of Kennewick & Richland	✗	N/O	Railroad Lease between Port of Benton and TCRY dated August 1, 2002 (18 pgs)
~~RVP-9-X~~	~~Cities of Kennewick & Richland~~	~~✓~~	~~A~~	~~Weekday Photos of Tank Cars on Passing Track / Siding (03 Oct to 15 Nov 2013) (31 pgs)~~
	Gary Ballew, Economic Development Manager, City of Richland			
	Bill King, Deputy City Manager, City of Richland			

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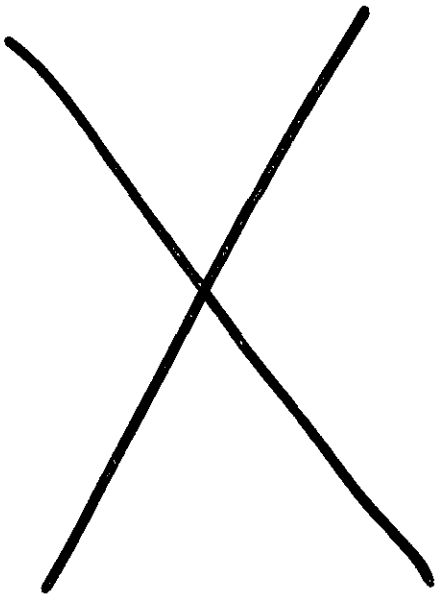
City of Kennewick and City of Richland v. Port of Benton, Tri-City & Olympia Railroad Company, BNSF Railway Company, and Union Pacific Railroad (Center Parkway)

FINAL EXHIBIT LIST

Docket TR-130499

No.	Commission Staff			
KH-1T	**Kathy Hunter,** Deputy Assistant Director, Transportation Safety, WUTC	✓	A	Pre-Filed Testimony (28 pgs)
KH-2	Kathy Hunter	✓	A	Aerial View of Proposed Crossing (1 pg)
KH-3	Kathy Hunter	✓	A	Configuration of Proposed Crossing (1 pg)
KH-4	Kathy Hunter	✓	A	Excerpt from Railroad-Highway Grade Crossing Handbook (rev'd 2nd ed.) – Section III.C (9 pgs)
KH-5	Kathy Hunter	✓	A	Diagnostic Review – Meeting Notes from December 11, 2012 (3 pgs)
KH-6	Kathy Hunter	✓	A	RCW 81.53.02 – Grade Separation Required Where Practicable (1 pg)
KH-7	Kathy Hunter	✓	A	Excerpts from USDOT Railroad-Highway Grade Crossing Handbook (pp. 33-35) (3 pgs)
KH-8	Kathy Hunter	✓	A	Excerpts from WSDOT Design Manual M 22-01-07 (July 2010) (pp. 1350-3 and -4) (2 pgs)
KH-9	Kathy Hunter	✓	A	USDOT Guidance on Traffic Control Devices at Highway-Rail Grade Crossings (11/2002) (49 pgs)
KH-10	Kathy Hunter	✓	A	Excerpt from USDOT Railroad-Highway Grade Crossing Handbook (11/2002) (p. 83) (1 pg)
KH-11	Kathy Hunter	✓	A	NFPA Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments (2010 ed.) (5 pgs)
KH-12	Kathy Hunter	✓	A	Federal Railroad Administration Accident Predictor Model Results (4 pgs)
	Public Comment Exhibit		***	Comments – Written (received by 10 Dec 13) + Transcript of Hearing 20 Nov 13
	Official Notice per 480-07-495	--	***	Driving Directions for ALJ Tour of Area (4 pgs)



UTC
TILITIES AND TRANSPORTATION
COMMISSION

WUTC DOCKET TR-130499
EXHIBIT
ADMIT ☒ W/D ☐ REJECT ☐

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

City of Kennewick Petitioner, vs. **Port of Benton;** **Tri City & Olympia Railroad Company;** **BNSF Railway; Union Pacific Railroad** Respondent	)	DOCKET NO. TR-130499-P PETITION TO CONSTRUCTA HIGHWAY-RAIL GRADE CROSSING **Center Parkway**

Prior to submitting a Petition to Construct a Highway-Rail Grade Crossing to the Washington Utilities and Transportation Commission (UTC), State Environmental Protection Act (SEPA) requirements must be met. Washington Administrative Code (WAC) 197-11-865 (2) requires:

> **All actions of the utilities and transportation commission under statutes administered as of December 12, 1975, are exempted, except the following:**
>
> **(2) Authorization of the openings or closing of any highway/railroad grade crossing, or the direction of physical connection of the line of one railroad with that of another;**

Please attach sufficient documentation to demonstrate that the SEPA requirement has been fulfilled. For additional information on SEPA requirements contact the Department of Ecology.

The Petitioner asks the Washington Utilities and Transportation Commission to approve constructionof a highway-rail grade crossing.

Section 1 – Petitioner's Information

City of Kennewick
Petitioner

Peter Beaudry
Signature

210 W. 6th Avenue
Street Address

Kennewick, WA 99336
City, State and Zip Code

P.O. Box 6108, Kennewick, WA 99336-0108
Mailing Address, if different than the street address

Peter Beaudry
Contact Person Name

(509) 585-4292, Peter.Beaudry@ci.kennewick.wa.us
Contact Phone Number and E-mail Address

Section 2 – Respondent's Information

Port of Benton
Respondent

3100 George Washington Way
Street Address

Richland, WA 99354
City, State and Zip Code

Mailing Address, if different than the street address

Scott D. Keller
Contact Person Name

(509) 375-3060, keller@portofbenton.com
Contact Phone Number and E-mail Address

Tri-city and Olympia Railroad Company
Respondent

10 North Washington Street
Street Address

Kennewick, Washington 99336
City, State and Zip Code

PO Box 1700, Richland, WA 99352
Mailing Address, if different than the street address

RhettPeterson
Contact Person Name

(509) 727-8824,rhettwater@mac.com
Contact Phone Number and E-mail Address

BNSF Railway
Respondent

2454 Occidental Ave. S., Suite 2D
Street Address

Seattle, WA 98134
City, State and Zip Code

Mailing Address, if different than the street address

Richard Wagner
Contact Person Name

(206) 625-6152; richard.wagner@bnsf.com
Contact Phone Number and E-mail Address

Union Pacific Railroad Company
Respondent

9451 Atkinson Street
Street Address

Roseville, CA 95747
City, State and Zip Code

Mailing Address, if different than the street address

Terrel Anderson
Contact Person Name

(916) 390-3693, taanders@up.com
Contact Phone Number and E-mail Address

Section 3 – Proposed Crossing Location

1. Existing highway/roadway **Center Parkway**

2. Existing railroad **Port of Benton Rail Spur (aka Richland Spur), operated by Tri-City and Olympia Railroad**

3. Location of proposed crossing:
Located in the **NW** 1/4 of the **SE1/4** of Sec. **30**, Twp. **9** , Range **29** W.M.

4. GPS location, if known: **Latitude 46.22983, Longitude -119.23120**

5. Railroad mile post (nearest tenth) **0.2**

6. City **Kennewick** County: **Benton**

Section 4 – Proposed Crossing Information

1. Railroad company: **Tri-City and Olympia Railroad Company**

2. Type of railroad at crossing ☒ Common Carrier ☐ Logging ☐ Industrial

☐ Passenger ☐ Excursion

3. Type of tracks at crossing ☒ Main Line ☐ Siding or Spur

4. Number of tracks at crossing: **2 existing, including siding; 1 proposed**

5. Average daily train traffic, freight **2 to 4 per day**

Authorized freight train speed: **15 mph** Operated freight train speed: **15 mph**

6. Average daily train traffic, passenger **0**

Authorized passenger train speed **N/A** Operated passenger train speed: **N/A**

7. Will the proposed crossing eliminate the need for one or more existing crossings?
Yes ____ No **X**

8. If so, state the distance and direction from the proposed crossing.

9. Does the petitioner propose to close any existing crossings?
Yes ____ No **X**

Section 5 – Temporary Crossing

1. Is the crossing proposed to be temporary? Yes ____ No __X__

2. If so, describe the purpose of the crossing and the estimated time it will be needed

_____

3. Will the petitioner remove the crossing at completion of the activity requiring the temporary crossing? Yes ____ No ____

Approximate date of removal _____

Section 6 – Current Highway Traffic Information

1. Name of roadway/highway: **Center Parkway**

2. Roadway classification **Minor Arterial**

3. Road authority: **City of Kennewick**

4. Estimated average annual daily traffic (AADT): **5,200(Projected, Opening Year2014)**

5. Estimated average pedestrian use per day:**Unknown, See #12**

6. Number of lanes: **2 (Proposed)**

7. Roadway speed: **30mph (Proposed)**

8. Is the crossing part of an established truck route? Yes _____ No: **X**

9. If so, trucks are what percent of total daily traffic? _____

10. Is the crossing part of an established school bus route? Yes _____ No: **X**

11. If so, how many school buses travel over the crossing each day? _____

12.Describe any changes to the information in 1 through 7, above, expected within ten years:
The AADT is projected to increase to 7,000 in 2033; traffic is projected to be between 5,200 and 7,000 during the initial 10 years of operation.Train speeds could increase to 20 MPH in the future with the removal of a turnout (aka switch) east of the project site.

The pedestrian use per day is expected to be low due to the lack of pedestrian-oriented businesses and recreational facilities in the vicinity.However sidewalks will be provided on both sides of the proposed roadway that meet the city's design standards.

Section 7 – Alternatives to the Proposal

1. Does a safer location for a crossing exist within a reasonable distance of the proposed location?
   Yes ____ No **X**

2. If a safer location exists, explain why the crossing should not be located at that site.

3. Are there any hillsides, embankments, buildings, trees, railroad loading platforms or other barriers in the vicinity which may obstruct a motorist's view of the crossing?
   Yes **X** No ____

4. If a barrier exists, describe:
   - Whether petitioner can relocate the crossing to avoid the obstruction and if not, why not.
   - How the barrier can be removed.
   - How the petitioner or another party can mitigate the hazard caused by the barrier.

The trees in the NE quadrant of the proposed crossing are on private property. Security fences in the SE and SW quadrants are anticipated just outside the roadway and railroad property lines. The lack of sight distance in that quadrant will be mitigated through the use of active warning devices (flashing lights and gates) and a non-mountable median.

5. Is it feasible to construct an over-crossing or under-crossing at the proposed location as an alternative to an at-grade crossing?
   Yes ____ No **X**

6. If an over-crossing or under-crossing is not feasible, explain why.

A roadway bridge over the rail line is not feasible. The northern roadway approach would exceed the established design standards for the City of Richland of 8%. This is true even if the rail line was lowered beginning at the end of the bridge over Columbia Center Boulevard (CCB) at a 1% grade. Lowering the CCB rail bridge would create a substandard vertical clearance for that roadway. Regardless, the required elevated Center Parkway roadway would eliminate access to the existing hotel in the Northeast quadrant of the proposed crossing and limit access to other commercial parcels.
A rail bridge over the roadway is also not feasible. The required lowered roadway would eliminate access to the existing Holiday Inn hotel at the Northeast quadrant of the proposed crossing and limit access to other commercial parcels.

Please refer to the supporting document prepared by the City of Richland, titled *Center Parkway Extension, Grade Separation Evaluation,* for more detailed information.

7. Does the railway line, at any point in the vicinity of the proposed crossing, pass over a fill area or trestle or through a cut where it is feasible to construct an over-crossing or an under-crossing, even though it may be necessary to relocate a portion of the roadway to reach that point?

Yes ____ No **X**

8. If such a location exists, state:
   - ♦ The distance and direction from the proposed crossing.
   - ♦ The approximate cost of construction.
   - ♦ Any reasons that exist to prevent locating the crossing at this site.

9. Is there an existing public or private crossing in the vicinity of the proposed crossing?

Yes **X** No ____

10. If a crossing exists, state:
   - ♦ The distance and direction from the proposed crossing.
   - ♦ Whether it is feasible to divert traffic from the proposed to the existing crossing.

There is public underpass (road under rail) about 1950 feet (0.37 miles) east of the proposed location for Columbia Center Boulevard. Columbia Center Boulevard is a heavily traveled 6-lane roadway that intersects with Tapteal Rd. as Columbia Center Boulevard enters the interchange with State Route 240. The heavy vehicle traffic that serves large retail developments from SR240 has resulted in an unusual access arrangement to and from Tapteal Dr. SB vehicles on Columbia Center Blvd.originating from WB SR 240 or Columbia Park Trail that wish to access Tapteal Drive and the Richland side of the rail line are required to make an uncontrolled left turn across 3 lanes of NB Columbia Center Blvd. traffic and loop in a clockwise direction back over Columbia Center Blvd. and down to Tapteal Drive, then make a left turn at a stop sign. NB traffic on Columbia Center Blvd. has to make a right turn onto Tapteal Drive and follow the same route up and back over Columbia Center Blvd. to access this area.

Section 8 – Sight Distance

1. Complete the following table, describing the sight distance for motorists when approaching the tracks from either direction.

"Number of feet from proposed crossing" is measured from the crossing gate along the centerline of the travel lane. Sight distance is measured from the edge of traveled way (edge of fog line or curb line) along the centerline of track at the crossing. NOTE - for "Left" sight distances, the edge of traveled way is on the *opposite* side of the roadway.

a. Approaching the crossing from **South**, *the current approach provides an unobstructed* view as follows: (North, South, East, West)

Direction of sight (left or right)	Number of feet from proposed crossing	Provides an unobstructed view for how many feet
Right	250	17
Right	150	20
Right	100	27
Right	50	73
Left	250	26
Left	150	37
Left	100	53
Left	50	192

b. Approaching the crossing from **North**, *the current approach provides an unobstructed* view as follows: (Opposite direction-North, South, East, West)

Direction of sight (left or right)	Number of feet from proposed crossing	Provides an unobstructed view for how many feet
Right	250	>500 (unobstructed)
Right	150	>500 (unobstructed)
Right	100	>500 (unobstructed)
Right	50	>500 (unobstructed)
Left	250	60
Left	150	72
Left	100	94
Left	50	154

2. Will the new crossing provide a level approach measuring 25 feet from the center of the railway on both approaches to the crossing?

Yes ____ No **X**

3. If not, state in feet the length of level grade from the center of the railway on both approaches to the crossing.

The track that is proposed to remain has a cross slope (superelevation) that places the northern rail lower than the south rail. The roadway will be constructed such that the roadway profiles will be within 3 inches of the plane of the two rails for30 feet from the closest rail.

4. Will the new crossing provide an approach grade of not more than five percent prior to the level grade?

Yes ____ No **X**

5. If not, state the percentage of grade prior to the level grade and explain why the grade exceeds five percent.

The existing Center Parkway roadway approaching the proposed crossing from the north is 6%. The grade is proposed to decrease to meet the track's superelevation as it approaches the crossing and to continue to decrease as it continues southward. If the roadway grade is decreased to 5%, the intersection with Tapteal Drive would have to be raised more than 15 feet.

Section 9 – Illustration of Proposed Crossing Configuration

Attach a detailed diagram, drawing, map or other illustration showingthe following:

- ♦ The vicinity of the proposed crossing.
- ♦ Layout of the railway and highway 500 feet adjacent to the crossing in all directions.
- ♦ Percent of grade.
- ♦ Obstructions of view as described in Section 7 or identified in Section 8.
- ♦ Traffic control layout showing the location of the existing and proposed signage.

Section 10 –Proposed Warning Signals or Devices

1. Explain in detail the number and type of automatic signals or other warning devices planned at the proposed crossing, including a cost estimate for each.

The proposedwarning devices include flashing lights, audible bells, and crossing gates.

The control equipment for the railroad warning devices will be modern constant warning time units.

The approximate cost for railroad crossing signal improvements is $250,000.

2. Provide an estimate for maintaining the signals for 12 months.**$5,000**

3. Is the petitioner prepared to pay to the respondent railroad company its share of installing the warning devices as provided by law?

Yes **X** No ____

Section 11 – Additional Information

Provide any additional information supporting the proposal, including information such as the public benefits that would be derived from constructing a new crossing as proposed.

Concrete crossing panel surfaces will be installed, and the roadway paved to match the elevation of the panels.

Non-mountable median islands will be installed on either side of the track. The south island will be 100 ft. from the NB crossing gate; the north island will be at least 60 feet from the SB crossing gate.

Section 12 – Waiver of Hearing by Respondent

Waiver of Hearing

The undersigned represents the Respondent in the petition to construct a highway-railroad grade crossing.

USDOT Crossing No.: _____

We have investigated the conditions at the proposedor existing crossing site. We are satisfied the conditions are the same as described by the Petitioner in this docket. We agree that a crossing be installed or reconstructed and consent to a decision by the commission without a hearing.

Dated at _____ , Washington, on the _____ day of

_____, 20. _____ ____

_____
Printed name of Respondent

_____
Signature of Respondent's Representative

_____
Title

Name of Company

_____
Phone number and e-mail address

_____

_____
Mailing address

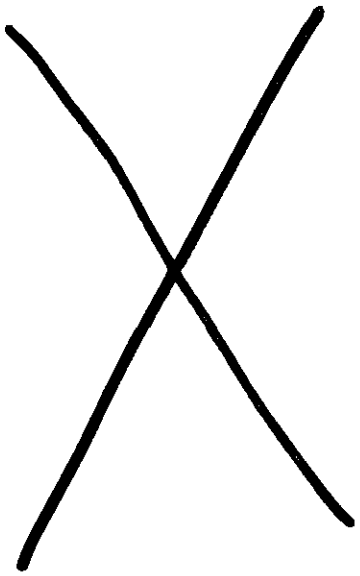


Exhibit No. RGB-1T

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED TESTIMONY OF RICHARD GRANT BAYNES

1. SUMMARY OF TESTIMONY

Richard Grant Baynes is the Director of Fire and Emergency Services for the City of Richland. His pre-filed testimony explains how the proposed crossing addresses an acute public need for a vehicular crossing on Center Parkway. The pre-filed testimony also addresses why existing crossings or other alternative railroad crossings do not adequately advance the public health and safety in the City of Richland and in the City of Kennewick.

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2. BACKGROUND

Q: *State your name, position, and years in that position.*

A: Richard Grant Baynes, City of Richland Director of Fire and Emergency Services, 10 years.

Q: *State any other relevant background experience.*

A: I began my fire service career in 1978 in New Zealand. I have been a driver, officer, senior officer, and executive officer in this career. As such, I have experienced firsthand the challenges presented by many road configurations, including limited access areas, railroad crossings, and one-way systems.

I am a graduate of the National Fire Academy Executive Fire Officer Program. One of my four applied research projects was on external environmental scanning, which closely examined the interrelationships between the fire service and our communities, recognizing multiple interests and values of others in relation to our services and needs.

I have a Master of Public Administration (MPA) from the University of Colorado. These studies included: public policy, legal issues, and organizational management.

Q: *Describe the City of Richland's relationship with City of Kennewick fire and police services with regard to responding to fire and police emergencies.*

A: The City of Kennewick and the City of Richland have a very close working relationship. Since 2004, this relationship has strengthened and expanded, with many collaborative programs and projects in place today. In 2006 the Fire Chiefs from Kennewick, Richland, and Benton County Fire District #1 brought their administrative offices into a single facility on Gage Boulevard, Kennewick.

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Today the two cities, along with three fire districts, have a Master Interlocal Partnership and Collaboration Agreement, signed in 2010, which is the foundation for several joint collaborative programs.

The Cities have an Automatic Aid Agreement that is bounded by Columbia Center Boulevard (Kennewick) to the east and Brantingham Road (Richland) to the west. This agreement automatically has the Richland fire station at the corner of Gage and Keene as first response into the area of the subject railroad crossing on the north side and the Kennewick fire station near the Benton County Justice Center on W Quinault Ave. to the south of the crossing. Both, however, are busy stations and each is next first due into each other's first due areas, when the other is already assigned to an incident. This is most significant for trauma and cardiac calls in this area when seconds count and the next closest medic units in either jurisdiction are much farther away.

Commercial and residential structure fires automatically require engines and medic units from neighboring jurisdictions and these are routinely dispatched across jurisdictional lines on a regular basis.

3. BACKGROUND ON THE PROPOSED PROJECT

Q: *State your understanding of the proposed project.*

A: The project will provide a public street connection between Gage Boulevard in Kennewick and Tapteal Drive in Richland with a crossing signal protected crossing of the Port of Benton-owned railroad tracks. The road will have one travel lane in each direction, a two-way center left turn lane and bicycle lanes.

4. NEED FOR PROPOSED PROJECT

Q: *Describe the acute need for the railway crossing at Center Parkway from a public health and safety perspective.*

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A: I have been with the City of Richland since December 1999 and the plan to open up this local area roadway between the two regional arterial roads (Columbia Center Boulevard ("CCB") and Steptoe Street) has been a constant item on our agenda.

The fire service is acutely aware of the criticality of response times and their impact on outcomes, particularly for trauma, cardiac and stroke patients, and structure and wildland fires. Our service delivery is tuned to count seconds saved from dispatch through to arrival at the patient/fire/rescue.

The proposed addition of this north-south roadway offers a faster response route into the area of Tapteal in Richland via Gage Boulevard. The JUB study notes a 48 second (30%) reduction from the Kennewick fire station #63 and a 1 minute 24 second reduction from the Richland fire station #72.

Additionally, this proposed crossing route will be a viable route through the north-south corridors for medic units and/or engines responding in this area should the primary routes of Steptoe and/or CCB be obstructed accidentally, deliberately, or due to heavy traffic. It is also important to note that CCB and the north side of the Steptoe/Gage intersection are virtually one way streets due to center barriers. These reduce or eliminate the ability of a responding unit to get around traffic congestion in the direction of travel for the responding unit(s) by crossing into the oncoming lanes, which are easier to move.

Access from northbound CCB into Tapteal requires making a series of turns and travel across an elevated loop road that slows responses in that direction significantly.

This crossing will grow in value as the area on Tapteal continues to develop adding people and structural risk to the area.

Currently the trains on this line run infrequently and are very short. It is anticipated that trains up to a mile in length may use this line. When they do, this crossing will have greater value yet. A mile long train moving at 10 MPH will take six minutes to clear a crossing, plus the pre and post barrier time, plus the time it takes to clear a line of traffic once the barriers are

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lifted. Steptoe is a primary route to Kadlec Regional Medical Center for Kennewick and Richland medical units. The Center Parkway will offer a faster alternative route when a train is crossing Steptoe, subject to the direction of travel of the train. Likewise for medic units and engines responding from the north to the south through this area.

Q: *In your opinion, describe whether the proposed crossing advances the public health and safety, in spite of the inherent risk of opening an at-grade crossing at Center Parkway.*

A: It is recognized that there is inherent risk in any at grade crossing of a railroad line. When there is no viable or cost effective alternative then it is imperative that the crossing is made as safe as possible. The infrequency of the trains across this area suggests that the probability of incidents is far lower than an at-grade highway or high volume scenario. Given the benefits I have described above I believe that the risks are significantly outweighed by the public safety advantages for the Center Parkway crossing.

5. CROSSING ALTERNATIVES

Q: Describe why other alternatives to this crossing do not achieve the City's stated public health and safety goals.

A: The regional arterials situated to the north and the south of the proposed crossing are designed to meet traffic flow needs safely and increased width of these roadways will not address the lack of a smaller two-lane, non-separated roadway through this area.

Finally, the other railway crossings to the east and to the west of the proposed crossing do not adequately address public health and safety needs because each is a regional arterial roadway, prone to periods of heavy congestion, and with its own inherent challenges to response vehicles. CCB is essentially a one-way street system with center dividers, with all of the challenges of movement through such systems under heavy traffic conditions. Access from CCB from the south is circuitous and slow. To the west, Steptoe is heavily travelled during peak

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commute times, even more so since it was extended to Clearwater Avenue. Steptoe provides reasonable access for units coming from the north but has a high potential for backed up traffic when vehicles are stopped at the railroad crossing and/or clearing after a train has passed. In contrast, the proposed at grade crossing will be on a local roadway, with significantly lighter traffic patterns, simpler routes in and out of the area, and will be the regular first choice route into the Tapteal/Center Parkway locale. This approach will reduce our response times into the area for Richland units and our mutual and automatic aid partners.

For example: a cardiac arrest incident at the Holiday Inn Express Hotel and Suites at 1970 Center Parkway will have three response units assigned. The Richland ambulance from Gage and Keene that currently takes the longer route via Steptoe has a much more direct, more easily travelled route east on Gage to Center Parkway and in the facility. The second ambulance responds to provide the requisite staffing for a code, travelling north on an often congested (essentially one-way) CCB and then through the turns and loops to access Tapteal and then Center Parkway. Finally, the Battalion Chief responds from the center of Richland and takes the primary route of Steptoe to Tapteal to Center Parkway.

As every minute of delay reduces the percent survival to hospital discharge by 10%, every delay for the critical units to a call (ambulances/paramedics) reduces the quality of the outcome for the patient. The time advantages of the proposed crossing will improve the survivability for trauma and cardiac patients, providing significant probability of the best possible outcome for those survivors.

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6. DECLARATION

I, Richard Grant Baynes, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED TESTIMONY OF RICHARD GRANT BAYNES is true and correct to the best of my knowledge and belief.

DATED THIS 29th day of August, 2013

RICHARD GRANT BAYNES

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Exhibit No. RGB-2T

WUTC DOCKET TR-130499
EXHIBIT RGB-2TR
ADMIT ☒ W/D ☐ REJECT ☐

2013 OCT 23 AM 11:38

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED REBUTTAL TESTIMONY OF RICHARD GRANT BAYNES

1. SUMMARY OF TESTIMONY

Richard Grant Baynes is the Director of Fire and Emergency Services for the City of Richland. In his pre-filed rebuttal testimony, Mr. Baynes explains why the acute public need for the crossing outweighs the danger of an at-grade crossing.

2. BACKGROUND AND CREDENTIALS

Mr. Baynes's background and credentials are set forth in Exhibit RGB-1T.

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3. TCRY PRE-FILED TESTIMONY

Q: *Please identify the testimony that you reviewed before preparing this rebuttal testimony.*

A: I reviewed the following: (1) Mr. Norris's pre-filed testimony submitted on behalf of Tri-City & Olympia Railroad ("TCRY"), and (2) Mr. Randolph V. Peterson's pre-filed testimony submitted on behalf of TCRY.

Q: *Can you please summarize the testimony submitted on behalf of TCRY?*

A: Yes. Both Mr. Norris and Mr. Peterson believe that the proposed crossing does not advance an acute public need.

4. ACUTE PUBLIC NEED

Q: *Previously, you submitted pre-filed testimony that the proposed crossing advances an acute public need. Is that correct?*

A: Yes.

Q: *Have you changed your opinion of this proposed crossing after reading the pre-filed testimony submitted by Mr. Norris and Mr. Peterson, submitted on behalf of TCRY?*

A: No. The crossing advances an acute public need.

Q: *Why?*

A: For all of the reasons set forth in my previous testimony.

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Q: *Are there any other reasons why you do not agree with the testimony submitted on behalf of TCRY?*

A: Mr. Norris is an engineer, and his relevant experience is in railroad crossing closures. He appears qualified in this regard. Mr. Peterson has experience working for TCRY. However, neither individual has experience as a provider of emergency services.

As providers of emergency services, the Cities operate within an imperfect transportation system. I agree with Mr. Norris - we all want "ZERO" accidents and fatalities. But that target is just not possible to achieve throughout the region's transportation system, and it is not the controlling standard. The Cities demonstrate that the site-specific dangers of the crossing are moderated to the extent possible by the installation of safety devices. The Cities demonstrate that there is an acute public need for the crossing that outweighs the danger of an at-grade crossing.

The proposed crossing moderates risk to the extent possible by the installation of safety devices. It also advances an acute public need. Emergency vehicles must respond as quickly as possible to a number of situations. The proposed crossing will provide this region's fire, police, and other first responders with a planned route to quickly respond to an emergency. The Cities have also demonstrated that the proposed crossing will reduce our emergency response time. And, as I stated in my first pre-filed testimony, we are acutely aware of the criticality of response times and their impact on outcomes, particularly for trauma, cardiac and stroke patients, and structure and wildland fires.

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5. DECLARATION

I, Richard Grant Baynes, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED TESTIMONY OF RICHARD GRANT BAYNES is true and correct to the best of my knowledge and belief.

DATED THIS 21st day of October, 2013.

RICHARD GRANT BAYNES

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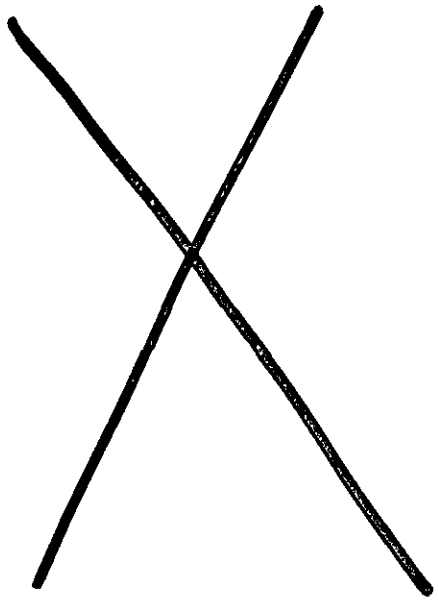

WUTC DOCKET TR-130499
EXHIBIT JP-1T
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit JP-1T

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED TESTIMONY OF JEFF PETERS

1. SUMMARY OF TESTIMONY

Jeff Peters is the Transportation & Development Manager for the City of Richland. His pre-filed testimony explains why the City of Richland is the lead applicant for this proposed crossing. Mr. Peters describes the estimated costs associated with the alternatives reviewed for the proposed crossing, and his testimony identifies how the proposed crossing will moderate any dangers associated with the proposed at-grade crossing.

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2. BACKGROUND

Q: *State your name, position, and years in that position.*

A: Jeff Peters, Transportation & Development Manager, one year and four and a half months.

Q: *State any other relevant background experience.*

A: For approximately seven years, I was an Assistant Project Engineer for the Washington State Department of Transportation in the Tri-Cities; and for five years and ten months I was a Transportation Project Manager at J-U-B Engineers, Inc. in Kennewick.

3. BACKGROUND ON THE PROPOSED PROJECT

Q: *Generally describe the project subject to this petition.*

A: This project extends Center Parkway from the existing roundabout at Gage Boulevard/Center Parkway/ Columbia Center Mall in Kennewick to Tapteal Drive in Richland. It will be a two-lane facility with a two-way left turn lane, bike lanes, sidewalks, streetlights and storm drainage. It is designed to cross the Port of Benton railroad tracks at-grade with a signalized, gated at-grade crossing.

Q: *Why is the City of Richland taking the lead on the design and implementation of this project when the crossing is situated in the City of Kennewick?*

A: I have attached to my testimony the cities' Joint Agreement for the Center Parkway Extension – Gage Boulevard to Tapteal Boulevard. I have also attached the first and second supplement to that agreement. The City of Richland is the lead agency for this project under these agreements.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9

4. COSTS OF CROSSING ALTERNATIVES

Q: *What is the cost for the proposed at-grade crossing at this location?*

A: The proposed at-grade crossing is currently estimated at $250,000.

Q: *Is this amount less than a separated-grade crossing, presuming that a separated-grade crossing is technically feasible?*

A: Yes. Our consultants at David Evans & Associates estimate that it would cost between $15 million and $200 million to construct a separated-grade crossing at this site.

5. PROPOSED SAFETY DEVICES

Q: *What are the proposed safety devices for the at-grade crossing?*

A: Safety devices include advanced signing, flashing lights, audible bell, physical crossing arms, and a non-traversable raised median.

Q: *Describe the progress that the City has made in specifically developing / engineering safety devices for the proposed crossing.*

A: The City has hired David Evans and Associates, Inc. (DEA) to design the at-grade crossing. Preliminary designs have been developed and are included in this petition.

6. DIFFERENCES BETWEEN THIS PETITION AND THE PETITION IN TR-040664

Q: *Did the City present the WUTC for an at-grade crossing at this intersection in 2004, Petition TR-040664?*

A: It is my understanding that the City of Kennewick prepared and presented the WUTC with an at-grade crossing petition that included this location in 2004.

FOSTER PEPPER PLLC
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PHONE (206) 447-4400 FAX (206) 447-9700

Q: *For the 2004 petition, did the City present any specified designs to protect the crossing?*

A: Not to my knowledge.

Q: *For this petition, what has the City done differently to protect the crossing from an engineering / design standpoint?*

A: The City of Richland has hired an engineering consultant (DEA) to perform a preliminary design, including safety features. The raised, non-traversable center median is an additional feature that has been included.

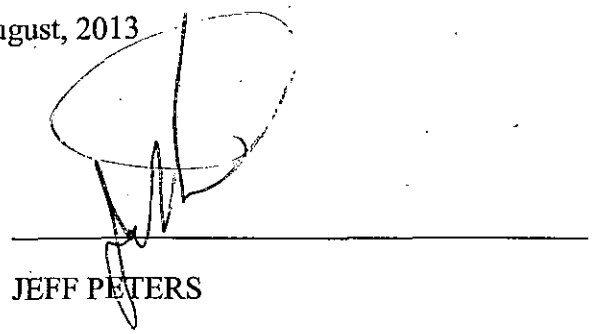
7. ATTACHMENTS

This pre-filed testimony includes the following attachments: (1) Joint Agreement Center Parkway Extension – Gage Boulevard to Tapteal Drive, City of Kennewick-City of Richland, dated September 18, 2001 (the "Joint Agreement"); (2) the first supplement to the Joint Agreement; and (3) the second supplement to the Joint Agreement.

8. DECLARATION

I, Jeff Peters, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED TESTIMONY OF JEFF PETERS is true and correct to the best of my knowledge and belief.

DATED THIS 29 day of August, 2013



JEFF PETERS

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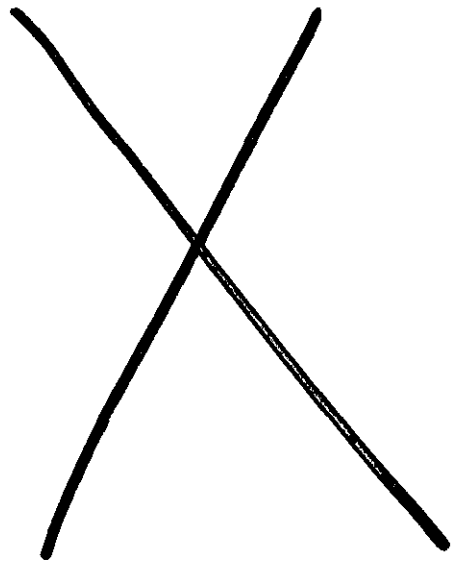
PHONE (206) 447-4400 FAX (206) 447-9700



C91-01

JOINT AGREEMENT

CENTER PARKWAY EXTENSION – GAGE BOULEVARD TO TAPTEAL DRIVE

CITY OF KENNEWICK – CITY OF RICHLAND

This AGREEMENT, made and entered into this 18th day of September, 2001, between the City of Kennewick (hereinafter called "KENNEWICK") and the City of Richland (hereinafter called "RICHLAND"), collectively hereinafter referred to as the "PARTIES".

WHEREAS, KENNEWICK has secured $2,016,000 in Rural Economic Vitality funds (hereinafter referred to as "REV") through the Washington State Community Economic Revitalization Board and $364,241 through the Surface Transportation Program Regional Competitive Fund (hereinafter referred to as "STP") for the construction of a new roadway extending Center Parkway from Gage Boulevard to Tapteal Drive, widening and improvements of Gage Boulevard from Center Parkway to Leslie Road, a new traffic signal at Center Parkway and Gage Boulevard, a new traffic signal at Bellerive and Gage Boulevard, channelization improvements, curb and gutter and sidewalk, storm drainage, at-grade railroad crossing, and associated work, all of which is hereinafter called the PROJECT, and

WHEREAS, KENNEWICK did obligate the REV and STP funds to the PROJECT; and

WHEREAS, RICHLAND did elect to commit $475,800 in Surface Transportation Program Direct Allocation funds (hereinafter referred to as "DIRECT ALLOCATION") to the PROJECT, and

WHEREAS, a Local Agency Agreement Supplement (DOT Form 140-041) is required in order to obligate the DIRECT ALLOCATION funding to the PROJECT, and

WHEREAS, RCW 47.28.140, Agreements to Benefit or Improve Highways, Roads, Streets, and Establish Urban Public Transportation Systems, provides authority for agencies to enter into this agreement, and

WHEREAS, the PARTIES recognize the mutual benefits of improvements to Center Parkway and Gage Boulevard, and

WHEREAS, the PARTIES recognize that a consultant has been chosen to accomplish the preliminary engineering for the Center Parkway Extension, and for the preliminary engineering for the Gage Boulevard improvements within the Richland city limits, and

WHEREAS, the PARTIES agree that KENNEWICK will accomplish the preliminary engineering for the Gage Boulevard Widening within the Kennewick city limits, including the preliminary engineering for a new traffic signal at the intersection of Gage Boulevard and Center Parkway, and

WUTC DOCKET TR-130499
EXHIBIT JP-2 0-000000756
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formula for the construction phase will be developed once the final scope of work and detailed cost estimates for the construction are completed. This is expected near the completion of the preliminary engineering phase. Local matching funds for additional grants that may be obtained for the PROJECT shall also be apportioned by the construction phase supplemental agreement..

PROJECT costs are defined as all actual direct and related indirect costs, including but not limited to, roadway engineering, railway engineering, right-of-way acquisition, legal, administrative overhead, testing services, and costs related to or incidental to the REV, STP or DIRECT ALLOCATION programs.

RICHLAND shall provide monthly billings as required to KENNEWICK itemizing Richland Public Works Department support costs, so these costs can be incorporated in the overall PROJECT costs and be reimbursed in accordance with Federal guidelines.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year first above written.

CITY OF KENNEWICK

James R. Beaver, Mayor

ATTEST:

Valerie Loffler, City Clerk

APPROVED AS TO FORM

John Ziobro, City Attorney

CITY OF RICHLAND

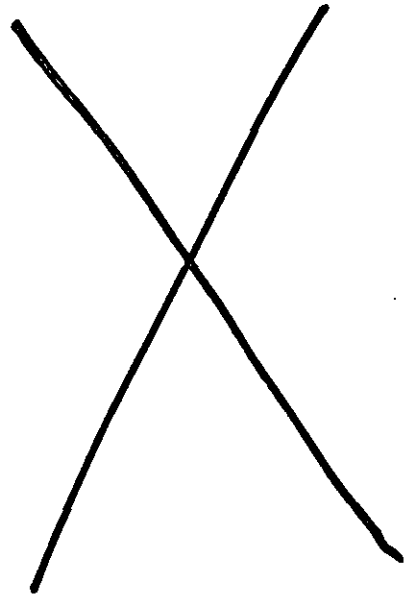
John C. Darrington, City Manager

ATTEST:

Kenneth Bays, City Clerk

APPROVED AS TO FORM

Thomas O. Lampson, City Attorney



C-1-67 C91-01 (1)

JOINT AGREEMENT

CENTER PARKWAY EXTENSION – GAGE BOULEVARD TO TAPTEAL DRIVE
CITY OF KENNEWICK – CITY OF RICHLAND

SUPPLEMENT No. 1

This SUPPLEMENT, No. 1 to the JOINT AGREEMENT, dated September 18, 2001, made and entered into this 17th day of February, 2006, between the City of Kennewick (hereinafter called "KENNEWICK") and the City of Richland (hereinafter called "RICHLAND"), collectively hereinafter referred to as the "PARTIES".

WHEREAS, the PARTIES previously entered into a JOINT AGREEMENT, dated September 18, 2001, that provided for the preliminary engineering and right-of-way acquisition for the construction of a new roadway extending Center Parkway from Gage Boulevard to Tapteal Drive, widening and improvements to Gage Boulevard from Center Parkway to Leslie Road, a new traffic signal at Center Parkway and Gage Boulevard, a new traffic signal at Bellerive Drive and Gage Boulevard, channelization improvements, curb and gutter and sidewalk, storm drainage, at-grade railroad crossing, and associated work, all of which is hereinafter called the PROJECT, and,

WHEREAS, the PARTIES have mutually agreed that the PROJECT should be modified and constructed in phases as follows: Phase 1 – installation of a new traffic signal at Bellerive Drive and Gage Boulevard; Phase 2A - widening and improvements of Gage Boulevard from Louisiana Street to Leslie Road, including channelization improvements, curb and gutter and sidewalk, storm drainage, and associated work; Phase 2B – construction of a roundabout, in lieu of a traffic signal, at the intersection of Center Parkway and Gage Boulevard, and widening and improvements to Gage Boulevard from Louisiana Street to Center Parkway, including channelization improvements, curb and gutter and sidewalk, storm drainage, and associated work; Phase 3 - construction of a new roadway extending Center Parkway from Gage Boulevard to Tapteal Drive, and

WHEREAS, Phase 1 of the PROJECT is complete, and

WHEREAS, RICHLAND did obtain an Urban Corridor Program (UCP) Grant through the Transportation Improvement Board (TIB) in the amount of $1,900,000.00 for the construction of Phases 2A, 2B and 3, and

WHEREAS, RICHLAND intends to install utility pipelines in Gage Boulevard under the construction contract for Phase 2A; and

WHEREAS, KENNEWICK is the lead agency for the PROJECT, and

WHEREAS, a supplement to the JOINT AGREEMENT is required for the construction of Phases 2A, 2B and 3, and

WHEREAS, a supplement to the JOINT AGREEMENT is required in order for KENNEWICK administer the UCP Grant, and

WUTC DOCKET TR-130499
EXHIBIT JP-3
ADMIT ☒ W/D ☐ REJECT ☐
0-000000759

Payment of construction costs for Phase 3 will be determined by a future supplemental agreement.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year first above written.

CITY OF KENNEWICK

James R. Beaver, Mayor

ATTEST:

Valerie Loffler, City Clerk

APPROVED AS TO FORM

John Ziobro, City Attorney

CITY OF RICHLAND

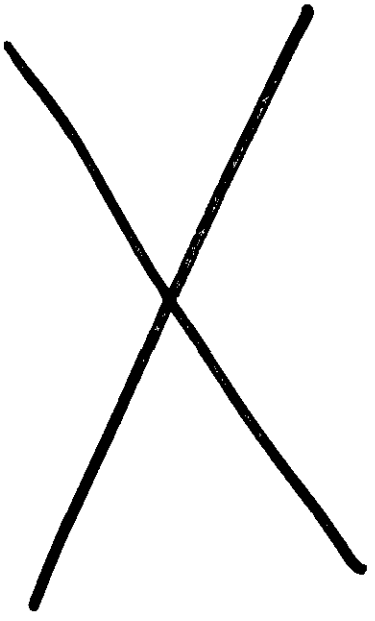
John C. Darrington, City Manager

ATTEST:

Cindy Johnson, City Clerk

APPROVED AS TO FORM

Thomas O. Lampson, City Attorney



CONTRACT NO. 91-01

JOINT AGREEMENT

CENTER PARKWAY EXTENSION – GAGE BOULEVARD TO TAPTEAL DRIVE

CITY OF RICHLAND – CITY OF KENNEWICK

SUPPLEMENT No. 2

This SUPPLEMENT No. 2 to the JOINT AGREEMENT, dated September 18, 2001, made and entered into this 7th day of February, 2012, between the City of Richland, (hereinafter called "RICHLAND") and the City of Kennewick (hereinafter called "KENNEWICK"), collectively hereinafter referred to as the "PARTIES".

WHEREAS, the PARTIES recognize the mutual benefits of improvements to Center Parkway; and

WHEREAS, the PARTIES previously entered into a JOINT AGREEMENT, dated September 18, 2001, that provided for the preliminary engineering and right-of-way acquisition for the construction of a new roadway extending Center Parkway from Gage Boulevard to Tapteal Drive, widening and improvements to Gage Boulevard from Center Parkway to Leslie Road, a new roundabout at Center Parkway and Gage Boulevard, a new traffic signal at Bellerive Drive and Gage Boulevard and associated improvements; and

WHEREAS, the PARTIES previously entered into SUPPLEMENT No. 1 dated February 27, 2006 that provided for the construction of Gage Boulevard, now complete, and to designate KENNEWICK to be the lead agency for the project; and

WHEREAS, the PARTIES desire to designate RICHLAND as the lead agency for the right of way acquisition, design and construction of Center Parkway from Gage Boulevard to Tapteal Drive; and

WHEREAS, the PARTIES desire to jointly support acquisition of additional funding needed to complete Center Parkway between Gage Boulevard and Tapteal Drive

NOW THEREFORE, by virtue of RCW 47.28.140 and in consideration of the mutual covenants, condition and terms contained herein, the said PARTIES hereby enter into this SUPPLEMENT No. 2 to the JOINT AGREEMENT as follows;

WUTC DOCKET TR-130499
EXHIBIT JP-4
ADMIT ☒ W/D ☐ REJ ☐ 0-000000762

c. Provide construction inspection services under the direction of RICHLAND'S project manager, as needed, for work within KENNEWICK city limits.
d. Invoice Richland for grant eligible costs incurred during the project no later than 60 days following Richland's acceptance of the constructed improvements.

II PAYMENT

1) RICHLAND shall pay KENNEWICK for grant eligible costs incurred and invoiced by KENNEWICK from grant proceeds

CITY OF RICHLAND

Cynthia D. Johnson, City Manager

ATTEST:

Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

Tom Lampson, City Attorney

CITY OF KENNEWICK

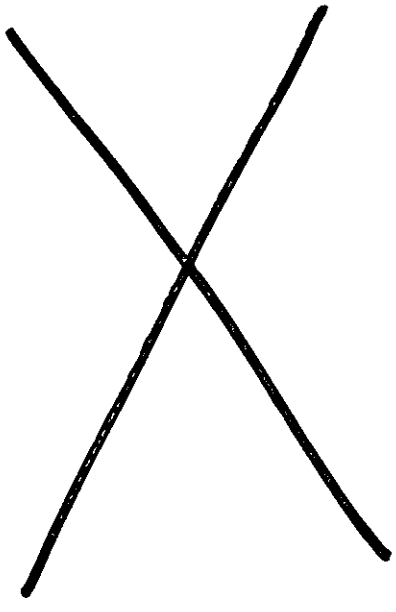
Marie E. Mosley, City Manager

ATTEST:

Valerie J. Loffler, City Clerk

APPROVED AS TO FORM:

Lisa Beaton, City Attorney



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JP-__-X
CS-__-X
RS-__-X
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JD-__-X
KMH-__-X
SG-__-X
KJ-__-X
KH-__-X

Congestion Relief

As described above, Center Parkway is one piece of a planned network of roadways. Columbia Center Boulevard is one of the busiest roadways in the region. The extension and connection of Steptoe Street to Clearwater Avenue has long been planned to provide significant relief to that congested facility. However, as growth continues to fill in the undeveloped portions of the area, regional models indicate that Steptoe Street will also become congested. The significant commercial activity attracted to the area immediately around the Columbia Center Mall requires a well thought out plan for accommodating traffic demand. Having alternate routes and multiple roadways will allow traffic to move into and out of this congested area, enhancing the ability to provide services and let the region continue to develop without extending other urban infrastructure into areas not yet served.

Center Parkway has been planned to provide relief to both Columbia Center Boulevard as well as Steptoe Street, consistent with the philosophy of providing collector roadways parallel and in between arterial roadways.

Improved Access

There is also significant land yet to be developed in this general area of the region, including nearly 60 acres between the railroad and SR 240 which has desirable visibility. Today this land has all utilities and collector roadway access on Tapteal Drive, however it is not as close to the rest of the commercial areas as it could be without Center Parkway, because of the barrier created by the railroad, so it lacks the synergy that commercial areas often seek.

Currently to get from the Columbia Center Mall to businesses on Tapteal Drive, traffic must make a left turn to go north on Columbia Center Boulevard, which is often congested, then proceed to go east on Yellowstone Avenue, south on Belfair Street and then proceed west on Tapteal Loop to access Tapteal Drive. With the Center Parkway connection, traffic will be able to exit the Mall area on the west side and go north at the roundabout at Gage Boulevard and proceed directly north to Tapteal Drive.

Improve Emergency Response

Emergency response to the area is provided by both the City of Richland, with a fire station on Gage Boulevard West of Leslie Road, and by the City of Kennewick with a fire station on Quinault Avenue east of Columbia Center Boulevard. An interagency agreement allows both jurisdictions to respond to incidents in the other jurisdiction, so coverage areas overlap. An evaluation of distances and emergency response times was performed by examining 4 potential routes: from each fire station with and without the proposed Center Parkway connection between Gage Boulevard and Tapteal Drive. Three of these routes are shown in Figure 2 (the fourth is not shown because using the new Center Parkway Extension is only a benefit from the City of Kennewick fire station because response from that site is quicker).

For comparative purposes an examination of response times to the Holiday Inn hotel immediately north and east of the Center Parkway crossing of the railroad tracks was undertaken. It was determined that from the Kennewick fire station that the current route on Columbia Center Boulevard and Tapteal Loop is 1.31 miles away and takes 2:48 minutes to respond, with the Center Parkway connection the distance would be 0.98 miles and only take 2 minutes, nearly a 30% reduction. From the Richland fire station the current route on Gage Boulevard, Steptoe Street and Tapteal Drive is 2.59 miles and would take 5:42 minutes, with the Center Parkway connection the distance is shortened to 2.02 miles and 4:18 seconds.

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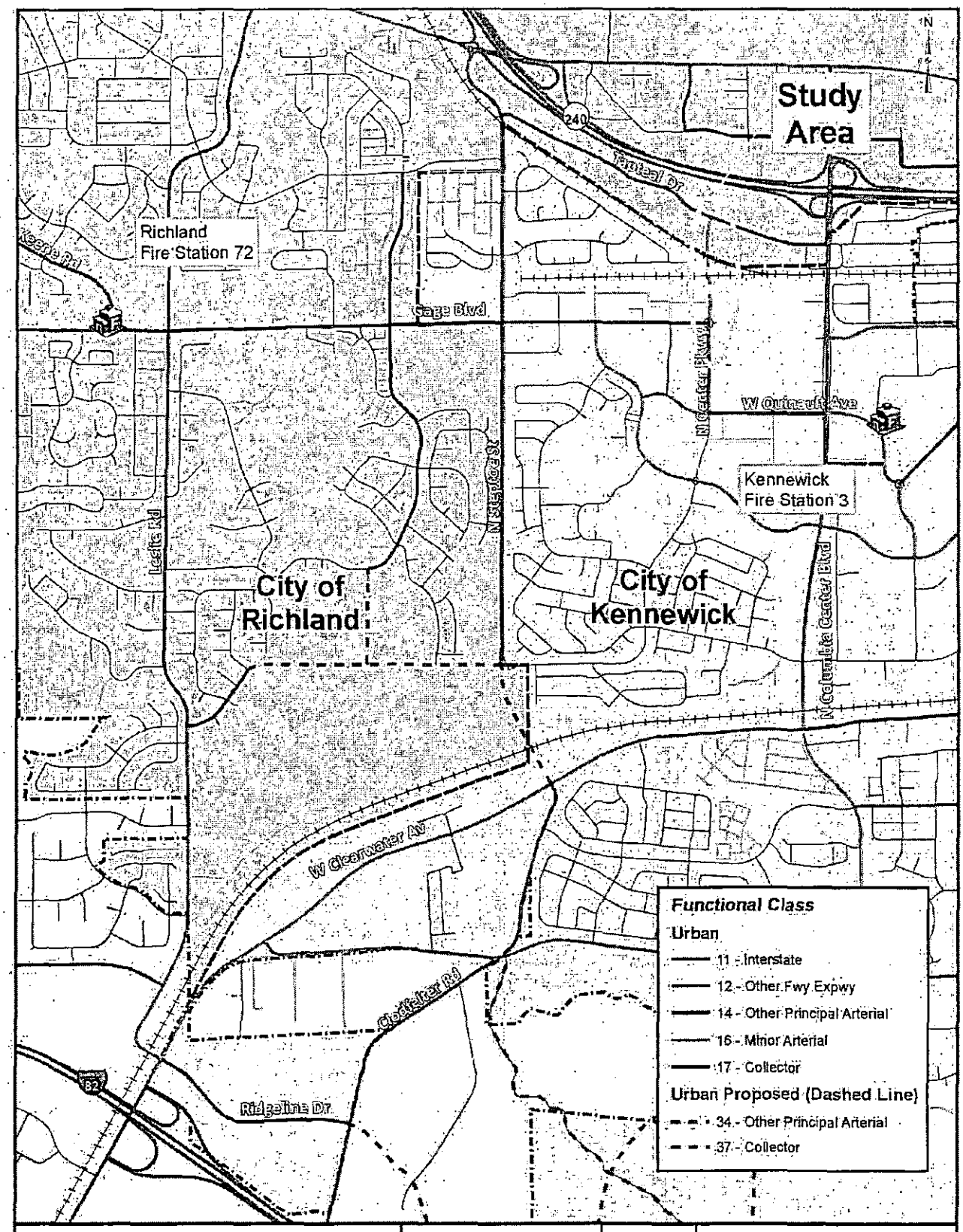
EXHIBIT JP-5-X
ADMIT ☒ W/D ☐ REJECT ☐



JUB ENGINEERS, INC.	Vicinity Map	FIGURE 1	City of Richland Center Parkway Extension Traffic Study

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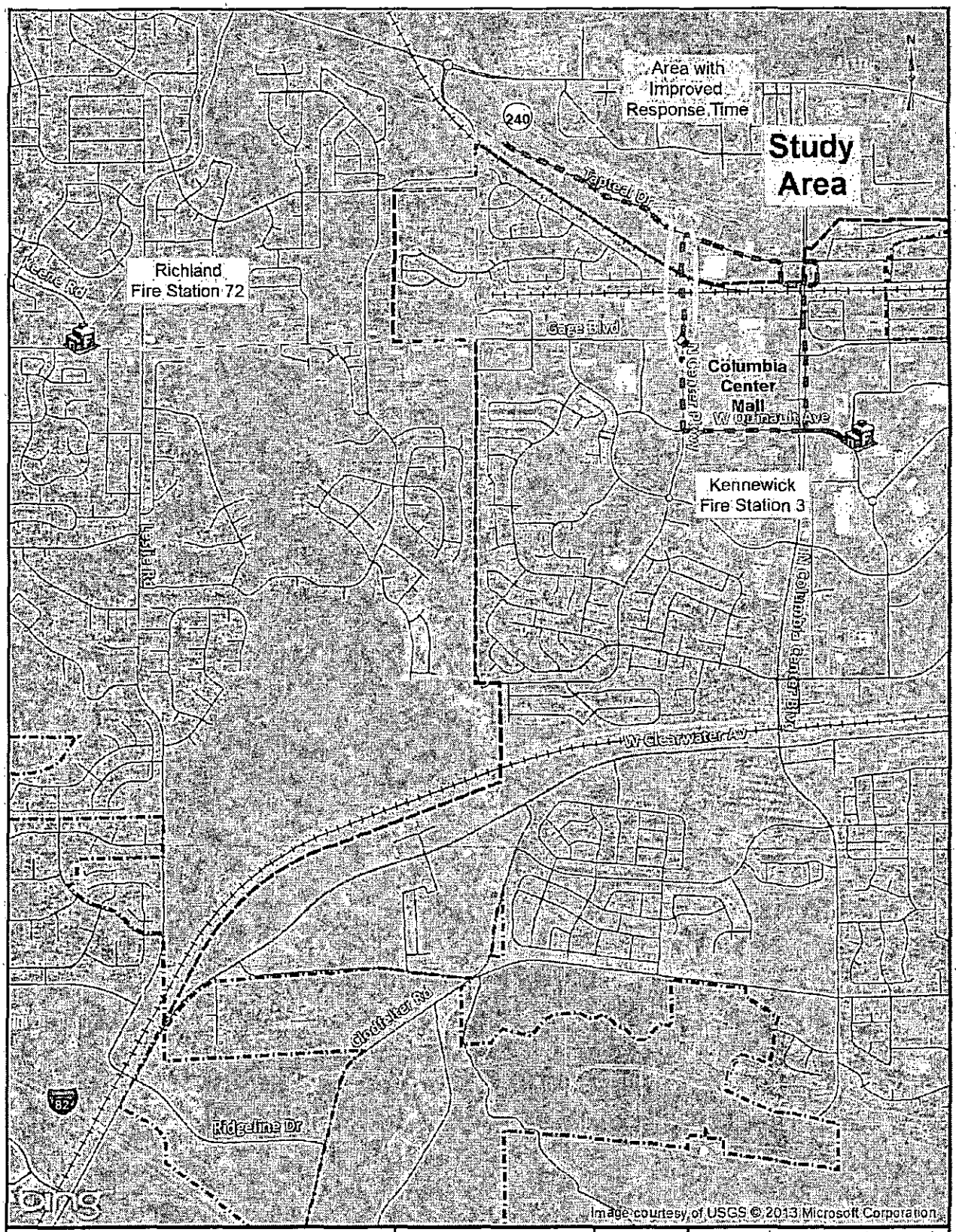

JUB ENGINEERS, INC.	Emergency Routes	FIGURE 2	City of Richland Center Parkway Extension Traffic Study

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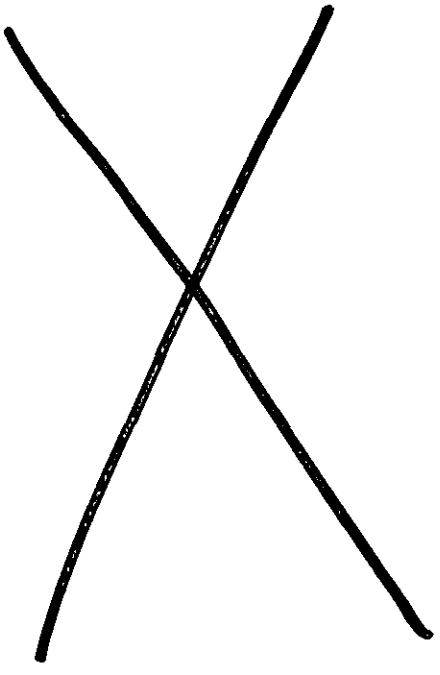

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EXHIBIT JP-6-X
ADMIT ☒ W/D ☐ REJECT ☐

JP-__-X
RS-__-X
JD-__-X
KJ-__-X
KH-__-X

Contract No. 42-11

CITY OF RICHLAND
STANDARD FORM RAILROAD TRACK USE AGREEMENT

THIS RAILROAD TRACK USE AGREEMENT (hereinafter referred to as "Agreement") is made and entered into as of this 6th day of April, 2011 (hereinafter referred to as the "Effective Date") by and between the **CITY OF RICHLAND**, a municipal corporation in the State of Washington (hereinafter referred to as "City") and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation and a duly licensed corporation in the State of Washington (hereinafter referred to as "Railroad").

WITNESSETH

WHEREAS, City is the owner of a railroad industrial spur track, commonly known as the Horn Rapids Rail Spur, located at the Horn Rapids Industrial Park in the City of Richland and connected to the Southern Connection of the Hanford Railroad (owned by the Port of Benton, Washington (hereinafter referred to as the "Port"), successor in interest to the United States Department of Energy), as shown on Exhibit A attached hereto (hereinafter referred to as the "Track"); and

WHEREAS, Railroad operates pursuant to separate agreement(s) over tracks owned by the Port which tracks connect with the Track near Milepost B 37 on the Port's trackage and a portion of which tracks have been used for the interchange of traffic between rail carriers at or near Richland Junction, Washington (hereinafter referred to as "Richland Junction"); and

WHEREAS, Railroad desires to use the Track for the purpose of providing railroad freight service thereon and thereover to industries located on or adjacent to the Track (hereinafter referred to individually as "Industry" and collectively as "Industries"); and

WHEREAS, City desires that all railroad interchange operations at Richland Junction be permanently eliminated to facilitate commercial development and improve vehicular traffic movement in the area; and

WHEREAS, City is willing to allow Railroad to use the Track on a non-exclusive basis but only on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties, intending to be bound, do hereby agree as follows:

SECTION 1
GRANT OF USE

Section 1.1. City hereby grants to Railroad non-exclusive permission to operate its trains, locomotives, cars and equipment with its own crews over the Track for the purposes set forth herein. Railroad's use of the Track shall be in common with such other user or users of the Track as City has heretofore admitted, or may at any time in the future admit, to use of all or any

portion of the Track, provided that City shall require such user or users to comply with all Legal Requirements (as defined in Section 9.1) applicable to such user's or users' use of the Track. Subject to the foregoing, City shall retain the exclusive right to grant to other persons the right to use all or any portion of the Track, provided that such use does not unreasonably interfere with the rights granted to Railroad herein.

Section 1.2. The Track shall include, without limitation, the right-of-way, tracks, rails, ties, ballast, other track materials, switches, bridges, grade crossings and any and all other improvements or fixtures affixed to the right-of-way.

Section 1.3. Railroad shall take the Track in an "AS IS, WHERE IS" condition subject to all rights, interests and estates of third parties in and to the Track.

Section 1.4. City represents that it owns or controls the land underlying the Track and that there are no existing easements or encumbrances affecting such land that would interfere with Railroad's rights under this Agreement.

SECTION 2
PERMITTED USE

Section 2.1. Railroad's use of the Track shall be limited to the movement of goods by rail to and from an Industry via tracks of such Industry that connect to the Track.

Section 2.2. Railroad shall not knowingly and intentionally permit the loading or unloading of railcars on the Track by any party within its control, and shall not enter into agreements or arrangements with any person for the storage of empty or loaded railcars on the Track or any portion thereof, without the prior written consent of City.

Section 2.3. Neither party shall use the Track or any portion thereof, for the storage, transload or disposal of any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended (hereinafter referred to as "CERCLA"), or petroleum or oil as defined by CERCLA, the Resource Conservation and Recovery Act, as amended (hereinafter referred to as "RCRA"), the Clean Water Act, the Oil Pollution Act, and the Hazardous Materials Transportation Act (hereinafter collectively referred to herein as the" Environmental Laws"), provided however, that nothing herein shall preclude Railroad or any other admittee of City from using the Track for the movement of hazardous substances in railcars in the normal course of providing rail transportation service to or from an Industry.

Section 2.4. Neither party shall use nor allow the use of the Track for the transportation of passengers thereon or thereover, provided however, that nothing herein shall preclude Railroad or any other admittee of City from operating a hi-rail vehicle over the Track for the purpose of inspecting the Track.

Section 2.5. Railroad shall not cause to be filed or knowingly and intentionally permit persons within its control to file any liens against the Track. In the event any such liens

are filed, Railroad shall cause such liens to be released within thirty (30) days of Railroad's receipt of notice of any such lien.

Section 2.6. Railroad shall not create or store any waste or nuisance on the Track. Railroad shall neither use nor occupy the Track or any part thereof in violation of Legal Requirements (as defined in Section 9.1). City shall not cause or allow the Track to be blocked, obstructed or used in any manner that would impair or diminish Railroad's ability to use the Track for the purposes set forth in this Agreement, provided however, that use of the Track by any user in the ordinary course of providing rail service to any Industry on the Track, shall not be deemed a violation of the requirements of this sentence.

SECTION 3
MAINTENANCE

Section 3.1. City, at its cost and expense, shall be solely responsible for, and shall have exclusive direction and control over, the maintenance of the Track which shall include, but not be limited to, maintenance of tracks, subgrade, track drainage, grade crossings, grade crossing warning signs and devices, signal boxes, bridges and abutments, culverts, drainage ditches, retaining walls and any fences or barriers that City may erect. City shall also be solely responsible for litter and vegetation control and for keeping the Track sufficiently free and clear of snow and ice to permit railroad operations thereover.

Section 3.2. City shall maintain the Track to not less than Federal Railroad Administration (hereinafter referred to as "FRA") Class 2 track safety standards with a maximum gross weight limitation of not less than 286,000 lbs. per car and City shall maintain the Track in such condition and in compliance with all Legal Requirements (as hereinafter defined below). City shall also maintain all grade crossing signal equipment on the Track in accordance with all applicable Legal Requirements (as defined in Section 9.1).

Section 3.3. City, in its sole discretion, may contract with a third party to perform City's maintenance obligations hereunder, provided, however, City shall remain responsible for any obligations of City under this Agreement that may be performed by any such contractor.

Section 3.4. Railroad shall notify City in writing of any deficiencies in City's maintenance of the Track when such deficiencies are reasonably discovered by Railroad, and City shall, as soon as practicable, but in any event not more than thirty (30) days after its receipt of such notice, or in the case of an imminent safety hazard and/or condition which renders the Track impassable, within forty-eight (48) hours, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence.

Section 3.5. If the use of the Track is at any time interrupted or traffic thereover is delayed for any cause whatsoever, City shall, with reasonable diligence, restore the Track for the passage of trains. Railroad shall not have nor make any claim against City for loss, damage, loss of business or expenses of any kind resulting from such interruption or delay.

Section 3.6. City shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of the Track and, Railroad shall not, by reason of City's performing or failing, or neglecting to perform any maintenance, repair or renewal of the Track, have or make against City, its officers, agents or employees, any claim or demand for loss, damage, destruction, injury or death whatsoever resulting from any defect in the Track or City's performance, failure or neglect, except as provided otherwise in Section 11 herein.

Section 3.7. Subject to the provisions of Section 8.1 herein, Railroad shall have the right to enter upon the Track and make inspections to determine compliance with the terms of this Agreement. In no event shall Railroad be obligated to make any such inspections, and Railroad shall not be liable for any failure to make any such inspections or failure to identify any matters that are not in compliance with this Agreement. In no event shall Railroad's conducting of inspections be deemed to result in a waiver of City's compliance with any terms of this Agreement.

Section 3.8. City shall be responsible for reporting of grade crossings and structures inventory and any other similar information as may be required by the FRA or any other governmental body having jurisdiction over such matters.

SECTION 4
COMPENSATION

Section 4.1. For so long as City permits Railroad reasonable use of the Track, as compensation for Railroad's use of the Track, Railroad shall pay to City annually at the beginning of each calendar year a fee of Fifteen Thousand Dollars ($15,000) (hereinafter referred to as the "Annual Fee") which shall be payable regardless of Railroad's use of the Track during that year.

Section 4.2.

A. The Annual Fee shall be subject to adjustment on January 1 of each year beginning January 1, 2011 in accordance with changes in the Consumer Price Index for Wage Earners and Clerical Workers, series CWUR0000SA0 (hereinafter referred to as "CPI-W"). The Annual Fee set forth in Section 4.1 shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recent July as related to the final index of the previous July and applying this percentage of increase or decrease to the current Annual Fee to be revised. The resulting adjusted Annual Fee shall hereinafter be referred to as "the Revised Annual Fee."

By way of example, assuming "A" to be the CPI-W final index figure for July 1, 2009; "B" to be the CPI-W final index figure for July, 2010; and "C" to be the current Annual Fee to be escalated; the Revised Annual Fee effective January 1, 2011 would be determined by the following formula:

B/A x C = Revised Annual Fee, Rounded to Nearest Whole Cent

B. In the event that publication of the CPI-W is discontinued, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter shall be submitted to arbitration in accordance with Section 16 herein.

C. Under no circumstances shall the Revised Annual Fee paid by Railroad to City be less than the Annual Fee in effect on the date of this Agreement.

Section 4.3.

A. Railroad agrees that as part of the consideration for obtaining City's permission to use the Track herein, Railroad shall, subject to Legal Requirements, as of the Effective Date and during the term of this Agreement, permanently relocate any interchange receipt operations between Railroad and another rail carrier at Richland Junction to an alternate interchange location except that Railroad may, in emergency situations only, interchange cars at Richland Junction. For purposes of this provision, an emergency situation includes, but is not limited to, the following: Force Majeure events or other Acts of God; movement of High or Wide loads; movement or handling of rail security-sensitive materials (as such term is defined in 49 CFR Part 1580, as amended, supplemented or replaced) in compliance with Legal Requirements or other safety requirements; track or other mechanical conditions necessitating a change in interchange location. Except as required by law or as provided in this Section 4.3.A, Railroad shall not, during the term of this Agreement, enter any agreement to deliver cars in interchange to any other railroad at Richland Jct.

B. City intends to construct a public street, called Center Parkway, at the location of Richland Junction. Railroad further agrees to provide easements and rights of way necessary to complete Center Parkway in exchange for compensation as defined in Section 18.

C. Railroad further agrees that if the design of Center Parkway requires an at-grade crossing of a track owned or used by Railroad, Railroad shall not oppose installation of a crossing designed in compliance with the current version of the Manual on Uniform Traffic Control Devices or any other applicable Legal Requirements, with the appropriate traffic control system to be used at the crossing to be determined by an engineering study involving both the City and Railroad representatives. In the event that both City and Railroad representatives jointly agree as to the appropriate traffic control system to be used at the crossing, Railroad shall execute a waiver of hearing document to the Washington State Utilities and Transportation Commission regarding the proposed crossing.

Section 4.4. City acknowledges that the compensation provided for in this Section 4 shall be the sole consideration for the right to use the Track, and in no event shall City impose any additional charges, tariffs, or surcharges on Railroad or any customer or receiver of Railroad as a condition of use of the Track for the provision of rail transportation service except to the extent expressly set forth below. Notwithstanding the foregoing, City may assess additional charges, tariffs, or surcharges for maintenance, operating and dispatching costs associated with the Track if all of the following conditions are satisfied: (i) City provides Railroad with ninety (90) days advance written notice of the proposed charges, tariffs or

surcharges and detailed information concerning City's costs, including the deficit not covered by the then current Annual Fee; and (ii) City, Railroad and any other users of the Track are not able to negotiate, within sixty (60) days of City providing notice in (i) above, an updated Annual Fee in lieu of the proposed charges to the mutual satisfaction of the parties. The increase in the updated Annual Fee as provided in this Section 4.4, shall not exceed Railroad's proportionate share of the deficit not covered by the Annual Fee prior to update. Railroad's proportionate share shall be calculated by comparing the total number of cars handled by Railroad over the Track to the total number of cars handled by all users over the Track for the twelve (12) full months prior to City's notification to Railroad of its intent to increase the Annual Fee.

SECTION 5
BILLING AND PAYMENT

Section 5.1. City shall render to Railroad a bill for the Annual Fee.

Section 5.2. Upon reasonable request by City, Railroad shall furnish to City, within sixty (60) days of receiving such request, a statement of the number of loaded and empty cars handled by Railroad over all or any portion of the Track during the previous twelve (12) months. Notwithstanding the foregoing, City shall only be entitled to make one request for such car information each calendar year during the term of this Agreement.

Section 5.3. All payments called for under this Agreement shall be made by Railroad within thirty (30) days after receipt of a bill therefor except for any claims or demands for payment pursuant to Section 11 of this Agreement. No payment shall be withheld because of any dispute as to the correctness of items in any bill rendered and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. In the event that Railroad shall fail to pay any monies due to City within thirty (30) days after the invoice date, Railroad shall pay interest on such unpaid sum of twelve percent (12%), or the maximum rate permitted by law, whichever is less.

Section 5.4. The records of each party, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of billing.

Section 5.5. For purposes of this Agreement, the terms "cost," "costs," "expense" and "expenses" shall include actual labor and material costs together with the surcharges, overhead percentages and equipment rentals as specified by City at the time any work is performed for Railroad, which surcharges, overhead percentages and equipment rentals shall be reasonable and consistent with City's then-current standard billing practice, procedures, rates and schedules. City's overhead percentages shall not exceed sixty percent (60%) during the term of this Agreement without Railroad's review and approval.

SECTION 6
ADDITIONS, RETIREMENTS AND ALTERATIONS

Section 6.1. City, from time to time, and at its sole cost and expense, may make such changes in, additions and improvements to, and retirements from the Track as shall, in its

judgment, be necessary or desirable for the economical or safe operation thereof, or as shall be required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction. Such additions and improvements shall become part of the Track and such retirements shall be excluded from the Track.

Section 6.2. If Railroad requests City to make changes in or additions or improvements to the Track required to accommodate Railroad's operations thereover, and Railroad agrees to reimburse City therefor, and City determines that the requested improvements will not adversely impact City's economic development goals, then City shall make such changes, additions or improvements to the Track and Railroad shall pay to City the cost thereof, including the annual expense, if any, of maintaining, repairing and renewing such additional or altered facilities. Any facilities other than the Track, which are exclusively funded by Railroad as provided for herein, shall be for the exclusive use of Railroad and City shall not allow any other party access to the facility without Railroad's prior written agreement.

SECTION 7
TERM

Section 7.1. This Agreement shall take effect on the date hereof and shall continue in full force and effect for three (3) years from the date hereof (hereinafter referred to as the "Initial Term") and shall automatically renew for successive one (1) year periods thereafter, absent termination as provided in Section 14.

SECTION 8
OPERATIONS

Section 8.1. Railroad agrees that entry to and exit from the Track shall be controlled by City or any contractor or admittee designated by City. City shall require that any entity allowed by City to control operations thereover shall be required to ensure that the trains, locomotives and cars of all users of the Track shall be operated thereon and thereover without prejudice or partiality and in such manner as will afford the safest and the most economical and efficient movement of all traffic over the Track. Except to the extent prohibited by law, City reserves the right at any time by sixty (60) days prior written notice to Railroad and any other user or users of the Track to assume coordination of operations over the Track consistent with the terms of this Section 8.1.

Section 8.2. Railroad shall provide, at its sole cost and expense, all locomotives, railcars, other rolling stock and transportation equipment, personnel, fuel and train supplies necessary for Railroad to provide safe and adequate rail transportation to the Industries. Railroad shall also provide, at its sole cost and expense, all radios and other communication facilities as necessary to comply with the regulations of the FRA. Railroad shall be solely responsible for all car hire charges and mileage allowances on cars in Railroad's account handled over the Track.

Section 8.3. City, at its sole cost and expense, shall provide all necessary switch locks for use in the operation of the Track. City shall provide at no charge a reasonable number of keys for such switch locks to Railroad and any other user or users of the Track.

Section 8.4. Railroad, at its sole cost and expense, shall perform or cause to be performed any repairs required to make locomotives, cars or other equipment in the custody or control of Railroad on the Track comply with Legal Requirements (as defined in Section 9.1).

Section 8.5. City shall not place, permit to be placed or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within eight and one-half (8-1/2) feet laterally from the centerline of straight track (nine and one-half (9-1/2) feet on either side of the centerline of curved track) or within twenty-three (23) feet vertically from the top of the rail of any track (hereinafter referred to as "Minimal Clearances"), provided that if any Legal Requirements (as defined in Section 9.1) require greater clearances than those provided for in this Section 8.5, City shall comply with such Legal Requirements. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements shall not be a violation of this Section, so long as City complies with the terms of any such Legal Requirements.

Section 8.6. Railroad shall not place or allow to be placed any rail car within two hundred fifty (250) feet of either side of any at-grade crossing on the Track. Railroad shall not place or permit to be placed on the City's right-of-way any permanent or temporary structure of any kind whatsoever without the prior written consent of City, which consent may be withheld at City's sole discretion. City shall require any other user or users of the Track to comply with the requirements of this Section 8.6.

Section 8.7. Railroad and City agree that with respect to the at-grade road crossings on the Port of Benton's track between the proposed Center Parkway crossing at Richland Junction and SR 240 (Vantage Highway) inclusive, Railroad shall use reasonable efforts to minimize its operations over such crossings during peak highway traffic times Monday through Friday. City acknowledges and understands that Railroad's compliance with its common carrier obligations may, from time to time, require operations over such crossings during peak highway traffic times. Railroad agrees to use reasonable efforts to meet its obligations under this Section 8.7.

Section 8.8. In the event that any user of the Track, including Railroad, provides notice to the City of any violation of Legal Requirements by any user of the Track, including Railroad, or any violation of the terms of this Agreement or the applicable agreement between such user and City (including without limitation, any applicable obligation to control entry to and exit from the Track or operations thereon or thereover without prejudice or partiality and in such manner as will afford the safest and the most economical and efficient movement of all traffic over the Track), City shall conduct an investigation into such alleged violation, and if, in the reasonable judgment of City, Railroad or such user shall be in violation of applicable Legal Requirements or the terms of this Agreement or such user's agreement with the City, City shall require Railroad or such user as the case may be to cure such conduct in accordance with this Agreement or the applicable agreement, and unless and until same shall be cured in compliance with this Agreement or the applicable agreement, City shall bar Railroad or such user as the case may be from use of the Track.

SECTION 9
COMPLIANCE WITH LAWS

Section 9.1. The parties agree to comply with all applicable provisions of law, statutes, regulations, ordinances, orders, covenants, restrictions and decisions of any governmental body or court having jurisdiction (hereinafter collectively referred to as "Legal Requirements") relating to this Agreement and/or use of the Track. Each party hereto shall indemnify, protect, defend and hold harmless the other party and its officers, agents and employees from and against all fines, penalties, and liabilities imposed on the other party under such laws, rules and regulations by any such public authority or court having jurisdiction when attributable to the failure of the first party to comply with its obligations in this regard.

Section 9.2. It is the understanding of the City and the Railroad that the Track is industry track. Unless otherwise required by law, Railroad does not intend to and will not seek or obtain any approval, authorization or exemption from the STB for its use or discontinuance of use of the Track.

SECTION 10
CLEARING OF WRECKS

Section 10.1. If trains, locomotives, cars or equipment of Railroad are wrecked or derailed on the Track and require rerailing, wrecking service or wrecking train service, Railroad shall be responsible for the performance of such service, including the repair and restoration of roadbed, track and structures, provided however, that if Railroad fails to restore the Track to service within a reasonable period of time, not to exceed forty-eight (48) hours, after such wreck or derailment, City, at its option, may arrange for the performance of such service, including repair and restoration of roadbed, track and structures, and Railroad shall reimburse City for the cost and expense thereof in accordance with Section 5 herein. Any other cost, liability and expense, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting from such wreck or derailment, shall be determined in accordance with the provisions of Section 11 hereof. All locomotives, cars and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by Railroad at the time of such wreck shall be promptly delivered to Railroad.

Section 10.2. If trains, locomotives, cars or equipment of any admittee of City, other than Railroad, are wrecked or derailed on the Track and require rerailing, wrecking service or wrecking train service, City shall ensure the performance of such service, including the repair and restoration of roadbed, track and structures, provided however, that if City fails to have the Track restored to service within a reasonable period of time, not to exceed seventy-two (72) hours, after such wreck or derailment, Railroad, at its option, may arrange for the performance of such service, including repair and restoration of roadbed, track and structures, and City shall reimburse Railroad for the cost and expense thereof in accordance with Section 5 herein. In order for Railroad's costs to be eligible for reimbursement, Railroad shall provide at least twenty-four (24) hours written notice to City and all other users of the Track of Railroad's intent

to mobilize resources to complete the work. City will be responsible for coordinating resources of various entities to complete the repair and avoid duplication of effort. Any other cost, liability and expense, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting from such wreck or derailment, shall be determined in accordance with the provisions of Section 11 hereof. All locomotives, cars and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by City or its admittee at the time of such wreck shall be promptly delivered to City or its admittee, as the case may be.

SECTION 11
LIABILITY

Section 11.1

A. TO THE FULLEST EXTENT PERMITTED BY LAW, RAILROAD SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND CITY'S OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INVITEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "**CITY INDEMNITEES**"), FROM AND AGAINST ANY AND ALL CLAIMS AND LIABILITIES OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURIES, DEATHS, DAMAGE OR DESTRUCTION OF PROPERTY AND DAMAGE TO OR DESTRUCTION OF THE ENVIRONMENT WHATSOEVER, INCLUDING WITHOUT LIMITATION LAND, AIR, WATER, WILDLIFE, AND VEGETATION (HEREINAFTER COLLECTIVELY REFERRED TO AS "**CLAIMS**"), TO THE EXTENT SUCH CLAIMS ARE PROXIMATELY CAUSED BY (I) THE BREACH OF THE TERMS OF THIS AGREEMENT BY RAILROAD AND/OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES, OR (II) THE NEGLIGENCE,GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILROAD OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES.

B. TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INVITEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "**RAILROAD INDEMNITEES**"), FROM AND AGAINST ANY AND ALL CLAIMS OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, TO THE EXTENT SUCH CLAIMS ARE PROXIMATELY CAUSED BY (I) THE BREACH OF THE TERMS OF THIS AGREEMENT BY CITY AND/OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES, OR (II) THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES.

C. UPON WRITTEN NOTICE FROM RAILROAD OR CITY, THE OTHER PARTY AGREES TO ASSUME THE DEFENSE OF CLAIMS OR ANY LAWSUIT OR OTHER PROCEEDING BROUGHT AGAINST ANY INDEMNITEE OF THE OTHER PARTY BY ANY ENTITY, RELATING TO ANY MATTER COVERED IN THIS AGREEMENT FOR WHICH THE OTHER PARTY HAS AN OBLIGATION TO ASSUME

LIABILITY FOR AND/OR SAVE AND HOLD HARMLESS SUCH INDEMNITEE. THE OTHER PARTY SHALL PAY ALL COSTS INCIDENT TO SUCH DEFENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, INVESTIGATOR'S FEES, LITIGATION AND APPEAL EXPENSES, SETTLEMENT PAYMENTS, AND AMOUNTS PAID IN SATISFACTION OF JUDGMENTS.

D. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF THE CONDUCT OF AN INDEMNIFIED PARTY OR THE EMPLOYEES, AGENTS, OFFICERS, OR CONTRACTORS OF AN INDEMNIFIED PARTY.

SECTION 12
INSURANCE

Section 12.1.

A. Railroad shall, at its sole cost and expense, procure and maintain during the term of this Agreement the following insurance coverage:

1. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $2,000,000 each occurrence and an aggregate limit of at least $4,000,000. Coverage must be purchased on a post-1998 ISO occurrence form or equivalent and include coverage for, but not limited to:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The employee and workers compensation-related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within fifty (50) feet of the Track.
- Any exclusion related to explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy with regard to Railroad's use of the Track under this Agreement.

2. Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

3. Workers' Compensation and Employers Liability insurance including coverage for, but not limited to:

- Railroad's statutory liability under the worker's compensation laws of the State of Washington. If optional under State law, the insurance must cover all employees anyway.
- Employers' liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

4. Excess Liability insurance in an amount not less than $10,000,000 each occurrence and $10,000,000 aggregate limit.

B. Railroad shall also comply with the following requirements:

1. Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

2. Railroad agrees to waive its right of recovery against City and Indemnitees under its Commercial General Liability, Automobile Liability, and Workers' Compensation/Employers Liability insurance coverages.

3. Railroad's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by City. The certificate of insurance must reflect that the above wording is included in evidenced policies.

4. All policy(ies) required above (excluding Workers' Compensation) shall include a severability of interest endorsement and shall name City as an additional insured by endorsement using additional insured form CG 26 07 04 with respect to Railroad's use of the Track under this Agreement. Severability of interest and naming City as an additional insured shall be indicated on the certificate of insurance.

5. Except if Railroad is a Class I rail carrier as defined under the regulations of the STB, Railroad is not allowed to self-insure without the prior written consent of City. If granted by City, any deductible, self insured retention or other financial responsibility for claims shall be paid directly by Railroad. Any and all City liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Railroad's insurance shall be paid by Railroad as if Railroad elected not to include a deductible, self-insured retention or other financial responsibility for claims.

6. Prior to entering upon the Track, Railroad shall furnish to City an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify City in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving City arising out of this Agreement, Railroad will make available any required policy covering such claim or lawsuit.

7. Any insurance policy shall be written by a reputable insurance company acceptable to City or with a current Best's Guide Rating of A and Class VII or better, and authorized to do business in the State of Washington.

8. Railroad represents that this Agreement has been thoroughly reviewed by Railroad's insurance agent(s)/broker(s), who have been instructed by Railroad to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

9. Not more frequently than once every five (5) years, City may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

10. Failure to provide evidence as required by this section shall entitle, but not require, City to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Railroad's obligations hereunder.

11. The fact that insurance (including, without limitation, self-insurance) is obtained by Railroad shall not be deemed to release or diminish the liability of Railroad including, without limitation,

liability under the indemnity provisions of this Agreement. Damages recoverable by City shall not be limited by the amount of the required insurance coverage.

C. City shall waive in writing the above insurance requirements if Railroad is a Class I rail carrier as defined in the regulations of the STB.

SECTION 13
ENVIRONMENTAL

Section 13.1

A. Railroad shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Track, including, but not limited to Environmental Laws. Railroad shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, anywhere on the Track. Railroad shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, anywhere on the Track. Any such release shall not be considered a default of this Agreement but shall be remedied as described below.

B. In the event of any such release described in Section 13.1.A., then Railroad shall provide immediate notice to City's Contract Officer at (509) 942-7327 of any release of hazardous substances on or from the Track, violation of Environmental Laws, or inspection or inquiry by government authorities charged with enforcing Environmental Laws with respect to Railroad's use of the Track. Railroad shall use reasonable efforts to promptly respond to any release on or about the Track. Railroad also shall give City immediate notice of all measures undertaken on behalf of Railroad to investigate, remediate, respond to or otherwise cure such release or violation.

C. In the event that City receives notice from Railroad or otherwise learns of a release or violation of Environmental Laws on the Track which occurred or may occur during the term of this Agreement for which Railroad is responsible pursuant to this Agreement, City may require Railroad, at Railroad's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure or prevent such release or violation affecting the Track.

D. Railroad shall promptly report to City in writing any known conditions or activities on the Track which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Railroad's reporting to City shall not relieve Railroad of any obligation whatsoever imposed on it by this Agreement. Railroad shall promptly respond to City's request for information regarding said conditions or activities.

SECTION 14
TERMINATION

Section 14.1. Railroad may terminate this Agreement at any time after one year from the Effective Date, by giving City not less than six (6) months' written notice of

termination. Upon expiration or termination of this Agreement consistent with the terms herein, all rights of Railroad to use the Track shall cease.

Section 14.2. Notwithstanding any other provision of this Agreement except Section 14.3, at any time after the Effective Date, City may terminate this Agreement if Railroad shall default on or breach any of its material obligations hereunder, including but not limited to timely payment of compensation to City pursuant to Section 4.1, and Railroad fails to cure such default or breach within thirty (30) days of receipt of written notice from City specifying such default or breach.

Section 14.3. Notwithstanding any other provision of this Agreement, at any time after the Effective Date, City may terminate this Agreement if Railroad fails to comply with its material obligations under Section 4.3 herein and Railroad does not cure such failure within thirty (30) days of receipt of written notice from City specifying such failure.

Section 14.4. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof. The Annual Fee paid by Railroad to City pursuant to Section 4.1 shall be non-refundable if termination of this Agreement becomes effective after June 1 of the year to which the Annual Fee applies.

SECTION 15
NOTICES

Section 15. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice for such change in address:

If to City: Community Development Services
Attn: Horn Rapids Rail Spur
City of Richland
975 George Washington Way
P.O. Box 190, MS #18
Richland, WA 99352
(509) 942-7593

If to Railroad:

General Manager Joint Facilities
1400 Douglas Street
MS 1180
Omaha, Nebraska 68179
(402) 544-2292

SECTION 16
ARBITRATION

Section 16.1. Any dispute arising between the parties hereto with respect to any of the provisions of this Agreement which cannot be settled by the parties themselves shall be resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as such rules may be amended from time to time, and as shall be applied with reference to the customs and practices of the railroad industry. Any such arbitration shall be held in Richland, Washington or at such other location as may be mutually acceptable to the parties hereto. The decision of the arbitrator or arbitration panel shall be final and conclusive upon the parties hereto. A final decision and award of the arbitration panel shall be enforceable in any court of competent jurisdiction in the United States of America. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own arbitrator, witnesses, exhibits and counsel. The compensation, costs and expenses of any neutral arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator or arbitration panel shall not have the power to (a) award punitive or consequential damages, (b) determine violations of antitrust or criminal laws, or (c) reform the terms of this Agreement, in whole or in part.

SECTION 17
MISCELLANEOUS

Section 17.1. This Agreement expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, provided however, no modification of this Agreement shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

Section 17.2. This Agreement shall be binding upon and inure to the benefit of City and Railroad, and shall be binding upon the successors and assigns of Railroad, subject to the limitations hereinafter set forth. Railroad may not assign its rights under this Agreement or any interest therein, or attempt to have any other person assume its obligations in whole or in part under this Agreement, without the prior written consent of City which consent may be withheld; in City's sole discretion; provided, however, no such consent shall be required where assignment occurs as a result of a sale or transfer of all or substantially all of the assets of Railroad pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.

Section 17.2.1. Notwithstanding Section 17.2 of this Agreement, UP shall have the right, at its sole discretion and upon ten (10) days advance written notice to the City, to name an agent to handle UP rail traffic to and from Industries located along the Track. While handling

such UP traffic, for the purposes of this Agreement, any agent so named by UP shall be considered to be UP, and City may enforce the provisions of this Agreement against UP for the acts of such agent. Regardless of whether or not UP names an agent as provided for in this Section 17.2.1, UP shall continue to have the right to handle part or all of its own traffic to Industries.

Section 17.3. If fulfillment of any provision hereof shall be declared invalid or unenforceable under applicable law, such provision shall be ineffective only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable the remainder of such provision or the remaining provisions of this Agreement, which shall remain in full force and effect.

Section 17.4. Section headings used in this Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any purpose.

Section 17.5. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. It is expressly agreed that no party may sue or commence any litigation against the other party unless such legal proceeding is brought in state court in Washington.

Section 17.6. No modification, addition or amendment to this Agreement shall be effective unless and until such modification, addition or amendment is in writing and signed by the parties hereto. This Agreement is made and intended for the benefit of the parties hereto and their respective successors and permitted assigns and for no other parties.

Section 17.7. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

Section 17.8. The parties each represent and warrant to each other that neither has employed a broker in connection with this transaction. In the event there is a claim against either party hereto with respect to any broker whatsoever other than as set forth in this Section 17.8, the party whose action gives rise to the claim for commission shall indemnify the other party against any liability, damage, cost or fee in connection with such claim, including, without limitation, attorneys' fees and costs.

Section 17.9. The failure of either of the parties hereto in one or more instances to insist upon strict performance or observation of one or more of the covenants or conditions hereof, or to exercise any remedy, privilege, or option herein conferred upon or reserved to such party, shall not operate and shall not be construed as a relinquishment or waiver for the future of such covenant or condition or of the right to enforce the same or to exercise such privilege, option, or remedy, but the same shall continue in full force and effect.

Section 17.10. Railroad shall, on the last day of the term, or upon any earlier termination of this Agreement, peaceably and in an orderly manner vacate the Track free of any property of Railroad or third parties placed by Railroad thereon. Railroad shall, if not in default

hereunder, remove its equipment, goods, trade fixtures and effects and those of all persons claiming by, through or under it, provided that such removal does not cause irreparable damage to the Track. Any personal property not used in connection with the operation of the Track and belonging to Railroad, if not removed at the termination hereof, and if City shall so elect, shall be deemed abandoned and become the property of City without any payment or offset therefor. City may remove such property from the Track and store it at the risk and expense of Railroad if City shall not so elect. Railroad shall repair and restore all damage to the Track caused by the removal of any of Railroad's equipment and personal property. Railroad, if requested by City, shall remove all signs placed on the Track by Railroad and restore the portion of the Track on which they were placed substantially to the same condition as immediately prior to installation thereof.

Section 17.11. The failure of Railroad to vacate the Track on the expiration or termination of this Agreement as required pursuant to the terms of this Agreement and the subsequent holding over by Railroad, with or without the consent of City, shall result in the creation of a tenancy at will at a monthly fee equal to one hundred fifty percent (150%) of the then-applicable Annual Fee divided by twelve (12), for each month or portion thereof in which the Railroad holds over, payable on the tenth (10^{th}) day of the following month. This provision does not give Railroad any right to hold over at termination of this Agreement, and all other terms and conditions of this Agreement shall remain in force during any tenancy at will created by any holding over by Railroad.

SECTION 18
RELOCATION AND COMPENSATION

Section 18.1. Railroad has secured all agreements necessary with Tri-City Railroad Company, LLC ("Tri-City Railroad") to permanently relocate the UP/Tri City Railroad interchange ("Interchange") from Richland Junction and the path of the Center Parkway. Pursuant to the Tri-City Railroad agreements, Railroad shall relocate its Interchange with Tri-City Railroad within thirty (30) days of the effective date of this Agreement.

Section 18.2. Within sixty (60) days after relocation of the Interchange, City shall pay to Railroad $2,100,000 (which constitutes $2,000,000 for the relocation of the Interchange and offset for Railroad's increased operating expense and $100,000 for the easement, as described below).

Section 18.3. The payment described in Section 18.2 provides compensation to the Railroad for the following:

a. The Railroad's estimated cost of increased operating expense and to replace rail assets lost due to the relocation of the Interchange.
b. A roadway and utility easement conveyed by the Railroad to the City of Kennewick for the completion of Center Parkway across Railroad's property at Richland Junction as described below.

c. Salvage by the City of all Railroad Track Materials (defined below) located on Railroad's property at Richland Junction west of the Richland Junction switch between MP 18.8 and the end of track at MP 19.5.

Section 18.4 Railroad shall convey an easement in width not to exceed eighty (80) feet to City for the Center Parkway across Railroad's right of way. The easement shall allow for curb cuts on each side of the road to serve Railroad's adjacent property. The easement shall be delivered to City no later than the date upon which the Interchange operations are relocated away from the Center Parkway.

Section 18.5 As of the date Interchange operations are relocated away from Richland Junction and the Center Parkway, the City will assume ownership and control of the Railroad Track Materials. Railroad Track Materials is defined to include rail, ties, switches and other track materials which make up the current interchange track between MP 18.8 and the end of track at MP 19.5 of Railroad's Kalan Industrial Lead west of the Richland Junction switch. At its sole risk, cost and discretion the City may remove, salvage or reuse all Railroad Track Materials; provided, however, that the City first obtains a right of entry to Railroad's property from Railroad.

Section 18.6 Subsequent to relocation of the Interchange, Railroad shall not reestablish an interchange operation at Richland Junction or the Center Parkway location, or any portion thereof, or sell or lease property at Richland Junction or the Center Parkway location to another railroad for the purposes of establishing a switching or interchange operation.

Section 18.7 Notwithstanding any termination of this Agreement, Section 18.6 above shall remain in full force and effect until City, at its sole election, shall agree to any proposed change.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first herein above written.

CITY OF RICHLAND, WASHINGTON

CYNTHIA D. JOHNSON
City Manager

UNION PACIFIC RAILROAD COMPANY

George M. Sturm
General Manager Joint Facilities

ATTEST:

MARCIA HOPKINS
City Clerk

APPROVED AS TO FORM:

THOMAS O. LAMPSON
City Attorney

U-0-000000788

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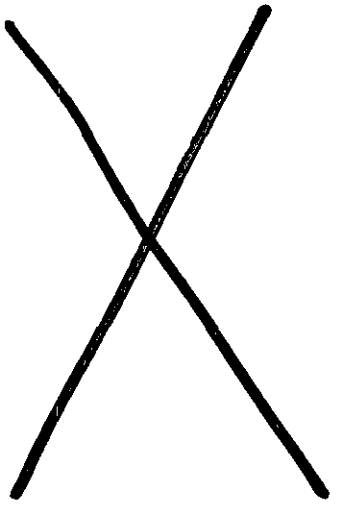

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COPY

Contract No. 22-11

CITY OF RICHLAND
STANDARD FORM RAILROAD TRACK USE AGREEMENT

THIS RAILROAD TRACK USE AGREEMENT (hereinafter referred to as "Agreement") is made and entered into as of this 5 day of January, 2011 (hereinafter referred to as the "Effective Date") by and between the CITY OF RICHLAND, a municipal corporation in the State of Washington (hereinafter referred to as "City") and BNSF RAILWAY COMPANY, a Delaware corporation and a duly licensed corporation in the State of Washington (hereinafter referred to as "Railroad").

WITNESSETH

WHEREAS, City is the owner of a railroad industrial spur track, commonly known as the Horn Rapids Rail Spur, located at the Horn Rapids Industrial Park in the City of Richland and connected to the Southern Connection of the Hanford Railroad (owned by the Port of Benton, Washington (hereinafter referred to as the "Port"), successor in interest to the United States Department of Energy), as shown on Exhibit A attached hereto (hereinafter referred to as the "Track");

WHEREAS, Railroad operates pursuant to separate agreement(s) over tracks owned by the Port which tracks connect with the Track near Milepost B 37 on the Port's trackage and a portion of which tracks have been used for the interchange of traffic between rail carriers at or near Richland Junction, Washington (hereinafter referred to as "Richland Junction");

WHEREAS, Railroad desires to use the Track for the purpose of providing railroad freight service thereon and thereover to industries located on or adjacent to the Track (hereinafter referred to individually as "Industry" and collectively as "Industries");

WHEREAS, City desires that all railroad interchange operations at Richland Junction be permanently eliminated to facilitate commercial development and improve vehicular traffic movement in the area; and

WHEREAS, City is willing to allow Railroad to use the Track on a non-exclusive basis but only on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties, intending to be bound, do hereby agree as follows:

SECTION 1
GRANT OF USE

Section 1.1. City hereby grants to Railroad non-exclusive permission to operate its trains, locomotives, cars and equipment with its own crews over the Track for the purposes set forth herein. Railroad's use of the Track shall be in common with such other user or users of the Track as City has heretofore admitted, or may at any time in the future admit, to use of all or any

WUTC DOCKET TR-130499
EXHIBIT JP-7-X
ADMIT ☒ W/D ☐ REJECT ☐

UTO-000000790

portion of the Track, provided that City shall require such user or users to comply with all Legal Requirements (as defined in Section 9.1) applicable to such user's or users' use of the Track. Subject to the foregoing, City shall retain the exclusive right to grant to other persons the right to use all or any portion of the Track, provided that such use does not unreasonably interfere with the rights granted to Railroad herein.

Section 1.2. The Track shall include, without limitation, the right-of-way, tracks, rails, ties, ballast, other track materials, switches, bridges, grade crossings and any and all other improvements or fixtures affixed to the right-of-way.

Section 1.3. Railroad shall take the Track in an "AS IS, WHERE IS" condition subject to all rights, interests and estates of third parties in and to the Track.

Section 1.4. City represents that it owns or controls the land underlying the Track and that there are no existing easements or encumbrances affecting such land that would interfere with Railroad's rights under this Agreement.

SECTION 2
PERMITTED USE

Section 2.1. Railroad's use of the Track shall be limited to the movement of goods by rail to and from an Industry via tracks of such Industry that connect to the Track.

Section 2.2. Railroad shall not knowingly and intentionally permit the loading or unloading of railcars on the Track by any party within its control, and shall not enter into agreements or arrangements with any person for the storage of empty or loaded railcars on the Track or any portion thereof, without the prior written consent of City.

Section 2.3. Neither party shall use the Track or any portion thereof, for the storage, transload or disposal of any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended (hereinafter referred to as "CERCLA"), or petroleum or oil as defined by CERCLA, the Resource Conservation and Recovery Act, as amended (hereinafter referred to as "RCRA"), the Clean Water Act, the Oil Pollution Act, and the Hazardous Materials Transportation Act (hereinafter collectively referred to herein as the" Environmental Laws"), provided however, that nothing herein shall preclude Railroad or any other admittee of City from using the Track for the movement of hazardous substances in railcars in the normal course of providing rail transportation service to or from an Industry.

Section 2.4. Neither party shall use nor allow the use of the Track for the transportation of passengers thereon or thereover, provided however, that nothing herein shall preclude Railroad or any other admittee of City from operating a hi-rail vehicle over the Track for the purpose of inspecting the Track.

Section 2.5. Railroad shall not cause to be filed or knowingly and intentionally permit persons within its control to file any liens against the Track. In the event any such liens are filed, Railroad shall cause such liens to be released within fifteen (15) days.

Section 2.6. Railroad shall not create or store any waste or nuisance on the Track. Railroad shall neither use nor occupy the Track or any part thereof in violation of Legal Requirements (as defined in Section 9.1). City shall not cause or allow the Track to be blocked, obstructed or used in any manner that would impair or diminish Railroad's ability to use the Track for the purposes set forth in this Agreement, provided however, that use of the Track by any user in the ordinary course of providing rail service to any industry on the Track, shall not be deemed a violation of the requirements of this sentence.

SECTION 3
MAINTENANCE

Section 3.1. City, at its cost and expense, shall be solely responsible for, and shall have exclusive direction and control over, the maintenance of the Track which shall include, but not be limited to, maintenance of tracks, subgrade, track drainage, grade crossings, grade crossing warning signs and devices, signal boxes, bridges and abutments, culverts, drainage ditches, retaining walls and any fences or barriers that City may erect. City shall also be solely responsible for litter and vegetation control and for keeping the Track sufficiently free and clear of snow and ice to permit railroad operations thereover.

Section 3.2. City shall maintain the Track to not less than Federal Railroad Administration (hereinafter referred to as "FRA") Class 2 track safety standards with a maximum gross weight limitation of not less than 286,000 lbs. per car and City shall maintain the Track in such condition and in compliance with all Legal Requirements (as hereinafter defined below). City shall also maintain all grade crossing signal equipment on the Track in accordance with all applicable Legal Requirements (as defined in Section 9.1).

Section 3.3. City, in its sole discretion, may contract with a third party to perform City's maintenance obligations hereunder, provided, however, City shall remain responsible for any obligations of City under this Agreement that may be performed by any such contractor.

Section 3.4. Railroad shall notify City in writing of any deficiencies in City's maintenance of the Track when such deficiencies are reasonably discovered by Railroad, and City shall, as soon as practicable, but in any event not more than thirty (30) days after its receipt of such notice, or in the case of an imminent safety hazard and/or condition which renders the Track impassable, within forty-eight (48) hours, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence.

Section 3.5. If the use of the Track is at any time interrupted or traffic thereover is delayed for any cause whatsoever, City shall, with reasonable diligence, restore the Track for the passage of trains. Railroad shall not have nor make any claim against City for loss, damage, loss of business or expenses of any kind resulting from such interruption or delay.

Section 3.6. City shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of the Track and, subject to the provisions of Section 4.1 of this Agreement, Railroad shall not, by reason of City's performing

or failing, or neglecting to perform any maintenance, repair or renewal of the Track, have or make against City, its officers, agents or employees, any claim or demand for loss, damage, destruction, injury or death whatsoever resulting from any defect in the Track or City's performance, failure or neglect, except as provided otherwise in Section 11 herein.

Section 3.7. Subject to the provisions of Section 8.1 herein, Railroad shall have the right to enter upon the Track and make inspections to determine compliance with the terms of this Agreement. In no event shall Railroad be obligated to make any such inspections, and Railroad shall not be liable for any failure to make any such inspections or failure to identify any matters that are not in compliance with this Agreement. In no event shall Railroad's conducting of inspections be deemed to result in a waiver of City's compliance with any terms of this Agreement.

Section 3.8. City shall be responsible for reporting of grade crossings and structures inventory and any other similar information as may be required by the FRA or any other governmental body having jurisdiction over such matters.

SECTION 4
COMPENSATION

Section 4.1. For so long as City permits Railroad reasonable use of the Track, as compensation for Railroad's use of the Track, Railroad shall pay to City annually at the beginning of each calendar year a fee of Fifteen Thousand Dollars ($15,000) (hereinafter referred to as the "Annual Fee") which shall be payable regardless of Railroad's use of the Track during that year.

Section 4.2.

A. The Annual Fee shall be subject to adjustment on January 1 of each year beginning January 1, 2011 in accordance with changes in the Consumer Price Index for Wage Earners and Clerical Workers, series CWUR0000SA0 (hereinafter referred to as "CPI-W"). The Annual Fee set forth in Section 4.1 shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recent July as related to the final index of the previous July and applying this percentage of increase or decrease to the current Annual Fee to be revised. The resulting adjusted Annual Fee shall hereinafter be referred to as "the Revised Annual Fee."

By way of example, assuming "A" to be the CPI-W final index figure for July 1, 2009; "B" to be the CPI-W final index figure for July, 2010; and "C" to be the current Annual Fee to be escalated; the Revised Annual Fee effective January 1, 2011 would be determined by the following formula:

B/A x C = Revised Annual Fee, Rounded to Nearest Whole Cent

B. In the event that publication of the CPI-W is discontinued, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the

parties hereto. In the absence of agreement, the matter shall be submitted to arbitration in accordance with Section 16 herein.

C. Under no circumstances shall the Revised Annual Fee paid by Railroad to City be less than the Annual Fee in effect on the date of this Agreement.

Section 4.3.

A. Railroad agrees that as part of the consideration for obtaining City's permission to use the Track herein, Railroad shall, subject to Legal Requirements, as of the Effective Date and during the term of this Agreement, permanently relocate any interchange receipt operations between Railroad and another rail carrier at Richland Junction to an alternate interchange location except that Railroad may, in emergency situations only, interchange cars at Richland Junction. For purposes of this provision, an emergency situation includes, but is not limited to, the following: Force Majeure events or other Acts of God; movement of High or Wide loads; movement or handling of rail security-sensitive materials (as such term is defined in 49 CFR Part 1580, as amended, supplemented or replaced) in compliance with Legal Requirements or other safety requirements; track or other mechanical conditions necessitating a change in interchange location. Except as required by law or as provided in this Section 4.3.A, Railroad shall not, during the term of this Agreement, enter any agreement to deliver cars in interchange to any other railroad at Richland Jct.

B. Railroad further agrees that if the design of Center Parkway requires an at-grade crossing of a track owned or used by Railroad, Railroad shall not oppose installation of a crossing designed in compliance with the current version of the Manual on Uniform Traffic Control Devices or any other applicable Legal Requirements, with the appropriate traffic control system to be used at the crossing to be determined by an engineering study involving both the City and Railroad representatives. In the event that both City and Railroad representatives jointly agree as to the appropriate traffic control system to be used at the crossing, Railroad shall execute a waiver of hearing document to the Washington State Utilities and Transportation Commission regarding the proposed crossing.

Section 4.4. City acknowledges that the compensation provided for in this Section 4 shall be the sole consideration for the right to use the Track, and in no event shall City impose any additional charges tariffs, or surcharges on Railroad or any customer or receiver of Railroad as a condition of use of the Track for the provision of rail transportation service except to the extent expressly set forth below. Notwithstanding the foregoing, City may assess additional charges, tariffs, or surcharges for maintenance, operating and dispatching costs associated with the Track if all of the following conditions are satisfied: (i) City provides Railroad with advance written notice of the proposed charges, tariffs or surcharges and detailed information concerning City's costs, including the deficit not covered by the then current Annual Fee; and (ii) City, Railroad and any other users of the Track are not able to negotiate, within 60 days of City providing notice in (i) above, an updated Annual Fee in lieu of the proposed charges to the mutual satisfaction of the parties.

SECTION 5
BILLING AND PAYMENT

Section 5.1. City shall render to Railroad a bill for the Annual Fee.

Section 5.2. Upon reasonable request by City, Railroad shall furnish to City, within sixty (60) days of receiving such request, a statement of the number of loaded and empty cars handled by Railroad over all or any portion of the Track during the previous twelve (12) months. Notwithstanding the foregoing, City shall only be entitled to make one request for such car information each calendar year during the term of this Agreement.

Section 5.3. All payments called for under this Agreement shall be made by Railroad within thirty (30) days after receipt of a bill therefor except for any claims or demands for payment pursuant to Section 11 of this Agreement. No payment shall be withheld because of any dispute as to the correctness of items in any bill rendered and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. In the event that Railroad shall fail to pay any monies due to City within thirty (30) days after the invoice date, Railroad shall pay interest on such unpaid sum of twelve percent (12%), or the maximum rate permitted by law, whichever is less.

Section 5.4. The records of Railroad, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by City for a period of two (2) years from the date of billing.

Section 5.5. For purposes of this Agreement, the terms "cost," "costs," "expense" and "expenses" shall include actual labor and material costs together with the surcharges, overhead percentages and equipment rentals as specified by City at the time any work is performed for Railroad, which surcharges, overhead percentages and equipment rentals shall be reasonable and consistent with City's then-current standard billing practice, procedures, rates and schedules.

SECTION 6
ADDITIONS, RETIREMENTS AND ALTERATIONS

Section 6.1. City, from time to time, and at its sole cost and expense, may make such changes in, additions and improvements to, and retirements from the Track as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof, or as shall be required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction. Such additions and improvements shall become part of the Track and such retirements shall be excluded from the Track.

Section 6.2. If Railroad requests City to make changes in or additions or improvements to the Track required to accommodate Railroad's operations thereover, and Railroad agrees to reimburse City therefor, City shall make such changes, additions or improvements to the Track and Railroad shall pay to City the cost thereof, including the annual expense, if any, of maintaining, repairing and renewing such additional or altered facilities.

SECTION 7
TERM

Section 7.1. This Agreement shall take effect on the date hereof and shall continue in full force and effect for three (3) years from the date hereof (hereinafter referred to as the "Initial Term") and shall automatically renew for successive one (1) year periods thereafter, absent written notice of termination by either party made at least one hundred eighty (180) days prior to expiration of the Initial Term or prior to any expiration of any such one-year renewal term unless earlier terminated pursuant to the terms of this Agreement.

SECTION 8
OPERATIONS

Section 8.1. Railroad agrees that entry to and exit from the Track shall be controlled by City or any contractor or admittee designated by City. City shall require that any entity allowed by City to control operations thereover shall be required to ensure that the trains, locomotives and cars of all users of the Track shall be operated thereon and thereover without prejudice or partiality and in such manner as will afford the safest and the most economical and efficient movement of all traffic over the Track. City reserves the right at any time by written notice to Railroad and any other user or users of the Track to assume management and control of all operations over the Track consistent with the terms of this Section 8.1.

Section 8.2. Railroad shall provide, at its sole cost and expense, all locomotives, railcars, other rolling stock and transportation equipment, personnel, fuel and train supplies necessary for Railroad to provide safe and adequate rail transportation to the Industries. Railroad shall also provide, at its sole cost and expense, all radios and other communication facilities as necessary to comply with the regulations of the FRA. Railroad shall be solely responsible for all car hire charges and mileage allowances on cars in Railroad's account handled over the Track.

Section 8.3. City, at its sole cost and expense, shall provide all necessary switchlocks for use in the operation of the Track. City shall provide at no charge a reasonable number of keys for such switchlocks to Railroad and any other user or users of the Track.

Section 8.4. Railroad, at its sole cost and expense, shall perform or cause to be performed any repairs required to make locomotives, cars or other equipment in the custody or control of Railroad on the Track comply with Legal Requirements (as defined in Section 9.1).

Section 8.5. City shall not place, permit to be placed or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within eight and one-half (8-1/2) feet laterally from the centerline of straight track (nine and one-half (9-1/2) feet on either side of the centerline of curved track) or within twenty-three (23) feet vertically from the top of the rail of any track (hereinafter referred to as "Minimal Clearances"), provided that if any Legal Requirements (as defined in Section 9.1) require greater clearances than those provided for in this Section 8.5, City shall comply with such Legal Requirements. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal

Requirements shall not be a violation of this Section, so long as City complies with the terms of any such Legal Requirements.

Section 8.6. Railroad shall not place or allow to be placed any rail car within two hundred fifty (250) feet of either side of any at-grade crossing on the Track. Railroad shall not place or permit to be placed on the City's right-of-way any permanent or temporary structure of any kind whatsoever without the prior written consent of City, which consent may be withheld at City's sole discretion. City shall require any other user or users of the Track to comply with the requirements of this Section 8.6.

Section 8.7. Railroad and City agree that with respect to the at-grade road crossings on the Port of Benton County's track between the proposed Center Parkway crossing at Richland Junction and SR 240 (Vantage Highway) inclusive, Railroad shall use reasonable efforts to minimize its operations over such crossings during peak highway traffic times Monday through Friday. City acknowledges and understands that Railroad's compliance with its common carrier obligations may, from time to time, require operations over such crossings during peak highway traffic times. Railroad agrees to use reasonable efforts to meet its obligations under this Section 8.7.

Section 8.8. In the event that any user of the Track, including Railroad, provides notice to the City of any violation of Legal Requirements by any user of the Track, including Railroad, or any violation of the terms of this Agreement or the applicable agreement between such user and City (including without limitation, any applicable obligation to control entry to and exit from the Track or operations thereon or thereover without prejudice or partiality and in such manner as will afford the safest and the most economical and efficient movement of all traffic over the Track), City shall conduct an investigation into such alleged violation, and if, in the reasonable judgment of City, Railroad or such user shall be in violation of applicable Legal Requirements or the terms of this Agreement or such user's agreement with the City, City shall require Railroad or such user as the case may be to cure such conduct in accordance with this Agreement or the applicable agreement, and unless and until same shall be cured in compliance with this Agreement or the applicable agreement, City shall bar Railroad or such user as the case may be from use of the Track.

SECTION 9
COMPLIANCE WITH LAWS

Section 9.1. The parties agree to comply with all applicable provisions of law, statutes, regulations, ordinances, orders, covenants, restrictions and decisions of any governmental body or court having jurisdiction (hereinafter collectively referred to as "Legal Requirements") relating to this Agreement or use of the Track. Each party hereto shall indemnify, protect, defend and hold harmless the other party and its officers, agents and employees from and against all fines, penalties, and liabilities imposed on the other party under such laws, rules and regulations by any such public authority or court having jurisdiction when attributable to the failure of the first party to comply with its obligations in this regard.

Section 9.2. City and Railroad agree that the Track is excepted trackage under 49 U.S.C. Section 10906 and that no approval, authorization or exemption from the Surface

Transportation Board (hereinafter referred to as the "STB") is required for Railroad to use the Track or to discontinue its use of the Track. Railroad agrees that it will not seek or obtain any approval, authorization or exemption from the STB for its use or discontinuance of use of the Track.

SECTION 10
CLEARING OF WRECKS

Section 10.1. If trains, locomotives, cars or equipment of Railroad are wrecked or derailed on the Track and require rerailing, wrecking service or wrecking train service, Railroad shall be responsible for the performance of such service, including the repair and restoration of roadbed, track and structures, provided however, that if Railroad fails to restore the Track to service within a reasonable period of time, not to exceed forty-eight (48) hours, after such wreck or derailment, City, at its option, may arrange for the performance of such service, including repair and restoration of roadbed, track and structures, and Railroad shall reimburse City for the cost and expense thereof in accordance with Section 5 herein. Any other cost, liability and expense, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting from such wreck or derailment, shall be apportioned in accordance with the provisions of Section 11 hereof. All locomotives, cars and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by Railroad at the time of such wreck shall be promptly delivered to Railroad.

Section 10.2. If trains, locomotives, cars or equipment of any admittee of City, other than Railroad, are wrecked or derailed on the Track and require rerailing, wrecking service or wrecking train service, City shall ensure the performance of such service, including the repair and restoration of roadbed, track and structures, provided however, that if City fails to have the Track restored to service within a reasonable period of time, not to exceed seventy-two (72) hours, after such wreck or derailment, Railroad, at its option, may arrange for the performance of such service, including repair and restoration of roadbed, track and structures, and City shall reimburse Railroad for the cost and expense thereof in accordance with Section 5 herein. Any other cost, liability and expense, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting from such wreck or derailment, shall be apportioned in accordance with the provision of Section 11 hereof. All locomotives, cars and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by City or its admittee at the time of such wreck shall be promptly delivered to City or its admittee, as the case may be.

SECTION 11
LIABILITY

Section 11.1

A. TO THE FULLEST EXTENT PERMITTED BY LAW, RAILROAD SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND CITY'S OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INVITEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "CITY INDEMNITEES"), FROM AND AGAINST ANY AND ALL CLAIMS AND LIABILITIES OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURIES, DEATHS, DAMAGE OR DESTRUCTION OF PROPERTY AND DAMAGE TO OR DESTRUCTION OF THE ENVIRONMENT WHATSOEVER, INCLUDING WITHOUT LIMITATION LAND, AIR, WATER, WILDLIFE, AND VEGETATION (HEREINAFTER COLLECTIVELY REFERRED TO AS "CLAIMS"), TO THE EXTENT SUCH CLAIMS ARE PROXIMATELY CAUSED BY (I) THE BREACH OF THE TERMS OF THIS AGREEMENT BY RAILROAD AND/OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES, OR (II) THE NEGLIGENCE,GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF RAILROAD OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES.

B. TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND INVITEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "RAILROAD INDEMNITEES"), FROM AND AGAINST ANY AND ALL CLAIMS OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, TO THE EXTENT SUCH CLAIMS ARE PROXIMATELY CAUSED BY (I) THE BREACH OF THE TERMS OF THIS AGREEMENT BY CITY AND/OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES, OR (II) THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS OFFICERS, AGENTS, CONTRACTORS OR EMPLOYEES.

C. UPON WRITTEN NOTICE FROM RAILROAD OR CITY, THE OTHER PARTY AGREES TO ASSUME THE DEFENSE OF CLAIMS OR ANY LAWSUIT OR OTHER PROCEEDING BROUGHT AGAINST ANY INDEMNITEE OF THE OTHER PARTY BY ANY ENTITY, RELATING TO ANY MATTER COVERED IN THIS AGREEMENT FOR WHICH THE OTHER PARTY HAS AN OBLIGATION TO ASSUME LIABILITY FOR AND/OR SAVE AND HOLD HARMLESS SUCH INDEMNITEE. THE OTHER PARTY SHALL PAY ALL COSTS INCIDENT TO SUCH DEFENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, INVESTIGATOR'S FEES, LITIGATION AND APPEAL EXPENSES, SETTLEMENT PAYMENTS, AND AMOUNTS PAID IN SATISFACTION OF JUDGMENTS.

D. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF THE CONDUCT OF AN INDEMNIFIED PARTY OR THE EMPLOYEES, AGENTS, OFFICERS, OR CONTRACTORS OF AN INDEMNIFIED PARTY.

SECTION 12
INSURANCE

Section 12.1.

A. Railroad shall, at its sole cost and expense, procure and maintain during the term of this Agreement the following insurance coverage:

1. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $2,000,000 each occurrence and an aggregate limit of at least $4,000,000. Coverage must be purchased on a post-1998 ISO occurrence form or equivalent and include coverage for, but not limited to:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The employee and workers compensation-related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within fifty (50) feet of the Track.
- Any exclusion related to explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy with regard to Railroad's use of the Track under this Agreement.

2. Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

3. Workers' Compensation and Employers Liability insurance including coverage for, but not limited to:

- Railroad's statutory liability under the worker's compensation laws of the State of Washington. If optional under State law, the insurance must cover all employees anyway.
- Employers' liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

4. Excess Liability insurance in an amount not less than $10,000,000 each occurrence and $10,000,000 aggregate limit.

B. Railroad shall also comply with the following requirements:

1. Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

2. Railroad agrees to waive its right of recovery against City and Indemnitees under its Commercial General Liability, Automobile Liability, and Workers' Compensation/Employers Liability insurance coverages.

3. Railroad's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by City. The certificate of insurance must reflect that the above wording is included in evidenced policies.

4. All policy(ies) required above (excluding Workers' Compensation) shall include a severability of interest endorsement and shall name City as an additional insured by endorsement using additional insured form CG 26 07 04 with respect to Railroad's use of the Track under this Agreement. Severability of interest and naming City as an additional insured shall be indicated on the certificate of insurance.

5. Except if Railroad is a Class I rail carrier as defined under the regulations of the STB, Railroad is not allowed to self-insure without the prior written consent of City. If granted by City, any deductible, self insured retention or other financial responsibility for claims shall be paid directly by Railroad. Any and all City liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Railroad's insurance shall be paid by Railroad as if Railroad elected not to include a deductible, self-insured retention or other financial responsibility for claims.

6. Prior to entering upon the Track, Railroad shall furnish to City an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify City in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving City arising out of this Agreement, Railroad will make available any required policy covering such claim or lawsuit.

7. Any insurance policy shall be written by a reputable insurance company acceptable to City or with a current Best's Guide Rating of A and Class VII or better, and authorized to do business in the State of Washington.

8. Railroad represents that this Agreement has been thoroughly reviewed by Railroad's insurance agent(s)/broker(s), who have been instructed by Railroad to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

9. Not more frequently than once every five (5) years, City may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

10. Failure to provide evidence as required by this section shall entitle, but not require, City to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Railroad's obligations hereunder.

11. The fact that insurance (including, without limitation, self-insurance) is obtained by Railroad shall not be deemed to release or diminish the liability of Railroad including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by City shall not be limited by the amount of the required insurance coverage.

C. City shall waive in writing the above insurance requirements if Railroad is a Class I rail carrier as defined in the regulations of the STB.

SECTION 13
ENVIRONMENTAL

Section 13.1

A. Railroad shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Track, including, but not limited to Environmental Laws. Railroad shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, anywhere on the Track. Railroad shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, anywhere on the Track.

B. Railroad shall provide immediate notice to City's Contract Officer at (509) 942-7327 of any release of hazardous substances on or from the Track, violation of Environmental Laws, or inspection or inquiry by government authorities charged with enforcing Environmental Laws with respect to Railroad's use of the Track. Railroad shall use reasonable efforts to promptly respond to any release on or about the Track. Railroad also shall give City immediate notice of all measures undertaken on behalf of Railroad to investigate, remediate, respond to or otherwise cure such release or violation.

C. In the event that City receives notice from Railroad or otherwise learns of a release or violation of Environmental Laws on the Track which occurred or may occur during the term of this Agreement for which Railroad is responsible pursuant to this Agreement, City may require Railroad, at Railroad's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure or prevent such release or violation affecting the Track.

D. Railroad shall promptly report to City in writing any known conditions or activities on the Track which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Railroad's reporting to City shall not relieve Railroad of any obligation whatsoever imposed on it by this Agreement. Railroad shall promptly respond to City's request for information regarding said conditions or activities.

SECTION 14
TERMINATION

Section 14.1. Railroad may terminate this Agreement at any time after one year from the Effective Date, by giving City not less than six (6) months' written notice of termination. Upon expiration or termination of this Agreement consistent with the terms herein, all rights of Railroad to use the Track shall cease.

Section 14.2. Notwithstanding any other provision of this Agreement except Section 14.3, at any time after the Effective Date, City may terminate this Agreement if Railroad shall default on or breach any of its obligations hereunder, including but not limited to timely payment of compensation to City pursuant to Section 4.1, and Railroad fails to cure such default or breach within twenty (20) days of receipt of written notice from City specifying such default or breach.

Section 14.3. Notwithstanding any other provision of this Agreement, at any time after the Effective Date, City may terminate this Agreement if Railroad fails to comply with its obligations under Section 4.3 herein and Railroad does not cure such failure within thirty (30) days of receipt of written notice from City specifying such failure.

Section 14.4. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof. The Annual Fee paid by Railroad to City pursuant to Section 4.1 shall be non-refundable if termination of this Agreement becomes effective after June 1 of the year to which the Annual Fee applies.

SECTION 15
NOTICES

Section 15. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice for such change in address:

If to City:
Community Development Services
Attn: Horn Rapids Rail Spur
City of Richland
975 George Washington Way
P.O. Box 190, MS #18
Richland, WA 99352
(509) 942-7593

If to Railroad:
AVP Contracts and Joint Facilities
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, TX 76161-0034
(817) 352-2354

SECTION 16
ARBITRATION

Section 16.1. Any dispute arising between the parties hereto with respect to any of the provisions of this Agreement which cannot be settled by the parties themselves shall be resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as such rules may be amended from time to time, and as shall be applied with reference to the customs and practices of the railroad industry. Any such arbitration shall be held in Richland, Washington or at such other location as may be mutually acceptable to the parties.

hereto. The decision of the arbitrator or arbitration panel shall be final and conclusive upon the parties hereto. A final decision and award of the arbitration panel shall be enforceable in any court of competent jurisdiction in the United States of America. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator or panel, if any, shall be borne equally by the parties hereto. The arbitration panel shall not have the power to (a) award punitive or consequential damages, (b) determine violations of antitrust or criminal laws, or (c) reform the terms of this Agreement, in whole or in part.

SECTION 17
MISCELLANEOUS

Section 17.1. This Agreement expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, provided however, no modification of this Agreement shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

Section 17.2. This Agreement shall be binding upon and inure to the benefit of City and Railroad, and shall be binding upon the successors and assigns of Railroad, subject to the limitations hereinafter set forth. Railroad may not assign its rights under this Agreement or any interest therein, or attempt to have any other person assume its obligations in whole or in part under this Agreement, without the prior written consent of City, which consent may be withheld in City's sole discretion; provided, however, no such consent shall be required where assignment occurs as a result of a sale or transfer of all or substantially all of the assets of Railroad pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.

Section 17.3. If fulfillment of any provision hereof shall be declared invalid or unenforceable under applicable law, such provision shall be ineffective only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable the remainder of such provision or the remaining provisions of this Agreement, which shall remain in full force and effect.

Section 17.4. Section headings used in this Agreement are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any purpose.

Section 17.5. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. It is expressly agreed that no party may sue or commence any litigation against the other party unless such legal proceeding is brought in state court in Washington.

Section 17.6. No modification, addition or amendment to this Agreement shall be effective unless and until such modification, addition or amendment is in writing and signed by the parties hereto. This Agreement is made and intended for the benefit of the parties hereto and their respective successors and permitted assigns and for no other parties.

Section 17.7. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

Section 17.8. The parties each represent and warrant to each other that neither has employed a broker in connection with this transaction. In the event there is a claim against either party hereto with respect to any broker whatsoever other than as set forth in this Section 17.9, the party whose action gives rise to the claim for commission shall indemnify the other party against any liability, damage, cost or fee in connection with such claim, including, without limitation, attorneys' fees and costs.

Section 17.9. The failure of either of the parties hereto in one or more instances to insist upon strict performance or observation of one or more of the covenants or conditions hereof, or to exercise any remedy, privilege, or option herein conferred upon or reserved to such party, shall not operate and shall not be construed as a relinquishment or waiver for the future of such covenant or condition or of the right to enforce the same or to exercise such privilege, option, or remedy, but the same shall continue in full force and effect.

Section 17.10. Railroad shall, on the last day of the term, or upon any earlier termination of this Agreement, peaceably and in an orderly manner vacate the Track free of any property of Railroad or third parties placed by Railroad thereon. Railroad shall, if not in default hereunder, remove its equipment, goods, trade fixtures and effects and those of all persons claiming by, through or under it, provided that such removal does not cause irreparable damage to the Track. Any personal property *not* used in connection with the operation of the Track and belonging to Railroad, if not removed at the termination hereof, and if City shall so elect, shall be deemed abandoned and become the property of City without any payment or offset therefor. City may remove such property from the Track and store it at the risk and expense of Railroad if City shall not so elect. Railroad shall repair and restore all damage to the Track caused by the removal of any of Railroad's equipment and personal property. Railroad, if requested by City, shall remove all signs placed on the Track by Railroad and restore the portion of the Track on which they were placed substantially to the same condition as immediately prior to installation thereof.

Section 17.11. The failure of Railroad to vacate the Track on the expiration or termination of this Agreement as required pursuant to the terms of this Agreement and the subsequent holding over by Railroad, with or without the consent of City, shall result in the creation of a tenancy at will at a monthly fee equal to one hundred fifty percent (150%) of the then-applicable Annual Fee divided by twelve (12), for each month or portion thereof in which the Railroad holds over, payable on the tenth (10^{th}) day of the following month. This provision does not give Railroad any right to hold over at termination of this Agreement, and all other terms and conditions of this Agreement shall remain in force during any tenancy at will created by any holding over by Railroad.

Section 17.12. The parties expressly agree that this Agreement and any rights and obligations under this Agreement shall not be deemed an "interchange commitment" as such

term is defined in Bill No. S-2889 dated December 9, 2009 entitled "the Surface Transportation Board Reauthorization Act of 2009."

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first herein above written.

CITY OF RICHLAND, WASHINGTON

CYNTHIA D. JOHNSON
City Manager

BNSF RAILWAY COMPANY

A.V.P CONTRACTS & JOINT FACILITIES

ATTEST:

DEBRA C. BARHAM
Deputy City Clerk

APPROVED AS TO FORM:

THOMAS O. LAMPSON
City Attorney

CITY OF RICHLAND
PUBLIC WORKS DEPARTMENT
CIVIL & UTILITY ENGINEERING DIV.
EXHIBIT A
CITY OF RICHLAND TRACK
POINT OF CONNECTION TO PORT OF BENTON
SWITCH 19+31
SWITCH 33+02
SWITCH 34+84
SWITCH 44+20
SWITCH 58+50
SWITCH 67+39
SWITCH 73+34
RIGHT OF WAY
KINGSGATE WAY AT-GRADE CROSSING AND WARNING SYSTEM
FUTURE LOCSTON BLVD
BATTELLE BLVD
KINGSGATE WAY
NOTE: STATIONS ARE APPROXIMATE; TAKEN FROM SCANNED AS-BUILTS

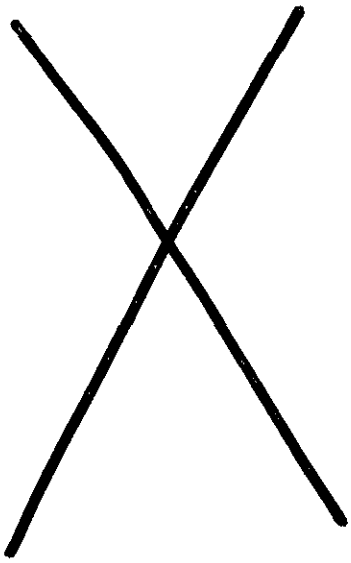

Exhibit No. CS-1T

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED TESTIMONY OF CHRIS SKINNER

1. INTRODUCTION

Chris Skinner is the Chief of Police for the City of Richland. His pre-filed testimony explains how the proposed crossing addresses an acute public need for a vehicular crossing on Center Parkway. The pre-filed testimony also explains why existing crossings or other alternative railroad crossing locations do not adequately advance the public health and safety in the City of Richland and in the City of Kennewick.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

2. BACKGROUND

Q: *State your name, position, and years in that position.*

A: Chris Skinner, Chief of Police. I have been in law enforcement for 23 years and have been Director of Police Services for the City of Richland for over 2 years.

Q: *State any other relevant background experience.*

A: I have been in law enforcement for 23 years. During that time I have had multiple assignments at all levels of a law enforcement organization. I hold a Master of Business Administration from George Fox University and I am a graduate of the #217 session of the FBI National Academy.

Q: *Describe the City of Richland's relationship with City of Kennewick fire and police services with regard to responding to fire and police emergencies.*

A: The City of Richland police department has a strong collaborative relationship with the City of Kennewick police department. We partner on several special teams and are engaged in a very strong mutual aid agreement. This agreement provides for each jurisdiction to respond in a time of need to issues outside of the city limits. This need for mutual aid is exercised on a weekly basis in southeast Richland area.

3. BACKGROUND ON THE PROPOSED PROJECT

Q: *State your understanding of the project.*

A: The project will provide a public street connection between Gage Boulevard in Kennewick and Tapteal Drive in Richland with a crossing signal protected crossing of the Port of Benton-owned railroad tracks. The road will have one travel lane in each direction, a two-way center left turn lane and bicycle lanes.

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4. NEED FOR THE PROPOSED PROJECT

Q: *Describe the acute need for the railway crossing at Center Parkway from a public health and safety perspective.*

A: The City of Richland and City of Kennewick share a city boundary. In many cases a citizen does not and would not know when they have left the City of Richland and entered the City of Kennewick. This often causes confusion with citizens when calling 911 and asking for help. Our Enhanced 911 identifies jurisdiction and dispatches the appropriate organization. There are times when the closest available car to respond to a serious critical incident is not the primary jurisdiction. The addition of the north/south access would allow for an enhanced response to citizens calls for service that are critical in nature.

More commonly, the Richland Police Department and Kennewick Police Department respond to each other's calls for help. If a police officer is in need of assistance then the closest car will respond regardless of jurisdiction. The addition of the north/south access allows for increased officer safety in the event that an officer is in need of assistance from the neighboring jurisdiction.

Q: *Describe whether the public health and safety is advanced in spite of the inherent risk of opening an at-grade crossing at Center Parkway.*

A: There is an opportunity with this north/south crossing to increase service to the community and enhance officer safety. There is undoubtedly some risk to creating an at-grade crossing but based on the low speeds and infrequent conflicts expected at this crossing, I believe the benefits far outweigh the risks in this case.

5. ALTERNATIVES

Q: *Describe why other alternatives to this crossing do not achieve the City's stated public health and safety goals.*

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A: The goal of public safety is "access". With greater access to our public and to each other means greater service. In law enforcement we engage in high risk behavior every day. One of those behaviors is emergency vehicle operations. We are asked to navigate all kinds of traffic at high rates of speed while trying to keep the public's safety in mind. The best way to do this is to create shorter "A" to "B" routes and not be forced to drive at high rates of speeds on more lengthy routes.

Finally, the other railway crossings to the east and west of the proposed crossing do not adequately address public health and safety needs because this southeast area of Richland has very limited street connectivity due to past development patterns and the hilly nature of the landscape. Without Center Parkway, police officers are limited to Columbia Center Boulevard and Steptoe Street. Both of these alternative routes are primary arterial commuting routes anticipated to experience congestion as our communities continue to grow.

In an emergency requiring response to the Columbia Center Mall area or a location on Tapteal Drive, a police officer responding via Columbia Center Boulevard without the connectivity provided by Center Parkway would have approximately a three quarters of a mile trip navigating at least two complex intersections and the frequently congested railroad undercrossing. In the same incident, the officer responding via Steptoe Street would have an approximately two mile trip requiring navigation of approximately five complex intersections and a potentially blocked at-grade railroad crossing.

In contrast, the Center Parkway route would provide access within less than half a mile and only one roundabout intersection and the proposed at-grade crossing on a street that will never function as a busy commuting route. The response with the Center Parkway connection provides a clear improvement to access and police response capability.

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6. DECLARATION

I, Chris Skinner, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED TESTIMONY OF CHRIS SKINNER is true and correct to the best of my knowledge and belief.

DATED THIS 29th day of August, 2013

CHRIS SKINNER

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 340
SEATTLE, WASHINGTON 98101-3
PHONE (206) 447-4400 FAX (206) 447-9700

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding by U.S. Postal Service, postage prepaid, and by email, to the parties identified below:

Tom A. Cowan Cowan Moore Stam & Luke P.O. Box 927 Richland WA 99352 *tcowan@cowanmoore.com*	Scott D. Keller Port of Benton 3100 George Washington Way Richland WA 99354 *keller@portofbenton.com*
Paul J. Petit General Counsel P.O. Box 1700 Richland WA 99352 *paulpetit@tcry.com*	Rhett Peterson Tri-City & Olympia Railroad Co. 10 North Washington St. Kennewick WA 99336 *Rhettwater@mac.com*
Brandon L. Johnson Minnick-Hayner, P.S. 249 West Alder P.O. Box 1757 Walla Walla WA 99362 *bljohnson@my180.net*	Tom Montgomery Kelsey Endres Montgomery Scarp, PLLC 1218 Third Ave., Ste. 2700 Seattle WA 98101 *tom@montgomeryscarp.com* *Kelsey@montgomeryscarp.com*
Richard Wagner Manager Public Projects BNSF Railway 2454 Occidental Ave. S., Ste. 2D Seattle WA 98134 *richardwagner@bnsf.com*	Carolyn Larson Dunn Carney Allen Higgins and Tongue LLP 851 SW Sixth Ave., Ste. 1500 Portland OR 97204 *cll@dunn-carney.com*
Terrell A. Anderson Manager, Industry & Public Projects Union Pacific Railroad Co. 9451 Atkinson St. Roseville CA 95747 *taanders@up.com*	Steven W. Smith Assistant Attorney General 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia WA 98504-0128 *ssmith@utc.wa.gov*

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9

A courtesy copy was also delivered, in the manner indicated, to:

Adam E. Torem
Administrative Law Judge
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia WA 98504-7250
atorem@utc.wa.gov

DATED this 3rd day of September, at Seattle, Washington.

Helen M. Stubbert

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9

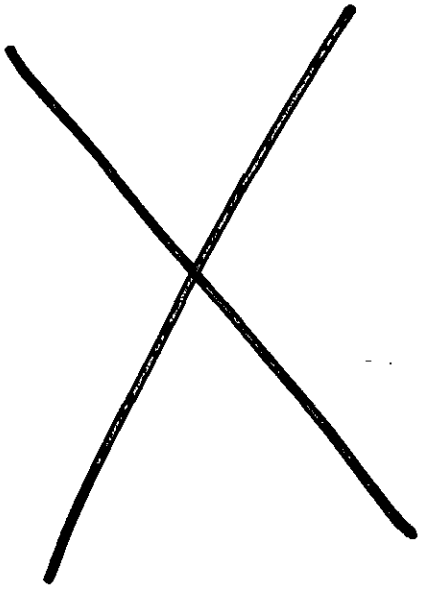

Exhibit No. CS-2T

WUTC DOCKET TR-130499
EXHIBIT CS-2TR
ADMIT ☒ W/D ☐ REJECT ☐

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED REBUTTAL TESTIMONY OF CHRIS SKINNER

1. INTRODUCTION

Chris Skinner is the Chief of Police for the City of Richland. His rebuttal pre-filed testimony explains how the proposed crossing addresses an acute public need for a vehicular crossing on Center Parkway.

2. BACKGROUND

Mr. Skinner's background and credentials are set forth in Exhibit CS-1T.

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3. TESTIMONY REVIEWED

Q: *Please identify the testimony that you reviewed before preparing this rebuttal testimony.*

A: I reviewed the following: (1) Mr. Norris's pre-filed testimony submitted on behalf of TCRY, and (2) Mr. Randolph V. Peterson's pre-filed testimony submitted on behalf of TCRY. I also reviewed Mr. Baynes's responsive pre-filed testimony.

Q: *Can you please summarize the testimony submitted on behalf of TCRY?*

A: Yes. Both Mr. Norris and Mr. Peterson believe that the proposed crossing does not advance an acute public need.

4. ACUTE PUBLIC NEED

Q: *Previously, you submitted pre-filed testimony that the proposed crossing advances an acute public need. Is that correct?*

A: Yes.

Q: *Have you changed your opinion of this proposed crossing after reading the pre-filed testimony submitted by Mr. Norris and Mr. Peterson, submitted on behalf of TCRY?*

A: No. The crossing advances an acute public need.

Q: *Why?*

A: For all of the reasons set forth in my previous testimony. I also join with the reasons set forth in Mr. Baynes's responsive pre-filed testimony.

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PHONE (206) 447-4400 FAX (206) 447-9700

5. DECLARATION

I, Chris Skinner, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED REBUTTAL TESTIMONY OF CHRIS SKINNER is true and correct to the best of my knowledge and belief.

DATED THIS ___ day of October, 2013.

CHRIS SKINNER

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding by U.S. Postal Service, postage prepaid, and by email, to the parties identified below:

Tom A. Cowan Cowan Moore Stam & Luke P.O. Box 927 Richland WA 99352 *tcowan@cowanmoore.com*	Scott D. Keller Port of Benton 3100 George Washington Way Richland WA 99354 *keller@portofbenton.com*
Paul J. Petit General Counsel P.O. Box 1700 Richland WA 99352 *paulpetit@tcry.com*	Rhett Peterson Tri-City & Olympia Railroad Co. 10 North Washington St. Kennewick WA 99336 *Rhettwater@mac.com*
Brandon L. Johnson Minnick-Hayner, P.S. 249 West Alder P.O. Box 1757 Walla Walla WA 99362 *bljohnson@my180.net*	Tom Montgomery Kelsey Endres Montgomery Scarp, PLLC 1218 Third Ave., Ste. 2700 Seattle WA 98101 *tom@montgomeryscarp.com* *Kelsey@montgomeryscarp.com*
Richard Wagner Manager Public Projects BNSF Railway 2454 Occidental Ave. S., Ste. 2D Seattle WA 98134 *richardwagner@bnsf.com*	Carolyn Larson Dunn Carney Allen Higgins and Tongue LLP 851 SW Sixth Ave., Ste. 1500 Portland OR 97204 *cll@dunn-carney.com*
Terrell A. Anderson Manager, Industry & Public Projects Union Pacific Railroad Co. 9451 Atkinson St. Roseville CA 95747 *taanders@up.com*	Steven W. Smith Assistant Attorney General 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia WA 98504-0128 *ssmith@utc.wa.gov*

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A courtesy copy was also delivered, in the manner indicated, to:

Adam E. Torem
Administrative Law Judge
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia WA 98504-7250
atorem@utc.wa.gov

DATED this ____ day of _____, at Seattle, Washington.

_____
Helen M. Stubbert

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

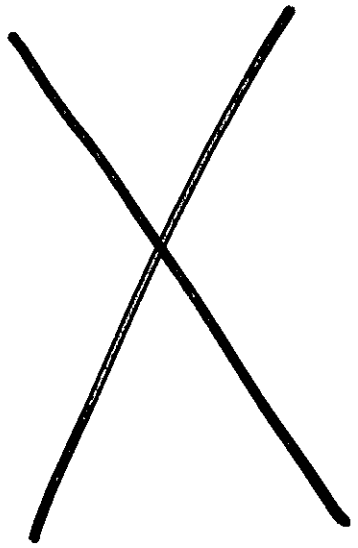

Exhibit No. RS-1T

WUTC DOCKET TR-130499
EXHIBIT RS-1T
ADMIT ☒ W/D ☐ REJECT ☐

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED TESTIMONY OF RICK SIMON

1. INTRODUCTION

Rick Simon is the Development Services Manager for the City of Richland ("City"). Mr. Simon's pre-filed testimony provides a Growth Management Act-related planning context for the proposed crossing. His testimony also reviews the alternatives considered by the City for the crossing, the measures taken by the City to mitigate the dangers of an at-grade crossing, and the City's acute need for the proposed crossing.

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2. BACKGROUND

Q: *State your name, position, and years in that position.*

A: My name is Rick Simon. I am the Richland Development Services Manager. I have held this position for the past 14 years.

Q: *State any other relevant background experience.*

A: I have been a public agency planner for the past 28 years. During the 14 years that I have held my present position, I have been involved in the review and update of the City's Comprehensive Plan under the provisions of the Growth Management Act ("GMA") and have also been responsible for overseeing the review of land use permit applications for the City. This experience has provided me with a broad range of experience in both helping the City to set its land use regulations and policies to govern future development as well as implementing those regulations and policies as they apply in specific applications. I have been a member of the American Institute of Certified Planners since 1996 and have a Bachelor of Arts degree in Urban and Regional Planning from Eastern Washington University.

3. GMA PLANNING & THE 2006 COMPREHENSIVE PLAN UPDATE

Q: *Did you staff the City's 2006 Comprehensive Plan update process?*

A: Yes.

Q: *Why does the City of Richland prepare and update a comprehensive plan?*

A: The City is mandated through the GMA to prepare and update a comprehensive plan that is intended to serve as the basis for the City's future decisions concerning land development and capital facility expenditures, including transportation system improvements. Periodic updates are needed in order to keep abreast of the growth of the City and to ensure that proposed improvements to the transportation systems will accommodate the demands placed on the system

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by future growth. In regard to transportation system improvements, having an up to date plan is critical, as the City is only eligible for state grant and loan funding for projects that are specifically listed in its comprehensive plan.

Q: *Please describe the City's 2006 comprehensive plan update.*

A: The GMA mandates that comprehensive plans updates include early and continuous public participation. Public hearings were held by the Planning Commission on September 13, September 27 and October 25, 2006 (the transportation amendments were discussed at the September 13 and October 25 meetings). City Council held a public hearing on November 7, 2006 and held first and second readings on the ordinance to amend the plan on December 5th and December 19th. There was no record of public testimony being offered at either of the Planning Commission hearings concerning the amendments to the Transportation Chapter of the plan.

Q: *Based upon the City's records, did Tri-City & Olympia Railroad Co. attend any public meetings related to the 2006 comprehensive plan update?*

A: No.

Q: *Based upon the City's records, did Tri-City & Olympia Railroad Co. submit any comments related to the 2006 comprehensive plan update?*

A: No.

Q: *When did the City adopt its 2006 comprehensive plan?*

A: Adopted by Ordinance 40-06 on December 19, 2006.

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4. COMPREHENSIVE PLANNING: LEVEL OF SERVICE AND TRANSPORTATION IMPROVEMENT PLAN

Q: *Describe the purpose of establishing a level of service ("LOS") in the City's Comprehensive Plan.*

A: Establishing a LOS is a requirement of the GMA (RCW36.70A.070(6)) and it is needed to gauge the performance of the transportation system as growth occurs and as the transportation improvement plan ("TIP") is implemented. LOS measurements help to determine what portions of the system are in need of improvement and so helps to inform the development of the TIP.

Q: *Describe the purpose of the Transportation Improvement Plan.*

A: The TIP is intended to identify the transportation system improvements that are needed to correct those portions of the system that are not functioning at the minimum adopted level of service and to identify the system improvements that are necessary to accommodate the anticipated level of growth contemplated in the comprehensive plan, while maintaining the LOS standards.

Q: *Does the City's Comprehensive Plan include both the City's stated level of service and the City's Transportation Improvement Plan?*

A: The plan does include LOS standards (Section 4 of the Transportation Element, attached to this pre-filed testimony) and includes a comprehensive listing of transportation projects that are needed to accommodate the projected levels of growth contemplated in the comp plan. This list is used to develop and annually update the TIP.

Q: *What is the relationship between the established level of service and the City's Transportation Improvement Program?*

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A: The implementation of the TIP is what will ensure that the City maintains the LOS standards that have been adopted in its comprehensive plan.

5. LEVEL OF SERVICE AND EMERGENCY SERVICES

Q: What is the level of service response times for fire and emergency services in the City of Richland?

A: I have attached the relevant portions of the Comprehensive Plan that answer this question. Specifically, Richland Fire and Emergency Services has a response performance objective that calls for the first unit to arrive at an emergency incident within five minutes or less from the time of dispatch (notification of response unit) 90% of the time. (Comprehensive Plan CF 5-3). *Richland Police has an average LOS response time goal of 5 minutes for high priority calls.* (Comprehensive Plan *CF 6-4).*

Q: *Has the City identified any threats to achieving its established level of service for emergency services?*

A: At a staff level, the relationship between LOS standards for emergency services and LOS standards for the transportation is well understood. Emergency service response (for fire and emergency vehicles, not necessarily for police) is a function of distance between the fire station and the site where emergency service is required and the adequacy of the street network in terms of capacity and level of congestion. A street network that provides direct access to a site, but is operating at LOS of E or F significantly hampers the emergency service responder's ability to arrive at a site in a timely fashion. One way to reduce congestion is to increase the number of access routes between any two points. For this reason, the extension of Center Parkway would provide an important link, not only for emergency vehicle response, but also to reduce overall traffic congestion, which in itself provides a benefit to emergency vehicle response.

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Q: *In your opinion, is there an acute public need for the City to achieve its stated level of service for emergency services?*

A: The City has a responsibility to its citizens to keep the commitments that it made through its adopted comprehensive plan for the provision of City services. It helps the City to provide the quality of life that its residents expect; it provides increased traffic circulation, which reduces congestion and, perhaps most importantly, improves emergency response times. It also helps to promote economic development of the community.

Q: *What happens if the City cannot achieve its stated level of service for emergency services?*

A: The City would need to re-evaluate its plan and search for other connections that would achieve the same result or amend its LOS to settle for longer response emergency vehicle response times, which would be considered unacceptable to Richland citizens. Other connections between Tapteal and Gage Boulevard that do not extend across the railroad are not possible. The present plan represents the most feasible alternative.

6. THE AT-GRADE CROSSING AT CENTER PARKWAY

Q: *What alternatives did the City review during the comprehensive planning process for the Center Parkway Crossing?*

A: The Public Works Department and the consultants that prepared the City's Transportation Plan evaluated alternatives, including a grade separated crossing. However, the grade separated crossing was not feasible given the differences in topography between the north and south sides of the rail line.

Q: *Did the City determine that an at-grade crossing at Center Parkway was the best alternative to address this public need?*

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A: Yes.

Q: *Why?*

A: Because a grade separated crossing was determined to be infeasible. This location for an at-grade crossing is acceptable on the basis that there would be good visibility in both directions for traffic crossing the tracks, because the infrequent trains moving through this section of track are travelling a low speeds, and because of the safety measure that would be implemented to protect the crossing (and the public).

Q: *Why did the City reject the other alternatives?*

A: No other alternatives were found to be feasible.

Q: *Did the City discuss railroad crossing safety measures during the comprehensive planning process?*

A: Discussions regarding rail crossing safety regularly occurred at a staff level with the consultants that helped the City prepare the Transportation plan.

7. THE CITY'S COMPREHENSIVE PLAN AND THE COUNCIL OF GOVERNMENT'S REGIONAL TRANSPORTATION PLAN

Q: *What is the relationship between the City's Comprehensive Plan and the Benton-Franklin Council of Government's Regional Transportation Plan?*

A: The Benton-Franklin Council of Governments 2011-2032 Regional/Metropolitan Transportation Plan ("Regional Transportation Plan") is a long-range transportation plan that establishes a transportation vision for the region. It identities the issues and concerns associated with the transportation system in the region, as well as the policies and specific programs intended to address those concerns.

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The City's Comprehensive Plan and the Regional Transportation Plan need to be in agreement with each other. The Regional Plan needs to assess the traffic flows that pass from one city to the adjacent city and ensure that cities' plans are consistent with each other; the Regional Transportation Plan also sets priorities for determining which projects are most important to fund on a regional level.

Q: *Is the railroad crossing at Center Parkway also included in the Council of Government's Regional Transportation Plan?*

A: Yes. I have attached the Preface, Executive Summary, and Appendix H of the Regional Transportation Plan. Appendix H expressly lists the Center Parkway Crossing as an element of the Regional Transportation Plan.

8. ACUTE PUBLIC NEED / CROSSING ALTERNATIVES

Q: *In addition to addressing emergency service response times, does the project address any other public needs?*

A: In addition to protecting the public health and safety by reducing emergency response times, the crossing also establishes a complete road network. The area presently lacks sufficient north-south transportation routes in this portion of the City. SR 240 serves as a barrier that prevents north-south movements. The only north-south corridors are Columbia Center Boulevard and Steptoe. The Columbia Center/Tapteal intersection only provides limited movements to move from Tapteal to Columbia Center and so provides limited function. The nearest intersection, Steptoe/Tapteal is over a mile away from Columbia Center, which in effect isolates the properties and uses along Tapteal Drive.

Given the limited capacity at the Tapteal/Columbia Center intersection, congestion occurs with relatively limited traffic volumes. The addition of the Center Parkway connection

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would provide significant relief to this congestion. The crossing also provides improved access to developable lands.

9. ATTACHMENTS

This pre-filed testimony includes the following attachments: (1) The Transportation Element of the City of Richland's 2006 comprehensive Plane; (2) The Capital Facilities Element of the City of Richland's 2006 Comprehensive Plan; and (3) the Preface, Executive Summary, and Appendix H of the 2011-2032 Regional/Metropolitan Transportation Plan for the Benton-Franklin Council of Governments.

10. DECLARATION

I, Rick Simon, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED TESTIMONY OF RICK SIMON is true and correct to the best of my knowledge and belief.

DATED THIS 29th day of August, 2013

RICK SIMON

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding by U.S. Postal Service, postage prepaid, and by email, to the parties identified below:

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A courtesy copy was also delivered, in the manner indicated, to:

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DATED this 3rd day of September at Seattle, Washington.

Helen M. Stubbert

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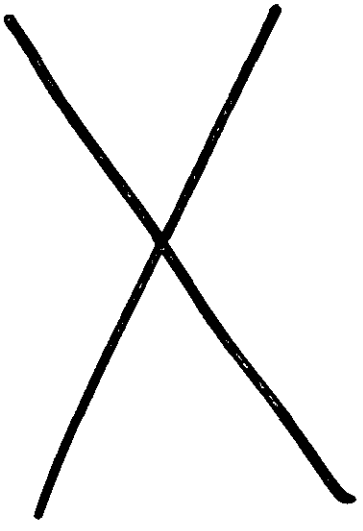


TRANSPORTATION ELEMENT

SECTION ONE

INTRODUCTION

Washington's 1990 Growth Management Act (GMA) requires rapidly growing cities and counties in Washington State to develop comprehensive plans that describe and plan for their future development. These plans must discuss facilities, functions, and financing for specific elements of the community. The specific goal of the GMA with regard to transportation is to "encourage efficient multi-modal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans." The GMA also requires that local comprehensive plans, including the land use and transportation elements, be consistent and coordinated with required regional programs.

The ability to move goods and people is essential for a healthy community, and the Transportation Element of Richland's comprehensive plan describes how it is done now and will be done in the future. To meet GMA requirements, the transportation element must identify existing transportation system characteristics, establish standards for levels of service, and identify existing and future deficiencies based on traffic growth projections.

The GMA also requires that a jurisdiction's transportation plan contain a funding analysis of the capital transportation projects it recommends. This analysis should cover funding needs and resources, and should include a multi-year funding plan. The purpose of the analysis is to ensure that each jurisdiction's transportation plan is affordable and achievable. If it is not, the plan must discuss how additional funds will be raised or how assumptions used in the analysis will be reassessed. The funding analysis is included in the Finance Plan of the City of Richland Comprehensive Plan.

PURPOSE AND SCOPE

Over the next 20 years Richland is projected to experience a 0.895 percent annual increase in population. This growth will result in an increase in traffic volumes to, from, through, and within the City. Transportation strategies must be developed to maintain or achieve acceptable levels of congestion and roadway condition. This Transportation Element will serve as Richland's strategy for accommodating anticipated growth. It combines technical and financial analyses of the City's transportation system using methods that meet GMA requirements.

The Transportation Element analyzes the current transportation system, identifies what improvements need to be made to serve the City, and determines how the improvements can be financed. Levels of service have been developed to reflect the system's ability to serve City users, applied to the existing facilities to determine current deficiencies, and used to predict deficiencies for the horizon years. A great deal of specific information has been gathered for the projects to be completed by the year 2001, and this section will replace the City's current 6-year Transportation Improvement Program. In accordance with the GMA, the plan will be updated each year, maintaining the 6-year planning horizon.

Coordination with other elements of the City's comprehensive plan and the plans of adjacent jurisdictions is important to the success of this element. The land use designations from the Land Use Element are used to forecast traffic, and the City's transportation goals and policies are used to guide project selection. The City has shared information and coordinated with the Benton-Franklin Regional Council (BFRC), the Washington State Department of Transportation (WSDOT), and neighboring cities in the preparation of this element. The plan meets the concurrency requirement of the GMA, under which improvements are required to match growth and development.

This element is divided into the following sections: goals and policies, existing conditions, level-of-service development and analysis, and deficiencies and recommendations. The roadway system inventory detailed in the Existing Conditions section and land use information from the Land Use Element are used together with a traffic model and the desired level of service to form the basis for the analysis of conditions in 2001 and 2015. The results of this analysis are reported in the Deficiencies and Recommendations section. In addition to the roadway system, non-motorized transportation systems associated with the roadway system are analyzed.

ANALYSIS METHODOLOGY

An analysis of the transportation system was conducted for the Draft Environmental Impact Statement using a computerized traffic model. The model results were based on data generated for the three alternative scenarios studied in that document. Because of time limitations, further traffic modeling was not done for the Transportation Element of the Comprehensive Plan. This analysis instead uses predictions made by the City that were derived from the previous analysis. The computer model will be updated following completion of this document, and results will be included in an updated Transportation Element to be completed in 1998.

This element is one of six prepared for the City of Richland Comprehensive Plan: the Economic Development Element, the Land Use Element, the Transportation Element, the Utilities Element, the Capital Facilities Element, and the Housing Element. While each addresses in detail its specific area, all rely on common assumptions and goals that were developed for the overall Comprehensive Plan.

SECTION TWO

GOALS AND POLICIES

The City of Richland has used a comprehensive set of goals and policies to guide the development of this comprehensive plan. These include a number of specific statements designed to direct the transportation planning effort.

Goals are statements of direction, mission, and purpose that outline the future of the transportation system. The Washington State Department of Community, Trade, and Economic Development, defines policies as "official statements of specific courses of action to follow in order to address, affirm, or resolve an issue and move toward the attainment of stated goals." In practice, goals are used to describe the desired outcome in general terms, to capture the big picture of the future; policies are specific strategies that capture, when implemented, the intent of the goals.

BENTON COUNTY-WIDE PLANNING POLICIES

Benton County developed a regional policy plan, known as the County-Wide Planning Policies, to provide a framework for the development and adoption of comprehensive plans for jurisdictions within the County. The framework is intended to ensure that county and city plans are consistent, as required by the GMA. Policies related to transportation are presented below.

Policy #1 (to meet the requirements of RESHB 1025 Section 2(3)a): The Comprehensive Plans of Benton County and each of the cities therein shall be prepared and adopted with the objective of facilitating economic prosperity by accommodating growth in accord with the following:

> Transportation - Encourage efficient multi-modal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

Policy #14 (to meet the requirements of RESHB 1025 Section 2(3)d): Maintain active county-city participation in the Regional Transportation Policy Organization in order to facilitate city, county, and state coordination in planning regional transportation facilities and infrastructure improvements to serve essential public facilities including Port District facilities and properties.

Policy #18 (to meet the requirements of RESHB 1025 Section 2(3)f): Urban growth areas may include territory located outside of a city only if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth. Within urban growth area, only urban development may occur. For the purposes of locating urban growth areas, and permitting new development within them, new development within them, "Urban" is defined as follows:

- Having dedicated and improved (surfaced) streets, with dimension, design and construction standards for new development determined by "joint city/county standards."
- For new development, road, street and intersection right-of-way widths located and sized to accommodate projected local and regional average daily traffic as determined by the Land Use Plans, Transportation Elements and, where relevant, projections of the Benton-Franklin-Walla Walla Regional Council of Governments Regional System.
- Having either public sewer or water service, with additional service requirements (e.g. standards of Policy #19), for new development consistent with "joint city/county standards."

GOALS AND POLICIES DEVELOPED FOR THE COMPREHENSIVE PLAN

Goals and policies for implementation in each element of the Comprehensive Plan support the City of Richland's vision. The general transportation goals are interpreted according to the Vision Statement, and are presented below.

TE Goal 1. The City will provide an efficient transportation network including road, rail, waterand air, to serve existing needs and to accommodate new development.

Policy 1 - The City will coordinate planning and operation of transportation facilities with programs to optimize multi-modal transportation programs.

Policy 2 - The City will coordinate the location of major utility and transportation corridors.

Policy 3 - The City will strongly encourage the preservation of rail rights-of-way for future rail uses, and will work with appropriate agencies to ensure the availability of rail services to its industrial parks.

Policy 4 - The City will coordinate and implement passenger and freight rail service preservation projects consistent with a regional transportation program.

Policy 5 - The City will maintain the existing transportation network, and projects that impact the existing network will support expansion of the network.

Policy 6 - The City will identify and prioritize transportation system needs citywide to meet current and future demand.

Policy 7 - The City will establish a program to consistently upgrade its existing signal system to improve traffic flow and progression.

Policy 8 - The City will seek to integrate appropriate facility design with compatible land use types to reduce environmental and livability impacts.

Policy 9 - The City will pursue transportation equity throughout the City with an equitable distribution of transportation projects.

TE Goal 2. The City will maximize the operating efficiency of its transportation system.

Policy 1 - The City will develop its roadway functional classification system in accordance with the regional functional classification system developed by the Benton-Franklin Regional Council.

Policy 2 - The City will maximize the operating efficiency of its transportation system through the use of Transportation Demand Management strategies.

Policy 3 - The City will actively coordinate the planning, construction, and operation of transportation facilities and programs that may affect the City with local, regional and state jurisdictions.

Policy 4 - The City will develop and deploy incident management plans on the primary arterial system.

TE Goal 3. The City will support beautification efforts for major entryways into Richland.

Policy 1 - The City will encourage the development and enhancement of principal entryways into Richland.

Policy 2 - The City will maximize the use of landscaping and other types of buffers along major transportation corridors.

TE Goal 4. The City will encourage public/private partnerships for financing transportation projects that foster economic growth and address the needs of growth and development.

Policy 1 - The City will reserve property for needed rights-of-way as quickly as possible by requiring dedication of right-of-way as a condition for development.

Policy 2 - The City will only consider land use changes (such as planned unit developments, master planned projects, rezones and plats) when existing and proposed transportation system needs are adequately met.

Policy 3 - The City will route major and secondary arterials around, rather than through, neighborhoods and communities so as to minimize traffic impacts on residential neighborhoods.

a - New residential collector street corridors should be designed and constructed through areas that are not already developed with single family housing.

b - Existing local residential streets should not be converted into collector street routes. In instances where existing streets must be converted to collector roads, these streets shall be brought up to the minimum design standards for collector roads.

c - In those cases where collector street corridors must be built in close proximity to existing residential neighborhoods, the collector street must be designed in such a way as to minimize the impact to adjoining residents through the use of landscape buffers, sound barriers or similar measures.

d - In order for arterial collector streets to function effectively, access restrictions shall be imposed on new arterial collector streets. Such access restrictions shall not prevent commercial businesses from accessing directly onto an arterial collector street. Further, residential access may be allowed in specific instances where such access can be

demonstrated to have no negative impacts on traffic safety, road function and/or circulation.

Policy 4 - The City will participate in regional airport planning to ensure that Richland's needs are met.

Policy 5 - The City will consider sharing costs with other jurisdictions for needed improvements that solve regional transportation problems.

Policy 6 - The City will be actively involved with regional river transportation planning with the Tri-Cities Rivershore Enhancement Council and other agencies.

Policy 7 - The City will encourage the development community to site and construct transportation facilities that are compatible with adjacent land uses to minimize potential conflicts.

TE Goal 5. The City will work to secure adequate long-term funding sources for transportation.

Policy 1 - The City will encourage public/private partnerships and grants for financing transportation projects.

Policy 2 - The City will work to establish local improvement districts and transportation improvement districts in designated areas for economic development.

TE Goal 6. The City will encourage the use of transportation modes that maximize energy conservation, circulation efficiency, and economy.

Policy 1 - The City will support increased use of multi-modal transportation. This includes, but is not limited to, high occupancy vehicle lanes, bicycle trails, park-and-ride facilities, carpools, vanpools, buses and mass transit.

Policy 2 - The City will coordinate planning efforts for non-motorized modes of travel with other jurisdictions and develop an integrated area-wide plan for non-motorized travel modes that ensures continuity of routes.

Policy 3 - The City will encourage sidewalks, improved shoulders, or off-street trails within new developments to accommodate internal circulation.

Policy 4 - The City will encourage new development to be pedestrian friendly and compatible with the public transportation system.

Policy 5 - The City will seek to receive formal recognition as a "Bicycle Friendly Community."

Policy 6 - The City will coordinate site development guidelines to encourage and enable use of alternative modes.

TE Goal 7. The City will work to ensure efficient and effective freight transportation needed to support local and regional economic expansion and diversification.

Policy 1 - The City will collaborate with federal, state and neighboring local governments and private business to ensure the provision of transportation infrastructure investments and services deemed necessary by the City to meet current and future demand for industrial and commercial freight movement by way of roadway and truck, rail, air and marine transport.

Policy 2 - The City will work with the Benton-Franklin Regional Council, Port of Benton, Benton County, and other agencies to develop intermodal connectivity facilities deemed by the City to be needed to facilitate seamless freight transfer between all transport modes.

Policy 3 - The City will ensure that plan Transportation Element goals and policies are implemented in a manner that reinforces the goals and policies of the Economic Development Element.

SECTION THREE

EXISTING CONDITIONS

The Tri-Cities is the largest metropolitan area between Spokane to the northeast, Seattle to the northwest, Portland to the west, and Boise to the southeast. Because of its location, the Tri-Cities is a major transportation hub for travelers and commodities in the Pacific Northwest. As part of the Tri-Cities, Richland has easy, direct access to all modes of commercial transportation services.

This section provides an inventory of the existing transportation system, which will be used as the baseline for assessing future development of the system. Recommendations to address deficiencies will be scheduled across the 20-year planning horizon.

DATA COLLECTION AND REVIEW

This element focuses on facilities operated by the City of Richland, as well as those operated by others, within the UGA. Additional facilities and services operated outside this area by other jurisdictions that are critical to the functioning of the transportation system are briefly described. Data for this section were obtained from the City of Richland Utilities and Physical Services Department. Data for non-City-operated transportation systems were obtained from service providers and secondary documents.

EXISTING ROADWAY SYSTEM

FUNCTIONAL CLASSIFICATIONS

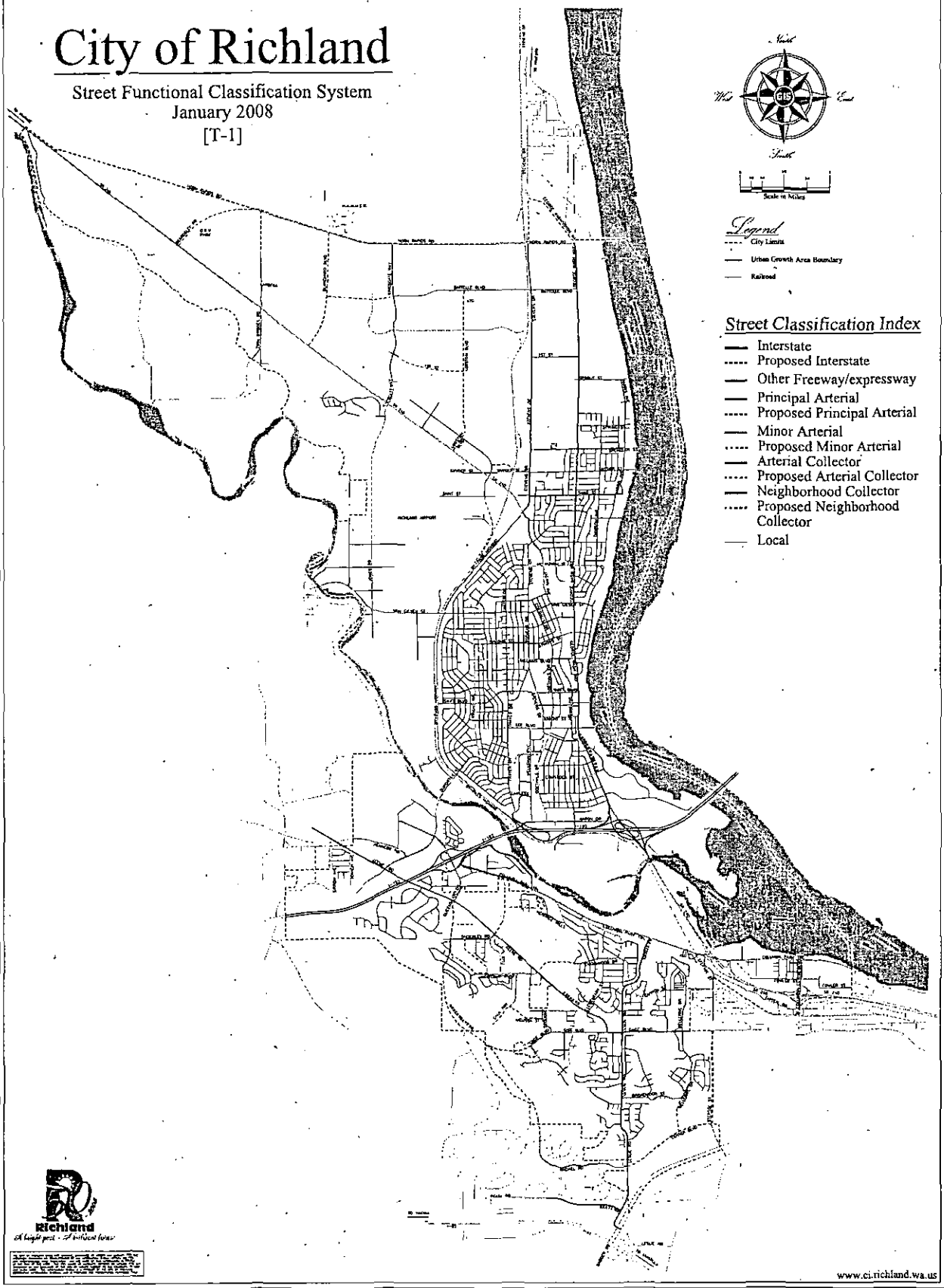
Each City roadway is classified according to its function within the system, as shown in Figure T-1. The City uses the following street classifications, based on the amount of traffic and the origin and destination of the traffic:

- Interstate
- Other freeway/expressway
- Principal arterials
- Minor arterials
- Collectors
- Local (residential) streets.

The Tri-Cities is connected to the interstate highway system. I-82 links the Tri-Cities metropolitan area to I-90 to the north and west, through Yakima, and to I-84 to the south, in northern Oregon. I-182, which passes through Richland, links Richland to these interstates and US 395. US 12 links the Tri-Cities to the interstates and to US 395, and provides access to Walla Walla and other southeastern Washington locales. The limited-access interstates serving the Tri-Cities carry between 30,000 and 50,000 vehicles per day. SR 240, which originates at US 395, links Richland and Kennewick and provides a western bypass route around the city to the Hanford site, then continues northwest to connect with SR 24. Access to West Richland is via SR 224 (Van Giesen Street) and I-182. WSDOT is responsible for maintaining an adequate level of service on these highways.

City of Richland

Street Functional Classification System
January 2008
[T-1]



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Arterials are used in an urban setting and are divided into principal and minor arterials. They carry the highest volumes of traffic within the urban roadway system, provide connections within the system for traffic using other classifications of roadways, and link high-volume destinations and land uses, such as major employers or larger commercial centers

Collectors connect traffic from residential streets to arterials. They can be used for through trips, or they may be the origin or destination of trips for purposes such as neighborhood services. Collectors are approximately 36 feet wide and designed for speeds up to 30 miles per hour.

Residential streets are low volume roadways serving specific residential areas. They are typically not used for through trips, and are often the origin or destination of vehicle trips. Residential streets are typically designed for travel at no more than 25 miles per hour and are 28 to 32 feet wide.

TRAFFIC VOLUMES

A computerized traffic model has been generated for the Richland area using TMODEL2 transportation modeling software. The model is used to assign trips to roadways for existing conditions and predict traffic volumes for future time periods (see Figure T-2).

By considering traffic volume counts, surrounding land uses, and other supporting data, the model depicts traffic conditions on the roadway network. It calculates travel volumes and travel speeds for each roadway segment. It is also used to predict future traffic volumes by considering future land use and population growth.

NON-MOTORIZED SYSTEM COMPONENTS

PEDESTRIAN FACILITIES

Pedestrian facilities within the City of Richland are mainly composed of sidewalks constructed in association with streets. Current design standards for residential collectors and residential streets include provisions for 4-foot sidewalks; however, not all existing residential areas have sidewalks. Bicycle paths, described below, also serve as pedestrian pathways.

BICYCLE FACILITIES

The City of Richland currently has a bicycle/pedestrian path that runs along the Columbia River, Keene Road, SR-240 By-Pass, and a portion of the Yakima River. There are plans to expand this bikeway through the construction of additional segments. In addition, over 100 miles of City streets have been proposed as bicycle routes, including principal and minor arterials and some collectors, which will provide major routes through and across the City. Links to the other cities in the area are also included in the proposed bicycle route network. Figure T-3 shows the existing and proposed bicycle route system.

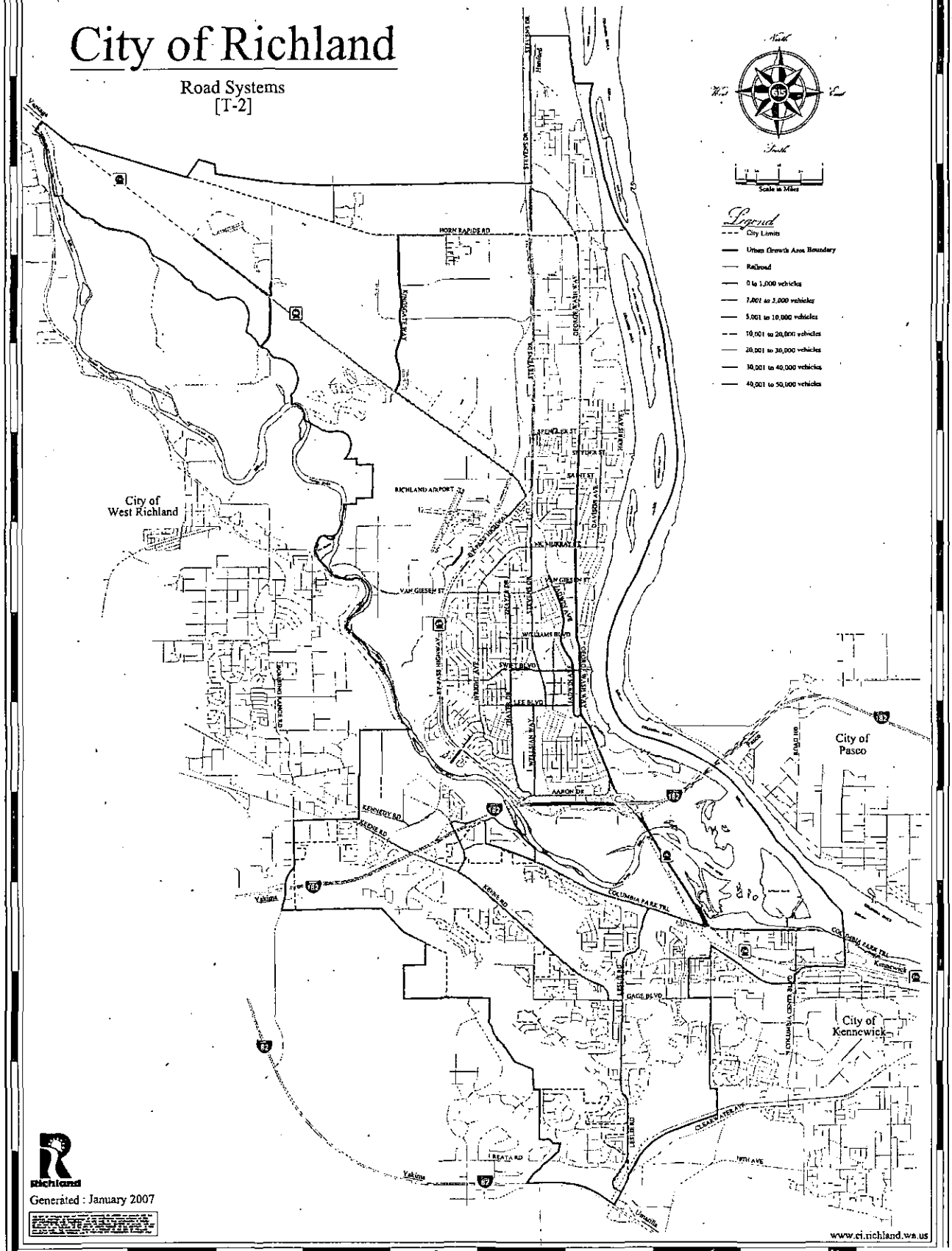
OTHER TRANSPORTATION SYSTEMS

AIRPORT FACILITIES

Primary air traffic to Richland uses the Tri-City Airport in Pasco. Downtown Richland and Richland's industrial areas are a 20 minute drive via I-182. The airport is classified as an air carrier airport, and offers direct passenger service to Seattle, Portland, Spokane and Salt Lake City. Commuter airlines also

City of Richland

Road Systems
[T-2]



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City of Richland

Bike Route & Path Map
[T-3]

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link the Tri-Cities with other regional cities. Tri-City Airport passenger carriers include Horizon, and United Express. UPS, Federal Express, and Pony Express service is also provided. The Port of Pasco owns the Tri-City Airport, which features a 58,000-square-foot terminal with state of the art services. The airport contains 2,235 acres and has three runways.

The Richland Airport, owned and operated by the Port of Benton, is classified as a commuter service airport. Located northwest of Richland's Core Area, it is the second largest airport in the area. A system of roadways links hangars, fixed-based operators, and commuter terminal facilities to associated industrial properties. The 600-acre airport has two 4,000-foot runways capable of supporting commuter aviation. At this time, the airport serves general aviation aircraft only, with 80 aircraft based there. Airborne Express uses the Richland Airport for several flights daily.

The third area airport, Vista Field in Kennewick, serves small aircraft. It does not provide instrument approach capabilities or commuter and larger aircraft services. Airport facilities are shown in Figure T-4.

RAIL FREIGHT FACILITIES

Both the Burlington Northern and Union Pacific railroads provide mainline rail service to more than 35 states from the Tri-Cities, including service from Richland's industrial area. The Tri-Cities urban region is the only major metropolitan and manufacturing area between the Cascade Range and the Rocky Mountains offering this level of service from these two major national carriers.

Burlington Northern, the nation's longest railroad, has its Pacific Northwest hub in the Tri-Cities. Union Pacific, the nation's second longest railroad, connects the Tri-Cities to the Great Lakes and the Gulf of Mexico. Union Pacific operates the largest fleet of refrigerated rail cars in the nation.

Tri-City rail service passes through Pasco's computerized terminal or through the Kennewick rail yard. Both are within 10 miles of downtown Richland. Computerized rail service and flatcar ramps provide quick, efficient truck-to-rail exchanges, an important consideration for the area's large fresh, frozen, and processed food industry. An existing rail ramp in the south end of Richland, on Carrier Road near Interstate 182, serves Acme Concrete. Tracks also pass by the Horn Rapids Industrial Park, but do not currently serve any users there.

The United States Department of Energy controls rail entry into the Hanford Reservation site north of Richland. Both Burlington Northern and Union Pacific have unlimited access to these tracks, which pass near Richland's industrial areas. A public rail dock has been constructed on Richland's northwest side, and there are plans to extend tracks west into Richland's vacant industrial area, north of the Richland Airport.

The Port of Benton acquired a portion of the Hanford railroad in 1998. The Port track begins at the Richland Junction (just west of Columbia Center Boulevard) on the south and extends to the north onto the Hanford site. The Port of Benton, through the Tri-City and Olympia Railroad Company, provides local freight switching and interconnect services to the Union Pacific Railroad and the Burlington Northern Santa Fe Railroad.

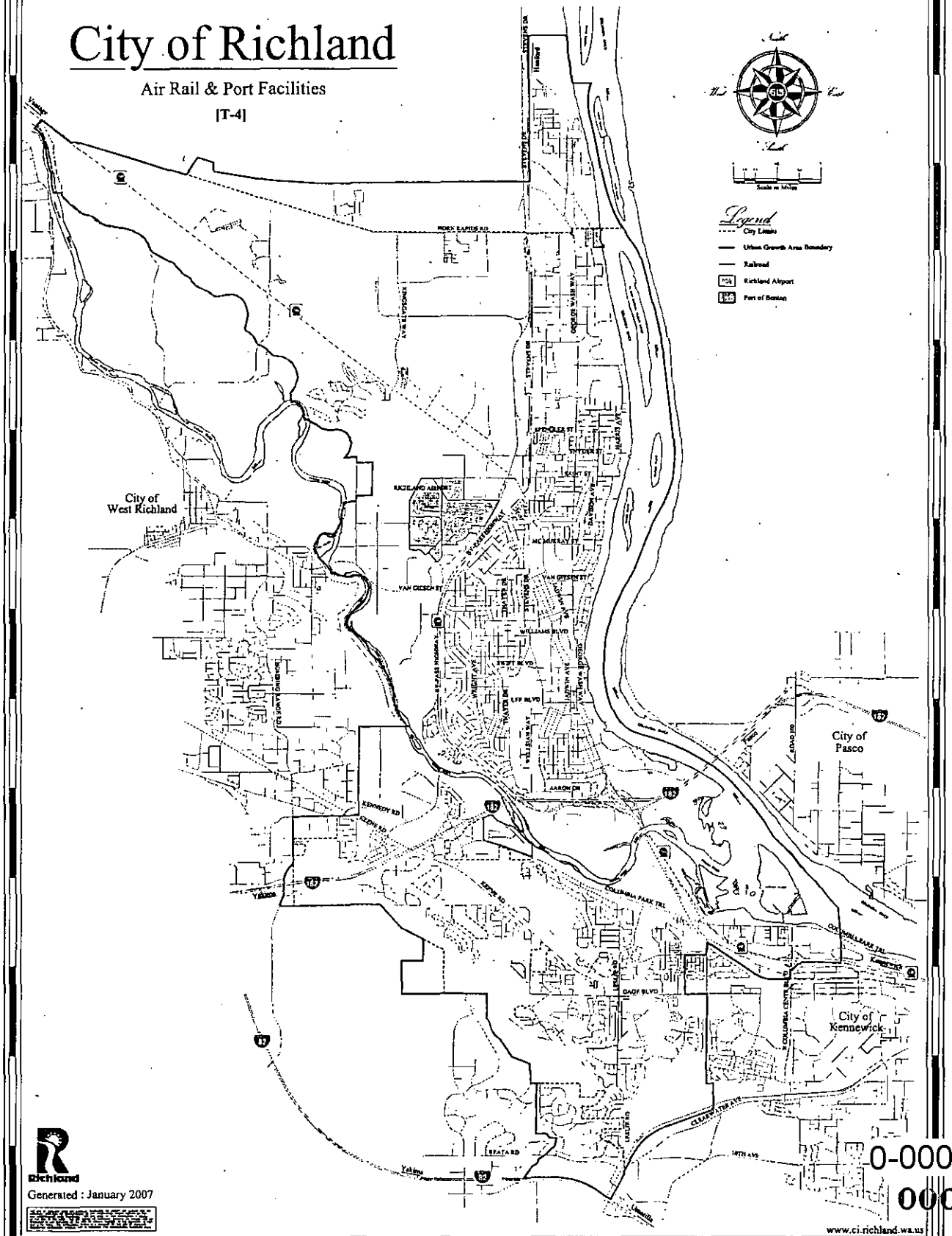
PASSENGER RAIL FACILITIES

Amtrak's Empire Builder line provides passenger rail service four times weekly from the Tri-Cities to Spokane and to Portland. Trains use the passenger station at West Clark Street and Tacoma Avenue in Pasco. Rail facilities are shown in Figure T-4.

City of Richland

Air Rail & Port Facilities

[T-4]



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PORT FACILITIES AND BARGE SERVICE

Three port districts operate on the Columbia and Snake Rivers in the Tri-Cities metropolitan area. The Port of Benton has more than 6,000 feet of Columbia River frontage zoned for heavy industrial use at the Richland Industrial Park, which includes a barge facility. The Port of Pasco has nearly two miles of waterfront, including a 650-foot dock, 20-foot-depth berths, and a 36-ton overhead crane. The neighboring 28-acre marine terminal facility has the largest bulk cargo tonnage movement on the upper Columbia River system. The Port of Kennewick has dock facilities along a 12-mile stretch of the Columbia, with a 1,400-foot barge dock facility planned.

The Columbia-Snake River System is one of the most modern transportation networks in the nation. Numerous barge lines dock in the Tri-Cities, 325 river miles inland from the Pacific Ocean, furnishing easy, direct access to domestic and Pacific Rim markets. River transportation is a cost-effective shipping mode for the Tri-Cities. Commodities often move from the Tri-Cities to Pacific Rim nations at a time advantage when compared to ports in San Francisco and Los Angeles. Nearly three million tons of barge freight, composed of a wide variety of bulk and raw agricultural and industrial cargoes and intermodal container cargoes, enter and leave the Tri-Cities annually. Seven barge companies service the Tri-Cities, with a container dock offering direct access to truck and rail service. Port facilities are shown in Figure T-4.

PUBLIC TRANSIT SYSTEM

Ben Franklin Transit provides community route bus service throughout the area (see Figure T-5). This service radiates from the Bob Ellis/Knight Street Transit Center, with routes 20, 23, 24, 26, and 39 providing local service within the Richland city limits. Route 10 serves West Richland; route 120 provides inter-city connections between West Richland, Richland, Kennewick, and Pasco; and routes 180 and 225 connects Richland and Pasco. Current fares are 75 cents for adults and 50 cents for youths (ages 5 to 18); senior citizens 60 and over ride free. The bus system does not operate on Sundays. Ben Franklin Transit also provides transit and vanpool services to the Hanford Reservation. Existing Transit Routes are shown in Figure T-5.

TRUCKING LINES

Richland and the Tri-Cities metropolitan area are served by more than 35 local, regional and national trucking lines. Eleven western states, Alberta, and British Columbia are within second-morning delivery service of the Tri-Cities.

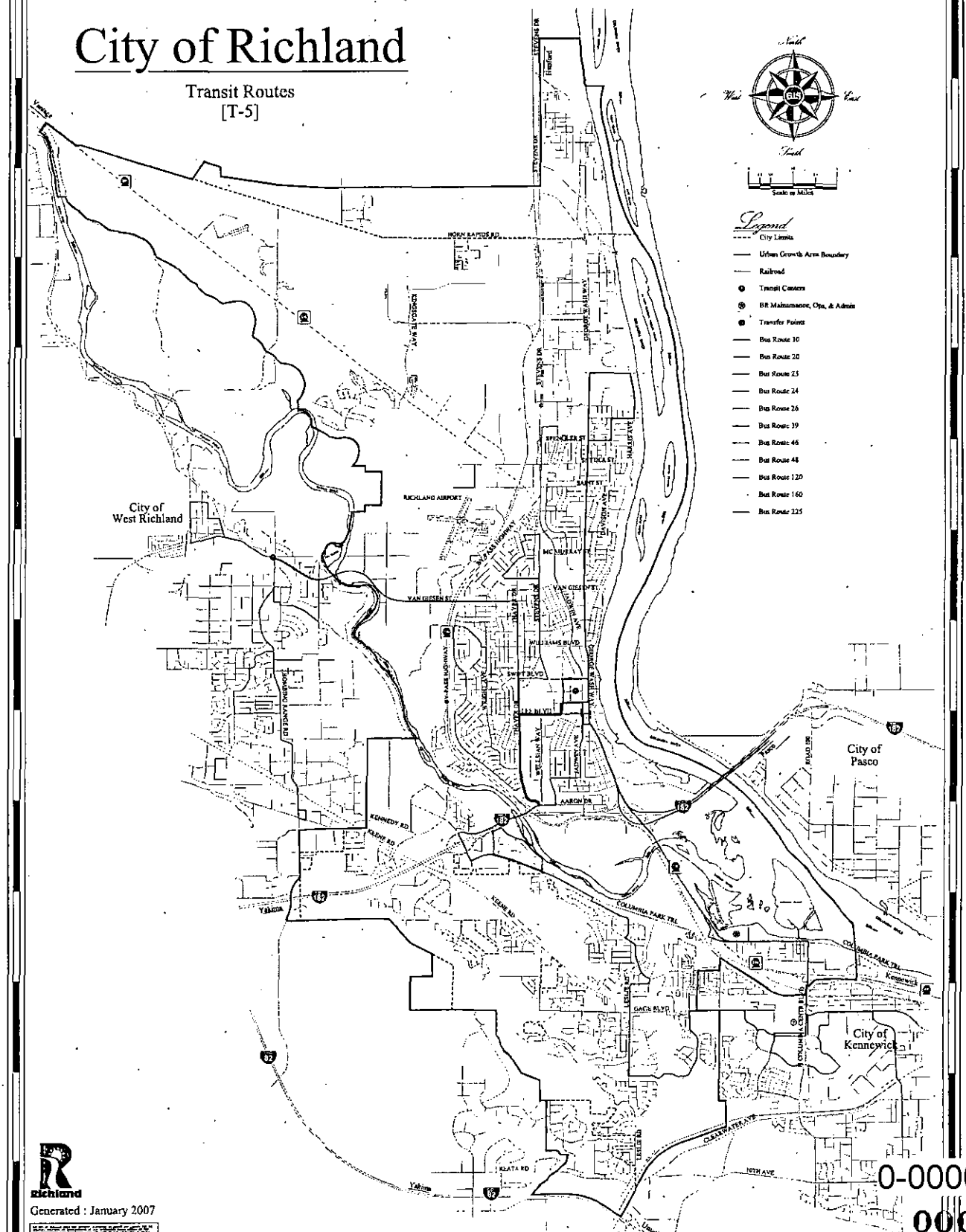
OTHER SERVICES

Several taxi and limousine services operate in the Richland area. Three companies serve Richland: A1 Tri-City Cab, A Plus Taxi & Van Service (Kennewick), and Tri-City Deluxe Cab (Kennewick). These services are supplemented by six limousine service companies: Affordable Limousine Service, Celebrity Limousine Service (Kennewick), Desert Wave Limousine (Richland), Four Star Limousine Service (Pasco) and Limousines Northwest (Pasco).

Greyhound Bus Lines also serves the Tri-Cities, with daily stops at the Bob Ellis/Knight Street Transit Center in Richland. Two buses arrive and depart daily. In addition, several transportation companies offer charter bus service throughout the region on an as-needed basis.

City of Richland

Transit Routes
[T-5]



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SECTION FOUR

LEVEL OF SERVICE

LOS DEVELOPMENT

The GMA requires jurisdictions to maintain standards for transportation level of service (LOS). These standards are used with a computerized model of the City's roadway system to analyze the transportation network and determine deficiencies under the Comprehensive Plan.

A capacity-based system for measuring LOS, developed by the Transportation Research Board, is outlined in the Highway Capacity Manual. Levels of service for different types of transportation facilities are based on parameters that best describe operating conditions for that type of facility, as well as the perceptions of drivers and passengers. These parameters are called measures of effectiveness. The measures of effectiveness used for Richland's transportation system are outlined in Table T-1.

TABLE T-1 LOS MEASURES OF EFFECTIVENESS

Type of Facility	Measure of Effectiveness
Freeways (basic segments)	Density (vehicles/mile/lane)
Multi-lane highways	Density (vehicles/mile/lane) or Free-flow speed (miles/hour)
Arterials	Average travel speed (miles/hour)
Signalized intersections	Average stopped delay (seconds/vehicle)
Unsignalized intersections	Average total delay (seconds/vehicle)

Levels of service are expressed using a scale with letter designations ranging from A to F. LOS A represents the highest level and the best operating conditions, and LOS F is the lowest level. The computerized traffic model replicates the operating conditions of the network and is used to assign an LOS to each roadway segment and intersection. Table T-2 generally defines the LOS rating scale.

LOS MEASUREMENT

METHODOLOGY

Levels of service for Richland were measured using the Highway Capacity Manual.

TABLE T-2 SCALE LEVEL OF SERVICE CRITERIA FOR SIGNALIZED INTERSECTIONS

LOS Rating	Control Delay per Vehicle (s/veh)
A	> 0-10
B	> 10-20
C	> 20-35
D	> 35-55
E	> 55-80
F	> 80

The traffic model uses existing housing, employment, and traffic data to simulate current conditions. Projected growth rates for employment and housing are used to predict growth in traffic. The model determines future levels of service from the traffic projections.

The afternoon peak time period was used for the traffic modeling; this has been determined through research to provide the best overall results, and is a standard used in all traffic model preparation. Roadway data collected from City records included traffic counts, locations of stop signs and signals, speed limits, and lane configurations. Land use data were collected for existing employment and housing. The model output can be expressed in terms of both traffic volumes and average speeds. These are used to determine levels of service.

THRESHOLD LOS

To determine whether service levels of a roadway system are deficient, a threshold LOS must be established. Any roadway with an LOS better than the threshold is considered acceptable, and a roadway with an LOS worse than the threshold is considered deficient. For this analysis, the threshold is LOS D, which is the same level adopted by BFRC and used in the Regional Transportation Plan.

The existing LOS was determined using a single peak-hour calculation. When the Transportation Element is updated, a different method of determining the LOS will be used. The update will look at a two-hour average LOS for each road segment. As with the previous analysis, the minimum threshold LOS will be D, and roads with an average LOS of E or F will be considered deficient.

EXISTING DEFICIENCIES

Reviewing the LOS results, each of the study intersections controlled by traffic signals operates at a LOS of D or better, based on traffic counts. Several of the unsignalized locations have long delays (LOS E or F) for minor street approaches. Projects identified to address existing deficiencies are listed in Table T-5.

TABLE T-3 EXISTING PM PEAK HOUR INTERSECTION LEVEL OF SERVICE (TRAFFIC SIGNALS)

Intersection	Level of Service	Average Delay (Seconds)	Volume/Capacity
Duportail/Queensgate	B	17.2	0.32
George Washington Way/Adams/Columbia Point	D (f)	43.5	1.00
George Washington Way/Knight	B	15.2	0.77
George Washington Way/Williams	A	6.1	0.61
George Washington Way/McMurray	B	16.5	0.87
George Washington Way/Spengler	B	19.2	0.86
George Washington Way/Jadwin	B	17.4	0.73
George Washington Way/Lee	A	9.3	0.68
George Washington Way/Swift	C	30.9	0.76
George Washington Way/Van Giesen	B	15.0	0.85
Jadwin/Lee	B	18.7	0.58
Jadwin/Swift	B	14.6	0.45
Jadwin/Van Giesen	B	18.1	0.49
Keene/Gage	B	15.8	0.56
Queensgate/Keene	C	24.5	0.84
Leslie/Gage	C	24.0	0.60
SR 240/Swift	B	17.1	0.88
SR 240/Van Giesen	D	50.4	0.95
SR 240/Stevens	C	33.6	0.94
SR 240/Duportail	C	24.4	0.92
Stevens/Lee	C	23.1	0.63
Stevens/Swift	B	13.7	0.39
Stevens/Williams	B	15.6	0.55
Thayer/Swift	B	14.6	0.37

TABLE T-4 EXISTING PM PEAK HOUR INTERSECTION CONDITIONS (NON-SIGNALS)

Intersection	Most Delayed Major Street LOS	Most Delayed Minor Street LOS
Gage Blvd/Bellerive Drive	A	F
George Washington Way/First	A	F
Keene/Shockley	A	C
Leslie/Columbia Highway	B	F
SR 240/Hagen/Robertson	A	E
SR 240/Kingsgate	A	F
Stevens/Spengler	A	F
Stevens/Battelle	A	F
Stevens/Knight	A	C
Swift/Wright	A	F
Thayer/Duportail	A	B
Thayer/Van Giesen	A	F
Wellsian Way/Aaron	B	F

TABLE T-5 CITY OF RICHLAND 2006 - 2025 TRANSPORTATION PROGRAM

2006 - 2015 Projects		
Project Name	Description	Estimated Project Cost
Aaron Dr Pedestrian Pathway	Paved or Concrete Pedestrian Trail along Aaron Dr.	$200,000
Center Parkway - Tapteal to south City Limits	Collector Arterial, two-lane w/ turn lane	$850,000
Citywide LID Incentive Program	Encourage and support for Street and Sidewalk LIDs	$965,000
Citywide Traffic signal Upgrades	Update existing traffic signals to current standards	$1,100,000
Duportail St, Ph I - SR 240 to Wellsian Way	Minor Arterial, two lane w/turn lane, sidewalks, bike lanes	$1,420,000
Duportail St. Bridge over Yakima River	4-lane bridge with bike lanes, sidewalks and lighting	$9,000,000
Duportail Street Extension - Keene to Kennedy w/ signal @ Duportail/Keene	Minor Arterial, four-lane w/turn lane	$1,530,000
Elementary St/Keene Rd Traffic signal	New Signalized Intersection	$200,000
Gage Blvd, Leslie Rd. to east City Limits	Principle arterial, four lane w/ turn lane	$2,900,000
G.W. Way and Hanford St. signal	Install traffic signal	$223,000
G.W. Way and Jadwin Ave improvements: 1) Jadwin to Columbia Point, 2) G.W. Way to Knight	1) Principle arterial, six-lane w/ turn lane, 2) Minor arterial, one NB, two SB w/ turn lane	$1,400,000
Jones Rd (Kingsgate), SR 224 to SR 240	Minor arterial, two lane w/ left turn lane, rural section w/ street lights and bike lanes.	$4,522,000
Keene Rd Widening - Queensgate to Tomich	Principal Arterial, four-lane w/turn lane, sidewalks, bike lanes	$5,400,000
Kingsgate Way/SR 240 Traffic signal	New Signalized Intersection	$200,000
Lawless Dr - Thayer to Wellsian	Minor arterial, two lane , signal @ Wellsian	$700,000
Leslie Rd Improvements - Meadow Hills to Clearwater Ave	Principal Arterial, two-lane w/turn lane, sidewalks, bike lanes	$2,530,000
Queensgate Dr - Keene Rd to Meadow Hills	Collector, two lane w/left turn lane, sidewalks, bike lanes	$1,450,000
Queensgate Dr Bike/Ped Trail.	12-ft Paved Trail along Keene Rd.	$50,000
Spengler St Extension - Robertson to Stevens Dr.	Collector, two lane w/turn land, sidewalks, bike lanes	$900,000
SR 224/SR 240 Grade Separation - Terminal Dr. to Birch	Principal Arterial, Prelim Engineering for six lane, Elevated interchange/On-Off ramps	$150,000
SR 240, ByPass Highway Trail	12-ft Paved Trail from VanGiesen to Coast.	$180,000
Steptoe St. Extension - Gage Blvd to S City Limits.	Principal Arterial, four lane, sidewalks, bike lanes, lighting	$3,245,000
Steptoe St./Canyon Boulevard	New Signalized Intersection	$200,000

Traffic Signal		
Steptoe St./Tapteal Dr. traffic Signal	New Signalized Intersection	$250,000
Stevens Dr - Knight street Trafic signal	New Signalized Intersection	$180,000
Stevens Dr Bike/Ped Trail	12-ft. Paved Trail from Spengler to Horn Rapids Rd.	$360,000
UPRR Bike /Ped Trail	12-ft Paved Trail along RR ROW next to Keene Rd.	$140,000
Wellsian Way and Aaron Dr traffic signal	Install traffic signal	$200,000
Wellsian Way and Lee Blvd traffic signal	Install traffic signal	$200,000
Total Project Cost 2006-2015		$40,645,000

2016-2025 Projects		
Project Name	Description	Project Cost
Battelle Blvd - Kingsgate Way to Blanchard Blvd	Collector, two lane w/left turn lane, rural street section w/ St. lights & bike lanes.	$800,000
Beardsley Rd - Horn Rapids to SR 240	Minor arterial, two-lane w/turn lane	$1,733,000
Bellerive Dr, Braodmoor to Center Blvd	Collector, two lane, sidewalks, bike lanes	$800,000
Blanchard Blvd - Horn Rapids Rd to SR 240	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$2,200,000
Blanchard Blvd/SR 240 Traffic Signal	New traffic Signal	$220,000
Canyon St - Englewood Dr. to Steptoe	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$2,500,000
Center Blvd, Steptoe to Leslie Rd	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$1,760,000
Center Parkway/Tapteal Dr Traffic Signal	New traffic Signal	$220,000
Citywide Bicycle Trail facilities.	Add new Bicycle Trails and Lanes where needed.	$1,200,000
Citywide LID Incentive Program	Encourage and support for Street and Sidewalk LIDs	$1,500,000
Citywide Ped., ADA and School Routes projects	Const sidewalks, ADA facilities and improve school walking routes	$1,200,000
Citywide Traffic Signal Upgrades.	Update existing traffic signals to current standards	$1,500,000
Columbia Park Trail, Steptoe to east city limit	Minor Arterial, four lane, sidewalks, bike lanes	$1,600,000
Columbia Park Trail, west city limits to Steptoe	Minor Arterial, four lane, sidewalks, bike lanes	$2,000,000
Comstock St - G.W. Way to Wellsian Way	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$1,400,000
Comstock St. - Goethals Dr. to Wellsian Way.	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$650,000
Englewood Dr - Keene Rd to Glenwood Ct	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$1,100,000

First St, G.W. Way to Stevens Dr	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$1,000,000
First Street - Kingsgate Way to Logston Blvd.	Minor Arterial, two lane w/turn lane, sidewalks, bike lanes	$1,800,000
Fowler St extension, Fowler to Columbia Park Trail	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$800,000
Gage Blvd Extension - West end to City Limits	Minor Arterial, two lane w/turn lane, sidewalks, bike lanes	$1,900,000
G.W. Way, First St traffic signal	New signalized intersection	$200,000
Goethals Dr/Lee Blvd Traffic Signal	New traffic Signal	$220,000
Hagen Rd - SR 240 to Airport Entrance	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$2,200,000
Heritage Hills Dr - Sundance Ridge to Keene Rd	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$1,400,000
Horn Rapids Rd, G.W. Way to Stevens Dr	Minor arterial, two lane w/ turn lane	$795,000
Horn Rapids Rd - Stevens Dr to Twin Bridges Rd	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$2,800,000
Keene Rd, Westcliff Blvd traffic signal	New signalized intersection	$200,000
Keene Rd and Shockley Rd traffic signal	New signalized intersection	$200,000
Kennedy Rd - Duportail to West City Limits	Minor Arterial, two lane w/turn lane, sidewalks, bike lanes	$1,400,000
Leslie Rd/Center Blvd Traffic Signal	New traffic Signal	$220,000
Leslie Rd and Columbia Park Trail traffic signal	New signalized intersection	$220,000
Leslie Rd/Reata Rd Traffic Signal	New traffic Signal	$220,000
Logstaon Blvd extension, Robertson to Battelle Blvd	Collector, two lane w/ turn lane, rural street section w/ street lights, bike lanes.	$2,560,000
Logston Blvd/SR 240 Traffic Signal	New traffic Signal	$220,000
Queensgate Dr - Keene Rd to Meadow Hills Dr	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$1,400,000
Saint St - Hagen Rd to Jones Rd	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$2,000,000
Shockley Rd, Keene Rd to Queensgate	Collector, two lane, sidewalks, bike lanes.	$900,000
Sky Meadows Ave - Cage Blvd to Meadow Hills Dr.	Unclassified, two lane , sidewalks	$700,000
SR 240 /Twin Bridges Rd Traffic Signal	New traffic Signal	$220,000
Twin Bridges Rd, SR 240 to south city limits	Minor arterial, two lanes	$881,000
Twin Bridges Rd - Horn Rapids Rd to SR 240	Unclassified, two lanes w/left turn lane, sidewalks, bike lanes	$2,650,000
Unnamed Street No 1 - Westcliff toMeadow Hills Dr.	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$1,200,000
Unnamed Street No 2. -	Collector, two lane w/left turn lane,	$1,200,000

Unnamed St.#1 to Gage Blvd	sidewalks, bike lanes.	
Unnamed Street No 3 - Heritage Hills to Columbia Park Trail	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$1,200,000
Van Giesen and Thayer traffic signal	New signalized intersection	$200,000
Van Giesen St/Jones Rd Traffic Signal	New traffic Signal	$220,000
Wellsian Way and Stevens Dr connection	Minor arterial, four lane, sidewalks, bike lanes	$2,004,000
Westcliff Blvd, Keene Rd to Meadow Hills Dr	Collector, two lane w/left turn lane, sidewalks, bike lanes.	$1,200,000
Total Project Cost 2016-2025		$56,713,000
Total Project Cost 2006-2025		$84,946,000

SECTION FIVE

FUTURE DEFICIENCIES AND RECOMENDATIONS

Deficiencies predicted for the future roadway system are described below.

FUTURE DEFICIENCIES

ROADWAY SYSTEM

As employment and population grow within the UGA, the number of vehicle trips on area roadways will rise. The Hanford site is the largest employer in the region. According to land use assumptions in the Benton-Franklin Council of Government model, the base employment associated with Hanford is 16,107 employees. This is expected to increase to 17,535 by 2010 and 20,832 by 2020.

The specific impacts of these changes will be determined as part of the update of the transportation model.

PEDESTRIAN AND BICYCLE FACILITIES AND PUBLIC TRANSPORTATION

The growth in population and employment also will increase demand for pedestrian and bicycle facilities and for public transportation.

Several strategies were developed for future pedestrian projects. These strategies are aimed at providing the City with priorities to direct its funds towards pedestrian projects that meet the goals and policies of the City.

Strategy 1	Connect key pedestrian corridors to schools, parks, recreational uses, transit centers and activity centers.
Strategy 2	Fill in gaps in the network where some sidewalks exist.
Strategy 3	Coordination of land use approval process to provide sidewalks and links to existing sidewalks.
Strategy 4	Improved crossings.
Strategy 5	Pedestrian corridors that connect to major recreational areas.
Strategy 6	Reconstruct all existing substandard sidewalks to City of Richland standards.

TABLE T-6 POTENTIAL PEDESTRIAN PROJECTS

Street	Side	From	To
Action Plan Projects			
Aaron Drive	Both	Wellsian Way	George Washington Way
Bellerive Drive	East	Gage Boulevard	Muriel Street
Bellerive Drive	East	Broadmore Street	Broadmore Street
Bellerive Drive	West	Country Club Road	Meadows Drive
Duportail Street	Both	Wright Avenue	Thayer Drive
Gage Boulevard	Both	Bellerive Drive	Steptoe Street
George Washington Way	East	Bradley Avenue	I-182
Jadwin Avenue	Both	Catskill Avenue	Coast Street
Jadwin Avenue	East	Symons Street	Torbett Street
Jadwin Avenue	West	Williams Boulevard	Stanley Street
Knight Street	North	Goethals Drive	Stevens Drive
Leslie Road	East	Broadmore Street	Gage Boulevard
Saint Street	South	George Washington Way	Davison Avenue
Spengler Road	North	Stevens Drive	Davison Avenue
Stevens Drive	East	Williams Drive	Torbett Street
Stevens Drive	East	Van Giesen Street	Wilson Street
Stevens Drive	West	McMurray Street	Catskill Street
Swift Boulevard	North	Sanford Avenue	Thayer Drive
Symons Drive	South	Jadwin Avenue	George Washington Way
Thayer Drive	East	Arbor Street	Iry Street
Thayer Drive	Both	Wellsian Way	Cottonwood Drive
Van Giesen Street	North	Mahan Avenue	Goethals Drive
Wellsian Way	East	Aaron Drive	Elliott Street
Wellsian Way	West	Wayman Street	Wayman Street
Williams Boulevard	South	Wright Avenue	Thayer Drive
Wright Avenue	East	Sanford Avenue	Woodbury Street

Several Strategies were developed for construction of future bikeway facilities:

Strategy 1 Connect key bicycle corridors to schools, parks, recreational uses, transit centers and activity centers.

Strategy 2 Bicycloe corridors that connect to major recreational facilities.

Strategy 3 Fill in gaps in the network where some bikeways exist.

Strategy 4 Develop maintenance program to clean bike lanes.

Strategy 5 Bicycle corridors commuters might use

Strategy 6 Bicycle corridors that connect neighborhoods.

Strategy 7 Construct bikeways to City of Richland Standards.

TABLE T-7 CORRIDORS IN PROPOSED BIKEWAY NETWORK

North-South Corridors	East-West Corridors
SR 240 By-Pass	Horn Rapids
Stevens Drive/Wellsian Way	Snyder Street
George Washington Way	Van Giesen Street
Columbia Park Trail	Swift Boulevard
Leslie Road	Lee Boulevard
Steptoe Street	Aaron Drive
Duportail Street/Queensgate Boulevard	I-182
	Columbia Park Trail
	Gage Boulevard

AIR AND RAIL SERVICE

Growth in Richland will increase demand for airport services, but air transportation demand is more directly related to regional changes. Demand for freight and passenger rail facilities could increase, depending on the type of new commercial and industrial development the plan's economic strategy attracts.

RECOMMENDATIONS

IMPROVEMENT PROJECTS

The Comprehensive Plan will likely require improvement projects for both planning periods to address level of service deficiencies Additional improvements will be needed as part of the Plan's proactive strategy to encourage economic development. Projects also may be needed to address safety or maintenance needs. Table T-8 shows the preliminary recommended improvements to address LOS deficiencies. Some projects will be City's responsibility; others will be the responsibility of the Washington State Department of Transportation (WSDOT).

TABLE T-8 RTP PROJECTS INCLUDED IN TRAVEL DEMAND MODELING (2020)

Project	Estimated Cost ($1,000s)	Model Updates
Center Parkway from Tapteal to Gage: Construct 3-lane Road.	$500	Included in Model
First Street/George Washington Way to Stevens: Widen existing street.	$900	
Traffic Signal - G.W. Way and Knight .	$200	Intersection control updated
Traffic Signal - Gage and Bellerive.	$150	Intersection control updated
Traffic Signal - G.W. Way and First..	$150	Intersection control updated
Traffic Signal - Keene and Shockley.	$200	Intersection control updated
Traffic Signal - Van Giesen and Thayer.	$150	Intersection control updated
Traffic Signal - Swift and Goethals.	$200	Intersection control updated
Traffic Signal - Steptoe and Tapteal.	$200	Intersection control updated
Traffic Signal - Leslie and Reata.	$200	Intersection control updated
Traffic Signal - SR 240 and Logston.	$200	Intersection control updated
Spengler Road from Stevens to Logston, Construct a 3-lane roadway.	$600	1 lane each direction plus center turn lane
Traffic Signal - Keene and Westcliffe.	$200	Intersection control updated
Steptoe St. from Gage to Clearwater, Construct a 5-lane roadway.	$1,500	2 lanes each direction plus center turn lane
Traffic Signal - SR 240 and Kingsgate.	$200	Intersection control updated
I-182 - Install exit ramp to Wellsian Way.	$1,500	1-lane exit off I-182
Traffic Signal - SR 224 and Jones Road.	$200	Intersection control updated
Keene Road widening from Queensgate to West Limits: Existing road widening and a bridge constructed across I-182.	$4,200	Additional lane in each direction
Battelle Boulevard from Stevens to Kelly: Construction of a 2-lane road.	$600	Additional lane in each direction
Duportail Street from Kennedy to Keene: Construction of a 5-lane road.	$500	2 lanes in each direction and a center left-turn lane
Duportail St. from SR 240 across Yakima River: Construction of a 4-lane bridge.	$9,000	2 lanes in each direction
Wellsian Way and Stevens Drive realignment.	$2,000	3 lanes west of Wellsian Way, 4/5 lanes east of Wellsian Way
Leslie Road widening from Meadow Hills to Reata.	$1,500	Additional lane in each direction
Logston Blvd. and Robertson to Battelle: Construction of a 3-lane rural section.	$1,700	Additional lane in each direction
Jones Road from Kingsgate to van Giesen: Construction of a 3-lane road.	$2,850	1 lane in each direction and a center left-turn lane
Duportail Street widening from Wellsion Way to SR 240.	$1,000	Addition of center turn lane
SR 240/I-182 to Columbia Center Boulevard: Replace Yakima River Bridge with 8-lane structure; add general purpose lane in each direction.	$69,000	Additional 2 lanes in each direction

The full cost of anticipated roadway improvements required to address LOS deficiencies is $100,000,000.

TRANSPORTATION DEMAND MANAGEMENT

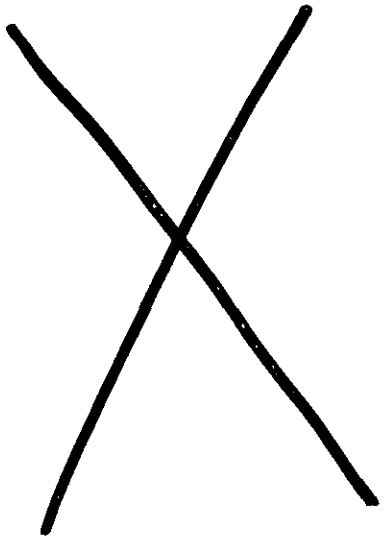
Another mitigation measure included in the Comprehensive Plan is the policy calling on the City to encourage transportation demand management measures, which reduce the need for new facilities by reducing the number of automobile trips. These measures typically include promotion of such travel options as transit, bicycling and walking. They not only benefit the roadway system through reduced traffic levels, but also contribute to a reduction in air pollutants.

Typical transportation demand management involves adoption of a commute trip reduction ordinance. Such ordinances usually require large employers - generally those with more than 100 employees - to submit annual transportation management plans to the City. The employers' plans outline steps they will take to meet an ordinance-mandated reduction in single occupant vehicle trips to and from their business sites during peak commute hours. Common strategies to achieve these reductions include the following:

- Assignment of a transportation coordinator to help employees find alternative commuting options
- Cash-out parking programs that pay employees to give up their parking spaces
- Employer-sponsored shuttles or vanpools
- Carpool or vanpool incentives or subsidies
- Ride-matching services
- Preferential carpool and vanpool parking
- Commute alternatives information
- Provision of showers and locker facilities for bicycle and pedestrian commuters
- Employer-provided travel allowances that employees can use to pay for parking or to commute by a travel alternative
- Flexible work hours
- Compressed work-week schedules
- Telecommuting programs allowing employees to work from home for certain tasks or positions.

The City also can take steps such as the following to further develop commute alternatives. Provide employers with information on transportation demand management measures.

- Form a transportation demand management committee made up of major employers and government representatives.
- Develop park-and-ride facilities near freeway interchanges.
- Develop pedestrian and bicycle facilities between key destinations.



CAPITAL FACILITIES ELEMENT

SECTION ONE

INTRODUCTION

PURPOSE OF THE CAPITAL FACILITIES ELEMENT

The Capital Facilities Element, required under the Washington Growth Management Act (GMA), addresses capital facilities needs in the City of Richland and urban growth area (UGA) and represents the City's policy plan for the next 20 years.

This Capital Facilities Element was developed to be consistent with the Benton County-Wide Planning Policies, and integrated with all other plan elements to ensure consistency throughout the Comprehensive Plan. The Capital Facilities Element considers the public capital facilities necessary to support the other Comprehensive Plan elements.

The Capital Facilities Element promotes efficiency by prioritizing capital improvements for the first planning period, 1996 through 2001, and second planning period, 2002 through 2015. Long-range financial planning enables the City to schedule projects so that the steps in development logically follow one another based on relative urgency, economic desirability, and community benefit. The identification of adequate funding sources results in the prioritization of needs, and allows tradeoffs between projects to be evaluated explicitly. The Capital Facilities Element will guide decision-making to achieve the community goals as defined in the Comprehensive Plan.

According to Growth Management Act - Procedural Criteria, Chapter 365-195 of the Washington Administrative Code (WAC), the Capital Facilities Element should contain at least the following features:

- An inventory of existing capital facilities
- A forecast of the future needs for such capital facilities
- Proposed locations and sizes of expanded or new capital facilities
- A six-year plan to finance such capital facilities
- A requirement to reassess the Land Use Element if funding falls short of meeting capital facilities needs, and to ensure consistency between the Land Use Element and the Capital Facilities Element and associated Finance Plan.

The Capital Facilities Element documents all capital projects needed to accommodate projected growth. The Finance Plan identifies the sources and levels of financial commitment and revenues necessary to meet the concurrency requirements of the GMA. Concurrency means that needed capital facilities must be installed and available for use at the time of development, or within a reasonable time period following completion of the development.

The capital facilities covered in this element are as follows:

- Parks and Recreation Facilities
- Schools
- Municipal Facilities
- Fire and Emergency Service Facilities
- Police Service Facilities
- Emergency Dispatch Communications Facilities
- Library Facilities
- Irrigation District Facilities.

ANALYSIS OF EXISTING FACILITIES

Data collection involved collection and analysis of existing reports, records, and documents, as well as field verification and data collection. For some facilities, a significant amount of data collection and analysis and capital improvement planning was already done. Up-to-date information was used to develop a baseline inventory of capital facilities.

DEVELOPMENT LEVEL OF SERVICE (LOS) STANDARDS

The development of standards for public infrastructure is an important step in the capital facilities analysis. Standards are the minimum acceptable level of service (LOS) for a particular type of public infrastructure (e.g., schools, stormwater/drainage, solid waste disposal, emergency services, parks). The standards are used to determine deficiencies in existing infrastructure that will need correcting and to identify future infrastructure needs. Some standards are specific (e.g., area per enrolled student, acres of parks per capita, pounds of solid waste per capita per day), while others are more general (e.g., drainage standards for stormwater runoff).

ANALYSIS OF FUTURE NEEDS

LOS standards are applied to the collected inventory data to determine infrastructure deficiencies or surpluses. Under the GMA, any deficiencies must be corrected through a combination of existing financing and project phasing or through adjustments to revenue, land use designations and/or level of service standards.

This element is one of six prepared for the City of Richland Comprehensive Plan: the Economic Development Element, the Land Use Element, the Transportation Element, the Utilities Element, the Capital Facilities Element, and the Housing Element. While each addresses in detail its specific area, all rely on common assumptions and goals that were developed for the overall Comprehensive Plan.

OVERALL CAPITAL FACILITIES GOALS AND POLICIES

GOALS AND POLICIES DEVELOPED FOR THE COMPREHENSIVE PLAN

The following goals and policies developed for the Comprehensive Plan apply to all capital facilities:

GCF Goal 1. The City will ensure that public facilities and services necessary to support development are sized and constructed to serve new development.

Policy 1 - The City will work with other purveyors of public services to provide facilities and services concurrent with development.

Policy 2 - The City will ensure convenient and safe student access to all school sites.

GCF Goal 2. The City will provide capital facilities that ensure environmentally sensitive, safe, and reliable service.

Policy 1 - The City will consider the environment and ways to minimize environmental impacts in siting, construction and use of all capital facility expansion and construction projects.

Policy 2 - The City will use the best available technology to mitigate adverse impacts resulting from capital facilities projects.

Policy 3 - The City will locate capital facilities identified as essential public facilities so as to provide the necessary service to the intended users with the least impact on surrounding land uses.

BENTON COUNTY-WIDE PLANNING POLICIES

The Benton County-Wide Planning Policies are a written policy statement that provides a framework for the development and adoption of county and city comprehensive plans. This framework is to ensure that city and county comprehensive plans are consistent, as required by the GMA. Benton County-Wide Planning Policies pertaining to capital facilities are as follows:

Policy #1 (to meet the requirements of RESHB 1025 Section 2(3)a): The Comprehensive Plans of Benton County and each of the cities therein shall be prepared and adopted with the objective of facilitating economic prosperity by accommodating growth in accord with the following:

3 - Public facilities and services. Ensure that those public facilities and services necessary to support development are available for occupancy and use without decreasing current service levels below locally established minimum standards.

5 - Permits: Applications for permits shall be processed in a timely and fair manner to ensure predictability.

7 - Open space and recreation: Encourage the retention of open space and the development of recreational opportunities; conserve fish and wildlife habitat; increase access to natural resource lands and water; develop parks.

10 - Public facilities and services: Ensure that public facilities and services necessary to support development are adequate to serve development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards. Except for water, sewer, streets, and power services, which shall be

available at the time of occupancy, "adequate" services shall be defined as either available at the time of occupancy, or shown on the current capital improvement plan to be a funded project within six years.

Policy #7 (to meet the requirements of RESHB 1025 Section 2(3)b): Within each Comprehensive Plan, the Land Use Plan for urban growth areas shall designate urban densities and indicate the general locations of greenbelt and open space areas. To the extent made practical by the natural features of the land form, open spaces and greenbelt shall be contiguous across jurisdictional lines, so as to enable their use as linked and contiguous recreational resources, including parks and bike and riding paths.

Policy #11 (to meet the requirements of RESHB 1025 Section 2(3)c): The County and cities within, along with public participation shall develop a cooperative regional process to site essential public facilities of regional and statewide importance.

Policy #21 (to meet the requirements of RESHB 1025 Section 2(3)h): Where Capital Improvement Plans and Land Use Plans involve land areas within, or tributary to, land within the urban growth areas, the county and cities, individually and jointly, shall routinely conduct fiscal analyses to identify and refine the most cost-effective long-term provision of regional and local public services and infrastructure.

c - Build-out scenarios should be factored into school, fire, and police service demand projections.

GROWTH MANAGEMENT ACT REQUIREMENTS

The following goals are outlined in the GMA and will be met by the City of Richland in the course of drafting, adopting, and implementing this Comprehensive Plan.

- GMA requires that the Comprehensive Plan include a Capital Facilities Element (Revised Code of Washington (RCW) 36.70A.070(3) and WAC 365-195-315).
- GMA requires local regulations that prohibit approval of development unless improvements or strategies to accommodate the impact of that development are in place at the time of development, or a financial commitment to complete such improvements or strategies is in place within six years (RCW 36.70A.070(6)). This "concurrency" requirement has been interpreted to extend to facilities other than transportation, including, but not limited to, water supply and sewers (WAC 365-195-060(3) and WAC 365-195-510).
- GMA requires that the Capital Facilities Element include a requirement to reassess the Land Use Element should funding for capital facilities fall short, and that these two plan elements and their proposed financing plans be coordinated and consistent (WAC 365-195-315(1)(e)).
- GMA authorizes local governments to impose impact fees on development activity as part of the financing of certain public facilities (RCW 82.02.050). Among the public facilities for which local governments can impose impact fees are publicly owned parks, open space, recreation facilities, and fire service facilities.

SECTION TWO

PARKS & RECREATION FACILITIES

The Parks and Recreation Facilities section of the Capital Facilities Element is based on information contained in the City of Richland 2006-2011 Parks, Trails and Open Space Master Plan (PTOSMP). This section presents an inventory of the City's existing parks and recreation facilities, identifies existing and future system deficiencies using adopted City standards for levels of service (LOS), and recommends measures to address the deficiencies.

GOALS AND POLICIES

GOALS AND POLICIES DEVELOPED FOR THE COMPREHENSIVE PLAN

The following goals and policies related to Parks & Recreation Facilities were developed for the Comprehensive Plan:

2006-2011 PARKS, TRAILS AND OPEN SPACE MASTER PLAN GOALS AND OBJECTIVES

The City prepared the following specific long-range goals and objectives for the planning period 2006-2011 for the 2006-2011 PTOSMP. These goals and objectives have been modified from those that were developed in 2002-2006. A goal is a statement of the City's aspirations as it relates to park and recreation service. It is the desirable quality that the City wishes to achieve. Objectives are working and measurable statements, which identify specific steps needed to achieve the stated goal. Often, one goal will have a number of objectives.

PTOSMP Goal 1. Provide an integrated system of parks, recreation facilities, trails and open spaces as an asset that enhances the community's quality of life.

Objective 1 - Develop a City-wide master plan for park and recreation facilities and programs based on the public need, and derived with public participation, and update it at intervals of no more than six years.

Objective 2 - Coordinate the development of City of Richland trails, open space and other recreational facilities and programs with other municipal recreational facilities development, where appropriate.

Objective 3 - Adopt city-wide park and trail signage standards.

Objective 4 - Develop and adopt a Master Plan for specific parks as necessary. Park Master Plans should be in place prior to the addition of any new facilities or extensive renovation of existing facilities.

PTOSMP Goal 2. Protect and provide responsible stewardship of the community's unique natural habitat, ecologically sensitive and scenic waterfront areas, and develop public recreational activities appropriate to these venues.

Objective 1 - Develop wildlife and vegetation management programs for ecologically sensitive areas. For jointly held areas or areas adjacent to the Richland UGA boundary, work in collaboration with other agencies to develop management programs.

Objective 2 - Provide opportunities to view and learn about natural wildlife and vegetation areas without adverse impact to the subject areas.

Objective 3 - Provide public access and use of the Columbia River and Yakima River shoreline in a manner that accommodates various uses but limits their impact on the natural environment.

Objective 4 - Continue to acquire additional open space to protect significant landforms, critical habitat areas, and appropriate native vegetation areas.

PTOSMP Goal 3. Enhance the community and region's cultural and historic heritage through features incorporated in community and regional parks.

Objective 1 - In cooperation with the Arts Commission, incorporate are in suitable public locations.

Objective 2 - Support the Public Facilities District in the planning and development of the Hanford Reach Interpretive Center.

PTOSMP Goal 4. Provide diverse active and passive recreational opportunities for residents and visitors of all ages, based on needs.

Objective 1 - Develop aquatic recreation programs to maximize the George Prout Pool facility.

Objective 2 - Track participation and interest in organized and individual recreation to determine trends and changing lifestyles.

Objective 3 - Periodically survey the community to determine interests and willingness to support recreational interests.

PTOSMP Goal 5. Extend and improve the multi-use trail system to link parks, community activity centers, schools, and employment centers.

Objective 1 - Complete "missing links" in present trails system.

Objective 2 - Complete off street trails from central Richland to Horn Rapids residential areas, parks and business centers.

Objective 3 - Complete the Keene Road Trail from Queensgate Drive to the west City limits.

Objective 4 - Complete improvements to the Riverfront Trail as designated in the Howard Amon Master Plan and Callison Plan.

Objective 5 - Reconstruct the Shelterbelt Park Trail.

Objective 6 - Complete the Stevens Drive Trail to Horn Rapids Road.

Objective 7 - Complete the Chamna Natural Preserve ADA Loop Trail.

Objective 8 - Complete the By-Pass Highway Trail from Van Giesen to Stevens Drive.

Objective 9 - Complete a downtown circular trail system utilizing Sutch Park, Columbia Playfield, Gillespie Parkway and Howard Amon Park.

PTOSMP Goal 6. Promote community beautification through enhancement of public spaces and thoroughfares, and encouragement of private property beautification.

Objective 1 - Improve the appearance of all city-owned space and major thoroughfares.

Objective 2 - Promote programs to improve landscaping of private property.

PTOSMP Goal 7. Fund facility development to the greatest extent practical with external sources of funds, e.g., grants, donations, in-kind contributions, fund-raising campaigns.

Objective 1 - Re-evaluate provisions for dedication of parkland or payment in lieu of for new subdivision plats and revise if deemed desirable.

Objective 2 - Seek wider range of possible grant sources.

Objective 3 - Encourage in-kind contributions and fundraising campaigns from user groups within the community.

Objective 4 - Investigate privatization of certain city-run programs and facilities if customer service, program/facility quality and consistency are maintained or improved and the economic impacts are favorable to the city.

PTOSMP Goal 8. Develop new parks and redevelop existing parks to provide amenities in accordance with master plans and citizen input.

Objective 1 - Complete a master plan for the Shelterbelt Park and implement.

Objective 2 - Develop trail head amenities at Westcliffe Park including parking, restroom and drinking fountain.

Objective 3 - Continue to improve park safety such as replacing old playground equipment, overlaying and reconstructing trails as necessary and installing appropriate signage.

Objective 4 - Make improvements to Horn Rapids Athletic Complex to improve safety and improve attractiveness of the park including new backstops, removing trees, tree roots in the outfields, and providing greater distances between fields.

Objective 5 - Construct restroom facilities at all Community Parks, larger Neighborhood Parks and the Chamna Natural Preserve.

Objective 6 - Complete reconstruction and enhancement of the Howard Amon Park parking lot and Lee Boulevard in accordance with the Howard Amon Park Master Plan.

Objective 7 - Review master plan, update and revise as necessary and complete renovations, per the master plan, to John Dam Plaza.

Objective 8 - Acquire the land west of the ORV Park, between SR-240 and Horn Rapids Road, for off-road vehicle use.

Objective 9 - Support the development of additional outdoor/indoor aquatic facilities, preferably through a regional facility.

Objective 10 - Develop a plan for the addition of water play areas.

PTOSMP Goal 9. Increase public awareness of park and recreation facilities and programs.

Objective 1 - Help citizens make full use of existing facilities through revised and clear maps and directions signs.

Objective 2 - Increase publicity through brochures, cable television, web site, event calendars, utility bill or newspaper inserts.

PTOSMP Goal 10. Provide Recreational Programming for City of Richland residents.

Objective 1 - Continue to work closely with the Richland School District and special user groups to promote joint use recreation programs and facilities.

Objective 2 - Provide programs for elementary school age children, teens, adults and seniors.

Objective 3 - Provide programs that satisfy the highest demand or need while keeping up with the latest recreational trends.

PTOSMP Goal 11. Maintain parks and facilities in a manner that exemplifies the City's passion for quality of life amenities.

Objective 1 - Seek partnerships or alternative funding sources for park and facility maintenance.

Objective 2 - Investigate and implement ways to reduce maintenance costs within existing parks.

Objective 3 - Create a public awareness and education class for citizen participation in park maintenance and development.

EXISTING CONDITIONS

WITHIN RICHLAND CITY LIMITS

Park & Recreation Agencies

Richland's parks and recreation activities are under the policy guidance of the Richland City Council, which appoints the Parks and Recreation Commission to advise the Council on matters related to policy. The administration of these policies, as well as the day-to-day operation, development, maintenance, programming, and scheduling of activities, is carried out by the Parks and Recreation Department under the Assistant City Manager.

The Planning and Capital Projects Division is responsible for the planning and development of new parks and improvements to existing parks.

The Recreation Division is responsible for the daily programming of City-owned recreational facilities, and provides a variety of sports and leisure services opportunities. Activities and programs include recreation, tourism, senior services, and athletics.

The Parks and Facilities Maintenance Division is responsible for the maintenance and renovation of all park facilities and other City-owned or controlled land and of municipally owned buildings.

Existing Park and Recreation Sites

The City of Richland has a total of 2,174 acres of city-owned park land within its corporate limits. Richland's park land inventory includes mini, neighborhood, community, regional, linear, natural open space, and special use parks. Each park's classification, acreage, and development status is shown in Table CF-1. The location of all parks is shown in Figure CF-1.

Trails and Bicycle Paths

The City has a system of trails, with Class 1 trails along the Columbia River, Keene Road and the By-Pass/SR-240 Highway/Stevens Drive corridor. The trail through the Yakima River delta and the Richland Wye area is a designated bicycle/pedestrian path that the City will complete in 2007 as a portion of the Sacagawea Heritage Trail. In addition, over 100 miles of city streets have been designated as bicycle routes. Links to other cities in the area are also included in the bike network. There are Secondary Tails in Badger Mt. Park, Desert Rim park, Marjorie Greenway McMurray Park, Paul Liddell Park and through the Sagewood Meadows neighborhood. Unpaved Trails exist in W.E. Johnson Park, Chamna natural Preserve, Bateman Island, James Lawless Park, South Columbia Point and along the Yakima River.

Other Recreational Activities

In addition to City-owned park land and indoor recreational facilities, other facilities include Badger Mountain Natural Preserve owned by Benton County, 68 acres of Corps of Engineers open space, Richland School District facilities, private schools, neighborhood private pool and/or tennis clubs, private health clubs, employer-provided facilities, public and private golf courses, roller skating, bowling, laser tag facilities, marinas, private groups specializing in boating, horseback riding, paintball waterskiing, and bow hunting, a number of churches providing indoor basketball courts, and a number of apartments and neighborhoods providing playgrounds, indoor gyms, pools, sport courts, racquetball courts, and fitness centers.

The Corps of Engineers manages two open space preserves in the Yakima River delta area, the Yakima Delta Habitat Management Unit, contains 268 acres of land south of the Yakima River on both sides of SR 240. The other area is 300 acres in the South Columbia Point area.

The Richland Community Center is available to all citizens of Richland. The Center serves as the venue for a wide variety of programs and activities designed for individuals and groups of all ages. The Center is used primarily for City sponsored and administered activities and programs. However, when not scheduled for City activities, some rooms are available for rental. A number of the facility's rooms are deigned and used as multi-purpose spaces for a variety of activities including aerobics, lectures, senior nutrition programs, dance classes, dinners, and wedding receptions.

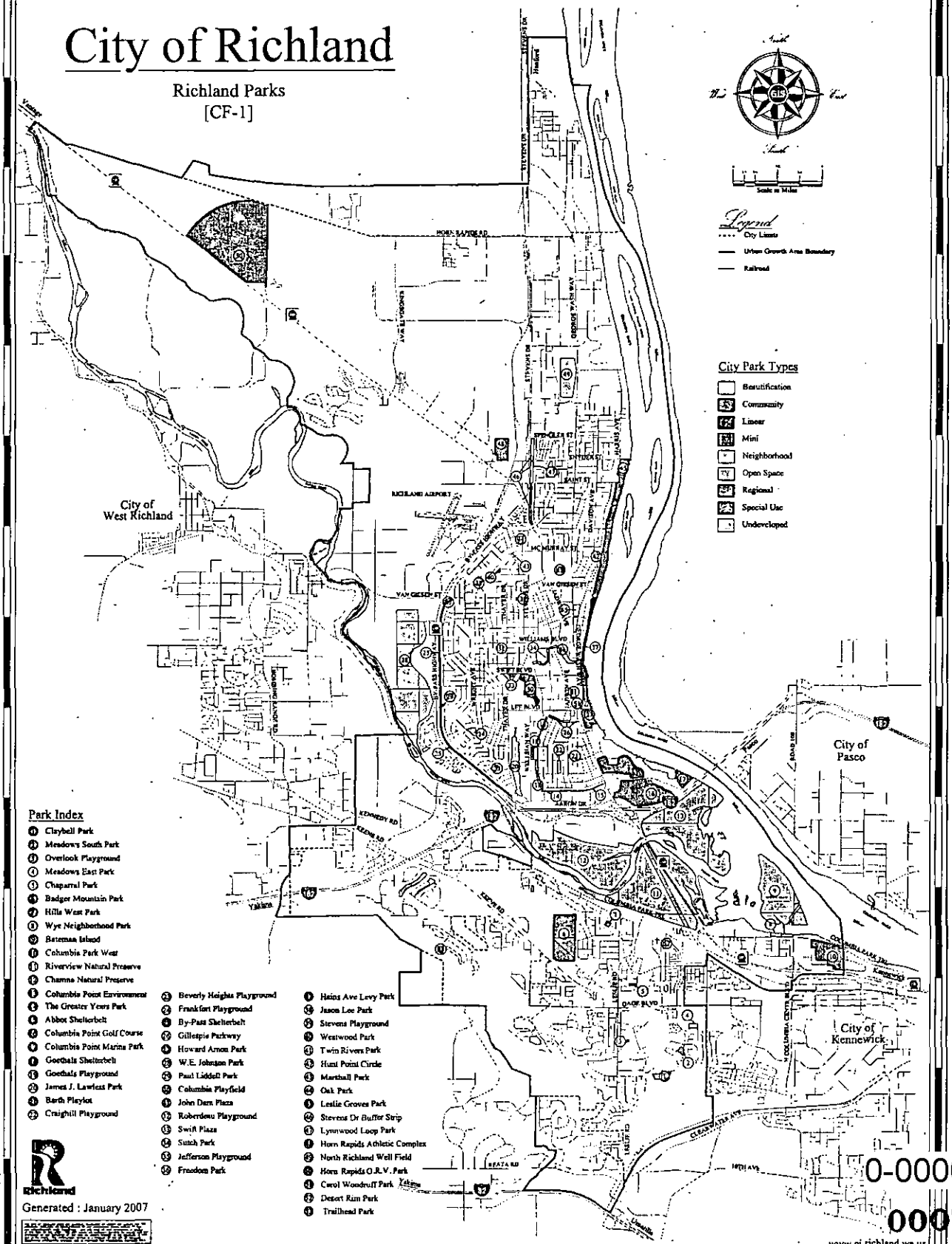
The Off Road Vehicle Park (ORV Park) has a public motor cross (MX) course, an All Terrain Vehicle (ATV) course, sand drag strip, four wheel drive team relay course, four wheel drive obstacle course, open trails, mini/pee-were MX track and RV camping. Portions of the park are leased to the for remote controlled airplanes, go-karts and sprint boat races.

The Horn Rapids Athletic Complex provides a public Bicycle Motor Cross (BMX) course and four men's softball fields.

The George Prout Aquatic Complex provides public swimming and swim classes. The facility has a 25 meter pool with dive tank and a 1,100 square foot wading pool.

City of Richland

Richland Parks
[CF-1]



Richland

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Columbia Playfield provides four lit softball fields for Girls fast pitch as well a as little league field. Badger Mountain Park and Jefferson Park provide five additional little league fields.

The City provides launch facilities and docks at Columbia Point Marina Park, Howard Amon Park, Columbia Park West, and Leslie Groves Park.

Jeannette Taylor Park contains a 23,000 square foot concrete skate park providing both street and bowl elements.

TABLE CF-1 INVENTORY OF CITY PARKS

Park	Acreage	Classification	Development Status
Abbot Shelterbelt	4.10	Linear	Trees
Badger Mountain Park	80.00	Community	Partially Developed
Barth Play Lot	0.35	Mini Park	Developed
Bateman Island	160.00	Natural Open Space	undeveloped
Beverly Heights Park	2.60	Neighborhood	Developed
Brookshire Park	2.50	Neighborhood	Undeveloped
Bypass Shelterbelt	55.74	Linear	Trees and Trailway
Carol Woodruff Plaza	0.10	Mini Park	Developed
Chamna Natural Preserve	276.00	Natural Open Space	To remain undeveloped
Chaparral Park	3.00	Neighborhood	Developed
Claybell Park	11.00	Neighborhood	Developed
Columbia Park West	65.00	Special Use	Partially Developed
Columbia Playfield (Includes George Pratt Pool)	28.89	Special Use	Developed
Columbia Point Environment	230.00	Natural Open Space	Undeveloped
Columbia Point Golf Course	170.00	Special Use	Developed
Columbia Point Marina Park	14.40	Special Use	Developed
Craighill Park	3.41	Neighborhood	Developed
Crested Hill Park	5.80	Undesignated	Undeveloped
Desert Springs Park	2.84	Neighborhood	Undeveloped
Frankfort Park	2.86	Neighborhood	Developed
GW Way/Aaron Drive Buffer Strip	0.4	Mini	Developed
Gillespie Parkway	5.80	Linear	Developed
Goethals Park	2.00	Neighborhood	Developed
Goethals Shelterbelt	15.00	Linear	Trees
Hains Avenue Levee Trail	19.00	Linear	Grass and Trailway
Heritage Hills Park	1.59	Neighborhood	Undeveloped
Hills West Park	2.06	Neighborhood	Developed
Horn Rapids Athletic Complex	24.00	Special Use	Developed
Howard Amon Park	45.91	Regional Park	Developed
Hunt Point Circle	0.38	Beautification Area	Developed
Jadwin/Stevens Triangle	1.50	Beautification Area	Partially Landscaped
James Lawless Park	34.00	Neighborhood	Undeveloped
Jason Lee Park	4.10	Neighborhood	Developed
Jeanette Taylor Park	2.02	Special Use	Developed
Jefferson Playground	8.71	Neighborhood	Developed
John Dam Plaza	3.9	Special Use	Developed
Keene Road Trail Corridor	78.7	Linear	Developed
Leslie Groves Park	149.20	Regional	Developed

Park	Acreage	Classification	Development Status
Lynnwood Loop Park	10.90	Neighborhood	Developed
Marjorie Sutch Greenway	14.60	Linear	Partially developed
Marshall Park	0.11	Mini	Developed
Meadows East Park	3.04	Neighborhood	Developed
North Richland Well Field	45.00	Undesignated	Undeveloped
Oak Park	3.10	Neighborhood	Developed
Overlook Park	0.91	Mini Park	Developed
Paul Liddell Park	2.75	Neighborhood	Developed
Richland ORV Park	300.00	Special Use	Partially Developed
Roberdeau Playground	3.10	Neighborhood	Developed
Stevens Drive Buffer Strip	16.27	Linear	Partially Undeveloped
Stevens Park	1.41	Neighborhood	Developed
Swift Parkway	1.50	Beautification Area	Developed
Tanglewood (Drolinger) Park	1.50	Neighborhood	Undeveloped
The Greater Years Park	0.24	Mini Park	Developed
Twin Rivers Park	3.04	Neighborhood	Undeveloped
W.E. Johnson Park	236.00	Natural Open Space	Partially Developed
Westwood Park	0.89	Mini Park	Developed
Wye Neighborhood Park	3.15	Neighborhood	Developed

Several neighborhoods, apartment complexes, private businesses, and churches throughout Richland have built private facilities, such as swimming pools, tennis courts, gymnasiums, gold courses, and playgrounds for their residents/members/employees. The construction and maintenance of these facilities is paid for from private funds and use of the facilities is usually open to members of the neighborhood for a monthly fee. These facilities are used extensively by the members. While these amenities are not considered in the inventory of available public facilities, private facilities reduce the demand on public facilities and allow the City to adjust downward its recommended LOS standards.

WITHIN THE UGA OUTSIDE RICHLAND CITY LIMITS

The Tapteal Greenway project, located along the Yakima River (Tapteal is the Native American name), is currently being established and planned by citizens, local jurisdictions, and various agencies to preserve a natural linear open space consisting of 30 river miles of the Yakima River and publicly owned lands adjacent to the lower Yakima River from Benton City to the confluence with the Columbia River in Richland. Greenway planning has identified the importance of protecting riverine wildlife and habitat; creating a varied recreational resource that includes a continuous trail system for non-motorized multi-model travel; protecting Native American and archeological sites; and promoting citizen stewardship of natural resources.

The Greenway is a regional network of linked open spaces serving the Tri-Cities and outlying areas. The planning area encompasses public lands in Richland, including Columbia Point, Bateman Island, the Yakima River Delta area, the Chamna Natural Preserve, and W.E. Johnson Park. The Tapteal Greenway Plan outlines activities and facilities to be constructed at each of these sites. The Plan states that these facilities should become a component of each jurisdiction's comprehensive plan. Accordingly, these facilities are included in the Capital Facilities Element.

La Pierre Field in South Richland is a single field American legion baseball facility.

A portion of the 574 acre Badger Mountain Preserve is located within the Urban Growth Area. The badger Mountain preserve was acquired by Benton County in 2005 and provides passive recreation activities.

No other formal parks or recreation facilities lie within the unincorporated UGA. Three residential subdivisions and a PUD in the southwestern-most part of the UGA contain several parcels designated as open areas. These parcels cover one-half acre or less, and have no formal designation for park or recreation use.

LEVEL OF SERVICE

The 2006-2011 Parks, Trails, and Open Space Master Plan uses a 2005 population of 43,520 and projected populations of 47,000 for 2010, 50,760 for 2015 and 75,000 for complete "build-out" of the urban growth area. For the purposes of this Comprehensive Plan, the 2005 population of 43,520 for the City of Richland was used to calculate existing deficiencies in park land and recreation facilities.

CITY OF RICHLAND LOS STANDARDS FOR PARKS AND FACILITIES

The comprehensive plan revised Richland's LOS standards for parks and recreation to be based on community input and comparison with other Pacific Northwest communities. This results in fewer deficiencies and a level of service that is more readily financed and supported by the public. The new standards are shown in Table CF-2. Whenever possible, neighborhood parks should be located within a 1-mile radius of areas they serve, while community parks should be within a 2-mile radius of the areas they serve.

TABLE CF-2 LEVEL OF SERVICE STANDARDS FOR PARKS AND RECREATION FACILITIES

LOS Standards for Parks		LOS Standards for Other Recreation Facilities	
Park Type	LOS Standard (acres per population)	Recreation Facility Type	LOS Standard (number per population)
Neighborhood Park	1.76/1,000	League Youth Baseball Fields	1 Field/5,000
Community Park	2.04/1,000	Practice Baseball Fields	1 Field/3,635
Regional Park	N/A	League Youth Softball Fields	1 Field/5,000
Special Use Areas	N/A	Practice Softball Fields	1 Field/3,232
Linear Park	N/A	Adult Softball Fields	1 Field/9,200
Natural Open Space	N/A	Indoor Basketball Courts	1 Court/4,600
		Indoor Volleyball Courts	1 Court/5,300
		Soccer Fields	1 Field/2,000
		Youth Football Fields	1 Field/7,400
		Golf Driving Range	1/50,000
		Golf 18-Hole Course	1/50,000
		Archery Range	1/50,000
		Skateboard	400 SF/1,000
		Outdoor Tennis Courts	1 Court/1,700
		Indoor Swimming Pools	184 SF/1,000
		Outdoor Aquatic Facilities	600SF/1,000

EXISTING DEFICIENCIES AND MITIGATION

The 2006-2011 Parks, Trails and Open Space Master Plan identifies service areas for Neighborhood Parks as a one mile radius. The plan identifies three new Neighborhood Parks within the Urban Growth Area, one in Horn Rapids, one in south Richland and one in the Rancho Reata area. There are two areas within the core Richland area that lie out side of park service boundaries, the residents north of Spring Street and east of GW Way and residents between Stevens Dr. and Jadwin Ave. north of Williams. Other areas of Richland have up to four parks providing service to the same area.

Based on the service area standards for Community parks there is a need for one additional Community Park in the south Richland 2006 annexation area, one in the Horn Rapids area and one in south Richland which is the proposed expansion of Claybell Park. In June of 2006 the City Council set aside 50 acres in the Horn Rapids area for a Community park thus eliminating that deficiency. With the acquisition of the Horn rapids property and if the expansion of Claybell Park is funded, all areas of the existing City limits are served by Community Parks with the exception of residents in the Van Giesen/Kingston/Jones Road area.

Special Use Parks, Regional Parks, and Open Space do not have a specific LOS as these types of parks are tied to an identified/specific use rather than a need based on population growth.

Table CF-3 shows how the City's existing inventory of facilities compares to facilities called for by the standards with the existing population.

TABLE CF-3 EXISTING PARKS AND RECREATION FACILITIES COMPARED TO STANDARDS

Existing Park Resources			Existing Recreation Facility Resources		
Park Type	1999 Inventory (acres)	2006 Inventory (acres)	Recreation Facility Type	2006 Inventory (number)	2006 Number Over (or Below) Standard
Neighborhood Park	76.38	79.48	League Youth Baseball Fields	8 Fields	(1 Fields)
Community Park	80.00	132.00	Practice Baseball Fields	7 Fields	(5 fields)
Regional Park	195.11	195.11	League Youth Softball Fields	4 Fields	(1 Field)
Special Use Areas	611.79	844.20	Practice Softball Fields	5 Fields	(9 Fields)
Linear Parks	130.51	240.31	Adult/ Softball Fields	4 Fields	1 Fields
Open Space Land	1170.00	682.00	Indoor Basketball Courts	21 Courts	11 Courts
			Indoor Volleyball Courts	10 Courts	2 Courts
			Soccer Fields	23 Fields	1 Field
			Youth Football Fields	4 Fields	(2 Fields)
			Golf Driving Range	3 Ranges	(2 Ranges)
			Golf 18-Hole Course	3 Courses	(2 Courses)
			Archery Range	1 Range	0 Ranges
			Skateboard/Bike Park	22,700 SF	5,292 SF
			Tennis Courts	20 Courts	6 Courts
			Indoor Swimming Pools	0 SF	(6,352 SF)
			Outdoor Aquatic Facilities	6,455 SF	(19,657 SF)

FUTURE DEFICIENCIES

METHODOLOGY

Population projections were used to calculate future needs for park land and recreation facilities.

The analysis assumes that many of the existing 2006-2011 park and recreational facility deficiencies will be corrected with the construction of the projects listed in Table CF-4. The analysis focuses on the future impact from the population growth. For linear parks and natural open space, the City's existing inventory is assumed to be adequate to meet future demand through the year 2015. The City currently has an inventory of 240 acres of linear parks, acres of special use parks, and 682 acres of natural open space. In calculating park land facility needs, the unit demand is rounded to the nearest whole number.

TABLE CF-4 PARKS, TRAILS, FACILITIES & OPEN SPACE 2006-2011 C.I.P.

Unfunded Capital Projects			
Item	Project	Potential Funding Source	Total Cost
1.	Columbia Point Marina Park Lighting (2007)	City	$60,000
2.	Stevens Drive Trailway Improvements (2009)	City/State	$355,000
3.	Chamna Natural Preserve (2007)	City	$68,000
4.	Columbia Point Tract D Riverfront Improvements (2007)	City	$70,000
5.	City.of Richland Dog Park (2011)	City/Private	$70,000
6.	Riverfront Trailway Lighting (2007)	City	$90,000
7.	Regional Aquatic Complex (2008)	City	$9,333,333
8.	Keene Road Bike Trail (2008)	City/State	$231,000
9.	Howard Amon Park Parking Lot (2009)	City	$127,600
10.	Howard Amon Park Riverfront Trail Improvements (2008-2010)	City	$480,000
11.	Parks & Facilities Storage Building (2009)	City	$225,000
12.	Claybell Park Restroom (2008)	City	$70,000
13.	John Dam Plaza Renovations (2010)	City	$500,000
14.	Howard Amon Park/Lee Blvd. Improvements (2010)	City	$383,750
15.	Develop new South Richland Neighborhood Park (2007)	City	$165,000
16.	ORV Park Irrigation Improvements	City	$150,000
TOTAL			$12,378,683

TABLE CF-5 FUNDED AND/OR PARTIALLY FUNDED CAPITAL PROJECTS

Item	Project	Status	Funding Source	Total Cost
1.	Playground Equipment & Safety Improvements (2007)		City	$155,000
2.	City Wide Trail Overlay (2007)		City	$65,000
3.	Horn rapids Safety Improvements (2007)		City	$100,000
4.	ADA parking Improvements (2007)		City	$40,000
5.	Howard Amon Park Irrigation (2006 $2007)		City	220,000
6.	Park & Trail Signage (2007)		City	$20,000
7.	Paul Liddell Park Playground (2007)		City	$45,000
8.	Westcliffe Park (2007)		Benton Co./City	$100,000
9.	By-Pass Shelterbelt Park (2007)		City/Federal	$700,000

10.	Badger Mt. Water Playground (2007)		City/State	$311,350
11.	Sacagawea Heritage Trail Linkage Construction (2006)		City/State	$646200
12.	Brookshire Park (2006)		City	$135,000
13.	Claybell Park Land Acquisition (2006)		City/State	$450,000
14.	South Richland Neighborhood Park land Acquisition (2006)		City	$255,000
15.	By-Pass Highway Trailway System (2007)		City/State	316,000
	TOTAL COST			$3,558,550

The cost for parks and recreation facilities depend on many factors, the number of playfields or courts, restroom facilities, site improvements (e.g., irrigation systems) and labor.

In determining planning level costs for parks and recreational facilities, it is assumed that the facilities would be developed on city-owned land, land traded for city land, or land dedicated by developers. Cost estimates for providing facilities are based on cost developed in support of revisions to the Richland Municipal Code - Dedication or Payment of Fee for Park, Recreation, and Open Space Land. Using this overall cost, an average park development cost of $90,000 per acre can be assumed; this estimate includes land costs.

POPULATION-BASED DEMAND

In 2006 the City Council established a 50 acre Community Park site in the Horn Rapids area, authorized staff to negotiate for a Neighborhood Park site in south Richland and set aside partial funding for the expansion of Claybell Park. The Horn Rapids Residential Community is obligated to provide a Neighborhood Park location. The acquisition of this park land should occur in late 2006 or 2007. These four park land acquisitions will meet all the existing neighbor hood and Community park deficiencies for the existing City limit boundaries. An additional Community park and one additional Neighborhood Park will be required to serve the future UGA on the south side of Badger Mountain.

There is also a need in the 2006 – 2011period for an additional 10 acres for additional sports fields.

The PTOSMP also identifies the need for additional aquatic facilities. A 5-6,000 square foot water spray playground in Badger Mountain Park has been budgeted in 2007. The proposed Tri City Regional Aquatic Facility would provide aquatic facilities to meet some of the demands or the City could opt to add additional facilities to the George Prout Pool Aquatic Center.

Tables CF-5 and CF-6 show how the City's growth in the first and second planning periods, respectively, will affect the existing facility inventory's ability to meet the standards. With the exception of neighborhood and community parks, the existing inventory of park land will accommodate this growth with a surplus of 244 acres. Additional recreation facilities that will be needed to meet the recreation facility standards in 2015 are listed in Table CF-6.

LOCATION OF PARKS AND RECREATION FACILITIES

In addition to specifying park acreage and number of recreation facilities per population, the adopted Richland LOS standards specify "service radius," a measure of how close park and recreation facilities are to the residential areas they serve. In 2006, the City Council established the service radius for Neighborhood Parks at up to one mile. This greatly reduced the need for additional park land and

provides many redundant parks throughout Richland. The one mile service radius provides park service to all but a very small portion of the existing city limits.

The service radius for Community Parks remains at 2 miles and the existing Community Parks with Claybell and Horn Rapids provide adequate coverage throughout the city with the exception of a small area in the Van Giesen/Kingston/Jones Road area.

TABLE CF-6 POPULATION-BASED DEMAND FOR 2015 STANDARD

Existing Park Resources			Existing Recreation Facility Resources		
Park Type	Demand to Meet 2015 Standard (Acres)	Additional Acreage Needed to Meet 2015 Standard	Recreation Facility Type	Demand to Meet 2015 Standard (number)	Additional Facilities Needed to Meet 2015 Standard
Neighborhood Park	80.61	8.60	League Youth Baseball Fields	10 Fields	3 Fields
Community Park	93.43	13.43	Practice Baseball Fields	14 Fields	1 Field
Regional Park	130.07	0.00	League Youth Softball Fields	10 Fields	6 Fields
Special Use Areas	421.82	0.00	Practice Softball Fields	16 Fields	12 Fields
Linear Parks	98.47	0.00	Adult Softball Fields	6 Fields	2 Field
Natural Open Space	1,015.39	0.00	Indoor Basketball Courts	11 Courts	0 Courts
			Indoor Volleyball Courts	10 Courts	0 Courts
			Soccer Fields	25 Fields	2 Fields
			Youth Football Fields	7 Fields	3 Fields
			Golf Driving Range	1 Range	0 Range
			Golf 18-Hole Course	1 Course	0 Course
			Archery Range	1 Range	0 Range
			Skateboard	20,304 SF	0 SF
			Outdoor Tennis Courts	30 Courts	10 Courts
			Indoor Swimming Pools	9,340 SF	9,340 SF
			Outdoor Aquatic Facilities*	30,456 SF.	24,001SF

*Reflects retirement of George Prout Pool (12,300 sq. ft.) at the end of 2002 swimming season and construction of a 25-yard "L-shaped" pool (4,640 sq. ft.) in time for start of 2003 swimming season.

OPEN SPACE

Developed Open Space includes golf courses, federal power transmission and irrigation wasteway easements, private open space, Mini, Neighborhood, Community, Regional, Special Use, and Lineal parks r. Natural Open Space consists of land intended to remain largely undeveloped over the long term with limited public access, including Bateman Island, Chamna Natural Preserve, South Columbia Point, and Badger Mountain Natural Open Space would be limited to passive recreational use such as nature viewing and hiking.

RECOMMENDATIONS

Park and recreational facility improvements will be met through proactive long-term planning. The City's goals and policies will promote the expansion of existing park land, open space, and recreational trails and green belts; establish set-asides for parks adjacent to new development; support the creation of cultural and recreational facilities; ensure the allocation of land for parks in residential areas; and ensure that LOS standard are met. They will meet the state's concurrency requirement that local jurisdictions have facilities available as demand develops.

The following recommendations have already been incorporated into the Comprehensive Plan:

- Modify LOS standards to levels that the City residents can support financially and politically.
- Use other county, federal or regional facilities a reasonable distance from Richland toward meeting LOS standards for regional parks.

The Plan also includes goals and policies ensuring that improvements and acquisitions for park and recreational facilities are provided and funded concurrently with new development.

New park and recreation facility development is recommended to mitigate the impacts of expected residential growth in south Richland and the Horn Rapids area, and the north central part of the City along the Columbia River.

The Land Use Element of the Comprehensive Plan designates substantial areas along the Columbia and Yakima Rivers as public facility, open space, natural open space, developed open space and agriculture. The land use changes, along with measures linking parks and maintaining adequate easements for Tapteal Greenway, will help maintain a healthy park and recreation facility network accessible for use by all Richland citizens. Specific linking measures include retaining shoreline views of the Columbia River near the Columbia Point development, incorporating the Tapteal Greenway into the City's planning process, retaining adequate easements for the Tapteal Greenway, and maintaining continuous open space and setbacks along the Columbia and Yakima Rivers.

Further measures that could be used to address deficiencies in parks and recreation facilities are as follows:

- Reevaluate developer impact fees to help pay for improvement needs associated with new development.
- Reevaluate process for developer land dedication.

SECTION THREE

SCHOOLS

The Growth Management Act requires school districts to prepare a six-year capital facilities plan to help determine when new schools will be needed, and what funds will be available for these facilities. The Richland School District passed a bond in April 2003 to renovate and build new facilities at Richland High School, Hanford High School and Jason Lee Elementary School. In addition the bond provided funding for the construction of a new middle school in West Richland to replace Hanford Middle School. Finally, the bond provided funding to construct a new elementary school in south Richland by May 2009.

This section of the Capital Facilities Element is based on information provided by the Richland School District. It describes goals and policies specific to school facilities; provides an inventory of the District's facilities; and describes adopted level of service standards, existing and future system deficiencies, and scheduled and recommended improvements.

GOALS AND POLICIES

The Comprehensive Plan includes the following capital facilities goal for schools:

CFS Goal 1. The City will work with the Richland School District to make investments in upgrading school facilities.

In addition, some of the LOS standards provided by the District are goal and policy oriented. The Benton County-Wide Planning Policies and GMA requirements for capital facilities provide a framework for the development and adoption of county and city comprehensive plans.

Existing Conditions

The Richland School District serves the City of Richland and draws some children from unincorporated Benton County and the Cities of Kennewick and West Richland. Some Richland residents attend Kennewick schools. Tapteal and William Elementary Schools are located in West Richland. Enterprise Middle School, to be located in West Richland, is planned for construction in 2004-05. It will replace Hanford Middle School currently located in north Richland. All other school facilities on the Richland School District are within Richland city limits.

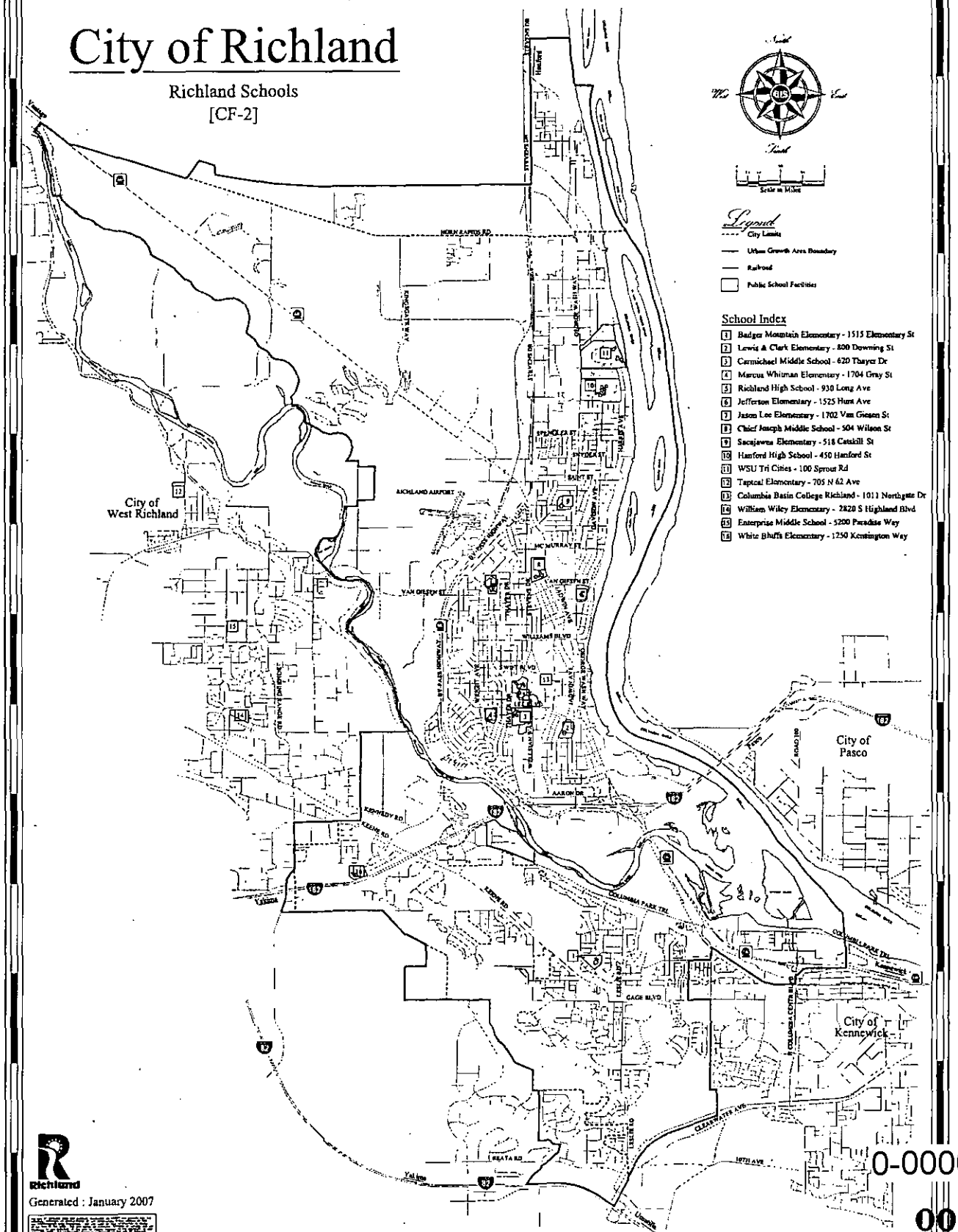
Richland School District Number 400 currently has eight elementary schools, three middle schools, and three high schools. Richland students also attend one elementary, one middle, and one high school in the Kennewick School District. Locations of Richland's school facilities are shown in Figure CF-2. Table CF-7 describes facilities in both school districts, and Table CF-8 lists the special purpose facilities, such as gymnasiums and libraries, in Richland schools.

TABLE CF-7 SCHOOL BUILDINGS

	Building Area (square feet)	Grounds (acres)	Main Buildings	Classrooms	Portables
Richland School District					
Elementary Schools					
Badger Mountain	48,371	15	1	25	8

City of Richland

Richland Schools
[CF-2]



Richland

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	Building Area (square feet)	Grounds (acres)	Main Buildings	Classrooms	Portables
Jason Lee	78,905	17	1	28	3
Jefferson	50,882	12	2	24	3
Lewis and Clark	43,412	15	1	20	4
Marcus Whitman	43,312	13	1	20	4
Sacajawea	44,100	16	1	21	2
Tapteal	48,371	15	1	25	5
William Wiley	49,138	13.5	1	25	27
Middle Schools					
Carmichael	107,066	26	1	31	3
Chief Joseph	116,837	22	1	31	0
Enterprise	91,300		1	36	0
High Schools					
Richland High	271,536	35	6	69	0
Hanford High	243,031	72	8	75	0
Rivers Edge	8,811	1	1	6	0
Kennewick School District					
Elementary School					
Vista	38,026	11.5	1	20	1
Middle School					
Desert Hills	88,362	20	4	37	1
High School					
Kamiakin	192,841	30	5	67	12

Source: Richland School District, 2004.

TABLE CF-8 RICHLAND SCHOOL DISTRICT SPECIAL-PURPOSE FACILITIES

School	Gymnasiums	Auditoriums	Cafeterias	Libraries
Badger Mountain	1	0	0	1
Jason Lee	1	1	1	1
Jefferson	1	0	0	1
Lewis and Clark	1	0	0	1
Marcus Whitman	1	0	0	1
Sacajawea	1	0	0	1
Tapteal	1	0	0	1
William Wiley	1	0	0	1
Carmichael	2	1	1	1
Chief Joseph	2	1	1	1
Richland High	3	1	1	1
Hanford Middle and High	3	1	1	1
Rivers Edge (Alternative)	0	0	0	0

Source: Richland School District, 2004.

The Richland District currently has an inventory of four undeveloped sites that could be developed, traded, or sold, depending on the need to house students:

- Site 1 - West Richland; 40 acres, north side of Paradise Road west of Bombing Range Road. This die will be developed as Enterprise Middle School.
- Site 2 - Benton County; 20 acres, west side of Dallas Road south of I-82.

- Site 3 - Benton County; 14 acres, middle of orchard on south side of Badger Mountain, one-quarter mile southeast of Gage extension (Milo Bauder's land).
- Site 4 - Richland - 16.77 acres, located on Kensington Way and Ruby Streets - designated site for elementary school.

Student full-time equivalent (FTE) enrollment in the Richland School District was 9,276 for the 2003-04 school year (see Table CF-9). Richland school officials expected a 2 percent decrease in enrollment during the 2003-04 school year, but enrollment actually increased by 1.0 percent. During the 1994-95 school year the Richland School District experienced overcrowding in some of its classrooms; 53 portable classrooms were needed to accommodate all the students. The 2003 Facilities Planning Committee Report to the School Board recommends building an elementary school in south Richland at Site 4 because the Badger Mountain and Tapteal elementary schools in those areas are the most severely crowded.

TABLE CF-9 STUDENT ENROLLMENT, 2003 - 2004

Grade	K	1	2	3	4	5	6	7	8	9	10	11	12	Total
FTE Enrollment	320	631	711	670	654	699	751	786	791	843	817	813	822	9,308

Source: Richland School District, 2004.

The District had a staff of approximately 1,200 full-time certified staff at the end of the 2003-04 school year. The staff included nearly 600 certified positions, including teachers and administrators.

LEVEL OF SERVICE

EXISTING LOS STANDARDS

The LOS for Richland schools is based on standards of services recommended by the Richland School District Facilities Committee in May 1996 and revised in 2003 for adoption by the School District. Standards were developed to define the quality expected for grade structure, enrollment, program capacity, curriculum, neighborhood schools, and school safety.

Grade Structure

The current grade structure is as follows:

- Elementary: Grades kindergarten through 5
- Middle: Grades 6 through 8
- High: Grades 9 through 12.
- Capacity

Schools will be designed to accommodate the following:

- Elementary: 450 to 550 students per school
- Middle: 650 to 750 students per school
- High: 1,500 to 1,750 students per school.

Program Capacity

The number of students a facility can accommodate (its program capacity) is determined by the current curriculum and the current pupil-teacher ratio. Changes in curriculum or pupil-teacher ratio will change a facility's program capacity. Capacity refers only to permanent facilities.

Because population changes throughout the school year, the District must use temporary facilities or interim measures to house students until permanent facilities can be built or boundary adjustments made. In most cases, it does not make sense to build or remodel a facility to accommodate slight changes in enrollment (e.g., 25 students).

Curriculum

School facilities shall support the District's current curriculum. Therefore, the curriculum adoption plan will provide guidance for adequate planning and funding at least five years in advance for new needs or changes to facilities.

Elementary Schools

Besides the general classrooms for grade-level groupings, the following specialized teaching stations will be provided at each elementary school:

- Learning resource center
- Computer lab
- Gymnasium
- Music room
- Special education resource room
- Art room
- Play fields
- Science room

Some elementary schools may have other specialized rooms to serve District needs.

Secondary Schools

In addition to the general classrooms for language arts, social studies, mathematics, science and other general academic programs, the following specialized teaching stations are required at each secondary (middle or high) school:

- Learning resource center
- Computers
- Special education resource rooms
- Gymnasiums
- Vocal/instrumental music rooms
- Art rooms
- Science labs

- Vocational labs (high schools)
- Home and family labs
- Play fields

Some secondary schools may have special classrooms to service District needs.

Neighborhood Schools

The Richland School District recognizes and supports the importance of neighborhood schools. These schools serve as a neighborhood center and provide a sense of community to the families they serve. Students who attend such schools acquire a sense of belonging and stability, and their education progress is enhanced. To support the concept of neighborhood schools, the Richland School District shall define attendance zones for elementary, middle, and high schools based on the following guidelines:

- Zones will be based on existing neighborhoods and natural boundaries.
- Zones will recognize areas of potential population change and accommodate minor enrollment shifts without redistricting.
- Zones will maximize safe walking and minimize busing.
- *Zones will support the District's ability to provide diversity and equity in education.*
- Zones will maximize the potential for students in a neighborhood to progress together from elementary to middle and high school.

School Safety

Schools will be designed with personal and property safety in mind; students, teachers, administrators, maintenance staff, and members of the community will help maintain and protect school property to provide a safe and healthy environment in which to learn.

EXISTING DEFICIENCIES AND MITIGATION

The Richland School District is required by the State of Washington to provide annual enrollment projections. The District uses the Cohort Survival Method, with consideration of other factors, as the basis for these projections. The Cohort Survival Method uses a five-year average of the percent of students progressing from grade to grade. The average over the most recently completed five-year period is used to project enrollment for the next five years.

A long range planning study, done for the school district by E.D. Hovee & Company in 2002, developed projections and long range enrollment trends in four areas of the school district: north Richland, central Richalnd, southern Richland, and West Richland. These planning projections, *summarized below were used to develop the bond issue in 2003.*

SCHOOL POPULATION TRENDS

- For the next 25 years, Richland School District enrollment will continue to be linked closely to projects in the Hanford area.
- New residents vs. internal growth will primarily drive population growth.

- Over the last decade net immigration has been more consistent and outpacing the previous two decades, combined.
- Population trends in the Richland School District closely track countywide trends.
- After a decade of population loss the district experienced a significant population boom:
- 60% of the growth occurred in Richland.
- West Richland more than doubled in size capturing 40% of the growth.
- The Richland School District has a slightly different demographic mix than Benton County.
- The proportion under 20 is stable.
- The proportion and number of young adults is holding steady.
- The proportion and number of family age adults remains constant but shows growing numbers.
- The senior population is growing.
- Over the past 30 years birth rates have remained steady.
- Enrollment growth has mirrored population trends but K thru 5 and 6 thru 8 populations have flattened.
- K thru 5 enrollment has hovered between 3,800 - 4,100 over the last decade.
- Middle School enrollment is averaging 2,100 - 2,200 per year.
- High School enrollment continues to grow, adding 100 students per year.
- Population is forecasted to reach 73,780 by the year 2026.
- The most rapid rate of growth is projected to occur through 2010, averaging 1,140 residents per year.
- Growth after 2010 is forecast to subside to 890 per year.
- West Richland is projected to continue to capture 40% or more of growth.

The Hovee Report made enrollment predictions based on the study data that were used by the school district's Facilities Planning Committee in long range planning for school modernization and construction of new facilities. Those enrollment predictions include the following:

- Northern and central Richland student populations will decline slightly over the next 25 years.
- South Richland student population is also projected to decline but growth capacity may shift demographic trends and the area should be monitored.
- Southwest Richland and West Richland student population is expected to increase significantly.

FUTURE DEFICIENCIES

LONG RANGE PLAN

Purpose and Process

Recognizing quality educational facilities are a contributing factor for quality educational programs, the Richland School District Board of Directors directed that a Long-Term Strategic Facilities Plan be developed. The purpose of the study was to review the adequacy of the district's facilities as compared to the current and future educational needs of the students. In addition to comparing current facilities to projected needs, alternatives were also suggested to assist in meeting future housing.

To conduct the study a Facilities Advisory Committee was appointed composed of community members, and City of Richland, City of West Richland, and district staff. The committee used a 25-year planning horizon in their forecast of comparing what is to what should be. It was recognized that 25 years is a long time to project needs of the district but maintained the constant premise that students must have access to quality programs and buildings.

Using the information assembled in the Facilities Plan, the committee developed a modernization sequence for the building upgrades. It was noted in the studies that most of the buildings were built in the 1950s, 1960s, and 1970s with minimal upgrades since construction. The exceptions to this finding were the renovation of Chief Joseph Middle School and Carmichael Middle School and the construction of the new Wiley Elementary School.

As a result of the committee's studies a bond issue was put before the patrons of the school district in the winter of 2000. That issue did not receive the sixty per cent approval. In the spring of 2001 a revised bond issue was sent to the community and again did not achieve the sixty per cent approval.

During the 2001-2002 school year a new Facilities Advisory Committee was formed to review former committee's studies, cost estimates, and recommendations and suggest a new capital improvement plan to the Board of Directors for consideration.

The Facilities Advisory Committee presented their recommendation to the Board of Directors January 2003. The capital projects plan was passed by the voters in April of 2003 receiving sixty-four percent approval.

RECOMMENDATIONS

ISSUES STUDIED

The committee's study encompassed the evaluation of Jason Lee Elementary, Richland High School, and the Hanford Secondary Complex and the need for additional elementary space. A major issue reviewed by the district was the condition of the school buildings and their ability to provide a safe, healthful environment within which the educational process can take place now and into the future. The delivery of sound educational programs is of utmost importance. Given the substantial amount of money invested in facilities by the community, the patrons should have a right to expect a superior educational environment.

The Richland School District's review resulted in several recommendations to guide future decisions:

- Closely monitor enrollment growth and changing demographic patterns to determine timing for new school facilities, especially at the elementary level.
- Many of the district's current facilities are nearing the end of their original useful lives. Therefore a time-phased plan should be put in place to make major renovations and/or replacement of facilities. The plan is to include maximum use of state matching funds.
- All renovation plans should consider appropriate instructional space for the delivery of curriculum particular to the level.
- Dedicate sufficient resources for the development of a technology infrastructure when facilities are renovated.

- New standards of maintenance should be adopted and funds should be committed to programs of preventative maintenance and regular repair to protect and maintain future capital investments.
- When issues arise surrounding the adequacy of capacity at schools, viable alternatives should be developed with specific facts and data about particular situations.
- Due to constant changes in the field of education, an on-going facilities planning committee should be established and supported.

Outcomes of the Study

The outcomes of the study and resultant proposed actions were to:

1. Ensure facilities are supportive of the educational programs of the Richland School District;
2. Ensure school facilities provide a safe and healthful environment;
3. Ensure school facilities are operated in the most cost-effective manner;
4. Ensure that adequate space to house students and programs is provided at appropriate times.

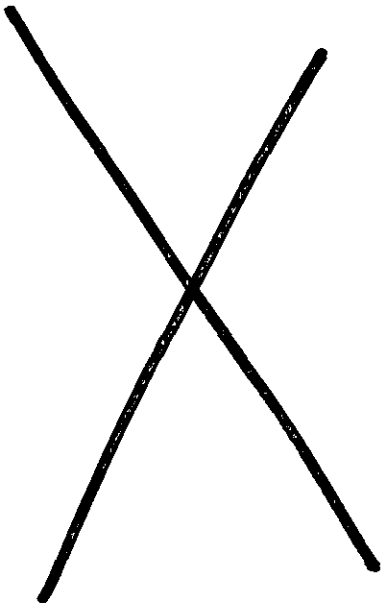
School Facilities Needs in the Richland School District in 2003

Upon the completion of their long-range school facility studies and other extensive reports, the Board of Directors approved several building projects. The study resulted in a plan to make the following school building improvements.

- Replace Hanford Middle School with a new school on a new site.
- Modernize Richland High School.
- Modernize Hanford High School.
- Modernize Jason Lee Elementary School.
- Build a new elementary school in South Richland.

This construction program is intended to extend the useful lives of these buildings to 30 years or more. In addition, the Superintendent of Public Instruction and the State Board of Education are being asked to provide financial assistance for which a bond issue has been approved to provide the local funds necessary for the following projects:

- Replacement of Hanford Middle School
- Modernization of Richland High School
- Modernization of Hanford High School
- Modernization of Jason Lee Elementary
- Construct a new elementary school



PREFACE

The Benton-Franklin Council of Governments (BFCG) serves as the lead agency for both the Tri-Cities Metropolitan Planning Organization (MPO) and the Benton-Franklin-Walla Walla Regional Transportation Planning Organization (RTPO). In accordance with state and federal transportation planning requirements, the BFCG has coordinated with area jurisdictions in the development of this combined Regional and Metropolitan Transportation Plan.

The intents of this long-range transportation plan are to establish the vision for the region and provide the means to attain that vision. It identifies the issues and concerns associated with the transportation system in the region, as well as the policies and specific programs intended to address those concerns. The plan provides an inventory of the current system as well as providing metropolitan area forecasts for population, employment, and traffic to be anticipated during the life of the plan.

Development of the *2011-2032 Metropolitan & Regional Transportation Plan* required the efforts of local area planners and engineering staff from each of the BFCG's member agencies. In addition, elected officials from each agency aided in formulating the policies contained in the plan and the review of its' content. BFCG staff was integral in providing the layout of the plan, the coordination of interacting with the many members, as well as the collection of information and efforts described within the plan. Without the collective effort of all involved, successful formulation of the plan would not be possible.

The *2011-2032 Metropolitan &Regional Transportation Plan* (RTP) replaces the 2006-2025 RTP. This combined urban/rural document eliminates duplication; provides a comprehensive vision for the entire region; and meets both the state planning requirements of the Growth Management Act (GMA) and the federal requirements of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

Over the coming years this plan will be updated to reflect policy changes, technological advances, funding options, and other "course corrections." This document is intended to be a dynamic guide to achieving the regional vision.

WUTC DOCKET TR-130499
EXHIBIT RS-4
ADMIT ☒ W/D ☐ REJECT ☐

EXECUTIVE SUMMARY

THE PLAN

This Metropolitan and Regional Transportation Plan (RTP) is a compilation of coordinated city, county, and state planning efforts for the Tri-Cities Urban Area (MPO) and the Benton-Franklin-Walla Walla Counties region (RTPO). The plan is in accord with state and federal guidelines and requirements.

The plan is based on least cost planning methodologies to attain the most cost-effective facilities, services, and programs that function as an integrated multi-modal regional transportation system; ensures preservation of that system; and makes efficient use of facilities to relieve congestion and maximize mobility of people and goods.

The plan presents regional level of service standards; evaluates the operational level of service of regional facilities for current conditions and for ten and twenty year horizons; assesses current and future capacity deficiencies; presents short, medium, and long-range transportation projects of each regional jurisdiction; presents a financial plan demonstrating how the transportation plan will be implemented; and includes goals, policies, and action strategies to guide the planning process for the next twenty years.

The plan establishes consistency with the jurisdictional six-year Transportation Improvement Programs (TIPs) and the MPO/RTPO TIP; the transit development programs of Ben Franklin Transit and Valley Transit; the land use and transportation elements of city and county comprehensive plans; and the Washington Transportation Plan.

BACKGROUND

The RTP was developed through a cooperative process that involved the BFCG, WSDOT, the public, and the efforts of the three counties, 13 cities, four ports, and two transit agencies that constitute the MPO/RTPO of the region.

The analysis for the Tri-Cities Urban Area and periphery utilized a computer traffic model to forecast future traffic volumes and levels of service. The Tri-Cities model area includes the Tri-Cities urbanized area and some adjacent areas in Benton, Franklin, and Walla Walla counties, including travel to and from the Hanford Reservation. Those future travel demand estimates were direct results of forecasts of changes in the level of urban development. One of the most important aspects of the urban transportation planning process is the forecasting of future development in terms of population and employment.

Total population within the Tri-City model area during 2010 was nearly 214,000. By 2020, the area is forecast to grow by 48,565 people for a total population over 263,500. During the second decade, the addition of nearly 48,000 is forecast to bring the 2030 total population to 310,504 people within the model area. This equates to model area increase of 96,527 over the twenty-year period, or an annual increase of 2.3 percent.

Employment and forecasted employment is stated by number of employees for most land use categories. There are, however, some categories that are measure in other means - such as schools being reflected by the number of students, or hotels being measured by the number

of rooms for example. For the purposes of discussion, employment values within this section refer only to those categories measured by employee.

Within the model area in 2010, total employees were estimated at 69,271. Forecasted employment for 2020, show an increase of 6,249 employees bringing the area total to 75,520. By the year 2030, an additional 11,675 employees were forecast to be employed within the area resulting in a total of 87,195. Employment forecasts are reflective of the anticipated downturn in total employment associated with the Hanford cleanup mission. In total, employment forecasts show an increase of nearly 18,000 employees or an annual growth rate of 1.3 percent for the twenty-year period.

MAJOR REGIONAL ISSUES

Regional transportation issues that were identified by the local transportation committees when developing the plan were:

Preservation and Maintenance. Smaller jurisdictions have difficulty transferring general revenues to street maintenance when those funds are severely needed. Additionally, much of the available grant funding is restricted to federally classified routes, leaving local road maintenance underfunded. Long-term maintenance deferral leads to system deterioration.

Safety Deficiencies. Physical deficiencies or items that do not meet current engineering standards may include horizontal and vertical alignments, intersections, stopping sight distance, inadequate or nonexistent shoulders, narrow lanes, roadside hazards, lack of protective guardrails, narrow bridges, and warning devices at railroad crossings. Obtaining funds to implement remedial measures is an on-going problem.

Automobile Dependence. Both the volumes of traffic on our streets and highways and the vehicle miles traveled by individual vehicles are increasing. Funding capacity improvements to keep pace with the demand is an on-going challenge.

The Hanford Site work commute changed when the Department of Energy eliminated their bus fleet and allowed private vehicles on the site. A BFCG survey performed every other year finds the daily Hanford-bound commute through Richland consisting of approximately 88 percent single-occupancy and 10 -12 percent carpool and vanpool. The nuclear waste treatment plant currently under construction is adding another 1,000-2,000 workers (numbers fluctuate) into the Hanford commute.

The morning commute to Hanford on SR 240 operates well within the capacity of this corridor due to staggered and variable work shifts. However, the afternoon return commute is more compressed, resulting in significantly more congestion and delays.

Ben Franklin Transit's vanpool program helps ease the Hanford corridor congestion.

The Tri-Cities area was again granted a two year exemption (effective June 30th 2011) from implementing a state mandated Commute Trip Reduction Program that will affect major employers, including the Department of Energy and their prime Hanford contractors.

Inter-City Bus Service. In 2004, Greyhound discontinued service to Connell, Prosser, Richland and Walla Walla. With WSDOT support, the "Grape Line" bus service has attempted to fill part of that void between Pasco and Walla Walla.

Stampede Pass Rail Impacts. Reopening the Stampede Pass rail line has resulted in traffic impacts in Pasco, Kennewick, Prosser, and other communities up the Yakima Valley. Grade separations have been constructed at the Interstate 82 Kiona Interchange (Exit 96), Ainsworth Avenue (SR 397) in Pasco and Columbia Center in Kennewick. In 2011 BNSF is scheduled to begin bridge construction for a grade separated crossing of Steptoe Street as part of a joint Kennewick/Richland project extending Steptoe Street between Clearwater Avenue and Gage Boulevard. Additional work is needed.

Snake River Draw Down/Dam Breaching. The impacts to road and rail transportation associated with the potential loss of barge traffic on the Snake River are extensive. There is no mechanism in place to finance the capacity improvements that would be needed to continue those freight commodity movements. The BFCG Board has gone on record *(resolution) opposing any dam breaching or pool draw downs.*

Columbia and Snake River Dredging. The Columbia River Channel Improvements Project was a collaborative effort between the U.S. Army Corps of Engineers and six lower Columbia River ports to improve navigation by deepening the navigation channel to accommodate the current fleet of international bulk cargo and container ships. The Corps completed the last section of the Project in November 2010, finishing an effort that took more than 20 years to complete. The project deepened the Columbia River by three feet, to 43 feet along a 103-mile stretch of river from the Pacific Ocean to Portland, Oregon. Additionally, following favorable court action, the Corps of Engineers completed the necessary dredging on the Snake River in the winter of 2005-2006. Siltation is again expected to necessitate dredging in 5-7 years.

Seasonal Weight Restrictions. Seasonal weight restrictions during freeze/thaw cycles of late winter and early spring affect 85 percent of the regional rural county freight and goods routes. This impacts delivery of farm commodities from scattered rural storage facilities to railheads and water ports. The process of all-weather surfacing these vital freight routes is moving slowly for lack of adequate funds.

Preservation of Light Density Rail Lines. Four light density, or branch lines, operate in the RTPO. Branch line operations provide competitive alternatives to shipping by barge or truck as well as reducing traffic congestion and maintenance requirements on state and local roads. Branch lines tend to operate on slim profit margins, resulting in deferred maintenance and potential abandonment. State financial support and a grain car program have helped to keep them running. Continued support will likely be needed to preserve these freight options.

Decline of Dedicated Transportation Funds. The 1999 repeal of the State Motor Vehicle Excise Tax was followed by two subsequent state gasoline tax increases. One of those increases marginally addressed funds for cities and counties, extending city and county transportation program needs.

The growth in the state's population, number of licensed vehicles, and vehicle miles traveled indicate the need for appropriate increases in transportation funding for cities and counties to offset increased maintenance costs, pavement overlays and capacity improvement needs. The Washington Transportation Plan further emphasizes those needs.

GOALS AND POLICIES

Regional transportation goals and policies were developed by the Transportation Technical Advisory Committee and Policy Advisory Committee, public input, and the BFCG to guide jurisdictional actions related to transportation planning. As an integral part of the adopted plan, the goals and policies should be reviewed on an ongoing basis for currency and consistency. Agencies may choose to adopt some or all of the policy statements as part of their local transportation or land use planning processes. The policies include:

1. Access
2. Efficiency
3. Balance
4. Safety & Security
5. Safety Conscious Planning
6. Environmental Responsibility
7. Transportation Financing
8. Intergovernmental Cooperation
9. Citizen Involvement and Public Education
10. Livability, Sustainability, & Land Use
11. Pedestrians and Bicycles
12. Transit Element
13. Transportation Demand Management/ Commute Trip Reduction
14. Streets and Highways
15. Air/Waterways/Rail
16. Freight Movement
17. Intermodalism
18. Transportation and Economic
19. Maintenance and Preservation

TRI-CITIES DEFICIENCY ANALYSIS (MPO)

City of Richland - Current congestion exists upon George Washington Way's (GWW) southern portion, with numerous delays experienced at signalized intersections with local cross-streets. SR 240 eastbound, between Route 10 and Stevens Drive, operates under congestion during the PM commute, while the SR 240 southbound "Bypass" traffic experiences delays at the six signalized intersections within this section. SR 240 eastbound ramp to I-182 westbound (toward Queensgate Drive) experiences congestion associated with the higher volumes and required weave movements accessing the westbound ramps.

Forecasts for the year 2020 show conditions along GWW will worsen with congested segments appearing further north. The I-182/GWW interchange will become increasingly busy, with some movements likely near capacity. SR 240 eastbound between Kingsgate Way and Stevens Drive is forecast to operate as congested. The Duportail Bridge and associated Duportail Extension (to Stevens Drive) will draw significant traffic volumes and improve conditions at both Aaron Drive and Queensgate Drive. With that said, the SR 240 eastbound ramp to I-182 eastbound will remain a location of concern.

2030 forecasts show the extension of Jones Road, coupled with anticipated reduction of employment in further reaches of the Hanford Site, will reduce congestion upon SR 240 eastbound between Kingsgate Way and Stevens Drive. However, conditions along the SR 240 Bypass are expected to worsen between SR 224 (Van Giesen Street) and Duportail Street in the southbound direction. Conditions along GWW southbound are forecast to be congested entirely when south of Lee Boulevard, with increasing congestion at the I-182/SR 240 interchanges at Aaron and GWW. Queensgate Avenue is forecast to operate as congested in the vicinity of the I-182 interchange while roundabouts at Columbia Park Trail and Tapteal Drive are forecast to operate near, or above, capacity by 2030. Gage Boulevard is forecast to operate with some segments congested and others at, or near, capacity.

City of West Richland - Currently there are no major deficiencies apparent within the city, however forecasts for the years 2020 and 2030 indicate SR 224 westbound will approach capacity in some locations. The extension of Keene Road to Twin Bridges Road is expected to provide an attractive alternative for Hanford commuters who have traditionally used the SR 240 Bypass. Further connection to I-82 with the Red Mountain Interchange will provide much easier access into and out of the city from points west and south of the area.

City of Kennewick - Currently, congestion exists upon portions of Gage Boulevard, primarily in the eastbound direction. US 395 travelers experience numerous delays at the signalized intersections with local streets. Clearwater Avenue also experiences significant delay in both directions due to the numerous signalized intersections present on the corridor. The US 395 "Blue" Bridge (southbound) is near congested levels, with improvements at the US 395/SR 240 interchange appearing to handle current volumes well.

Forecasts for the year 2020 show conditions forecast to improve along Gage Boulevard, with the Steptoe Street Corridor extended to Southridge sub-area, though portions of Gage Boulevard will continue to operate at levels near congestion. Improvements adjacent US 395 in the Southridge area will draw large volumes to the newly developed area, with model forecasts showing both 27th Avenue and Hildebrand Road as congested at points east of US 395. SR 240 eastbound between Columbia Center Boulevard and Edison Street is forecast to near congested levels. The US 395 "Blue" Bridge southbound is forecast to be at congested levels with the northbound approach also forecast as congested. SR 397, south of 10th Avenue is forecast to operate at congested levels, though largely a factor of its lower classification capacity.

By the year 2030, Gage Boulevard is forecast to be congested in both directions (adjacent Steptoe). SR 240 eastbound, between Columbia Center Boulevard and Edison Street, will continue to operate near congested levels. Hildebrand Road and 27th Avenue (east of US 395) are forecast to operate at congested levels. Portions of US 395 southbound are nearing congested levels with the US 395 "Blue" Bridge forecast to be above levels of congestion *in both directions* by the year 2030. Conditions along SR 397 (south of 10th Avenue) are forecast with congestion with congestion reaching further southeast than seen in 2020 forecast.

Benton County (Urban) - Current conditions show congested levels upon SR 240 eastbound between Route 10 and Twin Bridges Road. Other areas on the urban fringe appear to operate at comfortable levels at this time, though there are some spot operational concerns at specific locations.

Forecasts for 2020 indicate the SR 240 eastbound segment identified as congested today will experience lighter volumes if Hanford employment reductions occur as anticipated. Portions of SR 397 in the Finley area are expected to approach congested levels by 2020.

The 2030 model forecasts show that the Red Mountain Interchange will be an attractive route for some north-south commutes in the area. By 2030, segments of SR 224 could approach congested levels without sufficient improvement to accompany the interchange project. Development of the Badger sub-area in Richland is forecast to lead to some congestion along Reata Road near Leslie. Forecasted congestion will spread southward along SR 397 in the Finley area, primarily in the southbound direction.

City of Pasco - Currently, congestion exists in the I-182/Road 100 vicinity and also the I-182/Road 68 area. Congestion is primarily upon Broadmoor Parkway, Road 68, and Burden Boulevard as travelers negotiate the signals and ramp movements in these areas. The US 395 segment between Kartchner Street and Court Street experiences some congestion as numerous ramp movements and weaves are present in this portion.

By the year 2020, forecasts indicate the I-182 ("Richland-Pasco") Bridge will near levels of congestion. Ramps to and from Road 100 are expected to be congested as is Broadmoor, north of I-182. Conditions at Road 68/Burden Boulevard are forecast to be congested in north, south, and east directions. US 395 southbound ramps from US 395 (from Spokane Street) and loop ramp to Blue Bridge are both forecast to operate at congested levels by this time.

In the 2030 forecast, volumes upon the I-182 Bridge (eastbound) *are forecast to grow beyond the volumes of any other roadway in the urban area* - and operate at levels of congestion. Improvements are planned for the Road 100 interchange, but those associated ramp improvements are forecast to be at congested levels by 2030. Interchange projects at Road 52 and an Underpass at Road 76 result in better conditions at Road 68/I-182. The forecasts for US 395 (southbound) continue to show levels of congestion between Kartchner and Court Streets. In the 2030 forecasts, congested levels are found on US 395 southbound ramps with mainline volumes nearing congested levels.

Franklin County (Urban) - The model area roadways for Franklin County operate at comfortable levels at this time with only operational concerns at spot locations. Forecasts include few Franklin County roadway improvements on the urban fringe. Of those, only the extension of Road 100 (Broadmoor) is forecast to operate near a congested level. This is most likely a factor of the lower capacity associated with rural road segments. The intersection of Columbia River Road/Taylor Flats Road/Dent Road/Clark Road will experience a significant amount of traffic by 2030 and these volumes should be kept in mind when design of the planned improvements is begun.

Urban Area Summary - For the most part, forecasted congestion is upon segments that area professionals would intuitively expect. Area staff seem to have a good understanding of the needs and expected areas of future growth. The project lists contained within both 2020 and 2030 "Build" scenarios do help alleviate the congested conditions forecasts for most areas. It is evident, however, that not all congestion problems can be solved through the limited resources available at the local level. The SR 240, I-182, and US 395 corridors and their interactions with the local road systems will continue to be an area of required focus as locals struggle gaining access to and across the state facilities. Additionally, and perhaps of greater concern, is the congested levels of traffic forecast for the Tri-City area's two highest capacity bridges, the I-182 "Pasco-Richland" Bridge and the US 395 "Blue Bridge".

REGIONAL DEFICIENCY ANALYSIS (RTPO)

Rural Benton County

In large measure, road access for rural and agricultural areas in rural Benton County is good and improving. However, the road system may be considered to provide less than convenient access to some of the outlying rural areas.

Congestion challenges are absent on county roads serving rural or agricultural areas; existing Level of Service (LOS) is B or higher. Generally, principle road concerns in rural areas are "all weather" access for agricultural product transport, and more direct farm-to-market routes for agricultural products.

Benton City

All of Benton City's functionally classified streets are predicted to operate at LOS A or B in the Year 2030, with one exception. State Route (SR) 225, which is contiguous with components of the Benton City street system from the Yakima River north to SR 240, is forecast to operate at LOS D by 2020. This is a situation which Benton City and WSDOT should monitor over time.

Prosser

Most segments of the Prosser street system currently operate at LOS B or better. Projected volumes based on traffic count data suggest the downtown area south of the railroad tracks is the area of town most prone to future congestion. Because increased downtown business activity would lead to increased congestion, Prosser's 2011 Comprehensive Plan reduces the downtown LOS threshold to "D" in order to accommodate the City's vision for a more robust downtown. The remainder of Prosser's street system has an LOS threshold of "C".

Higher traffic volumes are also projected north of the Yakima River on Wine Country Road. Recent improvements on Wine Country Road were designed to accommodate these higher traffic volumes. However, continued intensification of growth accessing the intersections at the I-82 interchange and Merlot Drive in the north part of the city will require a major street improvement project at some point during the planning period.

Rural Franklin County

Most of Franklin County's functionally classified rural roads currently operate at LOS A or B. A few segments operate at LOS C, the regionally adopted standard. In 20 years, segments of Road 68 North and Taylor Flats Road may degrade to LOS D and merit future monitoring. These segments constitute a very small percentage of the classified rural road system. As such, traffic congestion is generally not a problem in rural Franklin County.

Connell

Calculations based on traffic counts performed prior to completion of the Coyote Ridge Correctional Facility expansion show all of Connell's functionally classified streets operating at Level of Service (LOS) "A" or "B" through the Year 2030 except for portions of Columbia Avenue north of Elm Street where higher traffic volumes may occur. Traffic flow, operating speeds, and maneuverability on most of the street system is expected to be at acceptable levels through the planning period. The need to widen Columbia Avenue beyond the current three lanes would be near the end of the 20-year horizon of the Plan. The effects of Coyote Ridge expansion on population-related and employment-related trips need to be more closely examined.

Kahlotus
All of Kahlotus' functionally classified streets, including State Routes 21, 260, and 263, are projected to operate at LOS A in the Year 2030. Anticipated need is likely to be in the form of street maintenance and the necessity for wider streets with curbs, gutters, and sidewalks.

Mesa
All of Mesa's functionally classified streets are projected to still operate at LOS A during the life of the Plan. Therefore, projects are generally triggered by pavement condition and the need for wider streets with curbs, gutters, and sidewalks.

Rural Walla Walla County
Overall, traffic congestion is not a problem on Walla Walla County's rural roads. All of the County's roads currently operate at LOS A or B, and population growth in the rural County has been slow - less than one percent/year between 2000 and 2010. None of the County-controlled roadways are projected to exceed their level of service standard by the year 2030.

Urban Walla Walla County
Capacity deficiencies may develop on roads currently under county jurisdiction but in the adopted Walla Walla or College Place Urban Growth Area over the twenty-year life of the Plan. Cooperation between neighboring jurisdictions is essential in addressing maintenance and capacity issues because City growth and the expansion of city limits could encompass those areas within that time frame.

Prescott
All of Prescott's functionally classified streets, including SR 124, are predicted to operate at LOS A or B throughout the 20-year planning period. Therefore, projects are generally triggered by pavement condition and the need for wider streets with curbs and sidewalks. The city's ability to finance such improvements relies upon securing state and/or federal funding.

Waitsburg
The City of Waitsburg is unique in that the two principal arterials in town are actually State highways: State Route 12 (Coppei Avenue) and State Route 124 (Preston Avenue), which are maintained by the State Department of Transportation. The state routes are projected to operate at LOS A or B, as are all of Waitsburg's remaining streets.

Walla Walla
Streets in Walla Walla generally operate at acceptable levels of service. Several deficiencies were identified in the 2004 Traffic Circulation Study; however, changes to the regional transportation network have occurred since then, altering conditions defined in that report. Regional changes to the urban area traffic system since the Study, altering conditions defined in that report.

Changes to the City's transportation network have occurred since that time. A project to reconstruct 13th Avenue from Abadie Street to Cherry Street to minor arterial standard is scheduled for construction in 2012. Additionally, the Myra Road - SR 125 to Garrison Creek project, which includes a grade separated intersection, is being studied.

College Place

Most streets in College Place currently operate at acceptable levels of service. As noted with Walla Walla, deficiencies were identified in the 2004 Walla Walla/College Place Traffic Circulation Study.

Improvements to the local transportation network are also underway. The City of College Place is also reconstructing and improving roughly a mile of Whitman Drive from Larch to Academy Drive with completion anticipated by November 2011. Additionally, the City is planning the reconstruction of Rose Avenue, a principal east-west arterial from Myra Road through College Avenue, a principal north-south arterial.

WSDOT - RTPO

Analysis of state routes in the rural RTPO region has determined that very few potential capacity challenges over the life of the plan.

SR 125 through Walla Walla functions as a city street with numerous intersections, traffic signals and commercial activities. The inherent congestion and delay are not conducive to through travel. There have been discussions between urban area jurisdictions and WSDOT to transfer jurisdictional responsibilities for the existing SR 125 and the new Myra Road, which would become the new SR 125.

SR 225 extends from Interstate 82 through Benton City to SR 240 at Horn Rapids, serving as Benton City's main street. Hanford commuters dominate peak volumes on this two-lane roadway and the route should be monitored for capacity problems.

FINANCIAL PLAN

The 22-year financial plan is required to be constrained to reflect what realistically may be done with available revenues during the 22-year planning horizon. This requirement means that the improvements included in the plan, and the maintenance and preservation of the existing transportation system, must be affordable within already available and projected sources of revenue.

The Tri-Cities metropolitan area transportation system is forecast to cost $1,062 million to maintain and provide needed improvements over the next 22 years. Of this total, $474 million (45%) will be needed to maintain and operate the system, and $589 million (55%) will be available for improvements. At the end of the 22-year planning horizon, the MPO will have an estimated $30 million surplus. In addition, the MPO will need to generate an additional $110 million in revenue to fund projects identified as unmet need.

The balance of the regional transportation system outside the MPO area is estimated to cost $1,065 million to maintain and provide needed improvements over the next 20 years. Of this total, $476 million (45%) will be needed to maintain and operate the system, and $589 million (55%) will be available for improvements. At the end of the 20-year planning horizon, the rural RTPO planning area will have a remaining estimate of -$29 million. In addition to this shortfall, the rural RTPO will need to generate an additional $68 million in revenue to fund projects identified as unmet need.

The MPO/RTPO members have indicated any funding shortfalls, excluding the planning projects, will be reduced to a manageable level and/or eliminated as project priorities and plans are defined and future transportation improvement plans are developed.

CONCLUSIONS

Public investment in the transportation system is essential to the health, safety, and economic prosperity of the region. The RTP identifies cost-effective transit and highway improvements, using each mode of travel where it is best suited to meet the travel demand of the community.

The future regional transportation system must be consistent with the land use goals and plans of each of the jurisdictions. Ensuring orderly growth is essential to the success of the transportation system. Lack of agreement between land use and transportation planning will result in unnecessary capital investment, underused facilities, or under-designed roadways incapable of serving the demand.

The Regional Transportation Plan is a planning and programming tool to assist in solving regional transportation problems. The RTP provides a basis for assessing the impacts of years 2020 and 2030 travel demand, and requires periodic updates to remain consistent with community goals.

The RTPO shall review the RTP biennially for currency and shall update it at least every five years to incorporate changing conditions and financial reality.

The BFCG will monitor the performance of the RTP and compare with the updated local comprehensive plans; thus, continuously gathering information about programs and projects implemented from this plan. This information will tell us how well the plan is being executed and the effectiveness of proposed strategies. It will also provide feedback to policy makers and the public on whether the policies and provisions in the RTP are helping to realize the preferred future for the region.

PLAN AND POLICY IMPLICATION

This Regional Transportation Plan was developed jointly by the Benton-Franklin Council of Governments and member jurisdictions, including the Washington State Department of Transportation. Adoption of the plan by the BFCG Board includes the following:

- Endorsement of regional transportation system components, including the street and highway system, public transit systems, regional airport system, water and land-based freight systems, and a commuter management program.
- Identification and documentation of transportation system deficiencies including: travel corridors with inadequate capacity to meet current and future travel demand; the need for transit to capture a higher percent of work trips; and the need to decrease the numbers of drive alone work trips by increasing the ridesharing and park & ride programs.
- Recognition of a state mandate to possibly have Commute Trip Reduction Plans and Ordinances in place.

- Endorsement of the level of transportation investment needed to adequately serve current and anticipated growth.

- Endorsement of the regional transportation planning framework as the process for achieving a unified direction on transportation polices and coordination with comprehensive land use planning.

- Completion of a federal requirement as a condition for receiving federal Surface Transportation Program funding, and as a basis for review of projects proposed for funding within the near-term Transportation Improvement Program (TIP).

- Implementation of the transportation plan, including transit plans, by the responsible jurisdictions.

- Establishment of consistency between this plan, the MPO/RTPO six-year Transportation Improvement Program (TIP), and the Washington Transportation Plan.

APPENDIX H

RTPO PROJECT LISTINGS FOR URBAN AND RURAL JURISDICTIONS

The following pages contain project listings for each jurisdiction within the RTPO, based upon anticipated revenues (see Chapter 9). Project lists are divided into two periods, 2011-2020 and 2021-2032.

Those jurisdictions that fall within the model area are listed first in this appendix as "Urban", followed by project lists from the "Rural" jurisdictions. Due to the model area stretching out into rural portions adjacent the Tri-City metro area, there are some projects indicated to be urban that actually fall outside the currently recognized FHWA urban/rural boundary. They are included within those listings to allow evaluation of projects upon the fringe of the metro area. It is anticipated that these areas will become urban within the twenty two- year planning timeframe of this RTP.

Urban Project Listings

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Urban Projects			
Benton County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
*Piert RD SR 397 to Bowles	Construct a two lane collector road	$3,745,666	2011
Olympia St. Kennewick C.L to SR 397	Reconstruct a two lane collector road	$126,282	2011
Hildebrand Kennewick City limits to KCL	Construct a two lane collector road phased	$610,420	2016
Badger/Wiser Deceleration Lane	Construct Badger Road Deceleraton lane at Wis	$437,055	2016
TOTAL 2011-2020		$4,919,423	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2032 Urban Projects			
Benton County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Finley Rd. SR397 to SR 397	Reconstruct a two lane collector road	$3,749,481	2021
27th Avenue Oak St. to SR 397	Reconstruct a two lane collector road	$1,034,625	2022
TOTAL 2021-2032		$4,784,106	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Urban Franklin County			
Project Name	*Description*	*Project Cost (YOE)*	*Year of Const.*
*Road 100 & Dent Rd. Connection	Construct new road	$2,586,250	2011
Road 68 (Court St. to Argent Road)	Widen to 4 lanes	$1,379,500	2013
Argent Road (Road 52 to Road 68)	Widen to 3 or 4 lanes	$1,172,500	2015
Road 68 N. (Pasco C/L to Taylor Flats Rd.)	Widen to 4 lanes	$965,600	2016
Total Cost 2011-2020		**$6,103,850**	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2032 Projects			
Urban Franklin County			
Project Name	*Description*	*Project Cost (YOE)*	*Year of Const.*
Wernett Road (Road 72 to Road 76)	Reconstruct and Hard Surface	$413,850	2021-2030
Road 60 (Park Street to Court Street)	Reconstruct and Widen	$1,379,500	2021-2030
Wernett Road (Road 76 to Court Street)	Construct New Road	$689,750	2021-2030
Court Street Intersections	Install Signalization	$689,750	2021-2030
Road 60 (Court Street to Argent Road)	Reconstruct and Widen	$2,069,250	2021-2030
Road 52 (Sylvester Street to Argent Road)	Reconstruct and Widen	$2,069,250	2021-2030
Argent Road Intersections Improvments	Install Turn Lanes and Signalization	$1,379,500	2021-2030
Total Cost 2021-2032		**$8,690,850**	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
Unmet Need - Urban			
Franklin County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Riverview Wide	Reconstruct and Widen	$1,000,000	
Riverview Wide	Improve Intersections and Install Signalization	$1,000,000	
TOTAL		$2,000,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan 2011-2020 Projects Kennewick			
Project Name	Description	Project Cost (YOE)	Year of Const.
Steptoe Street Phase 2	New construction - sidewalks, curbs, streetlights, signals, railroad grade separation. Signals @ Center Parkway & Steptoe (City of Richland jurisdiction) and at Steptoe & Clearwater.	$7,758,750	2011
US 395/Ridgeline & Hildebrand Intersection Improvements	Reconstruct intersection to provide added right-turn lanes northbound and southbound as well as upgrade to full five lane with right-turn lanes on Hildebrand & Ridgeline at the intersections	$4,603,525	2011
Southridge Blvd - Ridgline to Hildebrand	Construct missing sections, roundabout at Ridgeline, signal at Hildebrand	$2,700,045	2011
Plaza Way - Ridgeline to existing	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Ridgeline, Signal @ Plaza/Hildebrandt and at Plaza/Southridge	$1,086,225	2011
Ridgeline - Zintel Way to US 395	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Zintel Way	$786,220	2011
Ridgeline - US 395 to Southridge Blvd	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Plaza Way, roundabout @ Southridge	$786,220	2011
Zintel Way - Arthur to Ridgeline	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Ridgeline	$1,231,055	2011
Sherman Road - Ridgeline to Hildebrand	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Ridgeline	$1,313,815	2011
Ridgeline - Sherman to Southridge	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Southridge. Roundabouts at Ridgeline and Plaza Way, Ridgeline and Southridge Blvd, and Ridgeline and Zintel.	$1,515,543	2011
45th Ave./Olympia St. Intersection Imp.	New roundabout, and widen intersection.	$243,108	2011
Columbia Drive	*Resurfacing*	$232,763	2011
Fruitland - 1st to Columbia Dr	Resurfacing	$87,933	2011
1st Washington to SR395	Resurfacing	$72,415	2011
Canal Dr - Fruitland to Washington	Resurfacing	$62,070	2011
27th Ave - Vancouver to Olympia	Resurfacing	$124,140	2011
19th Ave - Vancouver to Washington	Resurfacing	$186,210	2011
Edison - Canal Dr to Columbia Park Trail	Resurfacing	$51,725	2011
27th Ave - Ely to Vancouver	Resurfacing	$56,898	2011
Olympia St - Kennewick Ave to 27th	Resurfacing	$263,798	2011
1st Ave - Fruitland to Washington	Resurfacing	$62,070	2011
Gum St - 10th to SR395	Resurfacing	$62,070	2011
Edison St - 10th to Clearwater	Resurfacing	$150,003	2011
Volland St - Clearwater to Canal Dr	Resurfacing	$150,003	2011
Clearwater And Leslie Intersection	Construct roundabout (City of Richland lead)	$310,350	2011
Steptoe Street Phase 3	Reconstruction - sidewalks, curbs, streetlights, signals, roundabout @ 5 corners (possibly two acting as one, but model as one).	$3,859,090	2012
Center Parkway Extension - Gage to Tapteal	Joint project with Richland - New roadway, curb & gutter, sidewalk, illumination	$2,565,600	2012
Olympia Street	Reconstruction, roadway widening, illumination, sidewalks	$4,062,200	2012
10th Avenue - CCB to 5 Corners	Street Improvements (TWLTL added)	$5,345,000	2012
Clearwater Avenue - Edison Street to US 395	Resurfacing	$1,389,700	2012

(Kennewick 2011-2020 Projects continued)

27th Ave - Union to SR395	Resurfacing	$181,730	2012
Edison Street - Clearwater to Hood	Widening, add bike lanes, dedicated turn lanes at intersections	$1,320,215	2012
Edison Street - Okanogan to Canal Drive	Widening, add bike lanes, dedicated turn lanes at intersections	$1,047,620	2012
Gum Street Sidewalks	Sidewalks	$133,625	2012
Hildebrand Blvd - US 395 to City Limits	New construction - 2 lanes each direction with median	$4,855,400	2013
Hildebrand Blvd - City Limits 5 corners	New construction - 2 lanes each direction with median, roundabout @ 5 corners	$2,471,840	2013
Southridge Blvd - Hildebrand to 27th	Construct missing sections, signal at Hildebrand	$1,445,585	2013
Canal Drive - US 395 To Washington	Resurfacing	$830,936	2013
Vista Way	Resurfacing	$104,833	2013
Edison St - Clearwater to Canal Dr	Resurfacing	$1,324,200	2013
Clearwater Ave/Edison Intersection Imp.	Upgrade Signal, Widen Intersection,	$320,015	2013
Canal Drive Sidewalks	Sidewalks North side of roadway	$137,938	2013
Center Parkway - Hildebrand to I-82	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Hildebrand	$5,690,000	2014
CCB - Deshutes to Quinault	Resurfacing	$1,889,080	2014
Quinault - Center Parkway to CCB	Resurfacing	$921,780	2014
Kennewick Avenue - Morain to Union	Reconstruction & widening, curb, gutter and sidewalk	$961,610	2014
Center Parkway - Grandridge to Gage	Resurfacing	$386,925	2015
Cascade Street - 27th to 45th	Reconstruction	$4,103,750	2015
Columbia Overlook Phase 2	Sidewalk, northside landscaping, rock wall , streetscape, park & ride	$3,517,500	2015
Grandridge And Young Street	New Roundabout	$293,125	2015
Tri-City Gateway Landscaping	Along SR-395 in Southridge Area	$649,366	2016
10th Avenue - Clearwater to "5 corners"	Reconstruction, roadway widening (TWLTL), illumination, sidewalks	$1,862,250	2017
10th & Morain Traffic Signal	New Signal & turn-lanes	$372,450	2017
Clearwater & Canal WB Right Turn Lane	Add a right turn lane	$434,525	2017
Clearwater & Edison WB	Add a right turn lane and widen southbound appoach for a left-turn lane	$310,375	2017
Clearwater & Arthur Street Signal	New Signal	$434,525	2017
Clearwater & 10th Avenue	New signal or roundabout	$651,788	2017
Kennewick & Yelm Signal Upgrade	New Poles and Equipment	$279,338	2017
Deschutes & Center Parkway Roundabout	Mini roundabout	$93,113	2017
Metaline Avenue - Kellogg to Edison	Widening, add bike lanes, curb, gutter, sidewalk	$1,464,970	2017
Citywide Traffic Signal System	New signal system software, communications	$765,600	2018
27th Avenue & Washington Street Signal	Signal or Roundabout	$701,800	2018
10th Avenue/SR 397	Install signal or roundabout	$720,775	2019
Total YOE Cost 2011-2020		**$81,797,119**	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2032 Projects			
Kennewick			
Project Name	*Description*	*Project Cost (YOE)*	*Year of Const.*
Christensen Road Interchange @ US-395	New Interchange	$17,243,750	2021
8th Avenue	Gum to 10th Ave Street Improvements	$2,207,200	2022
Canal Drive	Quinalt to Yost Street Improvements	$827,700	2022
Canal Drive	US 395 to Kent Street Improvements	$4,138,500	2022
Kennewick Avenue	Union to Morain Street Improvements	$1,069,113	2023
Vancouver Street	45th Avenue to 36th Avenue - Street Improvements	$1,400,193	2023
Rainier Street	7th Ave to 27th Ave Street Improvements	$2,414,125	2023
Center Parkway	New Construction, Interchange @ I-82	$10,346,250	2023
Ridgeline - Clodfelter to Sherman	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabouts @ Clodfelter and Center Parkway.	$8,277,000	2024
1st Avenue - Washington To SR 397	Resurfacing	$228,997	2024
Citywide Traffic Signal System Upgrade/Retiming	New signal system software, communications equipment and retiming	$1,103,600	2024
27th Avenue	Reconstruction, curb and gutter, sidewalks, illumination, signal or roundabout	$2,069,250	2024
10th Avenue - Union To Us 395	Resurfacing	$496,620	2025
10th Avenue - Us 395 To Olympia	Resurfacing	$496,620	2025
Union Street - 10th To Clearwater	Resurfacing	$606,980	2025
Union Street - 27th To 10th	Resurfacing	$488,343	2025
Kennewick Avenue - US 395 To Morain	Resurfacing	$220,720	2025
Kennewick Avenue - Olympia To Dayton	Resurfacing	$278,659	2026
27th Avenue	Resurfacing	$493,861	2026
Clearwater - Columbia Center Blvd To Leslie	Resurfacing	$1,020,830	2026
Hood & Neel Roundabout	Mini roundabout	$68,975	2026
Miscellaneous Streetscape	Citywide	$441,440	2027
Columbia Center Blvd. Safety Improvements	Channelization and signalization improvements, safety analysis	$1,213,960	2027
Downtown Revitalization - Canal Drive	Enhancement work, ornamental street lighting, pedestrian facilities, downtown revitalization project	$689,750	2027
Kennewick Avenue	Reconstruction & widening, curb, gutter and sidewalk	$758,725	2027
Columbia Center Blvd.- Deschutes to Quinault	Widening	$3,034,900	2028
46th Avenue - Steptoe to Clodfelter	New construction	$1,379,500	2028
Downtown UPRR/BNSF Grade Separation	Railway Crossing Grade Separation for the Downtown	$22,072,000	2030
Total YOE Cost 2021-2020		**$85,087,560**	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2032 Unmet Need			
Kennewick			
Edison /BNSF Grade Separation	Railway Crossing Grade Separation	$ 13,000,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
City of Richland			
Project Name	*Description*	*Project Cost (YOE)*	*Year of Const.*
Citywide Pedestrian, ADA and School Routes Projects	Const. Sidewalks, ADA Facilities and Improve School Walking Routes	$229,810	Annually
Keene Road Phase 3B	Principal Arterial, Convert Railroad Bridge w/ Four Lanes, Barrier Separated Pathway	$4,448,350	2011
Westcliffe Boulevard, Brantingham Road to Keene Road	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes, Traffic Signal	$537,940	2011
Center Parkway Tapteal to South City Limits	Collector Arterial, Two-Lane w/turn Lane, 30 mph	$213,800	2012
Vantage Highway Trail, Babe Ruth Fields to Stevens	New 12' multi-use pathway	$801,750	2012
Swift Corridor Improvements, Stevens Drive to George Washington Way	Mill and overlay street, widen sidewalks, add decorative street lighting, irrigation, street trees and landscaped medians	$1,421,770	2012
Elementary Street and Keene Road Traffic Signal	New Signalized Intersection	$220,700	2013
Duportail St. Bridge Over Yakima River	4-Lane Bridge with Bike lanes, Sidewalks and Lighting	$35,863,750	2013
Rachel Road - Steptoe Street to Leslie Road	Construct 2 lanes w/ curb, gutter, sidewalks, bike lanes and turn lanes as needed	$2,155,136	2013
Bellerive Drive - Broadmoor Street to Rachel Road	Construct 2 lanes w/sidewalks and bike lanes	$882,800	2013
Queensgate Drive Bike/Ped Trail	12-ft Paved Trail Keene Road to Columbia Park Trail	$142,250	2014
Steptoe Street and Tapteal Drive Realignment	Realign Roadway and Construct Roundabout	$1,707,000	2014
Stevens Drive Extension - Wellsian Way to Lee Blvd.	Minor Arterial, Two-Lane w/turn Lane, Sidewalks, Bike Lanes. Signal @ Wellsian	$1,407,000	2015
Kingsgate Way and SR 240 Traffic Signal	New Signalized Intersection	$234,500	2015
Duportail Street, Ph. 1 - SR 240 to Wellsian Way	Minor Arterial, Two Lane w/turn Lane, Sidewalks, Bike Lanes	$1,713,940	2016
Stevens Drive Bike/Ped Trail	12-ft Paved Trail From Spengler to Horn Rapids Road	$543,150	2016
Queensgate Drive Extension Phase 1 - Keene to Shockley	Collector, Two-Lane w/turn lane, sidewalks, bike lanes	$1,086,300	2016
Columbia Park Trail - Steptoe to West C/L	Minor Arterial, Two Lane w/ left Turn Lane, Sidewalks, Bike Lanes	$1,931,200	2016
Robertson Boulevard Extension - West end of road to Kingsgate Way	Unclassified, Two Lane, Sidewalk on one side	$1,911,910	2017
Kennedy Road - Duportail to West C/L	Minor Arterial, Two Lane w/left Turn, Sidewalk, Bike Lanes	$1,489,800	2017
Queensgate Drive Phase 2 - Westgate to Rachel	Collector, Two-Lane w/turn lane, sidewalks, bike lanes	$3,227,900	2017
Gage Boulevard Extension - West End at Morency to west City Limits (Queensgate I/S)	Minor Arterial, Two lane w/turn Lane, Sidewalks, Bike Lanes	$3,190,000	2018
University Drive - Kingsgate Way to Stevens	Minor Arterial, Two Lane w/turn Lane, Sidewalks, Bike Lanes	$1,914,000	2018
Logston Blvd. Extension - Robertson to Railroad Spur (University Dr)	Collector, Two Lane w/turn Lane, Rural Street Section w/Street Lights & Shoulders	$2,358,900	2019
Comstock Street - GWW to Wellsian	Collector, Two Lane w/left Turn Pockets, Sidewalks, Bike Lanes	$1,572,600	2019
Stevens Drive, Knight Street Traffic Signal	New Signalized Intersection	$242,100	2020
Rachel Road - Leslie Road to Steptoe Street	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$2,421,000	2020
Mellissa Street - Brantingham Road to Sequoia Avenue	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$470,750	2020
Total YOE Cost 2011-2020		$74,340,106	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2032 Projects			
City of Richland			
Project Name	*Description*	*Project Cost (YOE)*	*Year of Const.*
Citywide Pedestrian, ADA and School Routes Projects	Const. Sidewalks, ADA Facilities and Improve School Walking Routes	$236,038	Annually
Battelle Blvd. - Kingsgate Way to Blanchard Blvd.	Collector, Two Lane w/left Turn Lane, Rural Street Section w/Street Lights & Bike Lanes	$1,241,550	2021
Englewood Drive - Keene Road to Glenwood Ct.	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$1,310,525	2021
Leslie Road and Reata Road Traffic Signal	New Traffic Signal	$303,490	2022
Gala Way - Melissa Street to Meadow Hills Drive	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$689,750	2022
Twin Bridges Road - SR 240 to South City Limits	Minor Arterial, Two-Lane, 40 mph	$1,214,901	2024
Leslie Road and Rachel. Traffic Signal	New Traffic Signal	$303,490	2024
SR 240 and Twin Bridges road Traffic Signal	New Traffic Signal	$303,490	2025
Goethals Dr. and Lee Blvd. Traffic Signal	New Traffic Signal	$303,490	2025
Horn Rapids Rd. - Stevens Dr. to Twin Bridges Rd.	Minor Arterial, Two Lane w/turn Lane, 50 mph	$6,427,216	2026
Twin Bridges Road - SR240 to Horn Rapids Road	Collector, Two Lanes w/left Turn lane, Sidewalks, Bike Lanes	$3,448,750	2026
University Drive - Kingsgate Way to Logston Blvd.	Minor Arterial, Two Lane w/turn Lane, Sidewalks, Bike Lanes	$2,483,100	2026
Unnamed Street No. 3 - Heritage Hills to Columbia Park Trail	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$1,655,400	2027
Blanchard Boulevard and SR 240 Traffic Signal	New Traffic Signal	$303,490	2027
Logston Boulevard and SR 240 Traffic Signal	New Traffic Signal	$303,490	2027
Van Giesen and Thayer Traffic Signal	New Traffic Signal	$275,900	2028
SR 224/SR 240 Grade Separation, Terminal Dr. to Birch	Principal Arterial, Preliminary Engineering for Six Lanes, Elevated Interchange/On-Off Ramps	$48,282,500	2028
Beardsley Road - Horn Rapids to SR 240	Minor Arterial, Two Lane w/turn Lane, 50 mph	$2,390,611	2029
Heritage Hills Dr. - Unnamed Street No. 3 to Allenwhite Drive	Collector, Two Lane, Sidewalks	$758,725	2029
Center Parkway and Tapteal Dr. Traffic Signal	New Traffic Signal	$303,490	2029
Hagen Road - SR 240 to Airport Entrance	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$3,034,900	2029
Van Giesen St. Jones Road Traffic Signal	New Traffic Signal	$303,490	2030
Leslie Road and Columbia Park Trail Traffic Signal	New Traffic Signal	$303,490	2030
Blanchard Blvd - Horn Rapids Road to SR 240	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$3,034,900	2030
Jones Road (Kingsgate) - SR 224 to SR 240	Minor Arterial, 2 Lane w/left Turn Lane, Rural Section w/Street Lights & Bike Lanes	$6,238,099	2030
Total YOE Cost 2021-2032		$85,454,275	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
City of West Richland			
Project Name	Description	Project Cost (YOE)	Year of Const.
City Wide Street Lighting Program	Annual Improvements	$229,810	2011-2020
City Wide Pavement Rehab. Program	Annual Improvements	$1,895,933	2011-2020
City Wide Storm Drainage Program	Annual Improvements	$459,620	2011-2020
Keene Rd./Kennedy Rd. Traffic Signal	Install traffic signal	$103,450	2011
Keene Rd. Overlay	HMA overlay from Bombing Range Rd. to SR 224	$817,255	2011
Paradise Way Widening	Construct 3 lanes from S.45th to Belmont Blvd.	$341,400	2014
S.38th Ave./SR224 Traffic Signal	Install traffic signal	$273,120	2014
Bombing Range Rd.-Phase 8	Construct 3 lanes from Silver Lake Ct. to CL	$578,104	2014
Keene Rd. Phase 4	SR224 to Ruppert Rd.	$2,203,168	2014
Paradise Way Extension-Phase 2	Construct 3 lanes from Belmont to SR 224	$2,845,000	2014
Keene Road Pathway-Phase 3	12' HMA Path from S.Highlands Blvd. to Belmont	$182,080	2014
Grosscup Blvd./SR224 Traffic Signal	Install traffic signal	$281,400	2015
Paradise Way Extension-Phase 3	Construct 3 lanes from SR224 to Ruppert Rd.	$1,758,750	2015
Belmont Blvd. Phase 2	Construct collector from Paradise Way to SR224	$2,247,683	2015
Keene Rd. Phase 2 & 3 Widening	Widen to 4 lanes from Bombing Range to SR224	$1,448,400	2016
S. 38th Ave. Phase 2	Construct 3 lanes from Grant St. to South CL	$2,414,000	2016
Keene Road/Belmont Blvd. Traffic Signal	Install Traffic Signal	$301,750	2016
Total Cost 2011-2020		$18,380,923	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2032 Projects			
City of West Richland			
Project Name	Description	Project Cost (YOE)	Year of Const.
City Wide Street Lighting Program	Annual Improvements	$236,038	2021-2030
City Wide Pavement Rehab. Program	Annual Improvements	$1,947,312	2021-2030
City Wide Strom Drainage Program	Annual Improvements	$472,076	2021-2030
Keene Rd. Phase 5	Construct 2 lanes from Ruppert Rd. to Twin Br.	$2,640,363	2016
Bombing Range/Kennedy Rd. Traffic Signal	Install Traffic Signal	$331,080	2021
Keene Rd. Pathway Phase 4	12' HMA Pathway from Belmont Blvd. to SR 224	$482,825	2022
Keene Rd./SR224 Traffic Signal	Install Traffic Signal	$331,080	2024
Paradise Way/SR224 Traffic Signal	Install Traffic Signal	$331,080	2025
Belmont Blvd./Keene Rd. Traffic Signal	Install Traffic Signal	$331,080	2026
Total Cost 2021-2032		$7,102,934	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2032 Unmet Need			
West Richland			
Project Name	Description	Project Cost	Year of Const.
Red Mtn. Interchange (WSDOT)	WSDOT construct interchange	$2,000,000	2028

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
City of Pasco			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Argent Road Improvements	Widen between 20th Ave and Rd 36 w/signal	$1,603,500	2012
Heritage Rail Spur	Construct spur from Oregon to E. Pasco	$1,603,500	2012
I-182 Corridor Improvements Study	Road 52 to Road 76	$160,350	2012
Harris Road Realignment	Broadmoor to Sandifur	$267,250	2012
4th Avenue Corridor	I-182 to Sylvester Street	$1,699,710	2012
SR 12 Interchange Study (City share)	"A" Street to SR 12	$11,035	2013
Road 100 and Argent Road Signal	Install signals	$220,700	2013
Powerline Road	Road 68 to Road 100: Construct new arterial	$1,103,500	2013
Road 100 Improvements	Chapel Hill to Court Street	$662,100	2013
Sacagawea Trail (Bike Path)	Lower Dike (Rd 52 to Rd 72)	$682,800	2014
Sandifur Parkway	Widen road from Road 52 to Road 60	$284,500	2014
Chapel Hill Extension	Road 68 to Road 84	$910,400	2014
Cresent Road	Road 108 to FCID Canal	$170,700	2014
Road 68 and Court Improvements	Install round-about & or signals	$351,750	2015
Road 76	Widen road from Argent Road to Chapel Hill	$469,000	2015
Madison and Burden Road Signal	Install signals	$241,400	2016
Road 44 and Argent Signal	Install signals	$241,400	2016
Lewis Street Overpass	Oregon to 2nd Avenue: Build new overpass & street	$30,175,000	2016
Lewis & Clark One-Way Couplets	2nd Avenue to 10th Avenue	$2,414,000	2016
Heritage Blvd and A Street Signal	Install signals	$248,300	2017
Heritage Blvd and E. Lewis Signal	Install signals	$255,200	2018
Total Cost 2011-2020		$43,776,095	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2032 Projects			
City of Pasco			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Court Street Widening	Widen from Road 44 to Road 68	$275,900	2021-2030
Signal Improvements on Court Street	Install three signals west of Road 44	$827,700	2021-2030
I-182 Off/On Ramp at Rd. 52	Construct on/off ramps to Argent Rd	$2,759,000	2021-2030
Burden Blvd / I-182 On Ramp	Construct west bound on ramp	$6,897,500	2021-2030
I-182 / Broadmoor EB Off Loop	Finish interchange	$2,759,000	2021-2030
I-182 / Road 76 Underpass	Construct underpass at Road 76	$9,656,500	2021-2030
SR 395 / Foster Wells Interchange	Construct new interchange	$3,448,750	2021-2030
Total Cost 2021-2032		$26,624,350	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2032 Unmet Need			
City of Pasco			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Oregon RR Overpass (SR397)	Construct overpass over tracks	$10,000,000	
A Street RR Overpass	Construct overpass tracks	$10,000,000	
SR 395 Court Street Improvements	Reconstruct north end of blue bridge	$20,000,000	
SR12 / A Street (Tank Farm) Interchan	Construct new interchange	$25,000,000	
Total Unmet Need 2011-2032		$65,000,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan 2011-2020 Projects Washington State Department of Transportation		
PIN	Project Title	2011-2020
501212I	US 12/SR 124 Intersection - Build Interchange *	15,911,996
501204X	US 12/A St and Tank Farm Intersections - Interchange Feasibility Study *	110,553
5012XXX	US 12/SR 124 Intersection Vic - Build Park and Ride Lot	300,000
5182XXX	I-182/Broadmoor Blvd-Road 100 and Road 68 Vicinity - Access Improvements	5,000,000
518201V	I-182/Pasco Vicinity - Install 4-Strand Cable Median Barrier	485,182
5182XXX	I-182/Queensgate Park & Ride Improvements	500,000
5182XXX	I-182/Richland to Pasco - ITS	530,000
5182XXX	I-182/Richland to Pasco - Signal Improvements	145,000
518202H	I-182/Road 100 Interchange Vicinity - Improvements *	304,318
518202T	I-182/Road 68 Interchange - Interstate Safety *	35,267
5182XXX	I-182/Road 68 Interchange - ITS	310,000
5182XXX	I-82/Region Signal Improvements	80,000
5240XXX	SR 240/Blanchard Blvd Intersection - Traffic Signal	350,000
5240XXX	SR 240/Edison St I/C - EB Off Ramp Improvements and Signal	2,000,000
524002S	SR 240/Kennewick Vicinity - Install 4-Strand Cable Median Barrier	138,116
5240XXX	SR 240/Logston Blvd - Traffic Signal	350,000
5240XXX	SR 240/Richland Vic to US 395 - Signal Improvements	110,000
5240XXX	SR 240/Twin Bridges Road - Traffic Signal	350,000
524002C	SR 240/Yakima River Vic - Remediation of Failing Wetland Mitigation Site *	384,956
539502L	US 395/Columbia Dr to SR 240 - Rebuild Interchange *	1,577,855
5395XXX	US 395/I-82 to I-182 Planning Study	200,000
5395XXX	US 395/Kennewick to Kartchner St Interchange - Signal Improvements	120,000
5395XXX	US 395/Kennewick to SR 26 - ITS	425,000
5395XXX	US 395/Vista Way - Intersection Improvements	2,500,000
5397XXX	Oregon Drive & James Street Traffic Signal**	300,000
* Note, projects with an asterix are under construction.		
** denotes a project modeled under 2020-2032 scearnio		

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan 2021-2032 Projects Washington State Department of Transportation		
PIN	**Project Title**	**2021-32**
5182XXX	I-182/Queensgate to SR 240 Vic EB Phase 2 - Interchange Improvements*	13,000,000
5182XXX	I-182/SR 240/George Washington Way - Interchange Improvements	4,000,000
5224XXX	SR 224/62nd Pl to SR 240 Intersection - Construct Two-way Left-Turn Lane	5,900,000
5224XXX	SR 224/S 62nd Ave, S 41st Ave, S 40th Ave, Bombing Range Rd, 38th Ave - Intersection Improvements and Signals	3,100,000
524003G	SR 240/SR 224/Van Giesen Street - Intersection Improvements	691,535
5240XXX	SR 240/Van Giesen - Build Interchange	45,000,000
5240XXX	SR 240/Columbia Center to Edison - Add Lanes*	6,900,000
* Projects added within March, 2012 revision and not included within 2030 Build scenario		
	WSDOT Urban Unmet Needs	
5395XXX	US 395/Lewis Street - Interchange improvements	5,400,000
5012XXX	US 12/Lewis Street to Snake River - Build Interchange	26,800,000
	Total	32,200,000

Rural Project Listings

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Rural Projects			
Benton County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Clodfelter Rd. Bently to C. Williams	Reconstruct & construct a two lane collector road	$2,155,000	2011
Locust Grove Rd. Clodfleter to Edwards	construct a two lane collector road	$1,345,000	2011
Nine Canyon Rd. Mills to SR 397	Reconstruct a two lane collector road	$3,045,000	2012
Nine Canyon Rd. Beck to Mills	Reconstruct a two lane collector road	$2,826,000	2013
Nine Canyon Rd. Coffin to Beck	Reconstruct a two lane collector road	$3,260,000	2014
Travis Rd - Sellards Rd. to Henson Rd.	Reconstruct a two lane collector road	$1,500,000	2014
Sellards Rd. 221 to Travis Rd.	Reconstruct a two lane collector road	$4,650,000	2014
Bert James Rd. Sellards to SR 221	Reconstruct a two lane collector road	$4,150,000	2015
Knox Rd. District Line to Truhlicka	Reconstruct a two lane collector road	$2,500,000	2016
Knox Rd. Trulicka to OIEH	Reconstruct a two lane collector road	$2,283,000	2017
Hanks Rd. Crosby to Aller	Reconstruct a two lane collector road	$2,750,000	2017
Coffin Rd. Nine Canyon to Meals	construct a two lane collector road	$5,800,000	2018
Meals Rd beginning of pavmnt to Ayers	construct a two lane collector road	$2,717,000	2019
Christy Rd. BNSF RR Xing to Plymouth	Reconstruct a two lane access road	$3,150,000	2020
TOTAL		$42,131,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Rural Projects			
Benton County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
District Line Road - Hanks Rd. to Knox Rd.	Reconstruct two lane collector road	$445,000	2022
Old Inland Empire Hwy - Chandler to Rayhill Rd..	Reconstruct two lane collector road	$1,200,000	2023
Case Road - OIEH to Hanks Rd.	Reconstruct two lane collector road	$2,500,000	2024
Goose Gap Road - Goose Gap Rd. to Dallas Rd.	Construct new two lane access road	$550,000	2025
County Well Road - SR221 to Webber Canyon Rd.	Reconstruct two lane collector road	$950,000	2025
Corral Creek Road - OIEH to SR225	Reconstruct two lane collector road	$1,450,000	2026
DNR Road No. 1 - SR224 to Col Solare	Construct new two lane access road	$600,000	2026
DNR Road No. 2 - Col Solare to Sunset Rd.	Construct new two lane access road	$900,000	2026
Meals Road - Coffin Rd. to Piert Rd.	Reconstruct two lane collector road	$4,900,000	2027
Canoe Ridge Road - Sonova to 100 Cirlcle Farm	Construct new two lane access road	$910,000	2028
Canoe Ridge Road - 100 C.F. to Bert James Rd.	Construct new two lane access road	$2,730,000	2028
Bert James Road - Canoe Ridge Rd. to Horrigan Rd.	Construct new two lane access road	$7,000,000	2029
Bert James Road - SR14 to Canoe Ridge Rd.	Construct new two lane access road	$1,540,000	2030
TOTAL		$25,675,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Franklin County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Pasco Kahlotus Road 1	Reconstruct and Resurface to All-weather standard	$1,765,000	2011
Filbert Bridge Replacement	Replace structure with New Bridge	$468,000	2011
Taylor Flats Bridge Widening	Widen Structure to Current Bridge Standards	$300,000	2012
Access Road to Juniper Dunes	Construct New Access Road into Juniper Dunes Area	$1,500,000	2012
Pasco Kahlotus Road Overlay	Reconstruct and Resurface to All-weather standard	$2,500,000	2013
County Paving Priority Program	Improve various gravel roads to Hard Surface	$743,000	2013
Dent Rd & Inter. @ Rd. 68/T. Flats	Reconstruct Intersection (RAB) and Dent Road to Easy Street	$1,000,000	2014
Ringold Hill Safety Improvements	Install guardrail, minor widening, slope flatening and	$500,000	2014
Pasco Kahlotus Road 5	Reconstruct, Realign and Resurface to All-weather	$1,500,000	2014
County Wide Illumination Projects	Add Illumination and Signing	$500,000	2014
Intersection Approach Program	Improve approaches to Hard Surfacing at intersections	$150,000	2014
Frontier/East Elm Connection	Construct New Road connecing Frontier to E. Elm	$1,000,000	2014
Glade North Overlay III	Reconstruct to All-weather standard	$600,000	2015
Pasco Kahlotus Road 2	Reconstruct and Resurface to All-weather standard	$1,500,000	2015
Pasco Kahlotus Road 3	Reconstruct, Realign and Resurface to All-weather	$2,000,000	2015
Glade North Road Overlay IV	Reconstruct to All-weather standard	$1,000,000	2016
New Block 17 Road	Construct new road on new alignment	$1,000,000	2016
East Elm Road Extension	Construct new road on new alignment	$5,000,000	2016
Commercial/Tank Farm Road	Construct New Frontage Road from Tank Farm to PK	$4,000,000	2016
Pasco Kahlotus Road 4	Reconstruct, Realign and Resurface to All-weather	$2,500,000	2016
Coyan Road	Reconstruct Road including R/R Overpass	$2,000,000	2016
County Wide Safety Projects	Bridge Rail Retrofits, Guardrail Improvements & Ditch/Slope work	$2,000,000	2017
County Wide Bridge Replacement	Replace Structures with New Bridges	$3,000,000	2017
Total Cost 2011-2020		$36,526,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
Franklin County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Hollingsworth Road 1	Reconstruct to All-weather standard	$2,000,000	
Phend/Frontier/E. Elm Loop	Resurface to All-weather Standard	$8,000,000	
Hendricks Road I	Reconstruct to All-weather standard	$2,000,000	
Hendricks Road II	Reconstruct to All-weather standard	$4,000,000	
Palouse Falls Road	Improve to Hard Surfacing	$1,000,000	
Railroad Avenue	Reconstruct to All-weather standard	$3,000,000	
Glade North Road Overlay V	Reconstruct to All-weather standard	$3,500,000	
Sagehill Road III	Reconstruct to All-weather standard	$3,500,000	
County Wide Safety Projects	Flatten Slopes, Guardrails and other safety features	$1,000,000	
Total Cost 2021-2032		$28,000,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2030 Unmet Need			
Franklin County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Glade North Road Widening I	Widen to 4 lanes including Safety Improvements	$3,000,000	
Glade North Road Overlay VI	Reconstruct to All-weather standard	$2,500,000	
Taylor Flats Road	Reconstruct to All-weather standard	$5,000,000	
Selph Landing Road	Reconstruct, Realign and Resurface to All-weather	$3,000,000	
Hollingsworth Road II	Reconstruct to All-weather standard	$5,000,000	
Russell Road	Reconstruct to All-weather standard	$3,500,000	
County Wide Illumination Projects	Add Illumination and Signing	$1,000,000	
County Wide Bridge Replacements	Replace Structures with New Bridges	$2,000,000	
Glade North Road Widening II	Widen to 4 lanes including Safety Improvements	$4,000,000	
PH 15	Reconstruct, Realign and Resurface to All-weather	$7,500,000	
TOTAL		$36,500,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Walla Walla County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Old Milton Highway Mp 1.3- Mp 2.1	Reconstruct And Realign Road	$1,600,000	2011
Goble Bridge	Bridge Replacement, Reconstruct Road	$500,000	2012
Reser Road Mp 0.0 - Mp 0.5	Reconstruct Road	$1,300,000	2012
Fishhook Park Road Mp 3.59 - Mp 4.32	Bridge Replacement, Reconstruct Road	$600,000	2012
Gardena Br. Gardena Touchet Road	Bridge Replacement, Reconstruct Road	$6,000,000	2013
Gardena S. Br. Touchet Gardena Road	Bridge Replacement, Reconstruct Road	$500,000	2013
Prospect Ave. Mp 0- 0.4 & Mp 0.6 - 0.9	Reconstruct Road	$2,500,000	2013
Berney No 2 Bridge	Bridge Replacement	$1,500,000	2014
Sudbury Road Mp 11.6 Mp 17.0	Reconstruct Road	$1,650,000	2014
Harvey Shaw Road Mp 3.4 - Mp 3.5	Erosion	$1,000,000	2014
Ennis Bridge On Brown Road	Replace Bridge	$400,000	2015
Blue Creek Bridge	Deck Repair	$750,000	2015
Cottonwood Road Mp 0.47 - Mp 0.81	Bridge Replacement, Reconstruct Road	$3,000,000	2015
Mill Creek Road Mp 0.0 - Mp 11.0	Bridge Replacement, Reconstruct Road	$14,600,000	2016
Bussell Road Mp 0.5 - Mp1.43	Reconstruct Road	$1,500,000	2016
Mill Creek Road Widening 1 Mile	Widen Shoulders Overlay Road	$1,500,000	2016
Luckenbill Road Mp3.6 - Mp 4.5	Bridge Replacement, Reconstruct Road	$1,200,000	2017
Hart Road Mp 6.8 -Mp 7.8	Reconstruct Road	$1,200,000	2017
Lewis Peak Rd Mp 0.0 - Mp9.24	Reconstruct Road	$5,000,000	2017
Taumarson Road Mp 0.1 - Mp 1.0	Reconstruct Road	$2,500,000	2018
Lyons Ferry Road Mp1.5 -Mp 3.2	Reconstruct/Realign Road	$1,300,000	2018
Plaza Way Mp 1.06- Mp1.8	Reconstruct/Realign Road	$2,000,000	2019
Cottonwood Road Mp 0.81 - Mp 1.47	Reconstruct Road	$3,500,000	2019
Hart Road Mp 1.8 - Mp 2.6	Reconstruct Road	$2,200,000	2020
Russell Creek Road Mp 2.3 - Mp 3.5	Reconstruct Road	$2,300,000	2020
TOTAL COST		$60,100,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
Walla Walla County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Eureka N. Road Mp 3.3 - Mp 4.6	Reconstruct Road	$2,300,000	2021
Luckenbill Road Mp 7	Replace Bridge	$2,000,000	2021
Middle Waitsburg Rd Mp 11.8 - Mp 12.8	Reconstruct/Realign Road	$1,000,000	2022
Walter Bridge On Hart Road	Replace Bridge	$750,000	2022
Smith Springs Road Mp 3.3 - Mp 3.6	Reconstruct Road	$900,000	2023
Russell Creek Road Mp 0.0 Mp 0.8	Reconstruct Road	$2,600,000	2023
Paxton Bridge	Replace Bridge	$3,800,000	2023
Humorist Road Mp 4.24 - Mp 4.43	Widen/ Reconstruct Road	$5,000,000	2024
Middle Waitsburg Rd Mp 5.9 - Mp 7.3	Reconstruct Road	$4,000,000	2024
Middle Waitsburg Rd Mp 7.9 - Mp 9.0	Reconstruct Road	$1,500,000	2024
Pine Creek No 2 Bridge	Replace Bridge	$3,500,000	2025
Last Chance Road Mp 0.97 - Mp 1.0	Shoulder Widening	$1,000,000	2025
L. Monumental Road Mp 6.3 Mp 7.6	Reconstruct Road	$3,700,000	2026
L. Whetstone Road Mp 0.0 - Mp 2.2	Reconstruct Road	$1,350,000	2026
Harvey Shaw Road Mp 7.6 - Mp 8.3	Reconstruct Road	$2,900,000	2027
Lyons Ferry Road Mp 14.3 - Mp 14.9	Reconstruct Road	$2,300,000	2027
Lovers Lane Mp 0 - Mp 1.25	Reconstruct Road	$1,500,000	2028
Electric Avenue Mp 6.4 - Mp 6.8	Reconstruct Road	$2,000,000	2028
Electric Avenue Mp 0.0 - Mo 0.86	Reconstruct Road	$2,000,000	2028
Middle Waitsburg Rd Mp 7.6 - Mp 11.8	Reconstruct Road	$4,400,000	2029
Sheffler Road Mp 0.0 - Mp 8.0	Reconstruct Road	$11,000,000	2030
TOTAL		$59,500,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Prosser			
Project Name	*Description*	*Project Cost*	*Year of Const.*
6th Street: Sherman to BNSF RR	Rebuild, Curb, Gutter, Sidewalk, Drainage, Illum.	$587,000	2011
Kinney Way/Concord Way/Market Sidewalks	Park Ave. to SR22 - Curb, Sidewalk	$685,000	2011
Wamba Rd.: OIEH to Merlot	Rebuild, Widen, Curb, Sidewalk, Drain., Illum., Bike L	$1,498,000	2011
Sheridan Ave. Phase 2: WCR to 6th Street	Reconst., C, G, S, Drainage, Illum., Bike Lane	$1,259,000	2012
Byron Rd.: Sheridan to West City Limits	Reconst., C, G, S, Drainage, Illum., Bike Lane	$2,535,000	2013
OIEH: WCR to West City Limits	Reconst., Widen, C, G, S, Drainage, Illum., Bike Lane	$2,752,000	2013
Wamba Rd.: WCR to OIEH	Reconst., Widen, C, G, S, Drainage, Illum., Bike Lane	$552,000	2013
WCR/Gap Rd./Merlot Dr./CR12 Intersection	Reconstruct, Roundabout	$2,373,000	2013
Alexander Ct.: Highland Dr. to Paterson-Phse. 1	Reconstruct, Widen, Bike Lane	$945,000	2014
Nunn Rd.: WCR to West City Limits	Reconst., Widen, C, G, S, Drainage, Illum., Bike Lane	$1,305,000	2014
Alexander Ct.: WCR to Highland Dr. -Phase. 2	Rebuild, Widen, Curb, Sidewalk, Drain., Illum., Bike L	$317,000	2015
Benson Ave.: Mercer Ct. to Alexander Ct.	Reconst., C, G, S, Drainage, Illum., Bike Lane	$572,000	2015
OIEH: WCR to Grant	Rebuild, Widen, Curb, Sidewalk, Drain., Illum., Bike L	$3,158,000	2015
7th Street: WCR to Meade	Rebuild, Widen, Curb, Sidewalk, Drain., Illum., Bike Ln	$400,000	2016
Highland Dr.: Alexander Ct. to SR22	Rebuild, Widen, Curb, Sidewalk, Drain., Illum., Bike Ln	$1,061,000	2016
Downtown Intersections:5th Street	Planing, Overlay, C, G, S, Drain., ADA Ramps	$325,000	2016
Guernsey: Park Ave. to Prosser Ave.	Ln	$530,000	2017
Sister Streets Improvements	Reconst., Widen, C, G, S, Drainage, Illum.,	$1,600,000	2018
Total Cost 2011-2020		$22,454,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
Prosser			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Brown: Park Ave. to Bennett Ave.	Reconst., Widen, C, G, S, Drain.,	$562,000	2021
Bennett ave.: 6th to Florence	Reconstruct, Bike Lane	$1,230,000	2021
Yakima Ave.: Brown to 6th	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$2,560,000	2023
WCR: Exit 80 to East Wittkopf Loop	Overlay	$1,739,000	2024
Memorial: Meade to Playfield	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$905,000	2025
Playfield; 6th to Memorial	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$650,000	2026
Bennett Ave.: 8th to East Termination	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$500,000	2027
8th: Bennett to Meade	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$375,000	2027
Dudley: Bennett to 7th	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$950,000	2028
Sommers: Memorial to 7th	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$450,000	2028
Grant Ave.: 6th to 8th	Rebuild	$550,000	2029
Grant Ave.: 8th to 10th	Rebuild	$650,000	2030
Total Cost 2021-2020		$11,121,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Connell			
Project Name	Description	Project Cost	Year of Const.
W. Adams St. Reconstruction	N.Columbia Ave. to N. 5th Ave.	$720,000	2011
Columbia Ave. Seal Coat	SR 260 to SR 395	$140,000	2011
Street Preservation	Ongoing Street Maintenance	$80,000	2011
Old Railroad ROW Pedestrian Path	Pioneer Park to Hertiage Park	$100,000	2012
E. Birch St. Reconstruction	S. Columbia Ave. to Pioneer Park	$680,000	2013
E. Davis St. Reconstruction	N. Almira Ave. to N. Chelan Ave.	$550,000	2015
Date St. Sidewalk	S. Columbia Ave. to Pioneer Park(1 side)	$75,000	2016
Total Cost 2011-2020		**$2,345,000**	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
Connell			
Project Name	Description	Project Cost	Year of Const.
E. Clark St. Reconstruction	N. Columbia Ave. to Ford St.	$1,500,000	2017
Total Cost 2021-2020		$1,500,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2030 Unmet Need			
Connell			
Project Name	Description	Project Cost	Year of Const.
Connell Interchange	Hwy 395 @ Columbia /Lind	$18,000,000	
TOTAL		$18,000,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Mesa			
Project Name	Description	Project Cost	Year of Const.
May Avenue South	Pepiot to Farrell: water line, sewer line, curb, gutter & sidewalk	$583,000	2015
Total YOE Cost 2011-2020		**$583,000**	
2021-2030 Projects			
Mesa			
Project Name	Description	Project Cost	Year of Const.
Manton Way	Chip seal	$35,000	2021
Pepiot Road	SR 17 to E. School drive: curb, gutter, sidewalk	$280,000	2021
Petra Court	Oil Shoot	$10,000	2021
May Avenue North	160 feet: water, sewer, curb, gutter, sidewalk & paving	$130,000	2021
Total Cost 2021-2020		**$455,000**	
2011-2030 Unmet Need			
Mesa			
Project Name	Description	Project Cost	Year of Const.
Judson Street	Chip seal	$10,000	
Caldona Avenue	Chip seal	$10,000	
Lewis Court	Base course and oil shot	$20,000	
Third Avenue	Chip seal	$6,000	
Peabody North	Extension	$80,000	
First Avenue North	Chip seal	$5,000	
Columbia Street	Chip seal	$5,000	
Sheffield Road	Chip seal & shoulder work	$30,000	
First Avenue	Overlay: Pepiot to Manton; curb & sidewalk: Columbia to Manton	$400,000	
Park Avenue	Overlay, sidewalk & parking at park	$350,000	
Rowell Avenue	Chip seal	$10,000	
Franklin Street	Chip seal	$5,000	
Angeline Street	Chip seal	$3,000	
Old Town Road	Chip seal w/shoulder work	$30,000	
Lucille Street	Chip seal	$3,000	
Farrell Street	Chip seal	$3,000	
TOTAL		$970,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Kahlotus			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Violet, Weston & West Martin	Curb, Gutter, Sidewalk, ACP & Drainage	$310,000	2015
Total Cost 2011-2020		**$310,000**	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
Kahlotus			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Lake Road	Paved Road w/drain ditches	$310,000	2021
Total Cost 2021-2020		**$310,000**	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2030 Unmet Need			
Kahlotus			
Project Name	*Description*	*Project Cost*	*Year of Const.*
West Martin Sidewalk	Curb, Gutter & Sidewalk	$100,000	
Westin Sidewalk	Curb, Gutter & Sidewalk	$160,000	
Durham Street	Chip seal	$25,000	
Courtright Street	Chip seal	$15,000	
Maryland Street	Chip Seal	$10,000	
Washington Street	Chip seal	$10,000	
Westin Street	Chip Seal	$20,000	
West Martin Street	Chip seal	$15,000	
Violet Street	Chip seal	$5,000	
TOTAL		$100,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
City of Walla Walla			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Rose Street Sidewalk Improvements	Woodland to 12th Avenue	$251,000	2011
13th Avenue and Rose Signalization	New signal	$240,510	2011
Alder HSIP Project	Pedestrian improvements on Alder and Rose	$398,000	2011
Alder Street Improvements	Reconst. Signals at Colville, 1st Ave and 3rd Ave	$1,675,700	2011
Rose Street Reconstruction	2nd Avenue to Palouse Street	$859,348	2011
Orchard Street Sidewalk Improvements	9th Ave to Chase Street	$464,330	2012
13th Avenue Improvements Phase 11	Gap project between Cherry and Abadie Streets	$816,215	2012
Mill Creek at 2nd Ave Bridge	Rehabilitate Existing Bridge	$200,000	2012
Yellowhawk Creek at Sturm Ave Bridge	Rehabilitate Existing Bridge	$200,000	2012
Myra Road - SR125 to Garrison	Lowering intersection	$4,616,000	2013
Main-Palouse-Boyer Accessibility	Accessiblity improvements- audible & ADA	$104,632	2013
3rd and Alder Signal Improvements	Signal improvements	$250,000	2014
Plaza Way Improvements	Widening, signal improvements,9th to Tietan St.	$2,168,200	2015
3rd and Tietan Signalization	New signal	$350,000	2015
Boyer Street Bicycle Improvements	Bike Route improvement from Main to Wilbur	$280,000	2015
Wilbur Avenue Reconstruction	Whitman Street to Bryant Avenue	$2,500,000	2015
Mill Creek Trail Re-pave	resurface exist. Path from Cambridge St to Tausick Way	$200,000	2016
9th Ave and Plaza Way/Dalles Military	Intersection geometric and signal improvements	$1,763,750	2016
9th Avenue Sidewalk	Garrison Crk to Dalles-Military	$82,000	2016
Wilbur Avenue Extension	New street from Bryant Ave to Reser Rd	$4,875,000	2016
Orchard Street Reconstruction	Chase to 3rd Avenue	$1,200,000	2017
Audible Accesible Signal Improvements	2-3 signals upgraded to APS capbablilty	$120,000	2018
TOTAL		$23,614,685	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
City of Walla Walla			
Project Name	Description	Project Cost	Year of Const.
Myra Road - SR125 to Taumarson	New Construction	$3,367,000	2021
9th and Main Signal	Signal improvements	$250,000	2021
Chestnut & Howard	Intersection realignment and new signal	$733,000	2021
Howard and Abbott Signalization	New signal	$250,000	2021
9th and Pine Signalization	New signal	$250,000	2021
Clinton Street Reconstruction	Isaacs Ave to Alder Street	$1,500,000	2021
Avery and Rose Signalization	New signal	$250,000	2021
School Avenue Improvements	Reconstruct from Reser Rd to Byrant Ave	$4,000,000	2021
School Avenue Improvements Phase II	Reconstruct from Byrant Ave to Pleasant St.	$2,000,000	2022
Melrose Street Reconstruction	Wilbur Avenue to Airport Way	$3,500,000	2023
Alder and Tausick Intersection	Improve intersection	$300,000	2024
Isaacs Avenue Improvements	Tausick Way to WWCC entrance	$1,500,000	2024
Tietan Street Improvements	4th Avenue to Plaza Way	$1,905,000	2025
Alder and Division Signalization	New signal	$250,000	2025
N. 4th Avenue Improvements	Moore to Rees Avenue	$1,600,000	2026
Sportsplex Pedestrian Bridge	Across Mill Creek	$450,000	2026
Alder Street Re-channelization	7th Avenue to Palouse Street	$1,000,000	2027
Park Street Bike and Pedestrian	Boyer to Whitman	$125,000	2027
Cherokee Street Reconstruction	3rd Avenue to 2nd Avenue	$667,000	2028
9th and Alder Signal Upgrade	Replace span wire signals	$250,000	2028
Electric Avenue Improvements	Extend new street from Myra Road to Woodland Ave	$2,000,000	2029
Avery Street Improvements	Rose Street to Electric Avenue	$1,500,000	2029
9th Avenue Corridor Signal Interconnect	Plaza Way to Rose Street	$200,000	2030
New Street (Not yet named)	Extend new street from Myra Road to Woodland Ave	$200,000	2030
Wilbur and Melrose Signalization	New signal	$250,000	2030
Bryant and Howard Signalization	New signal	$250,000	2030
TOTAL		$28,547,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
College Place			
Project Name	Description	Project Cost	Year of Const.
Whitman Central Corridor Project	Reconstruction, signal, ADA improvements, multi-use path, sidewalks, and storm improvements	$2,500,000	2011
Rose Street Reconstruction	Remove & Replace base & asphalt, curb & gutter replacement where needed, re-striping	$1,800,000	2012
Taumarson Road	Reconstruction, curb, gutter, & multi-use path, storm	$1,000,000	2012
Total Cost 2011-2020		$5,300,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
College Place			
Project Name	Description	Project Cost	Year of Const.
College Avenue	Reconstruction, curb, gutter, & sidewalk replacment, ADA improvements, storm, & signals	$4,500,000	2021
Total Cost 2021-2020		$4,500,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2030 Unmet Need			
College Place			
Project Name	Description	Project Cost	Year of Const.
Davis Avenue	New street construction, bridge, realignment	$4,000,000	2022
Larch Extension North	Reconstruction, widening, curb, gutter, & sidewalk, ADA improvements, round-about	$1,500,000	
Larch Avenue Reconstruction (4th - 12th)	Reconstruction, ADA improvements	$1,000,000	
Total Unmet Need		**$2,500,000**	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Waitsburg			
Project Name	Description	Project Cost	Year of Const.
Touchet River Levee Walking Trail		$10,000	2014
School Sidewalks:	Highschool to Athletic Facility	$114,000	2013
W. Seventh St: Main St. Arnold Lane	Reconstruction and S. Sidewalk	$777,000	2012
TOTAL		$901,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
Waitsburg			
Project Name	Description	Project Cost	Year of Const.
Bolles Rd.: Main to WCL (Reconstruct & Widen)		$550,000	2021 (2015)
W. Seventh St: Bridge Rehabilitation		$1,000,000	2021 (2020)
TOTAL		$1,550,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2030 Unmet Need			
Waitsburg			
Project Name	Description	Project Cost	Year of Const.
Taggart Rd.: NCL to SR 12 (Extend & Straighten)		$500,000	2021
Main St. Bridge.: Bridge Rehabilitation		$2,000,000	2025
Preston Ave: Bridge Rehabilitation*		$3,500,000	2030
Citywide Stormwater		$250,000	2020
Millsite repurposing		$2,000,000	2025
TOTAL		$8,250,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
City of Prescott			
Project Name	*Description*	*Project Cost*	*Year of Const.*
A Street: 2nd to 4th	Widen, Resurface, Storm Drains	$75,000	2013
A Street: 2nd to RR	Widen, Resurface, Storm Drains	$80,000	2015
First St.: A St. to E St.	Resurface, Gutter, Storm Drains, Sidewalk	$110,000	2018
TotaL Cost 2011-2020		**$265,000**	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
City of Prescott			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Railroad Ave.: A St. to C St. and F St. to G St.	Widen, Resurface, Storm Drains	$110,000	2021-2030
4th St.: A St. to F St.	Widen, Resurface, Storm Drains	$150,000	2021-2030
Total Cost 2021-2020		**$260,000**	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan

2011-2020 Projects

Washington State Department of Transportation

This list is based on current funding levels and does not account for any new revenue packages.
The project cost column give a range of cost, because projects are not clearly defined to give actual costs.

$ is up to $1 million
$$ is $1 to $10 million
$$$ is $10 to $30 million
$$$$ is over $30 million

012	311.58	311.59	US 12-Nine Mile Creek vicinity MP 314.45.	Flatten slopes through rock cut.	$
012	355.05	377.18	US 12/Waitsburg to Tucannon River-Roadside Safety	Removed fixed objects and install guardrail.	$
012	288.86	338.32	US-12 ITS (Pasco to Walla Walla)	Full Arterial ITS in both directions	$
014	152.15	180.68	SR 14/Benton County Roadside Safety Improvements	Remove fixed objects, install guardrail and flatten slopes along SR 14.	$$
014	179.87	180.08	SR 14-Plymouth Road/McNary Court I/S South MP 179.95 to MP 180.17	Construct intersection improvements.	$$
017	1.57	1.58	SR 17/Benton, Franklin and Walla Walla Counties - Guardrail Upgrade	Update nonstandard guardrail north of Mesa on SR 17	$
024	43.32	43.7	SR 24/Vernita Bridge Rail Retrofit	The existing bridge rail at Vernita will be brought up to current standards.	$
082	36.02	82.06	I-82 Yakima to Prosser-Weather and Radio Stations	Will install four environmental sensor stations with snap shot cameras on the I-82 corridor from Union Gap to Prosser.	$
082	98.97	100.47	I-82/Red Mountain Vicinity - Pre-Design Analysis	This project will perform planning and pre-design analysis for a proposed *I-82 Red Mountain Interchange* and SR 224 connector as identified in the Red Mountain Area Plan.	$
224	0.1	0.13	SR 224/SR 225 - Benton City - Construct Intersection Improvements (Phase 1)	This project will construct a roundabout at the intersection of SR 224 and SR 225 in Benton City to eliminate a chokepoint for West Richland and Benton City commuters. The roundabout will work to improve the flow of traffic, reduce accidents, and provide capacity for increased traffic from future developments. The existing park and ride lot will be relocated to the east and the westbound off ramp will be relocated to the roundabout.	$$
082	82.06	82.07	I-82/Prosser Vic-WIM	Prepare the Prosser Vicinity for weigh in motion (WIM) equipment.	$
124	0	44.68	SR 124/Benton, Franklin and Walla Walla Counties - Guardrail Upgrade	The nonstandard guardrail along SR 124 east of Pasco needs updated. By updating the guardrail this project will maintain the safe operation of the highway.	$
125	4.45	5.39	9th Ave (SR 125) Corridor Signal Interconnect	Interconnect signals on 9th Ave.	$
125	5.27	5.28	Ninth Ave (SR 125) and Alder St	Traffic Signal Improvements.	$
125	5.33	5.34	Ninth Ave (SR 125)/Main St Signal Improvement	Upgrade the signal	$
125	0	2.35	SR 125/College Place - Signal Coordination	College Place Signal Coordination	$
241	8	25.18	*SR 241/Sunnyside to SR 24-Roadside Safety*	*Install a guardrail and remove fixed objects, improving* the safety of the highway.	$$
260	7.37	23.21	SR 260/Benton, Franklin and Walla Walla Counties - Guardrail Upgrade	Updates the nonstandard guardrail on SR 260 from the vicinity of Connell to Kahlotus.	$
395	62.5	62.51	US 395/Nordhein Road Vicinity Guardrail	Updates the nonstandard guardrail on US 395/Nordhein Road vicinity.	$
730	0	6.08	SR 730/Benton, Franklin and Walla Walla Counties - Guardrail Upgrade	Upgrades nonstandard guardrail on SR 730 south of Wallula.	$

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan					
2021-2030 Projects					
Washington State Department of Transportation					
This list is based on current funding levels and does not account for any new revenue packages. *The project cost column give a range of cost, because projects are not clearly defined to give actual costs.* ***$ is up to $1 million*** ***$$ is $1 to $10 million*** ***$$$ is $10 to $30 million*** ***$$$$ is over $30 million***					
012	319.85	322.67	US 12/Touchet, Nine Mile Hill to Woodward Canyon Vic - Phase 7A	Existing US 12 from Nine Mile Hill to the near Woodward Canyon is a two-lane roadway with multiple driveways and access points. Substantial truck traffic and recreational vehicles conflict with faster moving vehicles. Currently US 12 slow through the town of Touchet and passes through a school crossing zone. This project will construct a new four-lane divided highway north of existing US 12, adding capacity and improve safety along this section of US 12. Access to the highway will be limited to county road intersections with turn pockets conflicts should be minimized while vehicles, enter and leave the roadway.	$$$$
012	319.88	325.28	US 12/Walla Walla, Woodward Canyon Vic to Frenchtown Vic - Phase 7B	US 12 from near Woodward Canyon to the Frenchtown Monument is a two-lane roadway with multiple driveways and access points. Substantial truck traffic and recreational vehicles conflict with faster moving vehicles. Currently, US 12 slow through the town of Lowden. This project will construct a new four-lane divided highway north of US 12, adding capacity and potentially improving safety along this section of US 12. Access to the highway will be limited to county road intersections with turn pockets for minimizing conflicts with vehicles entering and leaving the roadway.	$$$$
024	38.43	43.51	SR 24/Vernita (Columbia River to SR 240) - Construct Truck Climbing Lane	Construct additional lane to accommodate freight movement. This will move the high percentage of trucks	$$
082	99.27	100.27	I-82/Red Mountain Vicinity - Build Interchange (Phase 2)	Improved access to the I-82 corridor between Benton City and the I-82/I-182 Interchange is crucial to ensure enhanced economic vitality for this region. A new I-82 Interchange and new connection to SR 224, east of Benton City, will provide direct interstate access to and from developments in West Richland while improving emergency response times to the entire area. Preliminary results from an economic study of a new interchange at this location show the benefits far exceed the cost.	$$$$
125	4.62	4.63	Orchard: 9th (SR 125) to 3rd	Reconstruct/signal @ 9th	$
395	62.69	63.75	US 395/Lind Rd - Improve Intersection	Construct improvements to the existing at-grade intersection. The specific improvements are yet to be determined.	$

Port Project Listings

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan		
2011-2020 Projects		
Port of Benton		
Project Name	*Description*	*Project Cost*
George Washington Way Sidewalk	6' sidewalk west side of George Washington Way - Horn Rapids Road to University	$226,000
Railroad Bridge Replacement	Columbia Park Trail Railroad Bridge - replace wood structure	$750,000
Fermi Road Construction	Construct new road from existing north end to University Road	$400,000
Larson Road Construction	Construct new road from Battelle Blvd to Horn Rapids Road	$650,000
Battelle Blvd Traffic Signal	Reconstruct and upgrade traffic signal at Battelle Blvd and George Washington Way	$200,000
Horn Rapids Road Extension	Extend Horn Rapids Road from George Washington Way to Columbia River	$250,000
South Richland Rail Transload Facility	Upgrade existing siding	$750,000
Wamba Road Construction	Reconstruct roadway from Merlot Drive to OIEH	$800,000
Benitz Road Construction	Reconstruct roadway from Wine Country Road to Yakima River	$250,000
Lee Road Construction	Reconstruct roadway from Benitz Road to POB Boundary.	$625,000
1st Street Construction	Extend 1st Street 2000 feet west of Stevens Drive	$1,500,000
TOTAL		**$6,401,000**

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan		
2011-2020 Projects		
Port of Pasco		
Project Name	*Description*	*Project Cost*
BPIC Rail Hub Ph. 5	Add 1 mile of intermodal rail to Big Pasco	$1,400,000
Heritage Rail Extension	Add 1 mile of industrial track near Heritage IC	$1,600,000
Burlington Road at Foster Wells Bus. Park	New 1/2 mile 3-lane road and utilities	$1,500,000
Ainsworth Avenue Reconstruction Ph. 1	Reconstruct 1/2 mile of road at Big Pasco	$300,000
Argent Road Widening	Add right turn lane to Argent from 20th to I-182	$300,000
Osprey Pointe Phase 2 & 3	Road & infrastructure improvements	$2,000,000
TOTAL		$7,100,000

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan		
2021-2032 Projects		
Port of Pasco		
Project Name	*Description*	*Project Cost*
Marine Terminal Road Improvements	Improve 1 mile of roads (Wash St, River St, 9th)	$2,000,000
Big Pasco Rail Rehabilitation	Reconstruct 5 miles of rail at Big Pasco	$2,500,000
TOTAL		$4,500,000

Transit Agency Vehicle and Equipment Replacement Plans

Ben Franklin Transit 2011-2020 Purchases			
Each	Vehicles	Year	Project Cost
13	Buses	2011	$ 4,687,500
Varies	(CCES) Computers, Communications Equipment, Software	2011	$ 187,500
0	Dial-A -Ride	2011	$ -
0	Vans	2011	$ -
3	Buses	2012	$ 1,000,000
Varies	CCES	2012	$ 194,063
30	Dial-A -Ride	2012	$ 3,000,000
40	Vans	2012	$ 1,000,000
7	Buses	2013	$ 2,500,000
Varies	CCES	2013	$ 312,500
7	Dial-A -Ride	2013	$ 625,000
19	Vans	2013	$ 475,000
8	Buses	2014	$ 2,968,750
Varies	CCES	2014	$ 312,500
12	Dial-A -Ride	2014	$ 1,092,750
32	Vans	2014	$ 787,500
8	Buses	2015	$ 2,968,750
Varies	CCES	2015	$ 312,500
12	Dial-A -Ride	2015	$ 1,092,750
32	Vans	2015	$ 787,500
8	Buses	2016	$ 2,968,750
Varies	CCES	2016	$ 312,500
12	Dial-A -Ride	2016	$ 1,092,750
32	Vans	2016	$ 787,500
8	Buses	2017	$ 2,968,750
Varies	CCES	2017	$ 312,500
12	Dial-A -Ride	2017	$ 1,092,750
32	Vans	2017	$ 787,500
8	Buses	2018	$ 2,968,750
Varies	CCES	2018	$ 312,500
12	Dial-A -Ride	2018	$ 1,092,750
32	Vans	2018	$ 787,500
8	Buses	2019	$ 2,968,750
Varies	CCES	2019	$ 312,500
12	Dial-A -Ride	2019	$ 1,092,750
32	Vans	2019	$ 787,500
8	Buses	2020	$ 2,968,750
Varies	CCES	2020	$ 312,500
12	Dial-A -Ride	2020	$ 1,092,750
32	Vans	2020	$ 787,500
Subtotal			**$ 50,112,063**

Ben Franklin Transit 2021-2030 Purchases			
Each	Vehicles	Year	Project Cost
8	Buses	2021	$ 2,968,750
Varies	CCES	2021	$ 312,500
12	Dial-A -Ride	2021	$ 1,092,750
32	Vans	2021	$ 787,500
8	Buses	2022	$ 2,968,750
Varies	CCES	2022	$ 312,500
12	Dial-A -Ride	2022	$ 1,092,750
32	Vans	2022	$ 787,500
8	Buses	2023	$ 2,968,750
Varies	CCES	2023	$ 312,500
12	Dial-A -Ride	2023	$ 1,092,750
32	Vans	2023	$ 787,500
8	Buses	2024	$ 2,968,750
Varies	CCES	2024	$ 312,500
12	Dial-A -Ride	2024	$ 1,092,750
32	Vans	2024	$ 787,500
8	Buses	2025	$ 2,968,750
Varies	CCES	2025	$ 312,500
12	Dial-A -Ride	2025	$ 1,092,750
32	Vans	2025	$ 787,500
8	Buses	2026	$ 2,968,750
Varies	CCES	2026	$ 312,500
12	Dial-A -Ride	2026	$ 1,092,750
32	Vans	2026	$ 787,500
8	Buses	2027	$ 2,968,750
Varies	CCES	2027	$ 312,500
12	Dial-A -Ride	2027	$ 1,092,750
32	Vans	2027	$ 787,500
8	Buses	2028	$ 2,968,750
Varies	CCES	2028	$ 312,500
12	Dial-A -Ride	2028	$ 1,092,750
32	Vans	2028	$ 787,500
8	Buses	2029	$ 2,968,750
Varies	CCES	2029	$ 312,500
12	Dial-A -Ride	2029	$ 1,092,750
32	Vans	2029	$ 787,500
8	Buses	2030	$ 2,968,750
Varies	CCES	2030	$ 312,500
12	Dial-A -Ride	2030	$ 1,092,750
32	Vans	2030	$ 787,500
Subtotal			$ 51,615,000
Total			$ 101,744,063

Valley Transit 2011-2030 Vehicle and Equipment Replacement Plan		
Valley Transit 2011-2020 Vehicle and Equipment Replacement Plan		
Project Name	**Description**	**Project Cost**
2011 Purchase Three (3) Dial-A-Ride Mini-Buses	(2) Replacement and (1) Expansion Mini-Buses	$350,949
2011 Purchase One Low Floor Shuttle Bus	(1) Expansion Shuttle-Bus	$175,000
2011 Purchase and Install Thirteen (13) Shelters	(13) Install Passenger Waiting Shelters at Various Locations	$112,000
2011 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$101,100
2012 CNG Safety and Mitigation for CNG Vehicles	Facility Safety Improvements to Operate and Maintain CNG Vehicles	$800,000
2012 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$71,672
2012 Purchase Administrative Support Van	Replace (1) Administrative Support Van	$27,353
2012 Purchase Maintenance Service Truck	Replace One (1) Maintenance Department Service Truck	$30,635
2012 Reconstruction of Parking Lot	Reconstruction of Parking Lot at Main Facility	$87,000
2012 Regional Transfer Center Ticket Office Expansion	Construct Passenger Waiting Area at Downtown Transfer Center	$106,000
2012 Replace One (1) CNG Powered 35-foot Transit Bus	Trolley Replica Bus	$543,000
2012 Replace Three (3) 30-ft, Low-Floor Transit Buses	Trolley Replica Buses	$1,593,000
2012 Replace Three (3) CNG-Mini Buses	Purchase (3) Replacement CNG Powered Mini-Buses	$599,000
2013 Main Facility Improvements	Energy Conservation and Building Improvements	$1,226,250
2013 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$88,902
2014 Purchase One Fork Lift	Replace (1) Maintenance Department Fork Lift	$30,000
2014 ADA Improvements at Bus Stops	ADA Improvements to Legacy Bus Stops	$287,000
2014 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$110,575
2015 Replace Three (3) Low-Floor Trolley Buses	Trolley Replica Buses	$1,720,461
2015 Market Station Multi-modal Station	Construction of Downtown Multi-Modal Station	$2,000,000
2015 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$127,381
2016 Replace Two (2) Low-Floor Trolley Buses	Trolley Replica Buses	$1,199,736
2016 Replace Four (4) Dial-A-Ride Mini-Buses	Purchase Four (4) Replacement CNG Powered, Low-Floor Mini-Buses	$612,964
2016 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$114,643
2017 Replace Four (4) Low-Floor Trolley Buses	Trolley Replica Buses	$2,434,251
2017 One Tractor	Replace (1) Maintenance Tractor Used for Snow Removal	$50,386
2017 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$122,027
2018 Replace One (1) Low Floor Shuttle Bus	Purchase One (1) Replacement Shuttle-Bus	$239,751
2018 One Operations Support Van	Replace (1) Operations Support Supervisor Van	$135,138
2018 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$123,868
2019 Replace Three (3) Dial-A-Ride Mini-Buses	Purchase Three (3) Replacement CNG Powered, Low-Floor, Mini-Buses	$526,128
2019 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$127,602
2020 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$134,020
Total Project Cost 2011-2020		**$16,007,792**

Valley Transit 2021-2030 Vehicle and Equipment Replacement Plan		
Project Name	**Description**	**Project Cost**
2021 Replace Four (4) Dial-A-Ride Mini-Buses	Purchase Four (4) Replacement CNG Powered, Low-Floor Mini-Buses	$767,528
2021 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$159,189
2022 Replace Three (3) Low-Floor Trolley Buses	Replace Three (3) 30-foot Trolley Buses with 30-foot CNG, Low-floor Trolley Replica Buses	$2,357,040
2022 One Maintenance Service Truck	Replace Maintenance Department Service Truck	$48,033
2022 One Administrative Support Van	Replace (1) Administrative Support Van	$42,886
2022 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$145,192
2023 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$171,893
2024 Replace One 30-foot Low-Floor Trolley Bus	Trolley Replica Bus	$810,825
2024 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$157,485
2025 Replace Three (3) CNG-Mini Buses	Purchase (3) Replacement CNG Powered Mini-Buses	$689,100
2025 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$185,825
2026 Replace Three (3) Low-Floor Trolley Buses	Trolley Replica Buses	$2,821,590
2026 One Fork Lift	Replace (1) Maintenance Department Fork Lift	$30,000
2026 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$171,013
2027 Replace Four (4) Dial-A-Ride Mini-Buses	Purchase Four (4) Replacement CNG Powered, Low-Floor Mini-Buses	$1,005,276
2027 One Tractor	Replace (1) Maintenance Tractor Used for Snow Removal	$79,000
2027 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$201,104
2028 One Operations Support Van	Replace (1) Operations Support Supervisor Van	$211,881
2028 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$185,906
2029 Replace Five (5) Low-Floor Trolley Buses	Trolley Replica Buses	$5,381,925
2029 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$217,868
2030 Replace Four (4) Low-Floor Trolley Buses	Trolley Replica Buses	$4,503,592
2030 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$202,298
Total Project Cost 2021-2030		**$20,546,449**

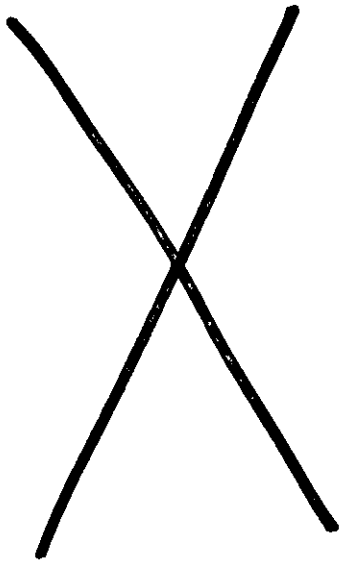


Exhibit No. NH-1T

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED TESTIMONY OF NEIL HINES

1. INTRODUCTION

Neil Hines is the Fire Chief for the City of Kennewick. His pre-filed testimony explains how the proposed crossing addresses an acute public need for a vehicular crossing on Center Parkway. The pre-filed testimony also explains why existing crossings or other alternative railroad crossing locations do not adequately advance the public health and safety in the City of Kennewick and in the City of Richland.

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2. BACKGROUND

Q: *State your name, position, and years in that position.*

A: Neil Hines, Fire Chief of Kennewick Fire Department, eight years as Fire Chief.

Q: *State any other relevant background experience.*

A: I have over 34 years of personal experience in fire and emergency service. Further, in my capacity as Fire Chief, I recently completed a comprehensive study to determine the proper placement of a future fire station in the City of Kennewick. This process required the development of an accurate and complete unit response time study. Through this effort I gained additional knowledge in emergency response patterns, which is relevant to my review and opinion of the JUB study response times provided below.

Q: *Describe the City of Richland's relationship with City of Kennewick fire and police services with regard to responding to fire and police emergencies.*

A: The relationship between the City of Richland and the City of Kennewick fire departments is strong and purposefully co-dependent. The two fire/EMS agencies have a long history of mutual aid response wherein both agencies will respond to the same incident irrespective of the city in which the event occurred. Further, the Cities of Richland and Kennewick also have an auto aid agreement in place, which allows for the dispatching of the closest available fire or EMS unit regardless of jurisdictional boundaries. This auto aid agreement was originally established in 2005, but was amended and expanded in 2007 to include the fire/EMS agencies immediately surrounding Richland and Kennewick. Under these mutual and auto aid agreements, units from other agencies respond to incidents occurring in different jurisdictions on a daily basis. This design allows for efficient and effective fire/EMS service delivery since the agencies deploy as a system without regard for jurisdictional boundaries.

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3. BACKGROUND ON THE PROPOSED PROJECT

Q: *State your understanding of the project.*

A: The proposed project will extend existing Center Parkway to the north from the round-about at Gage Blvd. and Center Parkway in Kennewick connecting to Tapteal Drive in Richland. The extension of Center Parkway will require an at-grade crossing of an existing railroad spur. Currently, there is no convenient or practical connection between Gage at Center Parkway and Tapteal Drive. Completion of Center Parkway to Tapteal Drive will provide a crucial link between the retail/commercial properties located on Tapteal and those located in the Columbia Center Mall and Gage Blvd. retail/commercial area.

4. NEED FOR THE PROPOSED PROJECT

Q: *Describe the acute need for the railway crossing at Center Parkway from a public health and safety perspective.*

A: I concur with the response times set forth in the JUB study. The best emergency response routes for fire and EMS units are on straight arterial-type roadways providing the most direct route with the least amount of traffic, traffic control systems, intersections, and turns to negotiate. As stated above, there is currently no convenient or practical connection between Gage at Center Parkway and Tapteal Drive. Therefore, any response to that area requires indirect travel via Steptoe Street or Columbia Center Boulevard, both which have a considerable number of traffic control devices, heavy traffic at certain times, intersections, and negotiable turns. Response times for fire and/or medical emergencies would be improved by extending the existing Center Parkway to Tapteal Drive. An improvement of mere seconds may significantly impact the outcome for critical events related to a medical emergency or fire.

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Q: *Describe whether the public health and safety is advanced in spite of the inherent risk of opening an at-grade crossing at Center Parkway.*

A: From my prospective, the interests of public health and safety are advanced when balanced against the potential risks associated with the proposed at-grade crossing. The frequency with which the railroad spur is currently utilized is not so significant that it outweighs the substantial benefit to the citizens who frequent the business areas on Gage Boulevard and Tapteal Drive, and to those who reside in the residential developments in close proximity to that area. A well-connected local transportation system is crucial to the Department's ability to deliver life-saving treatment and high levels of property protection, and the connection between Gage and Tapteal via Center Parkway is a key component to the implementation of that well-designed system. Therefore, in my professional opinion, public health and safety will be enhanced with the addition of the Center Parkway crossing, and said enhancement far outweighs any risk associated with the proposed at-grade crossing.

5. ALTERNATIVES

Q: *Describe why other alternatives to this crossing do not achieve the City's stated public health and safety goals.*

A: From my prospective, I do not see any better option than to extend Center Parkway as proposed. The traffic congestion within the Columbia Center Blvd and Gage/Steptoe corridors limit alternatives in utilizing existing road networks. From an emergency response prospective, the proposed Center Parkway extension provides the most direct response route with the least amount of turns and obstacles, thus providing a quicker and safer emergency response option for both cities' emergency service providers.

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6. ADDITIONAL INFORMATION

Q: Provide us with any other relevant information regarding the acute public need for this crossing.

A: Extending Center Parkway to Tapteal will provide not only a primary response routed from the south to the north, it will also provide an alternative response route should existing routes become blocked due to accidents or other disasters. The Center Parkway extension will also provide better direct access for pedestrian traffic moving between hotels, shopping, and eating establishments.

6. DECLARATION

I, Neil Hines, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED TESTIMONY OF NEIL HINES is true and correct to the best of my knowledge and belief.

DATED THIS 29 day of August, 2013

Neil Hines

NEIL HINES

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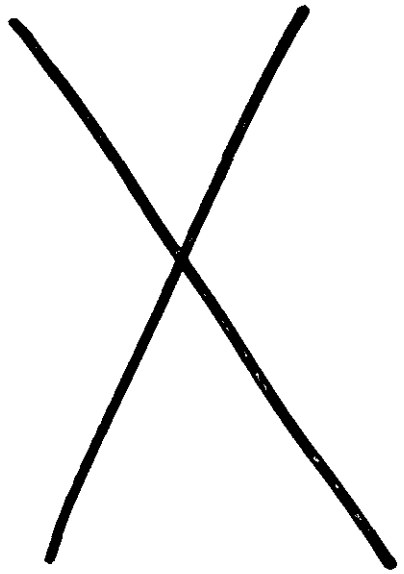

Exhibit No. NH-2T

WUTC DOCKET TR-130499
EXHIBIT NH-2TR
ADMIT ☒ W/D ☐ REJECT ☐

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED REBUTTAL TESTIMONY OF NEIL HINES

1. INTRODUCTION

Neil Hines is the Fire Chief for the City of Kennewick. His rebuttal pre-filed testimony explains how the proposed crossing addresses an acute public need for a vehicular crossing on Center Parkway.

2. BACKGROUND

Mr. Hines's background and credentials are set forth in Exhibit NH-1T.

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3. TESTIMONY REVIEWED

Q: *Please identify the testimony that you reviewed before preparing this rebuttal testimony.*

A: I reviewed the following: (1) Mr. Norris's pre-filed testimony submitted on behalf of TCRY, and (2) Mr. Randolph V. Peterson's pre-filed testimony submitted on behalf of TCRY. I also reviewed Mr. Baynes's responsive pre-filed testimony.

Q: *Can you please summarize the testimony submitted on behalf of TCRY?*

A: Yes. Both Mr. Norris and Mr. Peterson believe that the proposed crossing does not advance an acute public need.

4. ACUTE PUBLIC NEED

Q: *Previously, you submitted pre-filed testimony that the proposed crossing advances an acute public need. Is that correct?*

A: Yes.

Q: *Have you changed your opinion of this proposed crossing after reading the pre-filed testimony submitted by Mr. Norris and Mr. Peterson, submitted on behalf of TCRY?*

A: No. The crossing advances an acute public need.

Q: *Why?*

A: For all of the reasons set forth in my previous testimony. I also join with the reasons set forth in Mr. Baynes's responsive pre-filed testimony.

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5. DECLARATION

I, Neil Hines, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED REBUTTAL TESTIMONY OF NEIL HINES is true and correct to the best of my knowledge and belief.

DATED THIS 21 day of October, 2013.

Neil Hines

NEIL HINES

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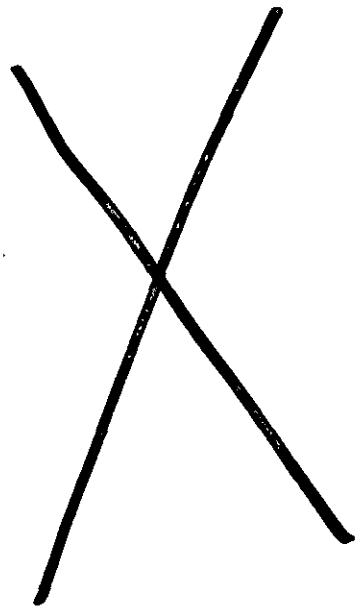

BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAIL WAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	Docket TR-130499 Pages 1-21

ORIGINAL

PREHEARING CONFERENCE, VOLUME I

Pages 1-21

ADMINISTRATIVE LAW JUDGE ADAM E. TOREM

1:42 P.M.

JUNE 4, 2013

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest, Room 206
Olympia, Washington 98504-7250

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* * * * *

OLYMPIA, WASHINGTON, JUNE 4, 2013

1:42 P.M.

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P R O C E E D I N G S

JUDGE TOREM: Let's be on the record, then.

This is Docket TR-130499, and this is a petition from the City of Kennewick to construct an at-grade highway rail crossing at Center Parkway in the City of Kennewick.

Today is Tuesday, June the 4th, 2013. It's almost 1:45 p.m. in the afternoon. The parties have been ready to proceed since about 1:30, and we have been having some pre on-the-record discussion as to agenda and sorting out who's on the bridge line.

We do have several parties here in Olympia today. I'm Adam Torem, administrative law judge for the Commission holding the prehearing conference, and we have a number of parties that are on the bridge line from positions around the region, and mostly from Eastern Washington.

I'm going to start by taking the appearance of the Petitioner and then take Staff here in Olympia and then go on the phone, and I've got a roll call of folks to go through.

For the Petitioner?

MR. ECKERT: Thank you, Your Honor. Jeremy Eckert, Foster Pepper, E-c-k-e-r-t.

JUDGE TOREM: And, Mr. Eckert, I understand you're also here on behalf of another client?

MR. ECKERT: That's correct; the City of Richland. We have previously filed a motion to intervene on behalf of the City of Richland.

JUDGE TOREM: All right. And we'll take up any opposition or response to the petition -- or the motion to intervene shortly.

MR. ECKERT: Thank you, Your Honor.

JUDGE TOREM: All right. Also in the room here is Commission Staff.

MR. SMITH: Yes, Your Honor. Steven W. Smith, Assistant Attorney General, for the Commission Staff.

JUDGE TOREM: Thank you. For BNSF Railway Company?

MR. WAGNER: Richard Wagner, manager of Public Projects, Seattle, Washington.

JUDGE TOREM: And, Mr. Wagner, your microphone is on -- I want to make sure the folks on the phone can hear you -- if the red light is on.

MR. WAGNER: It is now.

JUDGE TOREM: My understanding, Mr. Wagner, is that BNSF Railway Company has filed a waiver back on May the 2nd, 2013?

MR. WAGNER: That's correct.

JUDGE TOREM: And what is your company's plan as far

as participation in the proceeding?

MR. WAGNER: Other than just review of what generated from it, that would be it.

JUDGE TOREM: All right. So we'll keep BNSF, then, on essentially a mailing list for --

MR. WAGNER: Please do.

JUDGE TOREM: -- documents that are filed?

MR. WAGNER: Please do.

JUDGE TOREM: But you're not necessarily going to be participating further?

MR. WAGNER: No, sir.

JUDGE TOREM: All right. I believe there's a similar situation with the Union Pacific Railroad, who filed a waiver on April the 19th, 2013.

Counsel?

MS. LARSON: Yes. That is Carolyn Larson representing Union Pacific.

You have correctly stated our position that Union Pacific --

JUDGE TOREM: Ms. Larson, can I ask you to slow down just a little bit and see if you can speak slower and more direct? The bridge line is a little bit -- suffering today in clarity.

Go ahead, ma'am.

MS. LARSON: This is Carolyn Larson. I'm with Dunn

Carney in Portland, representing Union Pacific.

And, Your Honor, you have correctly stated Union Pacific's position on this matter that it does not intend to actively participate but would like copies of whatever order results from the proceeding.

JUDGE TOREM: All right. We will certainly keep you on the mailing list for the order.

Did you want to also receive, if there is filing of testimony and exhibits, copies of those as well?

MS. LARSON: No.

JUDGE TOREM: All right.

And for Burlington Northern I got the understanding, Mr. Wagner, perhaps you would want to receive those.

Maybe we can have it just come in electronically?

MR. WAGNER: Yes, sir. That would be preferred.

JUDGE TOREM: Okay. So for parties taking note as to who they have to serve documents on, Union Pacific's waiver, if I understand correctly, Ms. Larson, is a waiver of further service of any documents from the parties, but definitely an initial or final order from the Commission when one is entered?

MS. LARSON: That's correct, Your Honor.

JUDGE TOREM: All right. We will keep you posted. Thank you for appearing today to make that clear.

Next on my roster of parties is Tri-City & Olympia Railroad Company?

MR. PETIT: Yes, Your Honor. This is Paul Petit, P-e-t-i-t. I'm co-counsel with Brandon Johnson, and we are appearing on behalf of Tri-City Railroad Company, LLC.

JUDGE TOREM: All right. Thank you, sir.

Port of Benton?

MR. COWAN: Yes, Your Honor. Thomas Cowan, C-o-w-a-n, and our information is filed with the Staff. We are representing the Port of Benton.

JUDGE TOREM: All right. Let's turn quickly, then, to the City of Richland's motion to intervene.

Does Staff have a position on that?

MR. SMITH: Your Honor, we have no opposition to the motion to intervene.

JUDGE TOREM: And for Tri-City & Olympia Railroad Company?

MR. PETIT: Your Honor, this is Paul Petit again. We have no opposition to the motion to intervene.

JUDGE TOREM: And Port of Benton?

MR. COWAN: No opposition, Your Honor.

JUDGE TOREM: All right. I believe the motion states a substantial interest in the proceeding, and unless -- Mr. Eckert, do you want to speak further to it?

MR. ECKERT: No. We believe that the motion speaks for itself.

JUDGE TOREM: All right. Thank you very much for the

written motion and stating things.

Hearing no opposition to the motion to intervene, the City of Richland will be granted Intervenor status.

And now let's turn back. It would appear to me we have a Petitioner and a similarly contiguously located city joining to support the petition. That's my understanding of the intervention.

Mr. Eckert's nodding his head that I got that elementary item, correct?

MR. ECKERT: Correct.

JUDGE TOREM: My understanding from the answer, Mr. Petit, that your client opposes this petition, and that the Port of Benton has not filed a written response.

And, Mr. Cowan, you were going to make that clear at the prehearing conference if we held one, so I think today is the day we hear formally the Port of Benton's position in this year, 2013, and to see if that's changed at all from the Port's previous position back in 2006, 2007.

MR. COWAN: Your Honor, the Port has granted an easement to the City of Kennewick to cross the railroad which the Port owns. And subject to the terms and conditions of a railroad crossing agreement with the City of Kennewick and the City of Richland, our position in this is that we want to protect the terms and conditions of that crossing agreement and that we have asked the Cities to confirm to us that they will

continue to honor the terms and conditions and that the results of the WUTC hearings will not impact those terms and conditions. It was a no-cost easement that we granted, but it does have protections for the Port if the at-grade crossing is granted here.

The other part of ours is if there's a contingency that either they obtain the approval of our tenant Tri-City Railroad to cross the track at this location, or they avail themselves of the legal process to obtain that. They have elected to do the latter here, and so we want to make sure that it's understood that in granting the easement, we have not made any determination as to whether that is appropriate under the existing regulations, and we leave that to the Commission to make that determination as to the -- whether this is an appropriate place to have an at-grade crossing of this railroad.

So that's the position of the Port of Benton, and we have confirmed -- the Cities have confirmed with us in writing that they will observe the terms of our crossing agreement.

JUDGE TOREM: All right. Thank you. That helps, Mr. Benton [sic].

Let me see if, first, the City of Kennewick and City of Richland have any questions to clarify that today?

MR. ECKERT: No questions, Your Honor.

JUDGE TOREM: Commission Staff?

MR. SMITH: No, Your Honor.

JUDGE TOREM: And Mr. Petit, any questions about the landlord's conditions on this?

MR. PETIT: No, Your Honor. We have a copy of the agreement amongst the three entities: The Port of Benton, the City of Kennewick, and the City of Richland. And I would only highlight that Mr. Cowan's comment that the grant of easement is conditioned upon -- as far as the use as a crossing, it is conditioned upon obtaining the right to use the crossing or right to cross through legal process, and, of course, that's why we're here today.

JUDGE TOREM: All right. So I think the mutual understanding, then, is if the Commission were to grant the petition, that would satisfy the condition on the easement. And if the Commission does not grant it, then the easement can't be fully realized; is that your understanding Mr. Petit?

MR. PETIT: Yes, Your Honor, that is.

JUDGE TOREM: Okay. I think we're all on the same page there.

Having dealt with intervention and party positions, let me turn quickly now -- I think I gave enough lead time to Mr. Eckert to summarize what might be going on in the SEPA documentation, and if there's any ongoing need to address those issues.

MR. ECKERT: Thank you, Your Honor. In 2003, the City reviewed this exact crossing through the SEPA process and

issued an MDNS. We have incorporated all of those documents inside of the petition.

In addition, this crossing has been considered in the City of Richland's comprehensive plan, which was also subject to SEPA.

JUDGE TOREM: I have forgotten more about SEPA probably than I ever knew between these years in the Commission, and I forget how long an MDNS shelf life might last if there is such an expiration date.

MR. ECKERT: That's a good question, Your Honor. What we can do is double-check that. And if for any reason we need to go back and revisit it, we can incorporate the previous SEPA work through reference.

JUDGE TOREM: And I'm not sure that there's anything further when you have an MDNS, maybe refreshing those conditions and making sure they're still current, but I don't doubt that the 2003 MDNS was thorough. But we've had SEPA issues sometimes sneak up and wonder if we need to hold additional hearings particularly if -- I don't think it sounds like we would in this case become lead agency status. But because we're granting essentially a permit --

MR. ECKERT: Mm-hm.

JUDGE TOREM: -- in a way, I want to make sure that that issue is explored a little more and it doesn't unintentionally extend the hearing schedule we're about to get

into.

MR. ECKERT: Understood. What we would be happy to do is to go back, revisit the SEPA documentation, and we would submit material to you and all the parties regarding our compliance on SEPA or other additional materials that are required.

JUDGE TOREM: Simply the form of a letter to the record and to the rest of the parties would suffice as to maybe an hour of some associate's work somewhere confirming that these documents are still good and that conditions on the ground haven't changed.

MR. ECKERT: We would be happy to do that.

JUDGE TOREM: Do any other parties have insights or concerns about SEPA and the MDNS from ten years ago?

Hearing none, we'll let you see if there's any response needed to a letter that Mr. Eckert will file in due course. I'm not going to set a deadline for it. I'll let you select the appropriate time and hope that -- given that you're the Petitioner, you don't want to see any delay in the proceedings here as well, so you'll get it filed at an appropriate moment.

Turning to discovery, in the answer to the petition, Mr. Petit, on behalf of his client, requested that the Commission invoke its discovery rules. And in the prediscussion we had off the record, I didn't hear any opposition.

Let me ask again on the record: Does any party think that we shouldn't have the Commission's discovery rules invoked using data requests and the time for response set out in the rules in WAC 480-07-400 and its sequential rules detailing how the Commission does discovery?

Mr. Smith?

MR. SMITH: No; no objection, Your Honor.

MR. ECKERT: No objection, Your Honor.

JUDGE TOREM: Thank you.

And, Mr. Cowan, any concerns or objections about discovery?

MR. COWAN: None at all, Your Honor.

JUDGE TOREM: All right. Mr. Petit, I know you were asking for the discovery.

And were you thinking anything beyond written interrogatories, discovery requests, those sort of items?

MR. PETIT: Your Honor, depending on what the fruits of the documentary discovery are, we may be in a position of asking for a limited number of depositions. We cannot ascertain that at this time, but it may become essential depending on what we see in response to the data requests.

JUDGE TOREM: Well, I'm glad I asked the question, then, because the Commission typically shies away from entering into a more formal civil litigation-type discovery.

And granted in administrative law it's not unheard of

to have depositions, but the Commission likes to supervise those a little bit more judiciously than you might be familiar with in Superior Court.

We have a couple of other ongoing cases now where the Administrative Law Division is keeping a sharp eye to make sure that discovery is limited to the parties, and that if there are consent to depositions or there's good cause, we certainly will grant that.

But if the depositions are to go to third parties that are not subject to Commission jurisdiction, there are questions about jurisdiction for us to assert those subpoenas and enforce them and also policy concerns whether we want to drag other parties before the Commission that may not think they have any business being here.

So with that in mind, I don't know if that applies in this case, but I just want you, Mr. Petit, to know I would like to -- and I'll grant the request for discovery, but I would like an advance copy of any -- or advance notice of any deposition requests and that they be granted by Commission order before they go forward. So it will present you with a little bit of thought as to whether it's worth the procedural hassle for having one, but an expectation that you have to justify depositions individually and specifically before they'll be authorized.

MR. PETIT: I understand, Your Honor.

JUDGE TOREM: And I'll try to make a note to that just that the depositions would be by advance approval and see if I have some stock language as to the timing or other such things. But that's just a concern that's come up to my attention recently in a couple of cases in the solid waste community, and I don't want it to -- suddenly the tenor of litigation here to get beyond the normally friendly course of business we conduct at the Commission.

So discovery is granted subject to those limitations and as otherwise expressed in the prehearing conference order that I hope to enter tomorrow or Thursday.

The schedule for this case we discussed before going on the record has been suggested by Mr. Smith in an e-mail circulated yesterday. I have seen a copy of that today, and it looks like we're planning backwards for a hearing date somewhere in early to mid-November.

Mr. Smith, I'm going to let you summarize the other dates you might suggest, or maybe we'll take some time off the record to come up with a calendar, and then just recite it into the record later.

How would you prefer to proceed?

MR. SMITH: Probably better, I think, if we discuss it off the record and nail the dates down. I don't know. I think everyone is -- I understand that everyone's seen my rough schedule, and so I don't see a need to recite it here.

JUDGE TOREM: All right. Other parties, anything you want to put on the record about the schedule before we take a brief recess from the court reporter putting everything down?

MS. LARSON: Your Honor, this is Carolyn Larson. I don't have any comments about the schedule, but I just wanted to confirm with you: Would it be acceptable for me to get off the line now?

JUDGE TOREM: Certainly, Ms. Larson, and I think you've made your appearance and Union Pacific's position clear. Thank you for your participation today.

Mr. Wagner is gesturing as though he would like the same courtesy. It's sunny out, so who wants to keep you at a hearing room.

We'll let BNSF and Union Pacific --

MS. LARSON: Thank you very much.

JUDGE TOREM: -- sign off.

MS. LARSON: Thank you.

MR. WAGNER: Thank you.

MS. LARSON: Bye.

JUDGE TOREM: As for the remaining parties, is there anything else we need to do on the record at the moment?

MR. ECKERT: No, Your Honor.

MR. COWAN: Not from the Port of Benton.

JUDGE TOREM: Okay. Hearing none, then, we're going to take a brief recess. It's now two o'clock. We'll come back

on the record as soon as we have a schedule hammered out.

(Ms. Larson and Mr. Wagner left the proceedings.)

(Discussion off the record.)

JUDGE TOREM: So we're going to go back on the record just before 2:20 in the afternoon, and I'll recite what I think has been agreed through discussion and negotiation a schedule for five different dates related to the hearing schedule, plus a sixth date related to a discovery cutoff.

The first date in order is Tuesday, September 3rd. That will be the date for the City of Kennewick and its supporting Intervenor, City of Richland, to file their prefiled testimony and identify all their witness and supporting exhibits.

The responsive testimony will be due on Tuesday, October the 1st. And given that discovery has been authorized, we're going to set Friday, October the 11th, as a discovery cutoff, which gives folks ten days to respond to discovery requests. It ends -- the discovery requests will go out the last chance on October 11th and be due Monday, October 21st, because the rebuttal, cross-answering testimony deadline is Tuesday, October 22nd. That will take care of all of the evidentiary needs of the Commission and the parties.

The hearing we're going to schedule three days, and we'll do it in the Tri-Cities at a location to be determined. I'm going to have Mr. Eckert get with our Staff Kippi Walker and

make sure our Administrative Staff can know where the hearing is going to be, and we'll send out a separate notice of hearing specifying a location for Tuesday, November the 19th, Wednesday, November 20th, and Thursday, November 21st in the Tri-Cities.

Either Tuesday night or Wednesday night probably starting at about six o'clock -- it could be as early as 5:30, but six o'clock, somewhere in that range, we'll schedule a public comment hearing. And it may be at the same location or may be somewhere else that's better accommodated for members of the public to speak and address the Commission with their insights and concerns on this proposed crossing. But that will all happen the 19th, 20th, 21st, with the public comment the evening of Tuesday or Wednesday, the 19th or 20th.

Finally, posthearing briefs will be simultaneous, and they'll be due Friday, December the 20th, and that will close the record. So Friday, December 20th.

Counsel, did I accurately recite what we agreed to? Mr. Eckert?

MR. ECKERT: Yes; thank you, Your Honor.

JUDGE TOREM: And, Mr. Smith?

MR. SMITH: Yes, Your Honor.

JUDGE TOREM: Mr. Cowan?

MR. COWAN: Yes, Your Honor.

JUDGE TOREM: And, Mr. Petit?

MR. PETIT: Yes, Your Honor.

JUDGE TOREM: Okay. So I think we have a schedule. I'll get it reduced to writing. And as soon as we get some suggestions on where to hold the hearing, maybe Rail Staff can work with the Petitioner and our Administrative Law Division. We'll get a separate notice out that as soon as we've got something nailed down that fits the Commission's criteria for what we can and can't pay for and all of the other unwritten rules that go behind the scenes here.

Anything else for the record today?

All right. I'm not seeing anything. And if folks want to order a copy of the transcript, make sure when we go off the record, I'll stay on the phone line long enough so you can tell her if you want to order a copy of the transcript.

Thank you. It's a little bit after 2:20, and we are adjourned.

(Proceeding concluded at 2:22 p.m.)

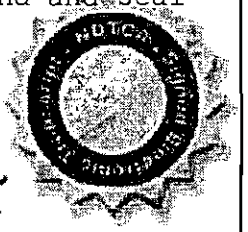
-o0o-

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter and Notary Public in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 13th day of June, 2013.



Shelby Kay K. Fukushima

SHELBY KAY K. FUKUSHIMA, CCR

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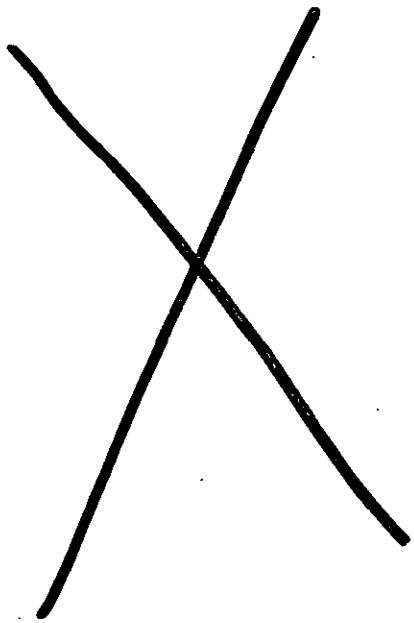
June 29, 2013



BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAIL WAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	Docket No. TR-130499 VOLUME II (Pages 22 - 240)

EVIDENTIARY HEARING

Pages 22 - 242

ADMINISTRATIVE LAW JUDGE ADAM E. TOREM

9:30 a.m. - 4:27 p.m.

NOVEMBER 19, 2013

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* * *

I N D E X

PETITIONER WITNESSES:

PETITIONER WITNESSES (Continued):

EXHIBITS:

NO.:	IDENTIFICATION:	OFR	ADM
JP-1T	Jeff Peters Pre-Filed Testimony	49	55
JP-2	Joint Agreement - Center Parkway Extension, Gage Boulevard to Tapteal Drive	49	55
JP-3	Joint Agreement - Center Parkway Extension, Gage Boulevard to Tapteal Drive - Supplement No. 1	49	55
JP-4	Joint Agreement - Center Parkway Extension, Gage Boulevard to Tapteal Drive - Supplement No. 2	49	55
JP-5-X	2013 JUB Report Emergency Response Times with Maps	92	101
JP-6-X	Track Use Agreement Between City of Richland and UPRR, 4-6-11	165	203
JP-7-X	Track Use Agreement Between City of Richland and BNSF, 1-5-11	165	203
RS-1T	Rick Simon Pre-Filed Testimony	58	70
RS-2	City of Richland Comprehensive Plan - Transportation Element	58	70
RS-3	City of Richland Comprehensive Plan - Capital Facilities Element	58	70
RS-4	Benton-Franklin Council of Governments Regional Transportation Plan - Preface/ Executive Summary/Appendix H	58	70
JD-1T	John Deskins Pre-filed Testimony	71	84
JD-2TR	John Deskins Pre-Filed Rebuttal Testimony	71	84
JD-3	Intersection Reports - Columbia Center Boulevard at Quinault Avenue and at Canal Drive	72	84

EXHIBITS (Continued):

NO.:	IDENTIFICATION:	OFR	ADM
JD-10-X	Draft Horn Rapids Site Development Agreement, 6-14-12	176	203
JD-28-X	Aerial View - Potential Passing Track	156	202
JD-30-X	Aerial View - Distance from Proposed Crossing to Columbia Center	83	84
CS-1T	Chris Skinner Pre-Filed Testimony	86	101
CS-2TR	Chris Skinner Pre-Filed Rebuttal Testimony	88	101
RGB-1T	Richard Grant Baynes Pre-Filed Testimony	102	133
RGB-2TR	Richard Grant Baynes Pre-Filed Rebuttal Testimony	102	133
NH-1T	Neil Hines Pre-Filed Testimony	134	135
NH-2TR	Neil Hines Pre-Filed Rebuttal Testimony	134	135
KMH-1T	Kenneth Hohenberg Pre-Filed Testimony	137	139
KMH-2TR	Kenneth Hohenberg Pre-Filed Rebuttal Testimony	137	139
KJ-1T	Kevin Jeffers Pre-Filed Testimony	140	201
KJ-2	Excerpts from Federal Highway Administration Railroad-Highway Grade Crossing Handbook - Revised Second Edition 2007	140	201
KJ-3	Excerpt from FHWA Manual on Uniform Traffic Control Devices for Streets And Highways - 2009 Edition	140	201
KJ-4	Excerpt from American Railway Engineering And Maintenance-of-Way Association Manual Of Railway Engineering, Volume 1	140	201
KJ-5	Traffic Study - Center Parkway Extension And Railroad Crossing (March 2013)	140	201

EXHIBITS (Continued):

NO.:	IDENTIFICATION:	OFR	ADM
KJ-6	Grade Separation Evaluation - Center Parkway Extension (March 25, 2013)	140	201
KJ-7	Grade Separation Evaluation - Center Parkway Extension (March 25, 2013)	140	201
KJ-8	Diagnostic Review - Meeting Notes From December 11, 2012	140	201
KJ-9	City of Richland Ordinance NO. 40-06	140	201
KJ-10TR	Kevin Jeffers Pre-Filed Rebuttal Testimony	140	201
KJ-11	Track Usage Data - Actual/Projected	140	201
KJ-12	Track Usage Data - Actual/Projected	140	201
KJ-13-X	Petitioners' Responses to Staff Data Requests Nos. 2-5	153	202
KJ-14-X	Horn Rapids Rail Loop - Documents Presented to Richland City Council on 11-19-13	175	202
SKG-1T	Susan Grabler Pre-Filed Testimony	204	210
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* * *

PROCEEDINGS:

ADMINISTRATIVE LAW JUDGE TOREM: Let's be on the record, then. This is Docket TR-130499 before the Washington Utilities & Transportation Commission. My name is Adam Torem, I'm the administrative law judge presiding in this matter.

It's the Cities of Richland and Kennewick against the Port of Benton, the Tri-City & Olympia Railroad Company, the BNSF Railway, and the Union Pacific Railroad. Those latter two railways have settled and waived their right to be at the hearing today, as has the port, which leaves commission staff and the Tri-City & Olympia Railroad as those opposing or supporting the petition filed by the cities.

The petition was filed back in April, on the 8th of April, 2013. We've got a pre-hearing conference we held in June, and the parties have since filed all of their exhibits. We had a status conference that was not recorded last Friday. At that time we discussed the cross-examination exhibits that had come in, a motion that was filed by the cities to submit additional evidentiary exhibits, and since that time, on Friday, the Tri-City & Olympia Railroad have also submitted additional cross-exam exhibits.

After we take appearances today, we'll take up those additional exhibits, see if there are any objections and press on with the agreed opening remarks or statements of five

to ten minutes each.

Please start with appearances from the cities.

MR. DIJULIO: Good morning, Judge Torem. Steve DiJulio, Foster Pepper, and Jeremy Eckert of Foster Pepper, appearing for petitioners, the Cities of Richland and Kennewick.

ADMINISTRATIVE LAW JUDGE TOREM: Thank you. And for the Tri-City & Olympia Railroad?

MR. PETIT: Good morning, Your Honor. Paul Petit on behalf of Tri-City & Olympia Railroad.

ADMINISTRATIVE LAW JUDGE TOREM: And representing commission staff?

MR. SMITH: Steven Smith, Assistant Attorney General, for the commission staff.

ADMINISTRATIVE LAW JUDGE TOREM: And I should say for the record, we are in the public library of the City of Richland today, not in Olympia. All of the witnesses are here in the local area, so we've moved the hearing site to the local area.

Let's take up the cities' motion that was filed last week. It's a motion to add evidentiary exhibits from the City of Richland.

Mr. DiJulio?

MR. DIJULIO: Just because of the -- this is Steve DiJulio. And just because of the transmission, we're

providing the color copies of the attachments to each party and six copies to the commission. We will have the duplicate copies of the planning documents, the other documents that are attached to the motion shortly, later this morning. And this material, particularly the planning documents, are part of the planning documents that are already in the record, but provide additional background regarding the planning foundation and planning background for the project.

ADMINISTRATIVE LAW JUDGE TOREM: Copies that you've just handed out are, looks like, one-page documents, looking at response times. One says addresses on Tapteal, one says addresses near the mall?

MR. DIJULIO: Correct.

ADMINISTRATIVE LAW JUDGE TOREM: And so these are which proposed exhibits in your motion?

MR. DIJULIO: They are attachments to that tab 1 or number 1 of the attachments.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. So they're both part of Chief Baynes' proposed --

MR. DIJULIO: Correct.

ADMINISTRATIVE LAW JUDGE TOREM: -- testimony? We'll take up the numbering of these once we deal with any objections.

Anything else speaking to the motion?

MR. DIJULIO: No, nothing at this time. Thank

you.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit?

MR. PETIT: Tri-City & Olympia has no objection to this motion, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: All right. And from the commission staff?

MR. SMITH: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: All right. So these additional exhibits may be offered and probably will be admitted at some point later in the hearing, once we have the adequate foundation.

Mr. DiJulio, in your motion you've identified Chief Baynes, Mr. Simon, and Mr. Jeffers or Kathy Hunter to take a look at these six different exhibits. And we'll number them as you propose them, depending if you want to have a witness adopt them as testimony or use them in cross-exam, so I'm not going to number any of them quite yet.

MR. DIJULIO: Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: We'll just see how it rolls out on the exhibit list.

Mr. Petit, you had this additional exhibit from the August 19th, 2013 economic development committee?

MR. PETIT: Actually, Your Honor, that's a group of documents, the most recent of which relates to a report. All of this is going to be on the agenda for the city

council meeting this evening, and so it really is an update of documents that we had in the past, but is the final set of documents, as we understand it, recommended by the city staff to be passed by the city council, if it votes that way, at a meeting this evening, with respect to a new 1.5 mile loop track to be constructed on city property north of the Center Parkway proposed crossing, which all of the trains accessing that loop will, in fact, cross the Center Parkway crossing.

And we are proposing that as a cross-exam Exhibit 42. It is fresh off the presses, posted on the city's website either sometime over the weekend or early Monday morning, we can't tell when. But we downloaded it as quickly as we could. And would intend to use it primarily, I think, as a cross-exam exhibit with respect to Gary Ballew, who is going to testify as offered by the city, but as an adverse witness in our case.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio, Mr. Eckert, any concerns about this?

MR. DIJULIO: From the cities' perspective, Judge Torem, these may be cumulative to the documents that have already been submitted by TCRY in its cross-examination exhibits. But, frankly, there's no reason to object to them, they're public documents, and to the extent that it informs the judge, then the cities have no objection to them.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Commission staff?

MR. SMITH: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Well, we'll deal with offering it with Mr. Ballew's testimony. I think that will be later today or at some point tomorrow, depending on availability, so we'll mark it accordingly when the time comes up.

MR. PETIT: My understanding was that Mr. Ballew would be available tomorrow, is that right?

MR. DIJULIO: Yes. Mr. Ballew will be available first thing Wednesday afternoon.

MR. PETIT: Okay.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. We'll take up this document Wednesday afternoon, then.

MR. PETIT: And, Your Honor, in order to expedite and because of the nature of the exhibits we're talking about here today, I just want to make it clear that Tri-City & Olympia Railroad has no objections to any of the exhibits that have been offered by the cities and the commission staff. So we can probably dispense with a lot of foundation testimony and we simply are not going to object to those exhibits.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. I think what we'll do, then, is instead of stopping each time there's an exhibit utilized by a witness or otherwise in Cross, we'll wait until the end of the examination and then

move for their admission so that if there is any question that comes up from any party, we can deal with it in one full swoop.

If there's something that is objectionable in advance, maybe counsel can let each other know and let me know appropriately so we're not spending a lot of time on perfunctory items.

MR. DIJULIO: From the cities' perspective, we concur with Mr. Petit in the respect that the documents are what the documents are. The need to authenticate or to identify for purposes of this proceeding is really unnecessary. And, you know, for purposes of -- we'll stipulate to their admissibility without waiving objections as to weight.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Anything else from the commission?

MR. SMITH: No. I'm agreeable with both parties.

ADMINISTRATIVE LAW JUDGE TOREM: All right. So I think we're ready to move on to the opening remarks.

MR. DIJULIO: May it please the commission, Counsel.

The Cities of Richland and Kennewick have ominous authority under the laws of Washington to operate and to maintain their transportation systems. The city of Richland

is a first-class city, first incorporated in 1910, later re-incorporated after the Manhattan Project in 1958. Kennewick is a code city under Washington law and has been part of the -- it was incorporated in 1904.

Those cities, as do most cities in the state of Washington, plan consistent with not only fundamental planning principles and authority, but also more recently, as a result of the mandates of the Growth Management Act, that requires specific planning, including planning for transportation systems. The importance of those foundational authorities is emphasized in the Growth Management Act at 36.70A.103. It requires that state agencies comply with local comprehensive plans and development regulations.

We will note that one of the exhibits before the commission has TCRY's recognition of the City of Richland's interest in facilitating well-designed urban transportation improvements, including rail, vehicle, and pedestrian facilities. Center Parkway project has been part of this region's transportation planning for at least a decade, if not longer.

The need for this project is not simply providing another tie between the commercial areas of Tapteal and that of the Columbia Center Mall to the south, but to decrease emergency vehicle response times both from the cities of Kennewick and of Richland, which you will hear have a -- have

cooperative agreements regarding service in the interesting borders that separate the two cities.

The project is needed to also reduce the level of incidents of traffic accidents in and around the mall as vehicles and pedestrians seek to avoid the congestion that occurs in these corridors and, of course, to meet the transportation planning element to provide for an integrated, cohesive transportation program throughout this area. The only public safety experts you will hear from in these proceedings are the police chiefs of the City of Kennewick and Richland and the fire chiefs of the same cities.

They will discuss with you the need for improved service associated with this, service that will be all the more necessary in the event that there are unit trains that will come forward as a result of the development in these communities and result in increased blockage time of the other intersection that is in proximity to this proposed crossing. As you know from the pre-filed exhibits, the proposed safety measures include just about every safety measure available and even more that may be required for this intersection type under the standards for railroad-highway grade crossings as provided by the federal government.

Crossing safety is a hallmark of this project, including the gated separation, the flashing lights and gates, the grade or tangent arterial improvement approaches for

visibility, and also median separation to prevent vehicles from avoiding the gates. Commission staff, you will hear also, agrees and says that the predicted incidents of accidents will even be lower than that predicted in the city model.

The evidence will demonstrate that there are no alternatives to an at-grade crossing for the Center Parkway crossing of the TCRY track. There are no warrants under federal law that would dictate other than a grade, at-grade crossing here. There's no warrant that would suggest, even if practicable, an above-grade or a below-grade crossing.

As the commission is familiar with its prior proceedings, the situation is different today than it was when the commission considered this matter some years ago. Two of the four tracks are no longer in use. The class 1 railways BNSF and UP will not be engaged in switching activities as they were in the past at this location, and the remaining activity on this portion, beginning at the Richland Junction, will only be TCRY's activities.

The importance of this project is also demonstrated not only from a regional standpoint, but also from a statewide perspective. As the evidence in this case will show, the TIB has awarded a grand to the cities in the amount of nearly $2 million for this project. This is not a project that is insignificant or limited to the area. There

is a need for this project, and the cities would request that the commission approve this grade crossing.

Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Thank you, Mr. DiJulio.

Mr. Petit?

MR. PETIT: May it please the commission, Counsel.

Indeed in 2004 and 2005, the Cities of Kennewick and Richland each brought petitions before this commission seeking to construct an at-grade crossing at this very location. After a full hearing, the administrative law judge ruled that the petitioners had failed to carry their burden of demonstrating public necessity for that crossing, and it failed to provide specific design plans for the crossing which would mitigate the dangers inherent in any at-grade crossing. In this proceeding, the petitioners try again.

And I would like to correct what I believe is a misstatement that I heard in Mr. DiJulio's opening, that only TCRY's trains will be running on this track. That is simply not true. Both the BNSF and the UP, which are class 1 railroads, have direct access rights to this track. And BNSF today uses it directly, the UP has and continues to use it directly for unit trains. So there will be three railroads running on this track, not just TCRY.

Indeed several things have happened since that original hearing and the ruling in 2007. And despite what the cities and the UTC staff believe, these factors do not support granting the petition. The original petition was opposed by all three railroads which will utilize this line and did utilize this line in 2007, will utilize it if this crossing is approved.

The City of Richland has made deals with the BNSF and the UP, and they no longer oppose this crossing, even though railroads across the country are extremely sensitive to new at-grade crossings because of the dangers that they create. This non-opposition by the two class 1 railroads was part of the price that they paid to be allowed to use the Horn Rapids spur that belongs to the City of Richland and which you are going to hear much about.

Because that's where all the increased rail traffic is going to be generated from, from developments on the Horn Rapids spur, in particular, property that is either owned by the City of Richland now in plan for development, or has been sold to other private parties in plan for development. But eliminating the interchange -- and I agree with Mr. DiJulio that we do not interchange, nobody interchanges at this location anymore -- that does not resolve the issues regarding multiple trains at this location.

TCRY has a passing track at this crossing. It is

not simply a spur, it is not simply a dead-end. It is a passing track. And the passing track is utilized by TCRY to get out of the way of other train traffic. With the advent of more unit trains, and I think as you will hear with the advent of more trains in total, some of which will not be unit trains, serving the new developments that are planned, that passing track will become extremely important. And no one has proposed a mechanism by which TCRY, which leases that track from the Port of Benton and has a right of quiet enjoyment under that lease, will be required to abandon this track.

We believe that this -- our story, and the story of this crossing, is shown in three pictures. And with the Court's indulgence, I'd like to utilize the video to display. The first of these comes from the petition itself. Exhibit 1, page 3.

What we have here is a graphic demonstration prepared by the engineers from the city which demonstrate the traffic flow of emergency responders and just the general area that we're talking about here in connection with this crossing. The yellow study area, of course, is the proposed Center Parkway crossing.

We believe the evidence will show that based on the traffic studies that are in that report prepared by JUB, that the proposed crossing does not alleviate traffic on either of the neighboring arterial streets, Columbia Center or

Steptoe. Columbia Center is the blue dotted line running north and south to the right, and Steptoe is the yellow highlighted line on the left edge. The dotted lines are the border between the city of Richland and the city of Kennewick.

Any diversion of traffic from -- let me get back to my point. We do not believe that the traffic reports that are -- and the studies that have been done demonstrate with any degree of scientific accuracy that there's going to be any substantial diversion of traffic flow to create the reduction in congestion which the city relies upon. We believe that -- and we will put on testimony to the effect -- that the diversion will be within the margin of error of the study itself.

And in addition to that, the diversion is questionable because the blue dotted line, Columbia Center Boulevard, is a grade-separated crossing, an inherently safer crossing where the train and the cars are not at the same level. And any diversion from Columbia Center to the red crossing at the new Center Parkway would divert traffic from the inherently safe separated crossing to an inherently unsafe at-grade crossing.

In addition, the claimed reduction in response times is unsubstantiated and it fails to support any argument of acute need. Now, I sympathize with the emergency responders. The railroad -- which I'm going to refer to the

railroad in these proceedings as TCRY, as Mr. DiJulio has, for the reason that that is our Association of American Railroads call letters. So for the sake of convenience, I would appreciate being able to do that.

TCRY sympathizes with emergency responders who I think always want an alternate access road. They always want an alternate access to any incident. There's no question about that. But the question here is whether that improved or that alternate access actually is improved access and whether it is needed when balanced against the dangers of an at-grade crossing. That's picture number 1.

Picture number 2 comes from TCRY's proposed cross-exam Exhibit Number 12, page 12. This is the Horn Rapids Industrial Park development area that I made reference to before. There are three major developments there which are not just potential, but are either actual or on the verge of being actual. These are all projects and developments that will substantially increase rail traffic across this very Center Parkway track.

The first is the 10 N. Washington mini-loop, which you can see in red above -- can you point at it for me, Kenneth?

It's called a mini-loop because it doesn't accommodate a full-size unit train, but TCRY, nonetheless, takes delivery of unit trains at its yard facility which is

located to the south. You can see that's our yard and shop right there. And moves those unit trains, breaks them up and moves them over the loop. So it can actually handle unit trains, has handled unit trains for the Union Pacific, and will continue to do so.

And you're going to hear some testimony about the increase in rail traffic anticipated by TCRY as a result of not only that unit train traffic, but also new developments at the mini-loop.

The second project just to the south of that is a one-and-a-half-mile rail loop. And you can see it outlined in this drawing in blue. That project, which we've got much more detail on and is the subject of cross-exam Exhibit 42, to be voted on by the City of Richland City Council tonight, apparently, would increase unit train traffic across this line and across Center Parkway.

In addition, totally unaccounted for by the city or the commission staff is a development directly to the west of that loop, which is two pieces of property, one is under contract for sale, the other is an option, where ConAgra, a major agricultural project facility, intends to create or to build a substantial cold storage warehouse facility, where they are going to consolidate up to seven of their regional locations into one. You can see all those blue lines in there are anticipated railroad tracks. These -- this facility will

be serviced by not necessarily unit trains, but by smaller and many more trains.

All of this means that the numbers relied upon by the petitioners to justify the volume of rail traffic at this crossing, in which they describe as infrequent, are likely to be obsolete before this crossing is even constructed.

The final picture that tells a story is the Center Parkway crossing design itself. This is the design as submitted with the petition, and it has -- it's a little bit difficult to see here, but I might be -- do you mind if I approach it, Your Honor?

ADMINISTRATIVE LAW JUDGE TOREM: (Shook head negatively).

MR. PETIT: This is the crossing with the barriers, median barriers, that Mr. DiJulio talked about. This is the two tracks that will be crossed. As you can see, this design anticipates and is predicated on the removal of one of those two tracks, which is the TCRY passing track that I made reference to before. The cities say that, for whatever reason, by whatever means, somehow that track is going to be removed. They haven't proposed a mechanism for that.

We have a lease, TCRY has a lease on that track that goes through at least the year 2022. We have a right of quiet enjoyment under that lease and the right to use that track. There has been no mechanism proposed by which we would

be deprived of the use of that track. But even more importantly than that, that passing track becomes extremely important the greater the volume of rail traffic is brought onto this rail. Because trains have to get out of the way of each other, and that's what a passing track is all about.

In fact, what this could create and will create is two trains at this intersection at this crossing at Center Parkway at the same time going in opposite directions or even going in the same direction, a danger which is, even the experts for the city recognize, is significant.

In short, TCRY requests that this petition be denied because, first of all, we believe it is precluded by the result in the prior petition, and we will argue that in our post-hearing briefs. Second, that the cities will fail to demonstrate with hard evidence the acute public need that is necessary in order to justify an at-grade crossing.

And, thirdly, the cities' projection of the danger that they claim to be mitigated is based on the assumption that train traffic as it exists in this snapshot moment in time will remain into the near future, while the city at the very same time is actively engaged in planning and promoting developments which will substantially increase the volume of train traffic in the near future and, therefore, the danger at this crossing.

Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Thank, you, Mr. Petit.

Mr. Smith, for commission staff?

MR. SMITH: Yes. I can be very brief, Your Honor. As you're aware from our pre-trial testimony, staff does support the granting of the petition to open a grade crossing in this matter. We do believe the cities have met their burden under the standard for opening a grade crossing.

Having said that, the staff is not petitioner itself, we have a different role in this proceeding, and we are equally concerned that the record be complete so the commission has an adequate basis to make its decision, whether it is one that agrees with our recommendation or not.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Thank you, Counsel, for your openings. It helps set the scene up of which points will be argued and which will be agreed upon.

Mr. DiJulio, are you ready for your first witness?

MR. DIJULIO: Yes. Thank you. The cities will call Jeff Peters.

JEFF PETERS

called as a witness by the Petitioner, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: Have a seat,

please.

THE WITNESS: Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: If you could state your first and last name, and spell both for the court reporter.

THE WITNESS: Okay. My name is Jeff Peters, J-e-f-f, P-e-t-e-r-s.

ADMINISTRATIVE LAW JUDGE TOREM: And I'll pass the witness back to the cities.

DIRECT EXAMINATION

BY MR. DIJULIO:

Q. Mr. Peters, I'm handing you your pre-filed testimony. Take a moment and take a look at that, please.

(Pause in the proceedings).

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio, just so I'm clear on the record, we're looking at Mr. Peters' testimony, he had pre-filed testimony on JP-1T, and three supporting exhibits, JP-2, -3, and -4, is that correct?

MR. DIJULIO: That's correct.

Q. Mr. Peters, so that is your declaration, is that correct?

A. Correct.

Q. And, also, in your capacity with the city as the transportation development manager, are you familiar with the city's comprehensive planning documents?

A. Yes, I am.

MR. DIJULIO: Judge, to be clear, we're not required to offer the exhibits, they will be admitted subject to objection?

ADMINISTRATIVE LAW JUDGE TOREM: (Nodded head affirmatively).

MR. DIJULIO: Okay.

Q. First, just go ahead and identify what those documents are.

And with reference to the parties and Judge Torem, these are the exhibits that are identified in petitioners' November 2012, 2013 identification of Cross exhibits. And these are City of Richland comprehensive planning -- comprehensive plan excerpts, CF5-3 to -4, CF6-4, CF LU 3-1, and T5-3 to -4.

Are those accurate copies of those documents, Mr. Peters?

A. I believe so, yes.

Q. In addition to those documents, Mr. Peters, I'm handing you, from the cities' Cross exhibits, two documents.

Can you identify those, please? Go ahead.

A. One is Appendix H, RTPO project listing from the

regional transportation plan.

Q. Very quickly, Mr. Peters, what is the regional transportation plan?

A. It's a planning document that the Council of Governments puts together for the whole region. It's a 20-year plan.

Q. And when you say the "Council of Governments," what -- is the City of Richland a part of that organization?

A. Yes. It's the metropolitan planning organization.

Q. And when you say the "metropolitan planning organization," what municipalities does that include?

A. All of the local cities in Benton and Franklin -- well, not all of them, but most of them in Benton and Franklin County, including Benton and Franklin County.

Q. And I guess for purposes of the record in this matter, what county is cities of Richland and Kennewick in?

A. Benton County.

Q. And what county is Pasco in?

A. Franklin County.

Q. Thank you. And the other document that you referred to was what?

A. The regional transportation plan is --

Q. Okay. And those are excerpts from that plan?

A. Correct.

Q. Earlier this -- were you here earlier at the start

of the hearing, Mr. Peters?

A. Yes.

Q. And you recall the discussion regarding additional filed exhibits to be considered in this matter?

A. Yes.

Q. Handing you two of those exhibits that were filed as part of the cities' motion, take a look at those, as well, please.

Okay. And what's the first document, sir?

A. It is section 2 of the City of Richland's comprehensive plan.

Q. And what is that particular section addressing?

A. Goals and strategies.

Q. And what is the second document in that set?

A. Second document appears to be the land use element of the comprehensive -- city's comprehensive plan.

Q. Thank you. And what is the third document?

A. Third document is the preface to the comprehensive plan.

Q. And, again, those are all from the current comprehensive plan of the City of Richland?

A. Yes.

Q. By the way, when was the comprehensive plan of the City of Richland last updated?

A. Two thousand -- I'm not sure.

Q. Is the comprehensive plan updated annually as part of the city's ongoing planning activities?

A. I believe so.

Q. What is the last document in that group, sir?

A. The last document is the Horn Rapids master plan from the City of Richland.

Q. And is that part of the city's overall comprehensive plan?

A. Yes, I believe so.

Q. Thank you.

MR. DIJULIO: That's all I have for this witness at this time. Thank you, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: And as you noted, Mr. DiJulio, I'm not requiring that we offer and admit all these exhibits one at a time. I did want, for housekeeping, just to note, I think the documents you handed him were previously marked as -- the first two -- the first five, actually, were Gary Norris's proposed Cross exhibits. So GAN-2-X, 3-X, 4-X, 8-X, and 9-X were all the previously admitted ones. And the others are referred to as RS-5 through -8 or undesignated numbers for Gary Norris in the motion. So if everybody 's following the paperwork that Mr. Peters has in front of him, is that correct?

MR. SMITH: Your Honor, could you walk through that one more time? Because I got lost myself.

ADMINISTRATIVE LAW JUDGE TOREM: All right. If I'm keeping score for the record, we had Mr. Peters' pre-filed testimony and supporting Exhibits 1 through 4. Then GAN-2-X, 3-X, and 4-X were the first group of comp plan exhibits that were handed up. The regional transportation plan excerpt is GAN-8- and 9-X.

So those are all located on page 7 of the exhibit list I published for the parties last Friday. The additional exhibits cited on page 2 of the cities' motion are in the middle of the page, numbers 2, 3, 4, and 5 on that page.

Mr. DiJulio, did I get all those correct?

MR. DIJULIO: Yes. Thank you, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Smith, does that --

MR. SMITH: Yes. Thank you, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: -- catch you up on all those? All right. I think we're ready to turn this witness over to cross-examination.

Mr. Petit, I'll have you take it up from here.

MR. PETIT: I have no questions, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: No questions for this witness?

Mr. Smith, any questions for this witness?

MR. SMITH: No questions.

ADMINISTRATIVE LAW JUDGE TOREM: With that in

mind, Mr. DiJulio, is there anything else, other than the documentary evidence that's been referred to by the witness?

MR. DIJULIO: Not from Mr. Peters at this time. Thank you, Judge Torem.

ADMINISTRATIVE LAW JUDGE TOREM: And we'll take it that Mr. Peters, you didn't ask, has no changes to his testimony? Does not, to his pre-filed testimony?

MR. DIJULIO: No changes.

ADMINISTRATIVE LAW JUDGE TOREM: All right. So at this time I'm going to mark as admitted Exhibits JP-1T, -2, -3, and -4, unless I hear any objections. And I'll leave the other ones that are designated for cross-examination until they're used. But we'll leave the pre-filed testimony, we'll just mark those as admitted. Did you want me to admit the other ones now?

MR. DIJULIO: Well, the reason why we would offer at this time is because it isn't necessarily the case that Mr. Norris will be able to identify them. So in terms of the foundational planning documents, similar to, frankly, some of the other material with respect to the North Richland industrial development, these are all part of the comprehensive planning effort. And it's important to have those as part of the record, as TCRY has suggested. So we're just making that record complete for the commission.

And we would use them in Cross with Mr. Norris,

but certainly, in terms of foundation, we believe they are an appropriate part of the record independently.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit?

MR. PETIT: We have no objection to that, Your Honor. We want the record to be as complete as possible.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Smith?

MR. SMITH: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: All right. So then we'll admit those other GAN-2, -3, and -4-X. GAN-8 and 9-X. And you're going to force me to make a decision on labeling these now. We'll go ahead and label them as the GAN series of exhibits, and we'll pick up with -13, -14, -15, and -16 for those exhibits identified in the motion, which are the remaining comprehensive plan exhibits and the Horn Rapids master plan.

I'll note which are which on a subsequent item, but you can number them in sequence as they were submitted and referred to in the cities' motion, just go in numeric sequence, -13, -14, -15, and 16-X, and we'll refer to them accordingly. And I'll make sure I get the court reporter the updated exhibit numbers. So those are all admitted at this time.

Mr. Peters, I think you can step down.

THE WITNESS: All right.

ADMINISTRATIVE LAW JUDGE TOREM: Thank you for

your references to those documents. Mr. DiJulio, who would be your next witness?

MR. DIJULIO: Rick Simon, please.

RICK SIMON

called as a witness by the Petitioner, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: Have a seat, please. Please state and spell your first and last name for the court reporter.

THE WITNESS: Rick Simon, R-i-c-k, S-i-m-o-n.

MR. DIJULIO: Thank you, Judge Torem.

DIRECT EXAMINATION

BY MR. DIJULIO:

Q. Mr. Simon, I'm going to ask you to speak up. We are in a large nice room, and so we have to speak so that all can hear.

And again, what's your position with the City of Richland?

A. I'm the development services manager for the city.

Q. And so you're familiar with the documents, the comprehensive planning documents that were just identified by

Mr. Peters?

A. I am.

Q. Are you the direct contact from the City of Richland with the Council of Governments with respect to regional planning?

A. I am one of the contacts, yes.

Q. And how long have you -- how long has the Center Parkway project, including the crossing to Tapteal, been part of the city's planning documents?

A. It was officially incorporated into the comprehensive plan during the 2006 amendment cycle.

Q. And did it exist prior to that in other group planning documents?

A. I believe it was part of the transportation improvement program prior to that.

Q. Handing you your pre-filed testimony, Mr. Simon, would you take a moment and look at that?

ADMINISTRATIVE LAW JUDGE TOREM: While he's reviewing that, it would appear that would be RS-1T and then the three supporting documents, RS-2, RS-3, and RS-4.

Q. (BY MR. DIJULIO:) That is your testimony?

A. Yes, it is.

Q. So, Mr. Simon, very quickly, looking at the document identified as RS-2, the transportation element of the City of Richland comprehensive plan.

A. Yes.

Q. And is -- that's what guides the city's programs and capital facility development within the city?

A. Yes, it does.

Q. And what's the next section that is part of that exhibit? This is the RS-3.

A. That would be the capital facilities element of the comprehensive plan.

Q. And is the Center Parkway project part of the city's capital facilities element?

A. Yes, it is.

Q. And what is Exhibit 3 to your declaration, sir?

A. That is a portion of the Benton-Franklin Council of Governments' regional transportation plan.

Q. And when was this last updated?

A. 2011.

Q. Say again, please?

A. 2011.

Q. And is the Center Parkway project and crossing to Tapteal part of that regional transportation plan?

A. Yes, it is.

Q. Okay. Thank you.

MR. DIJULIO: Nothing further at this time for Mr. Simon.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit?

MR. PETIT: Yes, sir.

CROSS-EXAMINATION

BY MR. PETIT:

Q. Good morning, Mr. Simon.

A. Good morning.

Q. You probably heard at the introductions, I'm Paul Petit, I represent the Tri-City Railroad, we're just going to call it TCRY?

A. Yes.

Q. I've read your pre-filed testimony, and if I could direct your attention, please, to page 5 of your pre-filed testimony. I'm looking right now, and I'd ask you to look at, line 7 through 12.

Do you see that?

A. Yes, I do.

Q. And you make a reference there to "The Richland fire and emergency services has a response performance objective that calls for the first unit to arrive at an emergency incident within five minutes or less from the time of dispatch 90 percent of the time."

Do you see that?

A. Yes, I do.

Q. Is it your testimony that any areas in the city of Richland are currently not serviced within that parameter which would be serviced if this Center Parkway were, in fact, constructed, the crossing were constructed?

A. I -- I do not know.

Q. Now, I'd like to direct your attention also to page 5, lines 20 and the following. You say there that "A street network that provides direct access to a site but is operating at LOS of E or F significantly hampers the emergency service responders' ability to arrive at a site in a timely fashion."

Do you see that statement?

A. I do.

Q. Okay. Are any of the streets that are within the area that would be accessed as a result of the construction of a Center Parkway -- well, let me ask you this: Would Center Parkway -- let's go back. Let me start again.

Are there currently any streets that service the area north of the railroad line that would be improved from a status E or F by the installation of Center Parkway crossing?

A. Really you're talking about Tapteal, and I don't believe that's operating at E or F at the present time.

Q. In fact, you have attached as your Exhibit T43, which is part of your RS-2 exhibit, page T43, you've attached a listing of existing p.m. peak hour intersection level of

service traffic signals. But that does not include Tapteal, does it?

A. No, it does not.

Q. Is there anything in your testimony that establishes the level of service that is currently being provided or operating at on Tapteal?

A. Not currently.

Q. Okay. Or projected in the future?

A. Well, it is included, the Center Parkway extension is included as part of the transportation program. It's included.

Q. As part of the transportation program, but not hard data with respect to the LOS to be anticipated, correct?

A. That's correct.

Q. Now, going on in that same place in your testimony, you state that "One way to reduce congestion is to increase the number of access routes between any two points. For this reason, the extension of Center Parkway would provide an important link, not only for emergency vehicle response, but also to reduce overall traffic congestion which, in itself, provides a benefit to emergency vehicle response."

Do you see that?

A. Yes.

Q. Did you conduct any traffic study or examine any traffic statistics in arriving at that conclusion?

A. No.

Q. Other than the report prepared by JUB Engineers, have you seen any documentation of traffic flow, traffic congestion, or other scientific studies that would support the statement you make there?

A. Not specific to this intersection, no.

MR. PETIT: That's all I have, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Smith?

MR. SMITH: I have no questions.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio, any follow-ups with this witness?

MR. DIJULIO: Reference is made to the cities' motion in the last of those documents, which I think for numerical sequence would now be identified as 17?

ADMINISTRATIVE LAW JUDGE TOREM: All right. GAN-17-X.

MR. DIJULIO: I'll provide additional copies for the commission of the same document at a break.

REDIRECT EXAMINATION

BY MR. DIJULIO:

Q. Mr. Simon, I'll hand you an exhibit that was stipulated to first thing this morning. Are you familiar with

that? Have you seen that document before?

A. Yes, I have.

Q. Okay.

MR. PETIT: Excuse me, Counsel? Counsel, what are we numbering this exhibit?

ADMINISTRATIVE LAW JUDGE TOREM: Exhibit GAN-17-X.

MR. PETIT: 17? Thank you.

Q. (BY MR. DIJULIO:) In his examination, Mr. Simon, Mr. Petit referred to LOS standards with respect to Tapteal at Center Parkway. But for purposes of focusing on the adjacent intersections, what does that memo address, sir?

A. It identifies LOS standards currently for the Columbia Center Boulevard and Quinault intersection and the Steptoe and Gage intersection.

Q. Would you go to the graphic for demonstrative purposes?

What are we looking at, Mr. Simon, the general -- what's the overall photo?

A. The overall photo is that portion of the southeastern portion of Richland and western portion of Kennewick that centers around the proposed Center Parkway.

Q. For orientation purposes, kind of highlight, you know, some of the landmarks or geographic features.

A. Certainly. State Route 240 runs across the site

from northwest to southeast. Gage Boulevard runs west. Steptoe, south.

Q. Mr. Simon, I'm going to ask you to stand on the other side of the exhibit so you're not blocking the judge's view.

ADMINISTRATIVE LAW JUDGE TOREM: I think it might be easier on the court reporter, too.

THE WITNESS: Let me start over again, then. State Route 240 runs from the northwest to the east.

MR. PETIT: Mr. Simon, be my guest.

THE WITNESS: Thank you, sir. State Route 240. Gage Boulevard runs from west to east. Columbia Center Boulevard, north to south. Steptoe, a north-south street. And then the railroad itself runs approximately parallel to SR 240, the Center Parkway proposed crossing is here.

MR. DIJULIO: Thank you. Thank you, Mr. Petit.

Q. So in referring to the two intersections that you're referring to, again, what are those two intersections?

A. Columbia Center Boulevard and Quinault and Steptoe and Gage.

Q. How long have you lived in this community, Mr. Simon?

A. 14 years.

Q. And, generally, based upon your familiarity with

this community and in your position as community development services manager, do you believe that to be an accurate representation of the current status of those two intersections?

A. Yes, I do.

Q. Thank you.

MR. DIJULIO: That's all I have.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit, any ReCross?

MR. PETIT: Judge, I beg your indulgence, but it seems that ReDirect has gone way beyond Direct, so may I exceed the scope of --

ADMINISTRATIVE LAW JUDGE TOREM: Well, just go where you think you need to go.

MR. PETIT: All right. Thank you.

RECROSS-EXAMINATION

BY MR. PETIT:

Q. Let's take a look at what's been marked as GAN-17-X, which is an e-mail from Kevin Jeffers to Kathy Hunter at the UTC.

Do you have that in front of you?

A. I do, yes.

Q. All right. So the first item that we're talking about here, it says, "Steptoe and Columbia Center Boulevard have LOS issues as identified below." Let's take the first one. "Columbia Center at Quinault intersection. Currently eastbound left-turn movement is LOS E, overall LOS C."

All right. So the intersection we're talking about is right over here, Quinault and Columbia Center Boulevard, correct?

A. Yes.

Q. Okay. Can you explain to me how installing a crossing at Center Parkway would have any effect on the traffic left turn or right turn at this intersection?

A. I'm not sure that I can.

Q. All right. So let's take a look at the next one, Steptoe at Gage intersection. "Currently southbound left-turn movement is LOS F," which you, I think, identified as being not desirable, correct?

A. Correct.

Q. All right. So we're talking about Steptoe Boulevard, which is a north-south street, and Gage Boulevard, right here. And it's talking about left turn. Did I read that right, left turn?

A. Yes, you did.

Q. Okay. So we're talking about traffic either coming up northbound on Steptoe and making a left on Gage or

coming south on Steptoe and making a left on -- a left onto Gage, correct?

A. Yes.

Q. Can you identify how the installation of a crossing at Center Parkway would alleviate any traffic congestion here that would elevate the status of that crossing as identified in that Exhibit GAN-17-X?

A. Can I use your pointer?

Q. Sure.

A. The left-turn movements on Steptoe would be crossing the northbound movements on Steptoe, creating a potential conflict. If there's another opportunity for northbound -- or, excuse me, for southbound movements on Steptoe, that could divert some of that traffic onto Center Parkway.

Q. Could.

A. Could, yes.

Q. Have you seen any traffic studies that support that conclusion with data?

A. No, I have not.

MR. PETIT: That's all I have, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Smith, does that raise any questions for the commission?

MR. SMITH: No, Your Honor.

REDIRECT EXAMINATION

BY MR. DIJULIO:

Q. Mr. Simon, Cross related to the turning movement, the intersection is currently, as a whole, operating at LOS C?

A. Yes.

Q. Will the new crossing of Center Parkway relieve congestion on this intersection, generally?

A. I think it could contribute to alleviating congestion.

Q. Thank you.

MR. PETIT: Just one final question, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: Go ahead.

RECROSS-EXAMINATION

BY MR. PETIT:

Q. You say it could contribute to alleviating congestion. Again, my question is, have you seen any data, any traffic studies, that support that conclusion?

A. No.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Anything further for this witness?

MR. DIJULIO: Nothing at this time. Thank

you.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Thank you, Mr. Simon. You can step down.

Counsel, it's now 10:40, let's take a 10-minute break, coming back at 10:50 with the next witness.

MR. PETIT: Could we know who the next witness is going to be?

MR. DIJULIO: We'll see if the chief gets here. If not, it will probably be John Deskins.

MR. PETIT: Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: All right. We'll take a 10-minute break.

(Short recess).

ADMINISTRATIVE LAW JUDGE TOREM: Okay. Counsel, let's go back on the record.

Just to sum up, Mr. Simon testified, and I'm going to admit at this time, unless I hear an objection, Exhibits RS-1T, RS-2, RS-3, and RS-4, as well as what's been marked as GAN-17-X. And those will all be admitted at this time, unless I hear any objections from TCRY or commission staff.

MR. PETIT: No objections, Your Honor.

MR. SMITH: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Those five exhibits are now admitted.

Are you ready to call our next witness?

MR. DIJULIO: Thank you. The cities call John Deskins, please.

JOHN DESKINS

called as a witness by the Petitioner, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: Have a seat. State your first and last name, spell both for the court reporter.

THE WITNESS: My name is John Deskins, J-o-h-n, and the last name is D-e-s-k-i-n-s.

DIRECT EXAMINATION

BY MR. DIJULIO:

Q. Mr. Deskins, I'm first handing you your pre-filed testimony to confirm that is what it is.

A. This looks like my testimony.

Q. Okay. Thank you. Now, handing you your rebuttal testimony.

(Pause in the proceedings).

ADMINISTRATIVE LAW JUDGE TOREM: So, Mr. Deskins, you should have in front of you items that were marked as JD-1T, JD-2TR for your rebuttal testimony, and I

believe also JD-3, 14 pages of supporting intersection data.

THE WITNESS: The JD-2T does not have the "R" on it, but it is the rebuttal testimony.

Q. (BY MR. DIJULIO:) Okay. Mr. Deskins, can you identify all those documents as true and correct copies of what they are?

A. Yes.

Q. Okay. All right. Now, in addition to what Mr. Torem identified, do you also have in front of you what are identified as, if I can find a reference in the exhibit list, GAN-6-X, which is the City of Kennewick comprehensive plan, technical document, capital facilities plan?

Do you have that in front of you?

A. There's something like that here. It's not labeled as such. I mean, it's not with a "GAN," but I see capital facilities plan.

Q. Okay. Do you recognize that as your City of Kennewick document?

A. Yes.

Q. And GAN-7-X, pages 58 and 59 of the city's comp plan? City of Kennewick's comp plan, excuse me.

A. Yes.

Q. Mr. Deskins, how long have you lived in this community, and I'll say the greater Tri-Cities community?

A. Ten years.

Q. And are you familiar with the area that is on the map behind you?

A. Yes, I am.

Q. Handing you what has been admitted as GAN-17-X, how are you familiar with that document, sir?

A. I developed background information for it.

Q. How did you prepare the background information?

A. We have a model, a micro-simulation model that contains the traffic data and all the pertinent data for the traffic signal timing and level of service analysis. I put in the most recent traffic counts that we have into that model to analyze the level of service.

Q. And when reference is made to, for example, Steptoe and Gage at LOS, overall LOS E, that means the entirety of the intersection and not just a particular movement?

A. That's correct. That's based on the very delay overall for all of the intersection.

Q. How will the Center Parkway project, completing to the crossing to Tapteal, address congestion in, you know, at this particular intersection, for example?

A. Okay. Can I use the figure?

Q. Sure.

A. Okay. This is the intersection of Steptoe and Gage right here. Though I say the level of service overall is

level of service E, I did mention that the southbound left turn was level of service F here, and also this eastbound left turn is level of service D. So it's nearing our concurrency standards.

Q. You mentioned a term that hasn't been in the record before. What does concurrency mean?

A. It basically means that we want to try to achieve, you know, we have an obligation to achieve certain levels of service on our roadways in order to have the roadway network basically be able to support the growth and the demand on the roadways.

Q. And that's as a result of -- the concurrency requirement is from the Growth Management Act?

A. That's correct.

Q. Thank you. Okay. Please proceed.

A. So as I stated, the level of service for the eastbound left turn to northbound is level of service D, based on the most recent analysis, counts taken in 2013. And the southbound left turn is F, so again, that's undesirable. So presuming that you had a trip that was in this vicinity that wanted to go to anywhere in here by the mall, by Costco, you know, you may want to come down through the alternate route of Center Parkway, versus go down here and make a movement that's currently at level of service F, experiences a lot of delays.

Similarly, if you were trying to get here, say,

from Richland, you would come down to Gage Boulevard, take this level of service D movement and come around this way. With the alternative route at Center Parkway, now you could go straight, a movement which is not experiencing major congestion, comparatively, and make your left turn and come up and access this area.

So the point of the Center Parkway extension is it gives alternatives to people who might be using intersection movements that are level of service D, nearing level of service D, or already at level of service F, it gives them alternatives. And with those alternatives, people are going to take advantage of them based on what they see at the present time.

Q. And, Mr. Deskins, in your capacity as the traffic engineer for the city, you evaluate the functions of intersections throughout the city of Kennewick?

A. That's correct.

Q. And what is your opinion regarding the congestion relief of the intersections both on Center Park -- excuse me, on Columbia Center Boulevard and the Steptoe intersection all the way through to Gage as a result of the Center Parkway opening?

A. I'm sorry, can you restate the question?

Q. Yeah. What's the impact going to be on the overall intersections as a result of the Center Parkway

opening?

A. Well, I would expect it would reduce the congestion and improve the level of service. Because it does give alternatives for people to use through-traffic movements, which again are usually less congested than the left-turn movements. The left-turn movements are almost always the more difficult ones to meet level of service standards. So I would expect that the level of service at this intersection and this intersection at Quinault and Columbia Center Boulevard would improve specifically.

Q. Thank you. You can sit down at this time. Mr. Petit asked questions regarding specific analysis of certain intersections, particularly the Center Parkway crossing. Other than the City of Kennewick and the City of Richland and Council of Governments' transportation plans, has there been a specific LOS study done with respect to the intersection at projected Center Parkway and Tapteal?

A. I believe there may have been a study by JUB.

Q. Okay. As part of this project?

A. As part of this project.

Q. And how about at Steptoe -- excuse me, at Center Parkway and Gage, for example?

A. No specific analysis.

Q. Thank you.

MR. DIJULIO: That's all I have for this

witness at this time.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Mr. Petit?

CROSS-EXAMINATION

BY MR. PETIT:

Q. Good morning, Mr. Deskins. My name is Paul Petit, and I represent TCRY.

A. Good morning.

Q. Prior to your current position, did you ever have any experience in conjunction with either the opening or the closing of railroad crossings across -- roads crossing railroads? Let me put it that way.

A. No.

Q. Now, in your testimony, you made reference to generating the background or backup information for GAN-17-X, which I believe you have in front of you. And you made reference to a micro-simulation and a computer. Is that a computer program?

A. Yes.

Q. And what does it do?

A. It basically analyzes, based on the signal timing and phasing inputs for the traffic signal and the traffic

counts and all the other factors that we have to utilize, it basically analyzes the level of service and the predicted delays, the predicted queues, at various train movements.

Q. Right. Did you run an analysis that specifically focused on the result of installation of a crossing at Center Parkway?

A. No, I did not.

Q. I'm going to direct your attention to the demonstrative exhibit that's on the board up here. We're looking at the proposed Center Parkway crossing. You made reference to alternative routes, potentially reducing traffic congestion at the corners of Gage and Steptoe, and I believe you said also potentially at Quinault and Columbia Center Boulevard, correct?

A. Correct.

Q. All right. And you are telling us that the information, the data, the scientific data to support a conclusion that that would result, can be found in the JUB reports?

A. There is some information regarding that in the JUB report.

Q. But I think you said one of them wasn't addressed. I can't remember which one. Center Parkway/Gage, isn't that what you said, was not addressed in the JUB report?

A. I'm not sure if they addressed that in the JUB

report or not.

Q. All right. Does your computer simulation take into consideration delays resulting from railroad crossings?

A. Not the simulation specifically, but you can do alternative analyses to try and predict what those queues and delays would be.

Q. Has it been done?

A. I've -- I've done some brief analysis on it, but, you know, I didn't summarize it because, frankly, it didn't concern me.

Q. Did not concern you?

MR. DIJULIO: Mr. Deskins, I'm going to ask you to speak up, please. Thank you.

Q. (BY MR. PETIT:) So you've not submitted to this commission any simulation that takes into consideration the effect of a train utilizing the Center Parkway proposed crossing and the results of that train delay on the traffic on Gage Boulevard, Center Parkway, and the surrounding area, is that correct?

A. That's correct. The simulation only includes basically intersections, that's -- so I was trying to analyze the level of service to the intersections.

Q. All right. And you realize that there's also an at-grade crossing of this very same railroad located on Steptoe?

A. Yes, I do.

Q. All right. And did any of your computer simulations or modeling address the effect of traffic on Steptoe as it might relate to getting to Tapteal Drive in connection with delays caused by trains crossing at that crossing on Steptoe?

A. No. Again, it was specifically for the intersections.

Q. Which intersections?

A. Gage, Steptoe, and I looked at Quinault and Columbia Center Boulevard.

Q. For road traffic only?

A. For road traffic, yes.

Q. Okay. Now, if you could take a look at page 3 of your pre-filed testimony, which is Exhibit JD-1.

A. Yes.

Q. Am I correct that the testimony that you give on paragraph -- from lines 8 through 26 on page 3 has to do with reducing traffic congestion only; in other words, you don't address emergency routes or access in connection with emergency service, is that right?

A. That's correct, in this paragraph at these lines.

Q. And do you have any data that would suggest that the proposed crossing will, in fact, decrease emergency vehicle response times?

A. That was not part of my task. I think it's evident, though, by looking at it, that if there's not a train, that definitely reduces response times.

Q. But you do not have any data in that regard?

A. That was not my task.

Q. And the data you know that exists is found in the JUB report, correct?

A. That's correct.

MR. PETIT: Excuse me just a minute, Your Honor. Number 32.

Your Honor, I'm going to use TCRY's cross-exam Exhibit Number 32.

Q. Exhibit 32 is a Google Earth projection of the distance between the proposed Center Parkway crossing and the proposed -- I'm sorry, the actual Steptoe intersection with Highway 240 at the roundabout there.

Are you aware of any crossings, any two crossings, any two at-grade crossings on the TCRY's BN/UP line that are as close together as 3700 feet?

A. I would have no idea, to be honest.

Q. Wouldn't you agree with me that if there were increased rail traffic at two crossings only 3700 feet apart, that that would have an impact on traffic flow and congestion where the traffic has to cross the actual railroad track in order to get from one side, from one place to another?

A. I would think it would have more of an effect if there weren't alternatives.

Q. We're talking about having the alternatives here in place. Let's assume we have two crossings, Steptoe and the proposed Center Parkway. Isn't it a fact that one of the things that has to be taken into consideration is the fact that multiple trains could be utilizing that track, or the same train could be tying up both crossings at slightly different times?

A. I'm not sure what that would really have to do with anything. If there's a train across the crossing, there's delay.

Q. Correct.

A. If there were two crossings, there's probably a chance that things would be better than if there's only one crossing.

Q. That is if you choose the right crossing to go to?

A. You can make those assessments as you arrive at the crossing and make a determination about which direction the trains are going. Maybe you're out of luck entirely, but you can make assessments based on what you see.

Q. So if you come to the Steptoe at-grade crossing and you're going north on Steptoe, and you see that there's a train traveling south or southeast, you wouldn't try to go to Center Parkway in order to avoid that train, correct?

A. In that instance, you're out of luck.

Q. Right. And if you were at Center Parkway and you saw that there was a train moving in the opposite direction, to the northwest, you wouldn't go to Steptoe to try to avoid that train, you'd just wait out the queue, wouldn't you?

A. Most likely. I wouldn't expect it's going to be that long.

Q. What if the train -- what if there was more than one train? The delay would be longer, wouldn't it?

A. Potentially.

Q. And a longer train, the delay would -- say, a hundred-car train as opposed to a one-car train, the delay would be longer also?

A. Sure.

ADMINISTRATIVE LAW JUDGE TOREM: Just for the record, this particular aerial view, I think, corresponds to what's on the exhibit list as Cross-Examination Exhibit JD-30-X.

MR. PETIT: Thank you, Your Honor. I have nothing further.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Smith, anything from commission staff?

MR. SMITH: No, no questions.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio, back -- your witness.

REDIRECT EXAMINATION

BY MR. DIJULIO:

Q. Mr. Deskins, you're familiar with the Council of Governments' transportation plan and model, is that correct?

A. Yes.

Q. Okay. And that plan, for purposes of its work, assumes the Center Parkway project is completed?

A. Yes, it does.

MR. DIJULIO: That's all I have. Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Any Re-Cross based on that?

MR. PETIT: Nothing further.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Thank you, Mr. Deskins, you can step down.

So if we're tracking exhibits again on each witness, those that have been offered or utilized are JD-1T, JD-2TR, JD-3, and also GAN-6-X and -7-X were not previously referenced. And now JD-30-X, as well.

Any objections to me admitting to those utilized exhibits at this time?

MR. DIJULIO: None for the cities.

MR. SMITH: No objection.

MR. PETIT: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: All right.

So those six exhibits will be admitted at this time.

I think we're ready to call your next witness, Mr. DiJulio.

MR. DIJULIO: Yes. Chief Skinner.

ADMINISTRATIVE LAW JUDGE TOREM: Chief Skinner, if you'll approach this chair and just remain standing for a moment while I finish this exhibit housekeeping.

THE WITNESS: Yes, sir.

CHRIS SKINNER

called as a witness by the Petitioner, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: Have a seat. Please state your first and last name for the court reporter, spelling both.

THE WITNESS: First name is Chris, spelled C-h-r-i-s. Last name Skinner, S-k-i-n-n-e-r.

ADMINISTRATIVE LAW JUDGE TOREM: And what's your position and with which city?

THE WITNESS: I am the director of police services with the City of Richland. That incorporates being police chief for the police department, the director for BCES, which is emergency dispatch and emergency management.

ADMINISTRATIVE LAW JUDGE TOREM: Direct your

attention to Mr. DiJulio.

THE WITNESS: Thank you, sir.

DIRECT EXAMINATION

BY MR. DIJULIO:

Q. Do you have a copy of your testimony?

A. I do, sir.

Q. Okay. Just to confirm, that's your pre-filed testimony in this matter?

A. It is.

Q. Chief, I'm going to also, just to orient the administrative law judge, for demonstrative purposes, what are we looking at here?

A. What we're looking at is a, well, one of many maps that the city will generate that depicts the city, but this one is particularly interesting because it denotes in the red dotted line the city limits of the city.

Q. Okay. If you could go to the exhibit and just kind of walk the judge through the city limits, just starting at the northwest corner, working your way down.

A. Sure. Thank you. City of Richland's kind of interesting, 42 square miles. It's a big footprint for a city of 50,000, and it poses some interesting challenges for law

enforcement to try and serve all parts of the city. The red dotted line identifies the city limits, and you can see some really interesting geography and some different city limit boundaries that exist in what we call the south Richland or south of Yakima River, to include some interesting geography up here in the north.

What the police department does in a way to try and address its policing needs and deployment strategies is we've identified the city into three districts, 1, 2, and 3. And district 1 is all the area south of the Yakima River; area 2 is the Yakima River, which is essentially right here, north to Williams; and then area 3 or district 3 is Williams and on up north all the way to include the Horn Rapids area and the landfill.

Q. Thank you, Chief.

A. Uh-huh.

Q. And, also, just to confirm, that's your pre-filed rebuttal testimony, as well?

A. Yes, sir.

Q. Okay. Thank you. Do police measure response times the same way as the fire do?

A. We don't, generally. We have -- if I may expound on that?

Q. Yes.

A. The interesting nuance between police and fire,

for the sake of redundancy, though, is that fire often tend to respond from a static location or a firehouse or a stationhouse. Their response time is measured from the time they get that call from the static location to wherever they need to respond to. And they have IAFF standards that oftentimes -- International Association of Firefighters' standards that identify certain response times that they try to attain.

In the police culture, we are often deployed in the community on a 24/7 basis and are not responding from static locations. So our response times can be anywhere from just having dumb luck and being five seconds away, to being on other calls for service or a long ways away in the district or other parts of the city and taking as much as 10 or 12 minutes to get to certain locations. So we could have average response times, but there's a real disparity when we talk about what that looks like.

Q. Okay. And is district 1 particularly difficult for response?

A. Yes. If I may, sir. District 1 is, like I said, has got some interesting parts to it. As you see here, we've got parts of the city here that we respond to out around kind of Badger Mountain and Leslie area, and then all of a sudden there's some county and then the newly annexed south Badger area here that is yet to be built out, but we're anticipating

several hundred homes in this area, which will be interesting.

The part of district 1 that makes -- is really interesting here is down here by this island view area in this interchange of Columbia Center Boulevard, is that this is city of Richland right here, and then all of that is Kennewick to the south. And so getting from this area, for my district 1 officers, for instance, to be able to get into the heart of district 1 or even to Badger Mountain south when that's built out, poses some interesting challenges in and out of different jurisdictions at high rates of speed. And so we're really mindful of kind of the geography of district 1.

MR. DIJULIO: That's all I have for Chief Skinner at this time. Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit?

Mr. Petit, let me ask that if you're going to make use of any of the maps, I'm noticing that we're asking the witnesses to talk over their left shoulder to you, which is making it harder for the rest of us to hear in this room and the court reporter, I think, as well. So let's see if we can figure out a way that the voices project back this direction for you and the witness, depending on what mechanics you're going to use here. For this witness and those going forward, as well, if we have those illustrative exhibits behind.

MR. PETIT: Okay.

ADMINISTRATIVE LAW JUDGE TOREM: I don't know

if it will be an issue for this witness, but --

MR. PETIT: I'm not sure how we're going to solve that problem.

ADMINISTRATIVE LAW JUDGE TOREM: We'll come up with something.

CROSS-EXAMINATION

BY MR. PETIT:

Q. Good morning, Chief.

A. Morning, sir.

Q. You have your pre-filed testimony in front of you there?

A. I do.

Q. Could you turn to page 4 of your pre-filed testimony, please?

A. Yes, sir.

Q. You made some statements there with respect to -- and I think you've addressed some of them in your testimony here -- about the unique nature of district 1, particularly that slice that's north of the railroad, which is close to Kennewick but isn't Kennewick?

A. Correct.

Q. Is that fair?

A. That's fair.

Q. Okay. One of the things that you said was that typically police response is from a moving location, correct?

A. From a -- well, we may be moving, we may not be moving, but --

Q. Remote?

A. -- typically we are remote, yes.

Q. You say at the bottom of page 20 -- I'm sorry, at the bottom of page 4, looking at lines 20 through 22, that Center Parkway, the proposed Center Parkway I'm assuming you're suggesting here, if there were a crossing at Center Parkway, is that what you're saying?

A. I believe that's what I meant, yes.

Q. Yeah. That that "would be within less than half a mile and only one roundabout intersection and the proposed at-grade crossing on a street that will never function as a busy commuting route."

Do you see that?

A. Yes.

Q. I'm a little bit confused as to what the half-mile distance is.

A. I think my intent was to communicate that from responding from that Tapteal area or that existing city of Richland area that is so challenging, that to get into the part of Kennewick in a mutual aid type of response, that that

access provides a much shorter distance and a guess of about a half a mile. And the one center roundabout is that one that already exists there at Gage, and I'm trying to remember what the road is that goes to the -- to the south there. But that --

Q. At the mall?

A. Yeah, at the mall there. That would be the one roundabout intersection that I'm talking about.

Q. Well, I'm not exactly sure what the half-mile distance is that you're talking about.

A. Well, I think, if I may, I think it was more of a guess from my perspective that if we were in this area of district 1, and we needed to get to this area in a mutual aid response, that we would be able to do that fairly easy with the access in a half a mile or less, with the one roundabout there at the mall, to be able to access that part of Kennewick.

Q. All right. Well, let's have TCRY Cross Exhibit Number 1, page 3. I'm not sure whether this has been admitted yet, Your Honor, but it is part of the petition.

ADMINISTRATIVE LAW JUDGE TOREM: I think this one was previously marked on the exhibit list as JP-5-X, and the page that you're looking at --

MR. PETIT: Page 3.

ADMINISTRATIVE LAW JUDGE TOREM: -- is page 3

of that exhibit.

MR. PETIT: All right. Thank you, Your Honor.

Q. I'm going to show you now up on the screen a document, a map that was prepared and submitted as part of the petition by the Cities of Richland and Kennewick --

A. Uh-huh.

Q. -- asking this commission to allow the construction of a crossing at Center Parkway. Have you seen this before?

A. Not this particular map, no.

Q. But you're very familiar with this general area, correct?

A. As familiar as police chiefs are with their area, yeah. I don't patrol that area on a daily basis, but I am familiar.

Q. It's part of your job to be familiar with it, isn't it?

A. Not necessarily, sir, no.

Q. All right. Well, let's take a look at it. You were making reference just now to what you referred to as, I believe, mutual response.

What does that mean?

A. Mutual aid response is -- well, it's an industry standard in law enforcement that we have memorandums of understanding that in times of crisis, that jurisdictions will

cross jurisdictional boundaries to respond to each other's crisis.

Q. So Kennewick will respond to crises in Richland, and Richland will do the same in Kennewick, is that right?

A. Yes, sir.

Q. And your specific testimony just now was about, in fact, having one or more of your units in that area that we are showing here on this exhibit colored green and then even extending a little bit further to the east with one of your units or one or more of your units in that area being able to respond to a call for mutual aid in Kennewick, correct?

A. That's correct.

Q. And so what you're really talking about is being able to get across the railroad tracks to get to the Kennewick -- across the Kennewick city border?

A. That's fair. Yes, sir.

Q. Okay. And the way you would do it now, if you had a unit on Tapteal, is that unit or those units would proceed eastbound and get onto Columbia Center Drive and go to wherever they needed to go in Kennewick by that means, correct?

A. Either Columbia Center Drive or all the way down to Steptoe.

Q. All right. Either one of those would be a viable route, depending on where the mutual aid was required, is that

right?

A. Depending on where the mutual aid is required, yes, sir.

Q. Okay. So what you're saying is that this proposed Center Parkway crossing gives you an alternative, an alternate route, but that alternate route is not necessarily the best route or the fastest route in any given number of situations, right?

A. Not in any number of situations, no.

Q. Do you have any studies or any data that would support the conclusion that the Center Parkway crossing, if it were built, would contribute in a significant way to response times on mutual aid calls in the city of Kennewick?

A. No. No specific studies, no, sir.

Q. Now, you may -- I read for you part of your testimony on page 4, line 21 and 22, where you state that "the at-grade crossing on a street that will never function as a busy commuting route."

You're talking about Center -- you're talking about Center Parkway?

A. Correct.

Q. And so what you're saying is that not only will this provide an alternate for your units to respond into Kennewick on a mutual aid call, but also it will be more efficient because Center Parkway will never be a busy

commuting route?

A. That's correct.

Q. All right. Do you have any data to support projected traffic volumes on Center Parkway that you base that conclusion on?

A. No.

Q. Now, if you could turn to page 3 of your pre-filed testimony. And I'm going to direct your attention to lines 19 through 22 of your testimony there --

A. Correct.

Q. -- where you say, "There is undoubtedly some risk to creating an at-grade crossing, but based on the low speeds and infrequent conflicts expected at this crossing, I believe the benefits are -- outweigh the risks."

Do you see that conclusion?

A. I do.

Q. Now, you talked to us about what you believe the benefits to be. Now I want to focus on what the risks will be and what you know about the level of those risks. You say that there is undoubtedly some risk, but the low speeds and infrequent conflicts would mitigate that risk.

Is that fair?

A. That's fair.

Q. The low speeds you're talking about, those are the speeds on Center Parkway, if the crossing is built?

A. That is my assumption, yes.

Q. Well, this is your testimony. I want you to tell me what you were saying.

A. Yes, that is what I said.

Q. Okay. And the infrequent conflicts that we're talking about, are we talking about train/vehicle conflicts?

A. Yes.

Q. In other words, the train is coming, the gates go down, the vehicles have to stop?

A. Correct.

Q. You say they're infrequent. What do you base that on?

A. I base that on my experience in law enforcement, how many times I have been in conflict with train crossings through my experience on patrol and the experience of my officers on patrol.

Q. In terms of data, in terms of numbers, in terms of studies, do you base it on any of those?

A. No.

MR. PETIT: That's all I have, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: Staff?

MR. SMITH: Yeah, Your Honor, one question.

CROSS-EXAMINATION

BY MR. SMITH:

Q. Chief Skinner, my name is a Steve Smith, I'm an assistant attorney general for the commission staff.

A. Sir, nice to meet you.

Q. I have one question. In response to a question from Mr. Petit, you said you had no studies that showed that Center Parkway would ever function as a busy commuting route.

Do you recall that?

A. (Nodded head affirmatively).

Q. Can I ask you, then, what is the basis of that conclusion?

A. I think a fundamental understanding of the geography of that area. Having -- having been in the situation where we've had to navigate Columbia Center Boulevard and Steptoe, understanding what those two arterials are designed to accomplish, the traffic flow, just the congestion that we see there. I think my -- my testimony was based on my assumptions of the short drive between the roundabout of Center Parkway down to Tapteal, that that would never see the type of vehicle volume that we're seeing at Columbia Center Boulevard and Steptoe.

Q. And is Center Parkway ever likely to extend beyond State Highway 240?

A. Not unless we're going to cross the river.

MR. SMITH: Thank you, Chief.

THE WITNESS: Uh-huh.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio?

MR. DIJULIO: Thank you, Judge Torem.

REDIRECT EXAMINATION

BY MR. DIJULIO:

Q. Chief Skinner, with your qualifications and background, you are not a traffic engineer?

A. That is correct.

Q. And do you know the difference from a technical standpoint between a major and a minor arterial?

A. No.

Q. And do you know how Center Parkway's even designated in the various transportation plans through a classification?

A. No.

Q. Thank you. Chief Skinner, you've been involved with the Richland Police Department for how long?

A. Going on third year.

Q. And before that?

A. Was in the Portland metropolitan area.

Q. And did you incur at-grade conflict issues in that deployment?

A. From time to time, yes, sir.

Q. In Richland, you are familiar with existing at-grade crossings of the Tri-City Railway, Port of Benton Tri-City Railway tracks, other than Steptoe?

A. I'm familiar with some, but probably not all.

Q. Okay. There's a number of them on, as the tracks work its way north, for example, the major intersection of Van Giesen Boulevard?

A. Correct.

Q. And a number of others?

A. Yes, sir.

MR. DIJULIO: Okay. That's all I have. Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit, any follow-up Cross?

MR. PETIT: Nothing, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Chief Skinner, thank you very much for your testimony today.

THE WITNESS: Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Please stand down.

The exhibits that we are going to formally admit at this time, unless there are objections, are going to be

CS-1T, CS-2TR, and as utilized in cross-exam, JP-5-X. I think that covers those used for this witness.

Were there any others that I missed?

MR. PETIT: I think that's it, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: And are there any objections to these three exhibits?

MR. PETIT: No objections, Judge.

MR. SMITH: None, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio, any objections to -- I think the only one relevant for objection would be JP-5-X.

MR. DIJULIO: No, no objection.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Those three will be admitted.

MR. DIJULIO: Particularly since it's our document to begin with.

ADMINISTRATIVE LAW JUDGE TOREM: Just making sure.

MR. DIJULIO: Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Do you have another witness queued up?

MR. DIJULIO: We do. Chief Baynes.

ADMINISTRATIVE LAW JUDGE TOREM: Sir, if you'll approach the witness chair and remain standing.

RICHARD BAYNES

called as a witness by the Petitioner, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: Thank you. And can you state your full name and spell each name for the court reporter?

THE WITNESS: Richard, R-i-c-h-a-r-d. Grant, G-r-a-n-t. Baynes, B-a-y-n-e-s.

DIRECT EXAMINATION

BY MR. DIJULIO:

Q. All right. Chief Baynes, let's see, do you have your pre-filed testimony? Do you have your rebuttal testimony, as well?

A. I do not.

Q. Okay. Let me just show you that so we have it in front of you. Rebuttal testimony.

A. Thank you.

Q. Okay. Chief Baynes, that is your testimony that you previously filed in this matter?

A. Yes, it is.

Q. Earlier this morning, Chief, before you arrived,

the parties discussed additional exhibits in this matter and some graphics that have been stipulated for consideration.

Are you familiar with those documents, sir?

A. Yes, I am.

Q. And how are you familiar with them?

A. The written text on the first page is my work. The colored tables are work that was done by my executive assistant, Tricia Okmoody (phonetic) at my direction.

Q. And what was the purpose for this work, sir?

A. I thought it was prudent to take the opportunity to actually look at some real times. This is data drawn from our records management system. And essentially we looked at some addresses that are in the Tapteal area or up in the -- I think I've called it Mail By the Mall area, that's the area where that business is located, and P.F. Chang's and things that -- just a few of those businesses that are just above the -- above the area of the crossing.

Q. So let's, for purposes of the explanation, there is a graphic we're using for demonstrative purposes. Would you just use that standing to the other side of the graphic so that the judge can see what you're pointing at.

ADMINISTRATIVE LAW JUDGE TOREM: Chief, if you'll stand on the opposite side. Thank you.

THE WITNESS: Okay. So when I refer to the Tapteal addresses, these are the businesses that are located

here called the Holiday Inn and then some of these others that are on the north side of Tapteal. So these are the Tapteal addresses that were -- the information was pulled for. And then the others are in this area. There's a bank here, this is the Mail By the Mall commercial property and the two restaurants. So some that are in this area what we consider the 100 block in our record system.

So we looked at times from the station here, Kennewick station 63, and then from the Richland fire station 72 on Gage and Keene.

Q. Chief, again, what does Richland designate that station number as?

A. 72.

Q. 72. Thank you. What did you find on your evaluation of the actual response times, Chief Baynes?

A. We gather data for responses from either of those, the two agencies, either the Kennewick Fire Department or Richland Fire Department for those specific addresses, and clearly there's some outlying response numbers in there. These response numbers in the table are from the time of dispatch to the time of arrival, so they include the turnout time, which is the time that the firefighters or medics are actually getting to their vehicle, in their vehicles and then on the road, which is a little different than just considering the drive time alone.

And we looked at the numbers to those two addresses and rather than look at an average, which can be a little deceiving, we looked at a median. Because there are times when neither of those stations are available, and so a response time would look considerably longer. One of the pieces of data on this is 69 minutes for response time. That's an entry error that's just sitting in there. So if you look at all of that and play averages out, you get a different number.

So I concentrated on the median number, knowing there would be some slightly shorter or longer, based on other factors besides just the physical movement from 63 to the address or from station 72 to the address.

Q. And, Chief, what did you determine as a result of that evaluation?

A. In just raw numbers, it looks like there's about a minute difference between accessing Tapteal via the proposed crossing versus the traditional routes, the station 63 route, which would come down Columbia Center Boulevard, around the loop, and over and then to Tapteal. Or from fire station 72 along Gage into Steptoe and into Tapteal.

Q. Very quickly, take a response, assuming that it begins at station 63 to Kohl's, for example. If you would do that on the map, I think that would probably be beneficial.

A. Sure. Station 63 is located down here in

Kennewick. It's very near the courthouse, if anybody is familiar with that area. The ramp runs out onto this street, so then they would proceed west to the intersection here with Columbia Center Boulevard and make a right-hand turn. They would run north on Columbia Center Boulevard, which in my testimony, I covered it, it's essentially a one-way street because it's center divided.

And one of the challenges in a center divided road is you get jammed up. It's a lot easier to move vehicles out of your way when you're coming at them head on versus behind them. Sometimes you're simply not even seen in the rearview mirror or heard. So that would make this move through here, cross under the railroad. I'm going to put my glasses on to get precise on here.

But there's a loop road here, so it's a right-hand turn, another right-hand turn, another right-hand turn, which now is over here above Columbia Center Boulevard, a right-hand turn down a fairly steep slope into a left turn and then to Kohl's. So that would be the traditional route.

Q. Chief, you referred to it as a loop, but it's not really a loop, is it?

A. It's a series of right-hand turns that takes you -- yeah, almost in a full 360 degrees, almost.

Q. Yes. But is it a -- is it a curve, or is it a series of turns?

A. Probably better described as a series of turns, right-hand turns. Yeah.

Q. And from the City of Richland's perspective, the response time would be -- well, while you're talking about the Kennewick station 63 response, in the alternative scenario, what would be the preferred route to get to the area?

A. Same exit heading towards Columbia Center Boulevard, crossing Columbia Center Boulevard, onto Quinault, a sweeping right-hand turn here onto Center Parkway. This is a controlled intersection here, but this is a sweeping free right turn up to the roundabout, through the roundabout, and across the crossing into Tapteal.

Q. And you've estimated that that will save approximately how much time?

A. Approximately a minute.

Q. And for the city of Richland for the route?

A. Route's relatively uncomplicated. Gage Boulevard has been significantly improved in recent years, so it's a run up Gage, today to Steptoe, a left-hand turn at Steptoe, heading north to the bottom across the crossing onto Tapteal, and then along Tapteal into -- so here, along Tapteal, into the -- into the buildings.

Q. And with the Center Parkway constructed?

A. A little shorter route, straight down here through the roundabout and into the --

Q. Thank you. Chief, in your time with Richland, have you had occasion to experience a blocking at Steptoe as a result of the use of the TCRY tracks?

A. Most of mine is just in simple commutes. I drive in and out of the city as a non-responder. I very infrequently respond. So the likelihood of me hitting it is fairly low. I have been stopped at the rail crossing there from time to time in the last few years.

Q. With the -- there will be testimony later in this proceeding regarding the potential increase of use of that line as a result of unit trains. What's your reaction to the -- in the event that there is additional track usage by unit trains?

A. I looked at that and tried to see the risks from the city's point of view. My main response to that is the more routes into areas we have, the better. So an alternative route in there helps us. You know, can we guarantee we're going to be clear of a train in the event of a crossing? No. But through communication with the Kennewick responders and the other Richland responders, ideally we can have a choice of routes. And the unit train will present a new dimension for us not just in that spot but in several spots.

But it's part of dealing with -- we had the same issue with running Columbia Center Boulevard in low traffic, say, early morning versus the peak traffic times. So there

are risks that we have to address. And alternatives are the key for us, if we have ways of working around things, that's what I look to most of all.

Q. And, Chief Baynes, will you describe briefly the relationship between Richland fire and Kennewick fire, in terms of either mutual aid or other relationships with respect to services into your communities?

A. The most traditional models you'll see between fire agencies is in the mutual aid area. And mutual aid really says you exhaust everything you have and then you call for help from your neighbor. In a scenario like this, that means if station 72 wasn't available, then the next station going would be station 71, which would be just up the road here. And if that weren't available, it'd be north Richland picking it up.

Chief Hines and I have worked closely with other chiefs in the area, and we have automatic aid in this area which says the first unit, or first medic unit, is coming from station 72. And the next one in the beat order is a Kennewick unit, and that's done by an automatic aid agreement. There's no permission required. The computer-aided dispatch simply looks down the beat order and picks up the next unit sent.

And many of these medical calls and every fire call will have more than one unit coming, and each of these stations only have one crew in them. So very often we're in a

both station scenario right from the get-go.

Q. So if Richland is the first call to the, say, the Kohl's store on Tapteal, and that unit is proceeding to the -- on Steptoe toward the intersection with Tapteal and is blocked by a train, does that unit have the opportunity to call to Kennewick and identify that as an issue that that's an alternative, if they can get there, they can get there faster?

A. They do. The risk there is where have they committed and which route would they have committed to also. But, ideally, particularly in a fire or serious medical call or trauma or code, you're going to have units coming from this station here, from Kennewick station 10, so the ability to make sure we've got somebody able to get across there is the -- they use their radios all the time to communicate issues with delays and things like that.

Q. And I guess, not to belabor the obvious, but the City of Richland and the City of Kennewick operates what's BLS or basic life support services, is that correct?

A. Advanced life support.

Q. Well, advanced life support, meaning what we would commonly refer to as paramedic services?

A. Yes.

Q. As well as BLS, basic life support, which is normally referred to as EMT-type services?

A. We have a mixture of both, but our units are all

ALS almost exclusively all the time. We have paramedics stationed throughout.

Q. And the ALS provider in these communities is not a separate emergency medical services provider than actually the City of Richland Fire Department and the City of Kennewick Fire Department?

A. Yes, they're fire-based ambulance transport systems.

Q. And what is the predominant call for service the City of Richland encounters, fire or medical?

A. About 80 percent medical.

Q. Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Any further questions?

MR. DIJULIO: Nothing further for this witness.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit?

MR. PETIT: Yes, Your Honor. Could we have number 1, page 3, which I believe has been introduced now into evidence as JD-5-X?

ADMINISTRATIVE LAW JUDGE TOREM: I think JP, but yes.

MR. PETIT: JP. JP.

CROSS-EXAMINATION

BY MR. PETIT:

Q. Chief, I'm showing you what's been marked as and introduced into evidence as JP-5-X, an exhibit in this proceeding.

Oh, by the way, good morning, Chief.

A. Good morning.

Q. Usually when I hear that Kiwi accent, I have a brown trout on the other of my line.

A. Wouldn't that be nice? Maybe I'm the trout.

Q. I doubt that. See, now you've seriously interrupted my train of thought.

Taking a look at this, what's been marked as JP-5-X, that is a representation that is found in the petition here, a map with some routes shown on it, and I think you've addressed some of these.

Does that look accurate, based upon your knowledge of the area?

A. Yes, it doesn't do anything -- it -- I don't know, does it imply that station 72 would follow the yellow line even with the crossing in? I'm not --

Q. I don't think it does. I think it implies that 72 would use the route marked in yellow, and that's the route it uses now to get to the Tapteal addresses. Is that right?

A. It is. If the crossing is in, they wouldn't, they would continue on and essentially meet the other station at the roundabout. So if it was a red dotted line, it would be red to the roundabout, and then north to the Tapteal area.

Q. Okay. So, first of all, we've got Richland station 72 off of the map to the left.

A. Correct.

Q. And then we've got Kennewick. And could we raise that up just a little bit, so we can see? There we go.

On this map it's identified as 3, but you identified it as 63, is that right?

A. Yeah. We use numbers to designate the agency, as well. So if you're talking to Kennewick people, it's their station 3. 6 is the number we use for Kennewick. 7 is a Richland station.

Q. Okay. Same thing.

A. Yeah.

Q. Now, you understand that if there is a crossing that is constructed at Center Parkway, that there are now going to be two crossings, two at-grade crossings to be negotiated within a relatively short distance, one at Steptoe, one at Center Parkway?

A. Yes.

Q. Correct?

A. (Nodded head affirmatively).

Q. So if you have a train moving southbound toward the Steptoe crossing, a unit responding from Richland 72 is going to have to make a decision as to whether to attempt to use the Steptoe route or to go down Gage Boulevard and use the Center Parkway route?

A. Yes, sir.

Q. Is that correct?

A. (Nodded head affirmatively).

Q. Assuming Center Parkway crossing is built?

A. Yes.

Q. So how is that decision made?

A. That's the challenge for them, and that's -- I've actually talked to some of the folks that are dealing with this and asking if there's any kind of telemetry or anything that's going to be available, especially for the bigger trains. Shorter trains move through a rail crossing pretty quickly.

But that's clearly an issue, you know, that the time-sensitive calls have multi-responders coming, we have to be in touch with each other to make sure we convey issues as we see. But they're going to have to commit to that before they'll even see if the train's there.

Q. I think that's my point.

A. Yeah.

Q. So the unit would have to commit to one of these

two routes before it has firm information as to whether or not it's going to be blocked at the crossing, correct?

A. Right. That's correct.

Q. So you could end up with a situation where there's one train, where you choose the wrong route and you end up with a delay because of the train at the crossing, correct?

A. That's true.

Q. And right now you don't have a system for bypassing or eliminating or evaluating or redirecting that, correct?

A. That's correct.

Q. Excuse me just a minute here.

MR. PETIT: Kenneth, can we have the Center Parkway crossing design?

Now, this is a part of the petition, Your Honor. I don't think we need to necessarily mark it as a separate exhibit. But it is drawing number 4, showing the proposed Center Parkway crossing design.

ADMINISTRATIVE LAW JUDGE TOREM: Okay.

Q. (BY MR. PETIT:) Are you aware, Chief, that at both Steptoe -- excuse me -- at the Center Parkway crossing there are actually not one, but two railroad tracks to be crossed?

A. Yes.

Q. And do you know what the function of the second

track at that location is, from the railroad's standpoint?

A. I think from observation, it -- what I've seen, it's cars stored there and things like that. I don't know whether it's a way of bypassing each other at that point. That would be my guess, but --

Q. In the railroad industry we do refer to it as a passing track, because it not only leaves the main track, but rejoins the main track. And you can understand that as unit trains become more prevalent, the smaller trains may have much more need to get out of the way of the bigger trains?

A. Right.

Q. You can understand that, correct?

A. Yes.

Q. Okay. Now, can you see that if this crossing were, in fact, constructed not as it's shown in this design where it eliminates one of those tracks, but rather where it has to cross two tracks, can you see the potential for an extended delay as a result of one train being on the passing track and the other one being on the main track, possibly going in opposite directions?

A. Yeah, I'm not sure how long the passing piece is, but the potential has to be seen then, yes.

Q. It's about -- I think we showed the exhibit before, it's about 3700 feet. So that potential exists, that you could have two trains at that intersection blocking it,

first the one and then the other, correct?

A. Sure.

Q. And if a unit is dispatched to Center Parkway and encounters that situation, it's going to be delayed longer because of the fact that a shorter train had to get out of the way of the unit train, correct?

A. That potential is there, yes.

Q. That potential exists?

A. Yeah. They would have to --

Q. And that -- I'm sorry.

A. They would have to back up and return and take a secondary route. That's why I was always talking about having alternate routes, too.

Q. So what we're saying here --

And we have to solve this problem about talking over the left shoulder, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: I think I'm going to ask the witness to stand on the other side of the diagram with you.

MR. PETIT: Sure.

ADMINISTRATIVE LAW JUDGE TOREM: Direct voices this way.

MR. PETIT: Okay. Can you see the diagram?

THE WITNESS: I'm going to keep out of your road. Yes, sir.

Q. (BY MR. PETIT:) All right. So the potential that we're talking about here is, here is the new proposed crossing. It's marked "proposed crossing" on this demonstrative exhibit. There are two railroad tracks here. One of them is a passing track, the other one is the mainline. What we were talking about is a train that has gotten off of the mainline, onto the passing track, to allow another train to pass it in either one direction or the other.

Do you understand that's the scenario I'm talking about?

A. Yes, I do.

Q. Okay. So if a train -- if a unit responding from 72 or 63 taking and intending to take the proposed new crossing as its route encounters that situation where it's likely to be delayed by not one, but two trains, you're telling me that the alternate would be to backtrack and take the existing routes to get to the other side of the track?

A. That's correct. The advantage of seeing it here is that it's a relatively short distance in here so they can see that and get a read on it, hopefully in advance of this station making its run past Steptoe, so they can redirect the second one around. The reason we have -- those times is so dynamic is that we kind of assume that either of these crews is sitting on their station at all times.

Sometimes it's conceivable, because they've both

run to the hospital in Richland a lot, they can be en route back into their areas and picked up on call. The second unit coming may not be from either of these, it may be from this station up here, which is third on the beat. So that's why I always argue the more alternatives the better, because we can't assure any route.

We have a wreck out on the causeway area here, on 240, that's a divided highway. If our unit's not coming here, sometimes they'll have to go across, around, and back. So the more diversity we can put into our response routes, the better, and this is just another one of those. Because essentially, now this is going to bottleneck with 180 because of the complexity of the traffic.

Q. Okay. I agree with all that.

A. I understand what you're saying.

Q. And I accept all of that. But my point is that now, instead of having simply an alternative route, we're adding trains into the mix?

MR. DIJULIO: Objection to the form of the question. He's answered the question, first of all; and, secondly, he's also testified that he's not a train expert.

ADMINISTRATIVE LAW JUDGE TOREM: Sustain the objection as to the form.

Mr. Petit, can you rephrase the question directed to the Chief?

MR. PETIT: Sure.

Q. You've given us examples of alternate routes and responses that would be beneficial. The proposed Center Parkway crossing -- excuse me. Those examples do not involve directly crossing a rail track, correct?

A. The Steptoe one does, yeah.

Q. All right. And so would you agree with me that whenever you're talking about crossing a railroad track, the rail traffic is a factor that has got to be taken into consideration in terms of the response times and the ability of the units to respond?

A. Absolutely.

Q. Now, if you could take a look at what's been marked --

ADMINISTRATIVE LAW JUDGE TOREM: Are we looking at the response time document?

MR. PETIT: Yes.

ADMINISTRATIVE LAW JUDGE TOREM: I think we haven't numbered it yet.

MR. PETIT: Could I ask you to do so?

ADMINISTRATIVE LAW JUDGE TOREM: I think this is going to be GAN-18-X. Let me clarify how many pages are in this document I was handed earlier. I think the intention was to have multiple copies of the addresses on Tapteal and the addresses near the mall document. As it turns out, I have a

lot of copies of addresses on Tapteal, but only one on addresses near the mall. We can solve that later, Mr. DiJulio.

MR. DIJULIO: Yeah. The exhibit is a three-page exhibit that covers narrative plus the two colored exhibits.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Excellent. So the narrative was the one that the chief referred to as his own calculations and his own typographical summary of what was backed up by the following pages. So that now, a three-page document, is 18-X, GAN-18-X.

Mr. Petit, go ahead.

Q. (BY MR. PETIT:) All right. So, Chief, if you would look at the exhibit that's been marked GAN-18-X, you testified about this in questioning from Mr. DiJulio.

A. Yes.

Q. And you stated that this was basically information that you gathered after you had looked at some of the response times that were put forth in this case so far?

A. Yes. I looked at the -- it was actually at the rebuttal phase, I looked at the comment about the travel time from station 63 in Kennewick to the Tapteal area. And I was disappointed in myself, I felt I should have spotted it. It seemed short to me, a relatively short time. So I thought just to look at that in respect to actual responses into the

area, it was useful to gather the data that we have in our records management system and compare or at least try to understand the difference and if there is a difference.

Q. And as a result of that, that caused you to prepare what's been marked as GAN-18-X?

A. Yes.

Q. All right. Let's start with the beginning of that. You said that you looked at what you thought was part of the rebuttal process, TCRY documents, testimony documents, and you make reference then to a two-minute-and-48-second response time from the KFD station 63?

A. Correct.

Q. Do you know where that two-minute-and-48-second number came from?

A. It was -- I think it was the city's study that was done by JUB.

Q. Could we have TCRY Cross number 1, please? The first page in that, please? There we go. And could we go to the last paragraph, please?

This is part of the same exhibit, Judge, and, again, it's just from the petition, so I don't see any need to mark it as a separate exhibit.

ADMINISTRATIVE LAW JUDGE TOREM: All right.

MR. DIJULIO: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: This is part

of JP-5-X, is that correct?

MR. PETIT: Yes.

MR. DIJULIO: No objection.

Q. (BY MR. PETIT:) The two-minute-and-48-second response time that you're referring to is set forth here in a report prepared by JUB, is that where you saw it?

A. Yes.

Q. So it wasn't in numbers prepared by TCRY?

A. No, no. I didn't mean to construe that. That's, when I was focused on the 2:48, was in the rebuttal, that's what the engineer referenced.

Q. And what you are saying is that that two-minute-and-48-second response time from Kennewick 63 to the Tapteal area is wrong?

A. No. I'm saying when I compare it to actual data, I think it's -- it's a factor of math versus actually being done. I did the math on it, it worked out at about 28-and-a-half-miles-an-hour average speed. I think in ideal conditions, perhaps in the middle of the night when there's very little traffic and the units have Opticom so they can control the lights well in advance of reaching them, they can hold a pretty steady speed. It's probably achievable in optimal conditions, but, actually, many of these responses are during the day in heavier traffic and so on. It couldn't be done in heavier traffic, I'm sure of that.

Q. But you had also told me that some and possibly many of these response times are from locations remote from the station, correct?

A. It may be. My data can't tell you that each of these was from the point of origin being the station.

Q. Okay.

A. Or what the crews were doing on the station at the time. So you've got -- the data on these colored tables includes a response time. Ideally we shoot for about a minute on a medical call or under. Again, there are factors that influence that. The 2:48 is driving only. The numbers on the tables are response, turnout time, and driving time collectively.

Q. Okay. But if these response times are from a moving location, if the unit is dispatched while moving, while it is located someplace other than the station, then these numbers, the numbers that show the response time from 63 to the Tapteal area are not reflective of reality, is that right?

A. They reflect reality from a response of I'm on my station ready to respond.

Q. But if you're not on your station ready to respond, they don't reflect?

A. No. And if I'm out on another call and somebody else has to take that spot, that's what happens. We're on a beat order, so there's nothing on any day that guarantees

response will come from this station or this station.

Q. So wouldn't it be fair to say that it also guarantees that crossing Center Parkway would not necessarily always be the preferred route for units or emergency vehicles that are stationed at 63 to get to the Tapteal area?

A. That'd be correct. It's one more alternative.

Q. Now, I want to take a look at this display again, so you're going to have to bear with me for a second.

A. I do feel like a brown trout.

Q. Okay. That's fair. You were giving a description on the record here of the -- how 63 responds now to a location or call on Tapteal Drive.

A. Yes.

Q. And if you lived in this town, these towns, for very long, we're all familiar with this situation here, where Columbia Center, to get to the other side of Columbia Center, it requires a right turn going over the hill, another right turn over the -- over the railroad bridge, and then a right turn down, and then you either go left or, if you're going to Les Schwab tires, you go right.

That would be fair, correct?

A. Yes.

Q. Okay. Now, that situation that you described there, couldn't that be solved by simply engineering an intersection at the place where you would otherwise turn

right, so it would allow you to turn left to go onto Tapteal Boulevard?

MR. DIJULIO: Objection as to foundation.

ADMINISTRATIVE LAW JUDGE TOREM: Explain a little bit more.

MR. DIJULIO: We're talking about alternative transportation design for the road system. He's the fire guy.

ADMINISTRATIVE LAW JUDGE TOREM: I'll allow the question. I think the chief understood it.

Chief, if you didn't understand it, you don't have to answer it.

THE WITNESS: Clearly if there's an alternative, I don't have any idea what that alternative looked like, but if there was an alternative to turn left, that would be another route.

Q. (BY MR. PETIT:) And it would eliminate having to go up and over the railroad bridge, correct?

A. Yeah.

ADMINISTRATIVE LAW JUDGE TOREM: Chief, do you know if that's even technically feasible? I think that was the nature of the objection.

THE WITNESS: I don't know. I know it's very complicated because of proximity of exit ramps and a whole lot of different stuff. We contemplated a fire administration building in that area, and that was one of our concerns, is in

and out of that building. It's actually, the one we looked at, is on the loop itself, and we were concerned about emergency exiting in there and routes in and out of the building, is one of reasons we didn't go there.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. Mr. Petit?

MR. PETIT: Yes.

Q. Chief, if you could take a look at your pre-filed testimony, page 4. And if you could look at lines 14 through 16. You say, "It is also important to note that CCB" -- that's Columbia Center Boulevard?

A. Yes.

Q. -- "and the north side of Steptoe-Gage intersection are virtually one-way streets due to center barriers."

Do you see that?

A. Yes, I do.

Q. Okay. Let's talk first about the Steptoe-Gage intersection. And if we could have number 3 up there.

ADMINISTRATIVE LAW JUDGE TOREM: I believe this is JP -- oh, I'm sorry, we're back to JP-5-X, page 3?

MR. PETIT: Page 3, yes. That's JP-5-X, I believe.

Q. So you don't have to talk over your shoulder, I'll take the pointer up here.

A. Thank you.

Q. So the intersection you're talking about here -- can you see, Judge?

The intersection you're talking about is Gage to Steptoe, and you're talking about the north side of this intersection, is that correct?

A. Yeah, it's just a little right to where you're at. That's a city boundary --

Q. Oh, I'm sorry.

A. -- the yellow dots.

Q. Right here. Right here.

A. Yeah.

Q. So this is -- it's shown as Steptoe Boulevard, and the intersection of Steptoe and Gage. Now, that center divider that you're talking about, how far north of that intersection does it extend?

A. It's relatively short. It cuts off access, I think, into the gas station, but not into McDonald's, but essentially it has that same effect, yeah.

Q. So it isn't a center divider that runs any significant distance on Steptoe?

A. No, nothing like the Columbia Center Boulevard version.

Q. All right. Let's talk about Columbia Center Boulevard, then. Directing your attention to Columbia Center

Boulevard, how many lanes of traffic are there going northbound on Columbia Center?

A. Driven it a hundred times. I'm saying two or three, but I couldn't tell you with any certainty.

Q. There's several?

A. How many?

Q. There are several?

A. Several?

Q. Yeah.

A. Yeah.

Q. I think there are four.

A. I think some of them are designated turn lanes and things like that. So in terms of through traffic, there's probably three that are --

Q. Okay. So what you're saying is that because of the divided highway and because there are -- there is likely to be congestion there, that it effectively operates as a one-way?

A. That's been my experience. I -- most of my early career was in a city of 400,000 people. We had several one-way systems and two-way systems. At peak times we would choose to go into the two-lane, two-way streets simply because we knew we could push through more effectively in heavy traffic. We find it really difficult moving traffic from behind.

Q. Now, looking at your testimony on page 4 again.

A. Yes.

Q. Page 4, line 23. You say, "Currently the trains on this line run infrequently and are very short."

What do you base that testimony on?

A. Just my observation.

Q. Your observation?

A. Yes.

Q. And you state that it is anticipated that trains up to a mile in length may use this line.

What do you base that on?

A. Conversation I've heard in the community and in the city, we've talked about unit trains and the potential for them to come into our area.

Q. So if we're talking about unit trains, we're talking about a train that is between 100 and 150 trains long, possibly a mile or even longer, correct?

A. Yes. I've always heard the mile as the reference point for that.

Q. You say, "When they do, when the unit trains are going to use this proposed crossing, the crossing will have greater value yet. A mile-long train moving at ten miles per hour will take six minutes to clear a crossing, plus the pre and post barrier time, plus the time it takes to clear a line of traffic once the barriers are lifted."

Can you explain to me how the fact that it's a unit train makes the Center Parkway at-grade crossing of even greater value?

A. Simply because one or the other will clear quicker. Without that, Steptoe is their only crossing point. And their alternative is a long, roundtrip from both sides. So if we see a unit train moving through and it's almost clearing where they're out on Steptoe and it's moving away from Center Parkway, we know we can get to that one and make that access point. So it's back to that concept of choice of alternative routes.

Q. That I asked you about and you explained before, correct?

A. Well, I tried, yes.

Q. Okay. You also say on page 5 of your written testimony, lines 10 through 13, "Given the infrequency of the trains across this area suggests that the probability of incidents is far lower than an at-grade highway or high-volume scenario."

Do you see that?

A. Yes.

Q. Is that based upon any studies or data?

A. No. It's my -- my own professional opinion.

Q. What the scientists refer to as anecdotal information?

A. Absolutely.

Q. Okay.

MR. PETIT: That's all I have, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: Commission staff?

MR. SMITH: I have no questions.

ADMINISTRATIVE LAW JUDGE TOREM: No questions from staff. Any follow-up?

MR. DIJULIO: No, nothing for Chief Baynes. Thank you, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: Chief Baynes, thank you very much for your time this morning. You can step down.

THE WITNESS: Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio, I think you had one other fire chief or police chief that was going to arrive. Do you want to take that witness ahead of the lunch hour?

MR. DIJULIO: I will defer to Mr. Petit. I'm not going to, other than introduce his testimony, I won't have anything else. I don't know what kind of cross-examination he may have for Chief Hines.

MR. PETIT: Give me a second, Your Honor, I can tell you that.

ADMINISTRATIVE LAW JUDGE TOREM: All right.

While you look through your cross-examination on Chief Hines, let me just review that we already had JP-5-X admitted, but we have three other additional exhibits, I believe, from Chief Baynes' testimony. His pre-filed testimony and rebuttal were RGB-1T and RGB-2TR and GAN-18-X, which was the three-page document, including all of the calculations from Tapteal or addresses on the mall. I think those were the only three new exhibits we talked about through the course of this witness.

Are there any objections to admitting those documents? All right. Hearing none, those three will be admitted.

MR. PETIT: Your Honor, I would have no Cross of Chief Hines.

ADMINISTRATIVE LAW JUDGE TOREM: None?

MR. PETIT: None. Assuming that all we're doing is introducing his already pre-filed testimony, I have no cross-examination.

MR. DIJULIO: So yes, we should swear him in and have him confirm.

ADMINISTRATIVE LAW JUDGE TOREM: I think that would be the most prudent course of action.

MR. DIJULIO: Okay. Chief?

ADMINISTRATIVE LAW JUDGE TOREM: Would you stand and raise your right hand, Chief?

CHIEF HINES

called as a witness by the Petitioner, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: Please have a seat. Spell your first and last name for the record, and then we'll have your adopt your testimony.

THE WITNESS: N-e-i-l, H-i-n-e-s.

ADMINISTRATIVE LAW JUDGE TOREM: You're going to be handed what's been marked as Exhibits NH-1T and NH-2T with an R on it for rebuttal. If you could just review those as Mr. DiJulio is handing them to you and confirm that they're accurate and your testimony.

(Pause in the proceedings).

THE WITNESS: Yes, that's correct.

ADMINISTRATIVE LAW JUDGE TOREM: All right.

MR. DIJULIO: Nothing further from the cities. Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit, any cross-exam?

MR. PETIT: None, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Any from the staff?

MR. SMITH: None.

ADMINISTRATIVE LAW JUDGE TOREM: I don't have

any questions for the chief. We'll admit NH-1TR and NH-2TR.

And we're now approaching 12:30. Mr. DiJulio, what would be your proposed --

MR. DIJULIO: I think it's about time for breaking.

ADMINISTRATIVE LAW JUDGE TOREM: All right. And when would you like to schedule your next witness?

MR. DIJULIO: I think we have Hohenberg scheduled to go at 1:30.

ADMINISTRATIVE LAW JUDGE TOREM: So it's now a little before 12:30. Will one hour be sufficient for everyone to get a bite to eat and get back?

MR. PETIT: I believe so, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: All right. So we'll try to go back on the record as close to 1:30 as possible. We'll be at recess for lunch.

I don't know that this room will be secure, and I don't know who might be staying here, but I can't imagine there's a lot of -- other than the technology. So someone will probably be guarding at least the technology.

We're at recess until 1:30.

(Lunch recess).

ADMINISTRATIVE LAW JUDGE TOREM: Okay. Counsel, it's time to go back on the record.

We're going to resume with I think the next

witness is Chief -- is it Hohenberg? I see he's present, so I'll swear him in.

Chief, if you'll raise your right hand.

KENNETH HOHENBERG

called as a witness by the Petitioner, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: If you'd take a seat there and spell your first and last name for the court reporter.

THE WITNESS: My first name is spelled K-e-n-n-e-t-h, last name is H-o-h-e-n-b-e-r-g.

ADMINISTRATIVE LAW JUDGE TOREM: Counsel?

DIRECT EXAMINATION

BY MR. DIJULIO:

Q. Chief, in addition to your status as chief of the Kennewick Police Department, starting soon you're going to be interim city manager for a period?

A. That is correct.

Q. Sorry to hear that. Okay. Just for a short period?

A. Well, I'm the deputy city manager for the City of

Kennewick, as well, so I fill in for her in her absence.

Q. Okay. Good. I'm handing you your pre-filed testimony in this matter. You're familiar with that?

A. Yes, sir, I am.

Q. Take a moment to look at it, if you wish.

(Pause in the proceedings).

A. Yes, sir.

Q. And other than the first sentence of that rebuttal declaration, is that also your pre-filed submission?

A. Yes, sir.

Q. Okay. And again, the first sentence should reflect that it's your declaration, correct?

A. That is correct, sir.

MR. DIJULIO: That's all I have for this witness, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: All right. So I'm making a note on Exhibit KMH-2T that the first sentence should be stricken and replaced with the appropriate language indicating this witness as the police chief of the city of Kennewick.

MR. DIJULIO: Correct.

ADMINISTRATIVE LAW JUDGE TOREM: Any questions further for this witness? All right. I'll turn it over for cross-exam from Mr. Petit.

MR. PETIT: Very briefly, Judge.

CROSS-EXAMINATION

BY MR. PETIT:

Q. Good afternoon, Chief.

A. Good afternoon, sir.

Q. My name is Paul Petit, I represent the Tri-City & Olympia Railroad, which we refer to as TCRY. If we could -- could you hand him his --

MR. DIJULIO: Sure.

MR. PETIT: Thank you.

Q. (BY MR. PETIT:) If you could please take a look at your pre-filed testimony, page 3, lines 4 through 7. Actually, forget about that. Let's look at lines 8 through 10. You state that, "If this project," being the Center Parkway crossing, "is allowed to move forward, it is my opinion that public health and safety concerns are reduced in spite of the inherit risk of opening an at-grade crossing. I believe the enhanced benefits to the general public outweigh possible risk."

Do you see that?

A. Yes, sir.

Q. You were not asked to conduct and did not conduct any kind of study with respect to the risks in an at-grade crossing at this location?

A. That is correct, sir.

MR. PETIT: Nothing further.

ADMINISTRATIVE LAW JUDGE TOREM: Commission staff?

MR. SMITH: No questions.

MR. DIJULIO: Nothing further.

ADMINISTRATIVE LAW JUDGE TOREM: Chief, thanks for coming down for a short visit.

THE WITNESS: Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: You may stand down.

And we'll take in KMH-1T and KMH-2TR, unless there are objections. Hearing none, those are admitted as well.

Your next witness.

MR. DIJULIO: Kevin Jeffers, please.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Jeffers, nice to see you again.

KEVIN JEFFERS

called as a witness by the Petitioner, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: Thank you, you can spell your first and last name for the record.

THE WITNESS: Kevin, K-e-v-i-n, Jeffers, J-e-f-f-e-r-s.

ADMINISTRATIVE LAW JUDGE TOREM: Counsel?F

DIRECT EXAMINATION

BY MR. DIJULIO:

Q. Mr. Jeffers, you have before your view your pre-filed testimony, is that correct?

A. I do.

Q. That is your testimony?

A. It is my testimony.

Q. And you also have your pre-filed rebuttal testimony, is that correct?

A. I do.

Q. And just for purposes of identifying what else you have up there, you also have a copy of the petitioners' response to UTC staff data request numbers 2 and 4, is that correct?

A. 2 through 4, I believe, yes.

Q. Mr. Jeffers, I'm now handing you what is KJ-2 through 9, and KJ-11 and 12. They're not numbered in the same sequence as the tabs you're holding.

A. Okay.

Q. Just so the record's clear, there's a tab just for separation purposes.

A. Okay.

Q. Why don't you just identify, beginning with KJ-2, the excerpts from the Federal Highway Administration

Railroad-Highway Grade Crossing Handbook, what you're referring to?

A. Okay. I'm going to put it on the table. Hopefully that's okay. So I have the -- I'm not sure of the numbering, but this is the revised second edition from August 2007 of the Railroad-Highway Grade Crossing Handbook, excerpts of which I used.

Q. Excerpt pages from?

A. Oh, the excerpt pages are --

Q. No, you don't have to identify them. I just want to make sure that we're working off the same set of documents.

A. Yes.

Q. So what's the next document?

A. The next document tab is Manual on Uniform Traffic Control Devices for Streets and Highways, 2009 edition.

Q. And again, they are excerpts from those documents?

A. Yeah, that's a very thick document. I guarantee those are excerpts.

Q. Okay. And then KJ-4, which is what?

A. This is the Manual For Railway Engineering, 2013. It's volume 1, from the -- yes, volume 1 from what appear to be chapter 5.

Q. Thank you. And KJ-5, a traffic study?

A. Yes. This is the JUB traffic study that's been referred to in the previously dated March 2013.

Q. Thank you. KJ-6?

A. The Center Parkway extension grade separation evaluation, prepared -- it has the City of Richland logo on it.

Q. Okay. The next document?

A. That is the appendix to Center Parkway extension grade crossing, grade separation evaluation, which I prepared.

Q. Okay. That's KJ-7, correct? You wouldn't know that, but that's KJ-7.

A. Okay.

Q. KJ-8, a diagnostic review?

A. Yeah. The meeting record from our -- from the diagnostic meeting held on December 11th, 2012.

Q. That's a standard practice in these kinds of proceedings, is that correct, Mr. Jeffers?

A. Yes. In my experience, any time you want to make modification to an existing, close an existing, or establish a new grade crossing, you would have what's called a diagnostic meeting to bring all the parties together to talk about issues at the site.

Q. Okay. Thank you. Next document, which is for the record, KJ-9?

A. This is Ordinance 40-06 from the Richland city clerk's office.

Q. Okay. Thank you. And the last two documents?

A. The last two documents are two graphics that I prepared based on responses from the data request 2 through 5.

Q. Why don't you take a moment. These are KJ-11 and -12. You have these copies in front of you, sir?

A. Yes. Tab 10. 9 and 10. Yes, thank you.

Q. Okay.

A. That is graphic 1.

Q. Please explain what this is, Mr. Jeffers?

A. Sure. So when -- upon receipt of the data request from the three different railroad companies, I took that information and kind of tried to put it all in one way and then graphically represent it. Graphic 1 is based on the car counts that were reported by the various railroads in 2013: The red, which represent Union Pacific; green, BNSF; yellow is TCRY.

The top bar shows the current -- based on the current car counts for 2013. The -- I used for that particular, for current counts, I used an average based on what was reported. In the case of Union Pacific, they had reported no cars themselves being moved, but they had reported over -- my recollection from that -- is over the last three and a half years, they had moved a certain number of unit trains, 12 is my recollection, ranging between 80 and 100 cars.

So I used 90 cars per train and inserted that in.

So it's about .02 per day. So it's a very small number, doesn't even show up in the graph. BNSF reported an average of six cars per train each weekday, so that's basically two trains for them. And then TCRY reported a certain number of trains per -- well, actually, this is based on the car count, so they reported a certain car count anticipated for 2013.

And so I divided that by the 15 cars per train to come up with a number of 1.8 -- or 1.18 trains per weekday. Because my understanding from the data request is they operated primarily on weekdays.

So in that, it comes up to an average train per weekday of, you know, a fraction over three trains per day. And that, based on -- based on the counting, that's in and out. So that's the total number of times the grade crossing would be traversed by a train, based on that data.

Then in the other two bars, with varying growth rates similar -- similar, I extrapolated on that data. The first, the center bar is based on a 5 percent growth rate. That's based on my experience in -- with the Washington State DOT in trying to project freight train growth over time. That's more or less unconstrained growth, but it's one that's been used in the past for similar exercises.

So I used that and projected that out, based on car counts, and then backed that out into numbers of the purported six cars per train for BNSF and the 15 cars per

train for TCRY, and the 90 cars per train for Union Pacific, to come up with a number that's a little over five trains per day.

Then in the -- in the data request, TCRY also purported an anticipated 20 percent growth annually. So I extrapolated that, just on their cars, holding the number of cars per train constant to come up with an unrealistic 26 cars of trains per day for them in a 2030 time frame. As I explained in my rebuttal testimony, that's probably unrealistic in that you would probably -- you definitely would extend, you'd just operate more cars per train, you wouldn't operate -- have that many trains operating at one time. It's just not economically justifiable.

Q. Okay. Turning your attention then to the next graphic, KJ-12.

A. Uh-huh.

Q. Explain what you did to prepare this graphic?

A. And you're referring to graphic 2, the header with graphic 2 on it?

Q. Yes.

A. So in this case, this is based on the car counts -- or, excuse me, the train counts that were provided by the railroads in that same data request. Again, the number of trains works out to, for Union Pacific, it's based on that same three-and-a-half very long-term 12 trains in a particular

period, so it's still a very small number, a very small, fractional number.

BNSF purported to have two trains per day. TCRY purported to have between two and four on a given weekday, so I averaged that to three per day. Again, working with averages. So that averages out to 5.02 trains per weekday in the current condition, under current traffic. Again, using the 5 percent growth rate that I talked about before, the middle graph shows what those numbers would look like, or those train counts would look like based on a 5 percent increase annually to 2030. And that brings it out to a little over 11 trains per day.

And then again, the TCRY trains growing at a 20 percent annual rate, which again I would -- I would say is probably an unlikely sustained growth rate, but that's certainly an inoperable 66 trains or 70 trains per day, over 70 trains per day, and I don't think the system could handle that. So that's what that particular graphic shows.

Q. So when you're factoring in the response to the data requests from railroads, including TCRY, you're assuming a potential unit train from UP, is that correct?

A. The data that was provided by Union Pacific included unit trains. So however the train operations may be from Union Pacific would -- I presume would still be unit trains, being that's all they purported to move over the line.

Q. Well, we're going to hand this to you, even though -- for him to identify a particular number. I've got it as RP, dash, blank, X. This is -- can you identify this, please?

A. Okay. This appears to be BNSF's response to the UTC staff data request numbers 2 through 5.

Q. RVP-2-X. Excuse me. This is data from BNSF. And with that particular exhibit, UP, and Tri-City's is upon which you produced your graphs?

A. Yeah. This is one of the data points included in my graphs.

Q. Thank you.

MR. DIJULIO: For the record, rather than taking the time, I'll just let it be known that the TCRY response is in RVP-3-X, and the UP response is RVP-4-X.

Q. Mr. Jeffers, you were here for this morning's portion of the hearing --

A. I was.

Q. -- is that correct? Okay. So you heard testimony regarding the use of the crossing of Center Parkway across the TCRY alignment at the Richland junction, is that correct?

A. Yes.

Q. Okay. And you understand what about the current configuration of that rail alignment?

A. You're asking what do I understand about the current configuration?

Q. Yes.

A. At -- at what's called Richland junction, there is a -- the former Union Pacific line, which runs due east-west. There's a switch off of that line that aligns with the Port of Benton on the line that TCRY leases. And maybe a few hundred feet, there's a -- there's a switch or a turnout, under common railroad terms would be called a turnout, which is the switch and full assembly.

And then a few hundred feet later, about 350 feet after that, is where the grade crossing is proposed. So there's this -- the siding that was spoken about. And using Google Earth as my means, because I don't have access to the railroad tracks directly, it appears that that siding is about 1900 feet long. There's another turnout back to the main track. The northern of the two tracks is the main track for the Port of Benton line, the southern track is the siding track. And there's a slight horizontal curve as it curves from being east-west, curving away to the north.

Q. And to the extent I misspoke this morning, Mr. Jeffers, the TCRY line is used not only for TCRY purposes, but also for BN and UP purposes, as you understand?

A. Yes. From my understanding, all three railroads have the right to use this line.

Q. Okay. And there is no longer switching involving BNSF or UP at the Richland junction?

A. That is my understanding as well.

Q. Okay. And the UP lines that formerly constitute a four-track area for the Center Parkway crossing as proposed has been eliminated, is that correct?

A. That's my understanding, through an agreement with the City.

Q. The proposal that was submitted, you were a part of the group that worked on the submission of the petition to the commission in this matter, is that correct?

A. That's right.

Q. Okay. And you saw on one of the earlier exhibits the exhibit identifying the crossing to be a crossing with only the TCRY main spur track, is that correct?

A. Yeah, the single, the single track crossing, that's correct.

Q. And is this -- have you evaluated the alternative of the crossing with both the spur and siding track in place?

A. Well, I reviewed an alignment or a drawing that depicts how two tracks might be accommodated at this crossing location. The primary concern being the horizont -- or the vertical alignment to make sure there isn't a creation of a humped crossing or anything that would impede traffic or hang up a low hanging vehicle, a truck or a short -- you know, a low-hanging car, something like that.

And that was -- you mentioned the petitioners'

response to UTC staff data request 2 through 4, and that was actually an attachment to that petition. Or to that -- to that submission. So it's the last page of that that you handed me or that verified that I had. It shows two tracks parallel to each other, it also shows the siding track being raised about .45 feet from its current vertical elevation, which in my estimation is very -- could be accommodated very easily with the existing track configuration there.

Q. Okay. I think perhaps with that background, you should explain how the current elevations between the existing spur and the siding or auxiliary track function accommodations?

A. Well, it's not uncommon for the main track to be kept at a slightly higher elevation. But in this case, as the track curves from the east to the north, there's a super -- probably a mild superelevation, or there appears to be a mild superelevation in that main track, which lends itself well for this application, because the road is coming up in the same elevation of the superelevation, the cross-elevation of track.

The siding track, based on the survey data, is lower than that and is probably flat, appears to be flat, which would not be too uncommon for a track where -- which is designed to have train cars just sit on it for a period of time. So you wouldn't normally put a superelevation in a track like that.

As part of the -- this analysis to see what, how we could accommodate a second track within the layout, within the layout of the roadway, we would propose to raise that second, the siding track up to be more in line with what the roadway profile would require, and also put a slight superelevation in it as well, and that would make a very nice, smooth transition over the tracks and accommodate that.

Looking at it from a horizontal standpoint, if I can expand, it's a simple matter of moving the warning devices to the south and the median island that was talked about to the south so that two tracks could pass through the crossing area, rather than the one that's there today, or the one that would be proposed in the original design.

Q. Other than the placement of the warning devices, median, etc., and the grade change for the siding track, those would be the only difference?

A. Yeah. Yes. You wouldn't have to -- the nearest switch or turnout to the road crossing, as I mentioned before, is -- it's 350 or maybe a little further away, feet away, from the road crossing. So raising the siding track up a little bit would cause -- you would need to design a vertical curve up and a vertical curve down. Now, we're only talking about less than half a foot, less than six inches, and that can easily be accommodated in that area.

Based on the information I had available, which

is, admittedly, dated information from old Union Pacific track charts, it appears that the grade of the track through there is very slight and so a minor increase or change in the grade could easily be accommodated with, you know, with train lengths that we're talking about, the shorter train lengths of 15 feet, or 15 cars, excuse me.

Q. Okay. And just, I think it will be evident from the prior testimony, but the siding track could not be used for a unit train, is that correct?

A. No, no. A unit train is going to be somewhere in the range of 6,000 feet or longer would be a typical. I mean, we talked about mile long. When we've done mainline projects, you know, it's something closer to 7,000 would be your target capacity. And this is only 1900 feet, so the only available use of that, the siding track, for meeting and passing other trains is, as described earlier, would be -- would be is if a local train, a short train, pulled onto that siding to allow another train, a unit train, to pass.

It couldn't be used to hold a unit train while another unit train passed. So it's -- you know, it's -- it's only moderately usable as a meet/pass location.

MR. DIJULIO: I think, just for the record, I'll ask that that response to UTC data request be made an exhibit in this matter.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio,

you provided me a copy of petitioners' response to UTC staff data request numbers 2 to 4. This one's not already labeled somewhere else, it would be related to the RVP-2, -3, and -4-X. Let's go ahead and mark this one as being used by this witness primarily, in the sequence of numbers for Mr. Jeffers, which I believe puts it at KJ-13, and we'll mark it with an X for cross-exam. It's a total of four pages.

MR. DIJULIO: Discounting the affidavit of service, there's an Exhibit C as the actual graphic attached.

ADMINISTRATIVE LAW JUDGE TOREM: I've got four pages that end with the signature page on each of the copies you've -- at least on the first copy that you handed me.

MR. DIJULIO: Oh, I apologize.

ADMINISTRATIVE LAW JUDGE TOREM: So maybe that one's short.

All right. The complete exhibit is the certificate of service at pages 5 and 6 and the Exhibit C on page 7, 8. Now we have a complete --

MR. DIJULIO: Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Thanks for the clarification. Okay.

MR. DIJULIO: Nothing further for this witness. Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit?

CROSS-EXAMINATION

BY MR. PETIT:

Q. Mr. Jeffers, as long as we're looking at what's been marked as KJ-13-X, could you have that in front of you, please? All right.

This is a response to data request that was based upon information provided primarily by you?

A. This was provided by myself, as well as Mr. Rogalsky, and Mr. Deskins.

Q. All right. Do you agree with the assertions in this Exhibit KJ-13-X?

A. I generally would, yeah.

Q. You make reference to the fact, at page 2, lines 14 through 20, "The siding track was formerly used for the interchange of railcars between BNSF and TCRY, but this" siding is no longer -- "this use is no longer the case. The use of the siding today is infrequent. The only practical use of the siding track is for long-term storage of railcars not required by a shipper, or to store on-track equipment and railcars used for track maintenance, or to hold railcars that are found to be defective by the main train crew while en route."

Is it your testimony that this track cannot be used as a passenger track?

A. In my experience, my testimony is that in my experience, a passing track of this length would have very limited use. The most reasonable economical use of a track like this would be, from what I found, for the activities that I stated in that testimony.

Q. Would it accommodate a 15-car train?

A. I'd have to do the math to make sure. How long are the cars, how many locomotives? I'd have to -- I'd probably have to have a distance from the clearance point of the south -- or, excuse me, that'd be north or east -- excuse me, north or west switch to the road crossing where the crossing starts. There's a number of factors to be able to answer that question.

Q. Okay. So you don't really know for sure?

A. I can't say for sure today, no.

Q. Okay. Now, are you aware of the lease rights that the city -- that TCRY has with respect to this rail line?

A. I'm vaguely aware of them. I have not read the lease myself.

Q. Is there anything that you're aware of that would prevent TCRY, if it -- as needed, from extending this passing track?

A. To Steptoe -- if you're asking could it be extended to Steptoe Street, it could be. I don't -- I don't see any reason why it couldn't.

Q. Okay.

MR. PETIT: Beg for your indulgence for a second, Your Honor. There's quite a few exhibits in this case. Number 30, TCRY Cross Exhibit Number 30.

ADMINISTRATIVE LAW JUDGE TOREM: Yeah, we've marked that as, I think, JD-28-X --

MR. PETIT: JD-28-X.

ADMINISTRATIVE LAW JUDGE TOREM: -- in the exhibit list.

Q. (BY MR. PETIT:) You can look at it here or up there on the screen.

A. I'll take what's in my hand, thank you.

Q. You see that that exhibit shows that there's a total of 5,000 -- I have to be able to read it -- 58, roughly, feet --

A. Yes.

Q. -- of available right-of-way between the Center Parkway crossing and the Steptoe crossing within which TCRY could extend that passing track, if it wanted and needed to. Is that correct?

A. Actually, I don't believe that's correct, based on this exhibit.

Q. And why would you say that?

A. Well, the line work that's shown extends to Columbia Park Trail. Having used Google Earth myself, what

we're looking at, as far as the distance, is the length of that entire line, yellow line, from the blue point to the last red point. So that would be 5800 feet to Columbia Park Trail, roughly.

Q. So it might be something slightly less than 5800 feet, maybe 5,000 feet?

A. Probably not. In one of the other exhibits that was shown earlier today, there was a measurement along Tapteal from Columbia Park or from Center -- from the intersection of Center Drive (sic) over to Steptoe that was in the range of 3,000 feet, if my recollection serves, and I think that's one of the other Cross exhibits.

So I would say that from Steptoe to the eastern end of the siding is, you know, in the range of 3,000 feet.

Q. Well, the existing passing track starts before the Center Parkway crossing, doesn't it?

A. Yes. As shown on this drawing, as well.

Q. But you would have to agree with me that a passing track in excess of 3,000 feet is certainly more usable as a passing track than a -- than the one that currently exists there today?

A. Sure. A longer siding would make it more usable regardless of how much longer it got to be.

Q. And you're not aware of any obstacle to the crew for the construction of such an extension of the passing

track, are you?

A. Short of Steptoe Street, no, I'm not aware of any obstacles, other than perhaps all the residences along there complaining about cars perhaps parked in their view-scape. But that's not the purview of this hearing.

Q. All right. Now, in this, what's been marked as KJ-13-X that you have in front of you, on page 4, it's stated that "The best outcome for this project is to eliminate the siding at the crossing location and mitigate the loss of the siding feature in one of several ways."

Do you see that?

A. Page --

Q. This is on page 2.

A. I'm sorry, I thought you said page 4.

Q. Yeah, I'm sorry.

A. Page 2. What line again, please?

Q. Line 23. Well, starting at line 21.

A. Starting at -- okay. The best outcome -- at the location, yes. I would say that would be -- that's accurate.

Q. Okay. Do you know where else the Port of Benton track, this passing track, could be installed?

A. Well, in -- in my testimony as written here, my intent was for its use to store cars, not as a passing track. So -- but I can't say where on the Port of Benton a passing track could be, on the Port of Benton's own rail corridor, a

passing track could be installed.

Q. Okay. Would you agree with me that, if there is an increased use of the Port of Benton track as leased to TCRY for unit train traffic, a passing track to eliminate conflicts with shorter trains becomes of greater importance?

A. I think a passing track somewhere between the -- where the lines connect with the UP mainline and the BNSF mainline, where those connections are and the loop tracks, there may be some value in a siding, whether it's accommodating its unit trains or shorter trains.

Q. Okay. Some value?

A. There would be value.

Q. Okay. Now, item number 2, alternative number 2 on page 3, you state -- or I think you said that you agree with this: "One alternative would be to relocate the switch existing east of the crossing and the tracks between the crossing and the switch to a location west of the crossing."

Do you see that?

A. Yes.

Q. So in other words, what you're talking about is taking the entire passing track, what I'm referring to as the passing track, and moving it further west?

A. That's right.

Q. And the third alternative would be to remove the switch and track east of the crossing and distribute the

materials as directed by UTC?

A. Yes.

Q. Do you see that?

A. Yeah.

Q. Okay. So what you're saying is that the -- you're agreeing with these recommendations that the UTC should order a reconfiguration of the TCRY track as leased from the Port of Benton along the -- one of the three of these three lines, is that correct?

A. I'm not saying what they should do. It would be my recommendation -- I would -- my professional recommendation would be that that should be -- those would be the best solutions to this. Being as we hadn't, as the designers, we had not had an opportunity to discuss opportunities such as that with TCRY or any of their representatives, this is our -- these would be, you know, these are our best recommendations I think we could make on the information we have at hand.

Q. Okay. So then you go on to say on page 3, line 5, "Alternatively, the crossing could be constructed over both existing tracks" --

A. Uh-huh.

Q. -- "relying on the proposed safety measures to protect the crossing, ongoing railroad operations, and the public."

A. Uh-huh.

Q. Do you see that?

A. Yes.

Q. All right. Now, if that were to occur, you've now testified that it would require the raising of the passing track by six inches?

A. Less than six inches.

Q. But it would still create a situation where potentially you would have two trains at the Center Parkway crossing simultaneously, one on the passing track and one going through on the main track, correct?

A. Yes.

Q. And you recognize that that creates safety issues and line-of-sight issues, and other problems at this crossing, correct?

A. Line-of-sight issues? I can't say I see it that way, no.

Q. You disagree with that?

A. Line-of-sight issues? Yes. With active warning devices, gates that are down, let's take an example of the shorter train coming from one direction or the other, comes up and stops, clear the crossing, because they wouldn't be permitted under UTC regulations to block the crossing for a significant amount of time. Ten minutes is my recollection here.

They would sit, wait for the unit train to

approach and move through the crossing, clear the crossing, and then they would proceed presumably through the crossing and then through. In all those cases, the flashing lights would either remain active and the gates would be down, or if there was a significant -- if there was enough time, once the -- once the second train cleared the crossing, those gates would come up, flashing lights would stop, but as soon as the shorter train approached the crossing, those lights would activate once again, the gates would come down, and they would move through.

Line of sight doesn't become an issue for the driver because they'd have flashing lights and a gate coming down in front of them.

Q. So when we are talking about line of sight in terms of justifying this crossing as an at-grade crossing, your suggestion and your testimony is that the action of the crossing signals mitigates any line-of-sight considerations altogether?

A. I do. I believe that was also stated in the petition, if I'm not mistaken.

Q. Now, you're aware that the UTC takes line-of-sight considerations into consideration when they are evaluating and in terms of giving their recommendation to the commission, correct?

A. I believe that's the case.

Q. All right. Could we go to your pre-filed testimony, please? Let's take a look at page 3 of that testimony, specifically line 16 through 21.

You state there -- do you have that in front of you?

A. Yes. I'm reading it now.

Q. You state there that "The City of Richland has worked closely with both the BNSF Railway and the Union Pacific Railroad to reduce the use of the railroad siding in the vicinity of Center Parkway."

A. That's what I wrote, yeah.

Q. "The city has also worked with the Port of Benton, who owns the remaining railroad line, to address issues with respect to a new railroad -- new railroad crossing that would be created by the Center Parkway extension."

Let's take the first of those, first?

A. Uh-huh.

Q. Let me go back over here. I've been sitting too long. The city has worked closely with BN and the UP, you state. Right?

A. Yeah.

Q. Do you know what that working closely consists of?

A. My understanding and at that time I had read two trackage right agreements that spoke to both railroads agreeing not to interchange cars at -- either at Richland

junction proper or in the vicinity of it. I don't remember the exact wording of those agreements.

Q. Okay. I'm going to show you two City of Richland standard form railroad track use agreements, one of them is between the City of Richland and Union Pacific Railroad. I believe we've marked that as Exhibit 2? Or 3?

MS. PHOTIDES: Union Pacific is number 2, and BNSF is number 3.

MR. PETIT: Okay.

THE WITNESS: Okay.

Q. (BY MR. PETIT:) Let's take that one first.

A. All right.

Q. And I'll leave that for you. If you turn to page 5 of that agreement.

A. Yes.

Q. The language is also up on the screen for anyone who cares to look at it up there.

ADMINISTRATIVE LAW JUDGE TOREM: So we're looking at the UP or the BNSF?

MR. PETIT: I believe we're looking at the UP, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. The screen has now caught up with you. So this is what you turned in as JP-6-X, that's page 5.

MR. PETIT: I'm not sure that it's JP.

MS. PHOTIDES: It is JP-6-X and BNSF is 7.

MR. PETIT: Your Honor has made sense out of our new exhibit list. Thank you. Okay. JP-6-X, correct.

Q. And if we're looking at the language here, direct your attention to page 5 of 19.

A. Yes.

Q. And it calls upon the UP to, quote, "Permanently relocate any interchange receipt operations between railroad and another rail carrier at Richland junction to an alternate interchange location."

Do you see that?

A. Yes.

Q. And in subsection paragraph C, it further states, "The railroad further agrees that if the design of Center Parkway requires an at-grade crossing of tracks owned or used by railroad, railroad shall not oppose installation of the crossing in compliance with the current version of the Manual on Uniform Traffic Requirements."

Do you see that?

A. Yes, I see that.

Q. Okay. So, in fact, are you aware that in fact, the City of Richland purchased the land on which the UP track at that location was present at the time that the prior petition was brought in 2004?

A. Yes, I believe I was made aware of that by city

staff.

Q. Okay. Do you have any idea how much the City of Richland paid for the agreement on the part of the UP to change and move the interchange and to purchase that piece of land?

A. I do not.

Q. Okay. Now, could you turn to the next exhibit, which I believe is going to be JP-7-X?

MS. PHOTIDES: 7-X.

MR. PETIT: 7-X, which is our Exhibit 3, Braden.

Q. And there's a similar agreement with -- between the City of Richland and the BNSF, correct?

A. There appears to be, yes.

Q. And the thrust of these agreements is to allow the two railroads, the BN and the UP, to have access to the Horn Rapids spur, is that right?

MR. DIJULIO: Objection. Document speaks for itself.

MR. PETIT: Just laying a foundation as to his understanding, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Overruled. Why don't you -- sorry. Sustain the objection. You can rephrase the question in a way that lets the witness actually answer it.

MR. PETIT: Okay.

Q. Do you know where the Horn Rapids spur is located?

A. I do now, yes.

Q. And where is that located?

A. I believe it is off of the Port's property, Port owned rail line in what might be considered north Richland.

Q. Is there any rail line that services that Horn Rapids spur, other than the Port of Benton TCRY line?

A. Not that I'm aware of.

Q. So when this document refers to City of Richland's standard form railroad track use agreement, is it your understanding that the track that's being used is, in fact, the Horn Rapids spur?

A. I'm not sure that I can answer that, because I'm not sure where -- where that ownership changes between the port and the city. So that could be the case, but it also has a stipulation in here regarding specific to the project area that we're talking about today. So I'm not an attorney, nor am I a contract expert, so it seems to me whatever the parties agreed to in an agreement, I would -- my person -- I would presume, overrides what the title of the agreement might be.

Q. I'm not calling upon you for your legal opinion.

A. Well, good.

Q. But if you take a look at page 1 of this agreement --

A. Yes.

Q. -- it identifies in the "whereas" clauses, in the list of the clauses, the first one, that "The city is the owner of a railroad industrial spur track commonly known as the Horn Rapids spur."

Do you see that?

A. Yes. The very first whereas.

Q. Okay. So I agree with counsel that the document speaks for itself. And it contains on page 5 similar language with respect to relocation of interchange and non-opposition of this particular Center Parkway crossing in paragraphs section 4.3, A and B. Correct?

A. The section A appears to be the same as the previous exhibit, the Union Pacific exhibit. I notice that in the Union Pacific exhibit, there's a section 3 that's omitted, but it appears to be similar language as far as section A goes.

Q. And section B is also similar language in the UP agreement?

A. Generally, yeah.

Q. In fact -- well, we won't quote -- the documents do speak for themselves. I agree with counsel in that regard.

Now, if you'd like to hang on to those legal documents --

A. Okay.

Q. -- you can, but you don't need to. Let me get them out of your way, so they're not encumbering you.

If you turn to page 4 of your pre-filed testimony, in your original testimony you made reference at line 10 to a proposal to eliminate the southernmost track, south most track, which would leave a single track being crossed by the roadway, correct?

A. I'm sorry, on line 10 of page 4?

Q. Of page 4, yes.

A. Page 4, line 10.

Q. At the -- yes. "In addition, it has been proposed" --

A. Oh, okay. I see. Yes.

Q. Right?

A. "Eliminate the south most track."

Q. And you are, based upon what we saw in Exhibit KJ-13-X, you are still proposing the elimination of that track as one of the alternatives to the building of this crossing, correct?

A. Yes.

Q. Is that correct?

A. It is. I think that from a -- an economic standpoint for everybody involved, that would be the engineer's solution. The best engineered solution would be to relocate that track to another location that both parties

could agree to. And it would be, I think, would be less costly to everybody.

Q. And the parties --

A. And you would get a better deal.

Q. And the parties you're referring to are whom?

A. TCRY and the cities.

Q. Are you aware of any proposal on the part of the city to TCRY regarding the relocation of that track?

A. I'm not privy to any written proposals, but I know that that would have been subject -- a subject of the diagnostic meeting in December of last year, should TCRY have chosen to attend.

Q. Well, this is certainly not an issue that would have been settled at a diagnostic meeting, would it?

A. Well, any time that the parties can talk about engineering solutions, and being an engineer myself, I think we would have, hopefully, have tried to find some sort of common solution to come to both parties', you know, mutual benefit. In previous projects I've been able to do that with -- between railroads and the city, so -- and with the Washington State DOT. So I don't see why we couldn't have worked on something there or at least agreed to examine some things going forward before the UTC process started.

Q. Okay. You made reference to prior proceedings that you've been involved in --

A. Uh-huh.

Q. -- as far as the UTC?

A. Yes.

Q. Were those proceedings related to the opening or closing of railroad crossings?

A. Closing.

Q. Do you think that -- have you ever been involved in a proceeding before the UTC which involved the opening of a railroad crossing before today?

A. I have not.

Q. Do you think that the fact that you have not been involved in opening proceedings, but have been involved in a number of closing proceedings, makes you unqualified to testify here today?

A. No. In your first question regarding have I been involved as opening or closing, I've also been involved with modifications, which are upgrades of existing crossings from, say, a passive warning devices or simply flashing lights to flashing lights and gates with medians, things of that nature. So I feel qualified, regardless, in order -- if this were a preexisting crossing that was substandard, it would be -- I would still be looking at similar solutions as we are with establishing this new crossing.

Q. Wouldn't you be looking at similar situations in connection with a railroad crossing closure as well?

A. I'm sorry, could you rephrase that?

Q. Wouldn't you be looking at similar circumstances, as an engineer in the capacity of consulting, regarding the closing of a railroad crossing as well?

A. Sure. I would look at the same factors that we're looking at here.

Q. So my question, then, to you is the fact that you have been or that another engineer of similar qualifications as yourself might have been involved in closing proceedings doesn't disqualify that person from being an expert on this application to establish a crossing --

A. No.

Q. -- correct? I don't believe it would.

A. The data, the criteria are -- and examinations would be similar. So yeah, I wouldn't say anybody is, if they've never been involved with opening, would be disqualified.

Q. Okay. If you would take a look at your testimony on page 5, please. On page 5, starting with line 11.

A. Uh-huh.

Q. You say there, "There are other outlets for rail traffic other than through the proposed project area that includes the proposed crossing."

What are you referring to by the -- by rail outlets or outlets for rail traffic?

A. I believe that would -- I would call that a typo. It should have said there are no other outlets.

Q. Oh, okay.

A. So I apologize, I stand corrected.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. We'll correct the exhibit to include the word no, "there are no other outlets," on line 11. Would that be your correct testimony, then?

THE WITNESS: Yes, it would.

Q. (BY MR. PETIT:) Okay. So in other words, what you're saying is that once a train gets onto the Port of Benton track at the Richland junction location, that there are no outlets further on up the line?

A. Not that I'm aware. There are some historic ones, but they're no longer in service.

ADMINISTRATIVE LAW JUDGE TOREM: Can you repeat that last statement?

THE WITNESS: I'm sorry, there are some historic ones, but they are no longer in service.

Q. (BY MR. PETIT:) And are you aware of plans and existing facilities to the north, where there are no outlets on this track --

A. Uh-huh.

Q. -- which will -- which currently generate rail traffic and are likely to generate rail traffic on this line

in the future?

A. I know there are some facilities up there. I'm not intimately familiar with the current ones. I know there's some car load service and there's some sort of loop track that's already in existence up there.

Q. All right. And are you aware of plans to construct a new loop track?

A. Vaguely. Through the -- through the documents that you guys provided last week.

Q. Okay. I'm going to show you now a new document which we just obtained. This is our Cross 42.

MR. PETIT: We want to give this a KJ number, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: That would be fine. So this is the one we talked about that's going to be considered by the city council this evening?

MR. PETIT: Yes.

ADMINISTRATIVE LAW JUDGE TOREM: All right. So we'll mark this. You'll have to tell me how many total pages there are.

MR. PETIT: I think, if I'm not mistaken, we failed to number them for this one.

(Discussion held off the record).

MR. PETIT: 79.

ADMINISTRATIVE LAW JUDGE TOREM: So it's 79

total pages. We'll mark this one as KJ-14-X.

Q. (BY MR. PETIT:) You're going to have to give this back to me at the end.

A. That's fine.

Q. I know that won't break your heart.

A. That's heavy.

Q. I'm showing you what's been marked as KJ-14-X --

A. Yes.

Q. -- which is a collection of documents that -- and I will represent to you that we obtained from the City of Richland's website regarding a rail loop that is proposed to be considered by the city council at its meeting tonight.

A. Okay.

Q. Have you been advised by the City of Richland about the details of that rail loop?

A. Only that there were plans for expansion in the future. But I -- the details of this, no, I can't say I was advised, completely advised.

Q. Did the City of Richland advise you of the anticipated increase in rail traffic that would result from the construction of this rail loop?

A. They did not provide me with any data that said there would be a certain increase in the volume of trains, as -- with this loop or with any other expansion that I'm aware of.

Q. Did they advise you, did the City of Richland advise you that it had sold property to a company called ConAgra for the purpose of ConAgra constructing a cold storage facility to be serviced by trains that would be going across the Center Parkway crossing and going up north to the Horn Rapids Industrial Park?

A. My recollection, I can't -- it would not have been to that detail, again. Some -- I remember vaguely discussions about future developments, but I don't recall any details of numbers of trains or specific shippers or anything to that effect.

Q. Well, I'm not exactly sure -- let me ask another question.

A. Okay.

Q. Was the name ConAgra ever mentioned to you?

A. Not that I can recall.

Q. And by "mentioned to you," I mean by the City of Richland?

A. Not by the City of Richland, nor anyone else, that I can recall.

MR. PETIT: Judge, did you -- did you mark our 12?

ADMINISTRATIVE LAW JUDGE TOREM: JD-10-X.

MR. PETIT: Thank you.

Q. I'm going to show you what's been marked as

Exhibit -- I'll take that back -- JD-10-X. And this is a document that will speak for itself, but have you ever reviewed this document in connection with your testimony here regarding the frequency of rail traffic across the Center Parkway, proposed Center Parkway crossing?

A. I believe that I examined this when it was made available to me last week, but that's -- there were quite a few documents, and I'm not even sure if that's exactly the case. If this was submitted last week, then I did review it briefly.

Q. Okay. Could you turn to the page that is numbered at the bottom UTC 028170?

A. 8170?

Q. Yes.

A. That's a -- okay. I might use the overhead for this.

Q. All right. All right. I'm going to direct your attention, then, to the screen. And as part of that exhibit, there is a schematic that identifies rail development to a facility on the Horn Rapids spur. Now, this is not the rail loop being voted on tonight by the city council, correct?

A. I -- I don't know. I can't say what's being voted on by the city council tonight.

MR. DIJULIO: Your Honor, I think I'm going to need to pose an objection because this witness has

demonstrated a lack of knowledge in this area, and we seem to be getting deeper and deeper into a subject that he doesn't know anything about.

ADMINISTRATIVE LAW JUDGE TOREM: Sustained.

MR. PETIT: Your Honor, the fact that he doesn't know anything about it is precisely my point.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. I think you've made your point as to the limited knowledge, if any, Mr. Jeffers has of this Horn Rapids development and what the city told him. If you want to find a sum-up question --

MR. PETIT: Okay.

ADMINISTRATIVE LAW JUDGE TOREM: -- that would be good. Otherwise, I think we're about to go down the path of question, objection, sustained, several times over.

MR. PETIT: We won't go there.

Q. Wouldn't you agree with me, Mr. Jeffers, that if rail were constructed along the lines as shown in this diagram, that that would result in a substantial increase in the rail traffic across the proposed Center Parkway crossing?

A. Well, without getting -- without knowing the details of how much would actually be -- how many trains would actually be generated out of these facilities, I think -- what was the term you used? You said substantial, I think, is the term you used. I don't know if substantial would be the word I would use, but I could imagine there would be some, at least

some nominal increase in the amount of traffic over this crossing, sure.

Q. And that was an increase in traffic that you did not take into consideration in your computation of the train volume on this crossing, correct?

A. I didn't take this particular thing. I used a, as I stated, as I testified before, I used a growth rate that was a year-over-year growth rate that I felt was reasonable. I didn't take this as a standalone and plug that into those computations, no.

Q. All right. Now, directing your attention to, also on this exhibit, just for purposes of identification, the item that is identified as 10 North Avenue LLC, you understand that that is a, quote, mini-loop?

A. Yes, that's the -- I think I referred to it as the smaller loop track or the existing loop track in the area earlier when you were talking with me.

Q. Were you provided with any information regarding the anticipated growth of rail traffic to that mini-loop in connection with the work that you did and the testimony you've given here today?

A. I was not provided with any growth specific to that facility, no, nor was I provided any data that was specific to that facility. So it would be hard to project anything.

Q. Do you have in front of you Exhibit KJ-6?

A. I don't have necessarily things with those numbers on them, so you'll have to remind me what that is.

Q. Oh, okay.

MS. PHOTIDES: It's the grade separation evaluation.

MR. PETIT: It's entitled Center Parkway grade separation evaluation. And you referred to it before as on the City of Richland letterhead.

THE WITNESS: (Indicating).

MR. PETIT: Yes, that's it.

THE WITNESS: Yes, do I have that.

Q. (BY MR. PETIT:) And it's also up on the screen.

A. Thank you.

Q. Do you concur with the examination of options and the conclusions regarding those options that are stated in this document?

ADMINISTRATIVE LAW JUDGE TOREM: Would you direct me to which page the options you're referring to exist?

MR. PETIT: In the exhibit, Your Honor, the options are on page 2.

ADMINISTRATIVE LAW JUDGE TOREM: And there's a list of four options there, is that correct?

MR. PETIT: Yes. That is what I am referring to.

THE WITNESS: Yes. I could say I do agree with the information presented here.

Q. (BY MR. PETIT:) Now, if you look at option number 3, it makes reference to "Maintain the railroad elevation and lower Center Parkway under the track."

A. Uh-huh.

Q. Do you see that?

A. Yes, I see that.

Q. And it states that "This option is not feasible because the excavation depth along Center Parkway would be over 23 feet. This would restrict access to existing businesses as well as adjacent properties. It would require an extensive retaining wall along Center Parkway."

Do you see that?

A. Yeah, I do.

Q. All right. So what we're talking about is one of the schematics that you -- that are attached as KJ-4. And could you identify which one of those it is?

ADMINISTRATIVE LAW JUDGE TOREM: I'm sorry, Mr. Petit, I misunderstood your question. Are you referring to a schematic in the same exhibit?

MR. PETIT: Yes. I misspoke when I said schematic, it's actually a combination of engineering drawings and an aerial photograph.

ADMINISTRATIVE LAW JUDGE TOREM: So we're

still in the same KJ-6 exhibit?

MR. PETIT: Yes, same exhibit, KJ-6.

THE WITNESS: It appears to be the second to the last page. I found that.

Q. (BY MR. PETIT:) Okay. So this one depicts option number 3, is that correct?

A. It does.

Q. Okay. But the first page of that exhibit on those attachments, which would be --

A. Back on page --

Q. -- the third page of the exhibit.

A. Okay.

Q. It shows a more complete drawing or overhead photograph of the area, correct?

A. Yes, it is.

Q. All right. So just for the record so we're clear what you're talking about, your objection to a 23-foot underpass under the existing railroad at this location are based upon the fact that it's 23 feet deep, for starters, and also on the fact that it would require extensive retention walls or retaining walls on either side of the roadway, is that right?

A. Yeah, which would damage the adjacent parcels.

Q. Well, let's talk first about that, the retaining walls.

A. Okay.

Q. The objection there is that it's expensive, is that right?

A. At this point, we don't have -- we don't have any geotechnical information to support what would need to be done there. So at this point we're assuming that retaining walls, it could be very inexpensive, they could be relatively inexpensive, or they could be very expensive. We don't know what the geology is beyond this location, at least I don't personally know.

Q. Okay. As far as you know, has that work been done?

A. I'm not -- I'm not aware if the city has performed geotechnical explorations or not.

Q. Okay. So the estimate of the cost that you have provided with respect to this option later in your pre-filed testimony, that's pretty much based upon not a great amount of information, correct?

A. It's all -- all of the costs presented here are based on similar high-level conceptual assumptions, so yeah.

Q. But not based on any detailed studies or plans or data?

A. No, no. We didn't -- this would not be in any way considered a ready-for-construction kind of design, so it's very conceptual. Planning level would be the term I would use

for these estimates.

Q. All right. Now, the other concern was the fact that the -- there would be reduction in access to properties on the north side of Center Parkway, is that right?

A. Yeah.

Q. And in particular we're talking about a business right -- located right to the north of the railroad, which is the Holiday Inn Express, correct?

A. That's one of the two properties, yeah.

Q. Well, in terms of an existing facility --

A. Yeah.

Q. -- that one is there, correct?

A. That's true, yes.

Q. And to the north of that property there's a vacant lot, correct?

A. Yes.

Q. And I went back there yesterday, there's a big for sale sign on it, so that is obviously available, could be purchased by the city, or part of it could be condemned by the city, correct?

A. Certainly.

Q. And the city could therefore construct an access road coming off of Tapteal to provide access to the Holiday Inn Express. Is that --

MR. DIJULIO: Objection. Qualifications,

foundation.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio, I think you're saying the foundation as to how it would be constructed?

MR. DIJULIO: I mean, he's asking him for alternative access to properties on the north side of Tapteal -- or north side of the line in the Tapteal area, and this person hasn't identified himself as somebody who's qualified to testify about those kinds of materials. He --

MR. PETIT: Let me withdraw the question.

MR. DIJULIO: He's qualified to testify, as his testimony indicates, about the alternatives for over-crossing or under-crossing these properties and the cost associated with each.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit is withdrawing the question.

MR. PETIT: I'll withdraw the question.

Q. Are you aware of any work that has been done by anyone to examine the possibility of providing an alternative access to the Holiday Inn Express off Tapteal, should an under-the-railroad crossing, grade-separated crossing, be constructed at Center Parkway?

A. Since this document shows that that would -- that's not economically viable, I would say the answer's no.

Q. Okay. And the same -- would the same be true of

any study to show the ability to have access to the vacant property directly to the west of the new Center Parkway or the existing Center Parkway north of the railroad track? By "the same," I mean, are you aware of any studies or any work that has been done by the city to determine alternate routes of access if an under-the-railroad Center Parkway crossing were constructed?

A. Again, no, for the same reasons.

Q. But you do state in your testimony that one of the reasons why this option is not feasible is that it would restrict access to existing businesses as well as adjacent properties, correct?

A. Sure. On the surface, it appears that would be the case.

Q. Okay. And your testimony is that, as far as you know, there's been no investigation done under the surface?

A. Not that I'm aware of.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit?

MR. PETIT: Yes.

ADMINISTRATIVE LAW JUDGE TOREM: We've been going at it for about an hour and a half since we came back from lunch. How long do you have for this witness's Cross?

MR. PETIT: Not very much, Judge. I'll wrap it up quickly.

ADMINISTRATIVE LAW JUDGE TOREM: I'm not

trying to rush you along.

MR. PETIT: I understand.

ADMINISTRATIVE LAW JUDGE TOREM: I was looking to see if this was an opportune moment for a break or not.

MR. PETIT: It would probably be in the witness's best interest that I continue.

ADMINISTRATIVE LAW JUDGE TOREM: All right. We'll go and when we finish your Cross, we'll take a break and then have additional Cross from staff and Re-Direct after the break.

Q. (BY MR. PETIT:) Could we direct your attention to the exhibit that contains your rebuttal testimony, which would be what we have marked as KMJ-10-T?

A. Okay.

Q. And in particular, I'm looking at your graphics, Exhibit 11 and 12.

A. I'm afraid those aren't on the printed copy I have, but apparently those got picked up.

Q. I'm sorry, I could not hear you.

A. It appears those graphics are not on the version that I have printed, but maybe Mr. DiJulio could give me another copy. The two graphic documents.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit, these are the KJ-11 and KJ-12 --

MR. PETIT: Correct, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: -- bar graphs?

MR. PETIT: Yes, Your Honor.

THE WITNESS: Oh, I'm sorry, they're on the tabs. I apologize. All right. Thank you.

MR. DIJULIO: Uh-huh.

THE WITNESS: Sorry.

MR. PETIT: Believe me, we've got enough paper in this case.

Q. All right. You prepared these two graphs, one based upon car count and one based upon train count --

A. Yes.

Q. -- correct?

A. Yes. That's true.

Q. Would it be fair to say that the information you used to prepare these was based upon existing or historical data only?

A. That's true.

Q. And when you are utilizing or -- utilizing that data in KJ-12 --

Braden, could we have KJ-12? Thank you.

-- you're assuming a 20 percent growth rate in that bottom, well, actually, in all three of those graphs, right?

A. Actually, I'm not assuming. I'm using the 20

percent growth that was asserted in the response to data, or the data request from TCRY, and I --

Q. And you --

A. And if I may, I'm only applying it to the TCRY car counts.

Q. Correct. Because you understood the 20 percent growth rate identified by TCRY to relate only to TCRY trains, correct?

A. I made that assumption.

Q. And so you made that assumption in both KJ-11 and KJ-12, correct?

A. That would be true.

Q. And you called that assumption unreasonable, I think, in your Direct testimony here today?

A. Over -- over that long of a period through 2030, yeah, I do see a 20 percent growth rate, annual growth rate, as being unreasonable, yes.

Q. Would a 20 percent growth rate, which would apply to not just TCRY trains, but Union Pacific trains headed to a new grain loop or to the 10 North Washington facility or the new ConAgra facility or BNSF trains headed to those same destinations, would that be unreasonable?

A. For a specific period? No, they wouldn't be unreasonable. But for over the duration from now until 2030, I would say that any sustained growth rate at 20 percent for

any business in -- a railroad-based business, as far as shipping goes, I see that as unlikely. There's so many different variables, and it's -- it's such a shot in the dark, that it would be -- I would be really surprised if that -- if the car counts went up by 20 percent for all railroads on an annual basis through 2030.

Q. Okay. So would you tell me why you did not prepare a shorter term growth projection, other than 2030?

A. I -- I based that on -- to try to align it with the traffic study that JUB had done, which is around the 2023 time frame.

Q. So you really made no attempt to determine the short-term growth rate of rail traffic by train or by car? And that was a question.

A. No, I didn't. Because when you're doing a -- this is really looking at, as a planning exercise, and you really wouldn't look at, well, what's happening next year. You would look at over the life of the facility or a longer term view. If any particular year were a 20 percent growth, that might work out, but in the averages, it probably wouldn't be 20 percent year over year for, what is that, 17 years. So --

Q. So --

A. Or 27 years.

Q. I'm sorry, were you finished?

A. Or 27 years. I'm sorry. I said 17.

Q. If the UP train traffic and the BN train traffic increased significantly in the next, say, ten years --

A. Uh-huh.

Q. -- as a result of these various developments that I've shown you today --

A. Uh-huh.

Q. -- wouldn't you agree with me that there is a likelihood of growth far in excess of 5 percent per year?

A. Well, there's a potential for that, but I would also mention that in my reading of public documents regarding the ConAgra facility or the loop track that is the ConAgra, I read in this morning's paper, it purported only a few trains, maybe two trains a week is my recollection. So that doesn't -- that's a huge increase for if you're talking about the Union Pacific trains, which are 12 trains over three-and-a-half or four-and-a-half years, one more train is a big growth spurt for that particular service.

BNSF, the number of -- they're running two trains in a weekday, if they ran four, that's a hundred percent growth rate. So in dealing with growth rates, it's more about a raw numbers thing. If the question were posed, is six trains -- is six trains over this crossing a day possible with the developments that are here? I would say that's not outside the realm of reason.

Q. How about 10 trains a day?

A. I think the -- based on my experience, the line would become quite congested, and it would be hard to move that many trains in a day through -- from the facilities down to -- down through the Union Pacific through the city of Kennewick. I think there would be some congestion issues there, you'd have some interferences between the various unit trains or the numbers of trains we're talking about.

I'm not saying it couldn't happen, but I'm saying it would take a real coordinated effort and some real planing.

Q. And what you're also saying is you really didn't take that into consideration in doing your projections in KJ-11 and KJ-12, that kind of growth from UP and BN traffic?

A. Uh-huh.

Q. That is correct?

A. So in the -- okay. Are you talking about, speaking specifically in graphic 2 or graphic 1?

Q. Either one.

A. KJ-11 or KJ-12?

Q. Either one.

A. Those were unconstrained growth, so that assumes growth that can be accommodated by the facilities. So the facility would have to be expanded if -- it would take, actually, an extensive modeling exercise to say, here's what the current capacity of the rail line is, here's how many trains a day it could handle reasonably in a reliable way. I

did not have that kind of information, nor did I have -- nor was I tasked to do that.

Q. You were not asked to do that by the City of Richland or the City of Kennewick?

A. No.

Q. You made reference to something you read in the newspaper this morning as --

A. Yes.

Q. -- relating to ConAgra?

A. It was -- I read -- it had to do with the hearing or the council meeting that's scheduled for tonight..

Q. Do you understand that the ConAgra development and this new rail loop are two separate projects?

A. Apparently, I didn't, no.

Q. That information was not provided to you or made clear to you by the City of Richland?

A. I'm going to say it wasn't clear to me that those are two different developments, no.

MR. PETIT: That's all I have, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Counsel, should we go ahead and take a break now for 10 minutes?

MR. SMITH: I have no questions.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. So we'll come back for Re-Direct after a ten-minute break.

(Short recess).

ADMINISTRATIVE LAW JUDGE TOREM: All right. I think we're ready to go back on the record.

Kevin Jeffers is still our witness, and we're going to turn it back to the city for ReDirect.

MR. DIJULIO: Thank you, Judge Torem.

REDIRECT EXAMINATION

BY MR. DIJULIO:

Q. Mr. Jeffers, rail volumes are variable over time?

A. Absolutely.

Q. They -- maybe it depends on changing customer needs?

A. Absolutely. All kinds of economic things can change the volumes up or down.

Q. And in this particular case, one of the data points that you had was actually decrease in UP traffic in recent -- UP train traffic in recent years?

A. Well, in the data requests, they said they had no -- they had not operated any trains over this, over this line in 2013, and that's why -- and then they went on to say over the last three-and-a-half or four-and-a-half years, there had been 12 trains total. So that's -- I would consider that a decrease. And in the TCRY information, my recollection is

that there was a slight decrease from 2011 to 2012 total car counts, so obviously there's some variability available.

Q. And when you forecast a 5 percent percentage increase, that's an average over time with potential increases in one year and decreases in another year?

A. Absolutely. And it's very -- I would consider it optimistic in most cases.

Q. Referring, Mr. Jeffers, to your testimony involving the potential road under-crossing of Center Parkway -- you should have that exhibit up there in front of you.

A. I do.

Q. And did you actually perform the geometry of the design of the facilities for the alternative of under-crossing for Center Parkway?

A. I did not perform any of the designs for any of the options shown.

Q. Okay. What was your particular function in doing that?

A. I examined them and tried to price them as best I could, based on my information, but -- based on the information available and on some common gross cost factors that we have available, that we use for planning studies and the like.

Q. And, Mr. Jeffers, you -- there was testimony

regarding the potential impact of the low grade of Center Parkway north of the existing Tri-City Rail, TCRY right-of-way, but that cut and support would be necessary for an extended period to the south of that right-of-way as well, is that correct?

A. It appears to be that, the way it's drawn here, yes.

Q. Okay. How far back?

A. It's difficult to say. I don't see any stationing called out on the particular drawing, but it could be as far -- it could go to the limits of the aerial view that's on here or maybe even further. It's difficult for me to see on this particular drawing, but it -- let me get my engineer scale here and use my thumb. So could be three or four thumbs. So, yeah, it would extend up to or perhaps beyond the aerial that's shown here.

Q. Thank you.

MR. DIJULIO: That's all I have for this witness.

ADMINISTRATIVE LAW JUDGE TOREM: Just so I understand the question that was just being asked --

THE WITNESS: Do you need to know how big my thumb is, or --

ADMINISTRATIVE LAW JUDGE TOREM: No, we don't need to go there.

EXAMINATION

BY ADMINISTRATIVE LAW JUDGE TOREM:

Q. But I did want to see, the support that's being indicated as the whitest strip between the roadway and what's been described as the Holiday Inn Express and adjacent vacant lot, is that correct?

A. I'm sorry, I'm not following the "whitest strip" that you referred to.

Q. Alongside the roadway.

A. In the aerial view?

Q. In the aerial view, there's a whiter -- white-colored strip, and I'm not sure if that stands for that retaining wall support.

A. Actually, that is the actual sidewalk in the aerial view, if I'm not mistaken.

Q. Okay. Perhaps that's correct. Is that where this would be built, or are we looking on the north end or both sides of the proposed crossing for retaining wall support?

A. The retaining wall, at least conceptually, would extend from Tapteal Drive southward, past the Holiday Inn Express, underneath the existing TCRY/port-owned rail line and then continue south to at least the edge of the aerial or perhaps beyond it.

Q. And this is the aerial view that's the second to

last page of the exhibit?

A. Yes, sir.

Q. And if you'd go back up in the exhibit to the first graphic, the first aerial view.

A. Yes.

Q. Does that give you a better idea of how much farther back that might extend?

A. Yeah. I believe the scale appears to be roughly the same. It could, just sitting here now, examining this, it could reach what I -- it's hard to read, but it appears there may be a -- I think -- I think it's private -- I think it's called out as a private road, which is the first intersection that tees into Center Parkway. It could extend as far as that roadway.

Q. So just past the building that exists there now?

A. Yeah. I believe previous testimony spoke to a mailbox store of some sort. I'm assuming that that is the building that the roadway would pass through, but I'm not sure.

Q. All right. That clarifies that line of inquiry. Thank you.

A. All right.

ADMINISTRATIVE LAW JUDGE TOREM: Does that bring up any additional cross-exam of this witness?

MR. PETIT: Just very briefly, Judge.

RECROSS-EXAMINATION

BY MR. PETIT:

Q. Could you take a look at that first aerial photograph in KJ-6?

A. That's this? That's KJ-6?

Q. Yes.

MR. PETIT: And I think the first aerial, could you raise it up, Braden?

THE WITNESS: This one?

MR. PETIT: I believe that's it.

THE WITNESS: Oh, you're talking to him to raise it up. I apologize.

MR. PETIT: That's okay.

Q. Just so we can be very specific about this, this is not the drawing for the road-over-railroad -- I'm sorry, road-under-railroad option?

A. No.

Q. It shows a wide view of the proposed crossing area, correct?

A. That's right.

Q. Okay. And you are referring to, I believe, a location here just to the south of the crossing that I believe is called Mail at the Mall?

A. I believe that's -- yeah, I think that's what we

-- what was testified to earlier as Mail at the Mall. I don't know the business names there.

Q. That thing is going to have to go if this road is built, correct?

A. I would imagine that particular one is, yeah.

Q. So what you are saying is that based upon your thumb and your intuition and your engineering experience, that a road-under-rail crossing would have to go at least as far back as that Mail at the Mall?

A. I'd say, yeah, at least as far, and maybe -- there's an east-west road that's teeing into it, it could go as far as that. Again, without a scale and a little more time to figure everything out, yes, that road there.

Q. The east-west road which is just to the north of the roundabout, is what you're referring to?

A. Yes.

Q. But I believe you testified in response to questions by Mr. DiJulio that you did not design these graphics or did not do the design work for these options, is that correct?

A. I did not do the design work, no.

Q. Who did?

A. It was performed by the city, City of Richland.

Q. And presented to you as being the options?

A. Yes. And then I used those options to put

together some costs, which I then provided to the city.

MR. PETIT: That's what I have, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. Anything further, Mr. DiJulio?

MR. DIJULIO: No. Thank you, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: And did the commission have any questions that arose from that line?

MR. SMITH: No.

ADMINISTRATIVE LAW JUDGE TOREM: Thank you, Mr. Jeffers. You can step down.

Let's go back quickly and, before we get to the next witness, do the housekeeping on exhibits that have been offered and should be admitted at this time. I believe we have all of the KJ labeled Exhibits 1 through 12, and then we had another pair added on to that, 13- and 14-X.

Were there any objections to the pre-filed testimony and supporting exhibits KJ-1T through KJ-12? Let me start with those.

MR. PETIT: None, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. Hearing none, those will be admitted. So that's KJ-1T, KJ-2, KJ-3, KJ-4, KJ-5, KJ-6, KJ-7, KJ-8, KJ-9. And then we get to KJ-10TR, which is the rebuttal testimony, KJ-11, and KJ-12.

The additional exhibits we worked with for the data points that went into KJ-11 and KJ-12 were marked as

RVP-2-X, -3-X, and -4-X. Again, those were initialed RVP.

Were there any objections to those three items?

MR. PETIT: No, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: So those three can be admitted at this time. My notes then take me to where we marked petitioners' responses to those same data requests as KJ-13-X, and later, Mr. Petit, you brought in KJ-- what we marked as -14-X, the Horn Rapids rail loop package that's going to be considered at tonight's city council meeting. That's the 79-page exhibit.

Speaking first to KJ-13, I'll ask, is there any objection to that one? Seeing none. And 14-X?

MR. DIJULIO: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: Those will be admitted as well.

I think at that point we went to the series that were marked as JD, under Mr. Deskins placed on the exhibit list. We have an aerial view discussion of the potential passing track and its length at JD-28-X. Any objections to that one coming in?

MR. DIJULIO: No.

ADMINISTRATIVE LAW JUDGE TOREM: All right. That one will be admitted.

And then we went back to the JP exhibits, the track use agreements with UP and BNSF were JP-6 and -7-X. Any

objections to those? Seeing none, those are admitted.

Bouncing back to the place where, on page 3 of the Exhibit list as it stands right now under Mr. Deskins, there was JD-10-X, the draft as of June 14, 2012, it should read, the Horn Rapids site development agreement, is JD-10-X.

MR. DIJULIO: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: And I think that may exhaust the exhibit numbers that we had for Mr. Jeffers. Did I miss any, Counsel?

MR. PETIT: I think we're good, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. Mr. DiJulio, who would your next witness be?

MR. DIJULIO: Susan Grabler, please.

ADMINISTRATIVE LAW JUDGE TOREM: Ms. Grabler, you're already raising your right hand, I think you've been observing this routine today.

THE WITNESS: I've done this before.

SUSAN GRABLER

called as a witness by the Petitioner, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: All right. Thank you. And you probably already know to state and spell both your first and last name.

THE WITNESS: Susan, S-u-s-a-n, Grabler,

G-r-a-b-l-e-r.

ADMINISTRATIVE LAW JUDGE TOREM: Counsel?

DIRECT EXAMINATION

BY MR. DIJULIO:

Q. SKG-1T, pre-filed testimony, Ms. Grabler. Do you recognize that?

A. I do.

Q. That is your testimony?

A. Make sure here.

(Pause in the proceedings).

A. Yes.

Q. Ms. Grabler, you've been involved in track design issues for a lot of years, have you not?

A. Yes.

Q. And your background, your CV, is set forth in your statement?

A. Yes, it is.

Q. So rather than talk about it, I'd just like to ask you very quickly, is there anything unique or extraordinary about this particular at-grade crossing that's being proposed for Center Parkway, based upon your years of experience?

A. Nothing unique. Considering a crossing for a new

crossing, you would only consider it on a line like the blue track like this, or an industrial lead. You wouldn't -- I normally wouldn't consider that for a mainline track.

Q. But for a line such as this, there's nothing unique or unusual in your experience?

A. No.

MR. DIJULIO: That's all I have for this witness.

MR. PETIT: I'm sorry?

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit?

CROSS-EXAMINATION

BY MR. PETIT:

Q. Good afternoon.

A. Good afternoon.

Q. Spent a lot of time with you at the Union Pacific, right?

A. 34 years.

Q. I'm just going to ask you a few questions. If you'd look at your pre-filed testimony on page 3?

A. Okay.

Q. Looking at line 15 through 20. And you're answering a question that says, "Discuss your understanding of

the proposed crossing and whether a grade-separated crossing is feasible at this location."

A. Correct.

Q. And you conclude it's not feasible?

A. It isn't.

Q. Okay. That's your conclusion in your testimony?

A. That's correct.

Q. And one of the reasons you give is that "The railroad structure over the Columbia Center Boulevard would have to be replaced to obtain the correct railroad grade profile over both Columbia Center Boulevard and Center Parkway."

A. Yes.

Q. Did you see the testimony of Mr. Jeffers in which he examined various alternatives and options to an at-grade crossing?

A. I have, but I don't recall exactly what it said. It's been some time.

Q. Well, you were here in the hearing room when he testified and we put those exhibits up on the screen, weren't you?

A. Yeah. Couldn't see them, but -- didn't have my binoculars on.

Q. I understand. All right. At least one of those options, where the road would go under the existing rail, did

not, as examined by Mr. Jeffers, require any replacement of the Columbia Center overpass structure, correct?

A. No, it was just the overpass. The underpass is a different -- has different impacts. And he did testify that it had impacts to the adjacent property.

Q. Right. Right. But the railroad structure over Columbia Center Boulevard would not have to be replaced if the option number 3 that Mr. Jeffers referred to, where the road went underneath the rail, were actually built?

A. That's true. That one would not have to be replaced, but again, it would have major impacts on the Holiday Inn Express access. That would totally be destroyed.

Q. You were here for my examination of him on that issue?

A. Yeah, I heard you making -- planning or asking him planning questions on what you would do.

Q. And have you done any planning to determine how an alternative access to the Holiday Inn Express could be constructed?

A. No.

Q. Would it be fair to say that you simply accepted Mr. Jeffers' conclusion in that regard?

A. No. I make my own decisions.

Q. Based upon the fact that there could not be, if this were a road under rail, there could not be an access to

the Holiday Inn Express directly off of Center Parkway?

A. There could not be because of the depth. Your depth under the bottom of the railroad structure, the bottom of the girder to the top of the pavement would have to be 16-and-a-half feet, and it would probably be five feet of depth on the girder, so that is, you know, 20-, 21, 21-and-a-half-feet deep.

Q. Okay.

A. There's no way you can go from there straight up into the Holiday Inn.

Q. And is there any reason that you know of that an alternative access to the Holiday Inn off of Tapteal, instead of Center Parkway, could not be constructed?

A. I didn't look at it.

Q. Did you conduct any independent evaluation of the anticipated train volumes, or did you rely upon the testimony of others in that regard?

A. I relied on the testimony of Kevin Jeffers on that.

Q. Now, you make -- let me back up a second. If you would turn to page 4 of your pre-filed testimony at the very last line, line 25. Well, actually, let's start at line 23. You talk about relatively short trains consisting of one to 50 cars traveling to and from the port.

What do you mean by "to and from the port"?

A. The Port of Benton is what --

Q. Where is that?

A. The Port of Benton?

Q. Yes.

A. That's the track that the TCRY operates on, the port track.

Q. Oh, so you're referring to the entire track?

A. Yes.

Q. Okay. So it's the Port of Benton track that you're referring to?

A. Yes.

Q. All right. And you understand that to be leased on a long-term lease to my client, TCRY?

A. Yes. I heard you say that earlier today.

Q. You don't have any reason to doubt that, do you?

A. No, not at all.

Q. Okay. Now, you say, "If the port can handle the unit trains, which it can't" --

First of all, are you referring to the Port of Benton track that is leased to TCRY?

A. Yes. And what I'm referring to is -- what I was really referring to there was the siding track, the 1900-foot siding track, for handling two unit trains, it can't do it.

Q. Okay.

A. That's what I meant.

Q. You're not testifying here today that the Port of Benton track, which TCRY operates, cannot handle unit tracks?

A. No. I'm just -- I was talking about this location, I was focusing on this location where this grade crossing is proposed to be.

Q. So what you're actually referring to, even though you didn't say it, is the sidetrack that would --

A. The siding, yes.

Q. The siding.

MR. PETIT: Nothing further, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: From the commission?

MR. SMITH: No questions.

ADMINISTRATIVE LAW JUDGE TOREM: Any ReDirect?

MR. DIJULIO: No. Thank you, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: So we have just one Exhibit, SKG-1T. Any objection to its admission?

MR. PETIT: None.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Thank you, Ms. Grabler.

Are you ready to take Mr. Montgomery's testimony at this time?

MR. DIJULIO: Yes. Spencer Montgomery.

ADMINISTRATIVE LAW JUDGE TOREM: Raise your right hand.

SPENCER MONTGOMERY

called as a witness by the Petitioner, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: Thank you. If you'll have a seat, please, and spell your first and last name for the record.

THE WITNESS: Spencer Montgomery, S-p-e-n-c-e-r, M-o-n-t-g-o-m-e-r-y.

DIRECT EXAMINATION

BY MR. DIJULIO:

Q. Mr. Montgomery, I'm handing to you Exhibit SM-1TR in this matter. Are you familiar with that?

A. Yes.

Q. Is that your rebuttal testimony filed in this matter?

A. It is.

Q. Sir, let me ask you, might as well use the graphic that's right up behind you. How long have you lived in the Tri-Cities community?

A. I was born and raised here, and have worked here after working other places for about the last 13 years.

Q. Okay. Where is your residence currently?

A. I live about two miles south of Columbia Center Boulevard and to the east.

Q. And is this an area -- you can return to your seat. Thank you.

A. Okay.

Q. So is this an area, as shown on the graphic around the mall, the project division, that you're familiar with in your regular travels?

A. Yes, it is. Very familiar. Obviously, me and my family, we shop in the area, our church is over in that vicinity.

Q. You might point out where your church is located, generally.

A. Our church isn't directly on this map. It's right down in this area (indicating).

Q. Okay. Thank you.

A. And we shop at Costco and we go to the movie theater and the mall.

Q. Thank you.

MR. DIJULIO: Nothing further at this point. Thank you, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Mr. Petit?

CROSS-EXAMINATION

BY MR. PETIT:

Q. Mr. Montgomery, I'd like to direct your attention to your pre-filed testimony, in particular page 3, line 11, where you address Gary Norris's qualifications in line 11, where you say, "Mr. Norris appears qualified in the traffic engineering field and the preparation of traffic studies. Mr. Norris also stated specific experience valuating the impact of railroad crossing closures, however, this petition to create an at-grade crossing does not involve a railroad crossing closure."

Do you see that?

A. Yes.

Q. You were here in the hearing room when Mr. Jeffers testified?

A. Yes.

Q. And do you agree with his testimony that many of the same aspects of engineering analysis and factors to be considered are involved in railroad crossing cases, as well as railroad opening, crossing opening, cases? Closure as well as opening?

A. Yes, I would agree with that.

Q. So you're not really suggesting that Mr. Norris is unqualified because he has extensive experience in railroad

closure, railroad crossing closure cases, are you?

A. No, no. I'm not implying that he's unqualified to examine any of these issues.

Q. All right. You go on to state that "Mr. Norris lacks a working knowledge and understanding of the comprehensive planning efforts undertaken by the community."

Do you see that --

A. Yes.

Q. -- on lines 15 and 16? You understand that what the commission is considering here has to do with one particular crossing and whether or not it meets the standards specified by law and whether or not the City of Richland's petition should be granted?

MR. DIJULIO: Objection to the form, characterization. He's asking the witness to rule on what the judge is going to decide, or ultimately the commission.

ADMINISTRATIVE LAW JUDGE TOREM: Sustain it. It can be rephrased.

MR. PETIT: It can.

Q. You understand this petition involves whether or not the City of Richland will be allowed to construct an at-grade crossing at Center Parkway?

A. Absolutely.

Q. Now, you state on page 4 of your pre-filed testimony that you disagree, starting at line 21, you disagree

with Mr. Norris's assessment that the traffic study was too narrow.

Do you see that?

A. Yes.

Q. You go on to state that "The study concluded that a 48-second reduction in emergency response times applies to much of the areas shown in the graphic, page 2 on page 7 (sic) of the traffic study. Could we have exhibit --

ADMINISTRATIVE LAW JUDGE TOREM: Is it the JUB traffic study?

MR. PETIT: Yes, Your Honor. The two pages we introduced of work.

THE WITNESS: Is that the JP-5?

MR. PETIT: Yes, JP-5. Braden, if you could pull up our number 1? There we go.

ADMINISTRATIVE LAW JUDGE TOREM: These are the same maps we looked at earlier?

THE WITNESS: Yes.

MR. PETIT: Yes.

Q. And you recognize these maps as being part of the petition that was filed in this case?

A. Yes, it was part of study that we performed for the cities.

Q. All right. Now, when you state that Mr. Norris's assessment was, the traffic study was too narrow, what do you

understand Mr. Norris's criticism to be?

A. Well, I didn't restate his full statement here, but I guess my understanding is that he felt that our study was too focused with respect -- or too narrow with respect to the area that the improvement would serve with respect to emergency response times. Okay. Now I'm remembering. He said our travel time, response times, were for one specific location at the Holiday Inn.

Q. Okay. That's the aspect of Mr. Norris's testimony that you're referring to?

A. Yes.

Q. Okay.

A. But I guess I would like to bring to attention that we have a colored area that shows a much larger area where response times would be improved.

Q. But if we go to the first page of this exhibit, which is JP-5, and go down to the bottom paragraph there, you'll see that this is part of the JUB report, correct?

A. Yes.

Q. And the information that Mr. Norris is referring to is the paragraph that reads at the bottom, second sentence, "It was determined that from the Kennewick fire station that the current route on Columbia Center Boulevard and Tapteal Road is 1.31 miles away and takes two minutes and 48 seconds to respond. With the Center Parkway connection, the distance

would be .98 miles and only take two minutes, nearly a 30 percent reduction."

A. Correct.

Q. That is the report, that's what the report states, correct?

A. Yeah. Yeah.

Q. And so when Mr. Norris looked at this report and identified that you, JUB, was using the Holiday Inn Express as the focal point, it was based upon the report itself, correct?

A. In the text portion of the report, yes. But it also does refer to the figures shown that shows the larger area that we did evaluate.

Q. In the map?

A. On the map, which is part of the report.

Q. Okay. So could you tell me where in the report and in the attachments there is data that was collected to support these various response times that are contained in the last paragraph of the page you're looking at?

A. The specific data is not there. What we indicate is that we evaluated it. And if I could explain the process that we used, if that would be helpful, I'd be happy to do that.

Q. Well, that was going to be my next question. What was your protocol and how did you go about it?

A. For some other studies that we performed for the

City of Richland, we've been asked to determine shortest route and the travel times using those routes in order to determine what the likely route of travel would be for the traveling public. In this case, this is more for emergency response purposes, as opposed to just the traveling public.

So what we did is we basically measured, not with a ruler, but with, you know, technical methods, the length of the different roads that would be used for the different routes and what the speed limit is on those different roadways. And in order to have a comparison of where the different decision points would be, using the different routes, we calculated these times.

Now, an important factor of this particular evaluation was the fact that you've got a lot of variation with respect to traffic signals on those routes and different times of the day that emergency responders might be called upon. And so we did not include the -- I think they call it the turnout time, the time from when the call hits the fire station until they're actually in their vehicle moving to the scene. So clearly that time should be added to this. This is just the travel time itself.

We did not include time spent stopped at traffic signals. They have the ability to bypass those if traffic isn't in the way. So we wanted to -- we wanted to be able to compare the existing condition with the alternate route under

similar evaluation techniques.

Q. Okay. I understand that. Did you include in that JUB report, the traffic report, any of the data or any of the methods or protocols that you used in arriving at these numbers?

A. Other than the times that we reported here, no.

Q. So -- and I'm not trying to be unfair here, but a person reading this report would have to conclude that you have simply stated a conclusion here without providing backup information, data, and protocol regarding your testimony, isn't that fair?

A. That's fair.

Q. Now, if you would take a look at page 5 of your pre-filed testimony, where you address the -- Mr. Norris's testimony regarding diversion of traffic from a grade-separated crossing at Columbia Center Boulevard to an at-grade crossing at Center Parkway.

Do you see that?

A. At the bottom of page five, yes.

Q. Yeah. At the bottom of page 5, and then it continues on to page 6.

Do you see that?

A. Yes.

Q. You say that "Trips diverted from Steptoe Street to Center Parkway will have a higher level of crossing

'protection."

Do you see that?

A. Yes.

Q. That's on page 6?

A. Yeah. Line 6, uh-huh.

Q. Lines 5 to 6. Do you see that?

A. I -- I see that.

Q. All right. What is it that you base that conclusion on?

A. I -- I base that conclusion on the information that was discussed at the diagnostic that I attended last year in December, that they were going to add supplementary safety measures with respect to -- well, standard lights and gates, obviously would be at the crossing, but the supplementary safety measures would be a center median to keep traffic from circumventing the gates.

Q. Okay. And that doesn't exist at the Steptoe crossing, correct?

A. That's correct. And so this would have a higher level of protection.

Q. So you're talking about the part of Mr. Norris's testimony where he is talking about diverting some amount of traffic from Steptoe to Center Parkway?

A. Correct.

Q. Okay. But you are not addressing the part of the,

as it relates to rail and rail train, train and car accidents, you're not addressing the fact that we're doing -- we're adding another at-grade crossing and diverting traffic from one at-grade crossing to another at-grade crossing? That was a terrible question. Let me ask it again.

A. Please do.

Q. Okay. You're talking about rail train -- train/car accidents only, train/vehicle accidents only?

A. The likelihood of them --

Q. Yes.

A. -- at this new crossing?

Q. Yes. When you're talking about diverting from Steptoe to Center Parkway, you're talking about the safety of the crossings, the relative safety of the two crossings, is that right?

A. Yes.

Q. Okay.

A. Yeah. I guess I would say that if we move some traffic from Steptoe Street to Center Parkway, then their protection and their safety is provided for better at the new crossing because of the enhanced features.

Q. But the enhanced features don't eliminate all the dangers of an at-grade crossing, do they?

A. No.

Q. And if you take a look at your next conclusion

there, you make reference to reducing -- "The crossing will reduce traffic on Columbia Center Boulevard and therefore the number of accidents on that high accident corridor."

Do you see that?

A. Yes.

Q. We're talking about vehicle-to-vehicle accidents here, we're not talking about trains hitting automobiles?

A. That's correct.

Q. Okay. Wouldn't you agree with me that Columbia center being a grade-separated crossing is a safer crossing as it relates to potential accidents between trains and cars?

A. Well, yes, that's clearly a true statement because they're grade separated.

Q. All right. Now, did JUB or any other engineering firm do any studies to support this conclusion of yours that reduction of traffic on Columbia Center Boulevard in the amount that is shown by the traffic study would have a significant effect on reducing the number of accidents on Columbia Center Boulevard?

A. I guess that depends on how you define significant. But if you reduce the traffic volume on a road, and it has a certain accident rate, then you will reduce the number of accidents.

Q. Okay. So it's in -- all right. And did you consider the amount of traffic that would be diverted from

Columbia Center to Center Parkway under the traffic study that was performed to be significant?

A. Yeah. Yeah. I would say that 7,000 vehicles a day on Center Parkway was our forecast, and I think that's a significant number.

Q. Do you think the diversion of traffic -- well, excuse me. Not all of those 7,000 vehicles on Center Parkway are going to be coming from Columbia Center?

A. Correct.

Q. Some of them are going to be coming from Steptoe?

A. That's correct.

Q. And do you disagree with Mr. Norris's statement that the total diversion of traffic onto Center Parkway is within the margin of error of the traffic study?

A. Do I disagree with that?

Q. Yes.

A. Yeah. Yeah, I disagree with that.

Q. And what information, what studies, what kind of data do you have to support that conclusion?

A. Well, I think the margin of error is looked at in a couple of different ways. When we -- when we collect data and do traffic counts for a traffic study, we take a sample. And you can go one day and you'll get one number, and you go another day and you'll get different traffic volumes. I would say that that is -- the volume of error is the change from day

to day that you might have in a sample.

Okay. Now, the regional model is what we use to base our forecast on. And it's calibrated within acceptable standards, and the volumes that come out of there are a tool to use. Some people rely heavily on those tools and say that the number that comes out of there is the right number.

I take a little bit different approach and I say it's a tool and we use that as a basis for looking at a larger area and examining those traffic volumes. That's why in our study you can see a graphic in there that shows traffic adjusted over a much larger area than just Columbia Center Boulevard, Center Parkway, and Steptoe Street.

Q. Okay.

A. We looked at a number of different factors, and I guess my point is that we forecasted the traffic volumes, I don't remember, depending on what location you want to look at, but on Columbia Center Boulevard there's roughly 7,000 vehicles in the peak direction. Yes, there's a margin of error there, but if our forecast was that it would be 260 vehicles lower, in that peak direction, then that's a percentage. And that percentage, in my opinion, is significant.

I believe the percentage that I was looking at earlier was 7 percent, and in terms -- you know, the term "level of service" was used earlier today. Typically in

traffic studies, a change of 10 percent is one full grade level of level of service. From F to E or E to D, D to C, etc. So if we're reducing traffic by 7 percent, that's nearly a full letter grade.

Q. Okay.

A. So I would call that significant.

Q. Okay. I understand your testimony. The last item that I'd like to address with you is on page 6 of your testimony, where you take issue with Mr. Norris's testimony, stating that "additional queueing analysis is required for the proposed crossing."

Do you see that?

A. Yes.

Q. That's on lines 15 through 26.

A. Yes, sir.

Q. Okay. We're talking about queueing -- and the judge is going to ask you to stand up so that you're not talking over your shoulder in answering these questions.

When you're talking about queueing at this proposed crossing location, you are dealing with a roundabout on Gage Boulevard and Center Parkway, correct?

A. One of the circumstances, yes.

Q. Yes. That's one of the circumstances. And then you're talking about the railroad crossing signal apparatus that can result in traffic stoppage, correct?

A. Yes.

Q. And you're talking about traffic coming from the center -- from the north on Center Parkway as well, correct?

A. Correct. There are essentially four situations that you would -- you would typically want to look at.

Q. Okay. And is it your testimony that your report looked at all four of those situations?

A. We looked at the two more worst-case scenarios, I would say.

Q. Which would be?

A. The queueing backwards from -- from the intersection of Center Parkway, future Center Parkway, actually, it exists today, back to the south, during just normal traffic operations.

Q. Okay.

A. Without any train closures of the crossing, what would the normal p.m. peak hour queue back from the intersection, and would that have any chance of getting close to the railroad tracks, to make sure. That was the primary purpose for our study was to make sure that this crossing was going to function safely.

Q. Okay.

A. The other situation that we looked at was in the event of a train closure at the crossing, would traffic southbound back up onto Tapteal Drive. And the reason why we

looked at those two instances is because the distance from the crossing to Tapteal Drive is, I believe, 600 feet, and the distance from the crossing down to the roundabout is, I believe, slightly over a thousand feet.

And then we did compare the two volumes in both directions, and we're comfortable that we looked at the worst-case scenario under each event.

Q. And is it your testimony that the queueing effect that you found would not contribute significantly to either the traffic congestion or emergency response times?

A. Yeah, I think so.

Q. And you're convinced that there's enough data there to come to that conclusion that you've provided in this report?

A. There may not be a statement in the report itself that says, you know, emergency responders would have to wait in the event of a train crossing, you know, a certain amount of time, but we have given the amount of time that the crossing would be closed under current conditions. And, actually, our estimate, I think, was pretty generous.

We assumed 30 cars at ten miles an hour for the train. That data is in there. And we assumed that the -- and the length of trains today are 10 to 12 cars, I believe. So with the crossing closed for slightly under two minutes, they could experience that at any signalized intersection, in just

general traffic operation. So if an emergency responder came there and had to wait for two minutes, yeah, I think that that's -- that's reasonable and that they would likely wait for that.

Now, there is an interesting point about this, is from this roundabout you can see the crossing. And so if they're responding from the fire station down here, they could come down here and see.

Q. At the roundabout?

A. From the roundabout, I believe you can see the crossing. And they could see, then they have a couple of different options.

Q. Which would be what?

A. Which would be cutting through the mall property and doing the loop around or using the roundabout to come back the other way.

Q. To go down to Steptoe and --

A. To go down to Steptoe and back.

Q. Okay.

A. But this would be the more reliable route for either Richland or for Kennewick.

Q. But you would have to admit that under those circumstances, as you have just outlined them, that would significantly reduce the response times available to the emergency personnel, whether they're coming from Kennewick 63

or Richland 72?

A. Yeah. I think there's multiple reasons, at least four reasons that I can think of, that this alternate route of Center Parkway would be more reliable and quicker for emergency response.

Q. Not the question I was asking you. I was asking you about the queueing effect should there be a train at this crossing at the new Center Parkway crossing, and you told me it would queue onto Tapteal, potentially back to Tapteal and potentially south to the roundabout. And we talked about -- or close to the roundabout.

A. No.

Q. Somewhere in the vicinity of the roundabout?

A. No. The queue back from the crossing for southbound traffic would be 300 feet --

Q. Okay.

A. -- which is only halfway to the Tapteal. And the queue the other direction would be slightly longer, maybe 400 feet, which is less, way less than half the distance to the roundabout.

Q. Okay. But your testimony was that an emergency responder coming down Gage would have the ability to view whether or not the crossing, new crossing at Center Parkway was blocked, and take an alternate route?

A. Yes.

Q. And my question to you is, wouldn't that necessarily increase emergency response time?

A. Over the current condition?

Q. Yes.

A. Not necessarily, because they could run into the same situation with the crossing closed at Steptoe.

Q. So you don't know?

A. And you can't see the train there until you come over the hill and see the crossing, and at that point, a fire truck isn't going to be able to turn around. Whereas this direction, a fire truck could turn around. If they can see that the train is going that way and the Steptoe crossing is going to be cleared first, they have the ability to turn around at the roundabout and use, you know, the existing route of Steptoe.

Q. So in order to be able to utilize that capability, the fire responders in their fire truck coming eastbound on Gage Boulevard would have to be able to observe whether or not there was a train at the Center Parkway crossing and the gates were down, and utilize the roundabout to reverse direction and go some other place, either through the mall to Columbia Center or back to Steptoe and up to Tapteal?

A. And since they could see the crossing, they would know which direction the train was going and which way to go from there. Whereas today, they have no option.

Q. Well, they have the option of --

A. They have -- in the event of a train, if that's what we're examining --

Q. Yes.

A. -- in the event of a train, which I would highlight in my testimony here is only 1 percent of the day.

Q. Okay. Let's talk about --

A. So it's very rare.

Q. Let's talk about that for a second. If you -- when you were talking about 1 percent of the day, you're talking about the traffic, train traffic numbers that were generated by and relied upon by Mr. Jeffers, correct?

A. No.

Q. What are you relying on?

A. I was relying on existing conditions.

Q. What existing conditions are you referring to?

A. Well, actually -- actually, I reviewed the data request information from the different railroads that supplied the number of trains that are occurring there today. And based upon the number of weekly trains, I think there was a range provided of 10 to 20 TCRY trains and 10 BNSF weekly trains, which would give us a range of 20 to 30. Divide that by the number of days in the week, and you get three to four trains.

And based upon the two minutes' closure time for

each train, you do the math, it comes out to less than 1 percent of the minutes in a day that the crossing would be occupied.

Q. But your data in that regard did not take into consideration any likely increase in rail traffic over this line at Center Parkway, correct?

A. Not in the pre-filed. But if we want to do a little bit of math, the statement from TCRY and some of the data you were going over with Mr. Jeffers earlier, I thought it was quite interesting that they were predicting the number of railcars, not the number of trains, but railcars. And the forecast that that gave -- and I know of no studies that they performed to identify that. It's really, I'll say, a wish list, supposedly.

And the reason why I say that is because we studied a different crossing of this same line 12 years ago, and the number of trains at that time was four. And today we have three to four. So it hasn't changed much. Now, I understand, everybody would like more train traffic because it's good for economic development.

But let's take their number of 20,000 railcars, and they think that a lot of these are going to occur in unit trains, which have at least a hundred cars in each one, that's a total -- and that's 20,000 per year was their number. And that sounds like a really big number to me. And I thought,

wow, 20,000 railcars, that's a lot of cars. There's only, I forget, I don't know what the number is today, but there's 2,000 or something. That's a huge increase.

Q. Per year?

A. Per year.

Q. Yeah.

A. But if there's a hundred railcars in a unit train, that's only 200 trains over the course of a year, that's less than one a day. And so the 1 percent of the time of the number of minutes in a day that the crossing would be closed, thus impacting the emergency response, might hold with one more train there a day. I mean, even doubling, I think, is pretty generous.

Q. But the assumptions you've made here is that all the increased traffic is going to be unit train traffic, number one; and, number two, all the unit train traffic is going to be TCRY traffic, correct?

A. In what I just spoke about, yes. But, okay, you want to cut it in half or whatever, it's still going to be a 2 or 3 percent of the minutes of a day that would be occupied, you know, making that crossing unavailable for anybody to use. And if it was a regular intersection with a traffic signal, it could be closed, you know, for regular traffic operations. You know, the intersection of Steptoe and Gage has a red light for one approach all day long.

I'm saying it's insignificant to say that the train, the train event closing the crossing to emergency response is insignificant.

Q. It's insignificant without taking into consideration the fact that there are three railroads that can run on this line, UP, TCRY, BNSF? You understand that to be the case?

A. I understand there's three railroads operating there, and I understand the growth rates that they're using. And even if all of it came true, it -- it's still a miniscule portion of the day, and I don't think that it would influence the route that the emergency responders would take.

Q. But you don't have any actual numbers for the -- and you did not take into consideration any actual numbers for increase in BNSF and UP trains, whether they be unit trains or shorter trains?

A. Not in my pre-filed testimony, but we discussed that just now.

Q. I understand.

A. They will experience a lot more delay at the existing traffic signals than they will at this railroad crossing. And depending on which direction a train is going and where they are in the queue, I mean, having two crossings that spreads that traffic out during a train event will shorten the queue and the response time for the emergency

responders by having a new crossing which is going to take some traffic off of Steptoe. It will make the queue shorter on Steptoe Street that the emergency responders would have to wait for.

Q. But it's also going to create the situation where, because the crossings, the at-grade crossings are at such close proximity to one another, that the emergency responders are going to have to make an election between one crossing or the other, which may contribute to delay in the response time, and I --

A. I think that's a wonderful option to have.

Q. Okay.

A. Earlier you had asked somebody about having rail crossings so close together.

Q. Yes.

A. And I know in downtown Kennewick, there are three crossings within a half a mile of each other. And when a train comes and you're sitting at one, you look at which direction the train is going and you go the other way. And you can cross the tracks because the train's gone sooner, so having an option like this for not just emergency responders, but for anybody traveling the road, a network is a good thing.

Q. But there's no real similarity between the visibility in this Richland area and downtown Kennewick, is there?

A. That's true.

MR. PETIT: That's all I have, Judge.

MR. SMITH: No questions.

ADMINISTRATIVE LAW JUDGE TOREM: Re-Direct?

MR. DIJULIO: Nothing further.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Thank you, Mr. Montgomery.

We just have your pre-filed rebuttal testimony to put into the record, SM-1-TR. Any objection to that testimony? Hearing none, that will be admitted as well.

I think from the petitioners' standpoint, we may have covered all of your witnesses and proposed evidence that you wanted to put on today. Is that correct?

MR. DIJULIO: That's correct.

ADMINISTRATIVE LAW JUDGE TOREM: Just reviewing it, there were other documents that perhaps weren't handled by a witness today that the cities wanted to propose their admission here on Tuesday, before we switch to another case-in-chief. I don't see any that are obvious, but wanted to give you a chance to review a witness list, and co-counsel, and see if there's anything that should be admitted now.

MR. DIJULIO: Well, time permitting, I guess we could start at the top of page 1, the Baynes' exhibits were admitted, as well as the three-page supplemental Baynes' exhibit at --

ADMINISTRATIVE LAW JUDGE TOREM: I think that's 17-X under KJ.

MR. DIJULIO: Peters exhibits are admitted. Skinner exhibits are admitted. Simon exhibits are admitted.

ADMINISTRATIVE LAW JUDGE TOREM: As are the Hines exhibits.

MR. DIJULIO: Hines.

ADMINISTRATIVE LAW JUDGE TOREM: And the ones that you proposed for Mr. Deskins.

MR. DIJULIO: We have nothing further, then, at this point.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. We are at almost 4:30 for today. I think those were all the witnesses we had scheduled for today. We may have other witnesses present. Do you want to press on and begin another case-in-chief for a half hour or so, or do you want to come back tomorrow morning at a designated time and see if we can get through everything tomorrow, instead of carrying over into Thursday?

Mr. Petit, what's your feeling on your witnesses? You have four to present, several of which are only available tomorrow, I understand.

MR. PETIT: At least two of which are. I believe that we can, in all likelihood, finish tomorrow. But the way I read the rule, Mr. Smith goes next.

ADMINISTRATIVE LAW JUDGE TOREM: True. I just want to make sure with your witnesses --

MR. PETIT: Just wanted to confirm.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Smith, did you want to start Ms. Hunter's presentation today? Or --

MR. SMITH: We're willing to go. I'll defer to Mr. Petit. We're ready to go.

ADMINISTRATIVE LAW JUDGE TOREM: Did you want to begin today, or did you want to go tomorrow morning at --

MR. SMITH: Oh, I'm getting the direction to say tomorrow, so --

ADMINISTRATIVE LAW JUDGE TOREM: All right. Proper for you to defer. Then tomorrow should we begin at 9:30, as we did today, or should we be here at nine?

MR. PETIT: I think 9:30 would be adequate, Judge. I think we're moving through this rather quickly.

ADMINISTRATIVE LAW JUDGE TOREM: All right.

MR. SMITH: Fine with me.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Then it is now 4:29 on my watch, which is always a little bit fast. We'll adjourn for the evening, we'll resume tomorrow at 9:30. Do remember in your planning for tomorrow that we do have a public comment hearing scheduled for 6:00 in this room, and will want to reconfigure it at some point to probably shift things around and allow public comment to come up and be

recorded.

The commission staff will have another staff member here, John Cup, to work directly with those folks. And we can work on logistics, if there's any questions on how that's going to be handled or any written comments that have been received since the last time. I think we had all of two comments that have come in to the commission as of sometime last week.

That's all I have for tonight. Thank you. We'll see you tomorrow.

MR. PETIT: Thank you, Your Honor.

MR. DIJULIO: Thank you, Your Honor.

(4:27 p.m.)

* * *

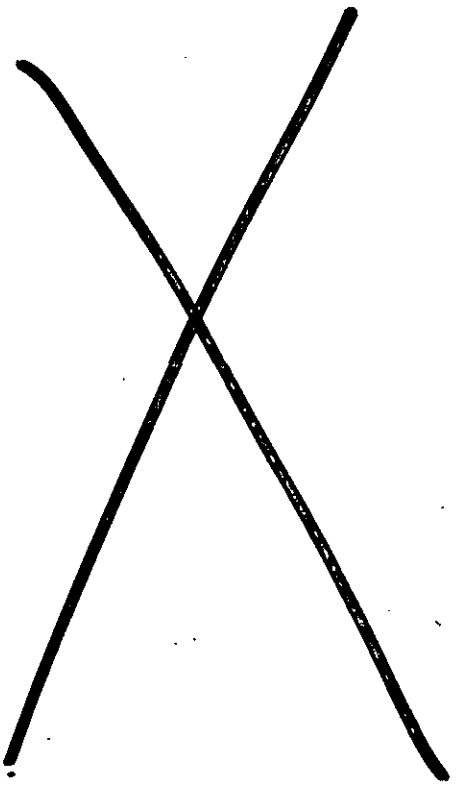
STATE OF WASHINGTON)
) ss.
COUNTY OF BENTON)

I, Dina Ranger, do hereby certify that at the time and place heretofore mentioned in the caption of the above-entitled matter, I was a Certified Shorthand Reporter for Washington and, pursuant to RCW 5.28.010, am authorized to administer oaths and affirmations in and for the State of Washington; that at said time and place I reported in stenotype all testimony adduced and proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting and that the foregoing transcript consisting of 218 typewritten pages is a true and correct transcript of all such testimony adduced and proceedings had and of the whole thereof.

Witness my hand at Kennewick, Washington, on this 2nd day of December, 2013.

Dina Ranger

Dina Ranger, CSR-RPR
CSR NO. RANGEDK317L3
Certified Shorthand Reporter
Notary Public for Washington



BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAIL WAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	Docket No. TR-130499 VOLUME III (Pages 241 - 435)

EVIDENTIARY HEARING

Pages 241 - 435

ADMINISTRATIVE LAW JUDGE ADAM E. TOREM

9:30 a.m.

NOVEMBER 20, 2013

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ADMINISTRATIVE LAW JUDGE TOREM: Let's be on the record. It's Wednesday morning, a little after 9:30, second day of our hearing in Docket TR-130499. We finished the City of Kennewick and City of Richland's case-in-chief yesterday, and I think we're ready to move on to commission staff.

MR. SMITH: Yes, Your Honor. We call Kathy Hunter.

KATHY HUNTER

called as a witness by the Petitioner, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: All right. Have a seat, please. State and spell your first and last name for the court reporter.

THE WITNESS: Kathy, K-a-t-h-y, Hunter, H-u-n-t-e-r.

DIRECT EXAMINATION

BY MR. SMITH:

Q. Ms. Hunter, where are you employed and in what capacity?

A. I work at the Washington Utilities & Transportation Commission. I'm the deputy assistant director of transportation safety.

Q. And do you have before you what's been marked as Exhibit KH-1T?

A. I do.

Q. And do you recognize that as your pre-filed testimony in this matter?

A. Yes, I do.

Q. You also have before you what has been marked for identification as KH-2 through KH-12?

A. Yes, I do.

Q. And are those exhibits referred to in your Direct testimony?

A. Yes.

Q. Do you have any changes or corrections to make today, either to your testimony or the exhibits?

A. I do not.

MR. SMITH: Your Honor, Ms. Hunter is available for cross-examination.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit?

CROSS-EXAMINATION

BY MR. PETIT:

Q. Good morning.

A. Good morning.

Q. You do have that binder with your pre-filed testimony in front of you?

A. I do.

Q. Okay. Because I'm going to be referring to it. And I'll give you the pages that I'm going to ask you questions.

A. Okay.

Q. First of all, if you could turn to page 9 of your testimony. You there discuss and cite testimony, written testimony, pre-filed testimony, by Mr. Peters, Mr. Simon, Mr. Deskins, Ms. Grabler, and Mr. Jeffers, correct?

A. Yes.

Q. Now, in connection with the statements made there, did you conduct any independent investigation to ascertain the truth or accuracy of those statements?

A. I did not.

Q. If you could turn to, then, page 10, I'd like to direct your attention to lines 9 through 16, where you address Mr. Jeffers' pre-filed testimony regarding alternatives to an at-grade crossing.

Do you have that in front of you?

A. I do.

Q. All right. Now, you also heard Mr. Jeffers testify yesterday, correct?

A. Yes.

Q. And did you understand from his testimony that he did not create the designs that were evaluated as alternatives?

MR. DIJULIO: Objection, form and also foundation.

ADMINISTRATIVE LAW JUDGE TOREM: Sustained. We'll let you warm up and rephrase this morning.

MR. PETIT: All right.

Q. Do you know who prepared the schematics and the drawings for the various alternatives that Mr. Jeffers addressed?

A. I believe it was either the city or the other consultant in the case.

Q. Do you know which?

A. I believe it was city.

Q. In fact, Mr. Jeffers testified it was the city, correct?

A. From what I can recall, yes.

Q. Okay. To your knowledge, has any independent engineering firms reviewed those designs to ascertain that

they are the only available or reasonable options to an at-grade crossing in this location?

A. No.

Q. I'd like for you to turn to page 12 of your pre-filed testimony, please. Lines 6 through 9. First of all, you state that you offer no testimony about the cost of constructing a grade-separated crossing, correct?

A. Correct.

Q. But you agree with the opinion expressed in various testimony that because of the topography of the land and the operations of the railroad at this location, a grade-separated design would be impracticable.

Do you see that?

A. Yes.

Q. Okay. Now, first, let's take those one at a time. In connection with the topography of the land, do you rely on the testimony of others in that regard to arrive at your conclusion?

A. I do.

Q. Now, you also make reference to the operations of the railroad at this location. What are you referring to by the operations of the railroad?

A. I believe I was referring to the switching that can take place over that siding, that passing track that's mentioned.

Q. And what did you examine or review or evaluate concerning the switching on the passing track at that location?

A. I believe there was some discussion at the diagnostic meeting, although the railroad was not present at that meeting, about how potentially switching might occur at that location.

Q. So you understood that switching would occur if that siding track were left in place?

MR. DIJULIO: Your Honor, I'm going to interpose an objection. There's a fact not in evidence that continues to be part of the examination questions regarding passing track. I don't believe there is any evidence in the record regarding the siding being a, quote, "passing," closed quote, track. And the continued reference to passing track as opposed to simply what it is, a siding or whatever else you want to call it, switching track, as the record has demonstrated from the rest of the record, would provide this. Again, nothing in the record demonstrates that this has been used for passing.

MR. PETIT: If I might respond, Your Honor? I guarantee we will tie this up. So for the purposes of talking about this today, we will provide testimony in our case-in-chief demonstrating that this track not only has been used, continues to be used, but will be used in the future as

a passing track.

ADMINISTRATIVE LAW JUDGE TOREM: Anything further?

MR. DIJULIO: Nothing further.

ADMINISTRATIVE LAW JUDGE TOREM: I'm going to allow the continued reference, and I thank you for noting that there's no formal testimony. If the record does not later or any development as to the actual use of the track now or in the future, we will leave that as a point in the briefs, but I won't draw any conclusions from it at this time.

If there's a confusing point to the witness, though, as to the reference, then I'll allow the witness to respond accordingly that they're not sure what you're referring to. But I do think we're all on the same page, that's it's the second track that spurs off for about, at least, I think 3700 feet is what we talked about yesterday.

MR. PETIT: Correct.

Q. And you understood what I was referring to as the passing track, that I'm talking about a second track at this location which has switches that connect back to the main track at two different locations?

A. Correct.

(Pause in the proceedings).

ADMINISTRATIVE LAW JUDGE TOREM: I'm not sure the question ever got answered. We had the objection

interposed as to the correct --

MR. PETIT: Right.

ADMINISTRATIVE LAW JUDGE TOREM: -- naming and reference, but the question, I believe, Ms. Hunter, posed to you was whether you assumed that switching operations were going to take place on that stretch of track, when you made this testimony.

THE WITNESS: Yes. And I think that I referred back to discussion at the diagnostic, with the participants at that meeting. We were discussing the potential of the railroad operations at that location and the impact if a crossing was constructed at Center Parkway.

Q. (BY MR. PETIT:) Now, is it your recommendation, ultimately, that the crossing be allowed, whether that passing track remains in place or not?

A. Yes. My testimony is based on including that second track at the crossing.

Q. And did you independently evaluate the effect of that -- those switching operations on this passing track in connection with the safety of this proposed crossing?

A. Based on my experience, I have just a general sense of what switching operations -- the impact on the crossing might be of switching operations. So that, coupled with the discussion at the diagnostic meeting, I felt that the warning devices that are proposed by the city at the Center

Parkway crossing could accommodate the switching operations without compromising safety.

Q. You had no input from the BNSF in that regard, did you?

A. No.

Q. The BNSF uses this track every day; you're aware of that, correct?

A. I am.

Q. And you had no input from the Union Pacific Railroad on this issue, either?

A. Correct.

Q. And you've stated, I believe, that at the diagnostic meeting, TCRY was invited, but no representative appeared, is that true?

A. There was no representative at the meeting.

Q. You don't --

A. I did not arrange the meeting.

(Pause in the proceedings).

Q. Okay. Now, I'd like you to turn to page 13 of your testimony, please. And could we have -- excuse me. First of all, I'm going to hand you an excerpt from the petition, which is the plan for the crossing.

(Pause in the proceedings).

Q. Do you have the crossing plan? Yeah, that's the right one. Thank you. So what I understand from your

testimony is that whether the crossing is designed according to this plan -- well, let me back up a second.

This particular plan, which is part of the petition, would call for the elimination of the passing track, correct?

A. Correct.

Q. And there's a second alternative which we have in evidence as KJ-13. I'm going to hand you -- it's KJ-13-X, which I'm going to hand you. And attached to this drawing -- or, I'm sorry, attached to KJ-13-X, there's another schematic prepared by Mr. Jeffers that shows a crossing accommodating two tracks, correct?

A. Yes.

Q. So as I understand it from your testimony, you, as UTC staff, are recommending the approval of the crossing, whether it's designed according to the initial plan that would eliminate one track, the passing track, or according to this revised plan that would leave the passing track in place, is that right?

A. Yes.

Q. Now, you recognize that the existence of the passing track causes some problems at this crossing location, right?

A. Some challenges, yes.

Q. Did you conduct any kind of examination as to how

frequently trains today utilize the passing track?

A. No. What I used was the information provided in the petition that presented the rail traffic as two to four trips a day.

Q. You understand that today two different railroads operate on this track?

A. Yes, I do.

Q. BN and TCRY?

A. Yes.

Q. And you did not conduct an investigation or an examination of how frequently those railroads are required to use this passing track in order to accommodate each other's operations?

A. No. The information presented in the petition was a total of the number of trips over the crossing, not a breakdown by passing track or main line.

Q. Can we go back to -- no, let's leave this one up. If you could direct your attention to the drawing that's part of KJ-13-X, which is the drawing that shows the schematic of a crossing with two tracks, a passing track and the main track.

Do you have that in front of you?

A. I do.

Q. Okay. And in connection with that track configuration and that crossing configuration, there will potentially be times when there is a train on each of those

tracks, correct?

A. Potentially, yes.

Q. Okay. And so wouldn't it be fair to say that in connection with the safety of this crossing, that that situation would have some impact on whether or not this crossing was safe?

A. If there were two trains occupying the crossing at the same time?

Q. If there were two trains, not necessarily occupying the crossing at the same time, but had to utilize the crossing, say, in sequence, one train coming through on the main line, another one waiting on the passing track to go the other direction and then utilizing the crossing, utilizing the track to get back on the main line.

A. Would there be an impact of safety is what you're asking me?

Q. Yes.

A. Well, the active warning devices would be engaged, providing protection for the traveling public, to isolate them from crossing over the crossing. So is safety compromised or is it lessened by the activity of two trains? The warning devices are going to activate whether there's one train or two trains.

Q. Sure. And I'm not quarrelling with that. What I'm suggesting to you is that a situation could arise, and you

can see a situation arising, where one train would cross those tracks, trigger the signal, clear the signal, the signal would go up, and then the other train would immediately trigger the signal.

You're aware of that kind of situation, correct?

A. That scenario, yes.

Q. Yes. And did you take that in consideration in your determination to recommend this crossing, even if it crossed both tracks?

A. Yes. I feel that the warning devices would be adequate to provide notice to the public that there was an oncoming train, whether it be from the main line or the passing track.

Q. If you would turn to page 13 of your testimony, you make reference there to sight lines, sight distances, and in particular, the WSDOT design manual that addresses sight distances.

Do you see that? Lines --

A. Are you on line 13 --

Q. -- 13 through 20.

A. Okay. Yes.

Q. Did you make any attempt to evaluate the sight distance that would be available if there were a train on the passing track at a time when another train came through on the main track?

A. I did not.

Q. Would you agree with me that there was potential obstruction of the sight distance if there is a train on the passing track while another train is coming through on the main track?

A. Yes. But, again, I think the active warning devices address that type of sight distance challenge that a train can present while parked on the siding track or passing track.

Q. I understand. But you felt it important to address the sight distance issue in your testimony that you filed before this commission, correct?

A. That's correct.

Q. And that testimony did not take into consideration, as part of the sight distance, the scenario we just talked about with a train on the passing track and another one on the main track.

A. That is correct.

(Pause in the proceedings).

Q. Now, if you would turn to page 17 of your testimony, please. I'm going to direct your attention to the testimony that starts on line 16 of page 17 and continues on to page 18 and 19, where you make reference to response times, emergency response times.

Do you have that testimony in mind?

A. I have it in front of me.

Q. Okay. Again, you rely upon the testimony of Chief Baynes, Mr. Skinner, Chief -- Mr. Simon, Chief Hines, Mr. Deskins, and Chief Hohenberg, correct?

A. Correct.

Q. As well as the JUB report, the J-U-B report, correct?

A. Correct.

Q. And you made no independent evaluation of the accuracy of any of those conclusions stated in that testimony or that report?

A. No, I relied on the expert testimony of these witnesses.

(Pause in the proceedings).

Q. If you could turn to page 24 of your testimony, please. In particular, I'm going to direct your attention to lines 13 through 19, where we -- you again address the issue of how many tracks this crossing is going to traverse, correct?

A. Correct.

Q. And there's reference there to the City of Kennewick concluding that the siding track will likely be removed. Do you see that?

A. I do.

Q. However, the railroad, TCRY, states it "actively

uses the siding track and will continue to do so in the future."

Do you see that?

A. I do.

Q. Now, this is the track that we're referring to, I've been referring to, as the passing track, which has two tracks at the location of the proposed crossing, one track that leaves the main track, goes over the crossing, and joins the main track again, correct?

A. Correct.

Q. That's what you understand this reference to be?

A. As the passing track.

Q. Yes. Now, you say here that the track belongs to the Port of Benton, and it is the Port of Benton's decision whether the track remains.

Do you see that?

A. I do.

Q. What did you base that conclusion on?

A. I base that on the data request responses that staff received in conjunction with this case.

Q. Which specific response did you have in mind?

A. I believe it was the ones provided by the Port of Benton.

Q. And is it your testimony that the Port of Benton asserted that it could decide to remove that track if they

wanted to?

A. I believe that their data requested that they had no intent of removing that track at this time.

Q. And you're aware that that track, in fact, is leased to Tri-City Railroad, correct?

A. Yes. Yes.

Q. Have you had an opportunity to review the Tri-City Railroad lease of that track?

A. I have not reviewed it in detail.

Q. So you don't know whether under that lease the Port of Benton has the right to require that that track be removed despite Tri-City Railroad's lease?

A. I do not. I do not recall.

MR. PETIT: That is all I have, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio?

MR. DIJULIO: Thank you, Judge Torem.

CROSS-EXAMINATION

BY MR. DIJULIO:

Q. Ms. Hunter, other than Chief Baynes, Skinner, Hines, and Hohenberg, are you aware of any other expert public safety testimony in the record of these proceedings?

A. I am not.

Q. You have participated, in your position with the WUTC, in other diagnostic meetings involving the Port of Benton TCRY line, have you not?

A. Yes.

Q. In fact, you were part of the diagnostic meeting with respect to some modifications to the Steptoe crossing, isn't that correct?

A. That's correct.

Q. And TCRY was invited to and participated in that meeting, isn't that correct?

A. That is correct.

Q. And you have no reason to believe that TCRY was not invited to participate in the diagnostic meeting with respect to the proposed Center Parkway crossing, do you?

A. That is correct in that when I attended the diagnostic meeting, we actually waited a few extra minutes to see if perhaps a representative might just be running late to that meeting.

Q. And the meeting minutes reflect the fact that they were invited, isn't that correct?

A. That's correct.

Q. As well as a representative of the Port of Benton?

A. Correct.

Q. Ms. Hunter, as part of your investigation of this application by Richland and Kennewick, did you evaluate the

incidents involving trains and pedestrians or trains and vehicles at other TCRY crossings?

A. Yes.

Q. And what did you learn or determine from that investigation? For example, the Steptoe crossing.

A. For example, we looked at the alternate route of Steptoe and looked at the accident history, and there have been no accidents that we could locate data on from the Federal Railroad Administration accident database, nor the commission's database on accident history.

Q. And is it, just to confirm, it is a requirement of federal and state regulations that such incidents be reported to the feds and to the state, is that correct?

A. That is correct.

Q. Did you have occasion to also evaluate the accident history on -- at other intersections along the TCRY route, other than the Steptoe crossing?

A. Beyond the Steptoe crossing?

Q. Yes.

A. Not that I recall right now.

Q. Thank you.

MR. DIJULIO: That's all I have. Thank you, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Smith.

MR. SMITH: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. SMITH:

Q. Ms. Hunter, in response to -- or Mr. Petit asked you a question about the characteristic of this crossing having the second track there.

Do you recall that, those questions?

A. Yes.

Q. And were there other examples of multiple tracks at-grade crossings in this state?

A. That exists with multiple track, one as a siding, or --

Q. Two mainline tracks.

A. Correct. Yes. There are many examples of that.

Q. And what are some of the characteristics of -- do you have an example?

A. Of a crossing that has multiple tracks? They are located throughout our state. For example, if you just picked a crossing in Puyallup, you have two mainline tracks that go through the city of Puyallup that are located in the downtown area. Very common.

Q. How many trains per day are on that corridor?

A. That example, there's upwards of 60 trains per day.

Q. And are there passenger trains on that line?

A. Yes, there are. There's Amtrak and Sound Transit that operates on that line.

Q. And do you know the speed those trains operate at?

A. I believe the freight operates at upwards of 40 miles per hour, and passenger Amtrak through that area is 70 miles per hour.

Q. And are any of the freight trains unit trains?

A. There's a mix of trains that traverse that line, including unit trains.

Q. Mr. DiJulio asked you some questions about other crossings along the TCRY route. Are you familiar with those crossings?

A. I'm familiar with the crossings just in this general area.

Q. And how far apart are those crossings?

A. The crossings that we're discussing around the proposed Center Parkway?

Q. No. In Kennewick or in Benton County.

A. If you just -- a few that come to mind for me would be crossings on Fruitland, Washington, and Benton, for example, BNSF crossings along the line through Kennewick.

Q. And what are the distances between those crossings, if you know?

A. They're approximately .12 miles or .12 miles apart. Excuse me. Let me correct that. .2 miles apart, a

little over a thousand feet.

MR. SMITH: Thank you, Your Honor. That's all I have.

ADMINISTRATIVE LAW JUDGE TOREM: Any ReCross?

MR. PETIT: No, Your Honor.

EXAMINATION

BY ADMINISTRATIVE LAW JUDGE TOREM:

Q. Ms. Hunter, I had a question just briefly as to the focus of your testimony and the change in position of the commission staff at this petition versus the one that the city previously filed in 2004, 2005.

A. Uh-huh.

Q. Shortly after your discussion of the previous administrative law judge's ruling, ending on page 17 in your testimony, you discuss the matter of acute public need, and then you go into crossing safety thereafter.

What's the commission's current position on acute public need? Starting on page 17 is where you build your opinion.

A. So it's my understanding the acute public need, the descriptor of acute associated with public need, was described in the previous docket in this case. It's also my

experience that it hasn't been the commission standard in the last dozen or so petitions to establish a new grade crossing.

What I have found that the commission's approach to new crossings is, is more of a balanced approach that takes into account factors such as emergency response time, reduction of emergency response time. Also it takes into account increased or more favorable traffic flow around the proposed crossing, also takes into account access to developable lands or access to services. And then the fourth criteria is really around have the site specific dangers of the proposed crossing been addressed adequately and really a balancing of that kind of four-pronged approach.

I use acute public need in my testimony in this case because it has been previously used in the 2004 case, so I -- and the petitioner in this case, as well as City of Kennewick, uses the acute public need.

Q. Do you recall whether the commission staff took a position as to acute public need previously in the 2004 case?

A. It's my understanding that commission staff did not participate in the hearing, did not offer any witnesses.

Q. On page 21 of your testimony, lines 10 to 13, that says that the commission does believe the current response times and improved response times, based on all of the police and fire chief traffic testimony you reviewed, do present an acute public need for the crossing.

Would you agree?

A. Yes.

Q. Having reviewed the previous decision and the testimony presented in this case, do you see a major difference in the situation presented almost a decade ago to what the city's petition presents today?

A. As I recall, the case that was put forth by the Cities of Kennewick and Richland previously, there wasn't evidence presented on reducing emergency response time as part of their case. I think that that's a tremendous factor to consider when looking at proposals such as this from a public safety standpoint.

And for commission staff, that is definitely one of the characteristics or qualities we look for when evaluating a petition for a new crossing. Just like we do if there's a proposal to close a crossing, what's the impact on emergency responders if that crossing is removed.

Q. You just said that you had four factors that the commission would balance in determining this acute public need determination.

A. Uh-huh.

Q. And in my review of your testimony, it only discussed the traffic -- sorry, the emergency response times. Did you also factor in traffic flow access issues and the safety mitigation?

A. I did.

Q. Where would I find those in your testimony as it regards acute public need?

A. They might not be included in the testimony if they're not laid out here.

Q. And I understand that you did look at the safety mitigation issues in the following testimony, starting at the bottom of page 21. That's explicitly laid out, but I did not see any references to acute public need, as you made that determination about the crossing mitigation for safety issues. I just want you to confirm if there's other places that relate any of the other factors to acute public need.

A. I think it is as you've outlined, Judge Torem. It is in the emergency response, and it is the proposed warning devices' description of those at the proposed crossing.

ADMINISTRATIVE LAW JUDGE TOREM: Those are all the questions I had.

Mr. Smith, did you want to Re-Direct on any of those?

MR. SMITH: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. SMITH

Q. Ms. Hunter, in response to Judge Torem's question about the current commission's position on the public needs standard in a grade crossing case, you described a balanced approach. And you discussed more recent decisions of the commission and the decision of the last petition for this crossing.

Are there other -- or how does the commission characterize its test in cases subsequent to this, the last petition prior to this crossing?

A. Can you restate that?

Q. Has the commission -- let me rephrase it. Has the commission consistently used the adjective "acute" in connection with the need element of the test for granting a new grade crossing?

A. No, they have not.

Q. Okay. What other adjectives or standards have they referred to?

A. Good cause shown, reasonable, consistent with public interest, public convenience and necessity. Yeah.

Q. Thank you. And Judge Torem also asked you about, you know, what's the difference between this petition and the prior petition.

A. Uh-huh.

Q. And let me ask you some questions along those lines. How many tracks were involved in the prior petition?

A. There were four tracks.

Q. And there are two in this petition, correct?

A. Correct.

Q. And how many railroads were conducting switching operations at this location during the last petition?

A. Three.

Q. And in the last case, did the cities present a clear case about what their -- what safety devices would be installed at the crossing?

A. No, they did not.

Q. Finally, in the response to another question from the judge, you indicated that the staff did not testify or participate in the last grade crossing case at this crossing.

A. That's correct.

Q. Okay. But just to be clear, the staff did file a legal brief at the end of that hearing.

A. Yeah. It's my understanding that Jonathan Thompson filed a legal brief, but commission staff did not testify. Mr. Thompson participated in the hearings.

MR. SMITH: That's all I had.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit, anything else?

MR. PETIT: Just a couple of follow up.

RECROSS-EXAMINATION

BY MR. PETIT:

Q. You just testified that commission staff did participate in the hearing in the form of the attorney who was present participated?

A. The attorney represented the commission.

Q. And that attorney representing the commission in the prior proceeding did not oppose -- or did oppose, rather, the granting of the crossing, correct?

A. That's correct.

Q. Now, you've testified that there'd been a change in the, basically, a change in the standard or the approach that the commission uses in evaluating the need or whether or not to grant a crossing petition such as the one we have in front of us, correct?

A. I reviewed the last eight or ten orders that the commission has approved construction of a new grade crossing, and that's what that statement is based upon, what I found in those previous commission orders.

Q. And I believe you testified that the approach that the commission has adopted is more of a balancing test, is

that right?

A. Correct.

Q. And just so I'm clear on what the factors are that you're referring to, would you reiterate those for me, please? I think you said emergency response was one of them?

A. Right. Reduction time of emergency response, improving traffic flow around the proposed crossing location, improved access to services and developable land, and then the last factor would be have the safety issues at the proposed crossing been properly mitigated.

Q. Now, in connection with your examination of this particular crossing application, did you articulate in your testimony at any place these factors of a balancing test and evaluate them in arriving at your conclusion in written testimony form?

A. Not thoroughly.

Q. You made reference to some of the elements, correct?

A. Correct.

Q. But you did not articulate the test that you're testifying about here today?

A. Not entirely.

Q. Did you articulate it at all?

A. I think Judge Torem touched on it when he talked about the first response and the proposed warning devices of

the crossing.

Q. But I'm talking about the test itself. In other words, did you provide testimony that this is the way in which you understand the commission now approaches evaluation on whether or not to grant an at-grade crossing petition, factors one, two, three, four?

A. No, not entirely.

MR. PETIT: That's all I have, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio?

RECROSS-EXAMINATION

BY MR. DIJULIO:

Q. In fact, Ms. Hunter, the phrase "acute public need" does not appear in RCW 81.63.020, does it?

A. That is correct.

Q. The term is "practicable," is it not?

A. Yes.

Q. And in your determination to -- the commission's determination, staff's determination to support the petition, it is your -- it is staff's position that the petition is supportable under acute public need, correct?

A. Correct.

Q. And it's also supportable under standards such as

good cause shown?

A. Yes.

Q. And public convenience and necessity?

A. Yes.

Q. As well as under any other balancing test that you suggested?

A. Yes.

MR. DIJULIO: Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Anything else for this witness?

MR. SMITH: No.

ADMINISTRATIVE LAW JUDGE TOREM: Great. Thank you, Ms. Hunter. Mr. Smith, I believe the only witness exhibits that had not been previously admitted were Ms. Hunter's 12 -- or KH-1T, her actual pre-filed testimony, and 11 subsequent supporting exhibits, so KH-2 through KH-12.

Do you want to move their admission at this time?

MR. SMITH: Yes, Your Honor, I move for admission.

ADMINISTRATIVE LAW JUDGE TOREM: Were there any objections to any of Ms. Hunter's exhibits?

MR. PETIT: None.

MR. DIJULIO: None from the cities.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. Hearing none, those 12 exhibits are admitted. And, Mr. Smith,

does commission staff have anything else for its case-in-chief?

MR. SMITH: No, Your Honor. The commission rests.

ADMINISTRATIVE LAW JUDGE TOREM: All right. And I think we're ready, Mr. Petit, for your case-in-chief. Do you want a moment to sort out the witness order, or are you ready to put one on right away?

MR. PETIT: I would like a minute to sort out the witness order, Your Honor. And in addition, I think it might be profitable to have a brief off-the-record discussion.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Let's take a brief recess, and give me a minute just to make a few notes, and then we'll take up your discussion. So if you could stay in place, we'll take up Mr. Petit's off-the-record discussions in about 30 seconds.

MR. PETIT: Okay.

(Short recess).

ADMINISTRATIVE LAW JUDGE TOREM: Back on the record, and have Mr. Norris be sworn in.

GARY NORRIS

called as a witness by the Respondent, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: Thank you.

If you'll have a seat and spell your first and last name for the court reporter.

THE WITNESS: First name is Gary, G-a-r-y, and my last name is Norris, N-o-r-r-i-s.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit.

MR. PETIT: Thank you, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: I believe your witness has in front of him his pre-filed testimony.

MR. PETIT: I'm going to hand it to him, as well.

Mr. Norris, I'm going to hand you two documents, one of them has been marked Exhibit Number GAN-1T, which is the pre-filed testimony of Gary Norris, and the second is marked GAN-2T, which is the pre-filed rebuttal testimony of Gary A. Norris.

Could you take a look at those, please, and tell me whether or not those are, in fact, your pre-filed testimony and whether you affirm the accuracy of those documents.

ADMINISTRATIVE LAW JUDGE TOREM: Let me just make a brief clerical correction, that they're both marked GAN-1T. I appended the R to the rebuttal testimony in the exhibit list.

MR. PETIT: All right. We will go with that, then, Your Honor, GAN-1TR for the rebuttal.

(Pause in the proceedings).

THE WITNESS: Yes, Your Honor, this is my testimony. I would like to make one little correction, though. In page 10 there is a -- on line 4, that should be SR 240, rather than SR 204.

ADMINISTRATIVE LAW JUDGE TOREM: All right. So the last number on line 4 of page 10 should be 240.

THE WITNESS: Correct.

ADMINISTRATIVE LAW JUDGE TOREM: I'm noting that on my copy of it. Thank you. Mr. Petit.

MR. PETIT: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. PETIT:

Q. Mr. Norris, there is a brief statement of your qualifications set forth in your testimony. In addition to the items that are cited there, have you had occasion to testify in administrative proceedings before this commission?

A. I have. I have approximately about a 10-year experience working with the Washington state rail office and the UTC in pursuing the Washington state goal to eliminate at grade crossings throughout the state.

Q. Mr. Norris, I'm going to ask you to please speak up a little bit because I'm having difficulty hearing you, and

I want to make sure everybody else can hear you, as well. In connection with those proceedings, sir, have you had the occasion to testify with respect to the standards that should be evaluated and the information that should be taken into consideration in connection with whether an at-grade crossing should be allowed or taken out?

A. Yes, Your Honor. In each case, there is extensive evaluation done of the various elements of consideration of closing a crossing to address the community and public need, as well as the safety of the crossing itself.

Q. Is it your opinion that the testimony that's been presented, both in writing and what you've -- let me back up a second.

You were present for the entirety of the testimony given yesterday by the witnesses for the City of Richland and Kennewick, correct?

A. Yes, I was.

Q. And you were present here this morning for the testimony of Ms. Hunter from the UTC staff, correct?

A. I was.

Q. And based upon the written testimony that has been filed and the oral testimony that you've heard in this hearing, do you have an opinion as to whether or not the cities have substantially produced evidence that would justify an at-grade crossing at Center Parkway?

A. Your Honor, my opinion in reviewing the documentation that's been provided to me by the city or through the city and the other participants in this hearing led to my conclusion that they have not provided sufficient documentation to warrant the opening of a crossing at this location.

Q. Well, let's start with one simple example of that. Are you aware of any requirement or recommendation in connection with the Manual on Uniform Traffic Control Devices that would pertain to evaluation of whether or not this crossing application should be admitted, should be permitted?

A. The Manual on Uniform Traffic Control Devices, in discussing at-grade railroad crossings, recommends that a benefit-cost analysis and an engineering study be conducted to determine if a crossing is warranted at that location.

Q. And could you recall the cite for that particular provision?

A. I believe it's section 8A.05.

Q. In reviewing all of the documentation that has been presented by the cities, the petitioners in this case, do you -- can you identify that they have fulfilled that requirement?

A. I cannot identify that they've done the necessary studies to document that there is a warrant for a crossing at this location.

Q. Now, what is your understanding of the response time criteria that we're dealing with here in connection with this crossing?

A. The response criteria as identified in the pre-filed testimony of the city and of the UTC participants indicated that the national standard requires a four-minute response time to 90 percent of the incidents that occur within the area.

The city has generalized that more to be a five-minute response time to 90 percent of the incidents for fire and emergency or aid car response and generally a five-minute response for the police events.

Q. Now, do you have any issues with the response time evidence that has been presented in connection with this application?

A. Yes. Actually, I have several issues with it. The first case we had talked about, the JUB study, that indicated a two-minute, I believe, and-48-second time crossing to -- with the new Center Parkway crossing. Again, that was only limited to a travel time study and did not address the 90 percent of the incidents that are occurring in the area, but cited specifically on the Holiday Inn as being the measurement of that travel time response.

Through that analysis, they went on to say that with the opening that it would provide a benefit over the

existing route to the Holiday Inn. Again, that was one location that was identified and does not represent 90 percent of the incidents that occur within this service area. If you looked at the basically 90 percent of the incidents occurring south of the existing railway track, we are well within the national standards for servicing emergency response in this area.

Q. Well, let's stop with that point, if we could, because I'd like to show you a graphic. Could we have our Exhibit 1. I'm going to show you what's been marked as and admitted into evidence as Exhibit JP-5-X. And would you take it to page 3?

Could you blow that up a little bit? That's good.

Do you recognize this map and diagram, Mr. Norris?

A. Yes, this is the exhibit that's presented in the JUB report.

Q. Now, in connection with this exhibit, it shows a study area in the yellow circle. Do you see -- or yellow oval.

Do you see that?

A. Yes, I do.

Q. And it also shows an area of improved response time in green.

Do you see that?

A. I do.

Q. Do you believe that the area in green actually would benefit in improved response time if the Center Parkway crossing were constructed?

A. No, I do not.

Q. And could you tell me why you have reached that conclusion?

A. Do you mind if I use your pointer?

Q. Yes, you can.

A. Your Honor, just in summary, what the JUB report had illustrated was that this area right here, the area in green, would be the improved service area with the extension of Center Parkway. I did not find that to be the case in my review of the information around the site and specifically the distance from the Quinault Avenue fire station, Kennewick station 63, through this route along Columbia Center Boulevard, through this series of -- I want to correct the record that yesterday it was stated by Mr. Baynes that this was a series of right turns.

In fact, a right turn normally constitutes a stop and a 90-degree turn to proceed onto the adjacent roadway. This is, in fact, a series of extended wide radiuses that allow the vehicle to travel through those curves at a relatively high rate of speed, comparing to having to stop and make a turn, a 90-degree turn. The only stop is required here when he enters Tapteal.

The measurement of the distance coming this way to Tapteal and Center Parkway versus coming this way along Quinault and up north Center Parkway to the same point is virtually the same distance. So there's really no benefit for anybody in here with the access, which is not showing on this area.

But then again, for anybody on this side of this point, the intersection of Tapteal and Center Parkway, is not benefited either because you have this route that can serve this area as well and can today. Looking at it from the Richland station side, if we come across here to the Gage and Steptoe intersection and then look at the distance from here across Gage Boulevard and up Center Parkway back to this point here of the Tapteal-Center Parkway intersection compared to the route of going -- of the Gage-Steptoe intersection, going north to Tapteal and Steptoe, the distance from Gage and Steptoe to Tapteal and Steptoe is the same, essentially, distance as from the Gage-Steptoe to the Center Parkway-Gage intersection. So essentially this distance is negated by this distance in the service from the Richland station.

So then we have to apply this distance that they're coming up Center Parkway and the new route along the Tapteal route, which brings us down into here somewhere. And what we found with a quick review of the Google map, of the distance to this point coming this way is about 13,000 feet,

and the distance from Steptoe and Gage coming this way is about 11,000 feet. So that gives us 2,000 feet difference between the service area that will be provided.

So coming this way from Richland, if this guy comes a thousand feet and the guy coming from the Steptoe -- or, excuse me, the Center Parkway-Tapteal intersection comes a thousand feet, they're going to meet. So about a thousand feet over here is really where the limits of service area is going to be improved as a result of the Richland station. There is no improvement from the Quinault Avenue station 63.

So we have a very limited secondary support service from that. Obviously, that leaves us with the only one that's really benefiting from this improved access here would be the Holiday Inn.

Q. Thank you, Mr. Norris. Now, just so that the record is clear, because you made reference to a number of "this" points and "that" points, when you're talking about the route from Richland 72 down Gage Boulevard and up to Steptoe versus the route down Gage Boulevard and up Center Parkway, is it your testimony, based upon what you just diagramed and showed for us there, that those distances are roughly equivalent?

A. From the Steptoe-Gage to the Center Parkway-Gage is equivalent to the Tapteal-Steptoe to Gage-Steptoe.

Q. Right. So -- and you testified that in terms of

response in connection with responding from Kennewick 63, that the -- there would be no improvement in service based upon the distance involved, should the Center Parkway be constructed, is that right?

A. To this point right here, the intersection of Tapteal and Center Parkway, there would be no improvement in travel time.

Q. All right.

A. Response time.

Q. Okay. Now, you can have a seat, then.

A. Okay.

MR. SMITH: Your Honor, I'm disinclined to question this, but I mean, we filed pre-filed testimony. We've been having basically Re-Direct here in the introduction of the witness for Cross, and I -- I'm just wondering how long we're going to go. I mean --

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit, that's a good question. It entered my mind as to how much Re-Direct we were going to do. If you could give us a time estimate, then I'll comment further.

MR. PETIT: I would think another 20 minutes would more than cover what I need to cover, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: And my understanding, Mr. Smith, is that Mr. Norris is not testifying on his -- what's already been submitted?

MR. DIJULIO: Well, I would join in Mr. Smith's objection in that so far, we haven't heard anything that isn't contained in either his Direct or rebuttal submissions. He's just simply restating the same information that's contained in there.

ADMINISTRATIVE LAW JUDGE TOREM: And my further comment to Mr. Petit was going to be that we would move quickly to Mr. Norris. The benefit of having heard the other testimony and anything that was in addition would be the better purpose of this time, and I'll be amenable to sustaining objections that it's not the -- what he's already saying is already in evidence and can be pointed to by the attorney, the objection would be sustained.

If he's commenting on other information that came in during the course of yesterday's and this morning's cross-examination, that will be allowed as appropriate for the scope of what we're doing here.

MR. PETIT: I understand, Your Honor, but I do believe this point about the equidistant access is not one that is addressed in either Mr. Norris's Direct testimony or rebuttal testimony. It is, in fact, based upon what we heard yesterday about response times and the evidence that was presented orally by the cities' witnesses.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Let's move along to the next point. I appreciate Mr. Norris

being able to point those things out and bring them into focus, but I want to make sure we have adequate time for the cross-examination of his pre-filed testimony and the further examination as the attorneys see fit.

MR. PETIT: I understand, Your Honor.

Q. Yesterday you heard Chief Baynes testify, and an exhibit was admitted yesterday which was a new exhibit called GAN-18-X. I'm going to hand you a copy of that.

Have you seen that document before?

A. Yes, I have.

Q. Okay. And in connection with that document, what did you understand that document to be?

A. I understood that this was a document presented by Chief Baynes to provide some additional information on response times for the service area we're talking about from the Richland and the Kennewick station.

Q. Okay. Now, if you would take a look at that exhibit. Is -- it's true that you did not have the benefit of this exhibit when you prepared your rebuttal testimony in this case, correct?

A. That's correct.

Q. And you understood that what Chief Baynes was doing here, in part, is addressed in the second paragraph. "We have looked at several addresses in the Tapteal area and then several addresses around the mall" -- "around the Mail By

the Mall, P.F. Chang's area, the existing Center Parkway, the route we will use with this crossing."

Do you have an opinion as to whether or not the addresses in question there would benefit from the crossing that we're talking about?

A. The addresses that are identified in that paragraph would not benefit by that crossing because they're all on the south side of the crossing itself.

Q. Now, you understand that Chief Baynes was providing different numbers than were provided in the JUB report regarding response time, correct?

A. Correct. I believe that Mr. Baynes was taking issue with the study time that was provided in the JUB report and was attempting to provide additional information which counteracts that information that was originally presented.

Q. And I believe that some of his testimony is contained in the last paragraph, he also testified to this orally yesterday, that responders crossing over the new crossing and bounding to Tapteal will still be about one minute better off, and I'm assuming that means with the crossing.

Do you read it that way?

A. That's the way I would interpret it. I would say this is a very confusing paragraph to try to understand just exactly what is being attempted with that, and I think that

was one of the primary reasons we walked through the discussion we just did was to try to help put some clarity into what we're talking about in regards to this issue.

Q. All right. Now, in connection with the data that was provided, the second and third pages of this Exhibit 18-X, GAN-18-X, do you believe that that data is sufficient to support any conclusions regarding response time?

A. No, I don't. I can't tell where the destinations are, where the responding vehicle was dispatched from, just what exactly is included in this. Does it include the 90 percent response that we're talking about? None of that information is presented in this discussion.

Q. In sum, do you believe that this Exhibit GAN-18-X shines any light at all on the response times?

A. No. In fact, I think it's more confusing than helpful.

Q. Now, I'd like to move to a different subject matter regarding reduction of congestion. You had an opportunity to address this in your pre-filed testimony, but in addition to that, you heard testimony in regard to that, correct?

A. That's correct.

Q. And in particular, you heard testimony about your conclusion that diverting traffic from a grade-separated crossing at Columbia Center Boulevard to an at-grade crossing

at Center Parkway would not result in any improvement in safety.

Do you remember hearing that testimony?

A. I do.

Q. Do you remember who gave that testimony?

A. I believe that was Spencer Montgomery.

Q. All right. Now, in connection with that testimony, did you have a chance last night to review a previously submitted Exhibit JD-3, which contains accident data on Columbia Center Boulevard?

A. Yes, I did.

Q. Now, the gist of Mr. Montgomery's testimony was to the effect that you were ignoring, in your conclusion about diverting traffic from Columbia Center to Center Parkway, you were ignoring vehicle-to-vehicle collisions and the danger of that, correct?

A. That's correct.

Q. Can you tell me, having reviewed the accident reports contained in Exhibit JD-3, whether there's any support to Mr. Montgomery's conclusion that there would be an increase in safety on Columbia Center as a result of construction of the Center Parkway crossing as it relates to vehicular collisions?

A. Well, there's two factors in that equation. The first factor would be, of course, the accidents that are

occurring on the corridor, and the information that I've been given in this accident report is a 12-year accident history at two intersections on Columbia Center Boulevard, which suggest that there's about 13 crashes per year on the Quinault intersection and about 14 at the Canal Street intersection.

The majority of these crashes are not injury crashes, only like an average of three injury per year and four at the other, at the Canal Street intersection. And that's -- with that equation, considering that against a potential for a fatal crash with a train and a car at the Center Parkway-Tapteal -- or Center Parkway crossing.

The other fact about this data is there's no understanding about how significant these crash histories are. The normal process in doing a crash analysis is to compare it to the amount of exposure that the intersection receives in terms of million entering vehicles. There's no analysis of that. We don't even know if these are significant rates for these intersections compared to a statewide average which suggests about one accident per million entering vehicles.

We don't have any of that analysis there to show us that this is a significant problem or not a significant problem. So there's no basis to make a determination.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Norris, you used the word, I think, the word "significant" in two different contexts. As you just stated it, are you talking

statistically significant in the numbers? Is that --

THE WITNESS: Yes.

ADMINISTRATIVE LAW JUDGE TOREM: And previously, perhaps I contorted it in my mind, you were referring to the degree of the accident, the more seriousness, injury accidents verus non-injury?

THE WITNESS: Correct.

ADMINISTRATIVE LAW JUDGE TOREM: So the significance you're referring to is the statistical basis for the analysis?

THE WITNESS: Right. Correct.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Thank you. Mr. Petit.

Q. (BY MR. PETIT:) Based upon your review of the accident data that's been provided in JD-3 and the testimony that you heard yesterday, do you have an opinion as to whether the cities have shown that construction of Center Parkway would reduce vehicle collisions on Columbia Center Drive?

A. I don't believe that they've made any attempt to analyze that or document that for the record, that that would be the case. There's other elements of their testimony that would lead one to believe that, in fact, there would not be any reduction in crash history as a result of the opening of Center Parkway.

Q. Now, you're familiar with the JUB report regarding

traffic analysis at intersections in connection with -- that was submitted in connection with this petition, correct?

A. I am.

Q. What intersections did the JUB report address in terms of traffic?

A. There was only one intersection, Your Honor, that was addressed in the JUB report in terms of a level of service or delay analysis, and that was the intersection of Tapteal and Center Parkway in the 2033 future horizon condition with the opening of the parkway. And for that analysis, they did a turning movement diagram and a level of service analysis which showed essentially that the intersection would operate at level of service C in the future.

Q. Now, speaking of level of service gradings, you heard testimony yesterday regarding level of service gradings and what it would take to go from one grade to another, correct?

A. Yes, I did. Mr. Montgomery mentioned that the difference in a level of service grade was about 10 percent. And that's not correct. There are essentially five levels of service grades from A to E, representing ultimate capacity of a roadway. And the hundred percent divided by five is 20 percent, is relatively different between level of service grade.

Q. So it's not 10 percent, it's 20 percent?

A. Correct.

Q. Now, you also heard some testimony yesterday about queueing effects on both sides of this crossing should there be -- should it be constructed and a train be passing through.

Do you remember that testimony?

A. Yes, I do.

Q. And could you --

A. Go ahead.

Q. Could you tell me, sir, what you understood that testimony to be?

A. Basically I understood the queueing from the track would be about 300 feet, which would not impact the Tapteal-Center Parkway intersection. And that was the only analysis that was deemed in the JUB report to be necessary for this analysis. However, a minor increase of 30 percent in delay time associated with a train could lead to a queue that would back up to the Center Parkway-Tapteal intersection.

Q. All right. Just for a reference, I'm referring now to -- let's see Exhibit --

ADMINISTRATIVE LAW JUDGE TOREM: This is JP-5-X, page 3.

Q. (BY MR. PETIT:) JP-5-X, which is up on the screen. And the reference, the queueing you're talking about is should the Center Parkway crossing be built within this yellow oval study area, the queueing of backup in the event of

a train crossing with the signal down up to the north on Center Parkway.

That's one queueing effect that will occur, correct?

A. Correct.

Q. And I believe you testified that you heard Mr. Montgomery testify to the effect that that would only be 300 feet or so?

A. The JUB report itself stated about 330 feet of queue would exist with the train traffic that was anticipated in their analysis.

Q. Okay.

A. That was essentially a two-minute delay.

Q. But Mr. Montgomery also addressed that issue yesterday in his testimony, correct?

A. Correct.

Q. Okay. Now, you just testified that a minor increase in that two-minute delay would result in queueing. What queueing are you referring to?

A. The queueing that we just mentioned was the one on Center Parkway emanating from the crossing, that would extend back to the intersection of Tapteal and Center Parkway. And the report estimated would be about 330 feet, which is about halfway back.

What we're saying, with a little additional

analysis, 30-second additional queueing time added to that, for about a two-minute-30-second train delay would result in a queue that would back up all the way to the Tapteal-Center Parkway intersection. This was the only queueing analysis that was done. There was no queueing analysis done for this distance, which should have also been included in any kind of evaluation of the impacts of the delay at the crossing.

The other point of analysis that should have been included would be the future projections for train traffic that could occur on that railway and the increased delay that would result from that, and what the impact of that increased delay would be on queueing at this intersection. There was no discussion of any of that.

Q. The other point, just so we have this clear, you again pointed to queueing, but did not identify the exact location of the queueing. You were talking about -- first we were talking about to the north.

Now you were talking about to the south of the proposed new crossing?

A. Correct. The south down to Gage.

Q. All right. And do you have an appreciation for the level of traffic on Gage? I mean, is that an arterial, is that a heavily traveled street?

A. It's a relatively heavy traveled street, correct. Five-lane arterial.

Q. And there was no analysis provided, either in Mr. Montgomery's testimony yesterday where he addressed queueing or in the JUB report, about the potential effect of traffic on Gage Avenue as a result of queueing from this crossing should there be a train passing through?

A. That's correct.

Q. Thank you. I'm going to show you also an exhibit that is -- that was not available prior to the time that you submitted your rebuttal testimony. It's been admitted as GAN-17-X. I believe I gave you a copy of that last night.

Do you have that?

A. Is that this one?

Q. That's it. Did you have an opportunity to review that exhibit?

A. Yes, I did.

Q. And it addresses the level of service grading for two different intersections, correct?

A. That's correct. For Columbia Center Boulevard at Quinault intersection and for Steptoe at Gage.

Q. And in connection with that, those conclusions, did you then go back to the traffic volumes that were identified in the JUB report and attempt to verify the accuracy of those conclusions?

A. I did not do a level of service analysis to attempt to document those conclusions. There was no

documentation presented with this e-mail to support these calculations of where these volumes came from or what process was used in level of service analysis or what -- substantiating the volumes. So there was no basis, really, to determine the accuracy or vet the information as provided here for inclusion as supporting documentation.

I would say, if you will, I could -- I would like to go through a little bit of the discussion of the volumes that we have here on the -- we can deal with that discussion, if you want.

Q. Please.

A. If I could use this --

MR. DIJULIO: I'm not sure there's a question before him. He answered the question. He did not do an LOS analysis. I'm not sure what the next question is.

Q. (BY MR. PETIT:) All right. The question is, is there -- do you have data that demonstrates the effect or lack of effect of the Center Parkway crossing on these LOS classifications?

A. Yes, I do, Your Honor.

Q. Would you tell the judge briefly what that data is?

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Norris, did you have this data when you prepared your testimony?

THE WITNESS: Did I have the data?

ADMINISTRATIVE LAW JUDGE TOREM: The data you're about to illustrate.

THE WITNESS: The data was presented in the JUB report that I'm going to rely on. I did not have the benefit of this level of service analysis or any discussion of that in the preparation of my testimony.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit, I'm going to just defer this discussion until after the other cross-examination. Because this is an area that he had the data, but he didn't have an assertion like we got yesterday in the GAN-17-X as to the LOS's.

MR. PETIT: Correct.

ADMINISTRATIVE LAW JUDGE TOREM: You've already made the point that there's no substantiation for these conclusions.

MR. PETIT: Correct.

ADMINISTRATIVE LAW JUDGE TOREM: And I can hear the wiggle of the chair for the objection coming, that I'm going to sustain, that says this is beyond the scope of yesterday's testimony. This is the direction that I wanted it. If on Re-Direct we need to have a further explanation, we can.

MR. PETIT: I understand, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: I think you've attacked the credibility of this. And rather than

belaboring it further, I'll wait until cross-exam is done. And if we haven't gone into it, maybe I'll entertain it at that time.

MR. PETIT: Thank you, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: So, sorry to steal your thunder, Mr. Norris. We may get to it again later.

Q. (BY MR. PETIT:) One final area, Mr. Norris. Did you independently evaluate an alternative emergency response route as a result of the testimony you heard yesterday in connection with the available response routes, from, in particular, Richland 72?

A. Yes, Your Honor. We did take a look at an alternative route to -- which would be non-impacted by an at-grade crossing.

Q. Let me show you what we are proposing to mark as GAN --

ADMINISTRATIVE LAW JUDGE TOREM: It would be 19-X if we're going to a new exhibit.

Q. (BY MR. PETIT:) 19-X.

A. I don't believe our graphic goes far enough to the north.

Q. We're going to get the right graphic. 43.

A. Okay. So --

Q. Let me just ask you a question, Mr. Norris. In response to my discussion with you last night and the

testimony that you heard yesterday about response times and alternative routes being available, did you undertake to plot another alternative route by which 72 could respond to the Tapteal area?

A. Yes, we did. We looked at the possibility from the Richland station 72, which is over here at, I believe it's -- can't see it on the map, but Gage, just north of Gage Street on Keene Road, which is over in this area (indicating).

If the response trucks came down to Leslie, I believe it's Leslie Road, and it came north that way and across on Oxford Avenue up to Columbia Park Trail and then down through the roundabout and over to Tapteal and down this way, the response time to the intersection of Center Parkway and Tapteal would be under the four-minute running time that was required as part of the city standard and the national standard.

Q. If that route were taken, would the emergency responders be required to cross any railroad crossing?

A. No, they would not.

MR. PETIT: Thank you, Mr. Norris. That's all I have.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio?

MR. DIJULIO: Judge, thank you.

CROSS-EXAMINATION

BY MR. DIJULIO:

Q. Mr. Norris, in your long list of experience, it doesn't include service as a police officer or firefighter, does it?

A. It does not.

Q. And when you say four minutes' running time in reference to proposed Exhibit GAN-19-X, that is a mathematical calculation based upon the distance from station 72 to a point to the north of Tapteal, is that correct?

A. That's correct, Your Honor.

Q. And what speed did you assume for that?

A. I used the speed that Chief Baynes had identified in his discussion yesterday of 28 miles an hour.

Q. Chief Baynes didn't use 28 miles per hour in his calculations at all. He was referring to the calculation that resulted from the analysis that was done by Mr. Montgomery, isn't that correct?

A. I'm not exactly sure of that. I heard the --

Q. Mr. Montgomery used speed limit, which was 30 miles per hour, didn't he?

A. He did not document the information that he had used.

Q. Okay. And Chief Baynes' testimony will show that

he did his own calculations from Mr. Montgomery's data and averaged out, based upon his calculations, at 28 and a half miles per hour.

Don't you recall that testimony?

A. I do recall that testimony.

Q. All right. And, in fact, the response times in actuality are substantially less. Excuse me, the response speed is substantially less than 28.5 miles her pour, isn't that the case?

A. I don't believe that's the case, and particularly not on these routes where you have 40-mile-an-hour posted speeds. And on Tapteal, you have virtually no traffic conflicting with emergency response.

And just as an example, this morning I had the opportunity, when leaving the hotel, to follow an emergency response vehicle on George Washington Boulevard, which has a posted speed of 35, and the fire truck was going on about 45 miles an hour. So I think there's ample reason to believe that they have the ability to go at least the posted speed, if not higher. And so the calculation that I made, I believe, was very conservative and leaves a lot of room for a reduced time.

Q. And how many lights in this alternative route at controlled intersections would they have to use?

A. I believe there's one light at the entrance to --

I'm not exactly sure. I think maybe Canyon Street.

Q. Let me ask the question differently, Mr. Norris. Do you know how many controlled intersections are passed as a result of this alternative route in your proposal?

A. When you speak of control, are you talking about traffic signal control, are you talking about stop sign control, or both?

Q. Both.

A. Both? I don't know the exact number, no.

Q. Okay. And your four-minute time is the same mathematical approach that Mr. Montgomery used, it did not include turnout time, is that correct?

A. The city standard, as Mr. Baynes was representing yesterday, was a four-minute travel time with a one-minute turnout time. The national standard is a four-minute travel time and did not include a turnout time, so --

Q. Thank you. By the way, Mr. Norris, when you were doing work with respect to rail crossing issues for WSDOT, did you have occasion to do work in Eastern Washington?

A. I'm trying to remember. I believe one occasion, I did, yes.

Q. Excuse me?

A. I do on one occasion, I believe I did, yes.

Q. What was the project?

A. I think it was a project down in Yakima with an

evaluation of grade crossing.

Q. Okay. And where are you currently living, sir?

A. I currently live in Preston, Washington.

Q. Let's begin with some basics. You would agree with me, would you not, that highway traffic collisions are a statistically rare event at rail crossings?

A. It depends on the crossing.

Q. Isn't it a standard that is recognized nationally that highway traffic collisions are a statistically rare event?

A. I'd have to go into that further before I answer that question.

Q. You're familiar with the U.S. DOT Railroad-Highway Grade Crossing Handbook?

A. Yes.

Q. And isn't that specifically stated in that handbook?

A. I believe it is.

Q. So you would agree that at least the U.S. DOT handbook says that highway traffic collisions are a statistically rare event?

A. I would agree that a generalized manual application for the country as a whole represents it in that manner, but I wouldn't say on a case-by-case basis that's necessarily the case, so you can't -- you can't apply that

thinking uniformly across the board and come up with the same result.

Q. You were employed by Renton for quite a while, is that correct?

A. That's correct.

Q. And you're familiar with all the at-grade crossings throughout the greater Kent-Renton-Auburn-Summer Valley?

A. Yes, I'm familiar with them. As an anecdote to that, I should state to you that the mayor of Renton informed me at one time there should never be another at-grade crossing in the state of Washington, so --

MR. DIJULIO: Objection, move to strike.

ADMINISTRATIVE LAW JUDGE TOREM: Granted. It was not responsive.

Q. (BY MR. DIJULIO:) Are you familiar with GAN-10-X, sir? Have you had a chance to look at that previously?

A. Yeah, I believe it's part of the pre-information that we reviewed.

Q. Thank you. And you are familiar with GAN-11-X, the report of reported incidents involving TCRY crossings?

A. Uh-huh.

Q. You've had a chance to consider that, as well?

A. Yes.

Q. Thank you. Mr. Norris, rail volumes are variable

over time, are they not?

A. Depends on the location.

Q. With increased pedestrian -- excuse me, use of commuter rail and other passenger rail on the west side of the state of Washington, for example, you have substantially increased use of the lines over there, don't you?

A. Yes, we have.

Q. This particular -- there's no passenger rail service on this TCRY line, is there?

A. Not to my knowledge, no.

Q. And so this is a freight-related service only, is that correct?

A. To my understanding, yes.

Q. Okay. Your understanding is based upon what TCRY has told you?

A. Right.

Q. By the way, you have not conducted any independent study of traffic counts or done intersection analysis in any part of your work in your engagement for TCRY, is that correct?

A. That's correct. My -- the whole emphasis of my work, Your Honor, was to evaluate the information that was provided to determine if, in fact, it documented an acute need for an additional crossing.

Q. And it's also -- I know your testimony today as

well as in your pre-filed testimony, is that you have not stated there is no acute public need applying that standard, but rather it is your professional judgment that the record does not support a showing of acute public need?

Am I stating your opinion correctly?

A. I believe you are.

Q. So while there may be acute public need, it is your opinion that it's not shown in the record?

A. That's my opinion. Of what I reviewed, yes.

Q. Okay. Mr. Norris, in your pre-filed testimony, as well as some of your testimony this morning, you commented on a lack of data provided in the report.

Is that accurate?

A. Yes.

Q. And you understand that a report does not necessarily contain all of the background documentation that may have gone into the conclusions of the report?

A. No, sir, I do not understand that to be the case. In fact, in virtually every engineering study that I have done or been involved with or reviewed, it always includes all the technical documentation to support the rationale of why a determination was made, why a specific analysis was concluded.

And all the information that supports that, leads up to that, is always included in a report, unless you're talking about a technical memo to a city council or something

like that. In any kind of a formal report, there's documentation to support it.

Q. And so you believe that this report was inadequate in not providing documentation for some of its conclusions, is that your testimony?

A. I not only believe that it was inadequate in not providing that documentation, I -- it was so generically presented in a way that I -- I couldn't even believe that the information had existed. It almost was like the analyzer was trying to avoid addressing the conditions that were necessary to support his conclusions in the analysis. So my only conclusion from that was that data did not exist and, therefore, they did not present it.

Q. Okay. You actually saw that data, and it did exist, didn't it?

A. No, it did not.

Q. Mr. Norris, were you informed by your client that it made a data request to the petitioners, the cities, for all of the background information regarding the JUB report?

A. Yes, I am aware of that.

Q. And do you know if that information was produced?

A. The information necessary to respond to the issues relevant to determining whether that crossing was necessary was not provided, and it was not included.

Q. Was that data sufficient to show the reduction in

traffic with and without the Center Parkway improvement to Tapteal on intersections surrounding the area?

A. No, it was not. And, in fact, Your Honor, what I was going -- about to do before we were cut off previously was show exactly how this report does not document those conditions. In fact, it suggests that there's no difference between the with and without condition of Center Parkway on Columbia Center Boulevard or on Tapteal to any great extent.

And, in fact, the volumes that are being increased as a result of this extension are impacting the intersection that was pointed out to us yesterday as being one of the deficient intersections in the city, being Gage and Steptoe. And virtually there's increase in the westbound approach with a conflicting movement to the southbound left turn, which was testified to yesterday as being a failing condition. Overall, that intersection has no significant benefit out of Center Parkway.

So the traffic study, the modeling that was done, shows no benefit of Center Parkway in doing anything to reduce congestion on what you might assume to be the congested routes, being Columbia Center Boulevard, has no documentation that supports that. In fact, shows there's no benefit to a congested intersection that they did show was an impact.

So I'm sitting here, and believe me, as a scientist, trying to evaluate this and make sense out of this,

all I'm hearing is rhetoric from the parties that are involved about how much better this is going to be, with no substantiation in fact that supports their contention.

MR. DIJULIO: Objection. Move to strike.

ADMINISTRATIVE LAW JUDGE TOREM: Overruled. He was responsive to the question. A little bit longer.

Q. (BY MR. DIJULIO:) Mr. Norris, I asked you a question about data. I did not ask you a question about the report. Let me ask you again.

Do you recall the separate production by the petitioners to TCRY's data request of backup data regarding work that was done in preparation of what has been referred to as the JUB report?

A. Yes.

Q. Okay. And you reviewed that data as part of your analysis?

A. Yes.

Q. And you still say there is no record of reduction in intersection volumes with and without the improvements? Is that your testimony?

A. That is my testimony.

ADMINISTRATIVE LAW JUDGE TOREM: Is that a new exhibit?

MR. DIJULIO: Yes, please.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. We'll

mark this as GAN-20-X.

Q. (BY MR. DIJULIO:) Mr. Norris, I've handed to you what is identified as UTC 001811 through UTC 001834. Do you have those in front of you, sir?

A. I do not.

Q. Excuse me. I should hand you one as well.

A. Thank you.

(Pause in the proceedings).

Q. You've seen all this documentation before, have you not, Mr. Norris?

A. Yes, I have.

Q. Okay. I'd refer you to 001825. I'm going to hand you a more legible version of that.

A. Thank you.

Q. That sheet has with and without impacts of the Center Parkway crossing under various planning scenarios, does it not?

A. Yes.

Q. Okay. So you were wrong in your testimony that there is not data provided regarding the difference in intersection traffic as a result of the Center Parkway improvement?

A. I understood your question to be did the documentation that was provided present a data that showed that there was an impact of providing the Center Parkway

extension. The data does not show that.

Q. The data shows the reduction in trips at those intersections with and without the Tapteal -- excuse me, the Center Parkway extension to Tapteal, isn't that correct?

A. No. What the data shows is the difference in volumes between the with and without Center Parkway extension. There is not necessarily a reduction in the volume attributed to Center Parkway at these locations. In fact, in some cases the volume goes up.

Q. I'll ask you a series of questions, Mr. Norris, regarding warrants for grade-separation crossings. The Center Parkway extension to Tapteal is not part of a designated national highway system, is it?

A. Not to my knowledge. I'm not aware whether it is or not.

Q. What is, in fact, the designation of this extension of Center Parkway to Tapteal?

A. I believe, Your Honor, the city has defined it as a minor arterial in their street network system.

Q. This Center Parkway area is not otherwise designated or designed to have partial controlled access, wasn't that correct?

A. A minor arterial normally has some limits on access control.

Q. This is not a controlled access road, is it?

A. It's defined as a minor arterial. By definition, a minor arterial has controlled access.

Q. All arterial streets have controlled access?

A. That is not correct. The Washington State Department of Transportation and the RCW define access control limits for different classifications of highways and streets. This is a minor arterial. It has a certain classification and certain access control associated with it.

Q. Okay. But this does not have partial controlled access as is currently -- as you understand the design, isn't that correct?

A. As it's designed today, no, it does not appear to have access control.

Q. The posted highway speed for this proposed improvement will not exceed 88 kilometers per hour, stated otherwise, 55 miles per hour?

A. I have not seen any information on the design speed.

Q. You don't know it to be in excess of 55 miles per hour, do you?

A. I do not know it to be in excess of 55.

Q. The average annual daily trip for this Center Parkway extension will not exceed 50,000, is that correct?

A. I -- I haven't looked at the ultimate design volumes. You're grasping at numbers that are -- aren't

relevant to the discussion.

Q. Excuse me, sir, but doesn't the U.S. DOT Railroad-Highway Grade Crossing Handbook provide a specific set of warrants to determine whether a grade separation should be provided?

A. Yes, it does.

Q. Okay. And aren't the first four warrants that I've identified part of those --

A. Yes, they are.

Q. -- material? Is the maximum authorized train speed in this area of the TCRY track in excess of 161 kilometers per hour or a hundred miles per hour?

A. I don't believe it is, no.

Q. Do an average of 75 or more trains per day, or 150 million gross tons per year, use this track or will use this track in any foreseeable future?

A. Not to my knowledge. I don't have knowledge of the ultimate plans.

Q. The seventh warrant is an average of 50 or more passenger trains per day in an urban area. There won't be that on this crossing, will there?

A. I don't believe so.

Q. In terms of crossing exposure, which is the product of the number of trains per day and the average annual daily trips, will not exceed 500,000, isn't that correct?

A. I believe that's true.

Q. Passenger train exposure will not exceed; that is, the product of the number of passenger trains in AADT will not exceed 400,000 in this? That's a given in this case without any passenger trains?

A. Right. Correct.

Q. The expected accident frequency offered for, EAF, for active devices and gauges calculated by the U.S. DOT accident prediction formula, including five-year accident history, exceeds 0.2.

Doesn't exist here, does it?

A. No, it does not.

Q. The vehicle delay exceeding 10 vehicle hours per day is not present currently or predicted any time in the future?

A. That analysis is not done, Your Honor, to determine that.

Q. You're not aware of that, are you?

A. It was not in the information I received.

Q. Okay. And it's not analysis that you performed, is it?

A. No, I did not.

Q. And an engineering study indicates that an absence of grade-separation structure will result in the highway facility performing at a level of service below its intended

minimum design level 10 percent or more of the time. You have no information regarding that, do you?

A. I do not.

MR. DIJULIO: Thank you. That's all I have for this witness, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Smith.

MR. SMITH: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SMITH:

Q. Good morning, Mr. Norris.

A. Good morning.

Q. Do you have, or could I ask you to turn to page 4 of your rebuttal testimony. And if I could direct you to lines 7 through 14. And there you quote from the initial order in Docket Number TR-040664, is that correct?

A. That's correct.

Q. And the first step, as you quote there, in the analysis of a new crossing looks at whether the site specific dangers of the crossing are moderated to the extent possible with modern design and signals, is that correct?

A. That's correct.

Q. And you do not address that prong of the test in

your testimony, is that correct?

A. No, I did not.

Q. I'm sorry to jump around, but I think it's the last time. If you could turn to your rebuttal testimony, page 2, lines 22 and 23. You use the adjectives, quote, extremely great or serious and crucial or critical, closed quote, to describe the level of need a petitioner must show in a grade opening case, is that correct?

A. Yes.

Q. And using those adjectives and those put forth in your testimony, you're not quoting from the commission report, are you?

A. In terms of the definition?

Q. Those adjectives, yes.

A. Well, the acute public need is a quote from -- but in terms of the definition, that's a dictionary.com definition of acute.

Q. But the term or phrase, extremely great or serious, crucial, or critical, did you get those from any commission order?

A. No, I did not.

Q. On that same page of your rebuttal testimony, line 21 through 23, you state, "In my opinion, none of the testimony in this proceeding demonstrates any need for the subject crossing."

Do you see that?

A. Yes.

Q. And by saying that, I take it you are completely discounting the testimony of the director of fire and emergency services for the City of Richland, chief of police for the City of Richland, the fire chief for the City of Kent (sic), and the chief of police for the City of Kent (sic), is that correct?

A. City of Kennewick?

Q. Sorry, Kennewick, yes.

A. No, I took all that information into consideration. And there was no really documented conclusions, other than comments made regarding the additional new route that would be opened up. If we opened up new routes every time we wanted to have improved service -- that's why we have set standards, that's why we do benefit-cost analyses, to determine if they're effective in achieving the goals and the investment of public funds to these improvements.

Q. My question, sir, was when you say that none of the testimony in this proceeding demonstrates any need for the subject crossing, when you use "none," I take it you're completely discounting the testimony of the first responders, is that correct?

A. That's correct.

Q. And in your analysis of the need for the Center

Parkway crossing, you did not balance any public safety benefit from enhanced response times of first responders around the crossing against any increased public danger related to opening the grade crossing at Center Parkway, is that correct?

A. I'm not quite sure I understand your question.

Q. Okay. When you looked at -- when you -- you -- did you balance the increased safety by increased response times, faster response times of first responders around that area, did you balance that against the danger of opening a new crossing at that spot?

A. As we've talked about, there's no increased benefit to response times as a result of this action.

Q. Page 12 of your testimony, lines 4 through 19. Excuse me, 4 through 9.

A. Page 12?

Q. Yes.

A. Of the pre-filed or the rebuttal?

Q. Of the Direct.

A. Okay.

Q. At lines 4 through 19 (sic) you discuss your participation in the Target Zero Program. Do you see that?

A. Yes.

Q. And when you're discussing the number of acceptable fatalities in the United States annually, are you

-- are you limiting your use of the term fatalities to train crossing fatalities?

A. No, it's total fatality.

Q. And as a member of the Target Zero Program, are you familiar with target zero strategy to focus on the four E's?

A. Yes.

Q. Can you tell us what they are? I'm sorry, if you know them off the top of your head.

A. Well, it's engineering records, funding of engineering improvements for crossings.

Q. One is also emergency medical services response times?

A. Right.

Q. And I'll ask you to turn to page 5 of your Direct testimony. Line 22. You agreed that the new crossing may improve access times to certain locations, but you go on to downplay the value of the new crossing as an emergency route because of the unpredictability of train delays, is that correct?

A. That's correct.

Q. And the unpredictability of train delays is a factor that applies to all grade crossings, is it not?

A. That's correct. The other side of that issue is, though, there is routes to these areas that are not impacted

by grade crossings that could be selected by the response.

Q. And on page 6, lines 6 through 11, you state that train traffic is likely to increase substantially in the future, is that correct?

A. That is my understanding, correct.

Q. And you cite the responses of the TCRR two data requests as the source of this projection, is that correct?

A. That's correct.

Q. And your testimony presents no independent basis for this projection, is that correct?

A. That's correct.

Q. If you'd turn to page 2 of your Direct testimony. I'm sorry, that would be your rebuttal testimony.

A. Page 2 of the rebuttal?

Q. Yes. Lines 15 through 17. You criticize that part of Ms. Hunter's testimony that deals with the diagnostic review conducted for the proposed crossing because a diagnostic review does not address whether the new crossing is required.

Do you see that?

A. Yes.

Q. And was it your understanding that portion of Ms. Hunter's testimony was directed to the need for the new crossing?

A. I understood that that -- her part of the

testimony in the diagnostic review was to look at the devices that could be installed in there to mitigate the impacts of that crossing, not whether the crossing was needed or not.

Q. Thank you. That's all I have.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit, any Re-Direct?

MR. PETIT: Could you give me a second, Your Honor?

(Pause in the proceedings).

MR. PETIT: No, Your Honor, I do not.

ADMINISTRATIVE LAW JUDGE TOREM: All right. I think for this witness we had Mr. Norris's pre-filed Direct and rebuttal testimony, GAN-1T and 1TR, as well as two new exhibits that were introduced on cross-exam, GAN-19-X, which was a one-page document regarding a proposed alternate route, and GAN-20-X, which I think, if my count is correct, is 24 pages of responses to data requests that Mr. DiJulio used.

Is there any objection to admitting these, I think it's four total exhibits, to the record?

MR. PETIT: Could you give us the numbers again, Judge?

ADMINISTRATIVE LAW JUDGE TOREM: GAN-1T and 1TR.

MR. PETIT: Right.

ADMINISTRATIVE LAW JUDGE TOREM: GAN-19-X and

20-X, and let me go back and also add GAN-10-X and 11-X were also cited and introduced to the witness during this course. Any objections to those six exhibits?

MR. PETIT: No, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio?

MR. DIJULIO: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: And Mr. Smith?

MR. SMITH: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio, can you provide me a more legible copy of that particular page of GAN-20-X at some point later in the day?

MR. DIJULIO: I can do that right now.

ADMINISTRATIVE LAW JUDGE TOREM: I think in the course of discovery all of you probably have a more legible copy than the one I got.

MR. DIJULIO: It's in the data production. Just for the purposes of meeting the 8 by 10 requirement, that's how it was produced.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Thank you for the much larger copy. I'm going to include this with my copy of the exhibit. And if it is referenced at all in my -- in your briefs or if it's referenced in my opinion, then I'll make sure we get a blown up copy of this into the record itself.

All right. We're at about noon at this point. Mr. Norris, you can step down. Thank you.

How do you propose we proceed, Mr. Petit? Did you want to wait until after lunch to take the two witnesses of the city.

MR. PETIT: I think that would make sense.

MR. DIJULIO: How long do you think you're going to have for Mr. King?

MR. PETIT: Maybe ten minutes.

MR. DIJULIO: He's here. We could get him. He is the assistant city manager, but he should be able to --

ADMINISTRATIVE LAW JUDGE TOREM: If he's here, is there any concern with putting him on now rather than having him come back again after lunch?

MR. PETIT: Use of the washroom, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: All right. We'll take a five-minute comfort break, and then we'll come back with Mr. King in five minutes.

(Short recess).

ADMINISTRATIVE LAW JUDGE TOREM: All right. We're back on the record. We're going to take one more witness before the lunch break, Mr. Bill King, I believe from the City of Richland. Sir, if you would raise your right hand.

WILLIAM KING

called as a witness by the Respondent, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: Please have a seat and state and spell your name for the record.

THE WITNESS: It's William King, W-i-l-l-i-a-m, K-i-n-g.

DIRECT EXAMINATION

BY MR. PETIT:

Q. Mr. King, how are you?

A. Good, thank you.

Q. Could you state what your position is with the City of Richland?

A. I'm the deputy city manager, generally responsible for community development activities in the city.

Q. And in that capacity, are you familiar with a project, a rail loop in the Horn Rapids Industrial Park that is currently before the city council? In fact, it was voted on last night by the city council?

A. I am.

Q. I'm going to show you what's been marked and

admitted as KJ -- Exhibit KJ-14-X, and ask if you recognize that as the documentation that was posted on the city's website in connection with this rail loop that was voted on at the city council meeting last night. You know, it'd probably be easier if you could look at the one with the staple on it so you don't have to be bothered by the clip.

A. Okay. So I recognize this as some of the documentation that was presented to city council. This seems to include a report to the economic development committee and at least draft versions, if not the final versions, of several contracts related to this matter.

Q. And those -- I believe these are the final versions that were voted on last night because these were taken by us from the website Monday morning. Do you have any reason to doubt that?

A. There were some minor changes introduced during the public meeting last night that were incorporated in the final approved version.

Q. Okay. But the documents themselves as they relate to the loop involved, number one, a lease of the property upon which a rail loop will be constructed and, number two, the sale of approximately 25 acres to the party that is going to develop and build the rail loop, is that correct?

A. That's correct.

Q. Now, Braden, could we have page 27?

I'm showing you what's been marked, what is page 27 of the exhibit you have in front of you, sir. And would you agree with me that that is an exhibit to one of these agreements, that shows the rail loop that was voted on and approved by the city council last night?

A. Yes, I think this is one of several exhibits relating to that, yes.

Q. Would you agree with me that that's a fair representation of the plan?

A. Yes.

Q. Which would include a mile-and-a-half rail loop and ancillary trackage connecting to the Horn Rapids -- Horn Rapids spur and ultimately to the Port of Benton railroad, correct?

A. Yeah, that would be correct.

Q. Now, in connection with that lease to construct a rail loop, are you familiar with the -- an Exhibit B that relates to what kinds of uses the loop can be put to in terms of rail cars and trains going over it, what kind of products can be brought in?

A. I'm somewhat familiar with that.

Q. Page 28. I'm referring to the small numbers at the bottom.

A. Since there's multiple agreements, there's more than one page 28, so -- sorry, if you can help direct me to

which page 28 you're talking about. Okay. I see this on page 23 of --

Q. I apologize for this, but here's one that's numbered at the bottom. These are --

A. Oh, I see. Your Exhibit 28.

Q. Yes.

A. Okay.

ADMINISTRATIVE LAW JUDGE TOREM: So we're on KJ-14-X, for the record, page 28 of that exhibit.

MR. PETIT: Yes, and that is the Bates number, applied number, not the number of the document itself.

Braden, if you could raise it up so the judge can see what I'm talking about.

THE WITNESS: Yes.

Q. (BY MR. PETIT:) All right. Looking at that page 28 of this exhibit, Mr. King, you see there that one of the items that is a permitted use for this new rail loop, in terms of products to be brought in, is containerized items for companies such as Wal-Mart, Target, Costco, etc.?

A. I do.

Q. Okay. Now, do you recall that you gave a statement or appeared in a television clip, news clip, in connection with this rail loop recently?

A. I was interviewed a few weeks ago on this matter, yes.

Q. All right.

MR. PETIT: This is a very short video clip, Your Honor, and I would like to play it at this time. It is the TCRY's cross-exam Exhibit 41, which we would like then to number in the next logical number sequence.

ADMINISTRATIVE LAW JUDGE TOREM: Before we hit play on that, this looks like it would be previously marked as JD-39-X. It's the television news interview by Mr. King on the new rail loop.

MR. PETIT: JD --

ADMINISTRATIVE LAW JUDGE TOREM: I'm sorry, it's JD-39-X.

MR. PETIT: Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Let's play the video.

(Video played).

MR. PETIT: Okay.

ADMINISTRATIVE LAW JUDGE TOREM: We've completed the video. Let's go back to the examination.

Q. (BY MR. PETIT:) There's two parts of the video that I want to focus on, Mr. King. First of all, the reporter, Mr. Chick, I believe his name is, made some statements about containerized mod -- what amounts to modular train use of this loop, correct?

A. He seemed to, yes.

Q. Yes. And is that based upon information that you gave him?

A. I did not talk to him directly. I talked to another reporter for the station.

Q. Did you tell that reporter that one of the uses for this loop would be as a container collection and shipment facility?

A. I don't recall specifically saying that, no.

Q. You agree with me, though, that Exhibit B that you have in front of you does, in fact, contemplate that use for this loop, correct?

A. Among many others, yes.

Q. Many others, including agricultural products, correct?

A. Yes.

Q. And including fertilizers and phosphates and other agricultural related products, correct?

A. Yes.

Q. As well as non-agricultural products including metal goods and lumber, machinery, and so forth, correct?

A. Yes.

Q. And in addition to that, fuel such as ethanol diesel?

A. Potentially.

Q. In fact, it contains on page 29 a list of

non-permitted uses?

A. Yes.

Q. Which would be coal, radioactive waste, hazardous waste, and any other product that the city determines is a dust or odor nuisance per city code. Do you see that?

A. Yes.

Q. But on Exhibit B, which is on page 28, it states that this permitted uses list is not meant to be exclusive of products outside of the not allowed list, which is Exhibit C, correct?

A. Yes.

Q. So in addition to the enumerated uses on Exhibit B, there could be additional products that would be brought into this loop via train, that would be allowed pursuant to this lease agreement, correct?

A. Potentially.

MR. PETIT: That's all I have, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: Any additional questions for this witness from the city?

MR. DIJULIO: None from the city.

ADMINISTRATIVE LAW JUDGE TOREM: From the commission?

MR. SMITH: No, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Mr. King, thank you very much for your time. You can step

down.

Counsel, on my watch it's approaching 12:20. I would suggest we come back at 1:30 and be ready if Mr. Ballew is ready at 1:30 and proceed from there. Is that acceptable?

MR. PETIT: Yes, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: We're at recess for the next hour and 10 minutes.

(Lunch recess).

ADMINISTRATIVE LAW JUDGE TOREM: We'll be back on the record and call Gary Ballew.

Sir, if you'll approach the witness chair and raise your right hand.

GARY BALLEW

called as a witness by the Respondent, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: Please have a seat. State your first name and your last name and spell both for the record.

THE WITNESS: Gary Ballew, G-a-r-y, B-a-l-l-e-w.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit.

MR. PETIT: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. PETIT:

Q. Mr. Ballew, how are you?

A. Good.

Q. We know each other.

A. Uh-huh.

Q. For a number of years, correct?

A. Correct.

Q. What is your current capacity with the City of Richland?

A. I'm the economic development manager for the city of Richland.

Q. And what does that position entail?

A. A number of different activities related to economic development throughout the city, recruitment of industries, business support activities, managing the real estate, the surplus real estate assets the city has, working on the research district, wine science center is one of my projects right now, and lead for the city's efforts on broadband, and probably like a slew of other things in there. Actually, right now I manage the housing project, as well.

Q. In your capacity as the economic development manager, have you had participation in the development of Horn Rapids Industrial Park as it relates to rail facilities?

A. Yes, I have.

Q. And in particular, I'd like to direct your attention to two specific rail facilities. First of all, a proposed ConAgra cold storage warehouse facility.

Are you familiar with that?

A. Yes, I am.

Q. And is that to be constructed on some property on which the ConAgra company has entered into an agreement to purchase from the city of Richland?

A. Yes, it is.

Q. And the second project that I'm going to be asking you questions about is one that is in the news today. That is a 1.5-mile rail loop to be constructed pretty much adjacent to the ConAgra cold storage facility, correct?

A. That's correct.

Q. And so that we can get an orientation on this, I'd like to show you what is in evidence as Exhibit 10-X -- I'm sorry, JD-10-X. And if you would turn to page -- I'll give you the page.

First of all, before -- before looking at that page that I identified for you, you're familiar with what this draft agreement relates to?

A. Yes, I am.

Q. All right. And could you tell us what it relates to?

A. It is a site development agreement. It is a draft that is under negotiation between the City of Richland and ConAgra Foods Lamb-Weston. It's in relationship to the automated cold storage warehouse project.

Q. The one that you had previously testified regarding in response to my question, correct?

A. Correct.

Q. Okay. And before I ask you questions about that exhibit, I'd like to show you what's been marked as and in evidence as Exhibit JD-9-X, an agreement for purchase and sale of real property.

Is that the real estate contract between the City of Richland and ConAgra Foods that relates to the construction of this cold storage facility that we're talking about?

A. It is.

Q. Now, I'll take that off your hands. I'm not going to ask you any more questions about it.

A. Okay.

Q. If you turn to the page I identified, the color drawing which is up on the screen, as well, the ConAgra facility is located or is to be located in roughly the same vicinity as the 1.5-mile rail loop, correct?

A. Correct. As you look at this map, the site labeled under contract, 80 acres, the 80 acres with the writing running north south, is the 80 acres that's in the

purchase and sale agreement.

Q. Am I pointing to it on the screen?

A. Yes, sir.

Q. Okay. And there's an additional 80 acres to the south. That's a property on which ConAgra has an option to purchase, correct?

A. That is correct.

Q. Okay. And this drawing shows some rough depiction of rail track feeding into this facility or into this property that ConAgra has a contract to purchase from the City of Richland, correct?

A. Correct.

Q. Is it your understanding that that facility is to be serviced by rail?

A. Yes.

Q. Is it your understanding that that facility is to be serviced by any unit trains?

A. No.

Q. So this would be less than unit train traffic that would be going through that rail system that's depicted on this exhibit, correct?

A. Correct.

Q. Has the city done any studies to determine what the anticipated volume of rail traffic would be coming into that ConAgra facility, assuming that it is built?

A. We haven't conducted a study. We've had discussions with ConAgra as well as their third parties.

Q. And as a result of those discussions, has the city come to any conclusion as to the volume of rail traffic that could be anticipated if this cold storage facility is, in fact, built?

A. We did have an initial estimate. That was with a third-party called -- I'm trying to remember the company name. It's a Dutch company. And when I say third party, ConAgra will actually transfer this purchase and sale agreement to a third party, or transfer the land to a third party who will build, own, and operate this cold storage facility.

So this first company was a Dutch company. The rail design you see came from their initial work. They estimated, I want to say, 30 cars a week could be generated from the facility. The new third party, which is -- has not provided an estimate to us.

Q. So the Dutch company is out, as I understand it?

A. That's up to ConAgra, but right now they have indicated this other -- other party is their preferred third party.

Q. Okay. Irrespective of the number of cars that we're talking about here, there's no question that this facility, if constructed, will generate additional rail traffic, correct?

A. Correct.

Q. And that would be over the Horn Rapids spur, which comes off of the Port of Benton line, correct?

A. Correct.

Q. And is there any way to get to that facility that would not require a train to cross the proposed Center Parkway crossing?

A. No.

Q. You can hang on to that.

A. Okay.

Q. I'm going to show you now what's been admitted as Exhibit JD-38-X.

If we could have number 40, Braden.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit?

MR. PETIT: Yes, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: This Exhibit JD-38-X, as well as the one you just referenced, JD-9-X --

MR. PETIT: Right.

ADMINISTRATIVE LAW JUDGE TOREM: -- are marked, but not yet admitted. So I just want to be clear so there's not any confusion, I'm going to ask you about it later.

MR. PETIT: Got it.

Q. Just one additional question before we move on, then. I'm going to show you again what's been marked for

identification as Exhibit JD-9-X. I think you already told me that that is a copy, appears to be an accurate copy of the agreement between City of Richland and ConAgra to sell the property we've identified on the exhibit, correct?

A. Yes.

Q. Now, going back to what's been marked for identification as JD-38-X, it's entitled, "Horn Rapids rail loop, November 13, 2013."

You recognize this document?

A. Yes, I do.

Q. In fact, it's slides from a PowerPoint presentation that you gave --

A. Correct.

Q. -- on November 13th, last week?

A. Yes.

Q. Who did you give it to?

A. Port of Benton commissioners.

Q. And where did that presentation occur?

A. At the Port of Benton offices in north Richland.

Q. And did you strive, in preparing this set of slides that ended up as a PowerPoint presentation, to be as accurate as possible in the presentation that you made?

A. I did strive to, yes.

Q. Now, if you could turn to the third page of that exhibit entitled, "A brief rail loop history." If you could

take a look at the second entry under 2012. It states, "BNSF and UP enter agreements with city to access Horn Rapids spur, agree to not switch cars at Center Parkway."

Do you see that?

A. That is correct.

Q. All right. Now, those agreements were agreements that allowed those two railroads to actually run on the Horn Rapids spur, correct?

A. Those were track use agreements, yes.

Q. Track use agreements. And as part of those track use agreements, each of those railroads, the BN and the UP, agreed, in addition to not switching cars at Center Parkway, they also agreed to not oppose the pending petition that we're here about today to build a Center Parkway crossing, correct?

A. That is my understanding, yes.

Q. Now, at this location where the proposed Center Parkway crossing is to be built, you understand that previously there were four tracks, correct?

A. I don't know the number of tracks that were at the Center Parkway crossing.

Q. Did you know there were tracks that were located there that were actually owned by the Union Pacific?

A. Yes.

Q. Are you aware that the city entered into an arrangement with Union Pacific to acquire -- not only to have

the Union Pacific move its interchange point, but also to acquire the land on which those tracks were located?

A. I'm aware of it.

Q. Okay. Can you tell us how much the City of Richland paid for that bundle of rights, the right to not have UP oppose this petition, the right to remove the interchange point, and the right to the land on which those rails were located?

A. I cannot. I don't know what that number is.

Q. It would seem strange to me that you, as the economic development manager, would not know that number. Is there some reason why you don't know it?

A. Well, I did know it. I don't recall it now.

Q. Is it more than a million dollars?

A. I -- I know it's in the million arena, approximately. I don't -- and that's a rough recollection on my part.

Q. All right. Now, if you would turn to the next page. It is entitled, "Why do we want a rail loop?" You make reference there to two regional economic engines, technology and agriculture, correct?

A. Correct.

Q. And the technology that you're referring to is at least based in part on the Hanford facility?

A. At least in part, yes.

Q. And the agriculture that you refer to is based upon the irrigated land agriculture that basically surrounds this area, correct?

A. Correct.

Q. Now, you state, then, "North Richland" -- and by that, I'm assuming you mean the northern area of Richland?

A. Uh-huh.

Q. Is that correct?

A. That's correct, yes.

Q. "Has competitive advantage with dual rail service, both BNSF and UP."

Do you see that?

A. Yes.

Q. And you've been aware of that for a number of years, haven't you?

A. Yes.

Q. Okay. And in fact, you were present when the Port of Benton's rail consultant, Tangent, Ann-Marie Lundberg from Tangent, made a presentation to the city council members in a session before the city council meeting last week, or on November 5th, in which the details were discussed about upgrading the Port of Benton rail to handle more rail traffic, correct?

A. Correct.

Q. In fact, you introduced her to that -- to speak to

that assembly, correct?

A. I did, yes.

Q. And she made the point that, in that presentation, that, first of all, BNSF and UP are the two largest class 1 railroads in the country, correct?

A. I don't have her presentation in front of me, so I can't -- I can't --

Q. You don't recall that?

A. I don't recall the specifics of her presentation, no.

Q. Well, isn't it also true that in addition to having dual rail service, the northern Richland area also has land available for industrial development adjacent to rail?

A. Yes, it does.

Q. And that makes the Horn Rapids Industrial Park, as you call it -- well, you don't call it that. That makes the Horn Rapids Industrial Park an attractive place for businesses to locate that will be serviced by rail?

A. We certainly hope so, yes.

Q. And part of what you do is to, in fact, attract those businesses, based upon those attributes, correct?

A. Yes.

Q. And you then go on to say that "A rail loop provides an attractor for agricultural investments, lower input pricing, provides for inventory diversity, creates

arbitrage opportunities for exports, lowers shipping costs of mid Columbia products."

Do you see that?

A. Yes, I do.

Q. And that is all attributes that would pertain to a rail loop that would be constructed in the Horn Rapids Industrial Park area, correct?

A. Correct.

Q. So, in fact, the City of Richland -- let me withdraw that question.

The next page, which for some reason I'm not exactly sure why it got copied the way it did, but the heading seems to have gotten blotted out. Project at something?

A. Project-at-a-Glance was the title of that, and there's animations in the PowerPoint. So as we went through the slides, certain photos would come up or diagrams would come up.

Q. All right. So you described what you referred to as deal drivers, an accessible rail loop, some city control, encourage development, an out clause, limit the risk, and the deal has to stand on its own.

Correct?

A. Correct.

Q. And the deal that you eventually put together with the company that is going to construct this rail loop, do you

believe that it has all of those deal driver elements in it?

A. Yes.

Q. Now, you're describing the deal here as involving the transfer of 25 acres. We're talking about the sale of 25 acres of land, correct?

A. We use the term Washington Transfer as shorthand for Central Washington Transfer Terminal, LLC, which is the company that I believe we -- that purchase and sale agreement was with. I think I have the name correct.

Q. I'm going to show you what's been marked as Exhibit KJ-14-X. Is that right, KJ-14?

MS. PHOTIDES: Uh-huh.

MR. PETIT: Okay.

Q. We obtained that document by going to the City of Richland's website and downloading the documentation that was posted there in connection with last night's city council meeting.

You understand that the City of Richland posted that information to make the public aware of the contracts that the city was proposing to enter into, correct?

A. Correct.

Q. And so do you believe that the information that was posted on the website was accurate to the extent possible?

A. Yes.

Q. Last night there was a city council meeting, and

there was a vote on whether or not to approve the contracts that are contained in that exhibit, correct?

A. Correct.

Q. What was the result of that vote?

A. It was 7-0 in favor of having the city manager execute and take other actions as necessary to sign and execute the agreements.

Q. Okay.

A. Though I would add, as Mr. King pointed out, there was two agreements with American Rock Products that were modified slightly from what was provided in the council packet. That information was provided to council in the council meeting and during the presentation itself.

Q. All right. So this package consists of, the package of agreements consists of, first, a lease to what you referred to as WT or WAT, which is actually Central Washington Transfer Terminal, LLC.

That's one of the elements of this package, correct?

A. Correct.

Q. Package of deals. And that lease is set forth in Exhibit KJ-14-X, correct?

A. Yes.

Q. That's the one you have in front of you?

A. Yes.

Q. Were there any modifications made to this lease when it was voted on and approved by the city council?

A. No, there was not.

Q. All right. Now, this is a 15-year lease, correct?

A. Correct.

Q. And the purpose of the lease is to give a rental interest or a leasehold interest to Central Washington Transfer Terminal, upon which it will construct a rail loop, correct?

A. Correct.

Q. And if we could turn to Exhibit A, which is number stamped at the bottom, Gary, page 27?

A. Uh-huh.

Q. Okay. If we could have that on the screen. Okay. Now, is this a depiction of the property that is going to be used under leasehold interest by Central Washington Transfer Terminal to construct a loop track?

A. This is an approximate depiction, yes.

Q. And what is the approximate footage of this track?

A. I don't -- don't know.

Q. If you look at page 1 of that agreement, paragraph 1.1, it makes reference to 8400 feet of rail loop. Is that approximately correct?

A. That would be approximately correct.

Q. And that's adequate enough rail facility to

accommodate unit trains, correct?

A. Correct.

Q. In fact, that's the purpose of this facility is to take unit trains and unload them, to transload the contents for transport someplace else, correct?

A. Yes.

Q. Now, in addition to the lease, there's also a purchase agreement whereby the same company, Central Washington Transfer, purchases 25 acres of land within the loop and also adjacent to the loop.

Correct?

A. Correct.

Q. And that land is shown up here on the exhibit, lease Exhibit A, under purchase property 18 acres, and then below, within blue, purchase property seven acres, is that right?

A. That's right.

Q. So the intent is for this company, Central Washington Transfer, to actually construct facilities on that property that it owns for its use in transloading and other operations, correct?

A. Correct.

Q. Now, in connection with this rail loop, is there -- if you would take a look at paragraph 2.6 on page 10. If you look at paragraph 2. --

A. Yes.

Q. -- that reads, "The lessee shall, within 18 months of the effective date of this lease, construct and build an operational rail loop track on the premises, at lessee's sole cost and expense, as generally shown on Exhibit A," which we've just looked at.

Correct?

A. Correct.

Q. So the city is anticipating that within 18 months, there will be an active rail loop at this location in the Horn Rapids Industrial Park to handle unit trains?

A. Correct.

Q. Now, in connection with the cargos that these unit trains are anticipated to handle, the nature of the goods that are being brought in, the nature of the commodities and so forth, there is an Exhibit B to this agreement, which is page 28, numbered at the bottom, called "permitted uses."

Do you have that in front of you?

A. I believe it's -- oh, yes, I see where you have the 28. Yes, I have that in front of me.

Q. Okay. So that's a pretty extensive list. It includes ag products, general categories of agricultural related products and non-agricultural related. So what this list is addressing is what the lessee, who's going to run the rail loop, will be able to have as cargo in the unit trains

that it brings into this facility, correct?

A. As part of this lease, yes.

Q. As part of the lease, yes. So that's -- these uses are identified as cargos that the lessee will be permitted to accept at this facility --

A. Yes.

Q. -- correct? And in addition to the ag products and general categories and non-ag related --

A. I'm sorry, can we step back?

Q. Yes.

A. You said permitted, and I just want to point out that by the lease it would be permitted. There's other activities that some of these commodities may need to undertake to be permitted for the facilities to be constructed. And those permits may also be issued by the city, but this wouldn't guarantee that those permits would be provided.

Q. It wouldn't -- I'm sorry?

A. The lease doesn't guarantee that a facility that could accept these products would be permitted. So it's that the lease would allow those. So I just wanted to correct that terminology.

Q. I understand. So that if a company, either Central Washington Transfer or some other company, erected the appropriate facilities within or adjacent to this loop to be

able to handle these products, and those construction -- that construction was permitted by the city under its construction permit arm --

A. Uh-huh.

Q. -- then these, these types of products would be coming into that loop?

A. That is correct.

Q. Okay. And among the items that is listed here is containerized items for companies such as Wal-Mart, Target, Costco, etc.

Do you see that?

A. Yes.

Q. And in addition to that, there are another category consisting of fuels, ethanol and diesel in particular.

Do you see that?

A. Yes.

Q. So it's your understanding that provided the companies who are going to be accepting these types of goods comply with the city's requirements regarding the construction that they have to do, that the rail loop will be allowed to accept these kinds of goods at its location in the Horn Rapids Industrial Park, correct?

A. Correct.

Q. We're talking about a substantial investment on

the part of the people who are going to build the loop to begin with, correct?

A. Yes.

Q. And we're also talking about a substantial investment on the part of people who will locate within the loop in order to be able to accept these various types of products that are listed on Exhibit B to this agreement, correct?

A. We would hope so.

Q. And so the city is looking to maximize its investment, maximize its use of this rail loop to the extent that it possibly can, correct?

A. I would say the city is looking to maximize its use of land in the industrial park to generate or secure those investments, yes.

Q. To secure those investments which will, in turn, benefit the economy of the city, correct?

A. Correct.

Q. Of the citizens of the city, correct?

A. Correct.

Q. And in turn, will generate additional rail traffic?

A. Yes.

Q. Is there anything in this lease that puts a limit on the number of rail -- of trains that can be accepted at

this facility in any period of time?

A. No.

Q. If you would look at the page in Exhibit JD-38-X that you have in front of you that is entitled, this is your PowerPoint presentation, the one that's entitled, "21-acre lease," do you see that?

A. Yes, I do.

Q. Is that -- are the elements contained in there still a fair representation of the lease that was approved for signature by the city council last night?

A. The 21 acres, which was an estimate, has been scaled up to a 25-acre estimate. That would be the first bullet point. So with that exception, I believe, yes, this is an accurate depiction of what is in the lease.

Q. It's a summary, but it's a summary of key elements of that lease, correct?

A. Yes.

Q. And one of the key elements of that lease is that it requires the operators of the loop to allow BNSF and UP access?

A. Yes.

Q. Correct?

A. Correct.

Q. Now, if you would turn to the page entitled, "Deal flow." I think that's a couple pages on. Was this your

attempt to give some kind of a rough timeline to the flow and the lease and sale and the construction of both the rail loop and the infrastructure?

A. Yes. In addition, the interrelated nature of the agreements, of the five agreements that were passed by council.

Q. Okay. Well, there's some agreements with American Rock that have to do with freeing up the land that it currently owns --

A. Uh-huh.

Q. -- and is mining so that it can be used as part of this loop. I'm -- I'm not really interested in that as part of my question. What I am interested in is the lease on which the rail loop will be constructed and the land that is to be purchased by not only Central Washington Transfer, but also potentially others to locate on or near the rail loop.

That's on the left side of your deal flow, correct?

A. Correct.

Q. Okay. So you've got a 30-day due diligence period after executing a PSA with Washington Terminal?

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit?

MR. PETIT: Yes.

ADMINISTRATIVE LAW JUDGE TOREM: I want to interrupt just to see if -- I think I know where we're going

with this testimony. And I know you're laborly laying the foundation to get to that ultimate point.

MR. PETIT: Yes.

ADMINISTRATIVE LAW JUDGE TOREM: I will liberally overrule objections to foundation if we could just get to that final point.

MR. PETIT: All right.

ADMINISTRATIVE LAW JUDGE TOREM: And get Mr. Ballew back to city hall. If counsel sees an objection that has to be made to foundation, please make it. But they're not itching to object, and I'd rather just see what's the ultimate point we're driving to.

MR. PETIT: The ultimate point we're driving to is this question, Judge.

Q. Do you anticipate that this rail loop will be online within the 18-month period as spelled out in the lease?

A. Yes.

Q. And online, operational, receiving trains, unit trains, at this facility, correct?

A. Correct.

Q. I asked you whether there was any limitation on the number of trains that can be accepted at this rail loop in the lease, and you said there was none. Are you aware of any other limitations on the number of trains that will be operated to this rail loop that have been agreed to by the

operator of the rail loop?

A. I'm -- I'm not aware of any limitations or agreements to limit.

Q. I'm going to show you Exhibit JD-11-X. And we're shifting again back to the ConAgra facility. Do you recognize these drawings as depictions of proposed rail construction to service that ConAgra facility?

A. I would recognize them as such.

Q. And so something along the nature of what's shown in Exhibit JD-11-X is going to have to be constructed in order to service that ConAgra facility, correct?

A. Something along the lines of that, correct.

Q. Multiple tracks?

A. We believe so. I, again, would say that the tracks -- that the tracks shown in the upsidedown L shape were based on input from that first third-party that's no longer associated with the project. We do not have a rail design from the second third-party, or the third-party, though we do believe that we will be constructing the -- what I'll call the passing track, which is shown in the interestingly shaped area.

Q. All right. And you're referring to page 1 of this exhibit?

A. I am referring to page 1, yes.

Q. And that's up on the screen here. By the passing

track, are you referring to --

A. Proposed track A, and I believe it's highlighted in green or shown in green.

Q. This on the screen?

A. Yes.

Q. Okay. And that's in order to provide a passing track to allow trains to operate on Horn Rapids spur, but also to operate into the ConAgra facility, correct?

A. Correct.

Q. And in addition to that, there is, on page 3 of this exhibit, proposed rail to service the actual facility itself, correct?

A. Correct, with the stipulation that this is the design of the first third party who is no longer associated with this project, so --

Q. Well, is that -- I'm sorry.

A. We would expect multiple tracks to service this facility, based on its operations.

Q. Whether it's the original designer or not, it's going to be something that is going to require multiple tracks coming in and multiple trains coming in, correct?

A. Yes.

Q. Do you know why ConAgra chose or elected to plan to construct this facility at this location?

A. They're -- I'm trying to recall. Part of it would

have been its central location, I believe part of it would have been the central location to its plants that it's expecting this facility to serve. I would also guess that, as you look through this purchase and sale agreement, there was actually a proposed slot of land. ConAgra Lamb Weston bought property at Columbia Point from the City of Richland back in 2008, I believe, and they were going to build an office building there, and they determined that after, for whatever reasons, recession and whatever else, they determined they were not.

So they had this land that they had already paid for that was also within the city of Richland, and I would guess that would play a part in it. And I would guess the other items that we talked about in the presentation of what we think makes Horn Rapids Industrial Park a good location to do business for a third-party.

Q. And I appreciate you telling me about the reasons why it makes sense to put that facility there. But you are aware also that ConAgra was, in fact, going to consolidate a number of cold storage facilities into this cold storage facility, thereby holding a greater volume in this facility than it did in the numbers of facilities it was consolidating, correct?

A. Yes.

MR. PETIT: That's all I have for this

witness, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Anything from the city?

MR. DIJULIO: Thank you, Your Honor. Very briefly.

CROSS-EXAMINATION

BY MR. DIJULIO:

Q. Mr. Ballew, talking about the Central Washington Transfer Terminal facility, the Washington Transfer Terminal facility, there is already a Washington Transfer Terminal facility in the Horn -- general Horn Rapids area, is that correct?

A. The principals of Central Washington Transfer Terminal, LLC also own property in the Horn Rapids Industrial Park where they conduct this activity.

Q. Okay. And so is this a new facility to replace the existing facility, or is it an additional facility so there will be two operating facilities?

A. That would be up to Central Washington Transfer Terminal on how they do that. We believe that much of the business that's currently conducted on their existing property will be switched to this property, but that, again, is their

business case to make.

Q. Okay. And is that existing facility rail served?

A. Yes.

Q. And has that facility received unit trains currently?

A. Currently I'm not aware of unit trains serving it.

Q. Has it received unit trains in the past?

A. It has received -- the facility is served by a small rail loop that requires the unit train to be broken apart and then -- and then off-loaded and then, you know, next set of cars brought in and off-loaded. And so in the past, it was considered -- it did -- unit trains were brought in through town, came up north into north Richland, were broken apart somewhere in north Richland, and then they'd go into that facility.

Q. Okay. And that has been the subject -- that other loop has been the subject of prior testimony. You understand that other smaller loop to be the existing TCRY loop within the Horn Rapids industrial area?

A. Yes.

Q. Okay. Now, with the new proposed Central Washington Transfer Terminal facility, has the City of Richland determined what if the maximum, most optimistic development scenario arising out of these agreements comes through, the number of unit trains that would be anticipated?

A. We believe operationally the track will be limited to an average of two and a half trains per week.

Q. And when you say two and a half trains per week, you're talking about a total of five trips, two and a half in, two and a half out, or one per day?

A. Approximately, yes.

Q. Okay. And sitting here today, you don't know whether there will continue to be trains serviced to the other facility operated by Central Washington Transfer Terminal?

A. I do not know, no.

Q. In your testimony, you also talked about ConAgra facilities.

A. (Nodded head affirmatively).

Q. Let's -- I want to ask you to be precise about this now. Is there an operating ConAgra facility in the Horn Rapids area?

A. Not within Horn Rapids, but there is a Lamb Weston French fry plant south of Highway 240. And adjacent to that plant is a Henningsen Cold Storage facility, it actually kind of blends right into the plant, and so that -- we currently have a cold storage which is within the Horn Rapids general area.

Q. Within the general area. And are those facilities rail served?

A. Yes, they are.

Q. And do you know if there is current rail service in or out of those facilities?

A. Yes, there is.

Q. And what do you understand that rail service to be?

A. Likely oil containers for canola oil, for fry oil, as well as I would guess refrigerated cars for French fries.

Q. And are those unit trains?

A. No, they're not.

Q. Okay. And do you know how frequently those trains service that particular Lamb Weston and cold storage facility?

A. No, I don't.

Q. Now, you talked about a different ConAgra facility, the -- is ConAgra under contract with -- has ConAgra actually purchased property from the city yet?

A. They -- not in Horn Rapids, they have not purchased. We're under a purchase and sale agreement.

Q. Okay. And have they -- the city has not closed on that agreement yet?

A. No. The agreement needs to close by January 20th of 2014 or it's no longer.

Q. And is that property that may be developed in the future by ConAgra?

A. Yes.

Q. And what would -- what's the intended use for that

facility were it to be closed?

A. So it --

Q. Were the deal to be closed.

A. So we have a purchase and sale agreement with ConAgra for 80 acres. On that 80 acres, they would contract with a third party and may actually assign the agreement to a third party who would own, operate, and construct what's called an automated cold -- or what we refer to as an automated cold storage warehouse.

Q. Okay.

A. This automated warehouse is actually a change in business practice for Lamb Weston. There would be some consolidation of other cold storage facilities in the immediate area, and then that facility uses -- it's all robotic. It's actually quite a large facility. It's about a hundred feet tall and uses automated cranes and -- to control the inventory better.

So -- so it basically allows ConAgra better inventory -- or Lamb Weston better inventory control and better logistics by utilizing this facility. They use a similar type of facility over in Europe, and so they're trying to bring that model here to the United States.

Q. And when you use the phrase -- you're referring to Lamb Weston and ConAgra. Are they the same company?

A. Lamb Weston is a wholly owned subsidiary of

ConAgra. The formal title is ConAgra Lamb Weston Foods, Inc.

Q. Okay.

A. And that is their division. So we will say, around here we'll say ConAgra, we'll say Lamb Weston, and we usually interchange those.

Q. If, in the future, that facility on the 80 acres is constructed, has there been any projection by the city, again, you know, assuming the best scenario development, employment, full occupancy, and the rest, of train traffic to that particular facility?

A. We have a car estimate that I had provided.

Q. The 30 cars?

A. 30 cars, but I don't know how that would relate to number of trains. It depends on how many --

Q. That's the only information you have with respect to demand that might occur as a result of this proposed but yet to be completed facility?

A. That's correct.

Q. Thank you. The current Central Washington Transfer facility operates, when it does receive product by rail, as rail in and truck out, is that correct?

A. When it receives product by rail, yes, it is rail in and truck out.

Q. How long has the City of Richland been working to attract tenants, purchasers, developers, to this area?

A. Well, it would be -- I think the first Horn Rapids master plan for the industrial park area was developed in the 1990s. It may have gone back further than that.

Q. Lots of land still out there available?

A. Yeah, I think the park is, industrial park's roughly 2,000 acres, with I believe our estimate's around 1200 acres is still available for development. That's not taking into account the deals that may be on the table and ready to go.

Q. So counting as already contracted, there still remains 1200 acres?

A. If you counted in the contracts that have been discussed here, the ConAgra, which is 80 acres, the lease of 21, 25, the purchase of an additional 25, so that puts you at 130 acres, so roughly 1070 acres still remain.

Q. Okay. Thank you. So about half is still available?

A. Yes, roughly half.

MR. DIJILIO: Okay. That's all I have.

ADMINISTRATIVE LAW JUDGE TOREM: Commission staff, any questions for this witness?

MR. SMITH: No questions.

EXAMINATION

BY ADMINISTRATIVE LAW JUDGE TOREM:

Q. Mr. Ballew, there was reference to an 18-month time frame in which the facilities would have to be constructed. Has the start date to measure that 18 months been triggered by last night's city council vote?

A. No, it would be triggered by execution of the lease. If you look at the deal flow that was provided, the purchase and sale agreement gets signed first, due diligence, then the lease agreement gets signed.

Q. And is that lease agreement, is there a deadline for that signature?

A. Yes. And we -- I would have to review the agreement, but we tried to tie -- so you execute the purchase and sale agreement, a time clock starts ticking on the lease, and you execute the lease, and then a time clock starts ticking on closing on the purchase and sale agreement.

Q. So you mentioned that the lease with ConAgra would have to be closed by the 20th of January next year?

A. That's the purchase and sale agreement --

Q. Sorry, purchase and sale.

A. -- for 80 acres, and that would have to occur by January 20th, 2014.

Q. Is that connected with the lease execution date as

well?

A. No.

Q. Separate?

A. Those are totally separate.

Q. What's your ballpark figure of when the 18-month clock might start ticking?

A. Should execute soon. We're expecting closing of all agreements, as you step down on that deal flow, we've put a date in of February 14th, 2014. One of our agreements with American Rock, that needs to be closed by then. So we would expect the lease agreement to be signed in, at the latest, in January of 2014.

Q. So we're thinking July or August of 2015, from there would be 18 months?

A. That would be the 18 months, yes, roughly.

Q. Is that about when the city anticipates any new rail traffic, whether it's replacement or new rail traffic, would begin?

A. That would be the outside envelope of the lease agreement. I would say our expectations are that it would occur sooner than that, that the construction of the rail could occur sooner, but I would still expect January of 2015, maybe the beginning of 2015, is when we could see a fully operational railroad.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. Thank

you. Mr. Petit, does that raise any additional questions?

MR. PETIT: No, Your Honor. I think you covered that thoroughly. I have nothing else.

ADMINISTRATIVE LAW JUDGE TOREM: Any other questions for this witness, then?

MR. DIJULIO: No. Thank you, Judge.

MR. SMITH: No.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Thank you, Mr. Ballew, for your time.

A little admitting of exhibit housework to take care of. The prior witness, we had a video that was shown, it was JD-39-X. Were there any objections to that coming into the record? I believe a DVD was supplied to all parties.

MR. DIJULIO: Excuse me?

ADMINISTRATIVE LAW JUDGE TOREM: The video that we saw before the lunch break, we hadn't admitted that yet. Were there any objections to the DVD?

MR. DIJULIO: We produced it at their request. We did not propose it. If he wants to make copies of it and mark it --.

ADMINISTRATIVE LAW JUDGE TOREM: I'm not suggesting it was. I'm just asking, any objections to admitting it to the --

MR. DIJULIO: Oh, absolutely none.

ADMINISTRATIVE LAW JUDGE TOREM: All right. I

believe the DVDs were already reproduced by TCRY. All right. So 39-X is admitted.

Let's go back over the ones we just had. I believe JD-9-X and 11-X were introduced for the first time. Any objections to those two?

MR. DIJULIO: None for the state.

MR. SMITH: None.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. JD-9-X and 11-X are admitted. I believe the only other one we had was the PowerPoint presentation. That's JD-38-X. Any objections to that one?

MR. DIJULIO: None from the city.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Petit?

MR. PETIT: Well, on your exhibit sheet, Judge Torem, on JD-38-X --

ADMINISTRATIVE LAW JUDGE TOREM: Yes, it should say Port of Benton?

MR. PETIT: Yes.

ADMINISTRATIVE LAW JUDGE TOREM: I confused my two port projects, so as I was typing busily -- so I've already caught that error this week. I will modify that in the final exhibit list. If you catch any other ones, please let me know. It was a bit of typing and starting and stopping last week, getting this put together. So if parties do find typographical errors, please bring it to my attention.

Mr. Petit, were there any other exhibits that needed to be addressed at this time?

MR. PETIT: I do not -- KG-14-X is already in evidence?

ADMINISTRATIVE LAW JUDGE TOREM: Yes, it is.

MR. PETIT: Okay. Those are the only ones at this time, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Let's take a five-minute break. Actually, make it ten minutes. We'll come back with your last witness, Mr. Peterson.

MR. PETIT: Fine, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: All right. We're at recess for the next ten minutes.

(Short recess).

ADMINISTRATIVE LAW JUDGE TOREM: Counsel, I think we're ready to go back on the record. I have Mr. Peterson here ready to swear him in.

RANDOLPH PETERSON

called as a witness by the Respondent, being first duly sworn to tell the truth, the whole truth and nothing but the truth was examined and testified as follows:

ADMINISTRATIVE LAW JUDGE TOREM: Please have a seat. State and spell your name for the record.

THE WITNESS: Randolph, R-a-n-d-o-l-p-h,

Peterson, P-e-t-e-r-s-o-n.

ADMINISTRATIVE LAW JUDGE TOREM: Sir, if you'll try to project your voice a little bit. Mr. Petit will introduce, I think, your pre-file testimony, and then we'll get you ready for cross-examination.

DIRECT EXAMINATION

BY MR. PETIT:

Q. Mr. Peterson, I'm showing you what's been marked as Exhibit RVP-1T, which is labeled your pre-file testimony of Randolph V. Peterson. Could you please examine that and make sure that it is correct.

(Pause in the proceedings).

A. It is.

MR. PETIT: Judge, there are some very limited issues I would like to address with him, based on things that came up at the hearing yesterday.

ADMINISTRATIVE LAW JUDGE TOREM: Okay.

Q. (BY MR. PETIT:) Mr. Peterson, you were here for testimony yesterday afternoon, at least part of it, correct?

A. Part of it.

Q. And you heard testimony about the issue of a passing track at the Center Parkway crossing location where

there -- this petition seeks to have an at-grade crossing constructed?

You heard that testimony?

A. Yes.

Q. And you're familiar with the layout of the track because you are the president of TCRY, correct?

A. Yes.

Q. And can you tell me whether that passing track is used currently by TCRY?

A. It is.

Q. Tell me how it is used by TCRY.

A. Well, mostly it is used to, when either the BN's coming in or we're going out, or we're coming in and they're going out, the other railroad gets on the passing track and could come by, or they go by.

Q. Is that a frequent occurrence?

A. Very frequent.

Q. And when that happens, what has to be done with the train crews in order to facilitate moving onto the passing track, whether it's BN moving onto the passing track to allow TCRY to pass, or the other way around?

A. Well, Tri-City Railroad is the operator of the railroad, of the Port of Benton railroad. So we have the responsibility of the management of the traffic, among other things, but as it relates to traffic.

So BN calls in, radios in to us before they have permission to enter. So when -- and before they call in to us, they've called in to the UP to get permission to get on to the UP, because the BN can't get to us without going onto the UP. So they've received permission from the UP, so they usually will come to a stop before they get to Richland junction, which some refer to as Center Parkway, one and the same for these purposes. And sometimes they'll hold, we'll hold them there, most of the time, depending on the situation of the day, most of the time we'll have them come into the passing track, and they'll stop, and they'll wait.

So when their train comes in, usually it's a two-man crew, the conductor gets off -- well, before entering the passing track, throws the switch, and the train proceeds. And then he'll throw the switch after the train clears and realign it for the mainline and then get -- walk up and get back on the train, wait for us. He doesn't have to get back on the train to wait for us, but he does. We'll pass. This is on a -- I say we, but one or the other of us coming out or going in in reverse.

So once we've cleared, then the train has permission -- our guys will radio in, we'll -- our operations will radio the BN, and the BN then will have permission to proceed. So they, in most cases, proceed out the other end of the passing track and, of course, stop before they get --

because the switch will be aligned for the main, and throw the switch, the conductor will get off, throw the switch, train will proceed through the switch, the conductor will throw the switch back to the main and get back on, walk up the train, get back on the locomotive, and away they go.

Or they're ready to go, and they have, you know, they might wait -- they will have, receive permission to go most all the time before they're out on the main. So that's what happens. It doesn't happen every day, but that's how it happens. Or that's what -- that's what occurs on the passing track.

Q. Do you consider that the maintenance and continuation of that passing track to be essential to both the BN and the TCRY current operations?

A. Absolutely essential.

Q. Now, another matter that was testified to for the first time today, you heard Mr. Ballew's testimony regarding the new 1.5-mile rail loop that was voted on by the city council last night?

A. Yes.

Q. And had you heard that his estimate was that there would be 2.5 unit trains per week coming into this unit train rail, correct?

A. I think he said that was an -- that was something to do with the maximum that they thought that -- that somebody

figured out that -- I'm not sure whether they said that that was the maximum that the line, our line would handle or the maximum that the transloader could operate at, but I did hear two and a half.

Q. All right. Are you familiar -- first of all, how long have you been in the railroad industry?

A. Since the mid '90s.

Q. In various capacities?

A. Or early '90s, actually.

Q. In various capacities?

A. Yes.

Q. Including what types of operations?

A. Rebuilding railroad equipment initially. We'd take locomotives and rebuild them, take them down to the bones and rebuild them and put them back together and sell them, lease them, that kind of thing.

Q. And how long have you operated the TCRY?

A. We started -- or I started TCRY in 1999. And at that time, we were the -- it took us about a year and a half to get approved by the service transportation board, and we got approved. And for a while there, we were the newest railroad in the country.

Q. And as a result of being in the business of operating TCRY, have you had occasion to have direct conversations with officials and officers and employees of

both BN, BNSF Railroad, and UP?

A. Over the years, yes.

Q. And are you generally familiar with the subject matter of unit trains unloading at loop tracks?

A. Yes.

Q. In your opinion, does a 1.5-mile loop track make economic sense at two and a half trains per week, in terms of return on investment?

A. Well, you know, I -- what's the investment? I mean, that's a wide open question. You know, I read in the paper somebody's going to invest a hundred million dollars. So does two and a half trains a week, if that's the max -- you know, it depends on whether they're moving titanium or corn, I guess, but -- I'm not prepared to comment on -- from -- whether it makes economic sense or not.

Q. At this particular loop track?

A. I don't think it has anything to do with the loop track, I think it has to do with what they're going to use it for and what kind of capital investment they're going to make.

Q. Okay. You're familiar with operations at other loop tracks around the country, aren't you?

A. Yes, to some degree.

Q. Okay. And in connection with those loop track operations -- well, let's back up a second. The economy involved in the unit train requires quick unloading, correct?

A. Doesn't require it, but there's an incentive built in by the railroads. If the train is returned within a specific period of time, there is an incentive, a money incentive to -- that's built into the transaction.

And that's, you know, the unit train is hauling one commodity. It could be a unit train, it could be a shuttle train, they all don't have to be a hundred cars in length. They can be -- they're running unit trains now up to 140 cars in length, okay, so that's -- that's really the unit train of today is 140 cars.

Will that loop track out there handle it? Yeah, it's long enough. But it depends on what you're moving. You know, this project, I guess, is approved for diesel fuel. So, you know, there might be a diesel terminal out there. That's a more valuable commodity than cow food. So can that loop track handle it, either one, yes. Can it handle containers, yes.

If you bring containers in and off-load containers, train -- you know, bring in and transload off of a bulk car, put them on a container, which is -- hell, we talked about that years ago and transloading the product off of bulk cars, putting them on containers, moving them over to the ports, okay. It's a great -- it's done all over the place. But when -- when you have -- when you're doing it at the end of your driveway, in other words, one way in, one way out,

you're going to have more train traffic.

That's not a bad thing. We're all for that project. I want to -- we're in the railroad business. Our primary concern is and has been and will continue to be is safety and make sure that it's done right. And, you know, don't -- you know, so that's -- that's our issue, but --

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Peterson, I want you to stop because you've lost the track of the question here.

Mr. Petit, was there another question, or are we ready to hand him off for Cross?

MR. PETIT: I think we're ready to hand him off for Cross.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. I'm going to direct your attention to the cities' counselors and see what questions they have and then perhaps the commission staff.

CROSS-EXAMINATION

BY MR. DIJULIO:

Q. Mr. Peterson, good afternoon. I'm going to call your attention to a series of question to the --

A. What's your name?

Q. My name is Steve DiJulio.

A. Thanks, Steve.

Q. You're welcome. I'm going to call your attention to the screen and Google Earth. And what we're going to do is start at the Richland junction, and I'm just going to ask you, for the hearing examiner, just I'll ask you a series of questions regarding the route for these trains.

So if you could focus, Jeff, on getting down narrower, focus on the track itself. A little bit further. Thank you. That's fine. Little bit finer, so you can actually see the tracks. That's fine for now. All right. Moving it to the east a little bit, please.

Now, you recognize that as the approximate area of the beginning of the Richland junction, Mr. Peterson?

A. Where the arrow's at, or where the --

Q. No, no, I'm just asking you --

A. Generally?

ADMINISTRATIVE LAW JUDGE TOREM: I think, for the record, is this the Columbia Center Boulevard and the loop that goes over the top of the tracks?

MR. DIJULIO: This is now -- let's go --

Q. Mr. Peterson, this area of the line that we're looking at here.

A. Yeah.

Q. That is not part of Port of Benton property, is

that correct?

A. That's owned by the Union Pacific.

Q. Okay. And where does -- going to the west a little bit, Mr. Peters, there's a -- you have the two lines beginning there, Holiday Inn to the north, Kohl's department store located there.

Approximately where does your leasehold interest actually begin?

A. (Indicating). About in there.

Q. Okay. So a short distance to the east of the actual Center Parkway alignment, is that correct?

A. Yes. I guess if you're talking about the road, the proposed road?

Q. The rail right-of-way. You begin somewhere in there, and the rest of the track is UP ownership from --

A. Yeah.

Q. -- that point --

A. Yeah.

Q. -- east?

A. But what'd you say about alignment? You said something about alignment?

Q. Okay. I said Center Parkway alignment, which you understand will be approximately here (indicating). Do you understand that, sir, that's what's being proposed?

A. Yeah. You're proposing a road up there, yeah.

Q. Yeah, right where those lines are going.
A. Yeah.
Q. All right. And this is the four lanes, four tracks that had been the subject of a prior application?
A. Yes.
Q. And these are the -- again, we're looking here at Port of Benton TCRY tracks?
A. You're right on the passing track, right there.
Q. But the actual Port of Benton grant from the federal government starts approximately in here (indicating)?
A. I think a little bit farther east there, about in there someplace.
Q. About there (indicating)?
A. Yeah.
Q. Okay. So everything from this point east operates on UP trackage?
A. Yes.
MR. DIJULIO: All right. Let's just run that line, if you would, Mr. Peters, to the east and follow that line.
Q. As we keep going to the east, Mr. Peterson, it's pretty much a straight shot without any service along this corridor, is that correct?
A. What do you mean, service?
Q. I mean, you don't have dock-high doors or stops

for delivery of train cars along any of this part in the city of Kennewick, do you?

A. Not -- you know, we run on that track.

Q. Well, I know you run on that track. I'm just asking, with respect to the actual --

A. I think there are no customers until you get downtown Kennewick that are served by rail.

Q. And you recognize that as the 395 crossing? I'm sorry, or is that Edison?

MR. PETERS: That was Edison.

MR. DIJULIO: Excuse me.

Q. Go back to the Edison crossing. The first grade crossing, then, to the east -- by the way, Mr. Peterson, you've been part of this community for a long time, haven't you?

A. Yes.

Q. Okay. You recognize that as the Edison crossing, the next one to the east?

A. Yes.

Q. And that's a grade crossing?

A. Yes.

Q. Thank you.

A. At-grade crossing.

Q. That's an at-grade crossing. And do you recall ever having accidents between trains and vehicles at the

Edison crossing, at least in the time you've been operating the railroad?

A. Well, no. TCRY has not had -- TCRY has not had an accident, a train accident involving a vehicle where we've either been hit or hit something, someone or something. We have had -- we have about -- we have cars that and trucks that run through the nine crossings that we have on our line, about once every two months, so we're always having issues with at grade crossings, if that's the question.

But we don't maintain that crossing. That's owned by the Union Pacific. We have not operated on the Union Pacific line for -- for, what, more than maybe a year, because they used to come to Richland junction and interchange with us there. So with the deal that the city made with the UP, we moved our interchange down to -- we can interchange Kennewick or we're interchanging down as far as Hedges, which is down at Finley.

Q. I want to make sure we understand your testimony, Mr. Peterson. TCRY exchanges further to the east, and we'll get down there in a few minutes.

A. Got it.

Q. But TCRY does run equipment on UP's line in this alignment, along this rail corridor, isn't that correct?

A. Trains only.

Q. Trains only, yes. I understand. Okay. So that's

a grade crossing. You understand that grade crossing's maintained by UP, but have had no incidents, while -- at least you're aware, with TCRY trains?

A. Not -- I'm not speaking for the Union Pacific or the BN.

Q. Understood.

A. Because at the BN also operates on that track.

Q. Let's go further to the east. Again, we still have no service or deliveries or stop areas until we get to Kennewick. Now we're starting to come into the 395 area, I believe, is that correct?

MR. PETERS: Getting there.

Q. (BY MR. DIJULIO:) Are we still following the alignment correctly, sir?

A. Me?

Q. Yes.

A. Yeah.

Q. This is the UP alignment that you line up with when you are running lines?

A. We're on that line.

Q. Yeah, there's 395 crossing.

A. That's grade separated there.

Q. Yeah. And then what is this junction here, sir?

A. Oh, that's a spur that -- a switch there. That's a spur that serves a customer.

Q. Okay. And the main --

A. More than one customer, but down -- old town Kennewick.

Q. Okay. And then this, is this, again, the TC -- or the UP line that is --

A. Yes.

Q. -- used by TCRY? And here's another junction, but this main TCRY or UP, TCRY alignment continues on this route?

A. That's all -- that's a spur track.

Q. This one is the spur (indicating)?

A. Yeah. Go down to the arrow there.

Q. That's the spur (indicating)?

A. No, that's the main.

Q. That's the main? That's the UP line that you would run over to get to the TCRY track, if you know?

A. That's the track --

Q. Which --

A. That's the track that goes to -- to and from Richland junction.

Q. Thank you. Okay. And then this line continues to the east and into Kennewick?

A. Yeah.

Q. And are we still on the correct alignment, sir?

A. Yes.

Q. And where do we start into the switching yards?

Are we about there yet?

A. What do you mean? In downtown?

Q. Yeah. Where are you picking up --

A. Go back to -- you go back to -- right in Washington Street. Not that far. Right there. Follow the arrow. He's got the arrow right on it. There you go.

Q. So you're -- if you're picking up trains or putting crews on trains for UP --

A. There's a passing track that begins right there.

Q. And this is the approximate area (indicating)?

A. Well, that's the exact area.

Q. Okay. Thank you. And are you doing any current work with BN?

A. What do you mean by current work?

Q. I mean, are you --

A. That's a UP interchange.

Q. That's a UP interchange. My question, then, is, are you doing any interchanges with BN, either in the Kennewick area or otherwise?

A. No.

Q. So the only service that you're providing, other than for your own account, is for UP beginning at approximately this location (indicating)?

A. Sometimes -- yeah. Beginning there. Sometimes there in Kennewick and sometimes further east.

Q. Okay. We're not going to go further to the east, and we're basically in downtown Kennewick, correct?

A. Yeah. And the yard runs east from Washington, that's a UP yard, and it runs east for a number of blocks.

Q. Okay.

A. So you see where we're switching, you see that North Alder Street?

Q. Is this North Alder (indicating)?

A. Right there by the arrow.

Q. Okay.

A. Yeah. So when we're switching, and that's kind -- switching or passing, the gates are down, okay, so that -- that street is blocked, while every day, twice a day, for when railroading is going on. And they -- those gates stay down.

MR. DIJULIO: Mr. Peters, if you'd take us all the way back, then, to the Center Parkway Richland junction area, please, if you would.

(Pause in the proceedings).

MR. DIJULIO: I think you're going to have to go much further north.

MR. PETERS: Did I go the wrong way?

MR. DIJULIO: All right. Thank you.

Q. Okay. We're going to pick up again at the Richland junction at the TCRY approximate location of the start of your leasehold interest here and then take the TCRY

line now to the north and west along the alignment.

And while we're going along this alignment, isn't it true, Mr. Peterson, that there are no services or stops along this alignment?

A. Customers?

Q. Yes.

A. That's correct.

Q. And you recognize this as the Steptoe grade crossing?

A. At-grade crossing.

Q. At-grade crossing, excuse me.

A. Yes.

Q. Thank you. And then as we again move to the north and west, we're still on the alignment, is that correct?

A. Yes.

Q. And we're paralleling 240 at this point, sir?

A. Yes.

Q. Thank you. Crossing the Yakima River?

A. Yes.

MR. DIJULIO: Let's stop there for a minute, if you would, Mr. Peters.

Q. We're getting into north Richland at this point. Do you recognize that, sir?

A. I'm not sure where north Richland begins or ends, but generally, yes.

Q. Okay. I understand. And do you recognize any of these properties as properties that TCRY may be serving with active rail delivery service?

A. No, I think those are all apartments.

Q. Okay. Further to the north. There's a crossing here, and this is a grade crossing, is that correct?

A. We've passed a couple already.

Q. Yeah, okay. What grade crossing is this that we're looking at here?

A. We call it Cemetery.

Q. Okay.

A. Not for any --

Q. Cemetery Road?

A. Yeah, it's just -- not that anyone died there.

Q. Thank you.

A. I mean, as a result of railroading.

Q. Okay. No incidents that you're aware of at that grade crossing?

A. No, not -- that's not necessarily true. Incidents as it relates to cars running through gates?

Q. Yes.

A. Then I can't say that that would be true.

Q. Do you have personal knowledge of a car running through the Cemetery Road gate at the TCRY track?

A. I believe that virtually all of our crossing

incidents are on file at the City of Richland Police Department. We report each one --

Q. And also to the UTC?

A. Yeah.

Q. And also to the feds?

A. Yeah.

Q. Thank you. There are gates at that crossing?

A. Yes.

Q. Thank you.

MR. DIJULIO: Mr. Peters, if you would take us to the north.

Q. What is this crossing, sir?

A. Oh, we call it Van Giesen.

Q. Van Giesen crossing. Approximately what's the distance between SR 240 and the tracks in this proximity, sir?

A. Don't -- I don't know.

Q. Okay. And that's also a gated warning -- warnings are gated and --

A. Yes.

Q. -- bells at that crossing? Do you recognize that as a five-lane section in contrast to the two-lane sections being proposed here?

A. What's that?

Q. Strike that question. Do you know how many lanes of vehicle traffic cross at grade the TCRY line at this

location?

A. Generally I think it's two primary going each direction and probably a turning lane on each.

Q. Thank you. Okay. We can take this further up. Are we getting into rail service yet for you, sir, along this area, if you know?

A. You mean --

Q. Any direct rail service --

A. There was a -- there's a transload dock that you've passed that we service.

Q. And what kind of transloading was that for?

A. Oh, just odds and ends stuff. You know, sometimes boxcars, lumber, roofing materials, salt, that kind of stuff. Not heavy use, but -- we're getting up -- where are we here? Let's see.

Q. We're almost, I think, to your --

A. By the tennis courts.

Q. If I understand correctly.

A. You just crossed -- Steve, I apologize, are you trying to identify the different crossings that we have?

Q. Yeah.

A. That one we would refer to as Airport crossing there.

Q. That's also a grade crossing?

A. At-grade crossing.

Q. Thank you. Gated?

A. Yes.

Q. Thank you. Okay.

MR. DIJULIO: Further to the north, Mr. Peters. Hold on a second so Judge Torem can catch up with us.

ADMINISTRATIVE LAW JUDGE TOREM: Thank you. It's hard to write and Google Earth at the same time.

MR. DIJULIO: Yes. Trying to be efficient. Okay. Go ahead, Mr. Peters, take us to the north.

THE WITNESS: You passed our entrance to ConAgra.

MR. DIJULIO: Okay.

Q. This line here into ConAgra?

A. Yes.

Q. What's your current -- what's your service been in 2013 into ConAgra, if you know, Mr. Peterson?

A. What do you --

Q. How many?

A. Types of products or something?

Q. How many cars, if you know, have been, or trains, to service the ConAgra facility?

A. I gave some projections in my testimony, and I believe that that -- we're about -- we're about 4,000 of the 5100 cars. Of that, ConAgra's probably 60 percent, and their cold storage facility's probably another, you know, 20 -- it's

about 80 percent. They're certainly 80 percent of our business.

Q. 80 percent of the business currently is the ConAgra?

A. Of the TCRY.

Q. Thank you. So we're back on the TCRY line. This is still Port of Benton TCRY. We haven't gotten to the Department of Ecology or Department of Energy track yet, have we?

A. You just -- there's another crossing there called Saint.

Q. Right there (indicating)?

A. Yes.

Q. And then --

A. That's a cross spot only, no gates on Saint.

Q. Okay.

A. And then the next one's 240, which is a state highway. And that's --

Q. Gated?

A. That's gated and lit.

MR. DIJULIO: Mr. Peters, if you would --

ADMINISTRATIVE LAW JUDGE TOREM: So are those both at-grade crossings, even across 240?

THE WITNESS: Yes. Uh-huh. Yes, sir.

Q. (BY MR. DIJULIO:) We're getting into some

additional rail yards up here. Mr. Peterson, what are we looking at here?

A. Uh-huh. That's true.

Q. What is that?

A. Rail yard.

Q. Okay. Is that TCRY yard?

A. Yes, it is.

Q. Thank you.

MR. DIJULIO: A little bit further to the north, if you would, Mr. Peters. Thank you.

Q. And --

A. That's the -- just so that you know, that's the TCRY rail facility shop.

Q. This is part of the leasehold from the Port of Benton is this building (indicating)?

A. Yes.

Q. Okay. And that's your shop, and you --

A. That's a rail car locomotive shop there to -- right there. Yeah.

Q. Yeah. And is this the end of the line at this point, or do you go a little bit further to the north?

A. Oh, we keep going.

Q. What about this line (indicating)?

A. This would be the first leg of the Y, which is the Y track. So if you go -- if you go left there.

Q. To the northwest?

A. Yeah. You go left, that would take you on to the Horn Rapids track.

Q. Okay.

A. Owned by the city. If you keep going straight, you go up to the Department of Energy track. A couple more crossings going that way --

Q. Okay.

A. -- and you'll be out at Hanford.

Q. Let's follow that spur to the northwest to see if we can -- if this photograph captures -- and that's the TCRY loop right there (indicating)?

A. Uh-huh, yes.

Q. Okay. And what facility --

A. Well, it's the one we serve.

Q. Yes.

A. It's owned by my family, but not by Tri-City Railroad Company.

Q. And what is this facility here (indicating)?

A. That is a corn facility. That facility is owned by the same fellows that are going to do the deal with the city on the big loop. They own the southern half of the property, and we own the northern -- we still own the northern. Not TCRY, but --

Q. That's the Central Washington Transfer Terminal

people?

A. Yeah.

Q. And do you have any indication, if they proceed with the development of the new project with the city, whether they'll continue to do business here?

A. No, I don't.

Q. And are you currently bringing product by train to that facility?

A. We've brought a couple trains this year only. They're -- they're bringing -- they're serving it mostly by truck, local corn that they buy locally.

MR. DIJULIO: Thank you. Mr. Peters, that's all I have for that. Thank you, Mr. Peters.

Q. Mr. Peterson, I want to go to your Direct testimony regarding the use of the Richland junction facility as a passing track. You recognize that it's not used every day, isn't that correct?

A. Correct.

Q. And, in fact, you may go for periods as long as six weeks or two months without using that passing track, isn't that correct?

A. That is not correct.

Q. Okay. Isn't it true, Mr. Peterson, that you have not used that track for passing since at least October 3rd of this year?

A. That's not true.

Q. Okay. You have caused to be staged one or more tank cars on that passing track on a somewhat permanent basis since October 3rd, haven't you?

A. That's not true.

Q. Okay. Did you direct that a -- that one or more tank cars be stationed at the passing track in preparation for this hearing?

A. That's not true. Storing cars, Steve, is different than an operating passing track. We use that passing track every week with the BN. Not every day, but every week.

Q. So you -- would you know personally whether or not your people have actually maintained the same tank cars on that site since at least October 3rd?

A. Well, tank cars most of the time are always black, but they're not always the same numbers. I don't know. Those tank cars most likely are either oil -- either oil -- empty oils or empty tallow cars.

Q. My question is, personally, did you know whether or not there are cars -- those tank cars would have been parked there on that, as you call it, passing track, since October 3rd?

A. Do I know --

Q. Do you know that personally?

A. I know that that's not the case.

Q. I'm going to show you a series of photographs, sir, that I'll represent to you to be photographs of the Richland junction beginning on October 3rd and daily, subsequently, since October 3rd of this year.

A. Okay. And, Steve?

Q. And isn't it true, sir, that you have maintained a series of tank cars on that siding continuously, beginning with two cars, spanning to three cars, and subsequently to the four cars that are now crossing the proposed Center Parkway alignment?

A. That's not true. I can tell you -- I can tell you this, last weekend at the request of the neighborhood, we did a horn test with a locomotive, and I was at Center Parkway for that horn test, at the request of the neighborhood, and those cars weren't there. So I can get you the records. I'd be happy to get you the records, but I don't -- it's not there. I'll get you the record of all of the cars by car numbers. There are no car numbers there. Those are just blank, black tank cars. That's a terrible assertion.

Q. And it is your position, sir, that those tank cars weren't removed for the horn test last Sunday?

A. I can tell you that the -- that passing track, those tank cars were not where they are -- I don't know. Those tank cars were moved. You said the tank cars -- I don't

know what tank cars -- let me be clear. Let me give you some tank numbers. We'll give you the records. If you're asserting that -- why would we put tank cars there on a passing track?

Q. So these are the same cars that are in the -- or two of the cars that were in the photograph, and that was taken last Friday.

A. Well, they might have been there since last Friday.

Q. Okay.

A. These would be empty cars that had been unloaded and are returning to service.

Q. There's Thursday before that, November 14th. Here's Wednesday, November 13th, before that.

A. I'm looking at five cars in this photo and four cars in that. And are you insinuating we don't have a right to use --

Q. Not at all.

A. Oh.

Q. I'm just suggesting --

A. But you suggested --

Q. I'm just asking you if you've been parking cars on that siding track continuously over the last month and a half?

A. We've probably been parking cars, from time to time, on that siding track since 1999. I don't understand

your point.

Q. My questions are not to make a point, but to elicit facts, sir. And the fact that I'm trying to elicit from you is your knowledge of cars being parked on the passing track, as you refer to it, continuously for the last six weeks.

A. I don't -- I told you my answer.

Q. You've got -- do you have those -- do you have four tank cars parked across the Center Parkway alignment today?

A. I -- what do you mean by -- what are you insinuating? I don't know. I haven't been to Center Parkway today.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Peterson?

THE WITNESS: Yeah.

ADMINISTRATIVE LAW JUDGE TOREM: You can just answer you do know or you don't know.

THE WITNESS: I don't know.

Q. (BY MR. DIJULIO:) And when you were out there on Sunday, were there any cars parked on the siding?

A. When -- I wasn't out there Sunday, I was out there Saturday.

Q. I'm sorry, Saturday when you were out there, were there any cars parked there Saturday?

A. No. Would you like to see the video of the

locomotive going through the center -- the proposed Center Parkway grade crossing at 20 naught -- 20 miles an hour? I'll be happy to give you the videos. I mean, they were taken Saturday. There were no cars, or they would have got hit.

Q. Okay. And you don't know what happens to be out there today, do you?

A. No, I don't.

Q. And you don't know what's scheduled to be out there tomorrow, do you?

A. No. They're not our cars. We don't own the cars. They're waiting to get picked up.

Q. So the fact that there have been -- these are not your cars is your testimony, the cars in these photographs --

A. Absolutely not our cars.

Q. -- these tankers? And they can sit there for days at a time before being picked up?

A. They can sit there for months. But if you leave them there too long, they get in the way of the operations, so I -- you know, it just doesn't make sense.

Q. Your, also, testimony this morning said that you were all for that project, that loop track development by the City of Richland. You're a rail guy and you support that.

Is that what your testimony was this morning, or just this afternoon?

A. My testimony is we are supportive of economic

development, railroading, and the part that railroading plays, absolutely, and our concern is always about safety.

Q. Handing you what's been marked RVP-6-X.

A. Thank you.

Q. You or someone in your -- under your control caused that be produced?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Richland city council formally considers a new project bringing mile-long trains through Richland at all hours, thousand more train cars. And your purpose for producing this was to cause the public to object to the proposal between the city and the transfer terminal people?

A. No.

Q. Mr. Peterson, in response to the production request through the UTC process, Tri-City Railway produced RVP-5-X.

Are you familiar with those documents, sir?

A. No. I don't think so. Better look through them. I don't think so.

Q. Do you know who Lisa Anderson is?

A. Yes.

Q. And who is Lisa Anderson?

A. She's our administrative secretary.

Q. And Rhett Peterson is one of your sons?

A. Yes.

Q. And you do not recall receiving this e-mail in September of 2012 from Ms. Anderson regarding a Benton-Franklin Council of Governments' open house, is that correct?

A. You just took my exhibit. Was I copied on it? Or it was written to me? It's written to Paul Petit. No.

Q. And you're copied on it, aren't you?

A. I am copied on it.

Q. Okay.

A. Okay. I got it. Am I familiar with it? Obviously not very much. Do you want me to read it?

Q. No. I'm just asking, are you aware of any activities by Tri-City Railway in the City of Kennewick transportation planning process?

A. Not me. I personally have not been involved in it.

Q. And do you know of anybody at Tri-City Railway?

A. I think we have had people actually go to a meeting or two.

Q. And how about City of Richland transportation planning?

A. We may have had people go to a City of Richland planning meeting as well.

Q. And other than this record, which I recognize you're not familiar with, in terms of attendance of the regional Council of Governments transportation planning, you're not aware of any direct involvement of TCRY, are you?

A. No.

Q. Now, handing you Exhibit RVP-7-X.

A. Okay.

Q. Do you recognize your signature on that agreement?

A. It's actually not mine, but I recognize the signature.

Q. Okay. It is an agreement by TCRY?

A. It is.

Q. And in the fourth recital in this contract, "TCRY recognizes the city or the City of Richland's interest in facilitating well designed urban transportation improvements, including rail, vehicle, and pedestrian facilities."

Is that an accurate statement of that recital?

A. Number 4?

Q. Second "whereas" clause.

A. Oh, in the whereas.

Q. Fourth whereas clause.

A. Fourth whereas, yeah. Yes.

Q. You agree with that statement, don't you?

A. I don't -- yes.

MR. DIJULIO: That's all I have, Your Honor.

Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Does commission staff have any questions?

MR. SMITH: No questions, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Any Re-Direct follow up, Mr. Petit?

MR. PETIT: Give me just a minute, Your Honor.

(Pause in the proceedings).

MR. PETIT: I have nothing further, Your Honor.

EXAMINATION

BY ADMINISTRATIVE LAW JUDGE TOREM:

Q. Mr. Peterson, were you involved last time the city petitioned in 2004 to open --

A. Yes, sir.

Q. -- this road crossing?

A. Yes, sir.

Q. And did you oppose it at that time?

A. Yes, sir.

Q. And you're opposed to opening the road crossing across the tracks at this time, is that correct?

A. Well, obviously we're somewhat here. But, you

know -- you know, there's -- it's not as simple, and, you know, being in the transportation deal, as there's just not going to be a train go by that crossing and -- for ten minutes every once in a while. You know, that's a -- that passing track is a very important piece of our railroading.

And as the traffic gets better, which we encourage, we're all for growing the rail traffic and economic development and the hundred million dollar projects and so on and so forth. And we've gotten a lot of criticism in the last couple weeks here over a flyer and trying to make sure that the folks -- that this whole thing gets vetted because once you put that in, it's in, and it's not coming out. So is that what everybody really wants up there, because it's going to be lots and lots of rail traffic.

So -- and that's good. Brings economic development. But -- and that means that passing track is even more important than it was when it was a sleepy little old railroad ten years ago. And so when that, when the train comes in, those gates are -- if there was a road there, those gates are coming down.

And so, you know, we're the first responder, we get all the upset calls, we get the folks, we get the people that drive through the gates, and so on and so forth. And we -- we deal with them. So our concern is not that it wouldn't be great to have a road there, and people have testified

about, you know, pros and cons of what kind of road and separated and so on and so forth, but just so everybody knows, that's a big part of railroading, and it's going to become a bigger part of railroading in the future.

And not only are we looking -- what we need to be looking for, we'll need to be looking for additional passing track facility, probably right on the other side of Steptoe between there and the Yakima bridge, so we can handle passing of trains, you know, bigger trains and more trains. So to think that that one's coming out is -- that's a big deal to us.

Q. Let me stop you there.

A. Yes. I'm sorry.

Q. One of the options we heard about, I think at Mr. Jeffers' testimony yesterday, was the consideration of leaving both tracks and still opening the road. What's TCRY's opposition if both tracks are left?

A. Okay. When we're there, those gates are down, we're doing our railroading, we got, you know, we got our two tracks, build the road. We don't care.

Q. So can you answer my question?

A. Yeah.

Q. Do you oppose putting the road through if the two tracks stayed in place and operations continued as they were now?

A. As long as we have good, hundred percent crossing protection. You know, our job is to protect our workers first.

Q. So if I understand your position correctly, the opposition is only to the removal of the passing track as a casualty of putting the road through.

A. I'm not -- I'm not the attorney. I don't know what all the legal issues and so on and so forth. But from an operating standpoint --

Q. That's all I'm asking.

A. Operating standpoint, we will continue to operate uninhibited, and there's going to be a lot of, you know, at times, there's going to be a lot of folks sitting, you know.

Q. And that's not the case at the north Steptoe crossing because there's only one track, not the mainline and passing track?

A. Yeah. Because the passing track comes in well away from the Steptoe crossing and the other crossings, as well, so it's just, they're all just run through. So -- so the issue is, just so everyone knows, when those -- when work, railroading is being done there, the gates are down, they could be down for a while. 20 minutes.

It depends on how long the train is that's on the passing track, because the conductor has to walk -- after he re-aligns the switch, he's got to walk the train back to get

back on the train. So if it's a six-car train, won't take so long. If it's a 15-car train, takes twice as long. If it's 25, takes even longer. So we don't have any issues with that right now, because there's no road at-grade crossing there. That's all.

Q. Are you aware of any state law or regulations that limit the amount of time a railroad can block a right-of-way?

A. Yeah, the RCW says -- although the class 1's, you know -- I mean, we all, as a rail industry, want to not block a crossing more than ten minutes, unless you have to. So, I mean -- but when you have to, they get blocked longer. So -- I am aware. Not aware of the exact chapter and verse of it, but generally.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. Thank you, Mr. Peterson. That's all the questions that I have.

THE WITNESS: Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: Let me see if that raises any additional questions from your legal department. Mr. Petit?

REDIRECT EXAMINATION

BY MR. PETIT:

Q. Mr. Peterson, you responded to a question from the judge in connection with TCRY's opposition to this at-grade crossing at Center Parkway. And you made reference to the removal of passing track. The design as it was presented did, in fact, require blockage of and therefore inoperation of the passing track, correct?

A. Yes.

Q. And if the passing track is -- if that crossing is made so that it goes across both the main track and the passing track, is it your testimony that you see the dangers and the delays at that crossing increase?

A. We have the same objection as we had seven years ago when this petition was made then, and it was -- we thought it was put to bed. Nobody appealed it, it was over, and then it comes up again, so our objections are the same.

You know, it creates more safety issues because you're putting in another at-grade crossing. So, you know, we don't have to have one, we don't want one, because you have more safety issues, both for our workers and the general public. But we're -- taking out a passing track is -- is not only -- that's affecting our operation.

MR. PETIT: That's all I have, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. DiJulio, anything further?

MR. DIJULIO: No, thank you, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: For the state?

MR. SMITH: No, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Peterson, thank you very much for your time.

THE WITNESS: Thank you.

ADMINISTRATIVE LAW JUDGE TOREM: You can step down.

Okay. Counsel, looking at -- we got post witness exhibit housekeeping. I believe we have Exhibit RVP-1T, the pre-filed testimony, and Mr. DiJulio used at least RVP-5-X, 6-X, and 7-X in his cross-examination. I think that was it for documentary exhibits that were discussed with this witness. Is that correct?

MR. DIJULIO: Yes. From the cities' perspective.

ADMINISTRATIVE LAW JUDGE TOREM: Any objection to admitting those four exhibits at this time?

MR. DIJULIO: None from the city.

MR. PETIT: None.

ADMINISTRATIVE LAW JUDGE TOREM: All right. So RVP-1T, RVP-5-X, 6-X, and 7-X, are admitted.

Mr. Petit, do you have any other witnesses or evidence to put on today?

MR. PETIT: No, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: Were there any cases in rebuttal to be presented now that all the three cases-in-chief have been presented?

MR. DIJULIO: If I might have five minutes?

ADMINISTRATIVE LAW JUDGE TOREM: All right. Let's take a brief recess, come back, and when we do come back, let's discuss any exhibits that were not offered yet and admitted that might be stipulated to for the completion of the record, if necessary. Because if I haven't admitted them, I'm not going to reread or go into any detail. So please take your time to make sure any exhibit that you didn't use with a witness, if you wish for me to consider it as evidence or you want to refer to it in your closing briefs, that would get it admitted to the record so it can be properly cited and reviewed.

And we'll come back and talk about cases in rebuttal and any other questions as to the remaining schedule, like for post hearing briefs and the rest, after break. All right. We're at recess for five or ten minutes.

(Short recess).

ADMINISTRATIVE LAW JUDGE TOREM: All right. Counsel, let's be back on the record. It's coming up on 4:00.

It looks like we have three items to inquire about: Whether anyone wants to make a presentation of rebuttal; any exhibit wrap-up we need to do, I'm aware of several; and, three, I think, we still have a question as to whether or not you would like me, at some point tomorrow, to drive the route to view anything that was not already viewed on Google Earth.

So let's start with rebuttal cases. Does the city have any further evidence in way of rebuttal.

MR. DIJULIO: Yes. In follow-up to the questions regarding parking on the siding, we will offer a series of photographs Monday through Friday, beginning October 3rd, 2013 and extending through Friday, November 15, 2013, and we'll offer those for stipulation in lieu of calling Jeff Peters to authenticate them.

MR. PETIT: And we will stipulate to their admission, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: And commission staff, any objections there?

MR. SMITH: No, we'll stipulate as well.

MR. DIJULIO: And for purposes of the record, we will retain the exhibit, go make record copies for the parties and the commission, and return them by the 6:00 hearing.

ADMINISTRATIVE LAW JUDGE TOREM: And was that correct, then, that Mr. Peters is the one who took the

photographs?

MR. DIJULIO: No, but one of his staff did.

ADMINISTRATIVE LAW JUDGE TOREM: Shall we put them in in his number of --

MR. DIJULIO: That's fine.

ADMINISTRATIVE LAW JUDGE TOREM: Or did you want to mark them for Mr. Peterson's Cross? How would you like that --

MR. DIJULIO: That will work just fine.

MR. PETIT: Which?

ADMINISTRATIVE LAW JUDGE TOREM: I think to keep them associated with the person they were posed to, we'll use them with Mr. Peterson and put them into that.

MR. DIJULIO: Mr. Peterson, thank you.

ADMINISTRATIVE LAW JUDGE TOREM: So we'll mark those as RVP-9-X, the photos of tank cars on the crossing or on the siding. And how many total pictures, do you think, October 3rd to November?

(Pause in the proceedings).

MR. DIJULIO: 31. I don't know why we have 31 and not 30.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. So it's October 3rd is the first one?

MR. DIJULIO: From October 3rd, 2013 to November 15th, 2013, Monday through Friday of each of those

weeks.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. Thank you. All right. Was there any other rebuttal testimony or evidence from the city?

MR. DIJULIO: None from the city, thank you.

ADMINISTRATIVE LAW JUDGE TOREM: All right. So RVP-9-X will be admitted subject to it being copied and distributed to the parties and the number of copies that we need for the commission. And my understanding is that might be later tonight, but if it needs to come in by mail after tonight, that'd be fine as well.

All right. Turning to commission staff, any rebuttal evidence.

MR. SMITH: No, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: And from TCRY?

MR. PETIT: No, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Turning to the exhibits that were previously distributed for cross-examination, did the city have any exhibits it identified? Those would have been for, I think, Gary Norris. There was a GAN-5-X and perhaps a GAN-12-X, a copy of which never was submitted, but at least it was indicated, and perhaps also RVP-8-X. Those three exhibits were identified and were not used during the hearing.

Was there an intention to stipulate to their admission or seek a stipulation, or should I just omit those from the record?

MR. DIJULIO: Working in reverse order, RVP-8-X, the railroad lease between the Port of Benton and TCRY would be cumulative. It's been referred to during the course of the testimony. If it -- whether it's worth anything, we'll offer it to make the record complete.

Counsel, do you want it in there?

MR. PETIT: I think so, so we stipulate to its admission.

MR. DIJULIO: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: So we'll stipulate to its admission, RVP 8-X, unless the commission has a concern?

MR. SMITH: No.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. Working in reverse order back to the Gary Norris exhibit, 5-X and 12-X.

MR. DIJULIO: Oh, that was a placeholder, and there is no exhibit for that. That was a placeholder for any record of accidents, and that was addressed in the testimony of Ms. Hunter.

ADMINISTRATIVE LAW JUDGE TOREM: Okay.

MR. PETIT: We're talking about GAN-12-X?

MR. DIJULIO: Correct.

ADMINISTRATIVE LAW JUDGE TOREM: All right. So I will not -- I'll mark that as not offered or admitted. And 5-X? I think it may have been subsumed in some other exhibits.

MR. DIJULIO: I think it was, as well.

ADMINISTRATIVE LAW JUDGE TOREM: So we'll leave that one out as well. Were there any other city offered or identified exhibits?

MR. DIJULIO: No. Thank you, Judge.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. From staff, were there any cross-exam exhibits that were not used or identified during the hearing?

MR. SMITH: No, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: All right. Turning to Mr. Petit and TCRY?

MR. PETIT: Yes, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: There was a long series in the JP sequence, and I'm not sure -- or JP and then JD, I'm not sure how many of those may have been subsumed by later copies, including the city council item from last night.

MR. PETIT: Your Honor, we're not proposing the admission of any of those JD exhibits except two. Actually, three.

ADMINISTRATIVE LAW JUDGE TOREM: Okay.

MR. PETIT: JD-27-X, which is an aerial view of the existing passing track from Google Earth; JD-29-X, which is an aerial view showing the distance from the proposed crossing to Columbia Center; and JD-30-X, which is an aerial view showing the distance from the proposed crossing to Steptoe.

ADMINISTRATIVE LAW JUDGE TOREM: And that one's already been offered and admitted, 30-X.

MR. PETIT: 30-X, I do not have a record of that. So we would then move for the admission of 27-X and 29-X.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. So just those two aerial view shots.

MR. PETIT: And there's one on the next page. In addition, JD-37-X, which is the video of the Tangent rail presentation to the Richland City Council that Mr. Ballew testified regarding. And it's my understanding, from discussion with the attorneys for the cities, that they have no objection to the admission of any of these proposed exhibits.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. So as to 27-X, 29-X, and 37-X, Mr. DiJulio?

MR. DIJULIO: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: And Mr.

Smith?

MR. SMITH: No objection.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. So those three will be admitted. And the remainder, Mr. Petit, my understanding is there's no need to offer them or discuss them further, consider them further?

MR. PETIT: That is correct, Your Honor.

ADMINISTRATIVE LAW JUDGE TOREM: All right. That was the JD series. Does that same apply to the JP -- there were some additional purchase and sale agreements or the -- perhaps even a copy of the other order, which I would take official notice of, in any case.

MR. PETIT: I have the -- those as admitted, Your Honor. JP-5-X.

ADMINISTRATIVE LAW JUDGE TOREM: I'm looking at 8 and 9.

MR. PETIT: 8 and 9.

ADMINISTRATIVE LAW JUDGE TOREM: Those were not offered.

MR. PETIT: Oh, 8 we do not need, Your Honor. We'll withdraw that one. And 9, if you're going to take official notice and judicial notice.

ADMINISTRATIVE LAW JUDGE TOREM: Yeah, it's a commission document.

MR. PETIT: Yeah.

ADMINISTRATIVE LAW JUDGE TOREM: And certainly one that's been referred to in this case a number of times.

MR. PETIT: Right. We put it in there in case we needed to interrogate, and we did not turn out to need to interrogate.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. All right. Thank you. Then I think that takes care of our orphan exhibits.

The last item is the question of the driving tour. Let me start with the city. What's the city's position on whether I should take a look at anything from the windshield?

MR. DIJULIO: The city has already submitted a proposed route plan, and we have discussed it with other counsel, and we have no objection to Mr. Petit's additional suggestion that we drive the additional route that Mr. Norris discussed this morning.

ADMINISTRATIVE LAW JUDGE TOREM: Mr. Smith, is there any additional items or suggested routes from --

MR. SMITH: Yes, Your Honor. We would propose that you drive the mall ring road, which that might be on the directions, but actually, as I understand it, it is an internal road within the mall that people take from the roundabout at Gage right through the mall parking lot. And there, as I understand it, there are speed bumps there to try to slow down the traffic.

And also we think it would be worthwhile for you to take the drive out to Horn Rapids Industrial Park, which has been the subject of testimony here. I don't have the directions handy. We could get them before the public hearing, or I'm happy to let you Google them yourself, but we can do that.

ADMINISTRATIVE LAW JUDGE TOREM: My only concern about a site tour that's not documented means that there's a hole in the record as to exactly what I went off and looked at and whether I would cover all of the bases that the city and the staff and, for that matter, TCRY want me to see. I don't want to overemphasize something or miss something entirely.

So I'd much prefer, for the completeness of the record, that I get spoon fed point by point directions of what you want me to drive, with some indication of where I should stop and what I'm viewing. If that's possible, and I could get it as late as tomorrow morning --

MR. PETIT: Well, we would propose to get it to you by the close of public comment period tonight, and I think Mr. Smith and I and Mr. DiJulio can work that out.

ADMINISTRATIVE LAW JUDGE TOREM: If we have something -- I mean, I have the original submission, and I understand the basics of what was there, looking at the fire stations and some of the response routes, and now we're

talking about adding Mr. Norris's north and through Columbia Park Trail item.

Quite honestly, much of this has been covered in the daylight and at night over the last couple days getting from the hotel to the hearing site, but seeing it in a formal part of the hearing and making it part of the record is what I would like to do so there's a full record and one that's, if there is an appeal, if there's any further process, that folks can look and see, here's what the judge went out and viewed.

I doubt very much I'll be referring or citing to my own stop at any particular intersection, but it's possible the testimony can be questioned or the hearing record could be questioned on appeal to commissioners and submitted with other photographs or other things that -- if there's a point of conflict. So as long as there's a basis, that's what I'd like for tomorrow.

Let me then direct counsel, then, if you will, find a stipulated route. You can get it to me tonight. If that doesn't happen for some reason, you can leave it at the front desk and tell me what time I should wait to go tomorrow morning. I can pick it up when I check out of the Holiday Inn Express. That would be fine as well.

Is there any other business to take care of before we break and come back at six o'clock for any public comment there may be?

MR. DIJULIO: Nothing from the cities, thank you.

ADMINISTRATIVE LAW JUDGE TOREM: The date for closing briefs, I think, is December the 20th. I think that's a Friday. Is there any need to change that?

MR. DIJULIO: Speaking for the cities, the only hesitancy we'd have is the availability of the transcript. The court reporter reports that she intends to have it to us shortly after the Thanksgiving break, which should be sufficient.

ADMINISTRATIVE LAW JUDGE TOREM: Okay. So the post hearing briefs will still be due December 20th on that Friday. We did not, I think, stipulate to any page limitations, and I want you to have enough room to make your points, but I'm hoping, as we're -- so many interruptions I had today, that we keep it on the main point and the legal basis of what my decision should be, standards to review and that sort of thing, rather than any tangential facts.

Those can hopefully be cited to and will be developed in the record and not a long discussion. Because, quite honestly, I won't read those, I'll skim through them and get to the legal part of the brief. That's what I'm looking for in the post hearing brief, not a re-recitation of facts in any extensive matter. So hopefully the citations will simply be to the record as to facts that were laid out, if they need

to be re-summarized or repackaged to some extent.

I'm not saying you can't do that, I just don't want you to spend an awful lot of time giving me all the background again and use up valuable pages and time doing that. Any questions on just the general approach to briefs?

MR. DIJULIO: None from the city.

ADMINISTRATIVE LAW JUDGE TOREM: There's a chance, I don't know that it will happen, once I get the briefs and I read them that following week, that I may send you some bench requests for additional briefing or an answer to a specific question, but it would only be on a direct technical matter, and I may direct it to one party specifically. Just in thinking of issues that I'm hoping are addressed in the briefs over the next couple of days, I'm just wondering if that may occur in this case. I haven't done it previously in a rail case. It does happen quite often in our utility regulation cases, but just so you're not caught unaware.

I will try not to give you a deadline of during the holiday period as those questions come up, so hopefully that would be due usually seven to ten business days after I come up with a question and decide it's worth shipping back out to you as parties. So hopefully that won't happen, but if it does, hopefully it will be very clear as to what it is. And if there's a question, send me back a note asking, "Judge,

what exactly do you want," so we can get it clear and you're not wasting time only to have a follow-on of, "No, that wasn't it." So if you see a bench request in this case and you don't understand exactly what it's driving at, please let me know.

All right. Then nothing else to say on the matter, it's almost 4:20. I plan to be back here at 5:45 to see who's coming for the public comment hearing. I'm not anticipating we'll have a full room. We'll start somewhere between six and 6:15. And when the last commenter at that point presents his or her comments, we'll close it. So it definitely won't be going until 9:00 just because we said we're setting the room aside from six to nine. All right. We're adjourned. I'll see you at 5:45 or thereabouts.

(4:20 p.m.)

* * *

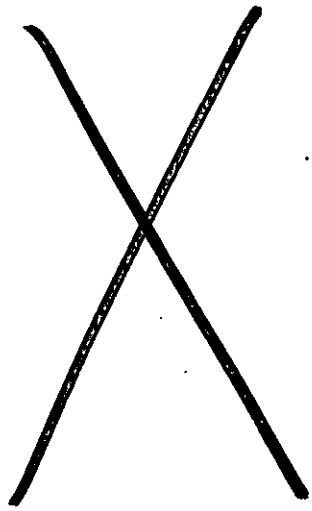
STATE OF WASHINGTON)
) ss.
COUNTY OF BENTON)

I, Dina Ranger, do hereby certify that at the time and place heretofore mentioned in the caption of the above-entitled matter, I was a Certified Shorthand Reporter for Washington and, pursuant to RCW 5.28.010, am authorized to administer oaths and affirmations in and for the State of Washington; that at said time and place I reported in stenotype all testimony adduced and proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting and that the foregoing transcript consisting of 194 typewritten pages is a true and correct transcript of all such testimony adduced and proceedings had and of the whole thereof.

Witness my hand at Kennewick, Washington, on this 2nd day of December, 2013.

Dina Ranger

Dina Ranger, CSR-RPR
CSR NO. RANGEDK317L3
Certified Shorthand Reporter
Notary Public for Washington



BEFORE THE WASHINGTON STATE

UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAIL WAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	Docket No. TR-130499 VOLUME IV (Pages 436 - 444)

PUBLIC COMMENT HEARING

Pages 436 - 444

ADMINISTRATIVE LAW JUDGE ADAM E. TOREM

6:00 p.m.

NOVEMBER 20, 2013

City of Richland Library
Gallery Room
955 Northgate Drive
Richland, Washington 99352

ORIGINAL

Hard Copy

SPEAKERS:

PROCEEDINGS:

ADMINISTRATIVE LAW JUDGE TOREM: Good evening. I'm going to call our public comment hearing to order. My name is Adam Torem. I'm an administrative law judge with the Washington Utilities and Transportation Commission. It's Wednesday evening, November the 20th, 2013. It's about 6:15. The docket number we've assigned to this case is TR 130499, and this is a case in which the Cities of Kennewick and Richland have filed a petition to open an at grade railroad crossing at Center Parkway, just north of the Columbia Center Mall.

The petition was filed back in April, and yesterday and today we conducted an evidentiary hearing with sworn witness testimony from the parties involved. And the parties involved were the Cities of Kennewick and Richland, the Port of Benton, the Tri-City & Olympia Railroad Company, the Burlington Northern Santa Fe Railway Company, the Union Pacific Railroad, and the commission's own regulatory staff from the rail division.

We heard two days' worth of testimony and numerous exhibits. The exhibits themselves are available on the Washington Utilities and Transportation Commission website, under the docket number I just recited. The attorneys will be filing legal briefs next month, ahead of the holidays, and I should have a decision out in this case early next year,

hopefully early January.

Tonight we've invited members of the public to come forward and have an opportunity to give the commission their own personal views on this proposal. I'm going to ask folks that want to comment, and I see that we have six people signed in tonight, three of which have indicated in advance that they would like to speak, to come up to the microphone when I call your name, take three to five minutes, I don't think we need to be too strict on time tonight, and tell us your name, your address, any affiliation you have, if you're representing yourself or a group or a governmental entry, and tell us if you're supporting or opposing the city's petition to open the crossing, and then explain however you would like why.

If you want to file a written comment, you can certainly do so. You can send it in by e-mail or by regular snail mail postal service. We have Roger here from our public comments section, and he will be able to give you the addresses and e-mail information if you want to go that route. If you want to submit something, I'm asking that all written comments be received by the commission no later than Tuesday, December the 10th, 2013, at close of business or 5:00 p.m. that day. That will give the attorneys, if any comments come in, an opportunity to review those comments before they finalize their legal briefs.

That's all the ground rules I had for you. I can't answer any questions about the case today, but many of the attorneys that represented their clients are here in the room today, and maybe you could introduce yourself to one of those folks with the tie on, besides me, if you have a question today, to perhaps figure out if they're the right party to answer your question.

All right. Let me turn to the folks that signed in early. And let me call Brian Malley to offer your comments.

MR. MALLEY: I'm Brian Malley. I am the executive director for the Benton-Franklin Council of Governments. We do metropolitan transportation planning for the Tri-Cities area, as well as we're an economic development district. I'm here in support of the petition to have an at-grade crossing at Center Parkway.

Prior to my hire as executive director, I spent the last 14 years in transportation planning for the area, so I'm intimately aware of where the project is and the area involved. One of the things that I did in that role was traffic modeling for the Tri-City area. And we've gone out to various agencies and had this project in our plan for a number of years, probably well over a decade.

One of the things we do when we're modeling building projects that we anticipate, we go out and reach out

to technical committees and policy committees regularly, including transit, the local ports and cities, as well as rail and other interests. This project has been supported widely by our member agencies. We've never really had anybody come up with opposition against the project.

So just generally in support, and I have some written comments. I'm not going to read them to you, but I'll submit them, I guess, online or hand them to you. Just wanted to express our support and that, just, we support our fire emergency agencies.

ADMINISTRATIVE LAW JUDGE TOREM: Thank you, Mr. Malley.

MR. MALLEY: You bet. Would you like a copy?

ADMINISTRATIVE LAW JUDGE TOREM: You can leave a copy of your comments with Roger here.

MR. MALLEY: All right.

ADMINISTRATIVE LAW JUDGE TOREM: The next name that's signed up desiring to speak, I believe, is Preston Ramsey.

MR. RAMSEY: My name is Preston Ramsey. You need my name and -- or my address? I -- address is 415 S. Alpine Drive, Liberty Lake, Washington. I'm here on behalf of the ownership of approximately five acres directly across the street from the Holiday Inn Express. And for obvious reasons, if you look at the map, we're very much in support of the

crossing. We have some additional comments that will be submitted through our attorney, but mainly we just want to voice support.

ADMINISTRATIVE LAW JUDGE TOREM: Thank you, Mr. Ramsey. And the last of the three of you that have asked to comment is, I believe Kim Shugart.

MS. SHUGART: Good evening, I'm Kim Shugart. I'm the senior vice president with the Tri-Cities Visitors and Convention Bureau, and we are the destination marketing organization for the Tri-Cities. We work on economic development projects with our partners in the community, and I'm here to express our support of the requested crossing. And the reason we're very supportive of this, we have 500 -- or, I'm sorry, 750 members that are small business and large business members of the bureau, and they're very dependent upon tourism.

Tourism in our community, visitors spend about 383 million dollars in the community, and this crossing is going to provide easier access to the retail area. A lot of the businesses that are placed in this area are either retail, restaurants, some of the amenities, there's a hotel there, amenities that visitors find attractive. And it will certainly help us in our marketing of the area and create a better visitor experience. So we're in support of the crossing.

ADMINISTRATIVE LAW JUDGE TOREM: Thank you, ma'am. Is there anyone else present that wishes to offer a verbal comment tonight? All right. Seeing none, as we said in the original time we sent this out, we're going to close the public hearing.

If you find someone else that should have been here to offer a comment and find the room dark when they arrive, please remind them that comments will be accepted, e-mail or in writing, through December 10th, 2013, close of business. Thank you all for attending and your attention to the details of the project and the business of the commission. Good night.

(6:22 p.m.)

* * *

STATE OF WASHINGTON)
) ss.
COUNTY OF BENTON)

I, Dina Ranger, do hereby certify that at the time and place heretofore mentioned in the caption of the above-entitled matter, I was a Certified Shorthand Reporter for Washington and, pursuant to RCW 5.28.010, am authorized to administer oaths and affirmations in and for the State of Washington; that at said time and place I reported in stenotype all testimony adduced and proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting and that the foregoing transcript consisting of 8 typewritten pages is a true and correct transcript of all such testimony adduced and proceedings had and of the whole thereof.

Witness my hand at Kennewick, Washington, on this 2nd day of December, 2013.

Dina Ranger

Dina Ranger, CSR-RPR
CSR NO. RANGEDK317L3
Certified Shorthand Reporter
Notary Public for Washington

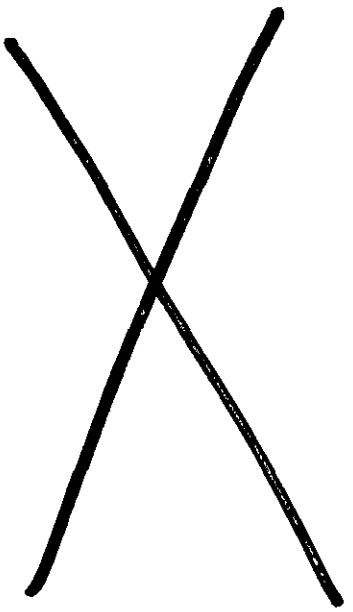


Exhibit No. JD-1T

WUTC DOCKET TR-130499
EXHIBIT JD-1T
ADMIT ☒ W/D ☐ REJECT ☐

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED TESTIMONY OF JOHN DESKINS

1. INTRODUCTION

John Deskins is the Traffic Engineer for the City of Kennewick ("City"). His pre-filed testimony explains that the proposed crossing is consistent with the Benton-Franklin Council of Governments 2011-2032 Regional/Metropolitan Transportation Plan. The testimony reviews how the proposed crossing mitigates the dangers of an at-grade crossing, and it discusses how the proposed crossing advances an acute public need by (1) decreasing emergency vehicle response time, (2) reducing the amount of vehicle-related accidents near the mall, and (3) providing adequate circulation in an important commercial area.

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2. BACKGROUND

Q: *State your name, position, and years in that position.*

A: John Deskins, Traffic Engineer for the City of Kennewick. I have held the position over nine years, since February of 2004.

Q: *State any other relevant background experience.*

A: I have been a professional engineer in traffic and transportation engineering for 18 years. I have a Master's Degree specializing in Transportation Engineering and am certified as a Professional Traffic Operations Engineer.

3. BACKGROUND ON THE PROPOSED PROJECT

Q: *State your understanding of the project.*

A: The planned connection would connect Gage Boulevard and the Columbia Center Mall on the south end with Tapteal Drive on the north in Richland. It would be one lane in each direction with a center turn lane to serve turning movements at the commercial areas along Center Parkway. The roadway would also provide a bike lane and sidewalks, and have an at-grade rail crossing.

4. TRAFFIC PLANNING

Q: *Explain the relationship between traffic in the City of Kennewick and the Benton-Franklin Council of Governments 2011-2032 Regional/Metropolitan Transportation Plan ("Regional Transportation Plan").*

A: The Benton-Franklin Council of Governments 2011-2032 Regional/Metropolitan Transportation Plan has a significant basis using the regional transportation model. The model incorporates all of the Tri-Cities area utilizing existing counts roadway networks, and land use to predict future traffic volumes, both with and without planned improvements.

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Q: *Is the Center Parkway crossing contemplated and approved in the Regional Transportation Plan?*

A: Yes. It is specifically listed in Appendix H to the Regional Transportation Plan.

Q: *Describe the issues that exist or will exist if the Center Parkway Crossing is not constructed.*

A: The area around Columbia Center Mall is highly commercial and is a regional hub for shoppers located up to an hour away or more. As more commercial growth occurs more transportation issues will occur along Tapteal Drive, which already has experienced recent growth. Here's why:

1. Drivers must drive long distances on congested arterial streets to get from one area to another. This adds unnecessary vehicle miles of travel and delay to those more congested routes.
2. Some drivers forego the out of direction travel on the city arterials in favor of taking the Columbia Center Mall ring road from the roundabout at Center Parkway and Gage to the signal at Columbia Center Boulevard and Willamette. This route with many parking aisles and pedestrians crossing everywhere is wholly unsuited for serving this traffic.
3. During the Holiday season in late November and December, the roadways around the mall are extremely congested with stop and go traffic and some entrances must be closed off simply to reduce the traffic tie-ups that occur as a result of the front side (Columbia Center Boulevard) capacity issues on site at the mall. Gaining better access to the backside of the mall would relieve some of this pressure as the roundabout serving the back of the mall is better suited to handle this traffic.

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Q: *How will the proposed crossing address those issues?*

A: Connecting these areas with a sufficient collector/arterial roadway like the Center Parkway Crossing is one very important way to help reduce the burden on congested principal arterial roadways like Columbia Center Boulevard, Quinault Avenue, Center Parkway. It is the equivalent of connecting the parking lots between two popular businesses so that drivers don't have to enter the busier city street to travel between the two, only on a much larger scale. The intersections on Columbia Center Boulevard and Quinault and at Canal are some of the most congested in the City and are regulars in the top 5 crash locations in the city annually. Any reduction of unnecessary trips through these intersections is likely to have a positive result when it comes to reductions in crashes.

By creating an alternative viable public street route around the mall it will reduce the loading on the mall ring road, particularly at the center point between Columbia Center Boulevard and Center Parkway which happens to coincide with the entrance to JCPenny, a heavily used pedestrian crossing area. This reduces exposure to pedestrian vs. vehicle crashes, especially those drivers of vehicles who don't have a destination on site that may be more impatient. It also reduces the possibility of vehicle-to-vehicle crashes in the parking lot as well.

By creating better access to the back side of the mall and the adjacent shopping areas we should achieve a better distribution at entrances and overall reduced congestion and crashes during the holiday season.

Q: *Will the proposed crossing improve emergency response times for the fire and police departments?*

A: Yes. Both by creating a shorter, less congested path and by slightly reducing congestion on the existing routes in use today.

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5. ALTERNATIVES TO THE PROPOSED CROSSING

Q: *Identify and explain the alternatives that the City reviewed to address the traffic issues near the proposed Center Parkway crossing.*

A: Any such analysis was done prior to my tenure with the City of Kennewick and I am not aware of those alternatives other than a grade separated crossing. It is my understanding that the grades made it infeasible. As for placement there is no other logical place to make this connection between Gage Boulevard and Tapteal Drive. It is ideally spaced between the parallel principal arterials of Columbia Center Boulevard and Steptoe Street and there are no major structures or neighborhoods blocking the way.

Q: *Why did the City ultimately decide to proceed with an at-grade crossing at Center Parkway?*

A: As I mentioned above, the crossing is needed to (1) decrease emergency vehicle response time, (2) reduce the amount of accidents near the mall, and (3) provide adequate circulation in this important commercial area. The trains generally are pretty short and the number of crossings are relatively low so the interruption to traffic is minimal as compared to a mainline railroad crossing of a principal arterial that has high traffic volumes. Even the conservative estimates from JUB's study show very low impact to traffic such that it would never be expected to back up into adjacent intersections. The planned implementation of supplemental safety measures, such as the raised median, to prevent vehicles circumventing the gates adds a significant safety measure to mitigate any concerns of the at-grade crossing.

Q: *Is it feasible to address the traffic issues by widening other roads in the area?*

A: Widening roads would reduce traffic congestion in the area as would be expected, so there may be a minor decrease in travel time as a result, but widening does nothing to address the missing and obvious network connection that the Center Parkway Crossing would provide for

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reasonable commercial access and emergency access. Both alternative routes create significant out of direction travel as has been noted by the JUB study. With the new connection provided, the distance between Tapteal Drive and Gage Boulevard along Center Parkway is approximately 1600 feet or 0.3 miles. Without the proposed connection, the routes using the other railroad crossings are significantly longer. Using Steptoe Street the distance is 1.9 miles going through one traffic signal, and using Quinault and Columbia Center Boulevard it is 1.7 miles going through four congested traffic signals. Widening the Columbia Center Boulevard underneath the existing grade separated crossing would be cost prohibitive. Rebuilding the intersections on Columbia Center Boulevard at Quinault Avenue, Canal Drive and Willamette Avenue are good alternatives that would produce positive benefits, but would cost millions of dollars in right-of-way and construction that are not feasible at this time. In the end, those improvements do not significantly reduce the travel time either which means many drivers will choose to cut through the mall parking lot to cut time off their trip. This is an unacceptable solution to the problem because, unlike the intermittent trains that are well protected by gates and medians, pedestrians (shoppers and their children) on the mall road are a constant presence that are much more vulnerable to impatient drivers trying to avoid the out of direction travel required by the current city street network.

6. ADDITIONAL INFORMATION

Q: *Are there any other reasons why an at-grade crossing on Center Parkway advances an acute public need in the City of Kennewick?*

A: It provides better balance for our traffic network, removing trips from the busiest and some of the most crash-prone intersections in the city. This connection will provide significant benefits to citizens and visitors by providing a critical access link between shopping, hotels and restaurants. Many vehicle trips will be shorter as a result and some vehicle trips will be replaced

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by walking trips (*i.e.*, hotels to restaurants).

7. DECLARATION

I, John Deskins, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED TESTIMONY OF JOHN DESKINS is true and correct to the best of my knowledge and belief.

DATED THIS 29 day of August, 2013

JOHN DESKINS

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A courtesy copy was also delivered, in the manner indicated, to:

Adam E. Torem
Administrative Law Judge
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia WA 98504-7250
atorem@utc.wa.gov

DATED this 3rd day of September, at Seattle, Washington.

Helen M. Stubbert

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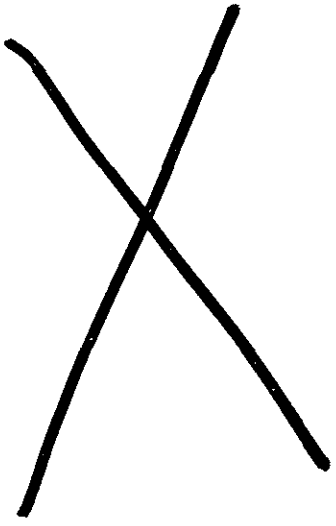

Exhibit No. JD-2T

WUTC DOCKET TR-130499
EXHIBIT JD-2TR
ADMIT ☒ W/D ☐ REJECT ☐

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED REBUTTAL TESTIMONY OF JOHN DESKINS

1. INTRODUCTION

John Deskins is a traffic engineer for the City of Kennewick ("City"). His pre-filed rebuttal testimony reviews Mr. Norris's pre-filed testimony submitted on behalf of Tri-City & Olympia Railroad ("TCRY"). Mr. Deskins concludes that the crossing addresses an acute public need by advancing the region's comprehensive transportation goals that aim to (1) reduce emergency response times, and (2) improve transportation safety around the Columbia Center Mall and vicinity.

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2. CREDENTIALS

Mr. Deskins' credentials and understanding of the project are set forth on pages 1-2 in Exhibit JD-1T.

3. RESPONSE TO GARY NORRIS TESTIMONY

Q: *What material did you review and analyze prior to preparing this pre-filed rebuttal testimony.*

A: I reviewed the following: (1) Mr. Norris's pre-filed testimony submitted on behalf of TCRY, and (2) Mr. Randolph V. Peterson's pre-filed testimony submitted on behalf of TCRY.

Q: *How would you summarize Mr. Norris's testimony?*

A: Mr. Norris believes that an at-grade crossing at Center Parkway is not warranted because, in his opinion, there is not an acute public need for this crossing.

Q: *Do you agree with Mr. Norris's assessment?*

A: No. This crossing petition is the result of comprehensive transportation planning. The J-U-B Traffic Study demonstrated that the crossing will improve emergency response times. The crossing will also improve circulation around the Columbia Center Mall and neighboring areas by improving the public roadway network. The improved circulation and resulting reduction in congestion is needed to protect public health and safety.

Q: *Can you explain why the proposed crossing advances an acute public need in the transportation network?*

A: In my previous pre-filed testimony, I explained why the crossing would improve public safety around the Columbia Center Mall (Exhibit JD-1T, pages 3-4). In short, by creating

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alternative viable public street routes around the mall, we can reduce the loading on the private mall ring road, particularly at the center point between Columbia Center Boulevard and Center Parkway. This will reduce exposure to vehicle-to vehicle crashes and help to separate vehicles and pedestrians. Attached to my testimony, I provide 12 years of crash data for Columbia Center Boulevard at Quinault Avenue and Columbia Center Boulevard at Canal Drive (Exhibit No. JD-3).

Q: *Why is this crash data relevant to this crossing petition?*

A: This crash data demonstrates the real danger of pedestrian-to-vehicle and vehicle-to-vehicle crashes in and around the Columbia Center Mall. In addition, it is also important to note that the private mall ring road is a pedestrian rich environment that was never intended for through traffic. The proposed crossing will reduce the burden on the private road and on congested principal arterial roadways, such as the Columbia Center Boulevard and Steptoe Street. Reducing congestion should ultimately reduce crashes.

Q: *How would you characterize Mr. Norris's testimony on page 7, line 6 -11?*

A: Mr. Norris's testimony seems to suggest that drivers will be more at risk by crossing the at-grade crossing than they are driving on congested Columbia Center Boulevard.

Q: Do you agree with Mr. Norris's assessment?

A: No. Mr. Norris's testimony is solely concerned with the crossing itself. Although traffic information was readily available, his testimony does not take into account any of the crash data submitted to the UTC in this petition process. Mr. Norris's testimony (page 6, lines 1-2) also fails to take into account the safety measures that the City will install at this crossing to protect the public and the crossing.

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SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

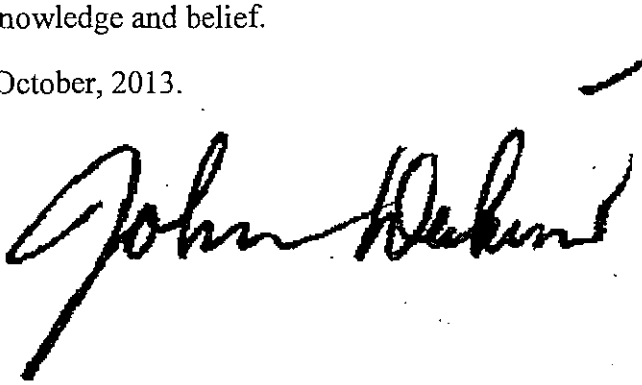
Q: *Does Mr. Norris's testimony take a comprehensive view of transportation planning in the Tri-Cities?*

A: No. Mr. Norris's testimony focuses on the proposed crossing itself. He fails to consider the practical considerations and decisions that make this region's transportation system work. We all want traffic crashes and fatalities to be zero. But if "zero" was the decision-making standard, which it is not, we would paralyze our transportation system. Transportation planning is based upon minimizing risk and efficiently moving people and goods. This petition does both, thereby advancing an acute public need in the Tri-Cities area.

4. DECLARATION

I, John Deskins, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED REBUTTAL TESTIMONY OF JOHN DESKINS is true and correct to the best of my knowledge and belief.

DATED THIS 22nd day of October, 2013.



JOHN DESKINS

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SEATTLE, WASHINGTON 98101-3
PHONE (206) 447-4400 FAX (206) 447-9700

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding ~~by U.S. Postal Service, postage prepaid, and~~ by email, to the parties identified below:

Tom A. Cowan Cowan Moore Stam & Luke P.O. Box 927 Richland WA 99352 *tcowan@cowanmoore.com*	Scott D. Keller Port of Benton 3100 George Washington Way Richland WA 99354 *keller@portofbenton.com*
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A courtesy copy was also delivered, in the manner indicated, to:

Adam E. Torem
Administrative Law Judge
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Olympia WA 98504-7250
atorem@utc.wa.gov

DATED this 22nd day of October, 2013, at Seattle, Washington.

Helen M. Stubbert

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
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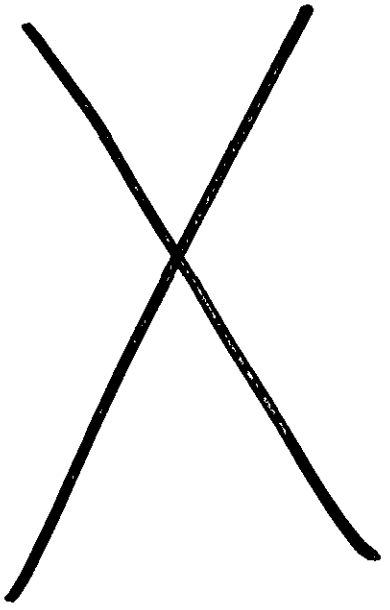


EXHIBIT NO. JD-3

Intersection Report
City of Kennewick

Thursday, January 31, 2013

WUTC DOCKET TR-130499
EXHIBIT JD-3
ADMIT ☒ W/D ☐ REJECT ☐

Intersection: COLUMBIA CENTER BLVD at QUINAULT AVE

Report Period: Saturday, March 17, 2001 to Wednesday, October 24, 2012

YEAR: 2012

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
12-04674	Wed - 02/15/2012	05:46 PM	Approach Turn	SB Left / NB Thru			X	2
12-10180	Sat - 04/07/2012	09:09 PM	Head On	SB Thru / NB Thru			X	2
12-10319	Mon - 04/09/2012	12:40 PM	Approach Turn	NB Left / SB Thru			X	2
12-16925	Sun - 05/06/2012	11:02 AM	Rear End	EB Thru / EB Thru		1		2
12-16468	Sat - 06/02/2012	10:32 AM	Right Angle	SB Thru / WB Thru			X	2
12-24606	Sun - 08/05/2012	03:18 PM	Right Angle	EB Thru / SB Thru			X	2
12-28191	Mon - 09/03/2012	12:15 PM	Right Angle	NB Left / WB Right			X	2
12-29004	Mon - 09/10/2012	08:25 AM	Approach Turn	SB Left / NB Thru			X	2
12-29498	Fri - 09/14/2012	02:10 PM	Approach Turn	SB Left / NB Thru			X	2
12-34047	Wed - 10/24/2012	12:38 PM	Right Angle	SB Thru / WB Thru			X	3
Total Crashes: 10				**Totals:**		1	9	10

YEAR: 2011

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
11-02113	Fri - 01/21/2011	05:33 PM	Rear End	EB Thru / EB Thru			X	2
11-05936	Tue - 03/01/2011	12:23 PM	Sideswipe	EB Right / WB Left			X	2
11-10154	Sat - 04/09/2011	06:02 PM	Approach Turn	SB Left / NB Thru			X	2
11-13010	Wed - 05/04/2011	04:23 PM	Fixed Object/Parked Vehicle	EB Left /			X	1
11-15977	Sun - 05/29/2011	06:15 PM	Right Angle	SB Thru / EB Thru		2		4
11-19125	Fri - 06/24/2011	03:51 PM	Approach Turn	SB Left / NB Thru			X	2
11-28827	Fri - 09/09/2011	12:23 PM	Approach Turn	SB Left / NB Thru			X	2
11-30442	Thu - 09/22/2011	07:54 PM	Rear End	WB Right / WB Right			X	2
11-34724	Sun - 10/30/2011	05:51 PM	Approach Turn	NB Left / SB Thru			X	3
11-38634	Wed - 12/07/2011	05:44 PM	Right Angle	EB Right / SB Thru			X	2
Total Crashes: 10				**Totals:**		1	9	10

0-000001416

000881

Intersection: COLUMBIA CENTER BLVD at QUINAULT AVE (Cont.)

YEAR: 2010

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
10-01284	Tue - 01/12/2010	11:32 AM	Right Angle	SB Right / SB Thru		1		2
10-03454	Sat - 01/30/2010	08:33 PM	Rear End	NB Thru / NB Thru			X	2
10-06876	Sat - 02/27/2010	06:27 PM	Approach Turn	SB Left / NB Thru			X	2
10-19134	Sat - 06/05/2010	01:13 PM	Rear End	NB Thru / NB Thru			X	2
10-19521	Tue - 06/08/2010	05:22 PM	Approach Turn	SB Left / NB Thru			X	3
10-25658	Mon - 07/26/2010	02:19 PM	Right Angle	EB Right / SB Thru			X	2
10-27699	Thu - 08/12/2010	12:56 PM	Approach Turn	SB Left / NB Thru			X	2
10-30966	Tue - 09/07/2010	06:14 PM	Rear End	EB Thru / EB Thru			X	2
10-32095	Fri - 09/17/2010	02:43 PM	Approach Turn	NB Left / SB Thru			X	2
10-37246	Tue - 11/02/2010	03:50 PM	Sideswipe	WB Thru / WB Left			X	2
10-38860	Wed - 11/17/2010	12:07 PM	Sideswipe	NB Left / NB Left			X	4
10-39318	Sun - 11/21/2010	05:15 PM	Approach Turn	SB Thru / NB Left			X	2
10-41512	Tue - 12/14/2010	08:42 AM	Approach Turn	NB Left / SB Thru		1		2
10-41847	Fri - 12/17/2010	04:23 PM	Approach Turn	SB Left / NB Thru		1		2
10-41930	Sat - 12/18/2010	08:42 AM	Rear End	NB Thru / NB Thru			X	2
Total Crashes: 15				**Totals:**		3	12	15

YEAR: 2009

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
09-06704	Fri - 02/27/2009	03:00 PM	Right Angle	NB Thru / EB Thru		1		2
09-12206	Mon - 04/13/2009	11:37 AM	Approach Turn	NB Left / SB Thru			X	2
09-17591	Sun - 05/24/2009	09:21 PM	Right Angle	SB Thru / WB Thru			X	2
09-18172	Fri - 05/29/2009	09:04 AM	Right Angle	NB Thru / EB Thru			X	3
09-19108	Thu - 06/04/2009	08:45 PM	Approach Turn	SB Left / NB Thru			X	2
09-22728	Tue - 06/30/2009	02:39 PM	Approach Turn	SB Left / NB Thru		1		2
09-27267	Fri - 07/31/2009	09:17 PM	Right Angle	SB Thru / WB Thru			X	3
09-28687	Tue - 08/11/2009	11:36 AM	Right Angle	SB Thru / WB Thru		1		2
09-32670	Thu - 09/10/2009	03:06 PM	Rear End	SB Thru / SB Thru		1		2
09-34842	Fri - 09/11/2009	07:45 PM	Right Angle	WB Thru / SB Thru			X	4
09-38401	Tue - 10/27/2009	01:12 PM	Approach Turn	NB Thru / SB Left			X	2
09-41333	Fri - 11/20/2009	10:57 AM	Rear End	SB Thru / SB Thru			X	3
09-42301	Sat - 11/28/2009	04:28 PM	Right Angle	SB Thru / WB Thru			X	2
09-43716	Thu - 12/10/2009	04:02 PM	Approach Turn	NB Left / SB Thru		2		4
Total Crashes: 14				**Totals:**		5	9	14

Intersection: COLUMBIA CENTER BLVD at QUINAULT AVE (Cont.)

YEAR: 2008

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
08-13915	Thu - 04/24/2008	11:31 AM	Rear End	NB Thru / NB Thru			X	2
08-21768	Mon - 06/23/2008	06:51 AM	Sideswipe	NB Left / NB Left			X	2
08-30136	Thu - 08/21/2008	04:24 PM	Right Angle	NB Thru / EB Left			X	2
08-30704	Thu - 08/28/2008	06:11 PM	Rear End	SB Thru / SB Thru			X	2
08-32727	Tue - 09/09/2008	05:48 PM	Right Angle	EB Thru / NB Thru			X	2
08-36867	Fri - 10/10/2008	10:52 PM	Approach Turn	SB Left / NB Thru		2		2
08-38187	Tue - 10/21/2008	05:47 PM	Approach Turn	SB Left / NB Thru			X	2
08-41821	Wed - 11/19/2008	05:34 PM	Sideswipe	EB Right / SB Thru			X	2
08-42351	Mon - 11/24/2008	09:15 AM	Approach Turn	NB Left / SB Thru		1		2
Total Crashes: 9				**Totals:**		2	7	9

YEAR: 2007

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
07-02205	Tue - 01/23/2007	05:05 PM	Rear End	EB Thru / EB Thru			X	3
07-11564	Mon - 04/23/2007	08:24 AM	Right Angle	SB Thru / WB Thru		1		2
07-12147	Sat - 04/28/2007	11:47 AM	Approach Turn	NB Thru / SB Left		1		3
07-14433	Fri - 05/18/2007	07:17 PM	Rear End	NB Thru / NB Thru		2		3
07-24715	Mon - 08/13/2007	01:43 PM	Approach Turn	SB Left / NB Thru		1		2
07-26592	Tue - 08/28/2007	04:56 PM	Sideswipe	WB Thru / WB Thru			X	2
07-30903	Sat - 10/06/2007	03:44 PM	Approach Turn	SB Left / NB Thru			X	2
07-33668	Fri - 11/02/2007	04:27 PM	Rear End	NB Thru / NB Thru			X	2
07-34174	Wed - 11/07/2007	02:10 PM	Approach Turn	SB Thru / NB Left			X	2
07-34530	Sat - 11/10/2007	05:49 PM	Rear End	EB Left / EB Left			X	2
07-37796	Wed - 12/12/2007	04:50 PM	Approach Turn	SB Left / NB Thru			X	2
07-39138	Sun - 12/23/2007	08:07 PM	Approach Turn	NB Thru / SB Left			X	2
Total Crashes: 12				**Totals:**		4	8	12

YEAR: 2006

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
06-01870	Fri - 01/20/2006	05:13 PM	Approach Turn	SB Left / NB Thru			X	2
06-03806	Fri - 02/10/2006	05:43 PM	Rear End	NB Thru / NB Thru			X	2

Intersection: COLUMBIA CENTER BLVD at QUINAULT AVE (Cont.)

YEAR: 2006 (Cont.)

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
06-12183	Thu - 05/04/2006	04:21 PM	Right Angle	SB Thru / WB Thru		1		2
06-23560	Tue - 08/15/2006	12:50 PM	Approach Turn	SB Left / NB Thru			X	2
06-28618	Sat - 09/30/2006	09:15 PM	Approach Turn	NB Thru / SB Left			X	2
06-28762	Mon - 10/02/2006	01:27 PM	Sideswipe	EB Right / WB Left			X	2
06-29644	Wed - 10/11/2006	06:30 AM	Right Angle	SB Thru / EB Thru			X	2
06-30000	Sat - 10/14/2006	03:24 PM	Right Angle	SB Thru / WB Thru			X	3
06-30443	Thu - 10/19/2006	12:23 PM	Rear End	NB Thru / NB Thru			X	2
06-18693	Fri - 11/03/2006	11:27 AM	Right Angle	EB Right / SB Thru			X	2
06-32304	Tue - 11/07/2006	12:24 PM	Approach Turn	NB Thru / SB Left			X	2
Total Crashes: 11				**Totals:**		1	10	11

YEAR: 2005

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
05-01042	Tue - 01/11/2005	11:10 PM	Right Angle	NB Thru / WB Thru			X	2
05-03209	Thu - 02/03/2005	01:39 PM	Approach Turn	NB Thru / SB Left		1		2
05-03925	Thu - 02/10/2005	02:26 PM	Sideswipe	EB Right / WB Left			X	2
05-04235	Sun - 02/13/2005	04:45 PM	Right Angle	SB Thru / WB Thru			X	3
05-06636	Tue - 03/08/2005	06:40 PM	Approach Turn	SB Left / NB Thru		1		2
05-11617	Mon - 04/25/2005	05:17 PM	Right Angle	EB Thru / NB Left			X	2
05-18412	Sun - 06/26/2005	02:01 PM	Right Angle	WB Right / NB Thru		1		2
05-24117	Thu - 08/11/2005	09:23 AM	Approach Turn	NB Left / SB Thru		1		4
05-31892	Tue - 10/18/2005	03:46 PM	Approach Turn	NB Thru / SB Left		1		2
05-38332	Thu - 12/22/2005	04:31 PM	Approach Turn	NB Thru / SB Left			X	2
Total Crashes: 10				**Totals:**		5	5	10

YEAR: 2004

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
04-00632	Tue - 01/06/2004	12:53 PM	Rear End	NB Thru / Prk Veh			X	4
04-13134	Sun - 04/18/2004	01:05 PM	Sideswipe	SB Thru / SB Thru			X	3
04-13580	Thu - 04/22/2004	09:00 AM	Rear End	NB Thru / Prk Veh			X	2
04-14261	Tue - 04/27/2004	01:00 PM	Rear End	NB Thru / Prk Veh			X	2

Intersection: COLUMBIA CENTER BLVD at QUINAULT AVE (Cont.)

YEAR: 2004 (Cont.)

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
04-15953	Mon - 05/10/2004	05:45 PM	Sideswipe	EB Left / EB Thru			X	2
04-21665	Fri - 06/25/2004	05:02 PM	Approach Turn	SB Thru / NB Left		1		2
04-23986	Mon - 07/12/2004	03:00 PM	Rear End	WB Right / Prk Veh			X	2
04-25927	Tue - 07/27/2004	02:39 PM	Approach Turn	SB Left / NB Thru			X	2
04-39439	Sun - 11/14/2004	04:46 PM	Sideswipe	SB Thru / SB Thru		1		2
04-43444	Fri - 12/24/2004	11:22 AM	Rear End	NB Left / NB Left			X	2
Total Crashes: 10				**Totals:**		2	8	10

YEAR: 2003

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
03-02188	Tue - 01/21/2003	12:04 PM	Rear End	SB Thru / SB Thru			X	2
03-04292	Mon - 02/10/2003	02:09 PM	Right Angle	EB Thru / NB Thru			X	2
03-06522	Tue - 03/04/2003	12:55 PM	Approach Turn	SB Left / NB Thru			X	2
03-11050	Wed - 04/16/2003	01:30 PM	Right Angle	EB Thru / SB Left			X	2
03-11711	Tue - 04/22/2003	01:32 PM	Rear End	Prk Veh / SB Thru		2		2
03-15128	Wed - 05/21/2003	12:02 PM	Right Angle	NB Thru / EB Thru			X	2
03-15925	Tue - 05/27/2003	08:03 PM	Approach Turn	SB Left / NB Thru		2		2
03-17836	Wed - 06/11/2003	02:22 PM	Rear End	NB Thru / Prk Veh		1		2
03-24310	Wed - 07/30/2003	03:40 PM	0	NB Thru / WB Thru			X	2
03-24861	Sun - 08/03/2003	05:16 PM	Approach Turn	NB Thru / NB Right			X	2
03-27116	Thu - 08/21/2003	03:54 AM	Right Angle	NB Thru / EB Thru		1		4
03-29413	Mon - 09/08/2003	10:40 AM	Right Angle	SB Thru / WB Thru			X	2
03-29920	Fri - 09/12/2003	09:29 AM	Approach Turn	SB Left / NB Thru			X	2
03-30285	Sun - 09/14/2003	08:39 PM	Rear End	SB Thru / SB Thru		1		2
03-32554	Thu - 10/02/2003	12:02 PM	Approach Turn	SB Left / NB Thru			X	2
03-32722	Fri - 10/03/2003	03:08 PM	Rear End	NB Thru / Prk Veh			X	2
03-33285	Wed - 10/08/2003	11:23 AM	Approach Turn	NB Thru / SB Left		1		2
03-34872	Tue - 10/21/2003	07:05 PM	Right Angle	WB Thru / SB Thru			X	2
03-35392	Sat - 10/25/2003	07:54 PM	Right Angle	NB Thru / WB Thru			X	2
03-36214	Sat - 11/01/2003	07:23 PM	Approach Turn	SB Left / NB Thru		3		2
03-38115	Mon - 11/17/2003	05:35 PM	Rear End	EB Thru / EB Thru		2		3
Total Crashes: 21				**Totals:**		8	13	21

Intersection: COLUMBIA CENTER BLVD at QUINAULT AVE (Cont.)

YEAR: 2002

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
02-04539	Sun - 02/17/2002	06:00 PM	Rear End	EB Thru / EB Thru		1		2
02-05260	Sun - 02/24/2002	10:55 AM	Approach Turn	NB Thru / SB Left			X	2
02-05748	Fri - 03/01/2002	10:59 AM	Approach Turn	NB Thru / SB Left		2		2
02-06408	Thu - 03/07/2002	05:45 PM	Approach Turn	SB Left / NB Thru		2		2
02-14117	Fri - 05/17/2002	04:47 PM	Approach Turn	SB Thru / NB Left			X	3
02-16537	Sat - 06/08/2002	10:29 PM	Backing	Bckng / SB Thru		1		2
02-17911	Fri - 06/21/2002	01:43 PM	Approach Turn	SB Left / NB Thru		2		2
02-21009	Tue - 07/16/2002	06:10 PM	Approach Turn	NB Left / SB Thru			X	2
02-26103	Fri - 08/30/2002	06:59 PM	Rear End	NB Thru / NB Thru		2		4
02-26561	Tue - 09/03/2002	11:32 AM	Approach Turn	WB Left / EB Right			X	2
02-26828	Thu - 09/05/2002	07:40 PM	Approach Turn	SB Left / NB Thru		1		2
02-27221	Mon - 09/09/2002	05:30 PM	Approach Turn	EB Left / WB Thru			X	2
02-32411	Mon - 10/28/2002	03:35 PM	Rear End	WB Thru / WB Thru			X	2
02-38894	Mon - 12/30/2002	07:04 PM	Approach Turn	NB Left / SB Thru			X	2
Total Crashes: 14				**Totals:**		7	7	14

YEAR: 2001

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
01-06763	Sat - 03/17/2001	12:22 PM	Approach Turn	SB Left / NB Thru			X	3
01-11536	Sat - 05/05/2001	06:14 PM	Rear End	SB Thru / SB Thru			X	2
01-13871	Sun - 05/27/2001	09:53 PM	Right Angle	NB Thru / EB Thru			X	2
01-17280	Fri - 06/29/2001	04:43 PM	Approach Turn	NB Left / SB Thru		1		2
01-19729	Fri - 07/20/2001	03:04 PM	Right Angle	NB Thru / WB Thru		1		2
01-19843	Sat - 07/21/2001	01:35 PM	Approach Turn	SB Thru / NB Left			X	2
01-21979	Wed - 08/08/2001	12:42 PM	Rear End	NB Thru / NB Thru			X	2
01-23673	Wed - 08/22/2001	08:18 PM	Approach Turn	NB Thru / SB Left			X	2
01-28670	Sat - 10/06/2001	11:49 PM	Approach Turn	SB Left / NB Thru			X	2
01-29027	Wed - 10/10/2001	01:30 PM	Backing	Bckng / EB Left			X	2
01-29914	Thu - 10/18/2001	02:48 PM	Right Angle	EB Right / SB Thru			X	2
01-31136	Sun - 10/28/2001	05:50 PM	Rear End	NB Thru / NB Thru			X	2
01-33029	Thu - 11/15/2001	07:00 PM	Approach Turn	NB Left / SB Thru			X	3
01-33034	Thu - 11/15/2001	07:04 PM	Right Angle	NB Thru / EB Thru			X	2
01-35727	Wed - 12/12/2001	06:17 PM	Approach Turn	NB Left / SB Thru		1		3

Intersection: COLUMBIA CENTER BLVD at QUINAULT AVE (Cont.)

YEAR: 2001 (Cont.)

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
01-36190	Mon - 12/17/2001	08:32 AM	Sideswipe	SB Thru / SB Thru			X	2
01-36313	Tue - 12/18/2001	01:54 PM	Right Angle	SB Thru / WB Thru			X	2
01-36316	Tue - 12/18/2001	02:37 PM	Sideswipe	NB Thru / NB Thru			X	2
Total Crashes: 18				**Totals:**	3	15		18

REPORT TOTALS:

Number of Crashes:	154	
Number of Fatalities:	0	(0.00%)
Number of Injuries:	42	(27.27%)
Number of PDOs:	112	(72.73%)
Number of Vehicles Involved:	340	
Number of People Killed:	0	(0.00%)
Number of People Injured:	55	(35.71%)
Crash Rate:	.00	

Intersection Report
City of Kennewick

Thursday, January 31, 2013

Intersection: CANAL DR at COLUMBIA CENTER BLVD

Report Period: Thursday, January 04, 2001 to Friday, December 21, 2012

YEAR: 2012

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
12-02826	Sat - 01/28/2012	07:08 PM	Approach Turn	EB Thru / WB Left			X	2
12-03831	Tue - 02/07/2012	06:20 PM	Approach Turn	NB Left / SB Thru		2		2
12-04964	Sat - 02/18/2012	12:38 PM	Pedestrian/Cyclist Involved	NB Thru / WB Thru		2		1
12-5912	Mon - 02/27/2012	12:56 PM	Approach Turn	SB Left / NB Thru			X	2
12-06470	Sat - 03/03/2012	12:44 PM	Rear End	SB Thru / SB Thru		1		2
12-07333	Mon - 03/12/2012	12:14 PM	Approach Turn	NB Left / SB Thru			X	2
12-07360	Mon - 03/12/2012	04:05 PM	Right Angle	WB Thru / SB Thru			X	2
12-11490	Fri - 04/20/2012	06:33 PM	Rear End	SB Thru / SB Thru			X	2
12-14682	Thu - 05/17/2012	06:47 AM	Right Angle	SB Left / SB Left			X	2
12-15695	Sat - 05/26/2012	01:59 PM	Rear End	SB Thru / SB Thru			X	2
12-20817	Fri - 07/06/2012	05:33 PM	Sideswipe	NB Left / NB Thru		2		2
12-22416	Thu - 07/19/2012	12:23 PM	Approach Turn	SB Left / NB Thru		2		3
12-23064	Tue - 07/24/2012	02:05 PM	Approach Turn	NB Left / SB Thru			X	2
12-25267	Fri - 08/10/2012	06:12 PM	Rear End	EB Thru / EB Thru			X	2
12-27356	Mon - 08/27/2012	02:19 PM	Approach Turn	NB Left / SB Thru			X	2
12-31011	Thu - 09/27/2012	10:22 AM	Rear End	WB Thru / WB Thru			X	2
12-33237	Wed - 10/17/2012	12:13 PM	Approach Turn	NB Left / SB Thru			X	2
12-38320	Wed - 12/05/2012	02:20 PM	Right Angle	WB Right / NB Thru			X	2
12-39033	Wed - 12/12/2012	08:11 PM	Right Angle	WB Right / NB Thru			X	2
12-39210	Fri - 12/14/2012	12:56 PM	Rear End	NB Thru / NB Thru			X	2
12-39379	Sat - 12/15/2012	05:46 PM	Rear End	NB Thru / NB Thru			X	2
12-40035	Fri - 12/21/2012	11:54 AM	Rear End	NB Left / NB Thru			X	2
Total Crashes: 22				**Totals:**	5	17	22	

YEAR: 2011

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
11-04835	Thu - 02/17/2011	11:17 AM	Approach Turn	NB Left / SB Thru			X	2
11-06269	Fri - 03/04/2011	05:06 PM	Rear End	SB Thru / SB Thru			X	2

Intersection: CANAL DR at COLUMBIA CENTER BLVD (Cont.)

YEAR: 2011 (Cont.)

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
11-08545	Sat - 03/26/2011	12:11 PM	Rear End	WB Thru / WB Thru		1		2
11-10822	Fri - 04/15/2011	07:19 PM	Right Angle	NB Right / WB Thru			X	4
11-14288	Sun - 05/15/2011	01:44 PM	Right Angle	WB Thru / SB Thru			X	2
11-16568	Fri - 06/03/2011	05:00 PM	Rear End	SB Thru / SB Thru		3		3
11-19136	Fri - 06/24/2011	05:23 PM	Rear End	NB Thru / NB Thru			X	2
11-23503	Thu - 07/28/2011	12:52 PM	Approach Turn	SB Left / NB Thru			X	2
11-37260	Wed - 11/23/2011	07:31 PM	Right Angle	WB Thru / NB Thru			X	2
Total Crashes: 9				**Totals:**		2	7	9

YEAR: 2010

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
10-07314	Wed - 03/03/2010	12:01 PM	Sideswipe	NB Left / NB Thru			X	2
10-13666	Fri - 04/23/2010	05:59 PM	Approach Turn	NB Left / SB Thru		2		2
10-15403	Sat - 05/08/2010	11:25 AM	Rear End	WB Thru / WB Thru			X	2
10-19342	Mon - 06/07/2010	09:42 AM	Approach Turn	SB Left / NB Thru			X	2
10-32728	Thu - 09/23/2010	11:19 AM	Right Angle	SB Thru / EB Left			X	2
10-38631	Mon - 11/15/2010	04:33 PM	Rear End	NB Thru / NB Thru		1		2
10-40310	Wed - 12/01/2010	02:13 PM	Approach Turn	NB Left / SB Thru			X	2
Total Crashes: 7				**Totals:**		2	5	7

YEAR: 2009

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
09-00119	Thu - 01/01/2009	06:23 PM	Sideswipe	NB Left / NB Thru			X	2
09-06375	Tue - 02/24/2009	06:10 PM	Approach Turn	SB Left / NB Thru			X	2
09-11657	Thu - 04/09/2009	10:36 AM	Approach Turn	NB Left / SB Thru			X	2
09-13107	Mon - 04/20/2009	01:14 PM	Sideswipe	WB Right / EB Left			X	2
09-14164	Tue - 04/28/2009	06:32 PM	Approach Turn	NB Left / SB Thru			X	2
09-14677	Sat - 05/02/2009	11:28 AM	Right Angle	WB Left / NB Thru			X	2
09-33951	Sun - 09/20/2009	01:06 PM	Sideswipe	SB Thru / SB Thru			X	2
09-34157	Tue - 09/22/2009	08:35 AM	Approach Turn	NB Thru / SB Left		1		2
09-40305	Wed - 11/11/2009	07:26 PM	Right Angle	WB Thru / SB Thru			X	2

Intersection: CANAL DR at COLUMBIA CENTER BLVD (Cont.)

YEAR: 2009 (Cont.)

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
09-40394	Thu - 11/12/2009	02:36 PM	Approach Turn	SB Left / NB Thru		2		2
09-43800	Fri - 12/11/2009	12:53 PM	Approach Turn	SB Left / NB Thru			X	2
Total Crashes: 11				***Totals:***		2	9	11

YEAR: 2008

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
08-00534	Sat - 01/05/2008	01:12 PM	Approach Turn	NB Left / SB Thru		1		3
08-6357	Fri - 02/22/2008	05:22 PM	Rear End	NB Thru / NB Thru			X	2
08-11838	Mon - 04/07/2008	01:30 PM	Approach Turn	EB Left / WB Thru		1		2
08-15723	Thu - 05/08/2008	03:08 PM	Rear End	SB Left / SB Left			X	2
08-18894	Sun - 06/01/2008	09:40 AM	Approach Turn	SB Thru / NB Left			X	2
08-21470	Fri - 06/20/2008	11:56 PM	Fixed Object/Parked Vehicle	SB Thru /			X	1
08-25753	Mon - 07/21/2008	10:53 AM	Approach Turn	NB Left / SB Thru			X	2
08-34842	Thu - 09/25/2008	02:25 PM	Rear End	SB Thru / SB Thru			X	2
08-37951	Sun - 10/19/2008	03:40 PM	Sideswipe	SB Left / NB Right			X	2
08-38171	Tue - 10/21/2008	03:30 PM	Right Angle	SB Thru / EB Thru			X	2
08-38975	Tue - 10/28/2008	02:07 AM	Approach Turn	SB Left / NB Thru		1		2
08-39634	Sat - 11/01/2008	09:56 PM	Rear End	NB Thru / NB Thru			X	2
08-40469	Sat - 11/08/2008	03:00 PM	Rear End	SB Thru / SB Thru			X	2
08-46009	Tue - 12/23/2008	10:30 AM	Sideswipe	SB Thru / SB Thru		1		2
Total Crashes: 14				**Totals:**		4	10	14

YEAR: 2007

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
07-08297	Sat - 03/24/2007	10:13 AM	Rear End	SB Left / SB Left			X	2
07-09222	Sun - 04/01/2007	05:30 PM	Approach Turn	NB Left / SB Thru		2		4
07-11304	Fri - 04/20/2007	06:38 PM	Sideswipe	EB Thru / EB Thru			X	2
07-13081	Sun - 05/06/2007	05:03 PM	Sideswipe	WB Right / WB Right			X	2
07-16018	Fri - 06/01/2007	07:11 PM	Rear End	SB Thru / SB Thru			X	2
07-23983	Tue - 08/07/2007	12:51 PM	Approach Turn	NB Left / NB Thru			X	2
07-29491	Sun - 09/23/2007	03:44 PM	Sideswipe	SB Thru / SB Thru			X	2

Intersection: CANAL DR at COLUMBIA CENTER BLVD (Cont.)

YEAR: 2007 (Cont.)

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
07-32897	Fri - 10/26/2007	05:23 PM	Sideswipe	EB Left / WB Right			X	2
07-33159	Mon - 10/29/2007	11:23 AM	Approach Turn	SB Left / NB Thru		1		2
07-35753	Sat - 11/24/2007	11:22 AM	Rear End	SB Left / SB Left			X	2
07-35796	Sat - 11/24/2007	08:11 PM	Right Angle	NB Thru / EB Thru		2		2
07-36142	Wed - 11/28/2007	12:26 PM	Right Angle	WB Thru / SB Thru			X	2
07-38271	Sun - 12/16/2007	07:03 PM	Approach Turn	NB Left / SB Thru		1		2
07-39901	Mon - 12/31/2007	12:09 PM	Approach Turn	SB Right / NB Left			X	2
Total Crashes: 14				**Totals:**		4	10	14

YEAR: 2006

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
06-01182	Fri - 01/13/2006	01:00 PM	Approach Turn	SB Left / NB Thru			X	2
06-05387	Mon - 02/27/2006	09:30 PM	Rear End	NB Thru / NB Thru			X	2
07-00761	Sun - 03/19/2006	01:58 PM	Right Angle	NB Thru / EB Thru			X	2
06-07584	Wed - 03/22/2006	01:31 PM	Rear End	SB Left / SB Left			X	2
06-11377	Thu - 04/27/2006	12:39 PM	Approach Turn	NB Left / SB Thru			X	2
06-14131	Mon - 05/22/2006	12:14 PM	Right Angle	NB Left / WB Thru			X	2
06-14136	Mon - 05/22/2006	12:57 PM	Right Angle	NB Thru / EB Thru		2		2
06-17272	Tue - 06/20/2006	10:49 AM	Approach Turn	SB Left / NB Thru			X	2
06-17903	Mon - 06/26/2006	11:50 AM	Rear End	SB Thru / SB Thru			X	2
06-21846	Mon - 07/31/2006	10:31 AM	Sideswipe	WB Right / EB Left			X	2
06-25215	Wed - 08/30/2006	12:01 PM	Approach Turn	SB Left / NB Thru			X	2
06-25677	Sun - 09/03/2006	04:55 PM	Backing	Bckng / NB Thru			X	2
06-26500	Mon - 09/11/2006	12:10 PM	Rear End	SB Thru / SB Thru			X	2
06-27059	Sat - 09/16/2006	12:19 PM	Right Angle	WB Thru / SB Thru		1		2
06-28858	Tue - 10/03/2006	12:30 PM	Rear End	WB Thru / WB Thru			X	2
06-29300	Sat - 10/07/2006	03:58 PM	Approach Turn	NB Left / SB Thru		2		2
06-30440	Thu - 10/19/2006	11:45 AM	Right Angle	NB Thru / WB Thru			X	3
06-30872	Mon - 10/23/2006	07:31 PM	Approach Turn	NB Thru / SB Left		1		2
06-32684	Sat - 11/11/2006	12:44 PM	Approach Turn	NB Thru / SB Left		1		2
06-33304	Fri - 11/17/2006	10:08 PM	Approach Turn	SB Left / NB Thru			X	2
06-35087	Wed - 12/06/2006	04:20 PM	Rear End	NB Thru / NB Thru			X	2
Total Crashes: 21				**Totals:**		5	16	21

Intersection: CANAL DR at COLUMBIA CENTER BLVD (Cont.)

YEAR: 2005

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
05-07449	Wed - 03/16/2005	04:05 PM	Rear End	NB Thru / NB Thru			X	2
05-13180	Mon - 05/09/2005	04:02 PM	Approach Turn	NB Left / SB Thru			X	2
05-19744	Wed - 07/06/2005	01:49 PM	Approach Turn	NB Thru / SB Left			X	2
05-20592	Sun - 07/10/2005	01:39 PM	Rear End	SB Thru / Prk Veh			X	2
05-25411	Mon - 08/22/2005	09:13 AM	Approach Turn	NB Thru / SB Left			X	2
05-25563	Tue - 08/23/2005	12:11 PM	Rear End	WB Thru / WB Thru		1		2
05-28124	Wed - 09/14/2005	02:27 PM	Approach Turn	NB Left / SB Thru		1		2
05-34458	Sat - 11/12/2005	01:23 PM	Rear End	WB Thru / WB Thru			X	2
05-34913	Thu - 11/17/2005	05:58 PM	Approach Turn	NB Left / SB Thru			X	2
Total Crashes: 9				**Totals:**		2	7	9

YEAR: 2004

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
04-07857	Sat - 03/06/2004	02:58 PM	Sideswipe	WB Thru / WB Thru			X	2
04-12509	Tue - 04/13/2004	10:40 AM	Right Angle	SB Thru / EB Left			X	2
04-32611	Sat - 09/11/2004	11:38 AM	Approach Turn	NB Thru / SB Left		2		2
04-34363	Mon - 09/27/2004	05:14 PM	Right Angle	NB Thru / EB Thru			X	2
04-38187	Tue - 11/02/2004	01:44 PM	Right Angle	NB Right / WB Thru			X	2
04-42834	Sat - 12/18/2004	12:46 PM	Rear End	SB Thru / SB Thru			X	3
Total Crashes: 6				**Totals:**		1	5	6

YEAR: 2003

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
03-00839	Wed - 01/08/2003	09:22 PM	Rear End	SB Thru / SB Thru			X	2
03-01923	Sat - 01/18/2003	08:02 PM	Approach Turn	SB Left / NB Thru			X	2
03-05839	Tue - 02/25/2003	02:19 PM	Sideswipe	WB Right / WB Right			X	2
03-08657	Sun - 03/23/2003	04:48 PM	Approach Turn	SB Left / NB Thru			X	2
03-08705	Mon - 03/24/2003	08:45 AM	Approach Turn	SB Left / NB Thru			X	2
03-08792	Tue - 03/25/2003	10:25 AM	Approach Turn	NB Thru / SB Left			X	2
03-20753	Fri - 07/04/2003	12:39 PM	Rear End	WB Thru / Prk Veh			X	2
03-31880	Sat - 09/27/2003	09:58 AM	Right Angle	SB Left / NB Thru			X	2

Intersection: CANAL DR at COLUMBIA CENTER BLVD (Cont.)

YEAR: 2003 (Cont.)

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
03-38408	Thu - 11/20/2003	11:20 AM	Rear End	SB Thru / SB Thru			X	2
03-40671	Wed - 12/10/2003	11:51 AM	Rear End	NB Thru / Prk Veh		1		2
03-41984	Mon - 12/22/2003	12:34 AM	Approach Turn	SB Thru / NB Right		2		2
Total Crashes: 11				**Totals:**		2	9	11

YEAR: 2002

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
02-00526	Sun - 01/06/2002	11:10 AM	Approach Turn	SB Thru / NB Left			X	2
02-02479	Sun - 01/27/2002	04:44 PM	Rear End	NB Thru / NB Thru		1		2
02-05536	Wed - 02/27/2002	10:29 AM	Approach Turn	SB Left / NB Thru		1		2
02-10158	Thu - 04/11/2002	01:56 PM	Rear End	WB Thru / WB Thru			X	2
02-10885	Thu - 04/18/2002	02:37 PM	Approach Turn	NB Left / SB Thru		1		2
02-13451	Sat - 05/11/2002	01:39 PM	Sideswipe	NB Thru / NB Thru			X	2
02-16131	Wed - 06/05/2002	10:38 AM	Rear End	WB Right / WB Right			X	2
02-17712	Wed - 06/19/2002	03:35 PM	Rear End	NB Thru / NB Thru		2		3
02-21797	Tue - 07/23/2002	12:45 PM	Approach Turn	SB Left / NB Thru			X	2
02-25253	Thu - 08/22/2002	05:02 PM	Rear End	SB Thru / SB Thru		1		2
02-26244	Sat - 08/31/2002	09:23 PM	Right Angle	EB Thru / NB Thru		1		2
02-26916	Fri - 09/06/2002	05:56 AM	Right Angle	NB Right / EB Thru			X	2
02-27735	Sat - 09/14/2002	08:50 AM	Rear End	WB Thru / WB Thru			X	2
02-27966	Mon - 09/16/2002	12:00 PM	Approach Turn	NB Thru / SB Left			X	2
02-30217	Mon - 10/07/2002	02:02 PM	Approach Turn	NB Left / SB Thru		2		2
02-33249	Tue - 11/05/2002	12:07 PM	Rear End	WB Thru / WB Thru			X	2
02-34503	Sun - 11/17/2002	01:45 AM	Sideswipe	SB Left / SB Left			X	2
02-37344	Sun - 12/15/2002	08:09 PM	Approach Turn	SB Thru / NB Left		1		2
Total Crashes: 18				**Totals:**		8	10	18

YEAR: 2001

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
01-00285	Thu - 01/04/2001	11:27 AM	Approach Turn	SB Left / NB Thru			X	2
01-01039	Fri - 01/12/2001	07:50 PM	Rear End	NB Thru / NB Thru			X	2

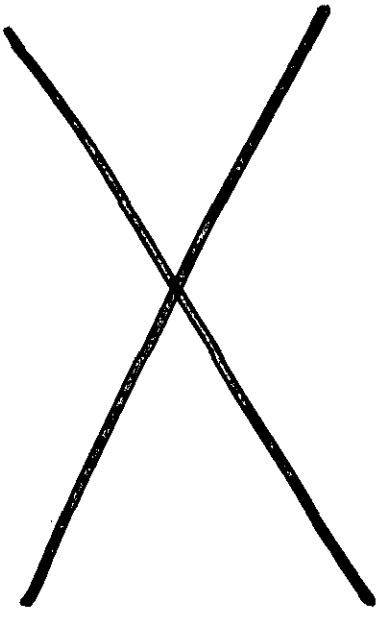
Intersection: CANAL DR at COLUMBIA CENTER BLVD (Cont.)

YEAR: 2001 (Cont.)

Case Number	Crash Date	Crash Time	Type of Crash	Direction Vehicle 1/Vehicle 2	Severity Fat	Inj	PDO	Tot Veh
01-04256	Sun - 02/18/2001	05:55 PM	Approach Turn	NB Left / SB Thru			X	2
01-05733	Wed - 03/07/2001	07:35 AM	Approach Turn	NB Thru / SB Left			X	2
01-05775	Wed - 03/07/2001	05:02 PM	Rear End	WB Thru / WB Thru			X	2
01-06516	Thu - 03/15/2001	03:33 AM	Fixed Object/Parked Vehicle	WB Left /			X	1
01-09842	Thu - 04/19/2001	11:57 AM	Right Angle	SB Thru / WB Thru		1		2
01-09862	Thu - 04/19/2001	02:57 PM	Approach Turn	SB Left / NB Thru		1		2
01-10448	Wed - 04/25/2001	05:12 AM	Rear End	NB Thru / NB Thru			X	2
01-11382	Fri - 05/04/2001	12:30 PM	Right Angle	SB Left / NB Thru			X	2
01-11621	Sun - 05/06/2001	11:19 AM	Approach Turn	NB Left / SB Thru		1		2
01-12908	Fri - 05/18/2001	05:45 PM	Rear End	SB Thru / SB Thru		1		2
01-20516	Fri - 07/27/2001	02:12 PM	Approach Turn	SB Left / NB Thru		1		2
01-21844	Tue - 08/07/2001	01:01 PM	Right Angle	SB Right / WB Thru			X	2
01-23912	Fri - 08/24/2001	08:47 PM	Approach Turn	SB Left / NB Thru			X	2
01-31319	Tue - 10/30/2001	04:28 PM	Rear End	WB Right / WB Right			X	2
01-31328	Tue - 10/30/2001	05:48 PM	Approach Turn	SB Left / NB Thru		1		2
01-31389	Wed - 10/31/2001	11:35 AM	Approach Turn	SB Left / NB Thru		1		2
01-31813	Sat - 11/03/2001	07:22 PM	Approach Turn	NB Left / SB Thru		1		2
01-34046	Mon - 11/26/2001	09:29 AM	Approach Turn	SB Left / NB Thru		2		2
01-35771	Thu - 12/13/2001	12:50 PM	Approach Turn	NB Left / SB Thru		2		2
01-35817	Thu - 12/13/2001	07:10 PM	Approach Turn	EB Left / WB Thru			X	2
01-37271	Fri - 12/28/2001	02:21 PM	Approach Turn	EB Left / WB Thru			X	2
Total Crashes: 23				**Totals:**	10	13		23

REPORT TOTALS:

Number of Crashes:	165	
Number of Fatalities:	0	(0.00%)
Number of Injuries:	47	(28.48%)
Number of PDOs:	118	(71.52%)
Number of Vehicles Involved:	337	
Number of People Killed:	0	(0.00%)
Number of People Injured:	65	(39.39%)
Crash Rate:	.00	



JD-__-X
KJ-__-X
KH-__-X

CONTRACT NO. 142-11

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This Agreement for Purchase and Sale of Real Property (the "Agreement") is made and entered into this 20th day of *December, 2011* between the **CITY OF RICHLAND**, a Washington municipal corporation ("Seller"), and **CONAGRA FOODS LAMB WESTON, INC.**, a Delaware corporation, and/or assigns ("Purchaser").

1. Purchase and Sale of Property. Seller agrees to sell and Purchaser agrees to purchase, on the terms hereafter stated, all of the following described property (collectively, the "Property"):

1.1. The Property. The land involved in this transaction is approximately 80 acres located in the Horn Rapids Industrial Park, City of Richland, Benton County, Washington, and is legally described as follows:

> The Property is generally depicted as the "Property" on Exhibit B and consists of approximately 80 acres (the "Property"). Seller and Purchaser shall work together to complete an ALTA survey ("Survey") of the Property as soon as practical during the Contingency Period and the completed legal description from the Survey shall be inserted into Exhibit A to this Agreement by mutual agreement of the parties prior to the expiration of the Contingency Period. Seller shall pay the expense for the Survey.

It is understood that the sale and conveyance to be made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws, orders, rules and regulations, and any and all outstanding rights of record or which are shown on the Survey.

1.2. Option Property. For a period of five (5) years from the date of Closing, Purchaser shall have an option ("Option") to purchase up to an additional eighty (80) acres located to the south of the Property, as generally depicted as the "Option Property" on Exhibit B (the "Option Property") at a price of Eighteen Thousand Five Hundred Dollars and zero cents ($18,500.00) per acre. The Purchaser may exercise its option in minimum twenty (20) acre contiguous increments over the five (5) year option term. Purchaser may exercise the option by delivering written notice and a legal description of the Option Property, or portion thereof to be purchased, to Seller and the closing on the Option Property shall occur on the earlier of: (i) the sixtieth day following Seller's receipt of written notice from Purchaser exercising the Option, or (ii) the thirtieth day following Benton County approval of any required subdivision of the Option Property. Title to the Option Property shall be conveyed by Seller and the Closing costs shall be paid pursuant to same requirements as applicable to the Property. Seller shall grant Purchaser reasonable access to the Option Property to complete Purchaser's investigations of the Option Property. Seller and Purchaser shall work together to

WUTC DOCKET TR-130499
EXHIBIT JD-9-X
ADMIT ☒ W/D ☐ REJECT ☐

complete a legal description(s) of the Option Property soon as possible following completion of the Survey and the completed description(s) shall be inserted into Exhibit C by mutual agreement of the parties prior to the expiration of the Contingency Period. Seller shall pay the expense for preparing the legal description of the Option Property. Purchaser and Seller shall execute and deliver an Option Agreement in recordable form at Closing and the Option Agreement shall be recorded against the Option Property immediately following Closing.

1.3 Contingency Period. The "Contingency Period" shall be one hundred and eighty (180) days from the date of this Agreement. If the Rail Contingency (as defined in Section 3.3) and or the Bid Contingency (as defined in Section 3.4) is not satisfied by the expiration of the Contingency Period, then Purchaser shall have the right, but not the obligation, to extend the Contingency Period to the earlier of: (i) forty days following satisfaction of the Rail or Bid Contingency; or (ii) two (2) years following the Seller's execution of this Agreement, provided that Purchaser delivers written notice to Seller on or before the expiration of the original Contingency Period.

1.4 Project. The buildings and improvements constructed the Seller shall have a minimum value of $35,000,000 (the "Project") as evidenced by construction contracts and invoices totaling the minimum value.

1.5 Contract Period. Contract period shall be defined as the period from Seller's execution of this Agreement through Closing.

2. Purchase Price.

2.1 Purchaser shall pay to Seller as the purchase price (the "Purchase Price") for the Property the title to Lot 2, SHORT PLAT No. 3234, according to the survey thereof recorded under Auditor's File No. 2010-003244, record of Benton County, Washington (the "Columbia Point Property"). Upon transfer of title by Purchaser of title to the Columbia Point Property to Seller as provided herein, Purchaser shall be relieved of any and all liability under the agreement dated June 30, 2009 between ConAgra Foods Lamb Weston, Inc. and the City of Richland, WA for the purchase price of the Columbia Point Property ("Columbia Point Agreement").

2.2 In the event that Closing on the Property has not occurred on or before October 31, 2012, whether due to termination of this Agreement or extension of the Contingency Period, Seller shall purchase from Purchaser the Columbia Point Property for the repurchase price stated in Section 6.1.4(i) of the Columbia Point Agreement. In the event of a repurchase the City of Richland will close the repurchase on January 31, 2013 and Purchaser will be relieved of all liability under the Columbia Point Agreement. The obligation contained in Section 2.2 shall survive termination of the Agreement.

2.3 In the event that the Contingency Period is extended as provided herein and the Seller repurchases the Columbia Point Property as provided in Section 2.2

above, the Purchase Price for the Property shall be Eighteen Thousand Five Hundred Dollars ($18,500.00) per acre.

2.4 Seller agrees to pay building permit fees for construction of the Project.

3. Conditions Precedent to Sale. This Agreement is subject to the following conditions precedent to the Purchaser's obligation to close on the purchase of the Property ("Closing Conditions"):

3.1. Title Review. Within ten (10) business days after the later of: (i) the date of execution of this Agreement by both parties ("Execution Date"); or (ii) upon completion of any survey and inserting the legal description in Exhibit A as provided in Section 1.1, Seller, at its sole cost and expense, shall obtain from Cascade Title Insurance Company (the "Title Company") a title commitment for the Property, and copies of all documents referred to therein, and furnish same to Purchaser. Title to the Property shall be marketable at Closing and shall be free and clear of all liens, judgments or other financial encumbrances, as well as all other encumbrances, except Permitted Encumbrances. Rights, reservations, covenants, conditions, restrictions, easements presently of record or shown on the Survey that do not materially affect the value of the Property or interfere with Purchaser's intended development or use of the Property shall be Permitted Encumbrances. Purchaser shall provide written notice of Purchaser's objections within fifteen (15) days after the later of Purchaser's receipt of i) commitment for title insurance; or ii) the ALTA survey. Encumbrances to be discharged by Seller shall be paid by Seller on or before Closing.

3.2. Due Diligence:

a.) Due Diligence: This transaction is contingent upon Purchaser completing its due diligence inspections, review and testing at Purchaser's sole expense and receiving findings satisfactory to Purchaser in its sole discretion. Seller agrees to act in good faith to provide records reasonably requested by the Purchaser and to allow Purchaser reasonable access to the Property to complete its due diligence. Purchaser shall be responsible to repair any damage to the Property caused by Purchaser's due diligence activities should this transaction fail to Close for any reason. Purchaser reserves the right to terminate this Agreement during the Contingency Period should Purchaser determine that the Property is not acceptable to Purchaser for any reason, in its sole and complete discretion. Upon termination as provided in the prior sentence, the parties shall be released from any further liability to each other, expect for repair to the Property as required in this Section 3.2.

3.3 Tri City Railroad Litigation- Rail Spur/Loop: Seller acknowledges that Purchaser requires reliable rail service to the Property. Seller has begun a proposal to construct a rail loop/spur connecting the Property to the Seller owned Horn Rapids Rail Spur, which connects to rail lines owned by the Port of Benton. Currently, Tri City Railroad Company, LLC and its subsidiaries has brought legal action on multiple

parties, including, but not necessarily limited to Burlington Northern Railroad, Port of Benton and City of Richland. This transaction is contingent upon completion of the (i) any pending litigation (or any litigation initiated during the Contract Period) affecting the ability of the Seller to install the rail loop/rail spur or Purchaser to use the rail loop/spur; and (ii) approval by Purchaser of the rail loop/spur design, both of which shall be determined in Purchaser's sole discretion prior to the expiration of the Contingency Period (collectively "Rail Contingency"). This Rail Contingency shall not be considered satisfied until all appeals have been finally resolved and all appeal periods have expired. Seller shall submit to Purchaser fully engineered drawings of the rail loop/spur ("Rail Drawings") to Purchaser within ninety (90) days of the date of this Agreement. Purchaser shall review the drawings within thirty (30) days of receipt and provide Seller with comments or requested changes. Seller shall submit this rail design to Burlington Northern Railroad and Union Pacific Railroad for approval upon written approval by Purchaser of the rail design.

3.4 Facility Operator. The Purchaser has identified a preferred 3rd Party operator for the Project. In the event that the preferred operator cannot meet the requirements of the Purchaser for the Project, which determination shall be in the Purchaser's sole discretion, the Purchaser shall be provided sufficient time to bid for a new facility operator ("Bid Contingency") provided Purchaser provides notice to Seller prior to expiration of the Contingency Period.

3.5 Environmental Reports. Seller, at Seller's cost, shall provide to Purchaser a current Phase I Environmental Site Assessment report certified to Purchaser. The environmental consultant conducting the Phase I shall be selected by Purchaser and reasonably approved by Seller. If reasonably deemed necessary by Purchaser to evaluate the condition of the Property, Seller shall may obtain a Phase II Site Assessment or other environmental investigation of the Property. Seller shall provide the Phase I report within 45 days of the date of this Agreement. The party Seller engages to perform the Phase I and Phase II (if necessary) shall be subject to Purchaser's reasonable approval and Seller shall require the environmental consultant to cooperate with Purchaser in Purchaser's review of the Property.

3.6 Building Height Requirement. Within sixty (60) days of this Agreement, the Seller shall provide to Purchaser a determination that a building or structure for commercial/industrial use up to 130 ft in height is not prohibited due to any regulatory agency including the Federal Aviation Administration or other governmental restrictions. Seller shall further provide written evidence from the FAA stating that such a building is not prohibited under FAA regulatory requirements.

3.7 Site Development Agreement. Prior to the expiration of the Contingency Period, Seller and Purchaser shall agree upon and obtain all necessary approvals for a Site Development Agreement (the "SDA"). Each party shall execute and deliver the SDA at Closing. The SDA shall detail the improvements necessary for the development of the Property including but not limited to the items described above in this Section 6 of

the Agreement and detail each parties' obligations and remedies. The necessary construction documents and specifications shall be attached to the SDA.

3.8 Document Delivery. All documents required of Seller in Section 4 must be executed and delivered to the Title Company on or before Closing.

3.9 Litigation. The Property must not be subject to any litigation, including the expiration of any appeal periods, as of the Closing.

3.10. Effect of No Notice In the event any of these Closing Conditions are not satisfied within the Contingency Period, this transaction shall be null and void, unless such contingencies are either waived by the Purchaser in writing or the contingency is modified and approved by written agreement of both Purchaser and Seller. If the Purchaser fails to give written notice to the Seller of Purchaser's approval of any of the contingencies and/or waiver of the contingencies by the end of the Contingency Period, then the Closing Conditions shall be deemed unsatisfied and this Agreement shall terminate with.

4. Closing. On or before the date of a Closing, as described herein, Purchaser shall deliver into escrow with Title Company, the Purchase Price for the Property, a signed closing statement, all documents required of Purchaser by the Title Company to issue the Title Insurance, the SDA executed by Purchaser, the Memorandum of Option executed by Purchaser and all other documents required herein or reasonably required by the Title Company to close the transaction. On or before the date of a Closing, Seller shall deliver into escrow with Title Company the Deed, a signed closing statement, all documents required of Seller by the Title Company to issue the Title Insurance, the SDA executed by Seller, the Memorandum of Option executed by Seller and all other documents required herein or reasonably required by the Title Company to close the transaction. Title Company shall be instructed that when it is in a position to issue a standard owner's policy of title insurance in the full amount of the Purchase Price with all standard exceptions deleted, insuring fee simple title to the Property in Purchaser, Title Company shall record and deliver to Purchaser the Deed; and issue and deliver to Purchaser the standard owner's policy of title insurance.

4.1. Closing Costs. Each party shall pay its own attorney's fees. Seller shall pay one-half of all transfer taxes, recording costs, escrow Closing costs, if applicable, and *the full* premium for a standard owner's policy of title insurance. Purchaser shall pay one-half of all transfer taxes, recording costs, and escrow Closing costs. Additionally, Purchaser shall pay any additional costs associated with extended title insurance coverage or endorsements to the policy, if Purchaser elects such. Seller and Purchaser shall each pay one-half of the escrow closing fees and Purchaser shall pay all recording fees for the Deed and the Memorandum of Option. Seller shall provide an estimate of Closing Costs within fifteen (30) business days of the date of this Agreement.

4.2. Closing Date. The closing of the transaction and delivery of all items required herein ("Closing") shall occur at Cascade Title Company on the thirtieth (30th) day following written satisfaction or waiver by Purchaser of all Contingencies, unless such day falls on a non-business day, in which case the Closing shall occur on the next business day.

5. Title. Upon Closing of escrow as set forth in Section 4, title to the Property shall be conveyed by Seller to Purchaser by a duly executed Statutory Warranty Deed in recordable form conveying title as provided in Section 3.1 ("Deed").

6. Covenants, Representations and Warranties.

6.1. Seller's Covenants. Seller hereby covenants and agrees as follows:

6.1.1. From the date of this Agreement through the Closing Date(s), the Seller shall not make any material alterations to the Property or to any of the licenses, permits, legal classifications or other governmental regulations relating to the Property, nor enter into any leases or agreements pertaining to the Property without the Purchaser's prior written consent.

6.1.2. During the Contract Period, Seller shall not voluntarily cause or allow to be recorded any encumbrance, lien, deed of trust, easement or other title encumbrance against the title to the Property without Purchaser's prior written consent.

6.1.3. Prior to the expiration of the Contingency Period, Seller shall use its best efforts to remove all title exceptions, except Permitted Exceptions, as described in Section 3.1.

6.1.4. During the Contract Period, Seller will operate and maintain the Property in a manner consistent with Seller's past practices relative to the Property and so as not to cause waste to the Property.

6.1.5. Seller shall reasonably cooperate with Purchaser to obtain approvals and permits for the development of the Property. This obligation shall be also included in the SDA.

6.1.6. Utility Improvements. Seller, at Seller's expense, shall extend water, sewer, high speed internet lines and power stubs a maximum distance of ten (10) feet into the Property as shown on Exhibit "D" and as further specified in this Section 6.1.6 ("Utility Improvements") and in the SDA. The Utilities Improvements shall be located at a location to be mutually approved by Purchaser and Seller. The sewer line will be a minimum of 8" and the water line will be a minimum of 16" with a flow of 4000 gpm at a pressure of 20 psi and/or a flow of 1600 gpm at a pressure of 60 psi. Seller to provide necessary infrastructure, cabling, and equipment to support the estimated 9 Mega Watt, 4.16 KV, 3 Phase power as agreed upon in the SDA. The Utility Improvements include,

but are not limited to, mainline cuts, extension of service lines, including electrical cabling, and ancillary costs associated with pavement patching and trenching. Seller will commence installation of the Utility Improvements upon receipt of written notice by Purchaser requesting commencement of the Utility Improvements installation, which shall not be prior to closing, and Seller shall complete construction of all Utility Improvements within nine (9) months after commencement of installation. Purchaser and Seller agree that these Utility Improvements will be at no cost to the Purchaser if and only if the Purchaser completes the construction of the Project within 24 months of completion of the Utility Improvements. To the extent that Seller completes the agreed upon Utility Improvements required in this section and the Purchaser fails to complete construction of the Project within the time period provided herein, Purchaser shall pay half of the actual cost of the Utility Improvements, not to exceed $2,400,000.

6.1.7. Roadway Improvements. Seller, at Seller's expense, shall provide roadway access to the Property consisting of a new (East/West) extended 1st Street connecting to the existing Kingsgate Way and a new to be named north/south street from north property line and connected to Robertson Street to the south and Logston Blvd., as shown on Exhibit "E", or otherwise provide two (2) separate access points to allow ingress and egress, acceptable to Purchaser in Purchaser's sole discretion, from the western and southern boundary of the Property ("Roadway Improvements") as will be agreed upon in the SDA. Seller will provide site design drawings of Roadway Improvements no later than 90 days following the Effective Date. All roadways and connecting road structure providing access to the Property must have sufficient capability for a weight of at least 101,000 lbs. per truck and a capacity to handle peak truck access to the Property for up to 500 semi-truck trips per day without modification by Purchaser. Seller will commence the installation of Road Improvements upon receipt of written notice by Purchaser requesting commencement of the Roadway Improvements installation, which shall not be prior to closing, and Seller will complete construction of the Roadway Improvements within nine (9) months of commencement of installation. Purchaser and Seller agree that these associated Road Improvements will be at no cost to Purchaser if and only if Purchaser completes the construction of the Project, within 24 months of completion of the Roadway Improvements. To the extent Seller completes the agreed upon Road Improvements and Purchaser fails to complete construction of the Project within the time period provided herein, Purchaser shall pay half of the actual cost of Road Improvements serving the Property, not to exceed $1,500,000.

6.1.8. Rail Spur Improvements. Seller, at Seller's expense, shall provide rail spur and rail improvements to provide rail access to the Property at a mutually agreed upon point as shown on Exhibit "F" and as will be further agreed upon in the SDA, ("Rail Spur Improvements"). Rail Spur Improvements must not cross any roadway or street which provides access to the Property. Purchaser agrees to pay all rail spur access costs charged by a railroad servicing the Property. Seller will commence the construction and installation of the Rail Spur Improvements upon receipt of written notice by Purchaser requesting commencement of the Rail Spur Improvements installation, which shall not

be prior to closing, and Seller shall complete the Rail Spur Improvements within nine (9) months of commencement of installation. Purchaser and Seller agree that these associated Rail Spur Improvements will be at no cost to Purchaser if and only if Purchaser completes the construction of the Project, within 24 months of completion of the Rail Spur Improvements. To the extent the Seller completes the Rail Spur Improvements and Purchaser fails to complete construction of the Project within the time period provided herein, Purchaser shall pay half of the actual costs of the Rail Spur Improvements serving the Property, not to exceed $400,000.

6.1.9 Utilities, Road and Rail Design Criteria. Purchaser shall provide the necessary design criteria to allow complete design of the Utility Improvements, Roadway Improvements and Railway Improvements within sixty (60) days of the date of this Agreement. Seller requires the information to be sufficient to ensure that utilities, road and rail infrastructure can be developed to meet Purchaser's criteria.

6.2. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties to Purchaser, each of which shall be true on the date hereof and on the date of any Closing.

6.2.1. Seller has full power and authority to enter into and carry out the terms and provisions of this Agreement and to execute and deliver all documents which are contemplated by this Agreement, and all actions of Seller necessary to confer such authority upon the persons executing this Agreement and such other documents will have been taken.

6.2.2. Seller is a Washington municipal corporation, duly formed and organized, validly existing and in good standing under the laws of the State of Washington.

6.2.3. As of the date hereof, to the best of Seller's knowledge, during the Contract Period:

6.2.3.1. Seller has not received any written notice from any governmental authorities or regulatory agencies that eminent domain proceedings for the condemnation of the Property are pending or threatened.

6.2.3.2. Seller has not received any written notice of pending or threatened investigation, litigation or other proceeding before a local governmental body or regulatory agency which would materially and adversely affect the Property.

6.2.3.3. Seller has not received any written notice from any governmental authority or regulatory agency that Seller's use of the Property is presently in violation of any applicable zoning, land use or other law, order, ordinance or regulation affecting the Property. Seller warrants that the Property is properly zoned for Purchaser's contemplated usage.

6.2.4 Approval. The Seller has obtained any and all approvals necessary to execute the Agreement and undertake Seller's obligations contained herein, including the approval of the City Council of the City of Richland.

6.2.5. No special or general assessments have been levied against the Property except those disclosed in the Preliminary Title Report and Seller has not received written notice that any such assessments are threatened.

6.2.6. Seller is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

6.2.7. The Property is not within a flood plain, flood way or flood control district.

6.2.8. To the best of Seller's knowledge, following all appropriate and due diligent inquiry into the condition of the Property, Seller represents, warrants, and covenants to Purchaser that no Hazardous Substances (i) are or have been used, treated, stored, disposed of, released, spilled, generated, manufactured, or otherwise handled on the Property, or transported to or from the Property, (ii) have been spilled, released, intruded, leached, or disposed of from the Property onto adjacent property; or (iii) have otherwise come to be located on or beneath the Property. Application of herbicides, pesticides, fungicides and other form chemicals consistent with the labeling therefore are deemed to be consistent with the warranty stated herein. No liens have been placed on the Property under any environmental laws, and Seller has no knowledge of any threatened or pending liens. Seller has received no notice and is not aware of any administrative or judicial investigations, proceedings, or actions with respect to violations, alleged or proven, of environmental laws by Sellers or any of their tenants, or otherwise involving the Property or the operations conducted thereon.

6.2.9. Seller shall immediately give Purchaser written notice of any event which would make any representation or warranty set forth in Section 6.2 incorrect or untrue.

6.3. Purchaser's Representations: Purchaser hereby makes the following representations to Seller, each of which shall be true on the date hereof and on the date of both Closings.

6.3.1. Purchaser represents that it has sufficient funds to close this transaction. If the Purchaser is a corporation, the Purchaser represents that it is a corporation in good standing, under the laws of its incorporation. If the Purchaser is a limited liability company, the Purchaser represents that it is a limited liability company in good standing, under the laws of its formation.

6.3.2. Purchaser further represents that following Closing the Property will be developed as a storage/warehouse facility for agricultural products or food products and/or agricultural and/or food processing and storage facility. Deviation from this intended use must be authorized by the Seller in writing or be subject to the

Reversionary Clause in Section 10.13. This agreement does not alleviate the Purchaser from obtaining the necessary approvals, authorizations or permits required for the development of Property for said use.

6.4. Survival of Covenants. The covenants, representations, and warranties contained in Section 6 of this Agreement shall survive the delivery and recording of the Deed from the Seller to the Purchaser.

7. Casualty and Condemnation.

7.1. Material Casualty or Condemnation. If prior to the Closing Date (i) the Property shall sustain damage caused by casualty which would cost fifty thousand dollars ($50,000.00) or more to repair or replace, or (ii) if a taking or condemnation of any portion of the Property has occurred, or is threatened, which would materially affect the value or utility of the Property, Purchaser may, at its option, terminate this Agreement by written notice to Seller given within ten (10) business days after notice of such event. If prior to the Closing Date Purchaser does not provide said termination notice within such ten (10) business day period, the Closing shall take place as provided herein with a credit against the Purchase Price in an amount equal to any insurance proceeds or condemnation awards actually collected by Seller and an assignment to Purchaser at Closing of all Seller's interest in and to any insurance proceeds or condemnation awards which may be due but unpaid to Seller on account of such occurrence.

7.2. Immaterial Casualty or Condemnation. If prior to Closing Date, the Property shall sustain damage caused by casualty which is not described in Section 7.1., or a taking or condemnation has occurred, or is threatened, which is not described in Section 7.1., Purchaser shall not have the right to terminate this Agreement. Closing shall take place as provided herein with a credit against the Purchase Price equal to (i) the cost to repair that portion of the Property so damaged by insured casualty, or (ii) an amount equal to the anticipated condemnation award, as applicable. At Closing, Purchaser shall assign to Seller all rights or interest in and to any insurance proceeds or condemnation awards which may be due on account of any such occurrence.

8. Purchaser's Remedies. In the event of material breach of this Agreement by Seller, Purchaser shall have, as its remedies (a) the right to pursue specific performance of this Agreement, (b) the right to terminate this Agreement and (c) all remedies presently or hereafter available at law or in equity.

9. Liquidated Damages. IN THE EVENT THAT PURCHASER FAILS TO PURCHASE THE PROPERTY AS PROVIDED HEREIN, , SELLER'S EXCLUSIVE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT BY WRITTEN NOTICE AND WITHOUT FURTHER OBLIGATIONS TO PURCHASER AND IN SUCH CASE FIFTY THOUSAND DOLLARS ($50,000) SHALL BE PAID BY PURCHASER TO SELLER AS LIQUIDATED DAMAGES. PURCHASER AND SELLER AGREE THAT IT

IS DIFFICULT TO ASSESS THE AMOUNT OF DAMAGES INCURRED BY THE SELLER, IN THE EVENT OF A DEFAULT BY THE PURCHASER, AND ACCORDINGLY THE PARTIES AGREE THAT THE AMOUNT OF $50,000 IS A REASONABLE ESTIMATE OF THE DAMAGES. THE RIGHT GRANTED TO SELLER IN THE PRIOR SENTENCE SHALL NOT APPLY IN THE CASE OF (I) A MATERIAL DEFAULT BY SELLER IN THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, (II) PURCHASER'S EXERCISE OF A TERMINATION RIGHT PROVDED HEREIN, AND/OR (III) THE NON-SATISFACTION OF A CLOSING CONDITION AS PROVIDED IN SECTION 3.

10. Miscellaneous.

10.1. Finders Fee. Purchasers and Seller each agree that if Purchaser closes on the purchase of the Option Property, Seller shall pay a three percent (3%) finder's fee to a licensed real-estate agent representing Purchaser as provide in Exhibit G. Except as provided herein, each party hereby agrees to indemnify and defend the other against and hold the other harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, resulting from any claims for a commission or finder's fee resulting from Purchase of the Property or Option Property. The provisions of this Section 10.1 shall survive the Closing.

10.2. Time of the Essence. Time is of the essence of every provision of this Agreement.

10.3. Notices. Whenever any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal delivery or by certified, registered or Express United States Mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:

TO PURCHASER:
ConAgra Foods, Inc.
c/o Jim Doyle
Vice President - Corporate Real Estate & Facilities
Mail Stop 1-190
One ConAgra Drive
Omaha, NE 68102

With a copy to:
ConAgra Foods, Inc.
One ConAgra Drive
Omaha, NE 68102
Attn: Legal Department

TO SELLER:
City of Richland
505 Swift Boulevard
PO Box 190, MS #18
Richland, WA 99352
ATTENTION: Community Development

With a copy to:
City of Richland
505 Swift Boulevard
PO Box 190, MS #18
Richland, WA 99352
ATTENTION: City Attorney

Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof or three (3) business days after having been mailed as provided above, as the case may be. Either party may change its notice address by serving written notice as provided herein.

10.4. Assignments and Successors. Purchaser may only assign this Agreement with Seller's written consent, which consent may not be unreasonably withheld, conditioned or delayed. Notwithstanding the prior sentence, Purchaser may, without the Seller's written consent, assign this Agreement or rights under this Agreement to a third party ("Warehouse Provider") who intends to build a warehouse facility on the Property and with whom Purchaser intends to enter into a warehouse services agreement. Nothing herein shall prevent Purchaser from assigning the rights to purchase the Property while retaining the right to purchase the Option Property as provided herein.

10.5. Captions. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

10.6. Definition of Days. All references to days, months, or years shall mean days unless specified as "business" days.

10.7. Exhibits. All exhibits attached hereto shall be incorporated herein by reference as if set out herein in full.

10.8. Binding Effect. Regardless of which party prepared or communicated this Agreement, this Agreement shall be of binding effect between Purchaser and Seller only upon its execution by an authorized representative of each such party.

10.9. Construction.. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be

employed in the interpretation of this Agreement or any amendment or exhibits hereto.

10.10. Counterparts. This Agreement may be executed in several counterparts each of which shall be an original, but all of such counterparts shall constitute one such Agreement.

10.11. Further Assurances. Purchaser and Seller shall make, execute and deliver such documents and undertake such other and further acts as may be reasonably necessary to carry out the intent of the parties hereto.

10.12. Merger. The delivery of the Deed and any other documents and instruments by Seller and the acceptance and recordation thereof by Purchaser shall effect a merger, and be deemed the full performance and discharge of every obligation on the part of Purchaser and Seller to be performed hereunder, except those clauses, representations, covenants, warranties and indemnifications specifically provided herein to survive the delivery and recording of the Deed.

10.13. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington.

10.14. Reversionary Clause and Option to Repurchase/Reclaim. The Property is being sold to Purchaser in anticipation of building a storage/warehouse facility for agricultural products and/or food products and/or agricultural and/or food processing and storage facility. If Purchaser does not initiate construction of the Project within twenty-four (24) months of Closing ("Construction Period"), Seller shall have the right to repurchase title to the Property ("Repurchase Right") for the original Purchase Price paid by Purchaser. In the case of a repurchase as provided in this Section 10.14, Purchaser shall pay cost, if any, of all recording fees, escrow fees, and the premium for a standard owner's title policy purchase by Seller, and each party shall pay its own attorney fees. To exercise it Repurchase Right, Seller must deliver an irrevocable written notice that Seller is exercising is Repurchase Right ("Repurchase Notice") within ninety (90) days following the expiration of the Construction Period. Seller's failure to deliver the Repurchase Notice within the time period provided in the prior sentence shall constitute a waiver of Seller's Repurchase Right. Upon valid exercise of the Repurchase Right, Purchaser agrees to convey title to Property to Seller within sixty (60) days of receipt of Seller's Repurchase Notice. This reversionary right is exclusive to the Seller and shall be exercised at the sole discretion of the Seller. This Repurchase Right shall survive the delivery of the Deed and shall terminate upon the earlier of (i) commencement of construction of the Project or (ii) Seller's waiver of the Repurchase Right. The Seller shall be under no obligation to exercise this reversionary right. Purchaser agrees that Seller must grant approval of any resale of the Property by Purchaser to any unrelated third party prior to expiration of the Construction Period. Seller acknowledges that the sale or transfer of the Property to a joint venture or entity with which Purchaser has a lease or operating agreement shall not constitute a sale subject to this Repurchase Right. Upon termination of the Repurchase Right, Seller

agrees to execute any documents necessary or desirable to release the Repurchase Right as are reasonably requested by Purchaser, or its assigns and successors in interest.

10.15. Right to Rescind Until Seller Acceptance. Purchaser reserves the right to rescind this Agreement in writing until it is accepted by Seller.

IN WITNESS WHEREOF, the Purchaser have executed this Agreement on the date shown next to its signature and Seller has accepted on the date shown next to its signature.

CITY OF RICHLAND - SELLER

By: Cynthia D. Johnson
Its: City Manager
Date: 12-14-11

CONAGRA FOODS LAMB WESTON, INC.- PURCHASER

By: Jim Doyle
Its: Vice President - Real Estate
Date: 12/20/11

APPROVED AS TO FORM:

Thomas O. Lampson
City Attorney

Exhibit A
Legal Description of the Property
(To be inserted pursuant to Section 1.1)

Exhibit B
Depiction of the Property and Option Property

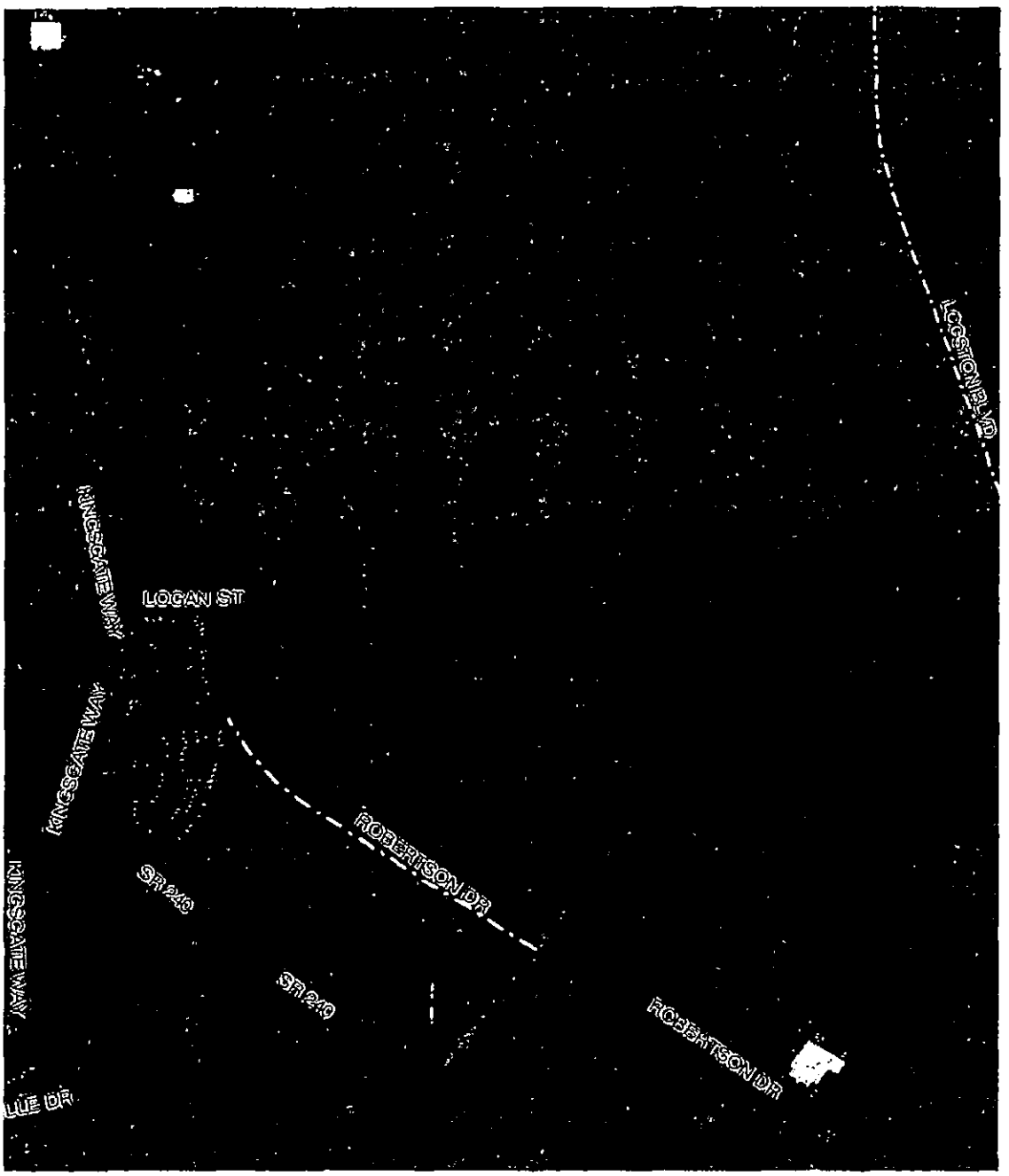
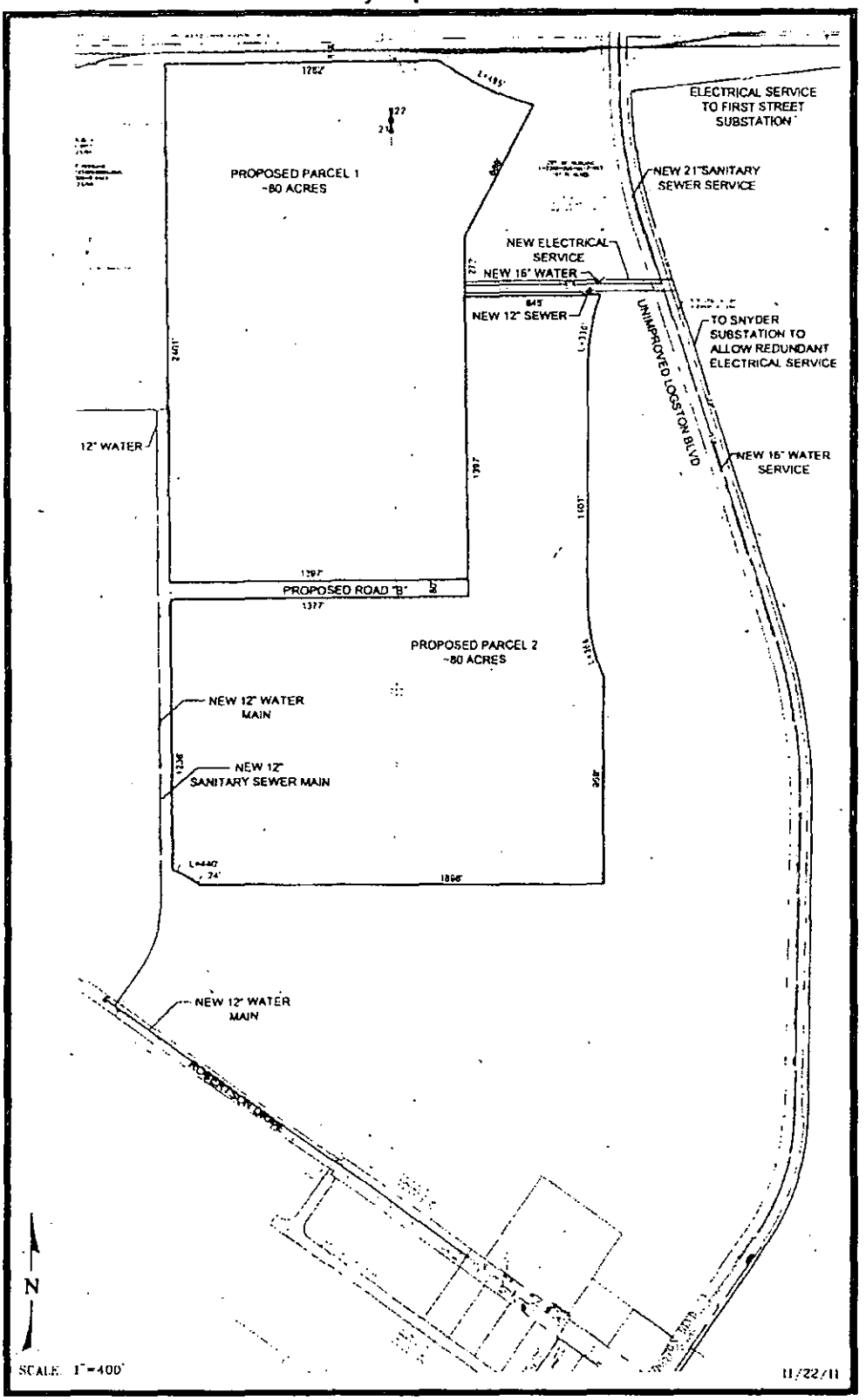


Exhibit C
Legal Description of the Option Property

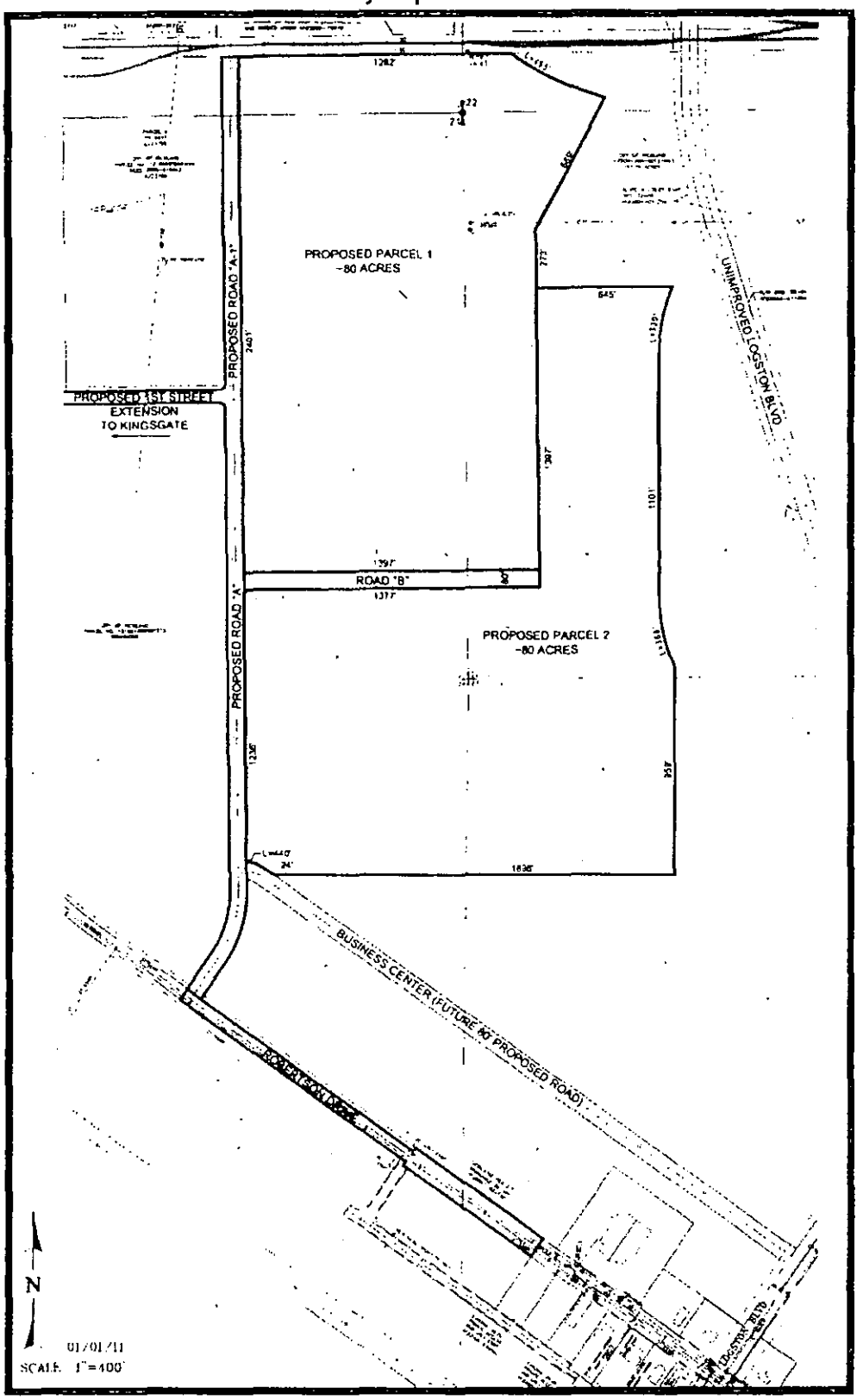
(To be inserted pursuant to Section 1.2)

Exhibit D
Utility Improvements



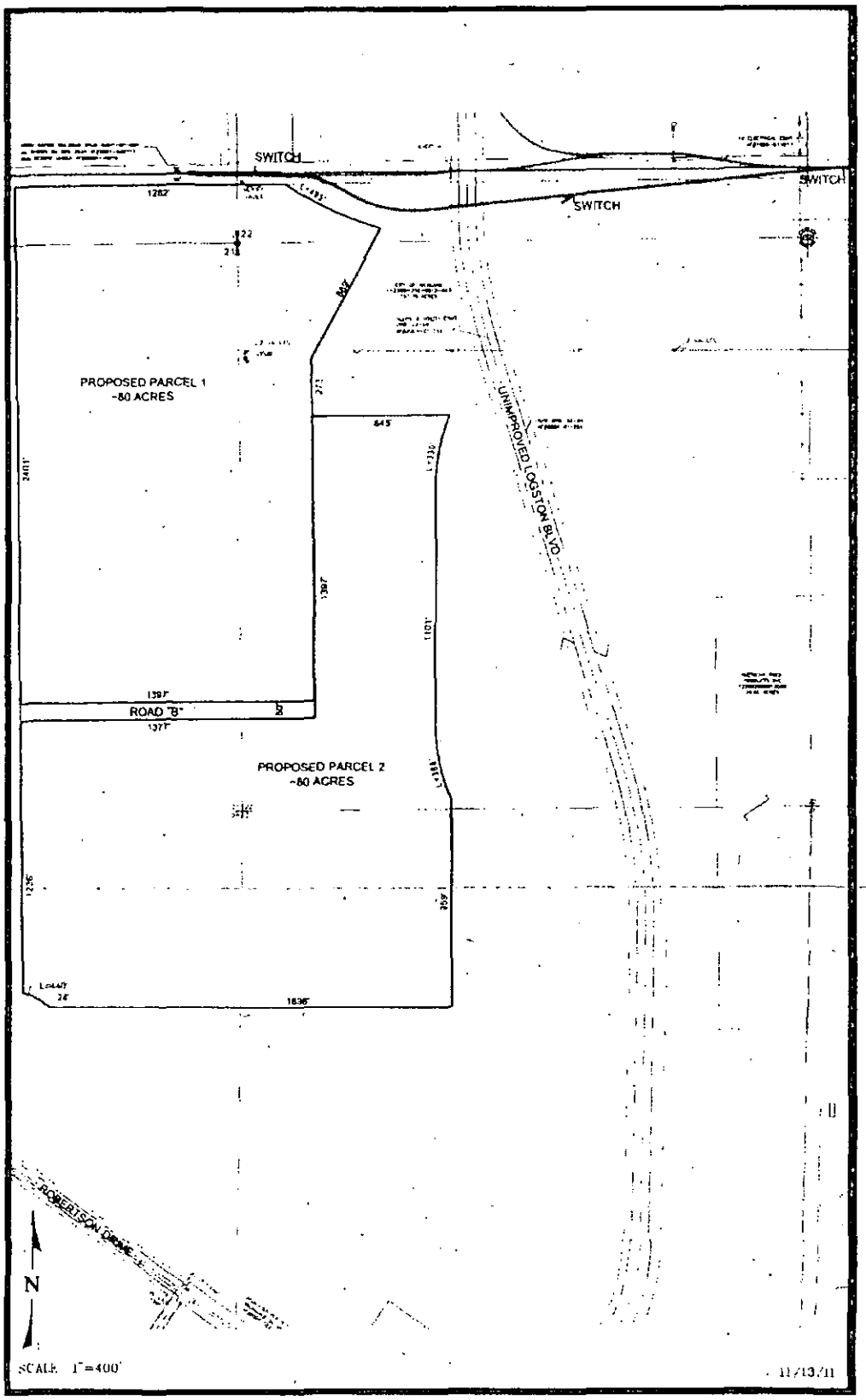
Exhibits: PSA ConAgra

Exhibit E
Roadway Improvements



Exhibits: PSA ConAgra

Exhibit F - Rail Spur Improvements



Exhibits: PSA ConAgra

Exhibit G
CITY OF RICHLAND
FINDERS FEE AGREEMENT (FORM OF)

Name of Broker/Agent making Introduction: _____

Agent for: _____

Name of Prospective Purchaser: _____

Description of Land: 80 Acres in the Horn Rapids Industrial Park – (Option Property only – see Exhibit B of PSA)

The City agrees to pay the above named Broker/Agent a Finders fee upon the execution and successful closure of a purchase and sale agreement with the above named Purchaser, for the purchase and sale of the above-described tract of land. This Agreement is not an exclusive listing agreement. The Broker/Agent will only be entitled to payment of the Finders fee upon closing of the sale. The Title Company shall pay said fee out of escrow at time of closing.

Term of Agreement: 60 days, plus the time period until closing provided for in the Purchase and Sale Agreement that references this Finders Fee Agreement.

Agent/Broker's Fee: 3% of Total Purchase Price. Purchase Price is estimated at $1,480,000.00 ($18,500/acre)

The Economic Development Manager for the City of Richland may at his/her sole discretion, grant an extension of the term of this Agreement if he/she determines that the transaction is making satisfactory progress towards closing. This Agreement expires 60 days after the Inception Date. Execution of any purchase and sale agreement is subject to approval by City Council. During the term of this Agreement the City may pursue other purchasers for the subject property until the time of execution of a purchase and sale agreement with the above Prospective Purchaser.

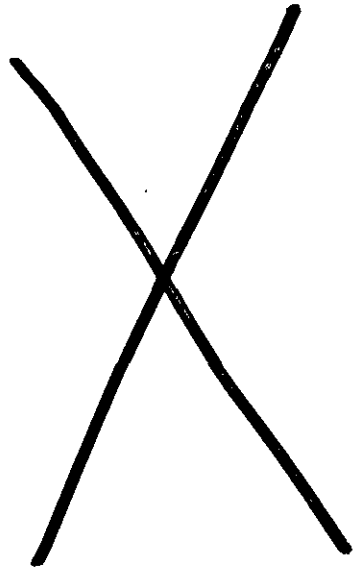
Inception Date: 10/19/2011

_____
Economic Development Manager

_____
Signature of Broker/Agent

_____
Name of above Broker/Agent - Printed

Exhibits: PSA ConAgra



JD-__-X
KJ-__-X
KH-__-X

DRAFT
June 14, 2012

HORN RAPIDS

SITE DEVELOPMENT AGREEMENT

THIS SITE DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 2012, by and between **CITY OF RICHLAND**, a Washington municipal corporation, hereinafter referred to as the "City", and **CONAGRA FOODS LAMB WESTON, INC.**, a Delaware corporation, and/or assigns, hereinafter referred to as "Owner".

W I T N E S S E T H:

WHEREAS, City is the owner of the real estate that has been developed as the Horn Rapids Industrial Park, City of Richland, Benton County, Washington ("Horn Rapids"), as depicted on the plat drawing attached hereto as Exhibit "A" and

Comment [GDB1]: I don't have a plat map for the Horn Rapids Industrial Park. We have our marketing map, but that's about it. Would that work?

WHEREAS, Owner entered into a Purchase Agreement with City dated December 20, 2011, (the "Purchase Agreement"), pursuant to which Owner is concurrently herewith purchasing the property in Horn Rapids legally described on Exhibit "B" attached hereto (the "Owner Property"); and

WHEREAS, City is undertaking the grading and installation of streets, sewers and other utilities, rail improvements, and other infrastructure for Horn Rapids (the "Infrastructure Improvements"), which includes the Owner Property; and

WHEREAS, the parties are desirous of entering into this Agreement to memorialize the rights and obligations of the parties as required under Section 3.7 of the Purchase Agreement;

NOW, THEREFORE, for and in consideration of the mutual exchange of the covenants and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Site Development Documents**. The following-described documents shall constitute the "**Site Development Documents**":

(a) Quit Claim Deed – Auditor File 2012-00910 as recorded in the office of Benton County, Washington Register of Deeds and as incorporated in Exhibit B (the "Quit Claim Deed");

(b) Road Construction Plan prepared by RGW Enterprises and City of Richland dated _____, 2012 and as incorporated in Exhibit C (the "Road Construction Plan");

(c) Water Utility Plan prepared by RGW Enterprises and City of Richland dated _____, 2012 and as incorporated in Exhibit D (the "Water Utility Plan");

(d) Sewer Utility Plan prepared by RGW Enterprises and City of Richland dated _____, 2012 and as incorporated in Exhibit E (the "Sewer Utility Plan")

WUTC DOCKET TR-130499
EXHIBIT JD-10-X
ADMIT ☒ W/D ☐ REJECT ☐

(e) Electrical and Fiber Plan prepared by City of Richland Energy Services dated _____, 2012 and as incorporated in Exhibit F (the "Electrical and Fiber Plan") Rail Improvement Plans prepared by RGW Enterprises and HDR Engineering dated _____, 2012 and as incorporated in Exhibit G (the "Rail Plan"); and

(f) Transportation Grading Plan, prepared by _____ dated _____, 2012 and as incorporated in Exhibit H (the "Grading Plan); and

Comment [GB2]: A grading plan would normally be part of bid design, which we were planning to do. We can identify from the centerline elevations if we have any major cuts or fills. Consider deleting or providing after date of notice to proceed with improvement.

2. **Designated Infrastructure Improvements**. City hereby covenants to and agrees with Owner that City will construct or cause to be constructed the Infrastructure Improvements identified on *Exhibits C, D, E, F, G* and H attached hereto (the "Designated Infrastructure Improvements") upon receipt of written notice by Purchaser requesting commencement of the Designated Infrastructure Improvements as provided in Section 6.1.6, Section 6.1.7 and Section 6.1.8 of the Purchase Agreement. The Designated Infrastructure Improvements shall be constructed in a good and workmanlike manner to City Design Standards and in accordance with the requirements of the Site Development Documents. City shall endeavor to have the Designated Infrastructure Improvements constructed with all due diligence and will endeavor to achieve substantial completion of the Designated Infrastructure Improvements according to the Construction Schedule attached to this Agreement as Exhibit "I" (the "Construction Schedule"), subject to delays caused by conditions described in Section 8 of this Agreement. The City will provide notice to Frontier Communications Company and Charter Business that the City will be installing infrastructure and that trenches will be available for the extension of private telecommunication service. The City will also permit the use of City fiber optic cable for the provision of telecommunication services to Owner. In the event City fails to proceed with diligence to complete the Designated Infrastructure Improvements, or does not complete the Designated Infrastructure Improvements on or before the dates set forth in the Construction Schedule, subject to delays caused by conditions described in Section 8 of this Agreement, thereupon Owner shall have the right upon delivery of notice to City, and City's failure to cure within thirty (30) days of receipt of notice (the "Cure Period"), to enter upon the Horn Rapids property and perform said Designated Infrastructure Improvements as set forth herein, including without limitation such construction that pertains to or is necessary for the development of Owner's Property and the City shall immediately reimburse Owner for the actual cost of any *Designated Infrastructure* Improvements installed by Owner pursuant to this paragraph. The Designated Infrastructure Improvements are to be undertaken by Owner only as a result of City's nonperformance as described herein. Nothing herein shall be construed to require Owner to complete or perform any or all of the Designated Infrastructure Improvements. Notwithstanding any exercise of Owner's rights to complete the Designated Infrastructure Improvements, City shall remain liable for all of the Designated Infrastructure Improvement costs plus any increased costs attributable to Owner's exercise of its rights to complete the Designated Infrastructure Improvements. In the event Owner exercises it's right to complete the Designated Infrastructure Improvents, for which the City will reimburse in accordance with this agreement, Owner shall require the payment of prevailing wages, bonding and insurance in accordance with the applicable Public Work laws of the State of Washington and Policies of the City.

3. **CONSTRUCTION OBLIGATIONS.**

It is understood and agreed by and between the parties that the following terms and conditions shall apply to Infrastructure Improvements that are undertaken by City on the Owner

Property and shall apply to the Infrastructure Improvements should they be undertaken by the Owner:

(a) **Construction Liens.** City shall not permit any construction liens to attach to the Owner Property on account of City's construction of the Infrastructure Improvements. In the event that a construction lien is filed against the Owner Property as a consequence of the construction activities of City, its agents and contactors, City shall within thirty (30) days of the filing of such lien, remove the construction lien as a lien against Owner's Property.

(b) **Construction Insurance and Indemnification / Hold Harmless**

(i) City shall procure and maintain such insurance to protect Owner and City from claims set forth below which arise out of or result from City's operations under and performance of this Agreement. City is a member of the Washington Cities Insurance Authority (WCIA) which is a self-insured pool of over 130 municipal corporations in the State of Washington. WCIA is not an insurance company and therefore Owner cannot be named as an "additional insured." Confirmation of the applicable coverage is provided by Evidence of Coverage letter from WCIA dated June 14, 2012 and incorporated in Exhibit J.

(ii) City will require by contract the following terms for work City is responsible for whether such operations or performance are by any contractor , or by anyone directly or indirectly employed by the contractor , or by anyone for whose acts or omissions contractor may be liable:

(iii) In the event that the Designated Infrastructure Improvements are to be undertaken by Owner all of the following terms of insurance and indemnification shall be required of the Owner and any contractor, or by anyone directly or indirectly employed by the Owner or contractor or by anyone for whose acts or omissions Owner or contractor may be liable.

The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Insurance

The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors.

No Limitation.

Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability *insurance shall be endorsed* to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85 or an equivalent endorsement. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance.

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $4,000,000 general aggregate and a $2,000,000 products-completed operations aggregate limit.

3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

4. When work involves *Railroad Easement*, Contractor shall maintain Railroad Protective Liability insurance on behalf of _____ Railroad, as named insured, with minimum limits of $2,000,000 per occurrence and $6,000,000 aggregate, or with such limits as the railroad shall require. The original Railroad Protective Insurance policy shall be furnished the railroad and a copy furnished the City prior to any construction or entry upon the railroad easement premises by the Contractor.

Contractor's Commercial General Liability Insurance shall be endorsed to provide the Contractual Liability - Railroads Endorsement ISO for CG 24 17 10 01 or a substitute endorsement providing equivalent coverage.

C. Other Insurance Provision

The Contractor's Automobile Liability, Commercial General Liability and Builders Risk insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

D. Contractor's Insurance for Other Losses

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

A. Waiver of Subrogation

The Contractor and the City waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extend covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

B. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

C. Verification of Coverage

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

D. Subcontractors

The Contractor shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

E. Notice of Cancellation

The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

F. Failure to Maintain Insurance

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

4. INDEMNIFICATION.

Owner shall protect, defend, indemnify, and save harmless Richland, its officers, agents and employees acting in their official capacity or course of employment, from and all costs including attorneys' fees, claims, judgments, and or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the Owner, its officers, employees and/or agents pursuant to this Agreement.

Richland shall protect, defend, indemnify and save harmless Owner, its officers, agents and employees acting in their official capacity or course of employment, from any and all costs including attorneys' fees, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of Richland, its officers, employees and /or agents pursuant to this Agreement.

5. NOTICES. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be personally delivered, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

If to City:

City of Richland
505 Swift Boulevard
PO Box 190, MS #18
Richland, WA 99352

ATTENTION: Community Development

With a copy to:
City of Richland
505 Swift Boulevard
PO Box 190, MS #18
Richland, WA 99352
ATTENTION: City Attorney

If to Owner:
ConAgra Foods, Inc.

Mail Stop 1-190
One ConAgra Drive
Omaha, NE 68102
Attn: Vice President of Real Estate

With a copy to:
ConAgra Foods, Inc.
One ConAgra Drive
Omaha, NE 68102
Attn: Legal Department – Real Estate

Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall be deemed receipt.

6. **MODIFICATION**. No modification or amendment of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. **ENTIRE AGREEMENT**. This Agreement, subject to the rights and obligations of the parties under the Purchase Agreement, contains the entire agreement of the parties with respect to the subject matter hereof, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement, sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations. Nothing contained in this Agreement shall give rise to duties or covenants on the part of Owner or City, express or implied, other than the express duties and covenants set forth herein. ANY REPRESENTATION OF EITHER PARTY'S AGENTS OR ANY THIRD PARTY WHICH IS NOT INCORPORATED IN THIS AGREEMENT OR THE PURCHASE AGREEMENT SHALL NOT BE BINDING UPON SUCH PARTY AND SHOULD BE CONSIDERED AS UNAUTHORIZED.

8. **NO JOINT VENTURE**. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or the federal government. Any correspondence or other references to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities and obligations of the parties as to a new, specifically defined legal relationship.

9. **FORCE MAJEURE**. In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of unusual weather conditions, acts of terrorism or vandalism, strikes, lockouts, acts of God, failure of power, riots, insurrections, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, the delayed party must give written notice of the conditions or events giving rise to the delay and the number of days claimed to be subject to delay within 15 days from the date of the occurrence of the condition or event giving rise to the delay.

10. **BINDING AGREEMENT**. This Agreement is incorporated into the Purchase Agreement and shall have the same binding affect and enforceability as the Purchase Agreement. It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto. Assignment of the Purchase Agreement shall constitute an assignment of this Agreement without requirement of further action by the parties.

11. **DISPUTE RESOLUTION.** Claims, disputes or other matters in question between the parties to this Agreement shall be resolved by arbitration unless the parties mutually agree otherwise. Any claim, dispute or other matter in question shall be decided in accordance with RCW Chapter 7.04A. Demand for arbitration shall be filed in writing with the other party to this Agreement. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statute of limitations and statute of repose. The arbitrator will be jointly named by the parties. If the parties cannot agree to name an arbitrator, then either party may petition the Benton County Superior Court and the then presiding judge will name the arbitrator. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court of law. The parties agree that time is of the essence and a final decision must be rendered no later than 120 days after the initial demand for arbitration is made. The arbitration hearing shall be held in Benton County, Washington.

12. **MISCELLANEOUS**. This Agreement shall be interpreted and construed in accordance with the laws of the State of Washington and any dispute with respect to it and the rights and duties thereby created shall be litigated in a court with jurisdiction in the State of Washington. Time is of the essence.

LIST OF EXHIBITS

EXHIBIT "A"	Horn Rapids Map
EXHIBIT "B"	Quit Claim Deed
EXHIBIT "C"	Road Construction Plan
EXHIBIT "D"	Water Utility Plan
EXHIBIT "E"	Sewer Utility Plan
EXHIBIT "F"	Electrical and Fiber Plan
EXHIBIT "G"	Rail Improvement Plan
EXHIBIT "H"	Transportation Grading Plan
EXHIBIT "I"	Construction Schedule
EXHIBIT "J"	WCIA Letter – Evidence of Coverage

[Space Below Intentionally Left Blank –
Signature Page to Follow]

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date and year first above written.

CITY OF RICHLAND, a Washington municipal corporation

_____

By: Cynthia D. Johnson
Its: *City Manager*
Date: _____

CONAGRA FOODS LAMB WESTON, INC., a Delaware corporation

_____

By: Jim Doyle
Its: Vice President - Real Estate
Date: _____

APPROVED AS TO FORM:

_____

Thomas O. Lampson
City Attorney

EXHIBIT "A"

Horn Rapids Map

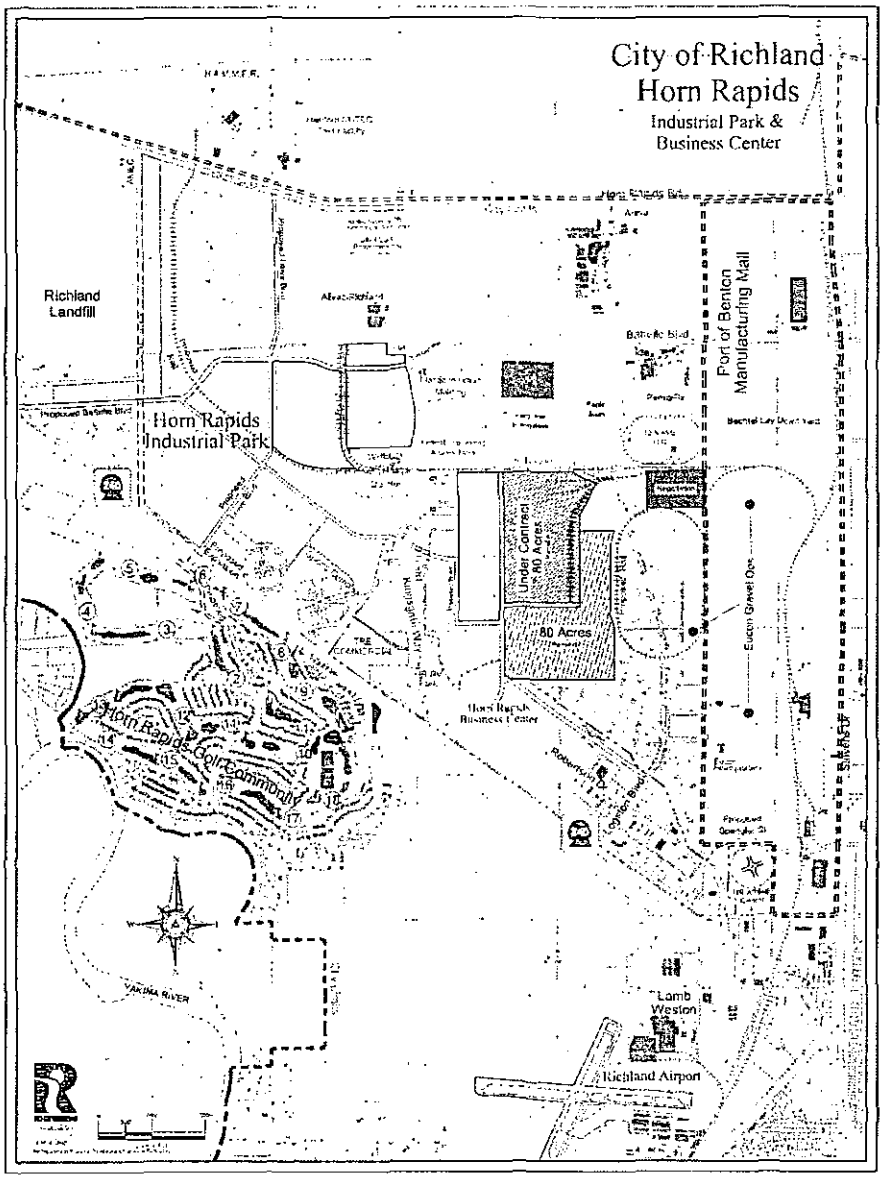

City of Richland
Horn Rapids
Industrial Park &
Business Center
Richland
Landfill
Horn Rapids
Industrial Park
Port of Benton
Manufacturing Mall
Under Contract
± 80 Acres
80 Acres
Horn Rapids Golf Community
Horn Rapids
Business Center
Lamb
Weston
Richland Airport
YAKIMA RIVER

EXHIBIT "B"

Quit Claim Deed

EXHIBIT "C"

Road Construction Plan

EXHIBIT "D"

Water Utility Plan

EXHIBIT "E"

Sewer Utility Plan

EXHIBIT "F" Electrical and Fiber Plan

EXHIBIT "G"

Rail Improvement Plan

EXHIBIT "H"

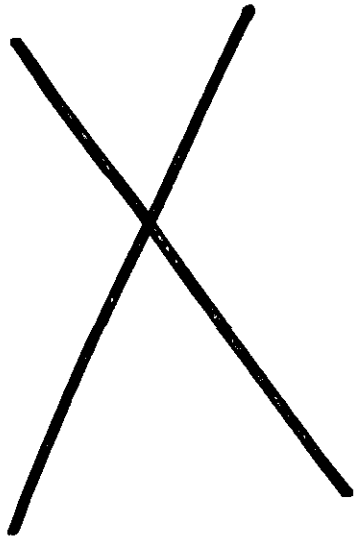
Transportation Grading Plan

EXHIBIT "I"

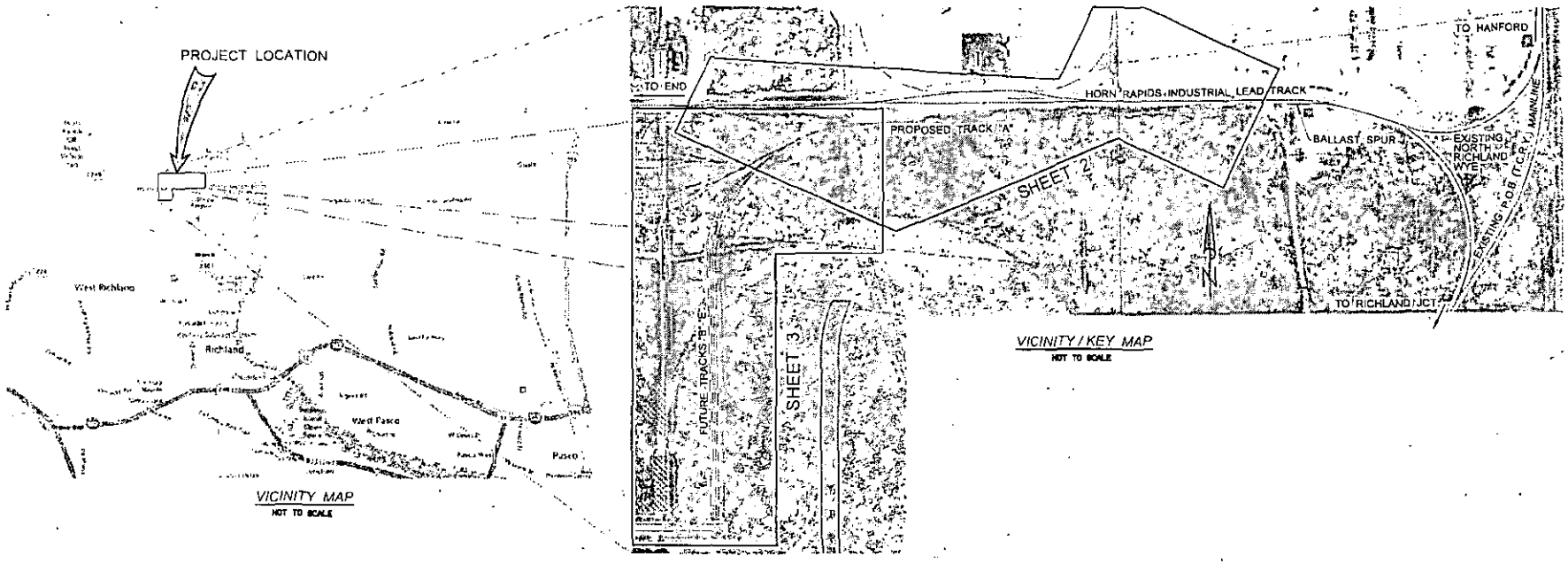
Construction Schedule

EXHIBIT "J"

WCIA Letter – Evidence of Coverage



WUTC DOCKET TR-130499
EXHIBIT JD-11-X
ADMIT ☒ W/D ☐ REJECT ☐



CONCEPT PLAN
NOT FOR CONSTRUCTION

CONCEPT DESIGN

REVISIONS	BY	DATE	DESCRIPTION

HDR
HDR ENGINEERING INC
1401 EAST TRENT AVE
SPOKANE, WA 99202
509-534-8500
(F)509-343-8501

POWER
OPTIC
CABLE

LEGEND
INITIAL PROPOSED TRACKAGE
EXISTING TRACKAGE
FUTURE CON-AGRA TRACKAGE
POTENTIAL FUTURE TRACKAGE
CON AGRA PROPERTY LINES
R.O.W. LINES

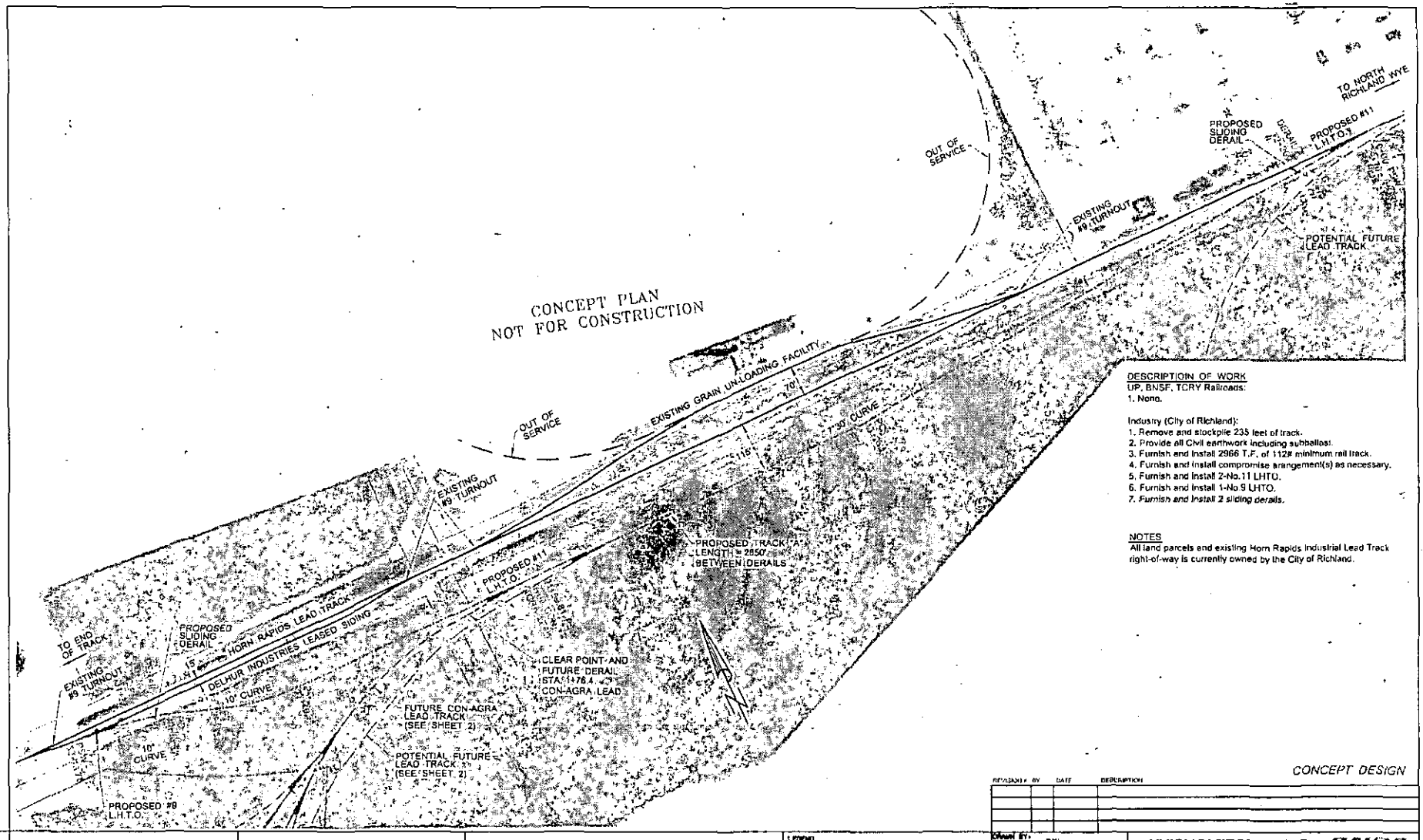
DRAWN BY: RAH
CHECKED BY: PJN
DATE: JULY 13, 2012
SHEET NUMBER: 1 OF 3

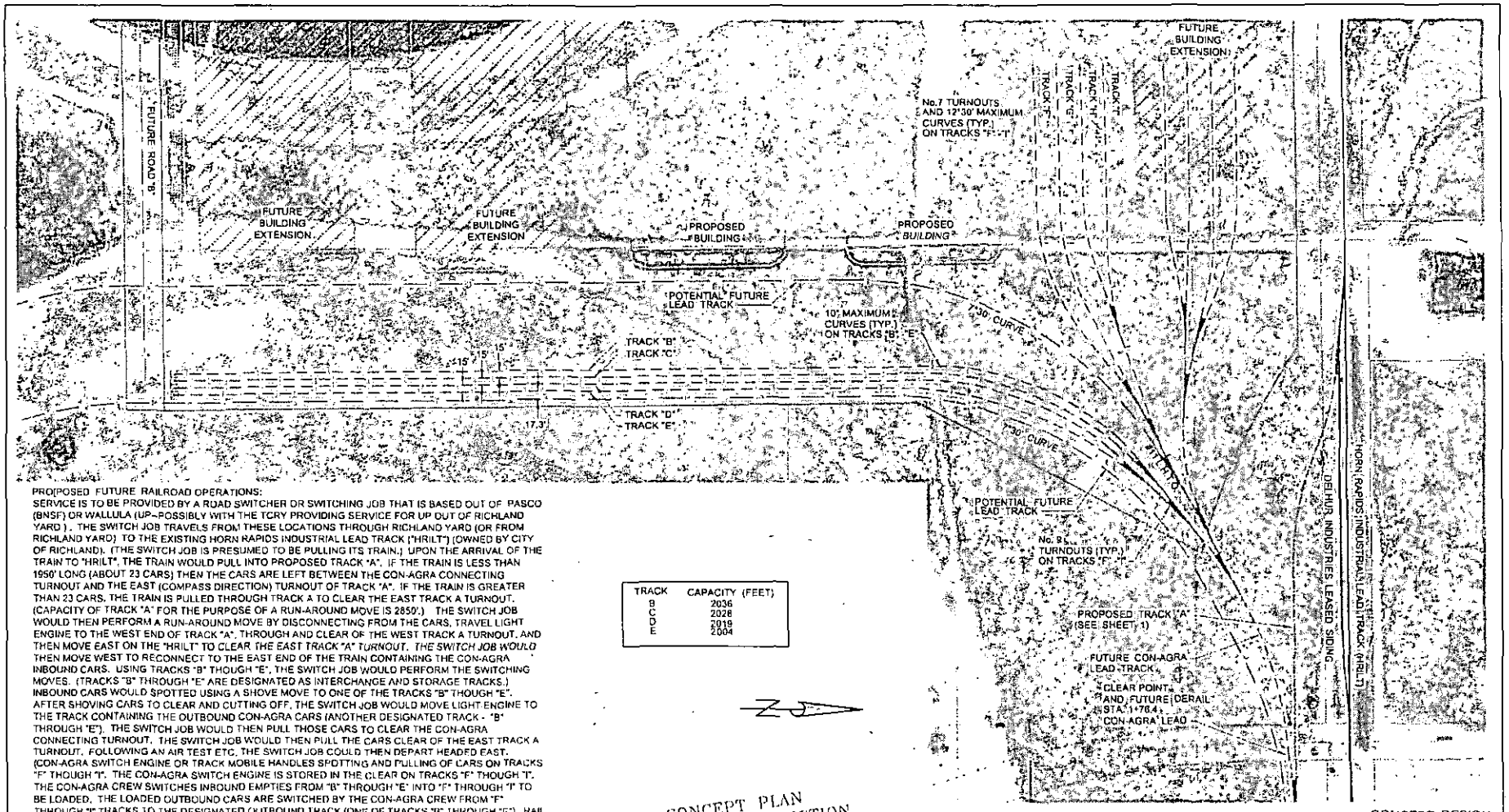
UNION PACIFIC RAILROAD
LOCATION & DESCRIPTION:
HORN RAPIDS INDUSTRIAL LEAD TRACK
CITY OF RICHLAND
RICHLAND, BENTON COUNTY, WASHINGTON
TRACKAGE TO SERVE: CITY OF RICHLAND AND FUTURE CON-AGRA

UTC028237

.0-0000014476

JD-__-X
KJ-__-X
KH-__-X





TRACK	CAPACITY (FEET)
B	2036
C	2026
D	2019
E	2004

PROPOSED FUTURE RAILROAD OPERATIONS:
SERVICE IS TO BE PROVIDED BY A ROAD SWITCHER OR SWITCHING JOB THAT IS BASED OUT OF PASCO (BNSF) OR WALLULA (UP--POSSIBLY WITH THE TCRY PROVIDING SERVICE FOR UP OUT OF RICHLAND YARD). THE SWITCH JOB TRAVELS FROM THESE LOCATIONS THROUGH RICHLAND YARD (OR FROM RICHLAND YARD) TO THE EXISTING HORN RAPIDS INDUSTRIAL LEAD TRACK ("HRILT") (OWNED BY CITY OF RICHLAND). (THE SWITCH JOB IS PRESUMED TO BE PULLING ITS TRAIN.) UPON THE ARRIVAL OF THE TRAIN TO "HRILT", THE TRAIN WOULD PULL INTO PROPOSED TRACK "A". IF THE TRAIN IS LESS THAN 1950' LONG (ABOUT 23 CARS) THEN THE CARS ARE LEFT BETWEEN THE CON-AGRA CONNECTING TURNOUT AND THE EAST (COMPASS DIRECTION) TURNOUT OF TRACK "A". IF THE TRAIN IS GREATER THAN 23 CARS, THE TRAIN IS PULLED THROUGH TRACK A TO CLEAR THE EAST TRACK A TURNOUT. (CAPACITY OF TRACK "A" FOR THE PURPOSE OF A RUN-AROUND MOVE IS 2850'.) THE SWITCH JOB WOULD THEN PERFORM A RUN-AROUND MOVE BY DISCONNECTING FROM THE CARS, TRAVEL LIGHT ENGINE TO THE WEST END OF TRACK "A", THROUGH AND CLEAR OF THE WEST TRACK A TURNOUT, AND THEN MOVE EAST ON THE "HRILT" TO CLEAR THE EAST TRACK "A" TURNOUT. THE SWITCH JOB WOULD THEN MOVE WEST TO RECONNECT TO THE EAST END OF THE TRAIN CONTAINING THE CON-AGRA INBOUND CARS. USING TRACKS "B" THOUGH "E", THE SWITCH JOB WOULD PERFORM THE SWITCHING MOVES. (TRACKS "B" THROUGH "E" ARE DESIGNATED AS INTERCHANGE AND STORAGE TRACKS.) INBOUND CARS WOULD SPOTTED USING A SHOVE MOVE TO ONE OF THE TRACKS "B" THOUGH "E". AFTER SHOVING CARS TO CLEAR AND CUTTING OFF, THE SWITCH JOB WOULD MOVE LIGHT ENGINE TO THE TRACK CONTAINING THE OUTBOUND CON-AGRA CARS (ANOTHER DESIGNATED TRACK - "B" THROUGH "E"). THE SWITCH JOB WOULD THEN PULL THOSE CARS TO CLEAR THE CON-AGRA CONNECTING TURNOUT. THE SWITCH JOB WOULD THEN PULL THE CARS CLEAR OF THE EAST TRACK A TURNOUT. FOLLOWING AN AIR TEST ETC. THE SWITCH JOB COULD THEN DEPART HEADED EAST. (CON-AGRA SWITCH ENGINE OR TRACK MOBILE HANDLES SPOTTING AND PULLING OF CARS ON TRACKS "F" THOUGH "I". THE CON-AGRA SWITCH ENGINE IS STORED IN THE CLEAR ON TRACKS "F" THOUGH "I". THE CON-AGRA CREW SWITCHES INBOUND EMPTIES FROM "B" THROUGH "E" INTO "F" THROUGH "I" TO BE LOADED. THE LOADED OUTBOUND CARS ARE SWITCHED BY THE CON-AGRA CREW FROM "F" THROUGH "I" TRACKS TO THE DESIGNATED OUTBOUND TRACK (ONE OF TRACKS "B" THROUGH "E"). RAIL OPERATIONS BY CON-AGRA ARE LIMITED TO TRACK WEST OF, AND IN THE CLEAR OF, THE CON-AGRA CONNECTING TURNOUT. THERE WILL BE NO CON-AGRA OPERATIONS ON TRACK "A".)

CONCEPT PLAN
NOT FOR CONSTRUCTION

CONCEPT DESIGN

REVISION #	BY	DATE	DESCRIPTION

HDR
HDR ENGINEERING, INC.
1401 EAST TRENT AVE.
SPOKANE, WA 99202
509-343-8500
(F)509-343-8501

FIBER OPTIC CABLE

200 0 200 400
SCALE IN FEET

LEGEND
INITIAL PROPOSED TRACKAGE
EXISTING TRACKAGE
FUTURE CON-AGRA TRACKAGE
POTENTIAL FUTURE TRACKAGE
CON AGRA PROPERTY LINES
R.O.W. LINES

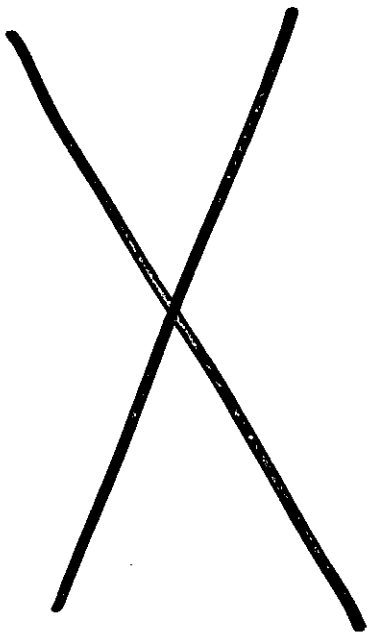
DRAWN BY: RAH
CHECKED BY: PJN
DATE: JULY 11, 2012
SHEET NUMBER: 3 OF 3

UNION PACIFIC RAILROAD

LOCATION & DESCRIPTION:
HORN RAPIDS INDUSTRIAL LEAD TRACK
CITY OF RICHLAND
RICHLAND, BENTON COUNTY, WASHINGTON
TRACKAGE TO SERVE: CITY OF RICHLAND AND FUTURE CON-AGRA

UTC028239

0-0000014780



JD-__-X
KJ-__-X
KH-__-X

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EXHIBIT JD-27-X
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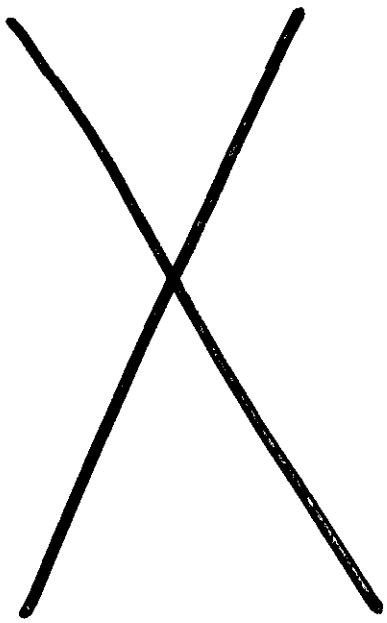

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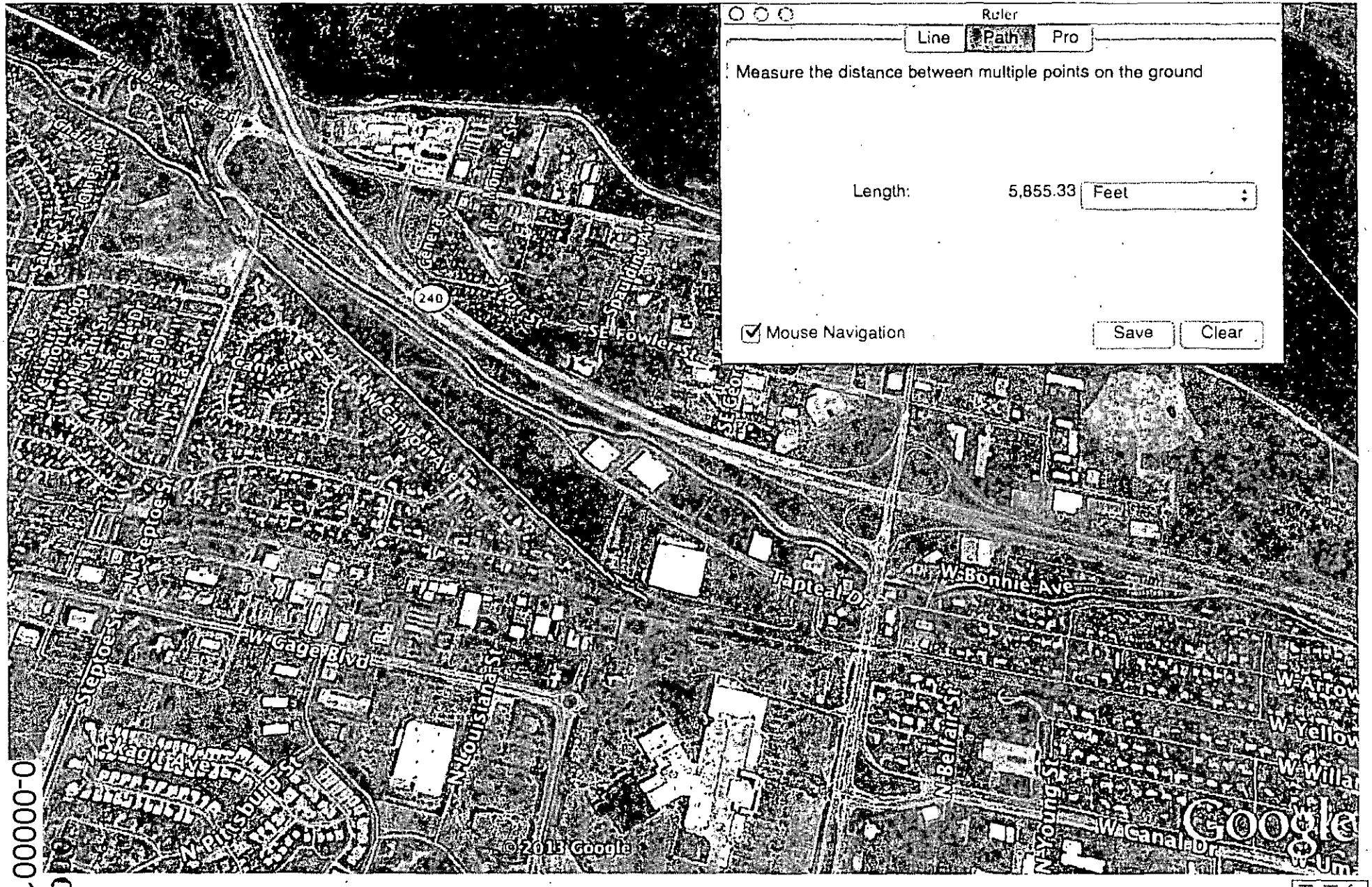

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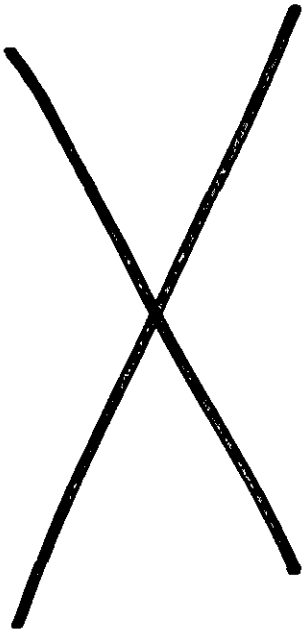

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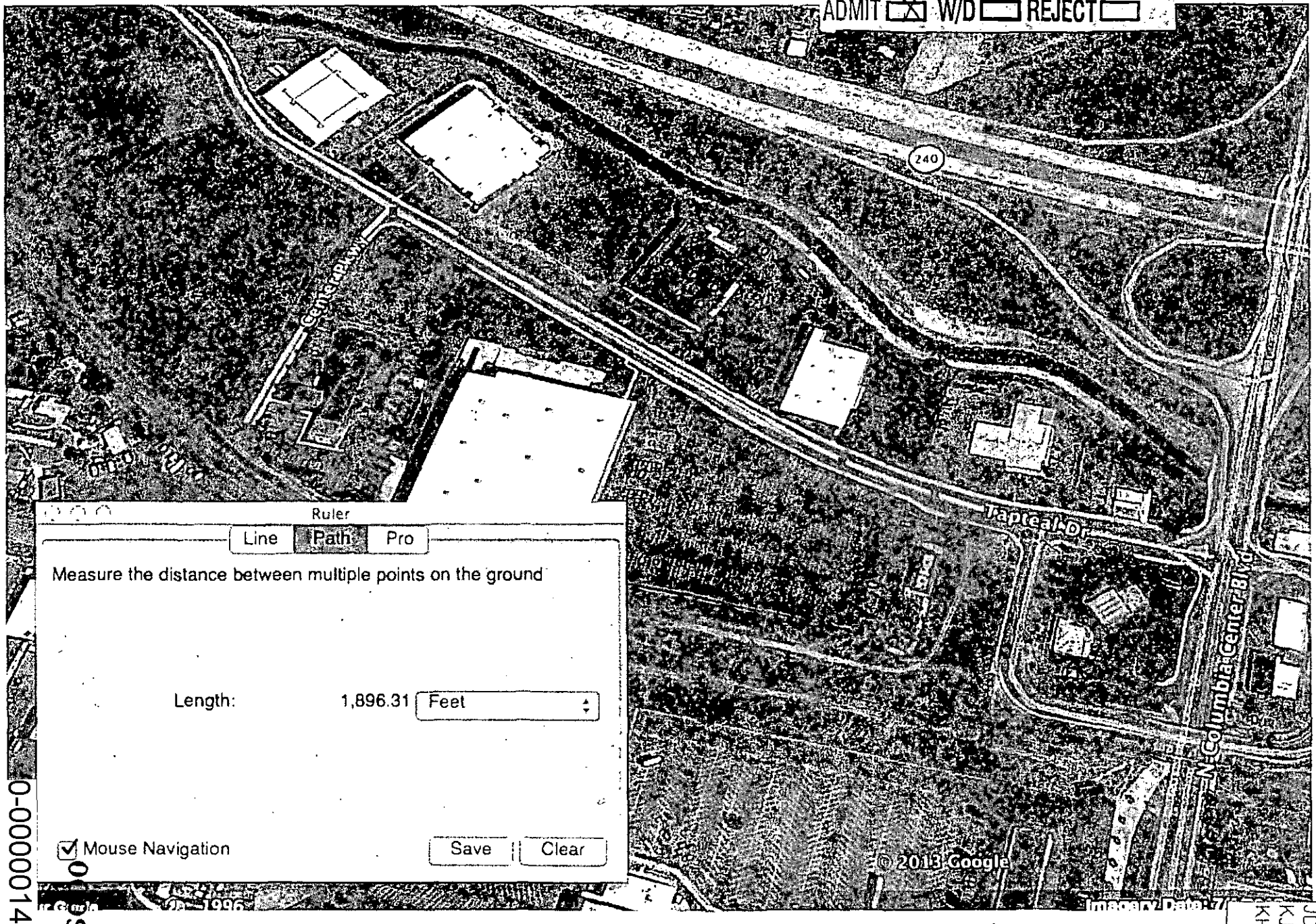

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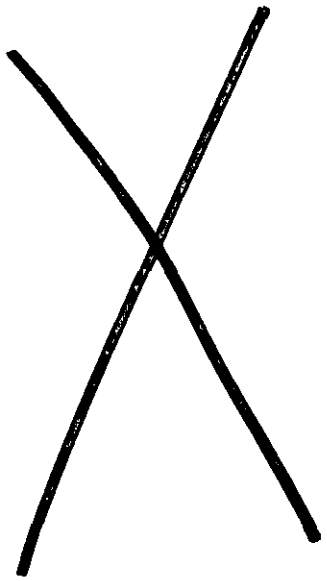

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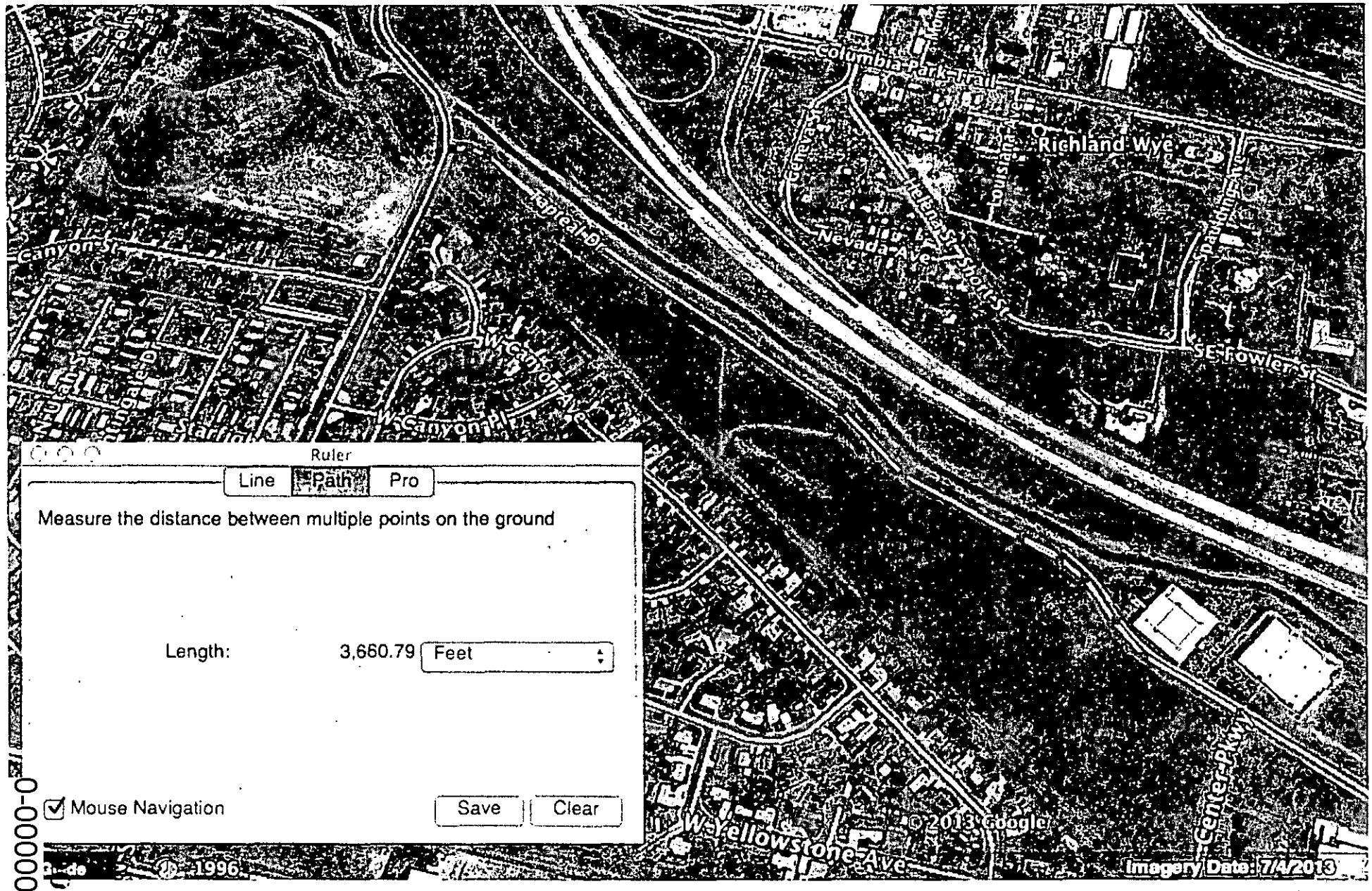

Ruler

Line | Path | Pro

Measure the distance between multiple points on the ground

Length: 3,660.79 Feet

☑ Mouse Navigation

Save | Clear

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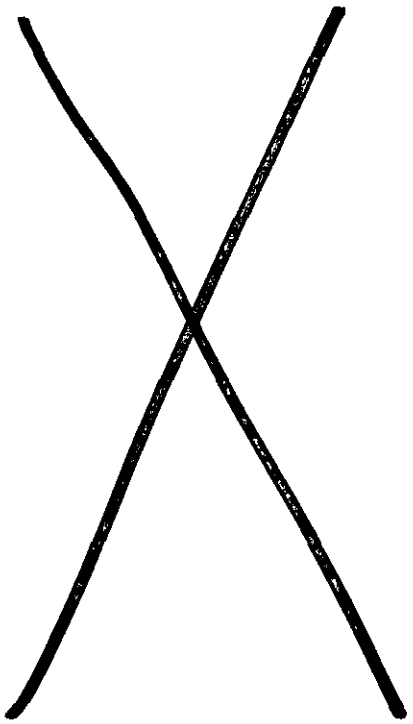
JD-__-X
KJ-__-X
KH-__X

WUTC DOCKET TR-130499
EXHIBIT JD-37-X and JD-39-X
ADMIT ☒ W/D ☐ REJECT ☐



Horn Rapids Rail Loop

November 13, 2013

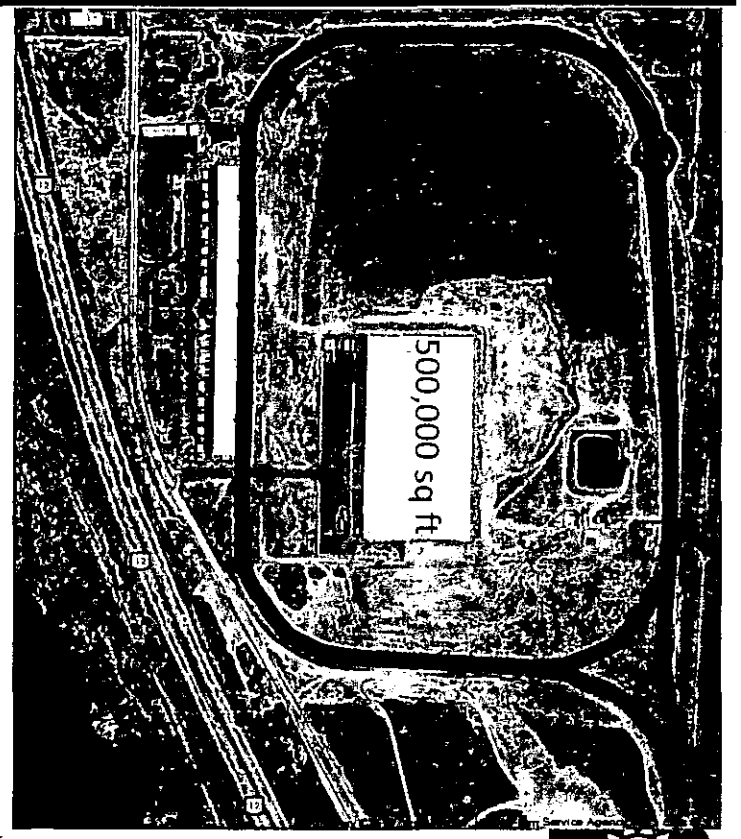
Gary Ballew, Manager
Economic Development Office

WUTC DOCKET TR-130499
EXHIBIT JD-38-X
ADMIT ☒ W/D ☐ REJECT ☐

Richland
Washington

Rail Loop - Terminology

- Rail Loop – a railroad track that allows continuous loading and unloading of rail cars from a single point (oval, teardrop, triangle)
- Unit train – a single commodity train that is shipped intact from point to point (usually 100 to 120 cars) up to 7800 feet long
- Turnaround – the time to load or offload a unit train
- Spur – extension of track that does not reconnect to originating track
- Siding – extension of track that does reconnect to originating track
- Switch – switches a train from one rail line to a second rail line
- Point of Demarcation – the point on a spur off a mainline where the ownership of the rail line changes (industry standard is the point where a train on the mainline can pass a rail car on the spur)
- Mainline railroad – one of the major carriers providing rail service across the country
- Shortline railroad – serves an area off of the mainline
- BNSF – Burlington Northern Santa Fe (mainline)
- UP – Union Pacific (mainline)
- TCRY – Tri City Railroad (shortline)



Richland
Washington

A Brief Rail Loop History

- Regional development of rail loops in S. Benton County and RailEx Facility in Wallula
- 2008 - City sold 33 acres to Tri City Railroad. They constructed facility that required breaking up unit trains to off-load
- 2010 - City approached by Central Washington Corn Processors – proposal to build a publicly owned rail loop (site visit Beard Industrial Park in Modesto)
- 2011 – Industrial Park Master Plan updated and includes rail loop
- 2011/2012 – Capital Improvement Plans include Horn Rapids rail loop
- 2012 – various legal challenges allow BNSF direct access to the Port of Benton rail line
- 2012 – BNSF and UP enter agreements with City to access Horn Rapids spur (agree to not switch cars at Center Parkway)
- 2013 – Central Washington Corn Processors (acting under Washington Transfer Terminal) proposes privately held rail loop with 3rd party access

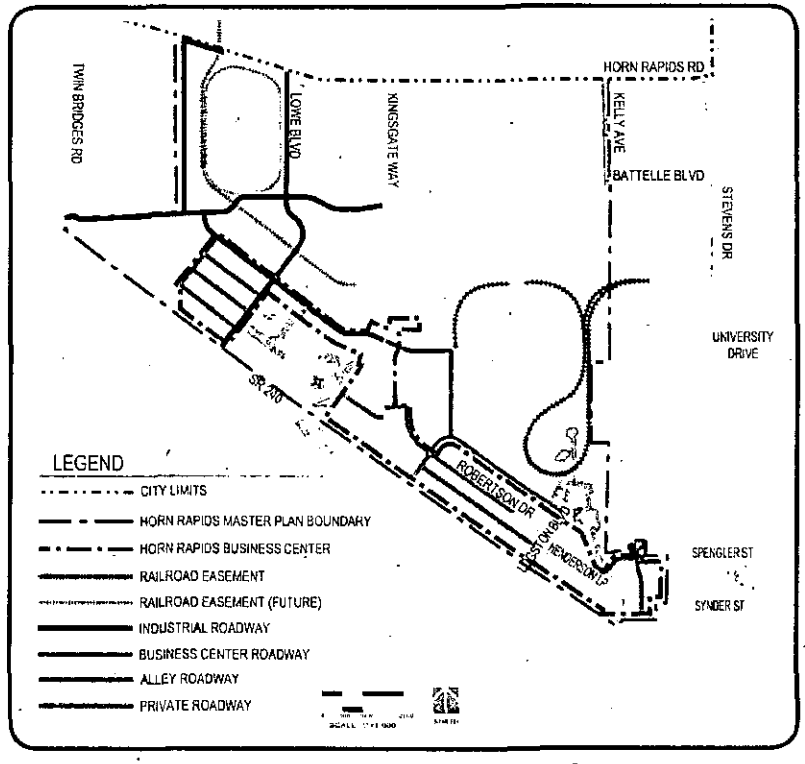


Figure 10: Transportation Plan

Richland Washington

Why Do We Want a Rail Loop?

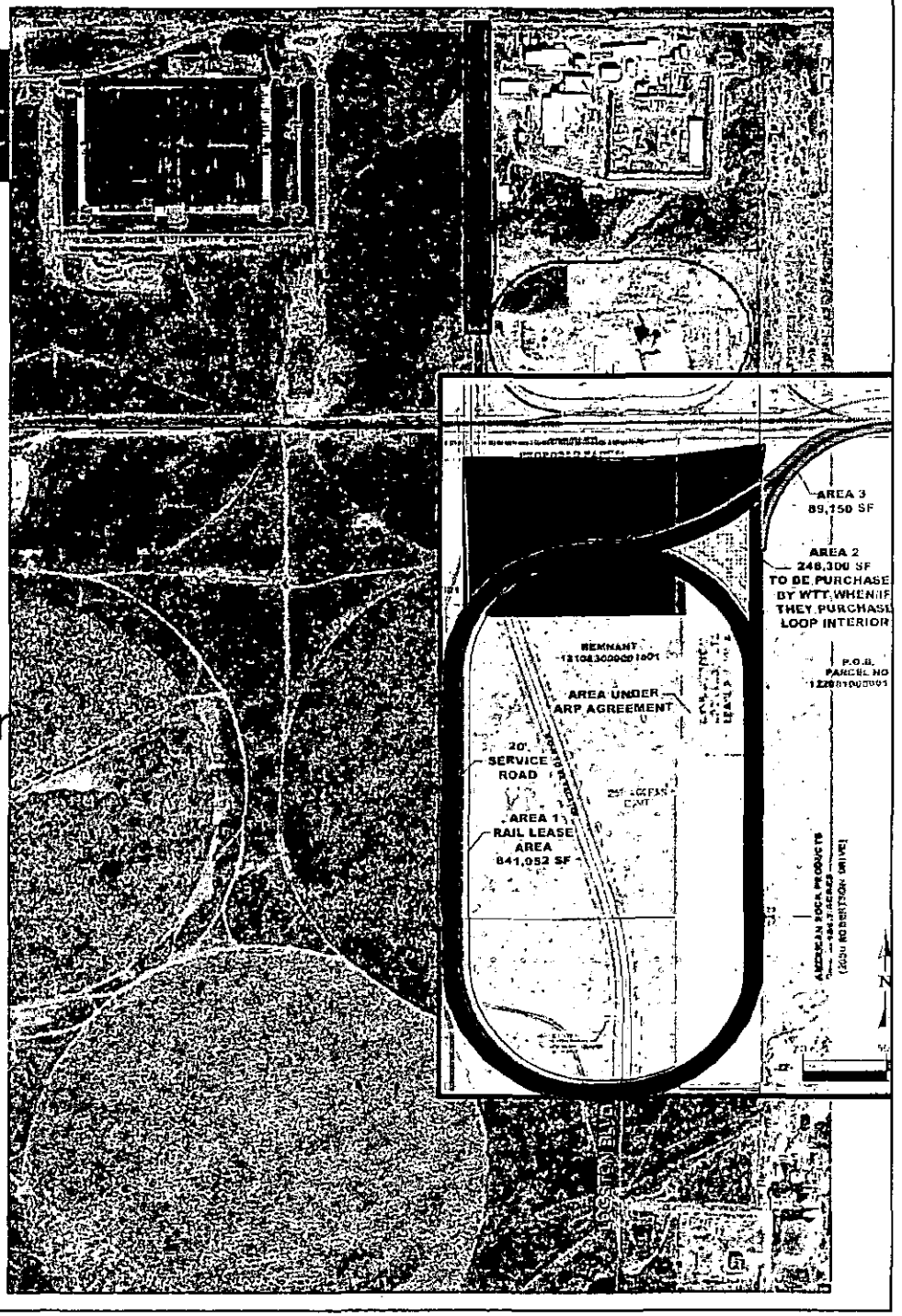
- Two regional economic engines, technology and agriculture
- N Richland has competitive advantage with dual rail service
  - both BNSF & UP
- Shipping costs steeply discounted for unit trains if those trains can be loaded/offloaded within 24 hours
  - difficult to do on spur or siding
- A rail loop provides an attractor for agriculture investments
  - Lowers input pricing
  - Provides for inventory diversity
  - Creates arbitrage opportunities for exports
  - Lowers shipping costs of Mid-Columbia products
- An **accessible** rail loop provides an asset to the HRIP, encouraging investments in the ag economy occur in Richland

Richland
Washington

Project at

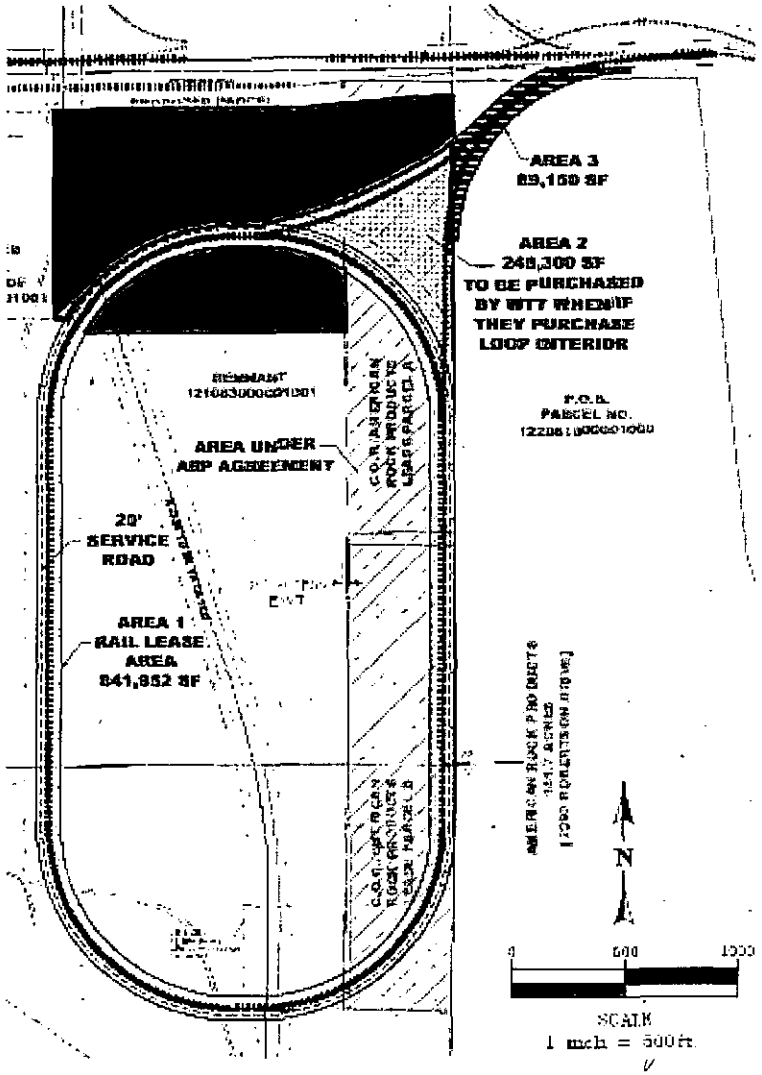
- Deal Drivers
  - Accessible rail loop
  - Some city control
  - Encourage development
  - Out clause
  - Limit risk
  - Deal has to stand on own

1. WA Transfer purchase 25 acres
2. WA Transfer lease for area under rail loop
3. Infrastructure Agreement to extend Logston
4. Repurchase land from American Rock
5. Gravel extraction agreement for American Rock



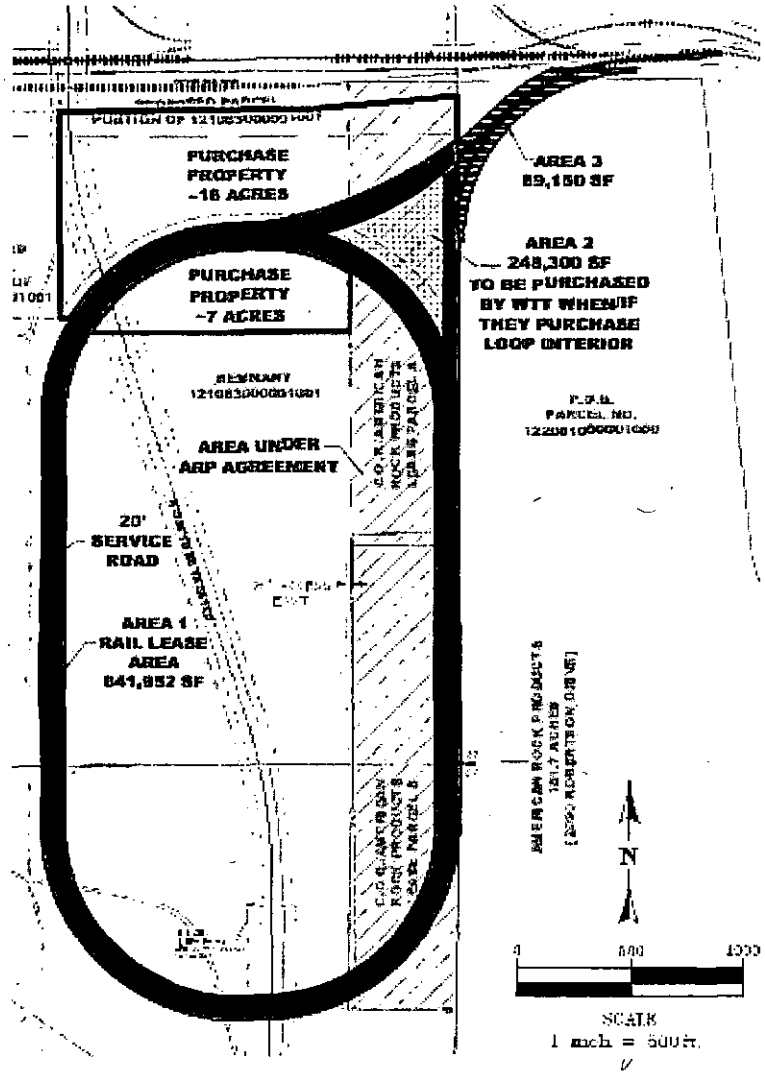
25 Acre Purchase and Sale Agreement

- 25 acres at $22,500 per acre ($565,000)
- City provide rail switch to demarcation point
  - ~ $100,000
- City build Logston Blvd (2000 ft.)
  - Infrastructure Agreement
  - Purchaser responsible for increasing assessed value by $5,000,000 to create LRF increment
- Record access easements over tracks
  - Purchaser responsible to build private road and crossings



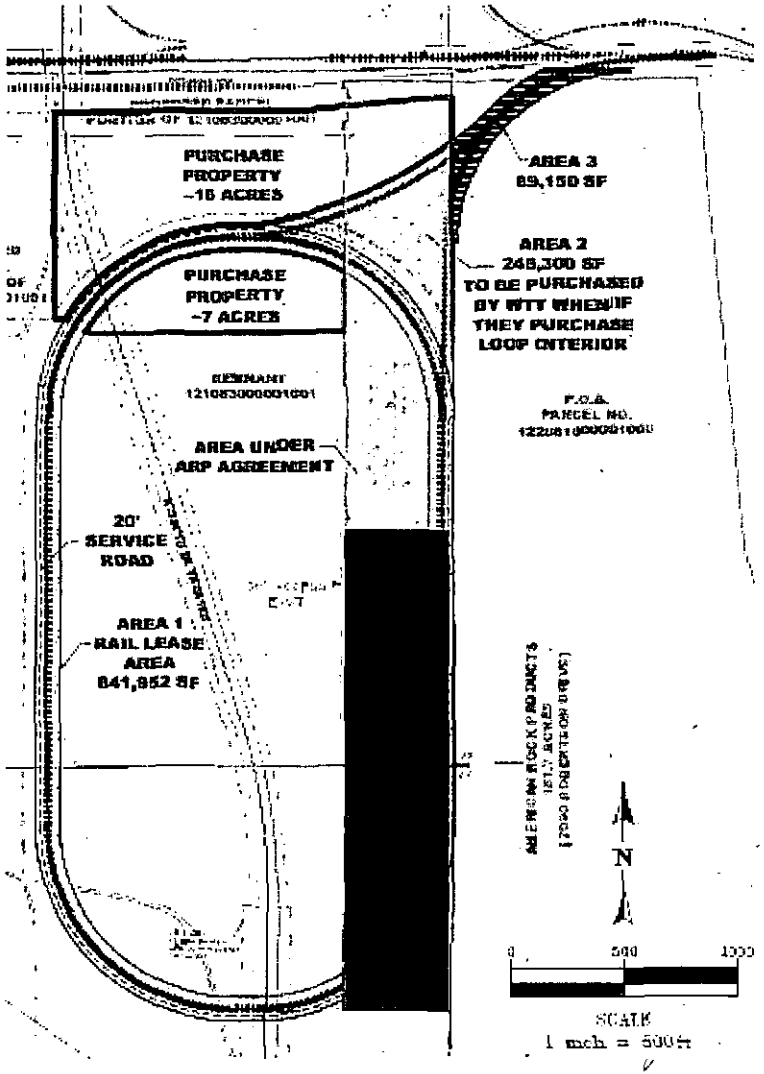
21 Acre Lease

- ~21 acres valued at $25,000 per acre
  - 15 years at $42,000/year, CPI bump
- Non-compete w/in loop and land to south of loop for five years (like commodities)
- List of allowed and not allowed products
- No city maintenance of rail loop
- Option to purchase interior of rail loop at $25,000 per acre (does not prohibit sale by City or require lessee participation)
- Can purchase lease area once 60% of interior of loop sold and developed (requires separate PSA and Council approval)
- User rates and demurrage schedule published and approved by the City
- Requires BNSF and UP access (maintains dual rail service)

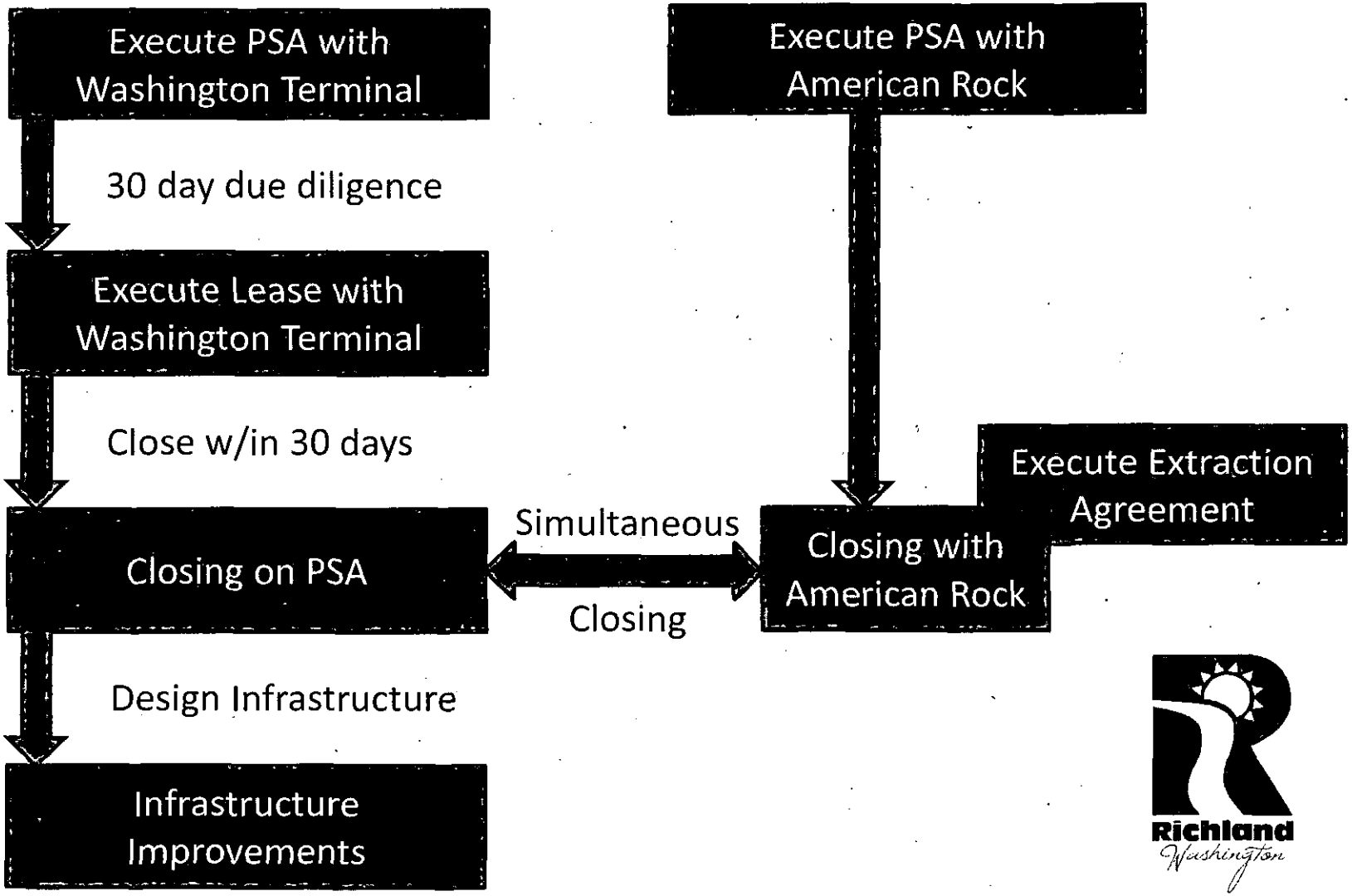


Purchase from American Rock

- 20 acres sold to American Rock in early 00's, additional 20 acres optioned
  - American Rock paid $290,875
- Estimate the 40 acres contains 860,000 tons of gravel
  - 197,000 tons lost to north
  - 100,000 tons lost under loop (if construction starts prior to mining)
  - 110,000 tons lost in leads (difficult to mine)
- Needed an agreement that accounted for higher value of land and loss of gravel
  - Pay American Rock original purchase price
  - Allow American Rock to extract gravel in the interior
    - Agreement for 2 years (once rail construction starts)
    - Can't interrupt construction or rail service
    - Return overburden and level



Deal Flow



Richland Washington

Cash Flow

Real Estate Transaction	Dollars
Washington Terminal Purchase	$562,500
Washington Terminal Lease (first year)	$ 42,500
American Rock Purchase	$290,875
Rail Switch	$100,000
Net	$214,125

RTLP ?

Note: Logston Blvd extension is funded through Local Revitalization Financing and not real estate proceeds.

Richland Washington

Risk & Mitigation

- Unit train traffic
  - Unit trains allowed now but would increase
    - A loop track can as a general practice support 2.5 trains a week or 5 trips
    - BNSF track in Kennewick has 6-10 trips per day
  - Public Works identified emergency access issue at Swift & Duportail
    - Would require mitigation during permitting
- Leased land
  - Modeled after our Eco-park lease
  - Insurance and indemnification language reviewed and modified by risk pool
  - Allows City purchase of loop at set price during lease
    - Provides no-fault, out clause
    - Would want 3rd party to take over operations
  - Can cancel lease for breach (lessee can remove rail)
  - Breaking city code (including nuisance code) is lease default

Richland
Washington

Risk & Mitigation

- Rail operations
  - City would only have operations if it used the buy out clause of the rail loop
  - Would likely only do this if there was a 3rd party operator identified
  - No maintenance or financial exposure for rail loop
- Gravel extraction
  - Modeled after Port of Benton's agreement with American Rock
  - Insurance and indemnification language reviewed and modified by risk pool
  - Gravel extraction performed under existing American Rock permit with Washington State Department of Natural Resources
- No action
  - Potential impact to relations with BNSF and UP
  - Loss of potential private sector investments, economic activity goes elsewhere

Richland Washington

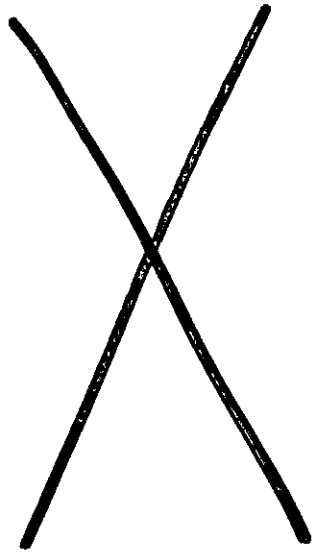


Exhibit No. KMH-1T

WUTC DOCKET TR-130499
EXHIBIT KMH-1T
ADMIT ☒ W/D ☐ REJECT ☐

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED TESTIMONY OF KENNETH M. HOHENBERG

1. INTRODUCTION

Kenneth M. Hohenberg is the Chief of Police for the City of Kennewick. His pre-filed testimony explains how the proposed crossing addresses an acute public need for a vehicular crossing on Center Parkway. The pre-filed testimony also explains why other crossing alternatives do not address the acute public need for this crossing.

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PHONE (206) 447-4400 FAX (206) 447-970

2. BACKGROUND

Q: *State your name, position, years in that position, and any other relevant background experience.*

A: Kenneth M. Hohenberg, Chief of Police. I have served the City of Kennewick as a Police Officer since July 17, 1978. I was appointed Chief of Police on July 01, 2003. I have served in a variety of assignments over the last 35 years including being a first responder and specifically being assigned to the patrol division as well as the traffic unit.

Q: *Describe the City of Richland's relationship with City of Kennewick fire and police services with regard to responding to fire and police emergencies.*

A: The Kennewick Police Department has a close working relationship with the Richland Police Department. We collaborate on a number of teams, programs, and community safety issues. We also routinely support each other in responding to calls for service and other emergency situations.

3. BACKGROUND ON THE PROPOSED PROJECT

Q: *State your understanding of the project.*

A: Extending Center Parkway, crossing the railroad tracks and connecting Gage Boulevard to Tapteal Drive.

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4. NEED FOR THE PROPOSED PROJECT

Q: *Describe the acute need for the railway crossing at Center Parkway from a public health and safety perspective.*

A: The proposed project would improve emergency response between the two cities as well as provide other alternatives for quicker response to each entity. It would also reduce response times depending on traffic volumes of other streets such as Columbia Center Blvd. or Steptoe Street.

If this project is allowed to move forward it is my opinion that public health and safety concerns are reduced in spite of the inherent risk of opening an at-grade crossing. I believe the enhanced benefits to the general public outweigh possible risks.

5. ALTERNATIVES

Q: *Describe why other alternatives to this crossing do not achieve the City's stated public health and safety goals.*

A: The other railway crossings to the north and to the south of the proposed crossing do not adequately address public health and safety needs because congestion on Columbia Center Blvd. to the east and Steptoe to the west. Both of these roadways carry heavy volumes of traffic. Columbia Center Mall is located directly to the west of Columbia Center Blvd. and directly to the east of Center Parkway. We are the regional shopping hub of southeastern Washington and northeastern Oregon. The proposed crossing will allow public safety vehicles the opportunity to respond to emergencies in the immediate area more quickly and safely.

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6. DECLARATION

I, Kenneth M. Hohenberg, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED TESTIMONY OF KENNETH M. HOHENBERG is true and correct to the best of my knowledge and belief.

DATED THIS 29th day of August, 2013

KENNETH M. HOHENBERG

FOSTER PEPPER PLLC
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PHONE (206) 447-4400 FAX (206) 44

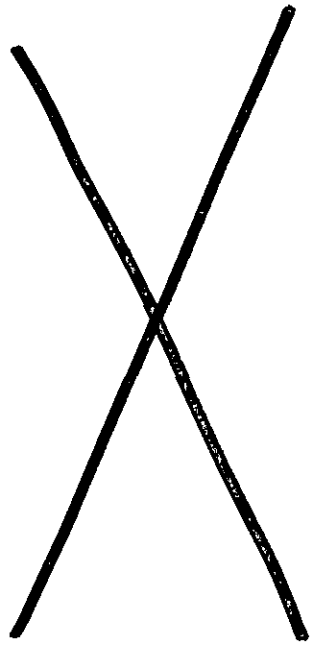

Exhibit No. KMH-2T

WUTC DOCKET TR-130499
EXHIBIT KMH-2TR
ADMIT ☒ W/D ☐ REJECT ☐

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED REBUTTAL TESTIMONY OF KENNETH M. HOHENBERG

1. INTRODUCTION

Neil Hines is the Fire Chief for the City of Kennewick. His rebuttal pre-filed testimony explains how the proposed crossing addresses an acute public need for a vehicular crossing on Center Parkway.

2. BACKGROUND

Mr. Hohenberg's's background and credentials are set forth in Exhibit KMH-1T.

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3. TESTIMONY REVIEWED

Q: *Please identify the testimony that you reviewed before preparing this rebuttal testimony.*

A: I reviewed the following: (1) Mr. Norris's pre-filed testimony submitted on behalf of TCRY, and (2) Mr. Randolph V. Peterson's pre-filed testimony submitted on behalf of TCRY. I also reviewed Mr. Baynes's responsive pre-filed testimony.

Q: *Can you please summarize the testimony submitted on behalf of TCRY?*

A: Yes. Both Mr. Norris and Mr. Peterson believe that the proposed crossing does not advance an acute public need.

4. ACUTE PUBLIC NEED

Q: *Previously, you submitted pre-filed testimony that the proposed crossing advances an acute public need. Is that correct?*

A: Yes.

Q: *Have you changed your opinion of this proposed crossing after reading the pre-filed testimony submitted by Mr. Norris and Mr. Peterson, submitted on behalf of TCRY?*

A: No. The crossing advances an acute public need.

Q: *Why?*

A: For all of the reasons set forth in my previous testimony. I also join with the reasons set forth in Mr. Baynes's responsive pre-filed testimony.

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5. DECLARATION

I, Kenneth M. Hohenberg, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED REBUTTAL TESTIMONY OF KENNETH M. HOHENBERG is true and correct to the best of my knowledge and belief.

DATED THIS ___ day of October, 2013.

KENNETH M. HOHENBERG

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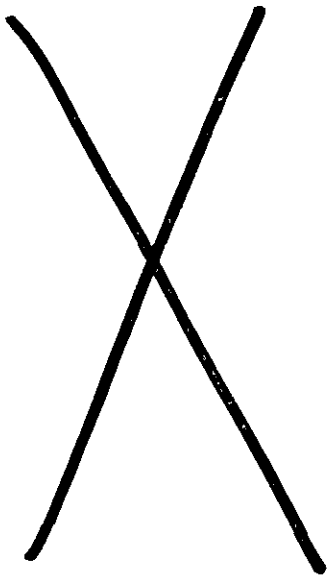

Exhibit No. SKG-1T

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED TESTIMONY OF SUSAN K. GRABLER

1. INTRODUCTION

Susan K. Grabler is a railroad engineer at David Evans and Associates, Inc. The City of Richland has contracted DEA to assist in the design of the Center Parkway Extension project, specifically for the elements associated with the proposed highway-rail grade crossing. Since 1973, Ms. Grabler has worked on numerous railroad engineering and railroad safety projects.

Ms. Grabler's pre-filed testimony provides a general overview of the project. It identifies the "inherent and site specific" dangers of the crossing and it also identifies the safety measures taken by the City of Richland to moderate those dangers. Ms. Grabler's pre-filed testimony reviews and analyzes the alternative crossings identified by the City of Richland and DEA, and she explains why the City of Richland decided to file a petition with the Washington Utilities and

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Transportation Commission ("WUTC"). Finally, Ms. Grabler's pre-filed testimony reviews and determines whether a separation of grades is practicable.

2. CREDENTIALS

Q: State your name, position, years in that position, and relevant background experience.

A: My name is Susan K. Grabler. I am employed by the engineering firm of David Evans and Associates, Inc., which has been contracted by the City of Richland, Washington to assist in the design of the Center Parkway Extension Project, specifically for elements associated with the proposed at-grade highway-railroad crossing.

My background is primarily in railroad engineering where I handle railroad coordination projects for several states and local municipal entities as well as Class 1 railroads. I retired from Union Pacific Railroad Company (UPRR) in Denver, Colorado in March 2007.

During my tenure at UPRR, I was first based in Portland, Oregon with the rail design group, from 1973 – 1983. I eventually became the Chief Draftsman responsible for all elements of railroad design projects in the Oregon Region (this was before CADD was available). From 1983 -1993, I managed all public projects in Oregon and Northern California with the state, county and local municipalities that the railroad operated through. From 1993 to 2007, I worked in Denver, Colorado as the Manager of Industry & Public Projects for Texas, Arkansas, Louisiana, New Mexico, Wyoming, Colorado, and Nebraska. During my 24 years in the public projects group, I was responsible for all new industry and public projects in a total of nine states before my retirement. I have managed hundreds of public projects similar to the extension of Center Parkway while at UPRR.

For several years I was also responsible for training all new Northern Region Managers of Industry and Public Projects and co-authoring the UPRR Industry Track Specifications used by private engineers and contractors for new industry track projects, including new industry tracks that cross public and private roadways.

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I have testified in hearings held by the Oregon Department of Transportation Rail Division (formerly known as the Oregon Public Utility Commission) and I have testified in hearings held by the Colorado Public Utility Commission. I worked with the California Public Utility Commission, Arkansas Department of Transportation, Louisiana Department of Transportation, Nebraska Department of Transportation, Wyoming Department of Transportation, but did not testify in these states as we were able to work toward the mutually common goal of public safety.

As a member of AREMA (American Railway Engineering and Maintenance-of-Way Association), Committee 36, we are responsible for defining the technical specifications for the latest in technology in automatic warning devices used in the United States and Canada.

3. OVERVIEW OF THE PROPOSED CROSSING

Q: *Discuss your understanding of the proposed crossing and whether a grade separated crossing is feasible at this location.*

A: Due to the existing topography and roadway geometry at Center Parkway and the close proximity of Columbia Center Boulevard, the grade separation of Center Parkway is not feasible at the proposed location. The railroad structure over the Columbia Center Boulevard would have to be replaced to obtain the correct railroad grade profile over both Columbia Center Boulevard and Center Parkway. Additionally the public access into the hotel adjacent to the crossing would be severely impacted.

The 7,000 Average Daily Traffic (ADT) proposed for Center Parkway and the average of six train movements a day would not justify spending local public funding for two new railroad overpasses. The Federal Highway Administration (FHWA)"**Railroad-Highway Grade Crossing Handbook, Revised Second Edition August 2007**" states that an urban crossing must have 100,000 ADT before it qualifies as a grade separation project. It would also take the road authorities several years to pull together all of the necessary state and local funding for one

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structure let along two grade separations. Additionally, the road authorities would have to acquire all of the necessary environmental impact clearances required for major public projects when considering railroad grade separation projects.

4. IDENTIFY THE INHERENT AND SITE-SPECIFIC DANGERS OF THE PROPOSED CROSSING

Q: *Identify the inherent and site-specific dangers of the proposed crossing*

A: Over my 30 years of working specifically on new public projects, my opinion is that the safest crossing is normally a grade separation; however, the Colorado Public Utility Commission Rail Chief Pam Fischhaber has advised that cars can also fall off of grade separations as happened in northeast Colorado a few years ago. While it is our intent to always provide the safest at-grade highway-railroad crossing, it is not always feasible to construct a grade separation due to the topography and geometry of specific locations such as the proposed Center Parkway project.

The automatic warning devices used on all new at-grade highway-railroad crossings by all railroads along with sound traffic engineering and civil engineering design practices will provide a safe at-grade highway-railroad crossing. Especially for a crossing with 7,000 ADT and low train volumes as proposed in this case.

With the addition of medians on the approaches to the crossing to keep motorists from driving around the gates, the existing train speed of 35-MPH or less and the average of six trains per day, along with the most current automatic warning devices, should be sufficient to create a safe at-grade highway-railroad crossing.

With the relatively short trains consisting of 1 – 50 cars, plus or minus, traveling to and from the Port, the wait time is normally in the range of 2 – 3 minutes, which is about the same time as a standard traffic signal. If the Port could handle the Unit Trains, which it can't, the train

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would typically consist of 105 – 120 cars per train and would create a longer wait time for the motorist.

The federal grade crossing safety program is identified in several **Federal Surface Transportation Acts.** Specifically, the **Surface Transportation Act of 1987** established the first Section 130 program, which apportioned federal funding to each state depending on the amount of crossings each state had. The funding is typically used for highway projects on existing State highway systems and also for highways/roadways off of State highway systems. Over the years, the Section 130 program has established a precedent for funding of specific grade separation projects and improvements at existing at-grade highway-railroad crossing projects. The proposed Center Parkway crossing would not qualify for Federal Funding because the City of Richland does not have any at-grade highway-railroad crossings in the immediate area with automatic warning systems that they can close. The crossing closures are a requirement of the FHWA if a road authority wants federal funding for a grade separation to be closed.

5. THE PROPOSED SAFETY FEATURES OF THE PROPOSED CROSSING THAT WILL BE USED TO ADDRESS THE DANGERS AT THE CROSSING

Q: *Describe the proposed safety features of the at-grade crossing.*

A: The Automatic Constant Warning Devices used by the railroad industry today are designed to give a constant warning time (CWT) to all motorists using an at-grade highway-railroad crossing equipped with gates and lights. The CWT is defined by the Federal Railroad Administration (FRA) as a warning time of not less than 20 seconds, reference **"49 CFR part 234 – Grade Crossing Signal System Safety and State Action Plans, Subpart A: General, 234.5 – Definitions."** The railroads will typically use approximately 30-35 seconds of CWT, which will give a CWT whether the train is traveling at 5 MPH or 35 MPH. The FRA has indicated that a warning time of over 45 seconds will tend to cause a motorist to attempt to circumvent the automatic gates. So the standard CWT is between 20-40 seconds.

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Per the **Federal Highway Administrations "Manual of Uniform Traffic Control Devices, 2009 Edition, Section 8C-04 – Automatic Gates, Page 773, "13** *The gates should cover the approaching highway to block all highway vehicles from being driven around the gate without crossing the center line."* This will typically keep even the smallest of vehicles from trying to circumvent the automatic gates.

The City proposes using the standard center medians, which we know in the railroad crossing safety arena, deters drivers just long enough for the train to enter the crossing and keeps the motorist from trying to circumvent the automatic warning devices.

6. THE EXISTING GRADE AND PRACTICALITY OF A SEPARATED CROSSING

Q: *Does the grade of the existing rail line impact the practicability of separated crossing?*

A: The branch line that serves the Port is operated by the TCRY. The grade over the proposed Center Parkway is currently less than 1%. If the City of Richland is ordered to build a grade separation, the railroad grade would be over 2% down and back up again and would be unfeasible for the TCRY railroad to operate on.

Typical trains operate on a 1% grade or less track profile for normal train operations. In the Cascades, they can operate up to a 2% grade, which is normal for most Class 1 railroads crossing over mountain passes. However, before they operate in those conditions, they must have the additional train power necessary to make it over the mountain passes. This is all dependent on the type of train and loads they are hauling. The train operating conditions are all site specific depending on their loads and the TCRY operations would not normally have four engines on the front end.

7. CONCLUSIONS

Q: *Summarize your conclusions of the proposed at-grade crossing at Center Parkway.*

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A: There is always the possibility of a motorist running through the gates and lights or actually driving over the medians to get around the gates. We do know that with the major decrease of at-grade highway-railroad crossing incidents over the past 38 years since the implementation of the Federal Highway Section 130 program, the federal at-grade highway-railroad safety program is one of the most successful programs ever developed by the federal government.

The **"Federal Highway Administration Railroad-Highway Grade Crossing Handbook, Second Edition 2007"** is a standard guide for traffic and railroad engineers to use for identifying proposed grade crossing projects using federal funding. New at-grade crossings cannot use federal funding for their establishment. And Federal funding for proposed grade separation projects can only be used when one or more existing at-grade highway-railroad crossings with an existing automatic warning system are proposed to be closed.

The improved designs of proposed at-grade highway-railroad crossings are due to the use of sound engineering practices by road authorities and railroads working together to design as safe as possible at-grade highway-railroad crossings that do not meet warrants for a grade separated crossing. The road authority in this case is the City of Richland, which has the responsibility to review all of the criteria for grade crossings in their city and it is their responsibility to determine how to maintain public safety, convenience and welfare for the public.

The railroad signal technology proposed to be used at Center Parkway will be the most current automatic warning system available today. Additionally, with the traffic and civil engineering practices employed by the City of Richland, this crossing will be designed and built to provide the public a safe at-grade crossing as well as providing the public the convenience they have sought at this location.

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8. DECLARATION

I, Susan K. Grabler, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED TESTIMONY OF SUSAN K. GRABLER is true and correct to the best of my knowledge and belief.

DATED THIS 29th day of August, 2013

SUSAN K. GRABLER

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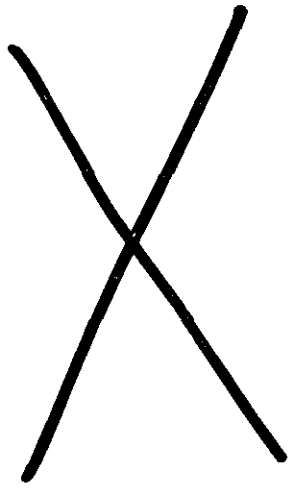

Exhibit No. KMJ-1T

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED TESTIMONY OF KEVIN M. JEFFERS, PE

1. INTRODUCTION

Kevin M Jeffers is an associate at the engineering firm David Evans and Associates ("DEA"). The City of Richland has contracted DEA to assist in the design of the Center Parkway Extension project, specifically for the elements associated with the proposed highway-rail grade crossing.

Mr. Jeffers' pre-filed testimony provides a general overview of the project. It identifies the "inherent and site specific" dangers of the crossing and it also identifies the safety measures taken by the City of Richland to moderate those dangers. Mr. Jeffers' pre-filed testimony reviews and analyzes the alternative crossings identified by the City of Richland and DEA, and

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he explains why the City of Richland decided to file a petition with the Washington Utilities and Transportation Commission ("WUTC"). Finally, Mr. Jeffers' pre-filed testimony reviews and determines whether a separation of grades is practicable, considering the factors set forth in RCW 81.53.020.

2. CREDENTIALS

Q: *State your name, position, years in that position, and relevant background experience.*

A: My Name is Kevin M. Jeffers, PE. I am an associate in the engineering firm David Evans and Associates, Inc., which has been contracted by the City of Richland to assist in the design of the Center Parkway Extension Project, specifically for elements associated with the proposed highway-rail grade crossing.

I have been a licensed professional engineer in Washington State since 1994 and I am also licensed in the State of Oregon. I began designing and overseeing the design of railroad projects in the 1998 while employed by the Washington State Department of Transportation. From 1989 until 1998, I specialized in bridge design and conditions inspection, including bridges over rail lines and, in limited cases, bridges carrying rail lines over roadways. I joined David Evans and Associates in 2011.

Since 1998, I have either designed or led the design of improvements to 35 highway-rail grade crossings in Clark, Columbia, Franklyn, Grays Harbor, King, Lewis, Lincoln, Pierce, Skagit, Snohomish, Spokane, Thurston, Whatcom, Whitman, and Yakima Counties. I have also led or managed the design of grade separations at three locations in Washington State.

I have previously testified in a Washington Utilities and Transportation Commission hearing regarding the closure of one grade crossing and the improvements of three other crossings in Snohomish County.

I am currently leading or significantly involved in seven projects where either highway-rail grade crossings or grade separations are proposed to be replaced or modified. My

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involvement in these projects is through contracts between my firm and clients, including the Port of Benton, BNSF Railway, the City of Tacoma, Tacoma Rail, the City of Fife, and Sound Transit.

3. OVERVIEW OF THE PROPOSED CROSSING

Q: *State your understanding of the proposed at-grade crossing.*

A: For several years, the Cities of Kennewick and Richland have pursued the extension of Center Parkway to connect between Gage Boulevard on the south to Tapteal Drive on the north. This effort has been challenging because of existing railroad lines that operate parallel to and in between Gage Boulevard and Tapteal Drive. There are multiple purposes for connecting Center Parkway, including:

- Completing a grid network of functionally classified roadways;
- Providing relief to congested arterial facilities;
- Providing improved access to commercial areas and developable land; and
- Improving emergency response times.

The City of Richland has worked closely with both the BNSF Railway and the Union Pacific Railroad to reduce the use of the railroad siding in the vicinity of Center Parkway. The City has also worked with the Port of Benton, who owns the remaining railroad line, to address issues with respect to a new railroad crossing that would be created by the Center Parkway Extension. The City has also secured federal and state funding for the construction of the roadway including the railroad crossing.

The City of Richland contracted with David Evans and Associates to study and document conditions with the proposed roadway crossing of the rail line to contribute to design considerations and ensure safety with the railroad crossing.

The proposed two-way, three-lane roadway in the area of the proposed crossing will be on tangent (aka "straight") roadway. The roadway profile over the crossing is designed with a

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series of gentle vertical curves that will meet the current standard for vertical clearances by the American Railway Engineering and Maintenance-of-way Association (AREMA) that is referenced in the Manual of Uniform Traffic Control Devises (MUTCD) and American Association of State Highway and Transportation Officials (AASHTO). The vehicle traffic will be warned of an approaching train by flashing lights and gates, which will be designed with Constant Warning Time (CWT) devices for motorists. This means the motorist will always get the agreed upon CWT of usually 30". The Federal Railroad Administration (FRA) requires the railroads to have the CWT set between 20"-40". The center lane used for left turns outside the grade crossing area will have a traffic island that will act a median separator, deterring vehicles from driving around the lowered gates. In addition, it has been proposed to eliminate the south-most track, which would leave a single track being crossed by the roadway.

In consultation with Susan Grabler of DEA and me, staff engineers at the City of Richland examined building a new grade separation over or under the rail line. These potential solutions were judged infeasible. Without deviating significantly from typical or codified design standards, each option considered would either require the replacement of the existing rail bridge over Columbia Center Boulevard to the east or would eliminate access to the existing hotel in the northeast quadrant of the proposed crossing and other private properties.

In addition, an examination I prepared of the conditions anticipated at the grade crossing, a grade separation was not warranted on the basis of design standards or safety. Along with having a relatively low "Crossing Exposure" (the product of the average number of trains and the Average Daily Traffic [ADT]) based on predicted roadway and train traffic volumes, the predicted accident frequency was below the Federal Highway Administrations (FHWA) requirement for a grade separation.

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4. THE INHERENT AND SITE-SPECIFIC DANGERS OF THE PROPOSED CROSSING

Q: *Describe your understanding of the inherent and site-specific dangers of the proposed at-grade crossing.*

A: My knowledge of the rail lines in this area is based on information I have gathered organically in my 14-plus years working in the rail industry, as well as through observations of the area served by the Port-owned rail line, through discussions with the City of Richland and the City of Kennewick staffs, through on-line research of the TCRY, and through review of Union Pacific Railroad (UPRR) and BNSF Railway timetables and track charts.

The rail line hosts freight trains at speeds up to 35 mph. There are no regularly scheduled passenger trains on the line. There are other outlets for rail traffic other than through the proposed project area that includes the proposed crossing. The Port-owned rail line joins the Union Pacific-owned rail line at a turnout (aka switch) east of the proposed crossing. The line is a branch line that was originally built to serve the Hanford nuclear site to the north. When it was originally built, the branch line was owned and operated by UPRR. At some point, the branch line was sold or donated to the Port of Benton, with UPRR maintaining operating rights to also serve customers along the branch line.

At one time, the remaining UPRR-owned line was a main line that competed with BNSF predecessor railroads for customers in the Yakima Valley. Currently, the UPRR-owned line does not extend beyond Gage Street west of the proposed crossing. The UPRR tracks that extend west of the turnout to the Port-owned line will be removed by the proposed Center Parkway project.

Having a junction with Union Pacific's main line has resulted in the practice of interchanging (exchanging) railcars between the UPRR and the TCRY on sidings that Center Parkway is proposing to cross. In the last few years, this practice has ended with trains simply passing through the proposed crossing location. The interchange of cars now takes place near

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Walulla, Washington, east of Kennewick. In addition, BNSF is now using operating rights they obtained to use the Port-owned rail line to access over the UPRR-owned tracks.

Even with three railroads competing for potential customers in the area, I understand that there are between two and four TCRY trains passing the proposed crossing location on a daily basis. In addition, UPRR or BNSF trains may be using the rail line twice a day, but likely not on the same day. As such, I believe that there are no more than six trains per day using the tracks at the proposed crossing.

I have not discovered any plans to increase speeds on this section of the rail line, but I have learned of plans for a facility in City of Richland industrial property that would result in longer "unit" trains (trains transporting a single product from one origin to one destination). If this facility is built, the rail line does not appear to have the capacity to host many more than the current estimated peak of six trains a day.

Q: Identify the envisioned vehicular and pedestrian use of the crossing.

A: Based on the Center Parkway Extension and Railroad Crossing Traffic Study, dated March 2013 and prepared by JUB Engineers, I understand that by 2033, the Average Daily Traffic (ADT) is predicted to be 7,000 vehicles per day over the crossing. While this is a significant number of vehicles when examining the roadway networks' fluidity, it is far below 100,000 ADT. This is one of the thresholds in the FHWA Grade Separation Guidelines suggested for urban areas when considering a grade separation.

Center Parkway will continue to intersect with Tapteal Drive to the north and Gage Boulevard to the south. These intersections are both more than 500 feet from the proposed crossing. Again, referring to the previously mentioned traffic study, the intersection of Center Parkway is forecast to operate with less than 25 seconds of average vehicle delay. In the report, it was determined that the average queue length during the PM peak hour would be approximately 4 vehicles for the left turn lane. Thus, with an average vehicle length of 25 feet,

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the queue length would not extend more than 125 feet back from Tapteal Drive to the railroad crossing.

Pedestrian and bicycle use of the proposed crossing would be accommodated by sidewalks and roadway shoulders on both sides of the roadway. I cannot say how many people might use these facilities, but based on the primarily commercial properties in the immediate vicinity, but the number of users will be relatively small. These facilities meet the design standards adopted by the City of Richland and the City of Kennewick.

Q: Provide any other relevant information regarding the dangers of this crossing considering those elements.

A: As I noted earlier, the predicted accidents between a vehicle and train in any given year at the crossing is relatively small. In the document titled Appendix to Center Parkway Extension Grade Separation Evaluation, dated March 25, 2013, I calculated the predicted number of accidents per year to be 0.145; this is equal to 1 accident per 6.9 years. I used the methods outlined in the Railroad-Highway Grade Crossing Handbook - Revised Second Edition 2007. I used the estimated six trains per day and the 7,000 ADT as inputs. The proposed crossing is planned to have flashing lights and gates, to cross one main track, to be paved, to be classified as an Urban Minor Arterial and to have two travel lanes. The train speed was assumed to be 15 mph, but this was not correct. The actual train speed is as much as 35 mph, but because the crossing will have flashing lights and gates, the train speed does not affect the calculation.

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5. THE PROPOSED SAFETY FEATURES OF THE PROPOSED CROSSING THAT WILL BE USED TO ADDRESS THE DANGERS AT THE CROSSING

Q: *Describe the safety features of the proposed at-grade crossing.*

A: As stated above, the proposed two-way, three-lane roadway in the area of the proposed crossing will be on tangent (aka "straight") roadway. This will maximize the site distance of approaching vehicles to the warning devises.

The roadway profile over the crossing is designed with a series of gentle vertical curves that will meet the current standards for vertical clearances by the American Railway Engineering and Maintenance-of-way Association (AREMA) that is referenced in the Manual of Uniform Traffic Control Devises (MUTCD) and American Association of State Highway and Transportation Officials (AASHTO). As with the tangent horizontal alignment, this slight vertical profile will not restrict the site distance of approaching vehicles to the warning devises.

The vehicle traffic will be warned of an approaching train by flashing lights and gates, which will be designed with Constant Warning Time (CWT) devices for motorists. This means that motorist will always get the agreed upon CWT of usually 30". The Federal Railroad Administration (FRA) requires the railroads to have the CWT set between 20"-40". This will greatly reduce the likelihood that a vehicle will try to cross the tracks as a train is approaching as while a train is passing.

The center lane used for left turns outside the grade crossing area, will have a traffic island that will act a median separator, deterring vehicles from driving around the lowered gates.

In addition, the elimination of the south-most track is proposed, which would leave a single track being crossed by the roadway. This will eliminate the possibility of a second train entering the crossing traveling in the opposite direction after an earlier train has just cleared the crossing. This situation can cause the gates to begin to raise then lower again, which can cause driver confusion leading to a vehicle driving around or under the gates and colliding with the second train.

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Q: *In your opinion, will these safety features appropriately mitigate the inherent and site-specific dangers of the proposed at-grade crossing?*

A: Yes.

6. ADDRESS THE REQUIREMENTS OF RCW 81.53.020

Q: Do you believe that a grade separation is practicable, considering the factors set forth in RCW 81.53.020.

A: No. A grade separation is *not* practicable at Center Parkway.

As previously stated, the rail line hosts freight trains at speeds up to 35 mph. There are no regularly scheduled passenger trains on the line. The rail line has two tracks at the propose crossing location, a main track and a short siding track previously used to interchange rail cars. This siding track is proposed to be removed, leaving only the main track. As the rail line passes the proposed crossing location, it is on a curve that has a "degree of curve" that is 2.5 degrees per 100 foot cord; this is a relatively flat curve. While the track profile is relatively flat at the crossing location, this is actually a crest in the profile with the rail line descending at a rate of 0.5% to the east and an even slighter 0.16% to the west. Since the track is curving at the grade crossing location, it has a slight super-elevation, with the south rail being approximately 1.5 inches higher than the north rail.

The roadway is proposed as shown in the "Preliminary Crossing Design" drawings. Generally, the roadway is on a tangent in the horizontal, crossing the rail line at about 22 degree skew. The profile of the roadway is descending from south to north; there is a series of vertical curves to align the profile with the top of the two superelevated rails of the main track and the hillside dropping away to the north. Thus, the profile south of the rail is descending at 0.36% and descending at up to 6% on the north side of the crossing. The roadway will be 46 feet wide with two vehicle travel lanes, center turn lane and two bike lanes. At the crossing, a non-

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mountable median fills 10 feet of the center turn lane. The proposed speed on the roadway is 30 mph.

Four options for grade separations were evaluated in the Center Parkway Extension Grade Separation Evaluation. None are practical. *I estimate that Option 1 would cost between* $100 million and $200 million, which would include rebuilding the rail bridge over Columbia Center Boulevard and Columbia Center Boulevard itself; it might be more costly depending on the extent Columbia Center Boulevard has to be lowered. I estimate Option 2 would cost between $15 million and $25 million, depending on if and how access to the existing hotel and the other commercial property northwest of the crossing locations is being proposed. I estimate Option 3 would also cost between $15 million and $25 million, again depending on if and how access to the existing hotel and the other commercial property northwest of the crossing locations is being proposed. Finally, I estimate Option 4 would cost between $30 and $50 million, which includes the raising or rebuilding of the rail bridge over Columbia Center Boulevard.

The rail line is at the crest of a hillside at the location where the crossing is proposed. The rail line is slightly higher than the natural topography adjacent to it. Thus, there is not a "natural" opportunity to grade separate the road and rail line.

7. CONCLUSIONS

Q: Summarize your conclusions of the proposed at-grade crossing at Center Parkway.

A: Based on my expertise, the features of the proposed Center Parkway grade crossing will moderate any "inherent and site specific" risks elements. The roadway will be straight and will have mild vertical curves approaching the crossing ensuring adequate site distance for the speed of traffic. The modern active warning devises, the Constant Warning Time equipped flashing lights and gates along with the non-mountable median, will minimize the potential for a vehicle entering into the path of a train.

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A grade separation for this location is not practical, as previously discussed. Since an at-grade crossing is the only practical option, the design of the proposed crossing is intended to be as safe a practice for this type of rail line, roadway, and the volumes of both.

8. ATTACHMENTS

My pre-filed testimony cites federally-accepted safety standards and other technical reports relevant to this crossing. In addition, I have reviewed other relevant materials to inform my pre-filed testimony. These materials are identified below, and they are included in this pre-filed testimony as attachments.

1. Federal Highway Administration (FHWA) Railroad-Highway Grade Crossing Handbook – Revised Second Edition 2007 (Report No. FHWA-SA-07-010).
2. Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices for Streets and Highways – 2009 Edition.
3. American Railway Engineering and Maintenance-of-way Association (AREMA) Manual of Railway Engineering, Volume 1.
4. The Center Parkway Extension and Railroad Crossing Traffic Study, dated March 2013 prepared by JUB Engineers.
5. Center Parkway Extension – Grade Separation Evaluation, prepared by the City of Richland.
6. The appendix to the Center Parkway Extension Grade Separation Evaluation, prepared by DEA, dated March 25, 2013.
7. Meeting Record prepared by DEA, dated December 11, 2012.
8. The City of Richland Ordinance 40-06 (adopting the City of Richland's 2006 Comprehensive Plan).

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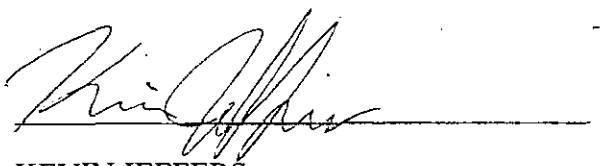
9. DECLARATION

I, Kevin Jeffers, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED TESTIMONY OF KEVIN JEFFERS is true and correct to the best of my knowledge and belief.

DATED THIS 30th day of August, 2013



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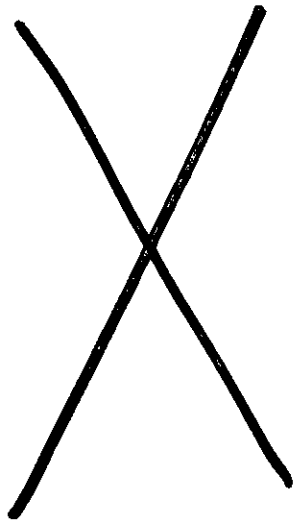

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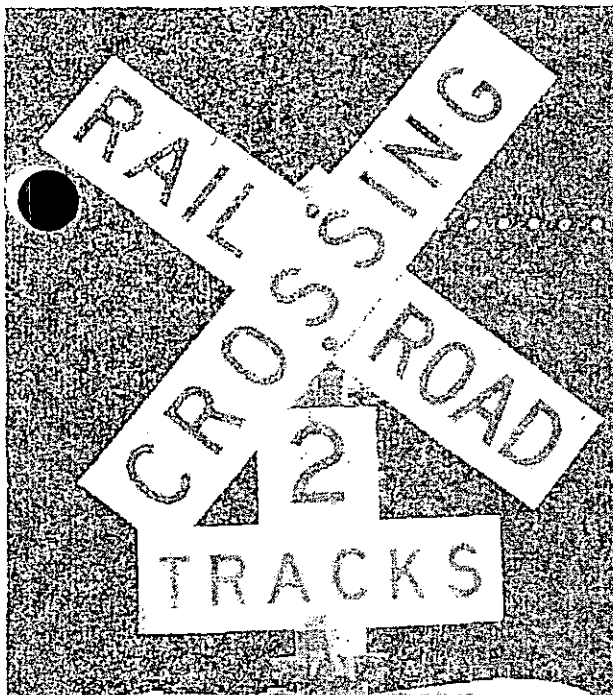

Railroad-Highway Grade Crossing Handbook

Revised Second Edition
August 2007

U.S. Department of Transportation
Federal Highway Administration

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16. Abstract

The purpose of the *Railroad-Highway Grade Crossing Handbook – Revised Second Edition* is to provide a single reference document on prevalent and best practices as well as adopted standards relative to highway-rail grade crossings. The handbook provides general information on highway-rail crossings; characteristics of the crossing environment and users; and the physical and operational improvements that can be made at highway-rail grade crossings to enhance the safety and operation of both highway and rail traffic over crossing intersections. The guidelines and alternative improvements presented in this handbook are primarily those that have proved effective and are accepted nationwide.

This handbook supersedes the *Railroad-Highway Grade Crossing Handbook*, published in September 1986. This update includes a compendium of materials that were included in the previous version of the handbook, supplemented with new information and regulations that were available at the time of the update. Updates were drawn from the current versions of relevant legislation, policy memoranda, Federal Register notices, and regulatory actions.

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Unclassified	Unclassified	324	

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involving motor carriers. A recordable collision is "an occurrence involving a commercial motor vehicle operating on a highway in engaged in interstate or intrastate commerce which results in (i) a fatality; (ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or, (iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle."[54]

In the past, FMCSA required motor carriers to report crashes directly to the agency. This is no longer the case. This information is now forwarded by states. However, motor carriers must maintain accident registers for three years after the date of each accident occurring on or after April 29, 2003 (49 CFR 390.15). (Previously, the register had to be maintained for one year.) An example of a comprehensive state crash reporting form is included in Appendix C.

Collisions involving the transport of hazardous materials are reported to the Materials Transportation Bureau (MTB) of the Research and Special Programs Administration. An immediate telephone notice is required under certain conditions, and a detailed written report is required whenever there is any unintentional release of a hazardous material during transportation or temporary storage related to transportation. Collisions are to be reported when, as a direct result of hazardous materials: a person is killed; a person receives injuries requiring hospitalization; estimated carrier or other property damage exceeds $50,000; or a situation exists such that a continuing danger to life exists at the scene of the incident. The form used for reporting these collisions to MTB is shown in Appendix D.

Significant transportation accidents are investigated by the National Transportation Safety Board (NTSB). NTSB issues a report for each accident investigated. The report presents the circumstances of the accident, the data collected, and the analysis of the data as well as conclusions, which are identified as "findings" of NTSB. In addition, NTSB issues specific recommendations to various parties for improvement of safety conditions. Appendix E provides summaries of a number of selected key grade crossing collision investigations provided by NTSB.

54 Ibid.

B. Hazard Indices and Accident Prediction Formulae

A systematic method for identifying crossings that have the most need for safety and/or operational improvements is essential to comply with requirements of the FAPG, which specifies that each state should maintain a priority schedule of crossing improvements. The priority schedule is to be based on:

- The potential reduction in the number and/or severity of collisions.
- The cost of the projects and the resources available.
- The relative hazard of public highway-rail grade crossings based on a hazard index formula.
- On-site inspections of public crossings.
- The potential danger to large numbers of people at public crossings used on a regular basis by passenger trains, school buses, transit buses, pedestrians, bicyclists, or by trains and/or motor vehicle carrying hazardous materials.
- Other criteria as appropriate in each state.

Various hazard indices and collision prediction formulae have been developed for ranking highway-rail grade crossings. These are commonly used to identify crossings to be investigated in the field. Procedures for conducting the on-site inspection are discussed in the next section. Some hazard indices incorporate collision history as a factor in the ranking formula; if not, this factor should be subjectively considered.

1. Hazard Index

A hazard index ranks crossings in relative terms (the higher the calculated index, the more hazardous the crossing), whereas the collision prediction formulae are intended to compute the actual collision occurrence frequency at the crossing. A commonly used index is the New Hampshire Hazard Index ranking methodology (presented in Appendix F).

There are several advantages of using a hazard index to rank crossings. A mathematical hazard index enhances objectivity. It can be calculated by computer, facilitating the ranking process. As crossing conditions change, a computerized database can be updated and the hazard index recalculated.

In general, crossings that rank highest on the hazard index are selected to be investigated in the field by a diagnostic team, as discussed in the next section. Other

crossings may be selected for a field investigation because they are utilized by buses, passenger trains, and vehicles transporting hazardous materials. FAPG requires that the potential danger to large numbers of people at crossings used on a regular basis by passenger trains, school buses, transit buses, pedestrians, bicyclists, or by trains and/or motor vehicles carrying hazardous materials be one of the considerations in establishing a priority schedule. Some states incorporate these considerations into a hazard index, thus providing an objective means of assessing the potential danger to large numbers of people.

Some states, however, consider these factors subjectively when selecting the improvement projects among the crossings ranked highest by the hazard index. Other states utilize a point system so that crossings high on the hazard index receive a specified number of points, as do crossings with a specified number of buses, passenger trains, and vehicles transporting hazardous materials.

Other states utilize the systems approach, considering all crossings within a specified system, such as all crossings along a passenger train corridor.

Crossings may also be selected for field investigation as a result of requests or complaints from the public. State district offices, local governmental agencies, other state agencies, and railroads may also request that a crossing be investigated for improvement. A change in highway or railroad operations over a crossing may justify the consideration of that crossing for improvement. For example, a new residential or commercial development may substantially increase the volume of highway traffic over a crossing such that its hazard index would greatly increase.

2. U.S. Department of Transportation Accident Prediction Model

A prediction model is intended to predict, in absolute terms, the likelihood of a collision occurring over a given period of time given conditions at the crossing. The following discussion presents the accident prediction model developed by U.S. DOT. (Other formulae are presented in Appendix F.) Thus, an accident prediction model can also be used to either rank crossings or identify potential high-accident locations for further review.

The U.S. DOT collision prediction formula combines three independent calculations to produce a collision prediction value. The basic formula provides an initial hazard ranking based on a crossing's characteristics, similar to other formulae such as the Peabody-Dimmick formula and the New Hampshire Index. The second calculation utilizes the actual collision history at a crossing over a determined number of years to produce a collision prediction value. This procedure assumes that future collisions per year at a crossing will be the same as the average historical collision rate over the time period used in the calculation. The third equation adds a normalizing constant, which is adjusted periodically to keep the procedure matched with current collision trends.

FRA has provided a Website where highway-rail intersection safety specialists may calculate the predicted collisions for any public highway-rail intersection in the national inventory.[55]

The basic collision prediction formula can be expressed as a series of factors that, when multiplied together, yield an initial predicted number of collisions per year at a crossing. Each factor in the formula represents a characteristic of the crossing described in the national inventory. The general expression of the basic formula is shown below:

$$a = K \times EI \times MT \times DT \times HP \times MS \times HT \times HL \qquad (1)$$

where:

- a = initial collision prediction, collisions per year at the crossing
- K = formula constant
- EI = factor for exposure index based on product of highway and train traffic
- MT = factor for number of main tracks
- DT = factor for number of through trains per day during daylight
- HP = factor for highway paved (yes or no)
- MS = factor for maximum timetable speed
- HT = factor for highway type
- HL = factor for number of highway lanes

Different sets of equations are used for each of the three categories of traffic control devices: passive, flashing lights, and automatic gates, as shown in Table 16.

The structure of the basic collision prediction formula makes it possible to construct tables of numerical values for each factor. To predict the collisions at a particular crossing whose characteristics are known, the values of the factors are found in the table and multiplied together. The factor values for the three

55 FRA Office of Safety Website (safetydata.fra.dot.gov/officeofsafety).

Table 16. U.S. DOT Collision Prediction Equations for Crossing Characteristic Factors

General Form of Basic Accident Prediction Formula: e = K x EI x MT x DT x HP x MS x HT x HL

Crossing Characteristic Factors

Crossing Category	Formula Constant K	Exposure Index Factor EI	Main Tracks Factor MT	Day Thru Trains Factor DT	Highway Paved Factor HP	Maximum Speed Factor MS	Highway Type Factor HT	Highway Lanes Factor HL
Passive	0.002268	$\left[\frac{c \times t + 0.2}{0.2}\right]^{0.3334}$	$e^{0.2004mt}$	$\left[\frac{d + 0.2}{0.2}\right]^{0.1336}$	$e^{-0.6160(hp-1)}$	$e^{0.0077ms}$	$e^{-0.1000(ht-1)}$	1.0
Flashing Lights	0.003646	$\left[\frac{c \times t + 0.2}{0.2}\right]^{0.2983}$	$e^{0.1058mt}$	$\left[\frac{d + 0.2}{0.2}\right]^{0.0470}$	1.0	1.0	1.0	$e^{0.1380(hl-1)}$
Gates	0.001088	$\left[\frac{c \times t + 0.2}{0.2}\right]^{0.8116}$	$e^{0.2912mt}$	1.0	1.0	1.0	1.0	$e^{0.1036(hl-1)}$

c = annual average number of highway vehicles per day (total both directions)

t = average total train movements per day

mt = number of main tracks

d = average number of thru trains per day during daylight

hp = highway paved, yes = 1.0, no = 2.0

ms = maximum timetable speed, mph

ht = highway type factor value

hl = number of highway lanes

Highway Type	Inventory Code	ht Value
Rural		
Interstate	01	1
Other principal arterial	02	2
Minor arterial	06	3
Major collector	07	4
Minor collector	08	5
Local	09	6
Urban		
Interstate	11	1
Other freeway and expressway	12	2
Other principal arterial	14	3
Minor arterial	16	4
Collector	17	5
Local	19	6

Source: Railroad-Highway Grade Crossing Handbook, Second Edition. *Washington, DC: U.S. Department of Transportation, Federal Highway Administration, 1986.*

traffic control device categories are found in Tables 17, 18, and 19, respectively.

The final collision prediction formula can be expressed as follows:

$$B = \frac{T_0}{T_0 + T}(a) + \frac{T_0}{T_0 + T}\left(\frac{N}{T}\right) \qquad (2)$$

where:

B = second collision prediction, collisions per year at the crossing

a = initial collision prediction from basic formula, collisions per year at the crossing

$\frac{N}{T}$ = collision history prediction, collisions per year, where N is the number of observed collisions in T years at the crossing

Values for the second collision prediction, B; for different values of the initial prediction, a; and different prior collision rates, $\frac{N}{T}$, are tabularized in Table 20, 21, 22, 23, and 24. Each table represents results for a specific number of years for which collision history data are available. If the number of years of collision data, T, is a fraction, the second collision prediction, B, can be interpolated from the tables or determined directly from the formula.

The formula provides the most accurate results if all the collision history available is used; however, the extent of improvement is minimal if data for more than five years are used. Collision history information older than five years may be misleading because of changes that occur to crossing characteristics over time. If a significant change has occurred to a crossing during the most recent five years, such as the installation of signals, only the collision data since that change should be used.

The final collision prediction, A, is developed by applying a normalizing constant to keep the procedure matched with current collision trends. The final formula, using constants established for 2003, is shown on page 60. (As of November 2003, th

Table 17. U.S. DOT Accident Prediction Factor Values for Crossings with Passive Warning Devices

K	"c" x "t"	EI	Main	MT	Day Thru	DT	Highway Paved	HP	Maximum Timetable	MS	Highway Type	HT	Highway Lanes	HL
	0*	1.00	0	1.00	0	1.00	1 (yes)	1.00	0	1.00	01&11	1.00	1	1.00
	1 - 5	2.22	1	1.23	1	1.27	2 (no)	0.54	5	1.04	02&12	0.90	2	1.00
	6 - 10	3.30	2	1.52	2	1.38			10	1.08	06&14	0.82	3	1.00
	11 - 20	4.24	3	1.87	3	1.45			15	1.12	07&16	0.74	4	1.00
	21 - 30	5.01	4	2.31	4	1.50			20	1.17	08&17	0.67	5	1.00
	31 - 50	5.86	5	2.85	5	1.55			25	1.21	09&19	0.61	6	1.00
	51 - 80	6.89	6	3.51	6	1.58			30	1.26			7	1.00
	81 - 120	7.95			7	1.61			35	1.31			8	1.00
	121 - 200	9.29			8	1.64			40	1.36			9	1.00
	201 - 300	10.78			9	1.67			45	1.41				
	301 - 400	12.06			10	1.69			50	1.47				
	401 - 500	13.11			11-20	1.78			55	1.53				
	501 - 600	14.02			21-30	1.91			60	1.59				
	601 - 700	14.82			31-40	2.00			65	1.65				
	701 - 1000	16.21			41-60	2.09			70	1.71				
	1001 - 1300	17.98							75	1.78				
	1301 - 1600	19.37							80	1.85				
	1601 - 2000	20.81							85	1.92				
	2001 - 2500	22.42							90	2.00				
	2501 - 3000	23.97												
	3001 - 4000	25.98												
	4001 - 6000	29.26												
	6001 - 8000	32.73												
	8001 - 10000	35.59												
	10001 - 15000	39.71												
	15001 - 20000	44.43												
	20001 - 25000	48.31												
	25001 - 30000	51.65												
	30001 - 40000	55.98												
	40001 - 50000	60.87												
	50001 - 60000	65.08												
	60001 - 70000	68.81												
	70001 - 90000	73.74												
	90001 -	79.44												
	110001 -	84.42												
	130001 -	91.94												
	180001 -	100.92												
	230001 -	109.94												
	300001 -	118.87												

General Form of Basic Accident Prediction Formula: a = K x EI x MT x DT x HP x HT x HL

"c" x "t" = Number of highway vehicles per day, "c", multiplied by total train movements per day, "t"

EI = Exposure index factor
MT = Main tracks factor
DT = Day thru trains factor
HP = Highway paved factor
MS = Maximum timetable speed factor
HT = Highway type factor
HL = Highway lanes factor

* Less than one train per day
** See Table 16 for definition of *highway type codes*

Source: Railroad-Highway Grade Crossing Handbook, Second Edition. *Washington, DC: U.S. Department of Transportation, Federal Highway Administration, 1986.*

Table 18. U.S. DOT Accident Prediction Factor Values for Crossings with Flashing Light Warning Devices

K	"c" x "t"	EI	Main	MT	Day Thru	DT	Highway Paved	HP	Maximum Timetable	MS	Highway Type	HT	Highway Lanes	HL
	0*	1.00	0	1.00	0	1.00	1 (yes)	1.00	0	1.00	01&11	1.00	1	1.00
	1 - 5	2.27	1	1.11	1	1.09	2 (no)	1.00	5	1.00	02&12	1.00	2	1.15
	6 - 10	2.99	2	1.24	2	1.12			10	1.00	06&14	1.00	3	1.32
	11 - 20	3.59	3	1.39	3	1.14			15	1.00	07&16	1.00	4	1.51
	21 - 30	4.17	4	1.55	4	1.15			20	1.00	08&17	1.00	5	1.74
	31 - 50	4.79	5	1.72	5	1.17			25	1.00	09&19	1.00	6	1.99
	51 - 80	5.52	6	1.92	6	1.18			30	1.00			7	2.29
	81 - 120	6.27			7	1.18			35	1.00			8	2.63
	121 - 200	7.20			8	1.19			40	1.00			9	3.02
	201 - 300	8.22			9	1.20			45	1.00				
	301 - 400	9.07			10	1.20			50	1.00				
	401 - 500	9.77			11-20	1.23			55	1.00				
	501 - 600	10.37			21-30	1.26			60	1.00				
	601 - 700	10.89			31-40	1.28			65	1.00				
	701 - 1000	11.79			41-60	1.30			70	1.00				
	1001 - 1300	12.89							75	1.00				
	1301 - 1600	13.80							80	1.00				
	1601 - 2000	14.71							85	1.00				
	2001 - 2500	15.72							90	1.00				
	2501 - 3000	16.67												
	3001 - 4000	17.91												
	4001 - 6000	19.89												
	6001 - 8000	21.97												
	8001 - 10000	23.66												
	10001 - 15000	26.08												
	15001 - 20000	28.80												
	20001 - 25000	31.02												
	25001 - 30000	32.91												
	30001 - 40000	35.34												
	40001 - 50000	38.06												
	50001 - 60000	40.39												
	60001 - 70000	42.43												
	70001 - 90000	45.11												
	90001 -	48.18												
	110001 -	50.85												
	130001 -	54.84												
	180001 -	59.56												
	230001 -	64.25												
	300001 -	68.86												

General Form of Basic Accident Prediction Formula: a = K x EI x MT x DT x HP x HT x HL

"c" x "t" = Number of highway vehicles per day, "c", multiplied by total train movements per day, "t"

EI = Exposure index factor
MT = Main tracks factor
DT = Day thru trains factor
HP = Highway paved factor
MS = Maximum timetable speed factor
HT = Highway type factor
HL = Highway lanes factor

* Less than one train per day
** See Table 16 for definition of highway type codes

Source: Railroad-Highway Grade Crossing Handbook, Second Edition. *Washington, DC: U.S. Department of Transportation, Federal Highway Administration, 1986.*

Table 19. U.S. DOT Accident Prediction Factor Values for Crossings with Gate Warning Devices

K	"c" x "t"	EI	Main Tracks	MT	Day Thru Trains	DT	Highway Paved	HP	Maximum Timetable Speed	MS	Highway Type Code**	HT	Highway Lanes	HL
	0*	1.00	0	1.00	0	1.00	1 (yes)	1.00	0	1.00	01&11	1.00	1	1.00
	1 - 5	2.37	1	1.34	1	1.00	2 (no)	1.00	5	1.00	02&12	1.00	2	1.11
	6 - 10	3.18	2	1.79	2	1.00			10	1.00	06&14	1.00	3	1.23
	11 - 20	3.86	3	2.40	3	1.00			15	1.00	07&16	1.00	4	1.36
	21 - 30	4.51	4	3.21	4	1.00			20	1.00	08&17	1.00	5	1.51
	31 - 50	5.22	5	4.29	5	1.00			25	1.00	09&19	1.00	6	1.68
	51 - 80	6.07	6	5.74	6	1.00			30	1.00			7	1.86
	81 - 120	6.94			7	1.00			35	1.00			8	2.07
	121 - 200	8.03			8	1.00			40	1.00			9	2.29
	201 - 300	9.23			9	1.00			45	1.00				
	301 - 400	10.25			10	1.00			50	1.00				
	401 - 500	11.08			11-20	1.00			55	1.00				
	501 - 600	11.80			21-30	1.00			60	1.00				
	601 - 700	12.43			31-40	1.00			65	1.00				
	701 - 1000	13.51			41-60	1.00			70	1.00				
	1001 - 1300	14.84							75	1.00				
	1301 - 1600	15.96							80	1.00				
	1601 - 2000	17.07							85	1.00				
	2001 - 2500	18.30							90	1.00				
	2501 - 3000	19.48												
	3001 - 4000	21.00												
	4001 - 6000	23.46												
	6001 - 8000	26.06												
	8001 - 10000	28.18												
	10001 - 15000	31.22												
	15001 - 20000	34.67												
	20001 - 25000	37.49												
	25001 - 30000	39.91												
	30001 - 40000	43.03												
	40001 - 50000	46.53												
	50001 - 60000	49.53												
	60001 - 70000	52.18												
	70001 - 90000	55.67												
	90001 -	59.68												
	110001 -	63.16												
	130001 -	68.41												
	180001 -	74.63												
	230001 -	80.85												
	300001 -	86.98												

General Form of Basic Accident Prediction Formula: a = K x EI x MT x DT x HP x HT x HL

"c" x "t" = Number of highway vehicles per day, "c", multiplied by total train movements per day, "t"

EI = Exposure index factor
MT = Main tracks factor
DT = Day thru trains factor
HP = Highway paved factor
MS = Maximum timetable speed factor
HT = Highway type factor
HL = Highway lanes factor

* Less than one train per day
** See Table 16 for definition of highway type codes

Source: Railroad-Highway Grade Crossing Handbook, Second Edition. *Washington, DC: U.S. Department of Transportation, Federal Highway Administration, 1986.*

constants will be in the Personal Computer Accident Prediction System software and an Internet version of the Highway-Rail Crossing Web Accident Prediction System located on the FRA Website.[56])

$$A = \begin{matrix} .6500 \\ .5001 \\ .5725 \end{matrix} \quad \begin{matrix} \text{passive devices} \\ \text{flashing lights} \\ \text{gates} \end{matrix}$$

Accident severity. Additional equations within the U.S. DOT model are used to predict the likelihood of fatalities and injuries. The probability of a fatal accident given an accident, P(FA|A), is expressed as:

$$P(FA|A) = \frac{1}{1 + CF \times MS \times TT \times TS \times UR} \qquad (3)$$

where:

CF = formula constant = 695
MS = factor for maximum timetable train speed
TT = factor for through trains per day
TS = factor for switch trains per day
UR = factor for urban or rural crossing

56 Ibid.

Table 20. U.S. DOT Final Accident Prediction from Initial Prediction and Accident History (1 year of accident data (T = 1))

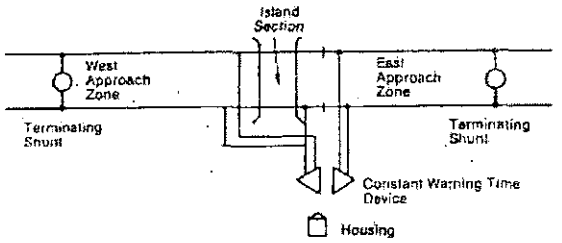
Initial Prediction from Basic Model, n	Number of Accidents, N, in T Years					
	0	1	2	3	4	5
0.00	0.000	0.048	0.095	0.143	0.190	0.238
0.01	0.009	0.066	0.123	0.179	0.236	0.292
0.02	0.019	0.084	0.150	0.215	0.280	0.346
0.03	0.028	0.102	0.176	0.250	0.324	0.398
0.04	0.037	0.119	0.202	0.284	0.367	0.450
0.05	0.045	0.136	0.227	0.318	0.409	0.500
0.06	0.054	0.153	0.252	0.351	0.450	0.550
0.07	0.063	0.170	0.277	0.384	0.491	0.598
0.08	0.071	0.186	0.301	0.416	0.531	0.646
0.09	0.079	0.202	0.325	0.447	0.570	0.693
0.10	0.087	0.217	0.348	0.478	0.609	0.739
0.20	0.160	0.360	0.560	0.760	0.960	1.160
0.30	0.222	0.481	0.741	1.000	1.259	1.519
0.40	0.276	0.586	0.897	1.207	1.517	1.828
0.50	0.323	0.677	1.032	1.387	1.742	2.097
0.60	0.364	0.758	1.152	1.545	1.939	2.333
0.70	0.400	0.829	1.257	1.686	2.114	2.543
0.80	0.432	0.892	1.351	1.811	2.270	2.730
0.90	0.462	0.949	1.436	1.923	2.410	2.897
1.00	0.488	1.000	1.512	2.024	2.537	3.049
1.10	0.512	1.047	1.581	2.116	2.651	3.186
1.20	0.533	1.089	1.644	2.200	2.756	3.311
1.30	0.553	1.128	1.702	2.277	2.851	3.426
1.40	0.571	1.163	1.755	2.347	2.939	3.531
1.50	0.588	1.196	1.804	2.412	3.020	3.627
1.60	0.604	1.226	1.849	2.472	3.094	3.717
1.70	0.618	1.255	1.891	2.527	3.164	3.800
1.80	0.632	1.281	1.930	2.579	3.228	3.877
1.90	0.644	1.305	1.966	2.627	3.288	3.949
2.00	0.656	1.328	2.000	2.672	3.344	4.016
2.10	0.667	1.349	2.032	2.714	3.397	4.079
2.20	0.677	1.369	2.062	2.754	3.446	4.138
2.30	0.687	1.388	2.090	2.791	3.493	4.194
2.40	0.696	1.406	2.116	2.826	3.536	4.246
2.50	0.704	1.423	2.141	2.659	3.577	4.296

Source: Railroad-Highway Grade Crossing Handbook, Second Edition. *Washington, DC: U.S. Department of Transportation Federal Highway Administration, 1986.*

move or switch on the approaches without reaching the crossing and, depending on their speed, never cause the crossing warning devices to be activated, thus eliminating unnecessary delays to highway traffic.

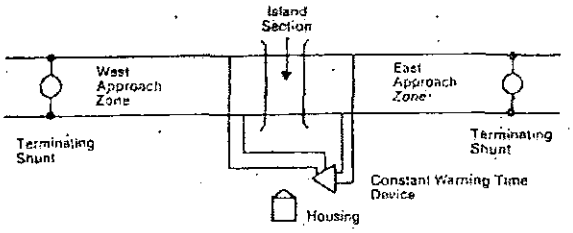
The latest constant warning time devices, like motion-sensitive devices, may be applied either in a uni-directional or bi-directional mode, as shown in Figures 48 and 49, respectively. A uni-directional application requires two devices, one monitoring each approach zone, with the approach zones separated by insulated rail joints. A terminating shunt is placed at the outermost end of each approach zone. The location of the terminating shunt is determined by the fastest train using the crossing.

Figure 48. Constant Warning Time Track Circuit, Uni-Directional Application



Source: Railroad-Highway Grade Crossing Handbook, Second Edition. *Washington, DC: U.S. Department of Transportation, Federal Highway Administration, 1986.*

Figure 49. Constant Warning Time Track Circuit, Bi-Directional Application



Source: Railroad-Highway Grade Crossing Handbook, Second Edition. *Washington, DC: U.S. Department of Transportation, Federal Highway Administration, 1986.*

A uni-directional application is suggested in situations where there are closely following train moves or to break up frequency pollution. Uni-directional installations are suggested to avoid bypassing insulated joint locations when bypassing these joints is not desirable.

A bi-directional application uses a single constant warning time device, which monitors both approach zones. Insulated rail joints are not required. Again, terminating shunts are placed at the outermost end of each approach zone. The bi-directional application is normally used where moderate train speeds are employed, thus requiring shorter approach zones, and where track and ballast conditions permit.

Motion-sensing and constant warning time track circuits should be considered for crossings on railroad mainlines, particularly at crossings with variations in train speeds and with a number of switching movements on the approach sections.

Warning time and system credibility. Reasonable and consistent warning times reinforce system credibility. Unreasonable or inconsistent warning times may encourage undesirable driver behavior. Research has shown that when warning times exceed 40–50 seconds, drivers will accept shorter clearance times at flashing lights, and a significant number will attempt to drive around gates. Although mandated maximum warning times do not yet exist, efforts should be made to ensure that traffic interruptions are reasonable and consistent without compromising the intended safety function of an active control device system's design.

Excessive warning times are generally associated with a permanent reduction in the class of track and/or train speeds without a concomitant change in the track circuitry or without constant warning time equipment. When not using constant warning train detection systems, track approach circuits should be adjusted accordingly when train speeds are permanently reduced. Another frequent cause of excessive warning times at crossings without constant warning time equipment is variable-speed trains, such as intercity passenger trains or fast commuter trains interspersed with slower freight trains.

A major factor affecting system credibility is an unusual number of false activations at active crossings. Every effort should be made to minimize false activations through improvements in track circuitry, train detection equipment, and maintenance practices. A timely response to a system malfunction coupled with repairs made without undue delay can reduce credibility issues. Remote monitoring devices are an important tool.

Joint study and evaluation are needed between the highway agency and the railroad to make a proper selection of the appropriate train detection system.

Train detection systems are designed to provide the minimum warning time for a crossing. In gene

MUTCD requires that the system provide for a minimum of 20 seconds of warning time. When determining if the minimum 20 seconds of warning time should be increased, the following factors should be considered:

- Track clearance distances due to multiple tracks and/or angled crossings (add 1 second for each 3 meters (10 feet) of added crossing length in excess of 10.7 meters (35 feet)).
- The crossing is located within close proximity of a highway intersection controlled by STOP signs where vehicles have a tendency of stopping on the crossing.
- The crossing is regularly used by long tractor-trailer vehicles.
- The crossing is regularly used by vehicles required to make mandatory stops before proceeding over the crossing (such as school buses and hazardous materials vehicles).
- The crossing's active traffic control devices are interconnected with other highway traffic signal systems.
- Provide at least 5 seconds between the time the approach lane gates to the crossing are fully lowered and when the train reaches the crossing, per 49 CFR Part 234.
- The crossing is regularly used by pedestrians and non-motorized components.
- Where the crossing and approaches are not level.
- Where additional warning time is needed to accommodate a four-quadrant gate system.

It should be noted that even when constant warning devices are used, the calculated arrival time of the train at the crossing is based on the instantaneous speed of the train as it enters the crossing circuit. Once the calculation is made, changes in train speed will change train arrival time at the crossing and, correspondingly, reduce (or increase) the elapsed warning time at the crossing. This factor must be considered at a crossing interconnected to a nearby highway traffic signal utilizing either a simultaneous or advance preemption sequence.

Design information about railroad interconnection circuits and approach length calculations can be found in the AREMA *Communications and Signal Manual*, Part 3.1.10, "Recommended Functional/Operating Guidelines for Interconnection Between Highway Traffic Signals and Highway-Rail Grade Crossing Warning Systems," and Part 3.3.10, "Recommended Instructions for Determining Warning Time and Calculating Minimum Approach Distance for Highway-Rail Grade Crossing Warning Systems."[98]

98 American Railway Engineering and Maintenance-of-Way Association. *Communications and Signal Manual*, Part 3.1.10 (www.arema.org/pubs/pubs.htm).

17. Pre-Signals

A recent article in *ITE Journal* describes and summarizes the state of the practice regarding the use of pre-signals—highway signals installed to stop traffic before it crosses the railroad.[99] The purpose of installing highway traffic signals in this manner at a crossing is to prevent vehicles from queuing across the grade crossing and finding themselves stopped on the tracks in the area now known as the minimum track clearance distance.

Differing names or descriptions were given to early pre-signal installations, such as double clearance signals, signals before the tracks, and overlap signals, among others. Previously, there were no broadly accepted guidelines for the use of these specialized signals. In June 1997, a U.S. DOT task force established industry-standard definitions relating to the interconnection of highway traffic signals with highway-rail grade crossing warning systems. In this report, pre-signals were defined as: "supplemental highway traffic signal faces [that are] operated as a part of the highway intersection traffic signals, [and are] located in a position that controls [highway] traffic approaching the railroad crossing and intersection."[100]

The timing and display of these highway traffic signals are integrated with the railroad's preemption program. FHWA's "Guidance on Traffic Control Devices at Highway-Rail Grade Crossings" illustrates a typical installation of pre-signals at a gated crossing. The illustration depicts the elements common to the pre-signal installations normally encountered.[101]

MUTCD Section 8D.07 lays out a framework of standards, guidance, and options for the use of pre-signals:

> *If used, the pre-signals shall display a red signal indication during the track clearance portion of a signal preemption sequence to prohibit additional vehicles from crossing the railroad track... If a pre-signal is installed at an interconnected highway-rail grade crossing near a signalized intersection, a STOP HERE ON RED (R10-6) sign shall be installed near the pre-signal or at the stop line if used. If there is a nearby signalized intersection with insufficient*

99 Gilleran, Brian F. "Use of Pre-Signals in Advance of a Highway-Rail Grade Crossing: A Specialized Tool with Specific Applications." *ITE Journal*, Vol. 76, No. 5 (May 2006): 22–25.

100 *Implementation Report of the U.S. DOT Grade Crossing Safety Task Force, Report to Secretary Rodney E. Slater*. FHWA-SA-97-085, Grade Crossing Safety Task Force, 1997.

101 *Guidance on Traffic Control Devices at Highway-Rail Grade Crossings*. Washington, DC: FHWA, Highway/Rail Grade Crossing Technical Working Group, November 2002.

iii. locations where train crews are routinely required to stop their trains because of cross traffic on intersecting rail lines or to pick up or set out blocks of cars or switch local industries en route.
iv. switching leads at the ends of classification yards.
v. where trains are required to "double" in or out of yards and terminals.
vi. in the proximity of stations where long distance passenger trains are required to make extended stops to transfer baggage, pick up, or set out equipment or be serviced en route.
vii. locations where trains must stop or wait for crew changes.

6. Grade Separation

a. Highway-rail grade crossings should be considered for grade separation or otherwise eliminated across the railroad right of way whenever one or more of the following conditions exist:

i. The highway is a part of the designated Interstate Highway System.
ii. The highway is otherwise designed to have full controlled access.
iii. The posted highway speed equals or exceeds 113 km/hr. (70 mph).
iv. AADT exceeds 100,000 in urban areas or 50,000 in rural areas.
v. Maximum authorized train speed exceeds 177 km/hr. (110 mph).
vi. An average of 150 or more trains per day or 300 million gross tons per year.
vii. An average of 75 or more passenger trains per day in urban areas or 30 or more passenger trains per day in rural areas.
viii. Crossing exposure (the product of the number of trains per day and AADT) exceeds 1 million in urban areas or 250,000 in rural areas; or
ix. Passenger train crossing exposure (the product of the number of passenger trains per day and AADT) exceeds 800,000 in urban areas or 200,000 in rural areas.
x. The expected accident frequency for active devices with gates, as calculated by the U.S. DOT Accident Prediction Formula including five-year accident history, exceeds 0.5.
xi. Vehicle delay exceeds 40 vehicle hours per day.[1]

b. Highway-rail grade crossings should be considered for grade separation across the railroad right of way whenever the cost of grade separation can be economically justified based on fully allocated life-cycle costs and one or more of the following conditions exist:

i. The highway is a part of the designated National Highway System.
ii. The highway is otherwise designed to have partial controlled access.
iii. The posted highway speed exceeds 88 km/hr. (55 mph).
iv. AADT exceeds 50,000 in urban areas or 25,000 in rural areas.
v. Maximum authorized train speed exceeds 161 km/hr. (100 mph).
vi. An average of 75 or more trains per day or 150 million gross tons per year.
vii. An average of 50 or more passenger trains per day in urban areas or 12 or more passenger trains per day in rural areas.
viii. Crossing exposure (the product of the number of trains per day and AADT) exceeds 500,000 in urban areas or 125,000 in rural areas; or
ix. Passenger train crossing exposure (the product of the number of passenger trains per day and AADT) exceeds 400,000 in urban areas or 100,000 in rural areas.

1 *Guidance on Traffic Control Devices at Highway-Rail Grade Crossings.* Washington, DC: Federal Highway Administration (FHWA), Highway/Rail Grade Crossing Technical Working Group, November 2002.

x. The expected accident frequency for active devices with gates, as calculated by the U.S. DOT Accident Prediction Formula including five-year accident history, exceeds 0.2.
xi. Vehicle delay exceeds 30 vehicle hours per day.
xii. An engineering study indicates that the absence of a grade separation structure would result in the highway facility performing at a level of service below its intended minimum design level 10 percent or more of the time.

c. Whenever a new grade separation is constructed, whether replacing an existing highway-rail grade crossing or otherwise, consideration should be given to the possibility of closing one or more adjacent grade crossings.
d. Utilize Table 43 for LRT grade separation:

Table 43. LRT Grade Separation

Trains per hour	Peak-hour volume (vehicles per lane)
40	900
30	1000
20	1100
10	1180
5	1200

Source: *Light Rail Transit Grade Separation Guidelines; An Informational Report*. Washington, DC: Institute of Transportation Engineers, Technical Committee 6A-42, March 1992.

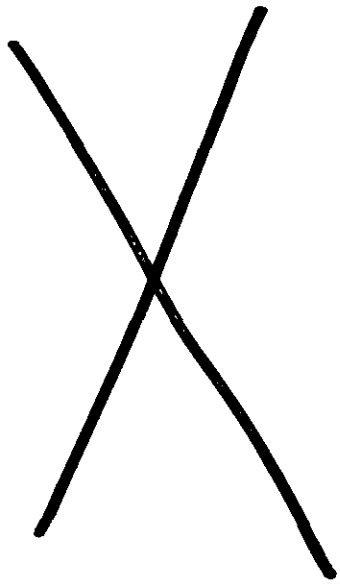
7. New Crossings

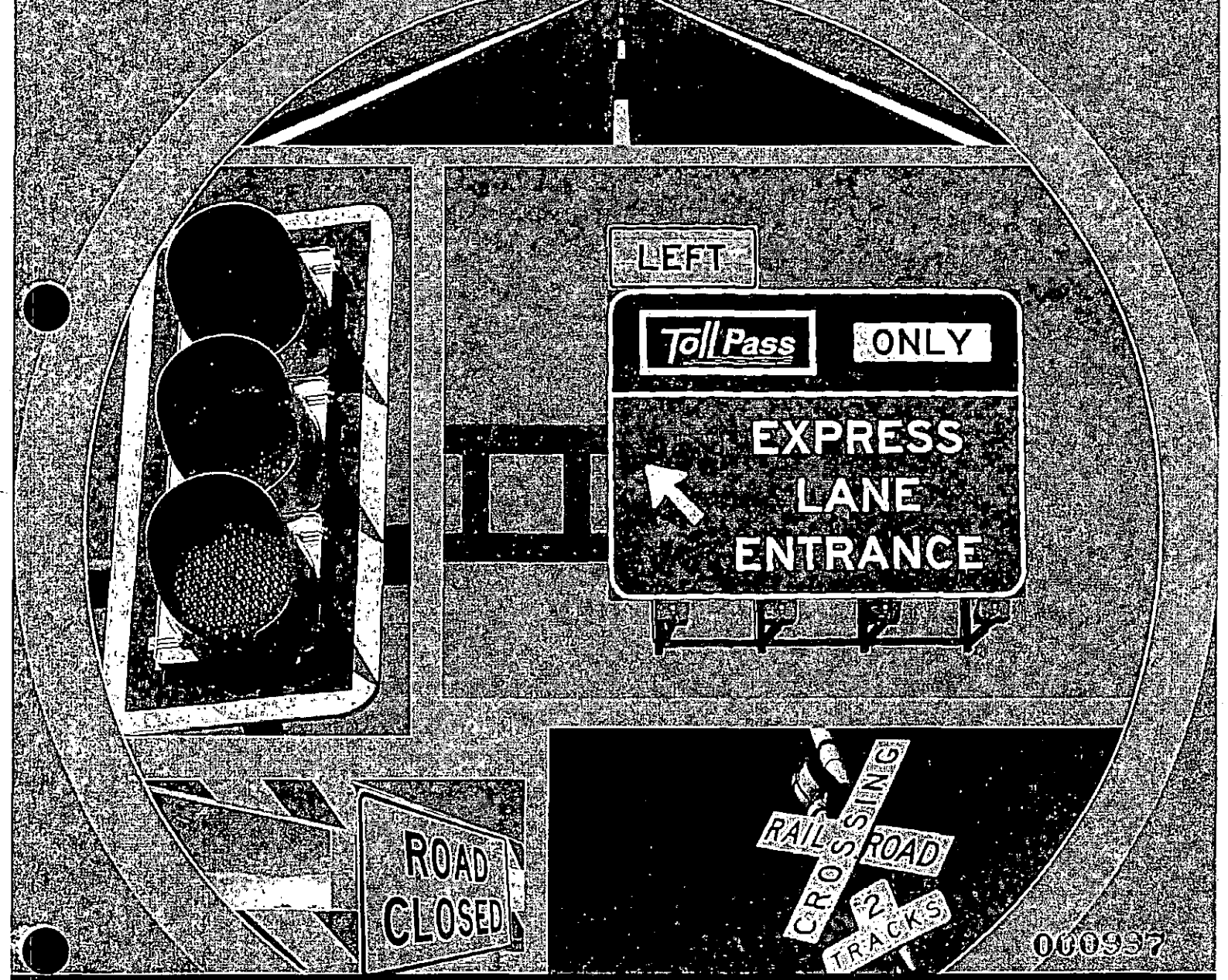
a. Should only be permitted to cross existing railroad tracks at grade when it can be demonstrated:

i. For new public highways or streets where there is a clear and compelling public need (other than enhancing the value or development potential of the adjoining property);
ii. Grade separation cannot be economically justified, i.e. benefit-to-cost ratio on a *fully allocated* cost basis is less than 1.0 (generally, when the crossing exposure exceeds 50,000 in urban areas or exceeds 25,000 in rural areas); and
iii. There are no other viable alternatives.

b. If a crossing is permitted, the following conditions should apply:

i. If it is a main track, the crossing will be equipped with active devices with gates.
ii. The plans and specifications should be subject to the approval of the highway agency having jurisdiction over the roadway (if other than a state agency), the state department of transportation or other state agency vested with the authority to approve new crossings, and the operating railroad.
iii. All costs associated with the construction of the new crossing should be borne by the party or parties requesting the new crossing, including providing financially for the ongoing maintenance of the crossing surface and traffic control devices where no crossing closures are included in the project.
iv. Whenever new public highway-rail crossings are permitted, they should fully comply with all applicable provisions of this proposed recommended practice.
v. Whenever a new highway-rail crossing is constructed, consideration should be given to closing one or more adjacent crossings.





U.S.Department of Transportation
Federal Highway Administration

The Manual on Uniform Traffic Control Devices (MUTCD) is approved by the Federal Highway Administrator as the National Standard in accordance with Title 23 U.S. Code, Sections 109(d), 114(a), 217, 315, and 402(a), 23 CFR 655, and 49 CFR 1.48(b)(8), 1.48(b)(33), and 1.48(c)(2).

Addresses for Publications Referenced in the MUTCD

American Automobile Association (AAA)
1000 AAA Drive
Heathrow, FL 32746
www.aaa.com
800-222-4357

American Association of State Highway and Transportation Officials (AASHTO)
444 North Capitol Street, NW, Suite 249
Washington, DC 20001
www.transportation.org
202-624-5800

American National Standards Institute (ANSI)
1819 L Street, NW, 6th Floor
Washington, DC 20036
www.ansi.org
202-293-8020

American Railway Engineering and Maintenance-of-Way Association (AREMA)
10003 Derekwood Lane, Suite 210
Lanham, MD 20706
www.arema.org
301-459-3200

Federal Highway Administration Report Center
Facsimile number: 814-239-2156
report.center@fhwa.dot.gov

Illuminating Engineering Society (IES)
120 Wall Street, Floor 17
New York, NY 10005
www.iesna.org
212-248-5000

Institute of Makers of Explosives
1120 19th Street, NW, Suite 310
Washington, DC 20036-3605
www.ime.org
202-429-9280

Institute of Transportation Engineers (ITE)
1099 14th Street, NW, Suite 300 West
Washington, DC 20005-3438
www.ite.org
202-289-0222

International Organization for Standardization
1, ch. de la Voie-Creuse
Case Postale 56
CH-1211
Geneva 20, Switzerland
www.iso.ch
011-41-22-749-0111

Section 8C.03 Flashing-Light Signals at Highway-LRT Grade Crossings

Support:

01 Section 8C.02 contains additional provisions regarding the design and operation of flashing-light signals, including those installed at highway-LRT grade crossings.

Standard:

02 **Highway-LRT grade crossings in semi-exclusive alignments shall be equipped with flashing-light signals where LRT speeds exceed 35 mph. Flashing-light signals shall be clearly visible to motorists, pedestrians, and bicyclists.**

03 **If flashing-light signals are in operation at a highway-LRT crossing that is used by pedestrians, bicyclists, and/or other non-motorized road users, an audible device such as a bell shall also be provided and shall be operated in conjunction with the flashing-light signals.**

Guidance:

04 *Where the crossing is at a location other than an intersection and LRT speeds exceed 25 mph, flashing-light signals should be installed.*

Option:

05 Traffic control signals may be used instead of flashing-light signals at highway-LRT grade crossings within highway-highway intersections where LRT speeds do not exceed 35 mph. Traffic control signals or flashing-light signals may be used where the crossing is at a location other than an intersection, where LRT speeds do not exceed 25 mph, and when the roadway is a low-volume street where prevailing speeds do not exceed 25 mph.

Section 8C.04 Automatic Gates

Support:

01 An automatic gate is a traffic control device used in conjunction with flashing-light signals.

Standard:

02 **The automatic gate (see Figure 8C-1) shall consist of a drive mechanism and a fully retroreflectorized red- and white-striped gate arm with lights. When in the down position, the gate arm shall extend across the approaching lanes of highway traffic.**

03 **In the normal sequence of operation, unless constant warning time detection or other advanced system requires otherwise, the flashing-light signals and the lights on the gate arm (in its normal upright position) shall be activated immediately upon detection of approaching rail traffic. The gate arm shall start its downward motion not less than 3 seconds after the flashing-light signals start to operate, shall reach its horizontal position at least 5 seconds before the arrival of the rail traffic, and shall remain in the down position as long as the rail traffic occupies the grade crossing.**

04 **When the rail traffic clears the grade crossing, and if no other rail traffic is detected, the gate arm shall ascend to its upright position, following which the flashing-light signals and the lights on the gate arm shall cease operation.**

05 **Gate arms shall be fully retroreflectorized on both sides and shall have vertical stripes alternately red and white at 16-inch intervals measured horizontally.**

Support:

06 It is acceptable to replace a damaged gate with a gate having vertical stripes even if the other existing gates at the same grade crossing have diagonal stripes; however, it is also acceptable to replace a damaged gate with a gate having diagonal stripes if the other existing gates at the same grade crossing have diagonal stripes in order to maintain consistency per the provisions of Paragraph 24 of the Introduction.

Standard:

07 **Gate arms shall have at least three red lights as provided in Figure 8C-1.**

08 **When activated, the gate arm light nearest the tip shall be illuminated continuously and the other lights shall flash alternately in unison with the flashing-light signals.**

09 **The entrance gate arm mechanism shall be designed to fail safe in the down position.**

Guidance:

10 *The gate arm should ascend to its upright position in 12 seconds or less.*

11 *In its normal upright position, when no rail traffic is approaching or occupying the grade crossing, the gate arm should be either vertical or nearly so (see Figure 8C-1).*

12 *In the design of individual installations, consideration should be given to timing the operation of the gate arm to accommodate large and/or slow-moving highway vehicles.*

13 *The gates should cover the approaching highway to block all highway vehicles from being driven around the gate without crossing the center line.*

Option:

14 The effectiveness of gates may be enhanced by the use of channelizing devices or raised median islands to discourage driving around lowered automatic gates.

15 Where gates are located in the median, additional median width may be required to provide the minimum clearance for the counterweight supports.

16 Automatic gates may be supplemented by cantilevered flashing-light signals (see Figure 8C-1) where there is a need for additional emphasis or better visibility.

Section 8C.05 Use of Automatic Gates at LRT Grade Crossings

Guidance:

01 *Highway-LRT grade crossings in semi-exclusive alignments should be equipped with automatic gates and flashing-light signals (see Sections 8C.02 and 8C.03) where LRT speeds exceed 35 mph.*

Option:

02 Where a highway-LRT grade crossing is at a location other than an intersection, where LRT speeds exceed 25 mph, automatic gates and flashing-light signals may be installed.

03 Traffic control signals may be used instead of automatic gates at highway-LRT grade crossings within highway-highway intersections where LRT speeds do not exceed 35 mph. Traffic control signals or flashing-light signals without automatic gates may be used where the crossing is at a location other than an intersection and where LRT speeds do not exceed 25 mph and the roadway is a low-volume street where prevailing speeds do not exceed 25 mph.

Section 8C.06 Four-Quadrant Gate Systems

Option:

01 Four-Quadrant Gate systems may be installed to improve safety at grade crossings based on an engineering study when less restrictive measures, such as automatic gates and median islands, are not effective.

Standard:

02 **A Four-Quadrant Gate system shall consist of entrance and exit gates that control and block road users on all lanes entering and exiting the grade crossing.**

03 **The Four-Quadrant Gate system shall use a series of drive mechanisms and fully retroreflectorized red- and white-striped gate arms with lights, and when in the down position the gate arms extend individually across the entrance and exit lanes of the roadway as shown in Figure 8C-2. Standards contained in Sections 8C.01 through 8C.03 for flashing-light signals shall be followed for signal specifications, location, and clearance distances.**

04 **In the normal sequence of operation, unless constant warning time detection or other advanced system requires otherwise, the flashing-light signals and the lights on the gate arms (in their normal upright positions) shall be activated immediately upon the detection of approaching rail traffic. The gate arms for the entrance lanes of traffic shall start their downward motion not less than 3 seconds after the flashing-light signals start to operate and shall reach their horizontal position at least 5 seconds before the arrival of the rail traffic. Exit gate arm activation and downward motion shall be based on detection or timing requirements established by an engineering study of the individual site. The gate arms shall remain in the down position as long as the rail traffic occupies the grade crossing.**

05 **When the rail traffic clears the grade crossing, and if no other rail traffic is detected, the gate arms shall ascend to their upright positions, following which the flashing-light signals and the lights on the gate arms shall cease operation.**

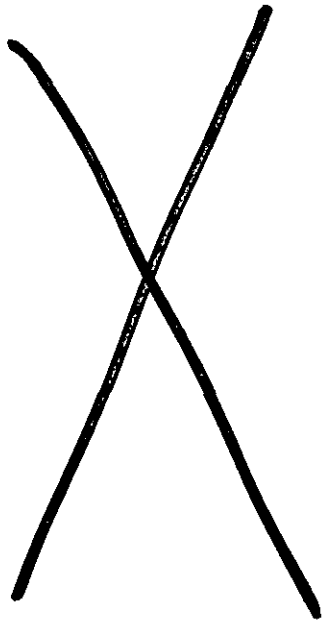
06 **Gate arm design, colors, and lighting requirements shall be in accordance with the Standards contained in Section 8C.04.**

07 **Except as provided in Paragraph 19, the exit gate arm mechanism shall be designed to fail-safe in the up position.**

08 **At locations where gate arms are offset a sufficient distance for highway vehicles to drive between the entrance and exit gate arms, median islands (see Figure 8C-2) shall be installed in accordance with the needs established by an engineering study.**

Guidance:

09 *The gate arm should ascend to its upright position in 12 seconds or less.*



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yards, terminals, interlockings or switch tracks specifically to avoid blocking other crossings. When it is necessary to cross tracks at such locations, grade separation of the roadway and railroad is highly recommended. Existing highway/railway at-grade crossings in such locations should be eliminated by closure or grade separation whenever possible. Care should also be taken to avoid crossing tracks at-grade wherever turnouts, crossovers, rail crossings or railroad bridges would fall within the limits of or in close proximity to the crossing. New highway/railway at-grade crossings should never be established across designated high-speed rail lines or tracks equipped with electrified "third rails". Other railway related factors which should be considered in selecting the location of an at-grade crossing are track curvature and superelevation, track gradient, number of tracks and others as may be relevant to the design of intersections and the selection of appropriate system(s) of highway traffic control devices at the crossing. (References 3, 4 & 5)

8.2.1.2 Roadway Alignment

To the extent practicable, the roadway alignment should be tangent in the immediate vicinity of the railroad and intersect the track(s) at or nearly at right angles. The number of traffic lanes and the width of the roadway section, including shoulders, should be uniform on both sides of the crossing and, preferably, for at least 100 feet on either side. Bi-directional center turn lanes should be eliminated in the immediate vicinity of any highway/railway at-grade crossing by installing a raised median instead, designating for use in one direction only, or striping out entirely. Additional shoulder or embankment width should be provided in the immediate vicinity of the crossing as/if required for proper placement of crossing traffic control devices per the *Manual on Uniform Traffic Control Devices* (MUTCD) (Reference 4). Parking lanes should be eliminated in the crossing vicinity as needed to preclude parked vehicles from blocking approaching motorists' view of the crossing traffic control devices and/or an approaching train. Curb cuts, driveways and other public access to the roadway within close proximity to the crossing should be restricted. Consideration should be given to pedestrians and bicyclists, where practical, and to persons with disabilities. The alignment of newly constructed or reconstructed sidewalks or paths should be adjusted to cross the track(s) as nearly at a right angle as possible to minimize the possibility of bicycle tires or the small wheels on the front of wheelchairs from becoming caught in the flangeway.

8.2.1.3 Roadway Approach Pavement

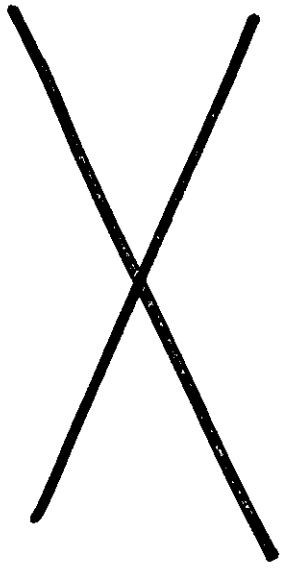
Any crown or superelevation in the roadway section should be eliminated at or tapered into the crossing to match the grade and profile of the railroad track. Portland cement concrete pavements should be terminated a sufficient distance from the outer edge of the crossing surface, giving due consideration to both future track and crossing surface maintenance as well as the type and width of equipment to be used to compact asphaltic concrete material in the resultant "gap" between the rigid pavement and the crossing surface (See Article 8.4.10 of this Chapter). Poured in place Portland cement concrete pavements should not be used between tracks where track centers are 25 feet or less. The use of under-pavement headers is not recommended; however, if the pavement design selected includes provision for headers, the headers should be constructed a sufficient distance from the ends of the track crossties so as not to interfere with future track and crossing surface maintenance and replacement operations.

8.2.1.4 Crossing Elevation

When constructing or reconstructing the roadway approaches to a highway/railway grade crossing, or the track through the crossing, the elevation of the crossing should be established by mutual agreement between both the roadway's and railroad's engineers, giving due consideration to any anticipated settlement of the track under traffic following any re-ballasting or surfacing. Where multiple tracks exist, the tops of rails of all tracks should be brought to the same plane where practicable.

8.2.1.5 Roadway Approach Grades

When constructing or reconstructing the roadway approaches to a highway/railway grade crossing, the roadway surface should be constructed to be level with said plane through the tops of rails for a distance of at least 24 inches (preferably 60 inches or more) beyond the outer rail of the outermost track in each direction. The top of rail plane should be connected to the grade line of the roadway in each direction by vertical curves of such length as is consistent with the design criteria normally applied to the functional classification of the roadway under consideration. (Reference 5) It is desirable that the surface of the roadway be not more than 3 inches above or 3 inches below the elevation of the top of rail plane, as extended, at a point 30 feet from the outermost rail, measured at right angles thereto. Particular care should be taken to provide a roadway profile that will allow



Traffic Study

March 2013

Prepared by:

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P-0-000001555
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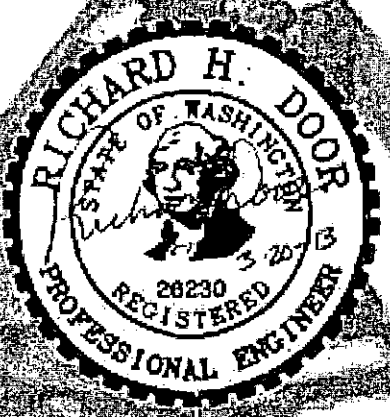
Center Parkway Extension And Railroad Crossing

Traffic Study

March 2013



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Introduction

For several years the City of Richland has pursued the extension of Center Parkway to connect between Gage Boulevard on the south to Tapteal Drive on the north. This effort has been challenging because of existing railroad lines that operate parallel to and in between Gage Boulevard and Tapteal Drive. There are multiple purposes for connecting Center Parkway which include:

- Complete a grid network of functionally classified roadways
- Provide relief to congested arterial facilities
- Provide improved access to commercial areas and developable land
- Improve emergency response times

The City has worked closely with both the Burlington Northern Santa Fe Railroad and the Union Pacific Railroad to relocate railroad siding in the vicinity of Center Parkway. The City has also worked with the Port of Benton, who owns the remaining railroad line, to address issues with respect to a new railroad crossing that would be created by the Center Parkway Extension. This effort has produced substantial progress such that the Center Parkway is within reasonable reach. The City has also secured federal and state funding for the construction of the roadway including the railroad crossing.

The City has commissioned this traffic study to document conditions with the future roadway connection to contribute to design considerations and ensure safety with the new railroad crossing. This traffic study will summarize existing conditions, transportation need and benefit for the project, forecast 20-year traffic volumes with and without the roadway connection, evaluate traffic operational conditions with the Center Parkway Extension and make recommendations to safely accommodate the project including safe railroad crossing treatment.

Existing Conditions

This section will discuss existing land use and the roadway network in the area around Center Parkway. A vicinity map showing the study area is included in Figure 1.

Land Use

The study area around Center Parkway is dominated by commercial development, with the Columbia Center Regional Mall located immediately adjacent to Center Parkway. Gage Boulevard terminates at Center Parkway at the west entrance to the Columbia Center Mall. Many other commercial developments have also located in the vicinity of the Mall so as to take advantage of the activity generated in the area. To the west is a residential development which takes access from Steptoe Street approximately one-half mile to the west. To the northwest is undeveloped land within the City of Richland that is zoned for commercial development.

Roadway Characteristics

Center Parkway south of Gage Boulevard is designated as a principal arterial south to Quinault Avenue. North of Gage Boulevard Center Parkway is discontinuous in the vicinity of the railroad tracks and thus is identified as a future minor arterial roadway from north of Gage Boulevard to Tapteal Drive. Center Parkway also extends south of Quinault Avenue as a local roadway serving residential neighborhoods. In recent years Center Parkway was extended by the City of Kennewick and curves to the west to connect with Steptoe Street. The Richland Transportation Plan identifies Center Parkway to be extended one more mile to the west to connect with Leslie Road. It provides 3 lanes including a two-way-left-turn-lane with shoulders, curb, gutter, sidewalks and street lights and a speed limit of 30 MPH. A two lane roundabout is at the intersection with Gage Boulevard that also provides access to the Mall to the east. The traffic volume during the PM peak hour is nearly 800 vehicles south of Gage Boulevard.

Gage Boulevard is an east-west principal arterial roadway that extends from Center Parkway to the west and currently terminates at the foothills of Badger Mountain approximately 2.75 miles to the west. To the east of Center Parkway is one entrance to the Columbia Center Mall. The City Transportation Plan identifies Gage Boulevard to be extended westward through the saddle of Badger Mountain to connect with Dallas Road and the interchange with I-82 approximately three miles to the west. Gage Boulevard in the vicinity of Center Parkway is a 5 lane roadway, including a two-way left-turn lane with curb, gutter, sidewalks and streetlights with a speed limit of 40 MPH. The traffic volume during the PM peak hour is 1200 vehicles west of Center Parkway and 2500 vehicles east of Steptoe Street.

Steptoe Street is a north south principal arterial situated approximately 0.6 miles west of Center Parkway. This street was recently extended south of Gage Boulevard to connect with Center Parkway and additional extension is underway that will connect to Clearwater Avenue in Kennewick as well as 10th Avenue further to the south. Steptoe Street general includes 5 lanes including a two-way-left-turn-lane with shoulders, curb, gutter, sidewalks and street lights with a speed limit of 40 MPH. To the north Steptoe Street has an at-grade railroad crossing, connects with Tapteal Drive and provides access to SR 240. The traffic volume during the PM peak hour is 1400 vehicles north of Gage Boulevard.

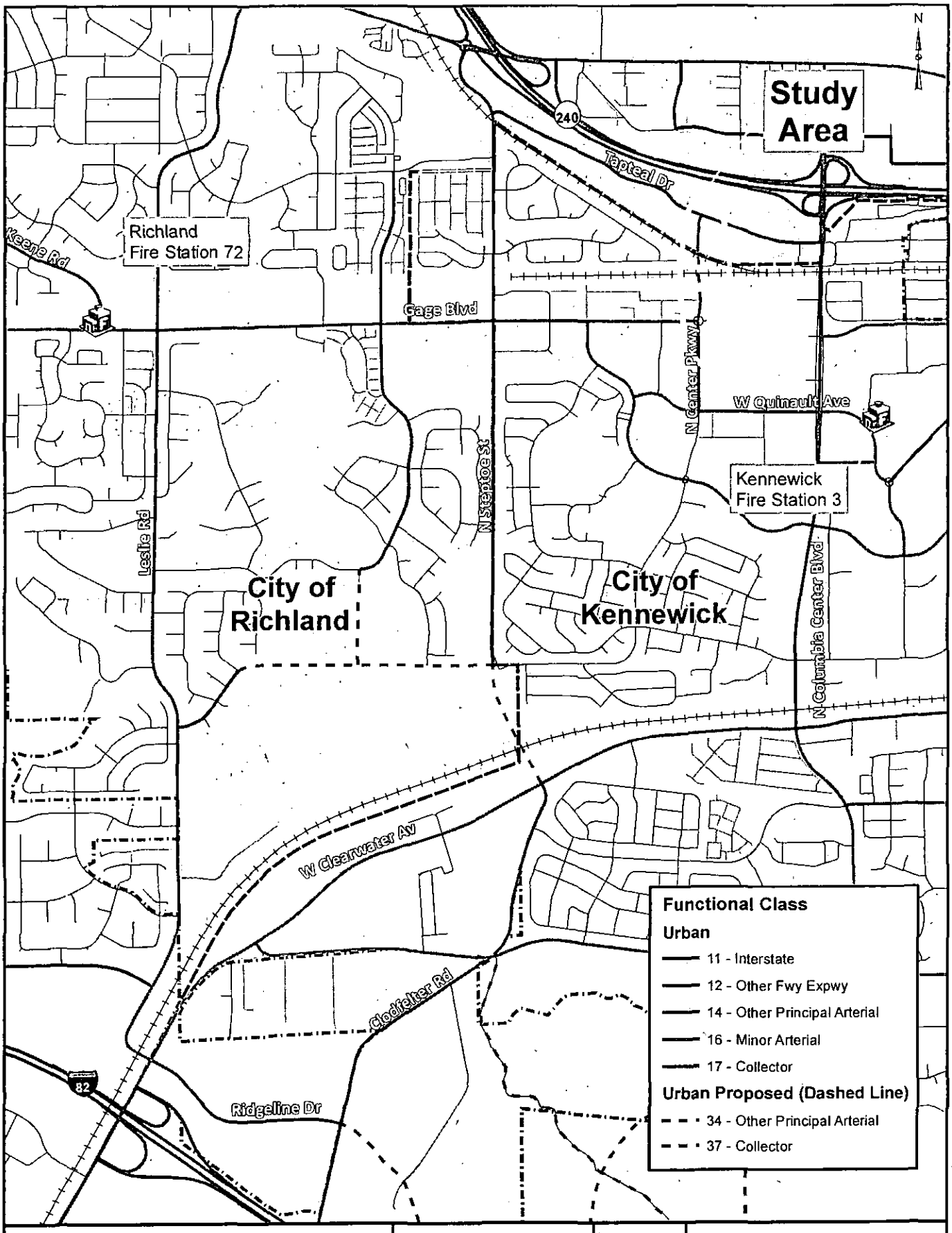
Columbia Center Boulevard is a north south principal arterial situated approximately 0.4 miles east of Center Parkway that gives major access to the most significant retail area in southeastern Washington. It provides connections to SR 240 at an interchange to the north and south to 10th Avenue. In the

vicinity of the Columbia Center Mall it is a 6 lane facility with curb, gutter, sidewalks and streetlights with a speed limit of 35 MPH. Columbia Center Boulevard provides a grade separated crossing of the railroad Several years ago, in an effort to alleviate congestion on Columbia Center Boulevard, a grade separated connection to Tapteal Drive for northbound traffic was provided via Tapteal Loop. The traffic volume during the PM peak hour is 2400 vehicles north of Quinault Avenue and 2600 vehicles south of SR 240.

Tapteal Drive is an east west collector roadway with a single through lane in each direction and a two-way left turn lane with shoulders. Although there is curb and gutter on both sides of the road, sidewalks are only provided where development has been implemented. It currently extends from Steptoe Street on the west to Columbia Center Boulevard (CCB) on the east, with a "T" intersection at either end. At the east end a grade separated overpass was built to limit movements at CCB to right-in/right-out only; eastbound Tapteal Drive traffic wishing to turn north on CCB must use the overpass to cross CCB and then make a right turn to go north. At the west end studies have been performed to extend Tapteal Drive westward to provide access to commercial area, cross the canal to the north and connect with Columbia Park Trail. The seed limit is 30 MPH. The traffic volume during the PM peak hour is 225 vehicles west of Columbia Center Boulevard.

Quinault Avenue between Center Parkway and Columbia Center Boulevard is a 5 lane east-west principal arterial roadway with a speed limit of 30 MPH. West of Center Parkway and east of Columbia Center Boulevard it is a 3-lane minor arterial roadway.

Grandridge Boulevard is generally an east-west minor arterial roadway that provides a by-pass of sorts to the Columbia Center Mall. It is 3 lanes, with extra turn lanes at some intersections. It connects on the west to Gage Boulevard west of Center Parkway and heads south, then east, crossing Center Parkway and Columbia Center Boulevard, then continues east and then north to connect with Canal Drive.



JUB	Vicinity Map	FIGURE 1	City of Richland Center Par[illegible] Traffic Study

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Transportation Need and Benefit

There are multiple purposes for the pursuit of the completion of Center Parkway across the railroad tracks to connect the two separate segments to the north and south. Some of the major objectives are discussed below.

Complete a Roadway Network

In planning for a transportation network within a region, city, subarea or even a neighborhood, a hierarchy of roadways that make up a system with varying functional classifications is beneficial for the movement of people and goods. A roadway system functions best when some roads are designed to primarily move traffic and other roadways are intended to provide access to adjacent parcels. Principal arterial roadways which limit access are typically spaced one mile apart, have higher speeds and are capable of moving more traffic.. Local access roadways have lower speeds to more safely accommodate entering and exiting traffic; their capacity is much lower. Collector roadways serve to both move traffic and provide some access, these roads typically are situated in between arterial roadways and provide connections between local roads and arterials roadways.

One other component of a well-designed roadway network is the formation of a grid system with arterial and collector roadways running both north/south and east/west. In many communities there are natural and man-made barriers that prevent the completion of a fully functioning grid. These barriers include: rivers, canals, topographical features such as hills and canyons, freeways, airports, railroads, freeways or even large developments such as military installations. Often times bridges or other means to cross these features are constructed to complete a grid system, especially when nearby roadways reach their capacity.

Over the last three to four decades the area of Richland and Kennewick south of SR 240 and west of Columbia Center Boulevard has been developing. As this area has developed additional roadways have been planned and constructed to serve the area, many of which have been widened after being in existence for over 20 years. As evidence of this joint effort between the two cities of Richland and Kennewick to put in place a grid network of functionally classified roads the following improvements have been carried out in recent years:

- Steptoe Street was connected between SR 240/Columbia Park Trail and Gage Boulevard
- Tapteal Drive was constructed between Columbia Center Boulevard and Steptoe Street
- Columbia Center Boulevard was widened to 6 lanes and grade separated with the BNSF railroad being lowered
- Gage Boulevard was widened to 5 lanes
- Leslie Road was constructed to urban standards
- Center Parkway was extended south and west to future Steptoe Street
- Steptoe Street was extended south to connect to Center Parkway
- Construction is underway of Steptoe Street south to Clearwater Avenue, including a grade separation with the BNSF railroad, with opening anticipated in 2013

The completion of Center Parkway north of Gage Boulevard is merely one step of many to complete both a functionally classified network and a north-south component of a grid system to provide safe efficient movement of traffic into this area of the region.

Congestion Relief

As described above, Center Parkway is one piece of a planned network of roadways. Columbia Center Boulevard is one of the busiest roadways in the region. The extension and connection of Steptoe Street to Clearwater Avenue has long been planned to provide significant relief to that congested facility. However, as growth continues to fill in the undeveloped portions of the area, regional models indicate that Steptoe Street will also become congested. The significant commercial activity attracted to the area immediately around the Columbia Center Mall requires a well thought out plan for accommodating traffic demand. Having alternate routes and multiple roadways will allow traffic to move into and out of this congested area, enhancing the ability to provide services and let the region continue to develop without extending other urban infrastructure into areas not yet served.

Center Parkway has been planned to provide relief to both Columbia Center Boulevard as well as Steptoe Street, consistent with the philosophy of providing collector roadways parallel and in between arterial roadways.

Improved Access

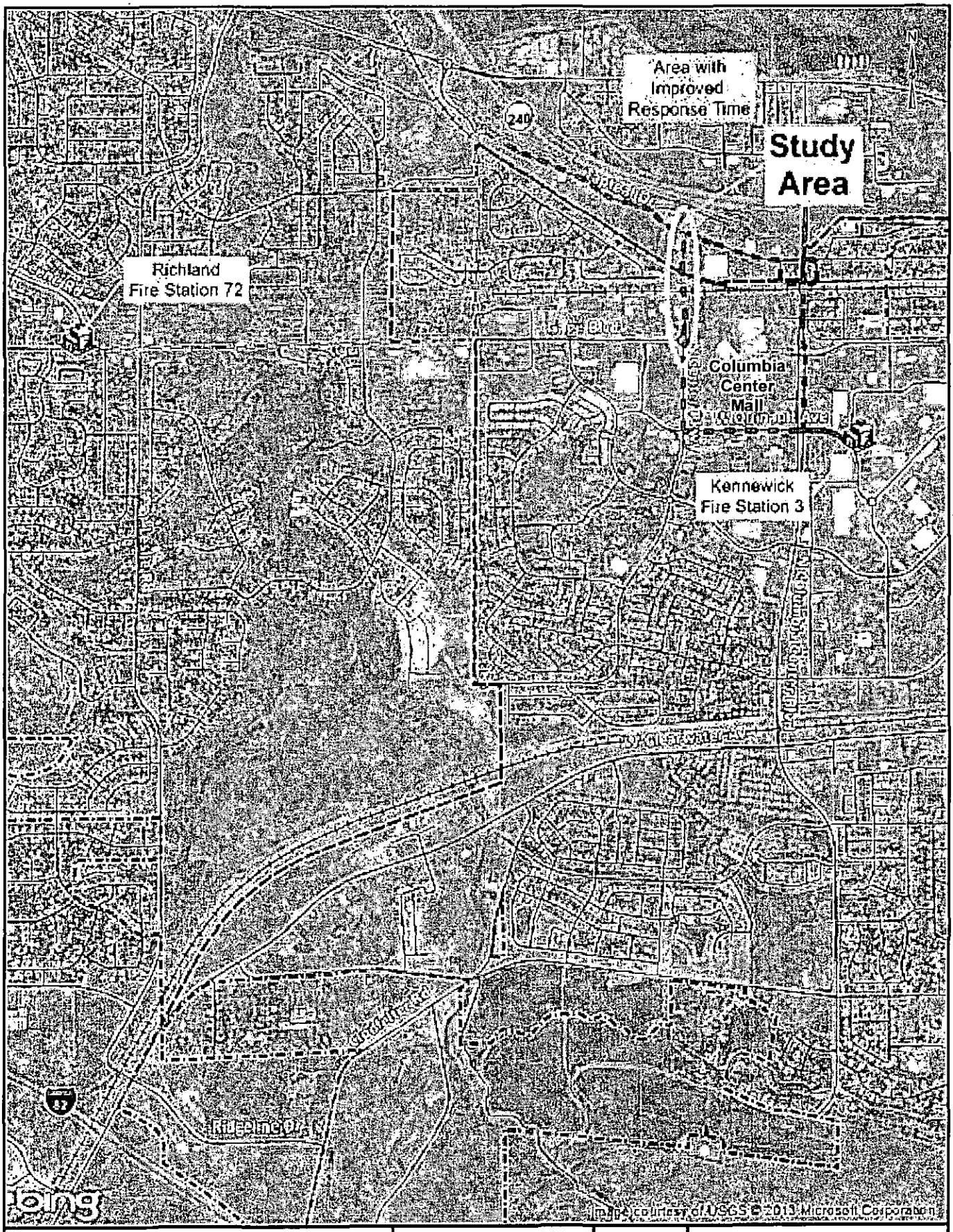
There is also significant land yet to be developed in this general area of the region, including nearly 60 acres between the railroad and SR 240 which has desirable visibility. Today this land has all utilities and collector roadway access on Tapteal Drive, however it is not as close to the rest of the commercial areas as it could be without Center Parkway, because of the barrier created by the railroad, so it lacks the synergy that commercial areas often seek.

Currently to get from the Columbia Center Mall to businesses on Tapteal Drive, traffic must make a left turn to go north on Columbia Center Boulevard, which is often congested, then proceed to go east on Yellowstone Avenue, south on Belfair Street and then proceed west on Tapteal Loop to access Tapteal Drive. With the Center Parkway connection, traffic will be able to exit the Mall area on the west side and go north at the roundabout at Gage Boulevard and proceed directly north to Tapteal Drive.

Improve Emergency Response

Emergency response to the area is provided by both the City of Richland, with a fire station on Gage Boulevard West of Leslie Road, and by the City of Kennewick with a fire station on Quinault Avenue east of Columbia Center Boulevard. An interagency agreement allows both jurisdictions to respond to incidents in the other jurisdiction, so coverage areas overlap. An evaluation of distances and emergency response times was performed by examining 4 potential routes: from each fire station with and without the proposed Center Parkway connection between Gage Boulevard and Tapteal Drive. Three of these routes are shown in Figure 2 (the fourth is not shown because using the new Center Parkway Extension is only a benefit from the City of Kennewick fire station because response from that site is quicker).

For comparative purposes an examination of response times to the Holiday Inn hotel immediately north and east of the Center Parkway crossing of the railroad tracks was undertaken. It was determined that from the Kennewick fire station that the current route on Columbia Center Boulevard and Tapteal Loop is 1.31 miles away and takes 2:48 minutes to respond, with the Center Parkway connection the distance would be 0.98 miles and only take 2 minutes, nearly a 30% reduction. From the Richland fire station the current route on Gage Boulevard, Steptoe Street and Tapteal Drive is 2.59 miles and would take 5:42 minutes, with the Center Parkway connection the distance is shortened to 2.02 miles and 4:18 seconds.



JUB ENGINEERS, INC.	Emergency Routes	FIGURE 2	City of Richland Center Park Traffic Study

Traffic Forecast and Operational Analysis

Traffic Volumes

For this traffic study a 20 year forecast of traffic volumes with Center Parkway was needed in order to perform operational analysis at the intersection of Center Parkway and Tapteal Drive. This forecast was needed to determine appropriate intersection and traffic control and ensure that traffic would not back up across the railroad tracks during peak times. A comparison of the benefits to other facilities was also desired. Thus a forecast of year 2033 traffic volumes with the existing roadway network (without the Center Parkway Extension) and with the Center Parkway Extension was prepared. The methodology to prepare those forecasts is presented below.

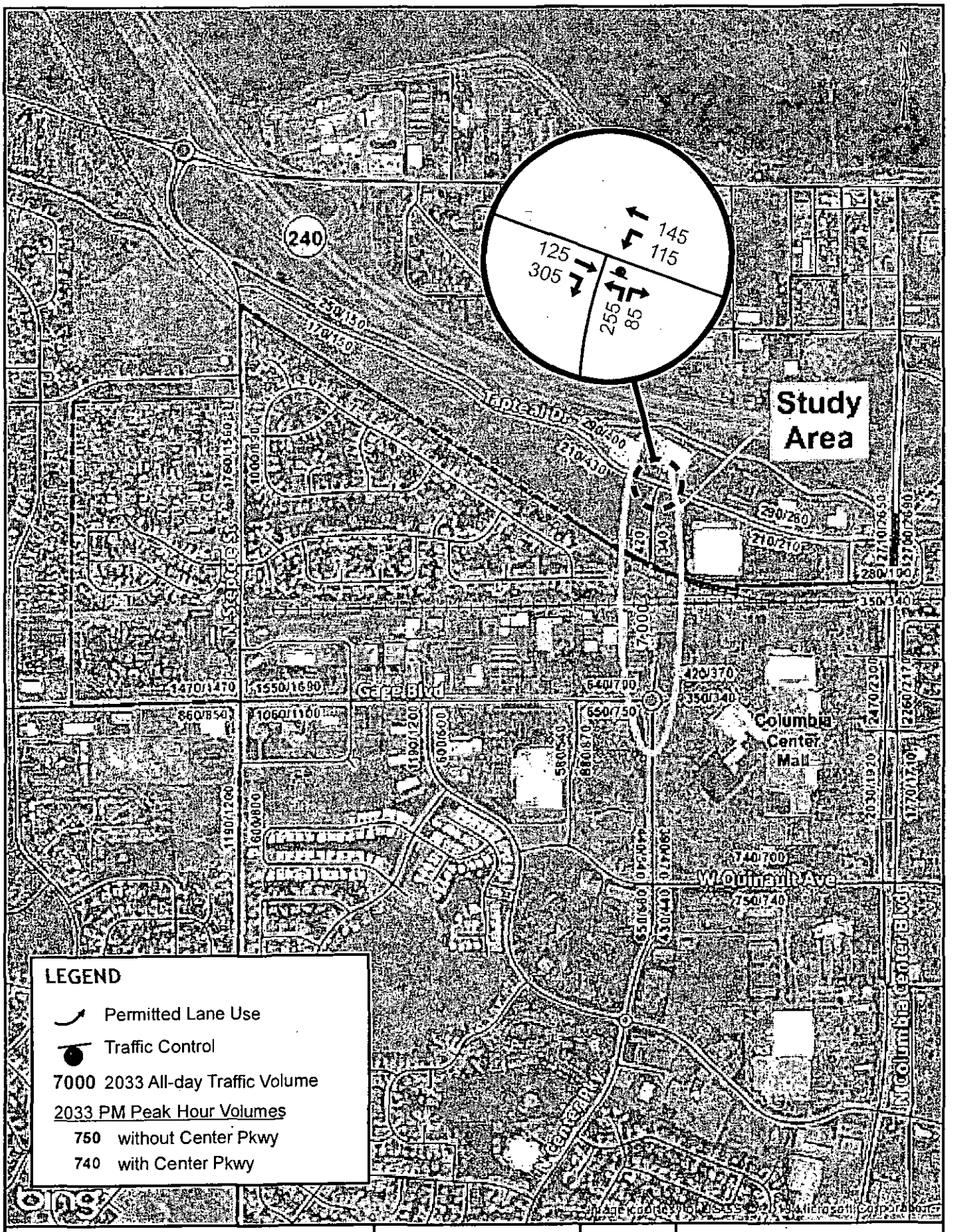
As a tool in preparing the Regional Transportation Plan, the Benton Franklin Council of Governments maintains a set of regional computerized transportation models. The model is developed using current traffic data and land uses in the region (representing year 2010) using Transportation Analysis Zones (TAZs) that are defined with various attributes describing the number and type of households and employees as well as other land uses within each zone. The model is calibrated using Federal Highway Administration procedures and methods. Once calibrated, changes in assumptions for future land uses and roadway networks can be made to determine the potential impacts of developments and/or roadway scenarios. Land use assumptions representing future conditions are developed to determine various impacts on the roadway network at a regional level. The future year model representing the year 2030 developed by BFCOG represents the best land use and roadway assumptions available at the time it was created.

It must be recognized that although traffic models are calibrated within acceptable ranges, the model is a tool in transportation planning and traffic forecasting. Professional judgment should be used in interpreting model outputs. To arrive at reasonable estimates of traffic volumes for the year 2033, a comparison of model results representing the year 2030 and 2010 was made; a comparison between 2010 model results and actual 2010 traffic counts was also made.

Specifically, an evaluation of how well the model currently performs and how closely existing traffic volumes are predicted by the model was made. An assumption was made that if the model currently predicts higher or lower traffic volumes than actually observed that this trend would continue into the future. The 2030 model was also compared to determine the growth in traffic between it and the 2010 model. Growth rates for the various roadway links being evaluated for this study were determined and continued from the year 2030 to 2033, but were applied to the year 2010 ground counts.

A few additional steps were undertaken to arrive at final projections for traffic volumes on applicable roadways. First, a cordon line was examined to ensure that the future volumes crossing a line immediately north of Gage Boulevard was within 1% in both scenarios. Since there is no existing traffic to compare against for the Center Parkway Extension some minor adjustments were needed. A second step was performed which balanced the volumes entering and exiting the two intersections at the end of the new Center Parkway Extension at Gage Boulevard and Tapteal Drive.

Average Daily Traffic (ADT) volumes were also prepared by examining the peak hour proportion of the all day volumes for the 2010 calibration counts along the cordon line used and applying that percentage to the final peak hour forecasts prepared. The forecast ADT for Center Parkway at the railroad crossing is 7,000 vehicles. A table in the Appendix shows all of the various volumes used for this forecast, with the volumes for both scenarios being shown in Figure 3.



JUB	2033 Traffic Forecast	FIGURE 3	City of Richland Center Park Traffic Study

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Some observations with respect to anticipated adjustments to traffic patterns during the PM peak hour with Center Parkway Extension in place include:

- Traffic volumes on Columbia Center Blvd and Steptoe St will go down 210 and 310 respectively
- Traffic volumes on Gage Blvd west of Center Parkway and East of Steptoe Street will go up 250 and 180 respectively
- Volumes on Center Parkway south of Gage Boulevard will go up 220
- Volumes on Tapteal Drive will go up 330
- Volumes on Grandridge Boulevard south of Gage Boulevard will go down 50
- Quinault Avenue west of Columbia Center Boulevard will go down 50
- Columbia Center Blvd south of Canal Drive will go down 170
- On several roadways outside of those mentioned above, such as Gage Blvd west of Steptoe Street, Steptoe Street south of Gage Blvd

An opening day forecast of the ADT was also prepared. The BFCOG model had no such projection, so the growth rate along the cordon line of 1.6% per year was used and backed up from the 2033 forecast. The resulting 2014 ADT is 5200 vehicles.

Operational Analysis

An operational analysis was performed for the intersection of Center Parkway/Tapteal Drive, it being 660' from the railroad crossing. The intersection of Center Parkway/Gage Boulevard was not expected to cause any problems because it is approximately 1,000' from the railroad crossing and the intersection control is a roundabout which would provide better service that the stop sign north of the railroad crossing.

The analysis of Level-of-Service (LOS) is a means of quantitatively describing the quality of operational conditions of a roadway segment or intersection and the perception by motorists and passengers. Service levels are identified by letter designation, A – F, with LOS "A" representing the best operating conditions and LOS "F" the worst. Each LOS represents a range of operating conditions and one or more measures of effectiveness (MOE's) are used to quantify the LOS of a roadway element. For intersections the MOE used is average control delay (seconds) per vehicle. While there are several methodologies for estimating the LOS of intersections, the most commonly used is presented in the Highway Capacity Manual and is the methodology used in this study (HCM 2000). The Highway Capacity Manual LOS criteria for unsignalized intersections are summarized in Table 1.

Table 1. Level of Service Criteria for Unsignalized Intersections

Level of Service (LOS)	Average Control Delay (seconds/vehicle)
A	< =10
B	>10 - < 15
C	>15 - < 25
D	>25 - < 35
E	>35 - <50
F	>50

Source: *Highway Capacity Manual 2000*, Transportation Research Board, National Research Council, Washington, D.C., 2000.

For unsignalized intersections delay is based on the availability of gaps in the major street to allow minor street movements to occur. As traffic volumes increase the availability of gaps will decrease and greater delay tends to result in driver frustration and anxiety, loss of time, unnecessary fuel consumption, and contributes to unnecessary air pollution. The City of Richland standard for Level of Service is LOS "D" for minor street approaches at unsignalized intersections, meaning the overall intersection LOS must be "D" or better.

Peak hour traffic volumes shown in Figure 3 at the intersection of Center Parkway and Tapteal Drive were input into the Highway Capacity Software (HCS) along with the assumption that the intersection would have exclusive left turn lanes for each approach and a stop sign for northbound Center Parkway. This analysis was performed to determine the delay and Level of Service at the intersection as well as queue lengths for the northbound approach. The results of the capacity analysis and intersection delay for existing conditions are shown in Table 2 with LOS worksheet calculations included in the Appendix.

As shown in Table 2, the intersection of Center Parkway is forecast to operate with acceptable delay and LOS, with under 25 seconds of average vehicle delay and LOS C. It was determined that the average queue length during the PM peak hour would be approximately 4.09 vehicles for the left turn lane and less than 1 vehicle for the right turn lane. Thus, with an average vehicle length of 25 feet the queue length would not extend more than 125' of the total 660' feet back from Tapteal Drive to the railroad crossing and there is no concern that vehicles would be put in an unsafe situation of being stopped on the railroad tracks during a train event.

Table 2. Summary of 2017 Build Scenario Delay (sec) and Level of Service

Intersection	Northbound Left Turn	Northbound Right Turn
Center Parkway/ Tapteal Drive	24.7/C	10.6/B

LEGEND

22.5/C Delay and Level of Service using existing lane configurations

An analysis was also performed to determine the potential impact of a train event on the intersection of Center Parkway/Tapteal Drive. Trains operating on the Tri-City and Olympia Railway are typically relatively short trains of 10 – 12 cars. To be conservative, and allowing for increased rail demand, an evaluation of a train with 30 cars of average length of 50 feet was performed. Because it is not uncommon for trains to travel in the 10 MPH range, this speed was used for this analysis, however clearly a faster train would result in a shorter duration of the railroad crossing closure. It would take 1.7 minutes for a 30 car train to travel its 1500 foot length at 10 MPH. Adding 15 seconds to account for the railroad crossing gate arms amounts to just under 2 minutes of total closure during a train event or 3.33% of the peak hour. With 420 southbound vehicles during the peak hour it would be expected that approximately 14 vehicles might be stopped at the crossing during a train event. The average length of vehicle being 25' would amount to a queue length extending back from the railroad crossing of approximately 350', which would still leave 300' between the queue and Tapteal Drive. The driveway for the Holiday Inn and the property on the west side opposite the Holiday Inn could be blocked for a portion of the train event, however southbound vehicles destined for the Holiday Inn could use the center turn lane to proceed to their destination. Cross access between the two parcels on the west side could be a possible feature to better accommodate a train event.

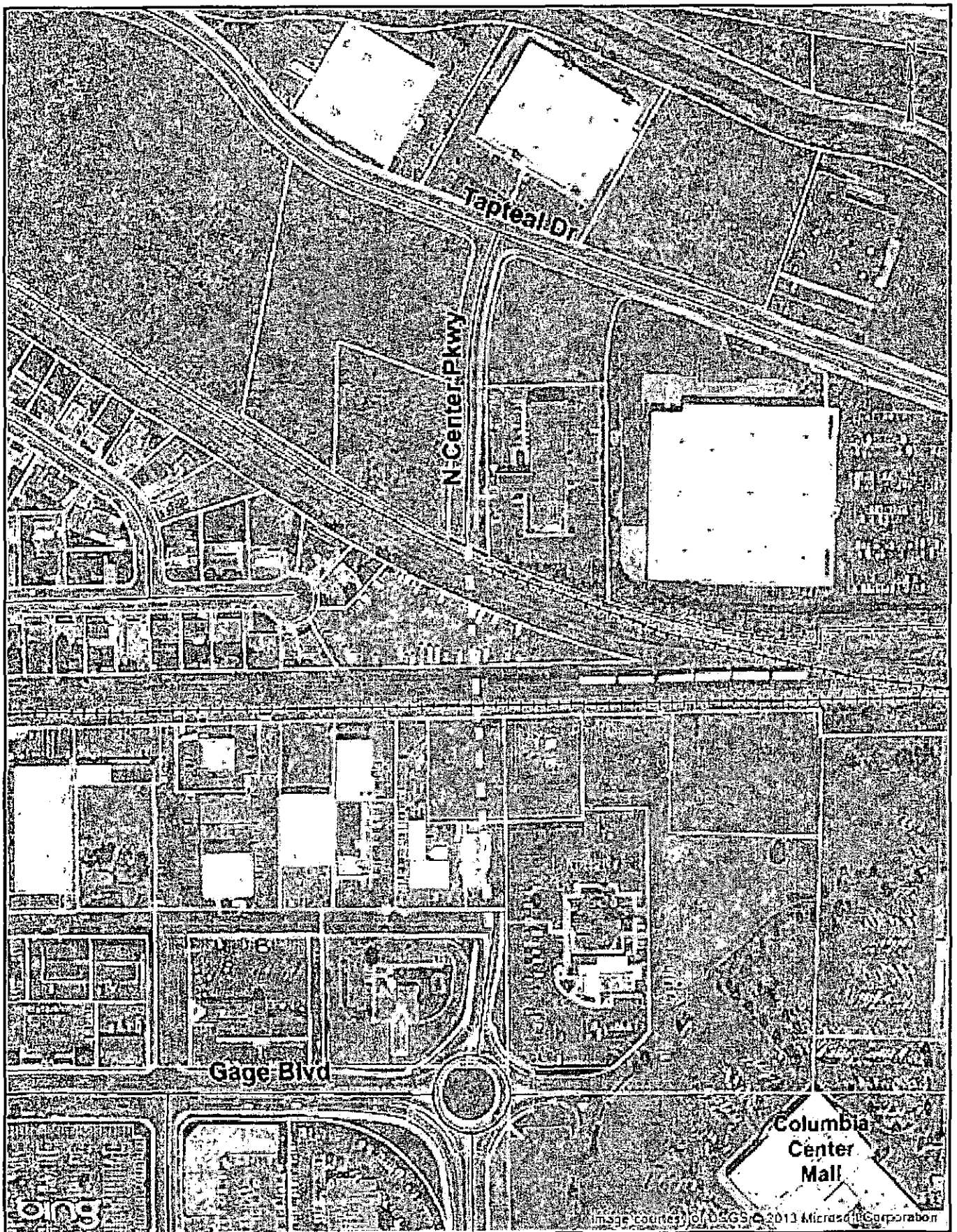
Center Parkway Project Area Considerations

The project area for the Center Parkway Extension is shown in Figure 4. There are two considerations worth discussion here for future development and consideration in the design of the roadway.

First, development on the east side of the road immediately north of the railroad crossing is the Holiday Inn which has two access points. The southern access is within 100' of the railroad crossing and the northern driveway is over 200' from the crossing. On the west side of Center Parkway there are two undeveloped lots. It is recommended that the southern lot on the west take its access opposite the northern access to the Holiday Inn, and that the northern lot take either share that access or take access from Tapteal Drive. In this fashion there will be enough spacing between the railroad crossing and the driveway accesses to Center Parkway.

Second, as a safety benefit to the railroad crossing, and to improve the environment for businesses and homes in the vicinity, the cities are interested in creating a Quiet Zone at the railroad crossing. To be most effective, a Quiet Zone at the Steptoe Street railroad crossing would be desirable as well.

The Federal Railroad Administration, since the early 1990's has undertaken a substantial technical and public process to put rules in place to require the sounding of train horns at all railroad crossings. The rule was finalized in 2005. Along with this requirement, provisions were included to allow the creation of Quiet Zones that have Supplementary Safety Measures (SSM's) at railroad crossings that "fully compensate for the absence of the train horn." These SSM's are physical constraints that prevent travelers from circumventing the gate arms at a railroad crossing, thus providing for a safer condition. Without the need for train horns the crossings are also more neighborhood and business friendly. In any event, when the train conductor sees the need, the train horn can be blown for improved safety. The purpose of the Quiet Zone is to eliminate the "routine" blowing of the train horn. For these particular crossings, a raised center median extending back 100' in length from the gate arms is the most cost-effective SSM. A formal procedure will need to be followed by the City of Richland to establish the Quiet Zone once the Supplementary Safety Measures are in place.



JUB ENGINEERS, INC.

0 125 250
Feet
1 inch = 250 feet

Center Parkway Extension Projet Area

FIGURE 4

City of Richland
Center Park
Traffic Study

Summary and Recommendations

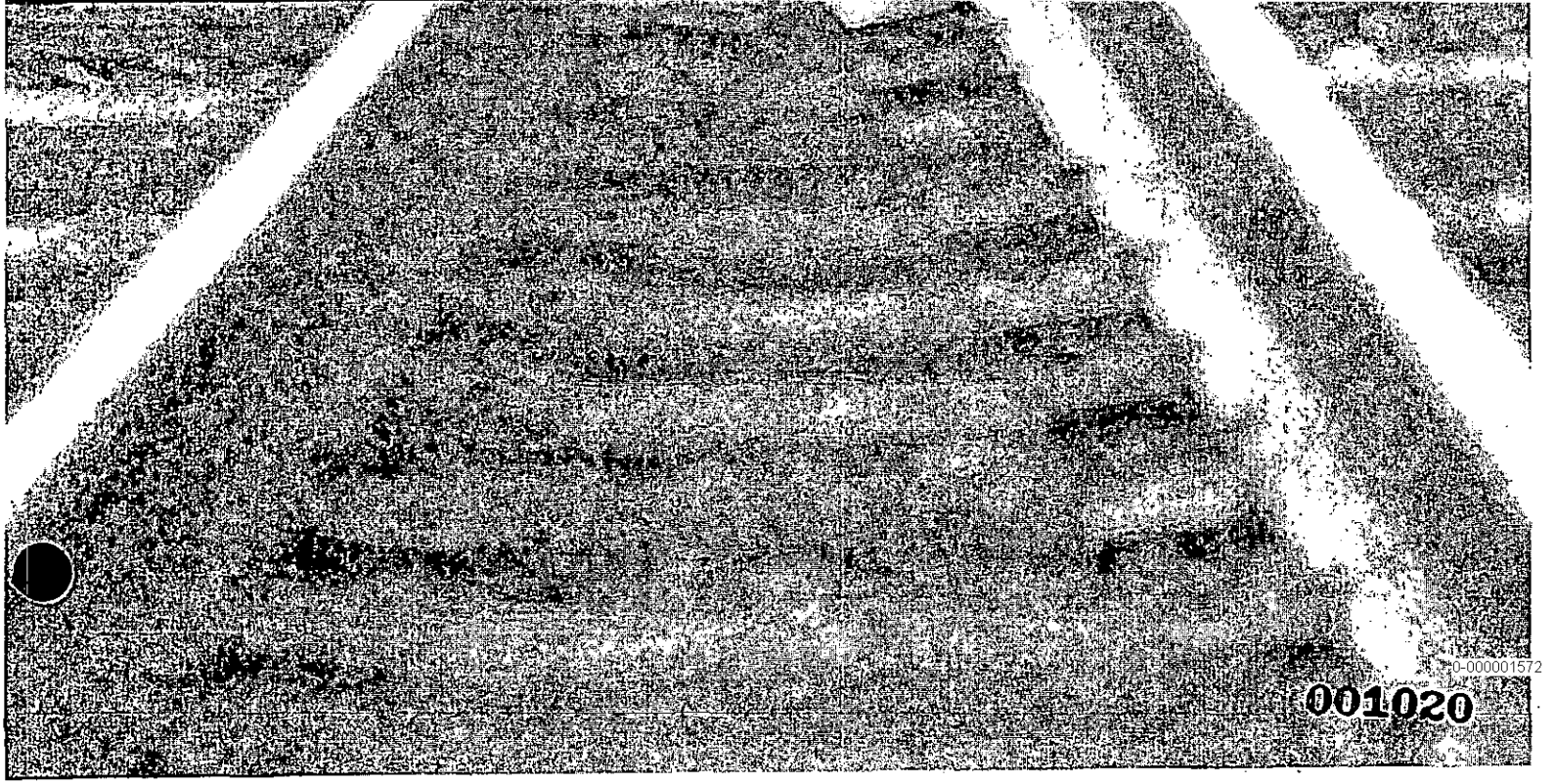
This Traffic Study has been performed to describe the efforts put forth by the City of Richland and the City of Kennewick to complete a roadway network that includes the extension of Center Parkway in order to accommodate growth in the region. Four primary objectives have been discussed that document the needs and benefits of extending Center Parkway between Gage Boulevard and Tapteal Drive that include:

- **Complete a grid network of functionally classified roadways** – The completion of Center Parkway north of Gage Boulevard is merely one step of many to complete both a functionally classified network and a north-south component of a grid system to provide safe efficient movement of traffic into this area of the region.
- **Provide relief to congested arterial facilities** - Center Parkway has been planned to provide relief to both Columbia Center Boulevard as well as Steptoe Street, consistent with the philosophy of providing collector roadways parallel and in between arterial roadways.
- **Provide improved access to commercial areas and developable land** – nearly 60 developable acres of commercial land between the railroad and SR 240 which has desirable visibility will have improved access and will gain the synergy that commercial areas often seek.
- **Improve emergency response times** – a significant area will have improved emergency response times, some with nearly a 30% reduction.

Traffic forecasts were prepared with and without the Center Parkway Extension for the year 2033. It is expected that the most significant change in traffic patterns will be a decrease in traffic volumes on Columbia Center Boulevard and Steptoe Street of 210 and 310 respectively during the PM peak hour. An examination of traffic queues in the vicinity of the railroad crossing was performed and it was estimated that the northbound queue would be less than 125 feet back from Tapteal Drive with over 650 feet of distance between Tapteal Drive and the railroad crossing.

For the undeveloped land west of Center Parkway between the railroad and Tapteal Drive, it is recommended that the southern lot on the west take its access opposite the northern access to the Holiday Inn, and that the northern lot take either share that access or take access from Tapteal Drive. In this fashion there will be enough spacing between the railroad crossing and the driveway accesses to Center Parkway.

Lastly, as a safety benefit to the railroad crossing, and to improve the environment for businesses and homes in the vicinity, a 100' median extending back from the railroad crossing gate arms should be installed. This is recommended as a Supplementary Safety Measures (SSM's) that will "fully compensate for the absence of the train horn" and allow the establishment of a "Quiet Zone" per the Federal Railroad Administration rules. This SSM is a physical constraint that prevents travelers from circumventing the gate arms at a railroad crossing, thus providing for a safer condition. The crossing at Steptoe Street should also be included in the Quiet Zone



CENTER PARKWAY TRAFFIC STUDY
TRAFFIC FORECAST

Location	2010				2030 Model				2033*				2033 ADT	
	Calibration Ground Counts		Regional Model		Without Center Pkwy		With Center Pkwy		Without Center Pkwy		With Center Pkwy		w/o Center Pkwy	with Center Pkwy
	NB/WB	SB/EB	NB/WB	SB/EB	NB/WB	SB/EB	NB/WB	SB/EB	NB/WB	SB/EB	NB/WB	SB/EB		
Tapteal W/CCB	120	101	132	163	299	326	265	266	290	210	260	210	4600	4400
Tapteal W/Center Pkwy	120	101	132	163	299	326	445	602	290	210	400	430	4600	7700
Tapteal E/ Steptoe	82	73	136	153	399	344	232	307	250	170	150	150	3900	2800
CCB s/SR 240	1906	1981	1618	1724	2182	2250	2180	2202	2700	2710	2690	2650	50100	49400
Mall E/Ctr Pkwy	314	296	200	265	255	303	217	296	420	350	370	340	7100	6600
Gage W/Steptoe	1144	765	1117	1014	1370	1081	1368	1070	1470	860	1470	850	21600	21500
Gage E/Steptoe	1424	1117	1534	1305	1593	1177	1740	1228	1550	1060	1690	1100	24200	25800
Gage W/Ctr Pkwy	596	595	735	826	756	856	945	978	640	650	790	750	11900	14300
Tapteal Overpass	156	95	138	55	234	129	157	133	280	230	190	240	4700	4000
Leslie N/Gage	471	662	408	645	476	757	470	754	580	810	570	810	12900	12800
Steptoe N/Gage	670	825	833	784	1183	1597	1051	1414	1000	1760	890	1560	25600	22700
Center Pkwy N/Gage	--	--	--	--	--	--	271	427	--	--	340	420	--	7000
CCB N/Canal Dr	1603	1815	1676	1825	2252	2361	2171	2205	2260	2470	2170	2300	43800	41400
Leslie S/Gage	625	984	672	907	782	917	779	915	760	1040	760	1040	16700	16700
Steptoe S/Gage	--	--	--	--	574	1132	573	1140	600	1190	600	1200	16600	16700
Grandridge S/Gage	967	755	620	675	540	498	530	459	880	580	870	540	13500	13100
Center Pkwy S/Gage	384	414	575	601	550	603	651	761	390	440	470	540	7700	9400
CCB S/Canal Dr	1275	1478	1514	1629	2003	2133	1935	2022	1770	2030	1710	1920	35200	33600
Center Pkwy s/G'Ridge	256	498	270	410	429	512	445	522	430	650	440	660	10000	10200
Quinault W/CCB	627	567	865	841	976	1054	925	1042	740	750	700	740	13800	13300
Cordon Line N/Gage	2744	3302	2917	3254	3911	4715	3963	4800	4120	5270	4160	5330	87000	87900

*Model Growth Rate Perpetuated from 2020 to 2033

TWO-WAY STOP CONTROL SUMMARY

General Information		Site Information	
Analyst	Montgomery	Intersection	Tapteal Dr/Center Parkway
Agency/Co.	JUB ENGINEERS	Jurisdiction	City of Richland
Date Performed	3/13/2013	Analysis Year	2033
Analysis Time Period	PM Peak Hour		

Project Description: Center Parkway Extension

East/West Street: Tapteal Drive	North/South Street: Center Parkway
Intersection Orientation: East-West	Study Period (hrs): 0.25

Vehicle Volumes and Adjustments

Major Street	Eastbound			Westbound		
Movement	1	2	3	4	5	6
	L	T	R	L	T	R
Volume (veh/h)		125	305	115	145	
Peak-Hour Factor, PHF	0.90	0.90	0.90	0.90	0.90	0.90
Hourly Flow Rate, HFR (veh/h)	0	138	338	127	161	0
Percent Heavy Vehicles	0	--	--	0	--	--
Median Type	Raised curb					
RT Channelized			0			0
Lanes	0	1	0	1	1	0
Configuration			TR	L	T	
Upstream Signal		0			0	

Minor Street	Northbound			Southbound		
Movement	7	8	9	10	11	12
	L	T	R	L	T	R
Volume (veh/h)	255		85			
Peak-Hour Factor, PHF	0.90	0.90	0.90	0.90	0.90	0.90
Hourly Flow Rate, HFR (veh/h)	283	0	94	0	0	0
Percent Heavy Vehicles	0	0	0	0	0	0
Percent Grade (%)		0			0	
Flared Approach		N			N	
Storage		0			0	
RT Channelized			0			0
Lanes	1	0	1	0	0	0
Configuration	L		R			

Delay, Queue Length, and Level of Service

Approach	Eastbound	Westbound	Northbound			Southbound		
Movement	1	4	7	8	9	10	11	12
Lane Configuration		L	L		R			
v (veh/h)		127	283		94			
C (m) (veh/h)		1097	458		738			
v/c		0.12	0.62		0.13			
95% queue length		0.39	4.09		0.44			
Control Delay (s/veh)		8.7	24.7		10.6			
LOS		A	C		B			
Approach Delay (s/veh)	--	--	21.2					
Approach LOS	--	--	C					

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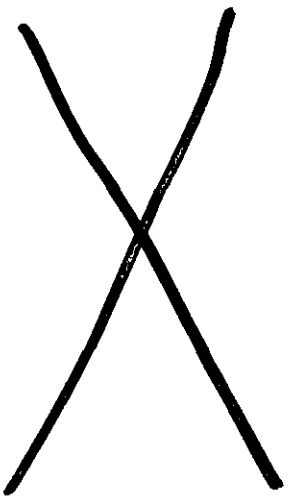


Center Parkway Extension

Grade Separation Evaluation

Center Parkway and Tri-City and Olympia Railroad

The Cities of Richland and Kennewick are seeking to extend Center Parkway from Gage Blvd north to Tapteal Blvd. The extension is part of the City of Richland's and City of Kennewick's long term transportation plans. The project would construct a 3-lane roadway for 750ft starting on the north side of the Gage Blvd Roundabout crossing the railroad tracks and connecting into the existing improvements just south of Tapteal Blvd.

This report evaluates the feasibility of constructing a grade separated crossing in lieu of an at-grade crossing at this location. It is intended to be used to support a petition to the Washington Utilities and Transportation Commission.

EXISTING CONDITIONS:

Railroad

- To the East of the proposed Center Parkway crossing, approx. 1900ft, there is a railroad bridge crossing over Columbia Center Blvd.
- To the West of the proposed Center Parkway crossing, approx. 3800ft, there is an at-grade signalized crossing of Steptoe St.
- For evaluation purposes, the track is assumed to be on an approx. 0.11% grade from Steptoe St. to Columbia Center Blvd.

Center Parkway

- The existing width of Center Parkway is 46 ft.
- Improvements stop just north of Gage Blvd at the Private Dr and start just north of the railroad tracks.
- The roadway grade approaching the railroad from the south is descending at 0.5%, but approaching the railroad from the north, the roadway is climbing at up to 6.0%.

DESIGN CRITERIA:

WUTC DOCKET TR-130499
EXHIBIT KJ-6
ADMIT ☒ W/D ☐ REJECT ☐

Railroad

- Max track grade of 1%.
- Minimum vertical clearance of 23.33 ft.
- Minimum horizontal clearance of 25 ft either side of track.

Center Parkway

- The width of Center Parkway in the area of the railroad will be 46 ft.
- Minimum vertical clearance of 16.5 ft.
- Minimum horizontal clearance is the width of the roadway section.

EVALUATED OPTIONS:

Option #1-Maintain Center Parkway elevation and lower track either side of crossing.

- This option is not feasible due to the impacts at the Columbia Center Blvd crossing. In order to lower the track and maintain the elevation at Center Parkway, the grade past the existing railroad bridge and Columbia Center Blvd would need to be lowered over 18 feet. Columbia Center Blvd is a highly travelled arterial and the surrounding area around the crossing is developed. Geometrically it wouldn't be feasible and the impacts to the traveling public and properties rule out this option. *(Due to its obvious infeasibility; no exhibit has been created for this option.)*

Option #2-Maintain Columbia Center RR Bridge elevation and lower track towards Center Parkway.

- This option is not feasible because the Center Parkway profile design will not meet City design criteria. The roadway grade would be over 8% and the fill depth would be over 19ft restricting access to existing businesses as well as adjacent properties. It would also require extensive retaining wall systems along the railroad as well as Center Parkway. *(See Grade Separation Evaluation #2 Exhibit)*

Option #3-Maintain RR elevation and lower Center Parkway under track.

- This option is not feasible because the excavation depth along Center Parkway would be over 23ft. This would restrict access to existing businesses as well as adjacent properties. It would require an extensive retaining wall system along Center Parkway. It should also be noted that a rail over roadway crossing is generally not desirable to railroads as this tends to increase maintenance costs. *(See Grade Separation Evaluation #3 Exhibit)*

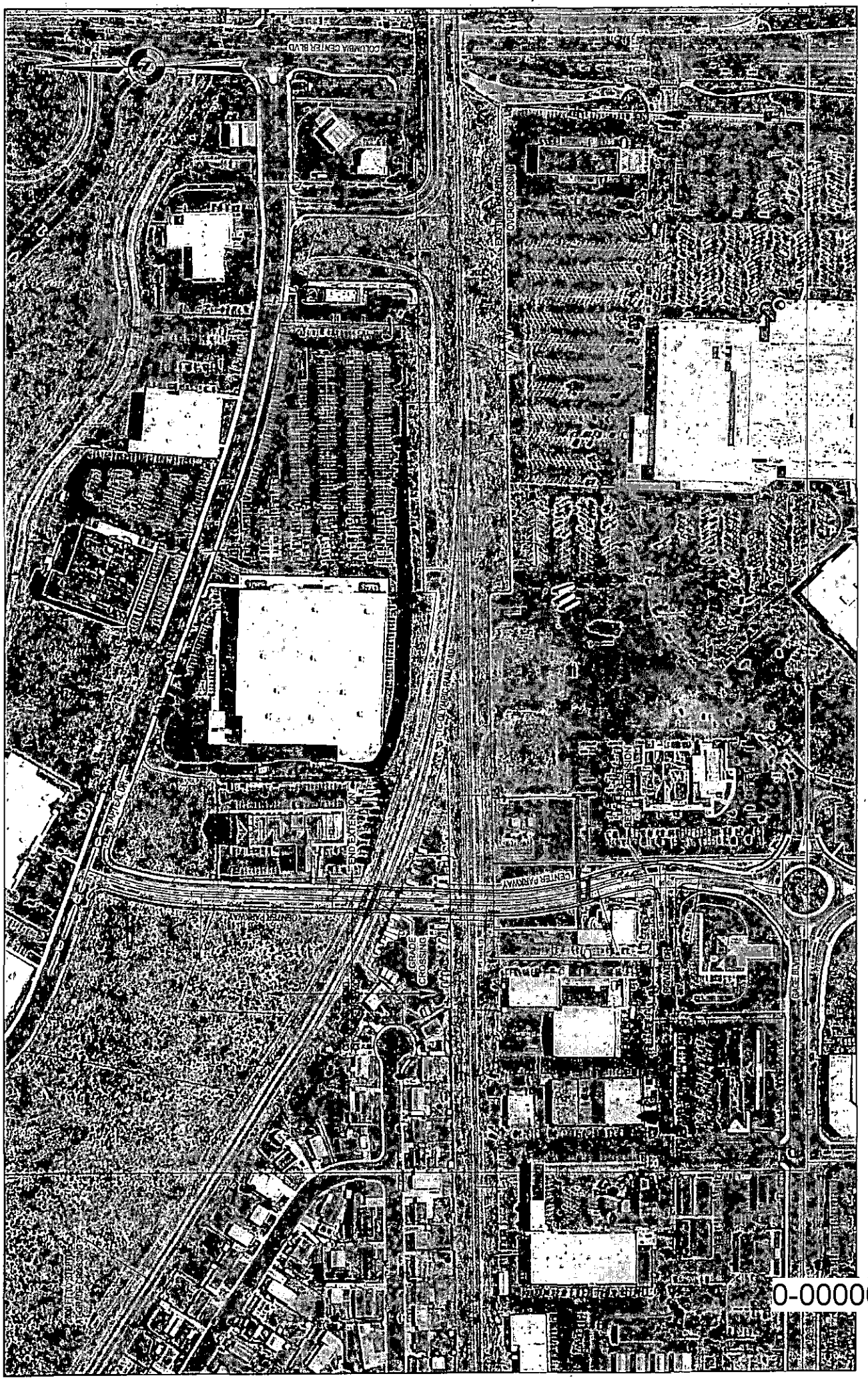
Option #4-Maintain Columbia Center RR Bridge elevation and raise track towards Center Parkway.

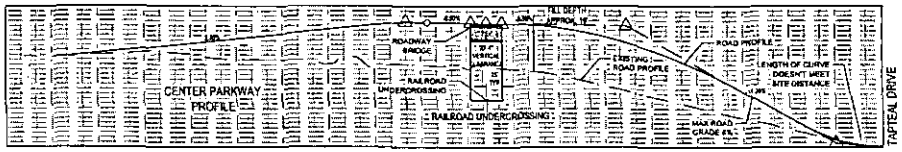
- This option is not feasible because the fill depth along the track would be over 18ft requiring an extensive retaining wall system to keep the fill within the right of way. Raising the grade of the railroad would likely require fill slopes that could impact the loop road parallel to the tracks that goes over Columbia Center. Similarly, fill slopes would likely impact private properties on either side of Center Parkway. Although this has the least grade impact along Center Parkway it would still require an excavation depth over 6 ft and would restrict access to existing businesses as well as adjacent properties. *(See Grade Separation Evaluation #4 Exhibit)*

Summary

In looking at a grade separation, the most desirable configuration is for the roadway to go over the railroad. Options #1 and #2 evaluate what would be required to provide a roadway overcrossing of the railroad. Neither of these options are feasible geometrically. The next configuration is for the railroad to go over the roadway. Options #3 and #4 evaluate what would be required to provide a roadway undercrossing of the railroad. Option #3 is not feasible due to the excavation depths and access issues. This leaves Option #4. Although the excavation depths along Center Parkway are not as deep, it still restricts access along the deeper cut length. There are also challenges in dealing with 18 ft fill heights along the railroad and building the fills, retaining walls, and structure while maintaining rail operations.

Based on this analysis, a grade separated crossing is not feasible at this location.

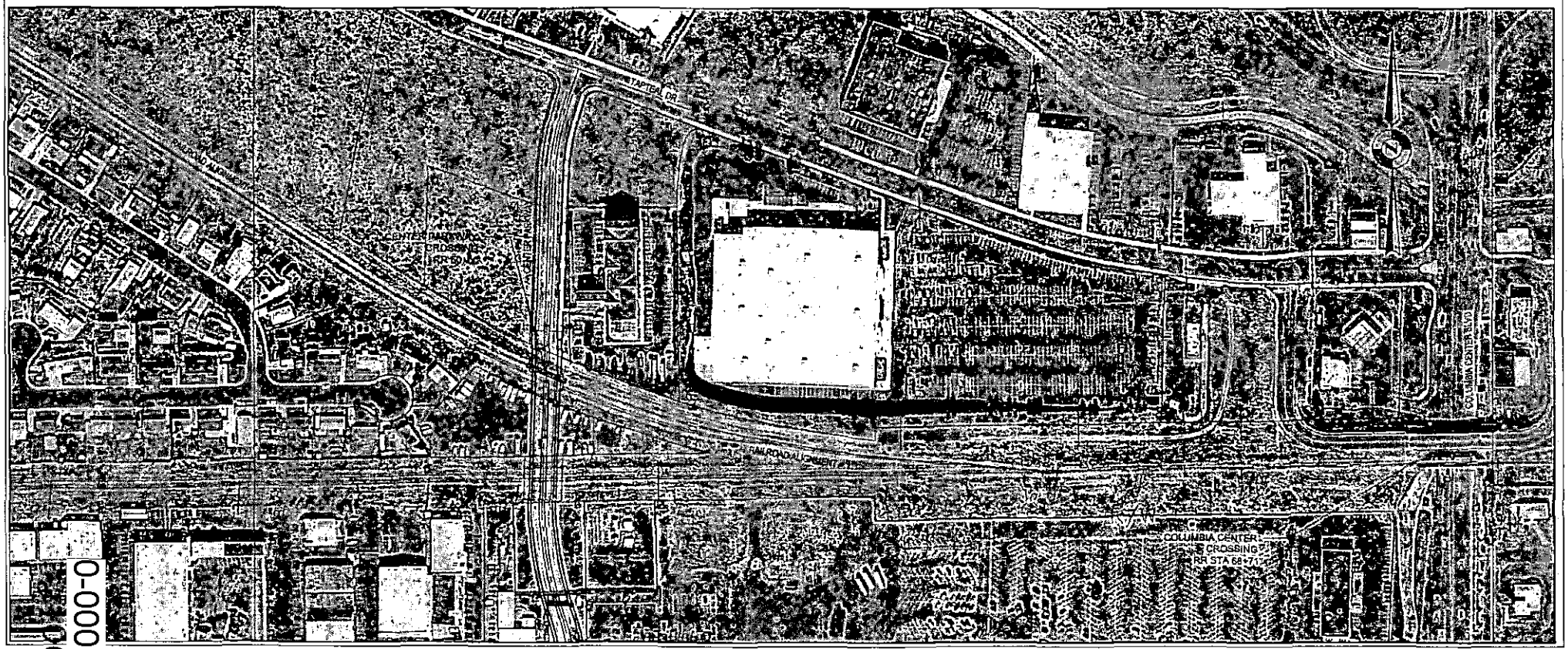

COLUMBIA CENTER BLVD
EXISTING RAILROAD OVERCROSSING
TAPTEAL DR
END EXTENSION
UNION PACIFIC RAILROAD
CENTER PARKWAY
CENTER PARKWAY
GRADE CROSSING
GAGE BLVD



GRADE SEPARATION EVALUATION #2
RAILROAD UNDER ROADWAY

- HOLD RR ELEVATION AT COLUMBIA CENTER RR BRIDGE
- GRADE RR TOWARDS CENTER PARKWAY USING A MAX -1% SLOPE
- CONSTRUCT ROADWAY BRIDGE OVER RAILROAD FOR CENTER PARKWAY CROSSING

OPTION DOES NOT WORK GEOMETRICALLY:
- GRADE ON CENTER PARKWAY EXCEEDS MAX ROADWAY GRADES ALLOWED
- FILL DEPTH IS IN EXCESS OF 19' WOULD RESTRICT ACCESS TO PROPERTIES ALONG CORRIDOR.
- RETAINING WALL HEIGHTS GREATER THAN 19' WOULD BE REQUIRED.

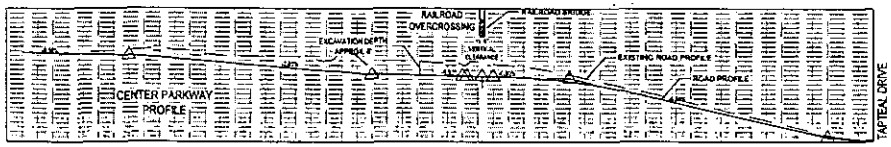


GRADE SEPARATION EVALUATION #3
ROADWAY UNDER RAILROAD

- HOLD RR ELEVATION AT CENTER PARKWAY
- GRADE ROADWAY UNDER RAILROAD
- CONSTRUCT RR BRIDGE OVER ROADWAY FOR CENTER PARKWAY CROSSING

OPTION DOES NOT WORK GEOMETRICALLY:

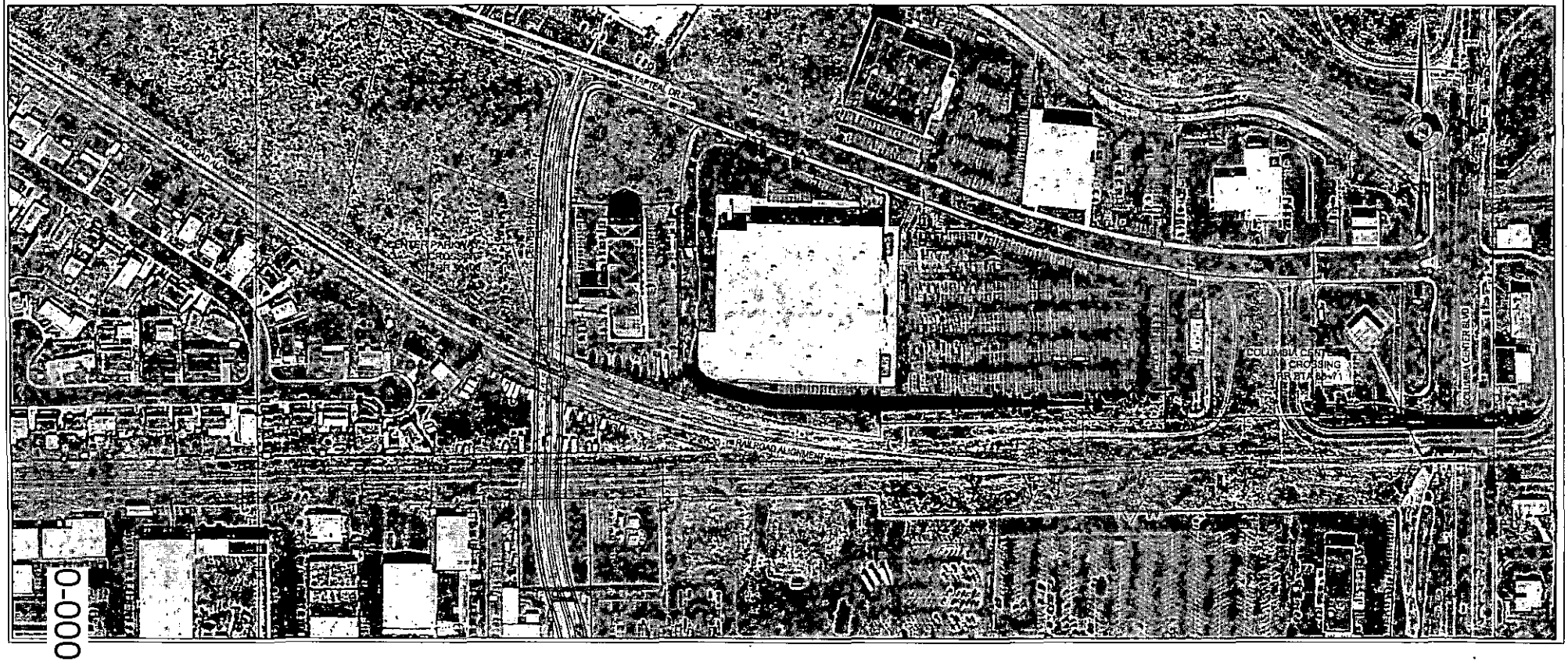
- EXCAVATION DEPTH IS IN EXCESS OF 23' WOULD RESTRICT ACCESS TO PROPERTIES ALONG CORRIDOR.
- RETAINING WALL HEIGHTS GREATER THAN 23' WOULD BE REQUIRED.



GRADE SEPARATION EVALUATION #4
ROADWAY UNDER RAILROAD

- HOLD RR ELEVATION AT COLUMBIA CENTER RR BRIDGE
- GRADE ROADWAY TOWARDS CENTER PARKWAY USING A MAX +1% SLOPE
- CONSTRUCT RR BRIDGE OVER ROADWAY FOR CENTER PARKWAY CROSSING

OPTION DOES NOT WORK GEOMETRICALLY:
- EXCAVATION DEPTH IS IN EXCESS OF 8' WOULD RESTRICT ACCESS TO PROPERTIES ALONG CORRIDOR.
- RETAINING WALL HEIGHTS GREATER THAN 18' WOULD BE REQUIRED ALONG THE RAILROAD.



WUTC DOCKET TR-130499
EXHIBIT KJ-8
ADMIT ☒ W/D ☐ REJECT ☐

DAVID EVANS AND ASSOCIATES INC.

Meeting Record

Project:	City of Richland – Center Parkway At-Grade Crossing
DEA Project #:	CRCH0000-0001
Date:	December 11th, 2012
Time:	9:30 A.M. until 12:00 P.M.
Subject:	Center Parkway proposed at-grade highway-railroad Crossing Diagnostic Meeting
Attendees:	Pete Rogalsky, City of Richland; Jeff Peters; City of Richland; Julie Nelson, City of Richland; Kathy Hunter, Washington Utilities and Transportation Commission (UTC); John Deskins, City of Kennewick; Steve Plummer, City of Kennewick; Bruce Beauchene, City of Kennewick; Spencer Montgomery, JUB Engineers; Susan Grabler, David Evans and Associates; Kevin Jeffers, David Evans and Associates
Invited but not in attendance	Rhett Peterson, Tri-City and Olympia Railroad; Scott D. Keller, Port of Benton
Location:	Current end of street near 1970 Center Parkway, Richland, WA 99352
Copies to:	Invitees, project file

Introductions

City of Richland

Pete Rogalsky, Public Works Director
Jeff Peters, Transportation & Development Manager
Julie Nelson, Project Engineer

Washington Utilities and Transportation Commission (UTC)

Kathy Hunter, Rail Manager

JUB Engineers

Spencer Montgomery, Transportation Planner

City of Kennewick

John Deskins, Traffic Engineer
Steve Plummer, Engineering Services Manager
Bruce Beauchene, City Engineer

David Evans and Associates (DEA)

Susan Grabler, Grade Crossing/Quiet Zone Specialist
Kevin Jeffers, Project Manager

Items Discussed:

WUTC DOCKET TR-130499

The proposed roadway will cross the Port tracks just south of the current dead-ended Center Parkway. The north property line of the Port railroad is the boundary of the two cities, making the proposed at-grade crossing in the City of Kennewick.

While invited, the TCRY and Port did not have representatives in attendance. Thus, no one at the meeting entered the Port right-of-way.

There are currently two sets of tracks at the proposed highway-railroad crossing. The TCRY holds train operating rights on the northern-most set of tracks that extend to the Port of Benton, north of Richland. The Port of Benton owns the rail infrastructure and the underlying right-of-way. There are two tracks on the Ports right-of-way at the proposed Center Parkway highway-railroad crossing; based on aerial photos, the northerly track is the "main" line track; the south track is a siding track. The turnouts (aka switches) to the siding are about 500 feet to the east and about 1,600 feet to the west of the proposed crossing.

It is believed that the train speed on the main track is about 35 mph; the siding speed is believed to be no higher than 10 mph. The Federal Railroad Administration (FRA) crossing database for the Steptoe Road at-grade crossing (USDOT Number 310397T) about 1/3rd of a mile to the west suggests that six trains per day traverse the proposed crossing, but this data has not been updated since 2004. Further, the Port and the City both anticipate increases in industrial development on the rail line which could increase the number or length of trains using the branch line.

In the past, TCRY is believed to have used the siding to interchange cars with Union Pacific Railroad (UPRR). It is now understood that TCRY moves cars bound for UPRR further into Kennewick.

Both UPRR and BNSF Railway have trackage rights into the Port of Benton, based on a recent court case. The City has agreements with both the BNSF and UPRR to not oppose a petition for the proposed Center Parkway at-grade highway-railroad crossing. The UPRR agreement includes a clause that UPRR will no longer interchange cars at the proposed at-grade crossing location. The City also has an agreement with the Port of Benton that would grant an easement for the roadway once a Crossing Order is received through the UTC process.

About 200 feet south of Port tracks are two UPRR tracks. These tracks are no longer being used. The City of Kennewick has purchased the ROW for the roadway from Union Pacific. The City intends to remove the tracks from the roadway ROW as part of the project, so no at-grade crossing of these two tracks will be required.

DEA presented a three-page conceptual design of what the proposed at grade crossing might look like. This depicts only the "main line" Port track will be crossed and assumes the "siding track" will be relocated or removed from the crossing. It was discussed that elimination of the "siding" track would likely be a condition of approval of the petition. The crossing is conceptually designed to include active warning devises including bells, flashing lights, and gates. While the conceptual design depicts four lanes, the City advised that it will only have two travel lanes, a center turn lane and two bike lanes. Sidewalks on both sides of the proposed roadway are also included to be located behind the automatic warning devices per the MUTCD.

During the meeting, it was discussed that non-mountable medians would be included at the proposed Port crossing; the southern median would be at least 100 feet from the crossing arm protecting the

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RICHLAND CITY CLERK ORD 94.00 Benton County

WHEN RECORDED RETURN TO:

Richland City Clerk's Office
505 Swift Boulevard
Richland, WA 99352

WUTC DOCKET TR-130499
EXHIBIT KJ-9
ADMIT ☒ W/D ☐ REJECT ☐

ORDINANCE NO. 40-06

AN ORDINANCE of the City of Richland relating to amending the Comprehensive Plan and amending Title 23 of the Richland Municipal Code.

WHEREAS, the City of Richland's existing Comprehensive Plan was last amended on December 6, 2005; and

WHEREAS, the City of Richland received requests for comprehensive plan amendments from Robert Young, Northstone LLC, and Gregory Holben and also processed five requests for amendments from staff; and

WHEREAS, the Richland Planning Commission held public hearings to review the proposed amendments to the Comprehensive Plan at a special meeting on September 13 and at regular meetings on September 27 and October 25 and forwarded formal recommendations to the City Council for approval of the proposed amendments to the Comprehensive Plan; and

WHEREAS, the Richland City Council conducted a public hearing on November 7, 2006 to consider the proposed comprehensive plan amendments; and

WHEREAS, pursuant to the State Environmental Policy Act and RCW 43.21C.030(2) the City of Richland adopted the Draft and Final Environmental Impact

Statement that had been prepared for the adoption of the 1997 Comprehensive Plan; and

WHEREAS, City staff completed an analysis of each proposed comprehensive plan amendment to determine compliance with the Growth Management Act; and

WHEREAS, the Richland City Council has considered all recommendations and reports submitted to it and all comments made at the public hearing and is in concurrence with the findings and recommendations of the Richland Planning Commission and City staff; and

WHEREAS, it is hereby found to be in the best interest of the citizens of Richland that the amendments to the Comprehensive Plan in the form provided herein be adopted.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Richland as follows:

Section 1.01 The following Findings and Conclusions for the 2006 Comprehensive Plan Amendments form the basis for the adoption of the 2006 Comprehensive Plan as set forth in Section 1.02 of this ordinance.

Amendment to the Parks and Recreation Section of the Capital Facilities Plan to reflect updates made in the City Parks, Trails and Open Space Master Plan and land use designation changes to re-designate City owned park land (Z2006-114):

1. In 1997, the City of Richland adopted a comprehensive plan that addressed community needs for parks and open spaces in compliance with the Growth Management Act.

2. The City has continued to refine its parks planning efforts through the development and approval of the Rivershore Master Plan in 1999 and the Richland Parks, Facilities and Open Space Plan in 2000, which was updated in 2002 and again in 2006 with the adoption of the 2006-2011 Parks, Trails and Open Space Master Plan. All of these planning documents were reviewed and

approved by the Richland Parks and Recreation Commission and the City Council.

3. The proposed park and open space related amendments to the comprehensive plan more accurately reflect the City's direction regarding the City's projected needs for park facilities and the City's projected plans for expanding and enhancing its system of park and open spaces.

4. The proposed amendments to the City's Land Use Plan Map reflect the City, County and School District acquisition and/or development of park, school and open space lands.

5. Based upon the above findings and conclusions, the adoption of proposed amendments to the Park and Recreation Section of the Capital Facilities element of the comprehensive plan is in the best interests of the community of Richland.

Amendment to the Transportation Chapter of the Comprehensive Plan to add a fiscally constrained Transportation Improvement Program (Z2006-116):

6. In 1997, the City of Richland adopted a comprehensive plan that addressed community needs for transportation in compliance with the Growth Management Act.

7. The City has continued to refine its transportation planning efforts since 1997 through periodic updates, including annual updates to the Transportation Improvement Program that are reviewed by the Planning Commission and adopted by City Council. Additionally, the City completed a transportation study in 2004.

8. The proposed transportation improvement program related amendments to the comprehensive plan more accurately reflect the City's direction regarding the City's projected needs for transportation facilities and the City's projected plans for expanding and enhancing its transportation system.

9. Based upon the above findings and conclusions, the adoption of proposed amendments to the Transportation element of the comprehensive plan is in the best interests of the community of Richland.

Amendment to the Natural Gas Section of the Utilities Chapter of the Comprehensive Plan. (Z2006-116)

10. In 1997, the City of Richland adopted a comprehensive plan that addressed community needs for utilities in compliance with the Growth Management Act. Natural gas is an energy source available in the community and is provided by the Cascade Natural Gas Company.

29. Proposed amendments would result in the relocation of the property designated for a future school site, moving it closer to the future second entrance into the Horn Rapids Community.

30. Other proposed amendments are relatively minor adjustments between the medium density and high density land use designations.

31. The proposed public facility designation would provide for both a future public school site and a park.

32. The comprehensive plan amendment is consistent with the provisions of the growth management act.

33. Based on the above findings and conclusions, approval of the comprehensive plan amendment would be in the best interest of the community of Richland.

Amendment to the Land Use Designation map of the City Comprehensive Plan, reclassifying 4.8 acres from Medium Density Residential to Commercial (Greg Holben) (Z2006-111):

34. The City of Richland Comprehensive Plan, adopted in 1997, currently designates the 4.8-acre parcel as High Density Residential 10.1+ dwellings/acre. The property is currently zoned R-3 Multiple Family Residential.

35. Property at the northwest corner of the Jadwin/McMurray intersection is developed with commercial uses (a mini-mart). Property to the north is developed with the City fire station. All other adjacent properties are developed with multi-family residential land uses;

36. Jadwin Avenue is designated a minor arterial and McMurray Street is designed a neighborhood collector on the City's Functional Classification System Plan.

37. Neighborhood commercial uses are appropriate in this location, given the site's proximity to collector streets and the existing land uses in the vicinity.

38. Based on the above findings and conclusions, approval of the comprehensive plan amendment and zone change request would be in the best interest of the community of Richland.

Amendment to the Land Use Designation map of the City Comprehensive Plan, reclassifying approximately 68 acres from an Industrial to Commercial in the Richland Wye (Z2006-118).

39. The City of Richland Comprehensive Plan currently designates approximately 68 acres in the Richland Wye as suitable for industrial land uses.

40. The current industrial land use designation is based on the 1998 Richland Wye Master Plan recommendations. The Industrial land use designation was put in place largely on the expectation that the Port of Kennewick would develop an industrial park on the Spaulding Business Center property.

41. At the time that the industrial land use designation was put into place, no changes to zoning were adopted. Consequently, there are existing discrepancies between zoning and comprehensive plan designations in the Richland Wye.

42. The Port of Kennewick is currently developing the Spaulding Business Center with office and potentially commercial land uses and would not benefit from the Industrial land use designation. Other Richland Wye properties that carry an industrial land use designation have not been developed with industrial land uses.

43. The City has begun a process of updating the Richland Wye Master Plan and through an open house has determined that Richland Wye residents and property owners are not supportive of the industrial land use designation. The open house also indicated a need for further public involvement. The City anticipates that the further work to update the Richland Wye Master Plan will be completed in 2007.

44. The City has an abundant supply of industrial land located along the northern border of the City, north of SR 240.

45. Based on the above findings and conclusions, approval of the comprehensive plan amendment would be in the best interest of the community of Richland.

Section 1.02 Section 23.01.030 of the Richland Municipal Code, as last amended by Ordinance No. 47-05, is hereby amended to read as follows:

23.01.030 Plan Adopted.
There is hereby adopted as a current and flexible guide to coordinate the public and private development of property and other resources of the City of Richland that certain Comprehensive Plan adopted by the Richland City Council on October 6, 1997, and amended on December 14, 1998, December 14, 1999, December 19, 2000, October 16, 2001, December 10, 2002, November 4, 2003, December 7, 2004, December 6, 2005 and December 12, 2006 which is on file with the City Clerk and consists of maps, general goals and policies relating to economic development, land use, transportation, utilities, capital facilities and housing, and also establishes an Urban Growth Area Boundary Land Use Plan Map.

Section 1.03 The City Clerk is directed to file with the Auditor of Benton County, Washington, a copy of this ordinance and the attached amendments to the City of

Richland's Comprehensive Plan entitled Exhibit A – Amendment to Park and Recreation Section of the Capital Facilities Plan, Exhibit B – Amendment to the Transportation Element of the Plan; Exhibit C – Amendment to the Natural Gas Section of the Utilities Element of the Plan; Exhibit D – Amendment to the Economic Development Chapter of the Plan; Exhibit E – Amendment to Land Use Designation Map in the Land Use Element; all duly certified by the clerk as true copies.

Section 1.04 This ordinance shall take effect on the day following the date of its publication in the official newspaper of the City of Richland.

Section 1.05 If any section, sentence, clause, or phrase of the amendments set forth in this Comprehensive Plan annual amendment ordinance should be timely challenged to any body or court with authority and jurisdiction to hear such a challenge, or if such amendment be determined to be invalid or unconstitutional, such challenge, invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause, phrase or amendment of this adopted annual comprehensive plan amendment ordinance.

Section 1.06 The City Council further finds that the amendments to the Richland Comprehensive Plan herein adopted, together with amendments adopted by the City Council from 2000 thru 2005 fulfill the City's obligations to comply with the Washington State Growth Management Act requirements of RCW 36.70A.130(3)(C). Specifically, the City is required to consider updates to its comprehensive plan by the end of 2006. The Council certifies that the Richland Comprehensive Plan; adopted in 1997 and subsequently amended annually have included updates to every chapter of the Comprehensive Plan and therefore fulfill the requirements of the state law.

PASSED by the City Council of the City of Richland, at a regular meeting on the 19th day of December, 2006.

ROBERT A. WELCH
Mayor

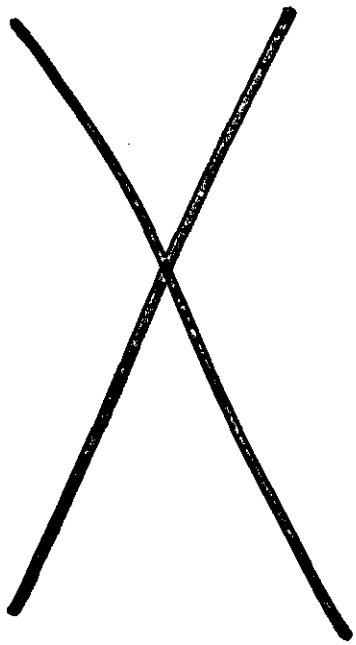
ATTEST:

CYNTHIA D. JOHNSON
City Clerk

APPROVED AS TO FORM:

THOMAS O. LAMPSON
City Attorney

Date Published: December 24, 2006



WUTC DOCKET TR-130499
EXHIBIT KJ-10TR
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit No. KMJ-10T

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED REBUTTAL TESTIMONY OF KEVIN M. JEFFERS, PE

1. INTRODUCTION

Kevin M. Jeffers is an associate at the engineering firm David Evans and Associates ("DEA"). Mr. Jeffers' pre-filed rebuttal testimony provides comprehensive train counts for the track at the location of the proposed crossing. Mr. Jeffers compiled the track usage data based upon data provided by the railroads that use the track at the location of the crossing. When reviewing this data, Mr. Jeffers determined that the data provided by TCRY's in response to UTC's data request is inconsistent with the data provided by TCRY to Petitioners in response to Petitioners' data request. To address this inconsistency, Mr. Jeffers created two models for the UTC's review. Mr. Jeffers' compilation of track usage data shows that **3.2 to 5.02 trains**

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currently use the track per weekday, depending upon which set of TCRY data is correct. **By 2030, assuming an *annual* five-percent (5%) growth rate, approximately 5.48 trains will use the track per weekday**, again, depending upon which set of TCRY data is correct.

Finally, Mr. Jeffers' pre-filed rebuttal testimony explains how the safety features of the proposed crossing protect the public and vehicles that will use the crossing.

2. CREDENTIALS

Kevin M. Jeffers' credentials and background are set forth in Exhibit KMJ-1T.

3. MATERIALS REVIEWED

Q: *Please identify the materials that you reviewed to prepare this pre-filed rebuttal testimony.*

A: I reviewed the following materials:

- Tri-City & Olympia Railroad ("TCRY") response to UTC data request Nos 2 – 5;
- TCRY's response to Petitioners' data request;
- Union Pacific Railroad ("UPRR") response to UTC data request Nos 2 – 5; and
- BNSF Railway ("BNSF") response to UTC data request Nos 2 – 5.
- *Tri-City Herald* article reporting on a BNSF train collision, available here: http://www.tri-cityherald.com/2013/10/21/2635656/two-hit-by-train-in-kennewick.html
- A BNSF Railway track chart and timetable for the Kennewick area were the BSNF train collision was reported

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Q: *What data did UTC request from TCRY, UPRR, and BNSF in data requests No. 2 and No. 4?*

A: Data request No. 2 asked the railroads to identify the number of trains per day that it operates at the location of the proposed crossing. It also asked whether the railroad anticipates any change in the number of trains traveling over the track at this location.

Data request No. 4 asked the railroads to identify the average number of cars or length of trains at the location of the proposed crossing. It also asked whether the railroad anticipates any change in the length of trains that travel over the track at this location.

4. RAILROADS THAT OPERATE ON THE TRACK SUBJECT TO THIS PETITION

Q: *What railroads operate on the tracks that are the subject of this petition?*

A: Tri-city and Olympia Railroad, ("TCRY"), Union Pacific Railraod ("UPRR"), and BNSF Railway ("BNSF").

Q: *Do any other railroads operate on these tracks?*

A: No.

Q: *Since only TCRY, UPRR and BNSF use the track subject to this petition, did the UTC data request provide UTC with the necessary data to determine the baseline track usage?*

A: Yes.

5. REPORTED USE OF THE TRACK

Q: *Based upon the figures provided by the railroads to UTC, what is the current usage of the track subject to this petition?*

A: The railroads reported the following use of the track:

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- **TCRY:** 2 to 4 trains per weekday, with an average length of "roughly 15 cars per train" (TCRY's response to UTC data request No. 4, page 4, line 7). TCRY also reports that it is projected to move over the proposed crossing a total of 2,310 total railcars (TCRY's response to Petitioners' Data request, page 4, lines 16 - 20).
- **UPRR:** 0 trains in 2013. However, UPRR states that they have moved 12 unit trains of between 80 – 100 cars per train over the past 4.5 years.
- **BNSF:** 1 train per day, with an average length of six cars per train.

6. DATA PROVIDED BY TCRY

Q: *Is the data that TCRY provided to Petitioners in their data request consistent with the data that it provided to the UTC in its data request?*

A: No.

Q: *Please explain.*

A: TCRY reported to Petitioners that it is projected to move a total of 2,310 railcars over the crossing in 2013 (TCRY's response to Petitioners' data request, page 4, lines 10 – 19). TCRY also reported to UTC that each train is "roughly 15 cars in length" (TCRY's response to UTC data request No. 4, page 4, line 7).

2,310 cars divided by 15 cars per train = 154 trains for 2013. 154 divided by 52 weeks = 2.96 trains per week. 2.96 trains per week divided by 5 weekdays per week = **TCRY runs 0.59 trains per weekday in one direction, or 1.18 cars per weekday**, if loaded cars go in one direction over the crossing and cross again in the other direction empty.

This calculation is inconsistent with the data that TCRY provided to UTC. TCRY reported to UTC that it runs an average of "two (2) to four (4) trains per weekday (TCRY response to UTC data request, page 2, lines 2-3).

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Q; *Do you have any other observations on assertions made by TCRY in the data that it provided to UTC?*

A: Yes. TCRY repeatedly cites the "unit trains" run by UPRR as purported evidence of regular railcar activity of the tracks at the crossing (TCRY Response to UTC data request Nos. 2 – 5, page 2, line 3; page 3, line 7; page 4, line 8). However, the data provided by UPRR shows that it has moved a total of 12 unit trains over the past 4.5 years, with it moving no unit trains in 2013.

7. 2013 TRACK USAGE

Q: *What is the most efficient way to use the data provided by the railroads to determine actual and projected track usage?*

A: It is most efficient to convert the data into total trains per weekday. This calculation will allow the UTC to determine the frequency with which the crossing will be closed to accommodate rail traffic.

Q: *Did you convert this data to determine average trains per day?*

A: Yes. Graphic 1 – Exhibit KMJ-11 – provides the average amount of trains per weekday on the tracks at the location of the crossing.

Q: *What conclusion can the UTC make from Graphic 1?*

A: The UTC can conclude that **3.2 trains per weekday** currently use the tracks at the location of the crossing. As demonstrated in Graphic 1, TCRY runs 1.18 trains per weekday; BNSF runs 2 trains per weekday; UPRR runs .02 trains per weekday.

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Q: *What assumptions did you rely upon when making Graphic 1.*

A: Graphic 1 assumes that TCRY runs 1.18 trains per weekday over the crossing. This assumption presumes that TCRY's car volume data is correct – that it will move 2,310 cars for 2013, with an average of 15 cars per train.

I also rely on BNSF's statement that it runs one train per day of six cars. This train goes into the Port of Benton area then returns, so that would be two train movements over the crossing per day.

Rather than discounting UPRR's train count to zero based upon its actual 2013 data, I relied upon UPRR's statement that it moved 12 unit trains over the last 4.5 years. This track usage data provides a better understanding of the track's actual usage.

Q: *Did you create a graphic that also accounts for TCRY's assertion that it operates between two to four trains per weekday?*

A: Yes. I also created Graphic 2- Exhibit KMJ-12 - which is based upon TCRY running an average of three trains per workday. The other assumptions for BNSF and UPRR remain the same.

Q: *What conclusion can be made from Graphic 2?*

A: It is possible that **5.02 trains per weekday** may use the tracks at the location of the crossing. This conclusion presumes that TCRY incorrectly provided data to UTC and Petitioners when it stated that it projects 2,310 total railcars for 2013, with each train carrying 15 trains.

8. PROJECTED TOTAL TRAINS PER WEEKDAY

Q: *Did you review TCRY's projected track usage?*

A: Yes. TCRY stated that it "anticipates annual increases in railcar traffic of approximately 20% each year" (TCRY's response to petitioners data request no. 21, page 4, lines 21-22).

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Q: *What is your reaction to TCRY's projected growth of 20% per year?*

A: I recognize that there may be an expansion in the Horn Rapids Industrial Park and that there may be construction of additional "loop tracks" in the vicinity. However, a 20% annual increase would be unusual and speculative over an extended time period.

In addition, it is important to note that TCRY has provided the UTC with only two full years of complete railcar data for this crossing. Further, TCRY's data shows a *decrease* in TCRY's total railcar traffic from 2,060 railcars in 2000 to 1,999 railcars in 2012 (TCRY's response to Petitioners' data request, page 4, line 19-20).

Q: *What is a typical rate of growth for the industry?*

A: A typical rate of growth for capacity planning purposes for the rail industry is an annual increase of 5%. This figure is based on my personal experience while working for the Washington State Department of Transportation and projecting growth in the number of freight trains to inform the need to grade separations in Vancouver, Kalama, Kelso, and Tacoma, Washington. Even this unconstrained growth assumed over a long period can lead to rail traffic volumes that cannot be accommodated without investments in rail infrastructure that are unlikely to occur.

Q: *Recognizing the two varying rates of growth, can you provide the UTC with any data so that it can make an informed decision on projected total trains per weekday at the crossing?*

A: Yes. Ultimately, the cities want to provide the UTC with realistic growth figures so that it can make an informed decision in this petition process. The year 2030 is assumed as the planning horizon for transportation planning. For example, 2030 is the planning horizon used in the J-U-B Transportation Study, which accompanied this petition. Accordingly, both Graphic 1 and Graphic 2 include growth projections for the year 2030, which is 17 years from the present date.

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Graphic 1 relies upon the industry standard 5% growth rate for TCRY, UPRR, and BNSF. Using this projection, **a total of 5.48 trains per weekday** will use the tracks at the crossing by the year 2030. Graphic 1 also includes data whereby we presume that TCRY can achieve a 20% annual growth rate for 17 consecutive years, while UPRR and BNSF achieve a 5% growth rate during this time. Under this projection, a total of 28.96 trains per weekday use the track at the crossing.

Similarly, Graphic 2, which presumes TCRY runs three trains per weekday, also relies upon the industry standard 5% growth rate for TCRY, UPRR, and BNSF. Using this projection, a total of 11.51 trains per weekday use the tracks at the crossing. Graphic 2 also includes data speculating that TCRY can achieve a 20% annual growth rate for 17 consecutive years, while UPRR and BNSF achieve a 5% growth rate during this time. Under this projection, a total of 71.19 trains per weekday use the track at the crossing.

Q: *Presuming that TCRY can achieve a 20% annual growth for 17 consecutive years, can the existing tracks support 71.19 trains per weekday?*

A: It is unlikely that the tracks can support this amount of use. For TCRY to move this projected number of trains, it would need to make large-scale investment in the existing infrastructure beyond track rehabilitation. The assumption that the trains would not increase in length is not likely to be accurate into the future. The costs of move small numbers of cars in each train would not be financially viable. Further, the 71.19 train per day exceeds even the busiest main lines in Washington State.

9. CONCLUSIONS REGARDING THE USE OF THE TRACKS

Q: *Based upon the data that you reviewed, what is the baseline use of the tracks at the crossing?*

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A: Track usage data shows that **a total of 3.2 to 5.02 trains currently use the track per weekday**, depending upon which set of TCRY data is correct.

Q: *Based upon the data that you reviewed, what is your projected use of the tracks at the crossing?*

A: It is unlikely that TCRY can achieve 20% annual growth for 17 consecutive years. A 5% annual growth rate is far more reasonable over a 17 year time period. The 5% rate can account for a few years of exceptional growth, and the 5% annual growth rate can also account for years when railcar traffic decreases, just as it did for TCRY between 2011 and 2012. Further, the assumption that the trains would not increase in length as the number of cars grows that is depicted in Graphic 2 is not likely to be accurate into the future. Therefore, **by 2030, assuming an *annual* five percent growth rate, approximately 5.48 trains are projected to use the track per weekday.**

10. CROSSING SAFETY FEATURES

Q: *The Tri-City Herald reports that, on October 21, a BNSF train running in the City of Kennewick struck two individuals just east of the Volland Street overpass. How does this incident relate to the petition being considered?*

A: My understanding of the incident, from reading media reports and a review of the location using a BNSF track chart and aerial maps, is that the two people were walking their dog along the track on the BNSF main line that is part of the Yakima Valley Subdivision. The location is just east of where West Canal Drive crosses under the single track and intersects with North Volland St. This is approximately at railroad milepost 6.0. The nearest highway-rail grade crossings are about a half-mile to the west and about two miles to the east. The maximum train speed here is 49 mph for freight trains. No passenger trains operate on this rail line on a regular basis.

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It appears that the injured people did not have permission to be on the track and were not crossing at a designated at-grade crossing location.

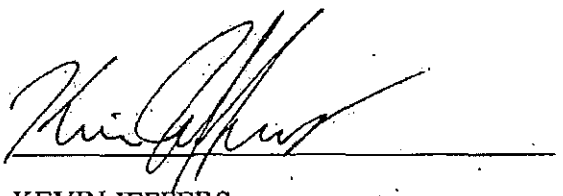
This incident occurred very near a grade-separated crossing, which shows that a grade-separating crossing does not result in eliminating all potential hazards.

This petition is to establish an at-grade crossing, including sidewalks, with active warning devises to protect the public. While the cities cannot protect against all dangers – such as individuals trespassing on tracks – the cities will install safety devices and barriers to warn the public of approaching trains.

11. DECLARATION

I, Kevin Jeffers, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED REBUTTAL TESTIMONY OF KEVIN JEFFERS is true and correct to the best of my knowledge and belief.

DATED THIS 22nd day of October, 2013.



KEVIN JEFFERS

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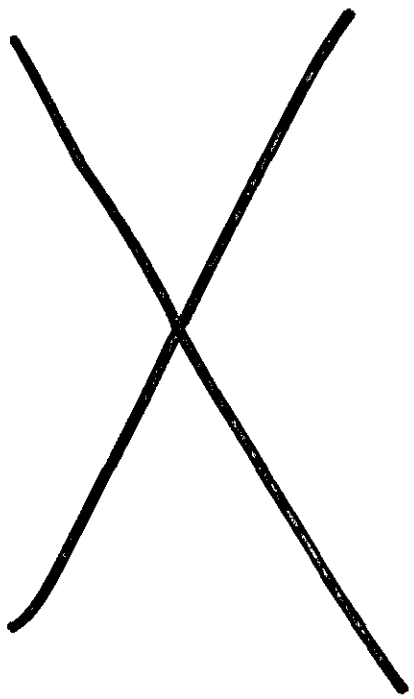
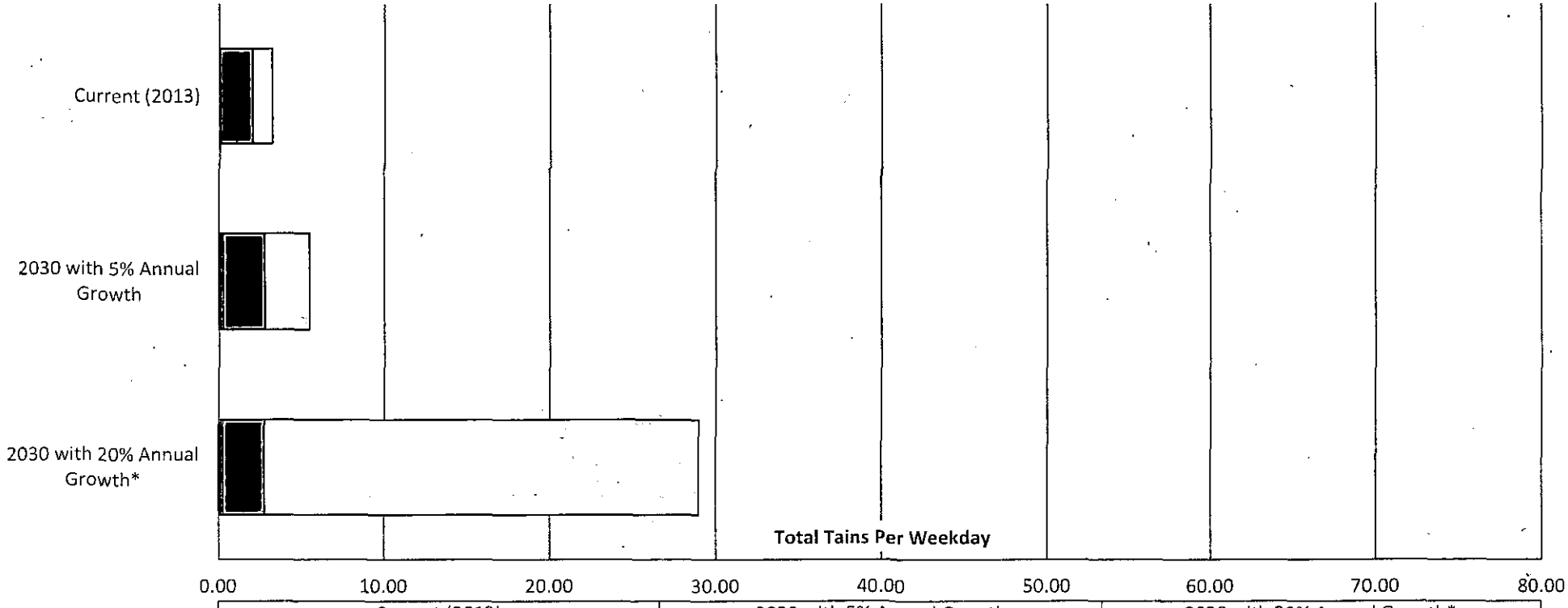


Graphic 1 - Average Trains per Weekday, Current & Future

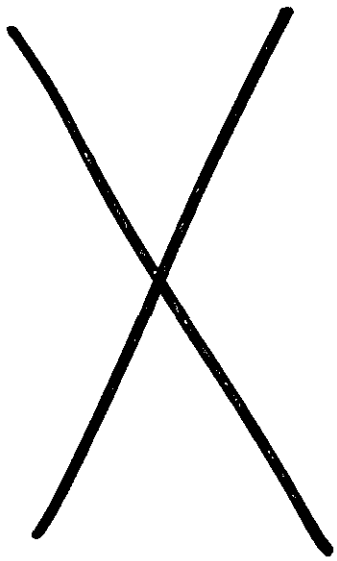
Based on Car Counts Provided By Railroads to UTC Data Request Nos. 2 - 5



	Current (2013)	2030 with 5% Annual Growth	2030 with 20% Annual Growth*
■ UPRR (Ave. 90 cars/train)	0.02	0.28	0.28
■ BNSF (Ave. 6 cars/train)	2.00	2.50	2.50
□ TCRY (Ave. 15 cars/train)	1.18	2.70	26.18

*TCRY train growth at the testified projection of 20%; the more typical 5% is used for other railroads.

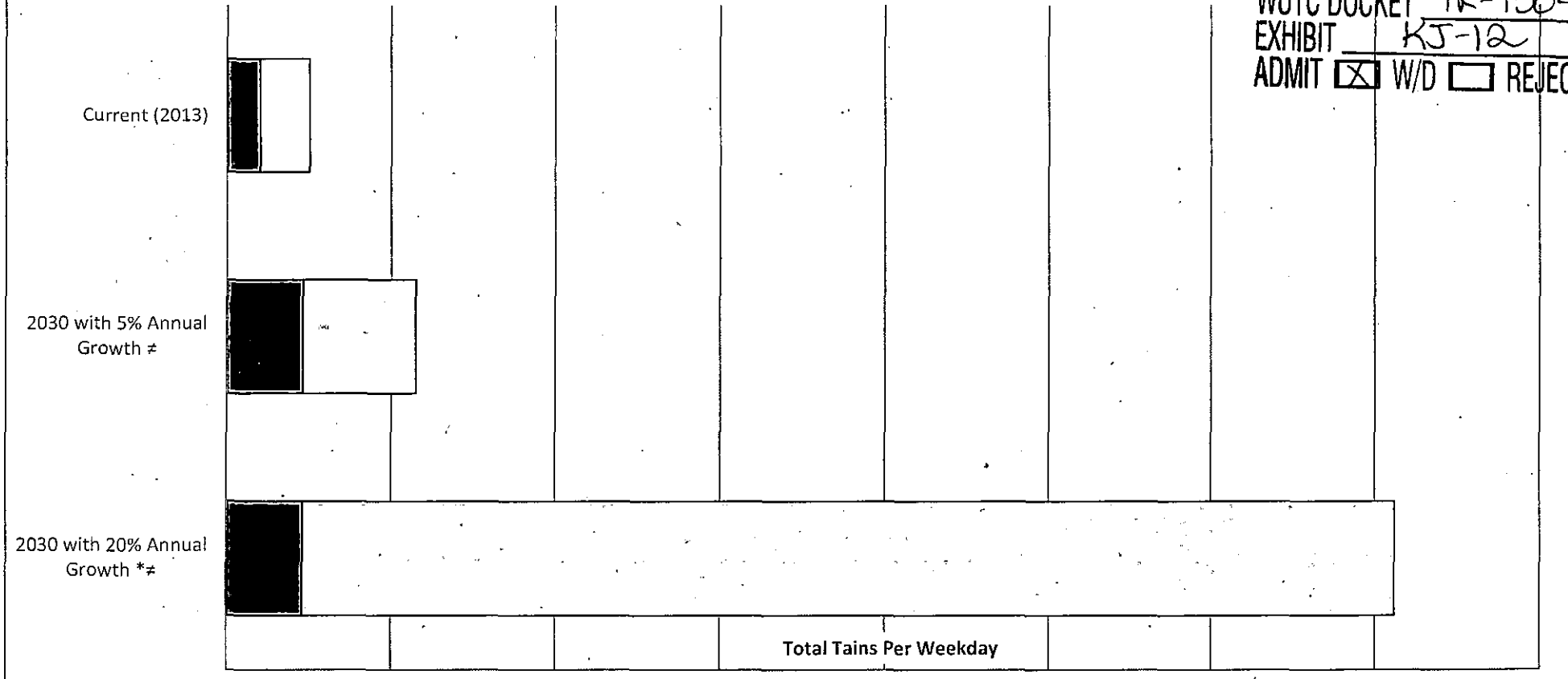
WUTC DOCKET TR-130499
EXHIBIT KJ-11
ADMIT ☒ W/D ☐ REJECT ☐



Graphic 2 - Average Trains per Weekday, Current & Future

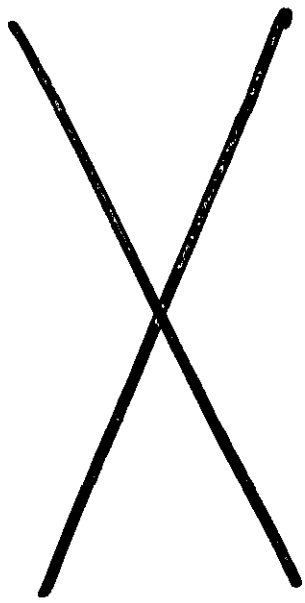
Based on Train Counts Provided By Railroads to UTC Data Request Nos. 2 - 5

WUTC DOCKET TR-130499
EXHIBIT KJ-12
ADMIT ☒ W/D ☐ REJECT ☐



	Current (2013)	2030 with 5% Annual Growth ≠	2030 with 20% Annual Growth *≠
UPRR	0.02	0.05	0.05
BNSF	2.00	4.58	4.58
TCRY	3.00	6.88	66.56

* TCRY train growth at the testified projection of 20%; the more typical 5% is used for other railroads.
≠ 2030 Train volumes assumes growth in the number of trains without increasing train lengths.



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PETITIONERS' RESPONSE TO UTC STAFF DATA REQUESTS NOS. 2 – 4.

PETITIONERS, City of Kennewick and City of Richland, respond to UTC Staff Data Requests Nos. 2 – 4.

Data Request No. 2. Thank you for providing us with an opportunity to clarify the Petitioners' position. The petition before the UTC is for an at-grade crossing at Center Parkway. The crossing may be designed to remove the siding, and it can be designed to accommodate the siding. The Petitioners will accommodate the UTC's preferred approach.

The Petitioners' preferred approach is to remove the siding track as part of the project, making the crossing over only one track. The Petitioners know that rail car interchange with BNSF Railway and Union Pacific Railroad ("UPRR") will not occur at this location, because the City of Richland has agreements with both railroads wherein BNSF and UPRR agree to

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permanently cease interchange at this location. The agreements are available in Petitioners' response to TCRY's first data request.

TCRY has refused to engage in any design consultation with Petitioners on the Center Parkway Crossing. As a result, the Petitioners and TCRY have been unable to develop an agreed-upon solution to the siding track. Based upon TCRY's data, the removal of the siding will likely not impact TCRY's use of the line at the crossing. TCRY has yet to submit any quantifiable information to UTC or Petitioners regarding its use of the siding. In addition, TCRY's car numbers crossing the intersection are 2,060 cars in 2011 and 1,999 cars in 2012. Although a new cold-storage facility is scheduled to begin operation, which may inform TCRY's projected growth, TCRY has not provided any data to demonstrate how it can sustain a 20% annual rate of growth. We note that TCRY's own data demonstrate that TCRY's track usage *decreased* over three percent (3%) from 2011 to 2012, the only two years of complete data provided by TCRY.

As background, the siding track was formerly used for the interchange of rail cars between BNSF and TCRY. But this siding use is no longer the case, as stated in Kevin Jeffers' pre-filed testimony. The use of the siding today is infrequent. The only practical use of the siding track is for long-term storage of rail cars not required by a shipper, or to store on-track equipment and rail cars used for track maintenance, or to hold railcars that are found to be defective by a train crew (aka bad-ordered) while en route. Kevin Jeffers did not observe any rail cars in the siding when visiting the area in August 2012, December 2012, and April 2013.

The best outcome for this project is to eliminate the siding at the crossing location and mitigate the loss of this siding feature in one of several ways:

1. Remove the existing switch east of the crossing and the length of the track between the switch and the crossing, and reinstall this equipment elsewhere on the Port of Benton track as directed by UTC;

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2. Relocate the switch existing east of the crossing and the track between the crossing and the switch to a location west of the proposed crossing; or

3. Remove the switch and track east of the crossing and distribute the materials as directed by UTC.

Alternatively, the crossing could be constructed over both existing tracks, relying on the proposed safety measures to protect the crossing, ongoing railroad operations, and the public.

Data Request No. 3. The requested data is attached in Exhibit A and Exhibit B. In addition to the danger of pedestrian-to-vehicle crashes, it is important to note the unnecessary vehicle-to-pedestrian interactions that occur as a result of some drivers using the Columbia Mall roads to connect between Gage Boulevard and Columbia Center Boulevard. There are drivers who would otherwise use the Center Parkway connection if it were available.

Data Request No. 4. The City of Richland proposed to eliminate the southernmost track (aka the siding track). This proposal is set forth in the petition and is depicted in the design plans submitted with the petition. However, as identified in Data Request No. 2, above, the Petitioners alternatively propose to include the siding if the UTC determines that the siding should not be removed. Petitioners attach a plan and profile of the proposed crossing with the track and the siding, in Exhibit C.

Between September 12 and 24, 2013, the following individuals assisted in preparing Petitioners' response to UTC's data requests:

For Data Request No. 2:	Pete Rogalsky, City of Richland, Public Works Director, (509) 942-7558;
	Kevin Jeffers, P.E., David Evans and Associates, Senior Project Manager, (253) 250-0674.
For Data Request No. 3:	John Deskins, P.E., PTOE, City of Kennewick, Traffic Engineer, (509) 585-4400

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Alisha Piper, City of Kennewick, Traffic Technician, (509) 585-4342.

For Data Request No 4: Pete Rogalsky, City of Richland, Public Works Director, (509) 942-7558;

Kevin Jeffers, P.E., David Evans and Associates, Senior Project Manager, (253) 250-0674.

DATED THIS 25th day of September, 2013

FOSTER PEPPER PLLC

P. Stephen DiJulio, WSBA #12921
Jeremy Eckert, WSBA # 42596
Attorneys for City of Richland and City of Kennewick

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all parties of record in this proceeding in the manner indicated, to the parties identified below:

Tom A. Cowan Cowan Moore Stam & Luke P.O. Box 927 Richland WA 99352 *tcowan@cowanmoore.com*	Scott D. Keller Port of Benton 3100 George Washington Way Richland WA 99354 *keller@portofbenton.com*
Paul J. Petit General Counsel P.O. Box 1700 Richland WA 99352 *By U.S. Mail* *paulpetit@tcry.com*	Rhett Peterson Tri-City & Olympia Railroad Co. P.O. Box 1700 Richland, WA 99352 *By U.S. Mail* *Rhettwater@mac.com*
Brandon L. Johnson Minnick-Hayner, P.S. 249 West Alder P.O. Box 1757 Walla Walla WA 99362 *bljohnson@my180.net*	Tom Montgomery Kelsey Endres Montgomery Scarp, PLLC 1218 Third Ave., Ste. 2700 Seattle WA 98101 *tom@montgomeryscarp.com* *Kelsey@montgomeryscarp.com*
Richard Wagner Manager Public Projects BNSF Railway 2454 Occidental Ave. S., Ste. 2D Seattle WA 98134 *richardwagner@bnsf.com*	Carolyn Larson Dunn Carney Allen Higgins and Tongue LLP 851 SW Sixth Ave., Ste. 1500 Portland OR 97204 *cll@dunn-carney.com*
Terrell A. Anderson Manager, Industry & Public Projects Union Pacific Railroad Co. 9451 Atkinson St. Roseville CA 95747 *taanders@up.com*	Steven W. Smith Assistant Attorney General 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia WA 98504-0128 *By U.S. Mail* *ssmith@utc.wa.gov*

A courtesy copy was also delivered to:

Adam E. Torem
Administrative Law Judge
c/o Steven W. Smith
Assistant Attorney General
1400 S. Evergreen Park Dr. S.W.
P.O. Box 40128
Olympia WA 98504-0128
By U.S. Mail
atorem@utc.wa.gov

DATED this 25th day of September 2013, at Seattle, Washington.

Helen M. Stubbert

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EXHIBIT C

PLAN AND PROFILE OF CROSSING THAT INCLUDES SIDING

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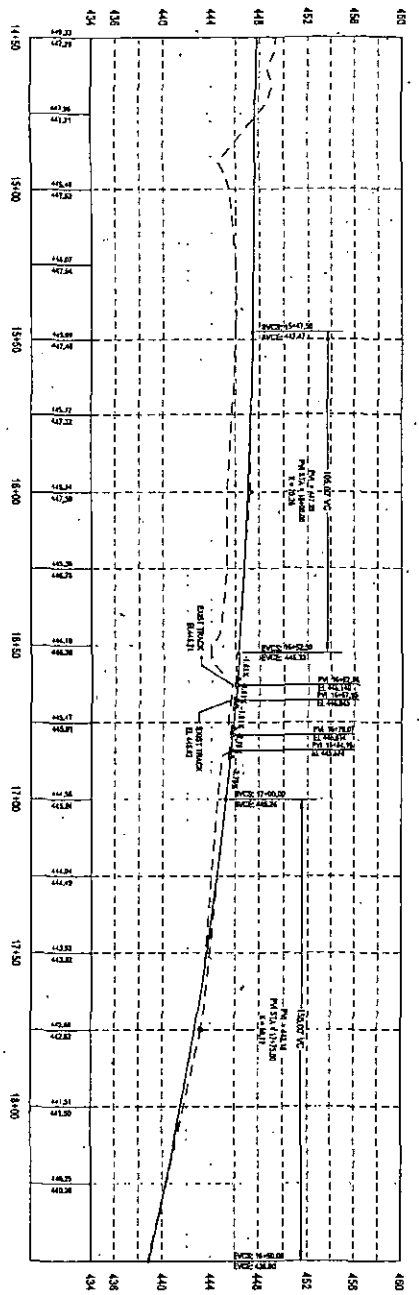
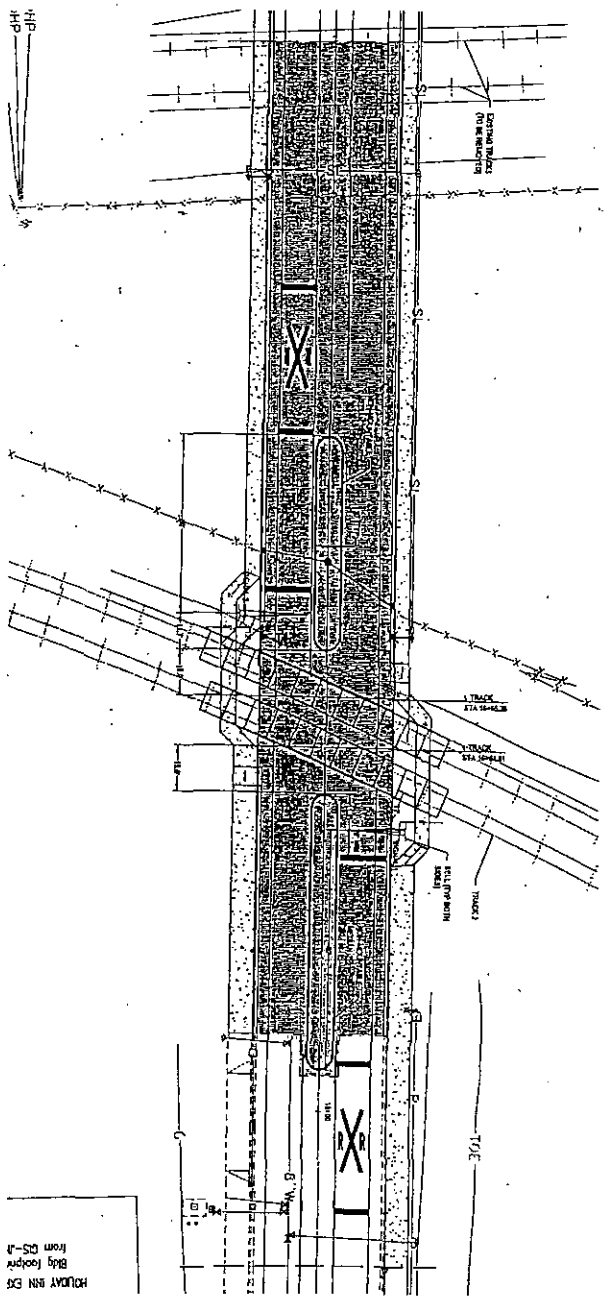
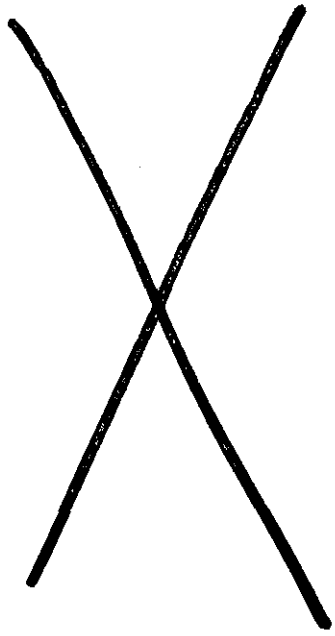




Center Parkway Extension *(Gage Blvd to Tapteal Dr)*	CITY OF RICHLAND PUBLIC WORKS DEPARTMENT CIVIL & UTILITY ENGINEERING DIV.		
PLAN & PROFILE C14+50 TO C18+50	REVISION NO. DESCRIPTION BY APP. DATE		



Richland
Washington

MEMORANDUM
Economic Development Office

Note: Dollar amounts were generated in August 2013 and have been modified as contract specifications have been resolved. – SCM, 11/14/2013

TO: Economic Development Committee

FROM: Economic Development Office

DATE: August 19, 2013

SUBJECT: Commodities Plus - Land Lease, Land Purchase, & Infrastructure Financing, Horn Rapids Industrial Park

---

As part of the Economic Development Committee's responsibility to review proposals of potential land sales and leases, the Economic Development staff is asking for the EDC to review the proposed land lease, land purchase, and financing request that Commodities Plus is pursuing at the Horn Rapid Industrial Park (HRIP) and to make a recommendation to Council.

Summary:

- Dennis Kyllo with Commodities Plus and his partners at Central Washington Corn Processors (CWCP) have been working with city staff regarding a loop track in the Horn Rapids Industrial Park. At this time, Mr. Kyllo and his partners would like to proceed with a land lease of approximately 19 acres to build a loop track, a purchase of approximately 19 acres in the Horn Rapids Industrial Park above the proposed loop track location for their facility, as well as some financing assistance for the project (see map). Their investment for the loop and property improvements will be approximately $5,000,000.
- The proposed lease will be approximately $38,000 per year. The initial lease term will be for 15 years with an option to extend every five years. There will be rate escalations throughout the term of the initial lease. Commodities Plus is planning on building and paying for an 8400 lineal foot loop track on the proposed city-leased land.
- The proposed price for the land purchase will be approximately $675,000.00 ($22,500 per acre for 30 acres). Commodities Plus is planning to build two office buildings, storage area, and a silo on this property for their bulk trans-loading business.
- Commodities Plus has requested that the city help with road improvements to the property. Staff is researching and analyzing the costs of these improvements to see if the property and lease improvements will quantify these road improvements for LRF.

Real Estate Analysis:

Land Lease

- The price for the proposed property is approximately $38,000 per year for approximately 8400 lineal feet.

WUTC DOCKET TR-130499
EXHIBIT KJ-14X
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- Premises will be approximately nineteen (19) acres of land for a rail loop track and service road, the approximate location for which is shown on Exhibit 1 "Proposed Rail Loop Exhibit." 19 acres assumes an 8,400 foot rail loop track and 50 feet from the track centerline on both sides of the track.
- The term of the initial lease will be for 15 years from effective date and will terminate on the fifteen year anniversary.
- There will be an option to negotiate a five year lease after the initial lease term is complete.
- In lieu of the first year's lease payment, upon execution, Lessee shall pay a security deposit equal to one year's rent. Lessee shall then have up to 18 months to complete construction of the rail loop track. If completion occurs before the 18th month, yearly rent payments shall commence on the first full month after completion of the loop track. If the loop track is not completed within 18 months, yearly rent shall commence at the beginning of the 19th month. The security deposit shall be applied to the first year's rent and thereafter be payable on a yearly basis and due by the 5th day of the month in which it is due.
- On December 31, 2019 and on December 31, 2024 the annual lease rate will be increased based on inflation, calculated by using the November 2014 CPI-w and the November 2019 CPI-w and the November 2024 CPI-w as published by the U.S. Bureau of Labor and Statistics.
- CWCP will be responsible for paying the leasehold excise tax assessed by the state during the lease term.
- All parties will agree to permitted and prohibited uses to present to Council for approval.
- The purchasers will have a five year option to purchase the land within or adjacent to the loop for $25,000 per acre.
- There will be a limited non-compete clause in place during the term of the lease where the city cannot or will not offer for sale or lease of property within or adjacent to the loop to third parties engaged in business in direct competition of CWCP or their partners.
- CWCP and its partners will maintain and manage the rail loop during the term of the lease.
- CWCP and its partners will submit to the city a maintenance plan and a rail operations plan prior to closing. Both parties need to agree to the maintenance and operations plan terms in order to close.
- There will be a "without cause" and "with cause" termination section in the agreement in order to protect the city from breaches of contracts as well as other reasons that may come up in the long term.
- CWCP and its third parties will be held to city and state regulatory compliance rules related to environmental, code, and other nuisance concerns.
- There will be a buyback provision in the contract that will give the city an option to purchase the rail improvements if the city determines that they would like to terminate the contract without cause. If there is a breach of contract and the breach is not remedied, the city will not compensate the purchasers for the rail loop.

Land Purchase

- The proposed price for the land purchase will be approximately $675,000.00 ($22,500 per acre for 30 acres). Commodities Plus is planning to build two office buildings, storage area, and a silo on this property for their bulk trans-loading business.
- There will be a limited "non-compete" clause for sales and lease for the area within the "Rail Loop Interior".
- The city will stub utilities ten (10) feet into the property. This is part of our standard development practices.

- There is a reversionary clause within the purchase and sale agreement which will allow the city to repurchase the property if the purchasers fail to submit a building plan application for approval within six months, or do not initiate construction of the facility or fail to build the loop track within 18 months.

Financing Assistance

- CWCP and Commodities Plus are requesting the city's assistance for approximately 2,400 lineal ft. of roadway improvements from Battelle Blvd. to the loop. Staff is researching and preparing cost estimates to see if these proposed LRF improvements are feasible.

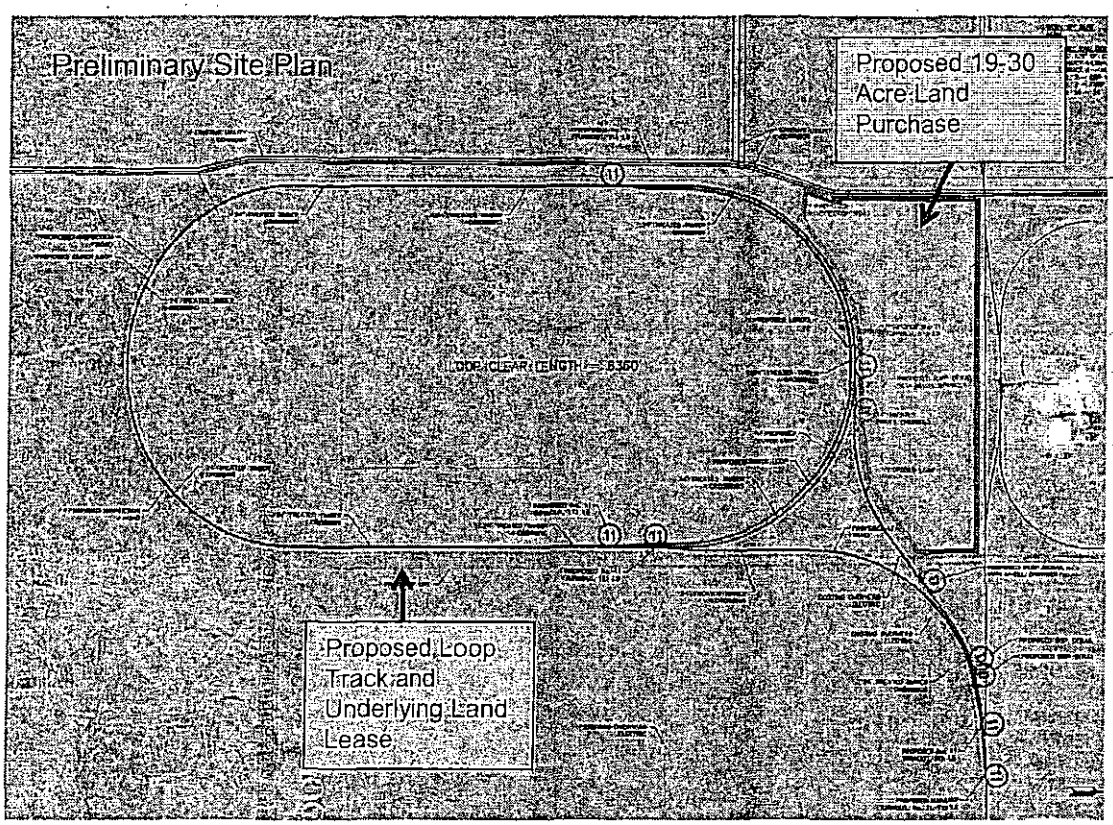
Recommendation:

Staff supports Commodities Plus and Central Washington Corn Processors proposed lease, purchase and financing request at the Horn Rapids Industrial Park for a proposed loop track, office buildings, storage and silo with a positive recommendation.

Proposed Motion:

I move that the Economic Development Committee make a positive recommendation to the Richland City Council to authorize the proposed lease, purchase and financing request (dependent on staff cost estimates) at the Horn Rapids Industrial Park for a proposed loop track, office buildings, storage and silo.

PREPARED BY: Sally Mohr, RE Marketing Specialist



Richland
Washington

MEMORANDUM
Economic Development Office

Note: Dollar amounts were generated in August 2013 and have been modified as contract specifications have been resolved. – SCM, 11/14/2013

TO: Economic Development Committee
FROM: Economic Development Office
DATE: August 26, 2013
SUBJECT: **American Rock Products, Repurchase of 20 Acre Property and Cancellation of Option and Mineral Extraction License Agreement - Horn Rapids Industrial Park**

As part of the Economic Development Committee's responsibility to review proposals of potential land sales and leases, the Economic Development staff is asking for the EDC to review and provide a positive recommendation to Council for the proposed repurchase of land, cancellation of option and a mineral extraction license agreement with American Rock Products at the Horn Rapid Industrial Park (HRIP).

Summary:

In April 2004, the City and American Rock Products (ARP) entered into a Purchase and Sale Agreement and closed on the purchase for approximately 20 acres in the Horn Rapids Industrial Park (shown on map as Parcel A). Simultaneous with the execution of the Purchase and Sale Agreement, the City and ARP also entered into an Option Agreement allowing ARP to purchase 5 acre increments of land south of Parcel A (shown in the map as Parcel B).

At this time, the City would like to buy back that same 20-acre property from ARP and cancel ARP's option on the adjacent property. ARP is willing to sell the purchased property back to the City and agrees to the cancellation of its option in return for a mineral extraction agreement to mine, produce, store and remove aggregate materials from the Horn Rapids Industrial Park for a set period of time.

This purchase and sale agreement with the option cancellation and the mineral extraction license agreement are tied to the Central Washington Corn Processors' proposed loop project. If the proposed loop project does not move forward for any reason, neither will the buy-back agreement with the option cancellation nor the mineral extraction license agreement.

Purchase and Sale Agreement and Option Cancellation:

- The City will pay American Rock Products $270,875.27 for the repurchase of the 20 acre property that American Rock Product (same price ARP paid in 2004) and $20,000.00 for the cancellation of the Option Agreement.
- This will allow the City to move forward with the development of a proposed loop project encompassing parcel A, which in turn will allow for more development of the Horn Rapids Industrial Park.

Mineral Extraction License Agreement:

- In addition, the City agrees to enter into a Mineral Extraction License Agreement to allow American Rock Products to conduct, at no further charge from the City, the removal and processing of sand and gravel and related activities on the property described as Parcels A & B and portions of the land within the interior of and adjacent to the Rail Loop.
- ARP will be allowed to extract, produce, store and remove aggregate materials for a two-year period.

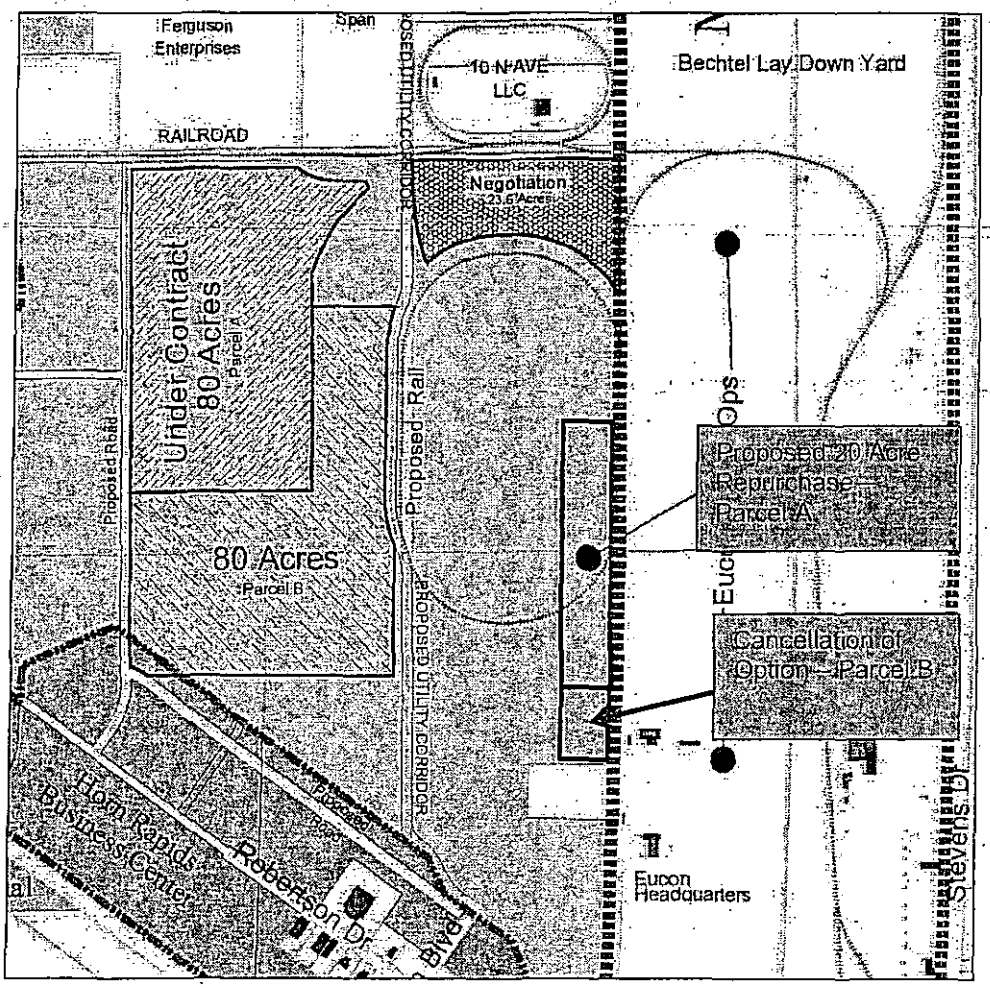
Recommendation:

Staff supports the City's proposal to the repurchase of land, cancellation of the option agreement and a mineral extraction license agreement with American Rock Products at the Horn Rapid Industrial Park.

Proposed Motion:

I move that the Economic Development Committee make a positive recommendation to the Richland City Council to authorize the repurchase of the 20-acre parcel of land, the cancellation of the existing option agreement and entering into a mineral extraction license agreement with American Rock Products at the Horn Rapid Industrial Park.

PREPARED BY: Sally Mohr, RE Marketing Specialist



GROUND LEASE AGREEMENT
BETWEEN
THE
CITY OF RICHLAND
AND
WASHINGTON TRANSFER TERMINAL, LLC.

This Agreement is made and entered into by and between the **CITY OF RICHLAND**, a municipal corporation of the State of Washington, hereinafter referred to as "City," and **CENTRAL WASHINGTON TRANSFER TERMINAL LLC.**, a Delaware limited liability company, hereinafter referred to as "Lessee."

W I T N E S S E T H:

WHEREAS, the City of Richland has identified in its long-term strategic plan the desire to develop industries served by rail; and

WHEREAS, the Lessee desires to enter into an Agreement leasing a portion of industrial park to construct, maintain and operate a rail "loop track" and uses ancillary to and dependent upon the rail industry;

NOW, THEREFORE, in consideration of the covenants and agreements herein contained and the terms and conditions hereof, the parties agree as follows:

SECTION 1
PREMISES, TERMS, AND RENEWAL

1.1 **Premises.** The Premises shall be approximately twenty-five (25) acres of land for a rail loop track and service road. The approximate location is set forth herein as Exhibit A and shall be supplemented by as-built drawings upon completion of the track. The twenty-five (25) acres assumes eighty-four hundred (8,400) feet of rail loop track and fifty (50) feet from the centerline of the track on both sides, labeled as Area 1 as well as Area 2 depicted in Exhibit A. The final lease legal description will be based on the actual length of track.

1.2 **Inspection of Property.** Lessee has inspected the Property and agrees to take the Property in its present condition. Lessee is relying on its own inspections of the Property to determine whether to enter this Lease, and Lessee is not relying on any representation made by City, its employees or agents. The taking of possession by Lessee under this Lease shall be deemed conclusively to establish that the Property is in good and satisfactory condition, and Lessee accepts the Property "as is," having had a full and complete opportunity to inspect the same.

1.3 **Effective Date.** This Lease Agreement, although executed on the date of signature of the second party, shall become effective fifteen (15) calendar days

after closing on the Purchase and Sale Agreement between the City of Richland and Washington Transfer Terminal, LLC for purchase of the 25 acres upon which the rail loop shall be constructed. In the event the City of Richland and Central Washington Transfer Terminal fail to close on the Purchase and Sale Agreement referenced herein, this Lease Agreement shall terminate, and the parties shall have no obligations hereunder.

1.4 **Term.** The permission herein granted to the Lessee shall be for a period of fifteen (15) years from the effective date as determined under Section 1.3 above, and shall cease and terminate at 11:59 p.m. on the fifteen-year anniversary of the effective date.

1.5 **Renewal.** Upon application of the Lessee, and provided that the Lessee is not in uncured breach of this Agreement, the City and Lessee shall negotiate a renewal of this lease in increments of additional five (5) year terms. Negotiations for extension of this Lease Agreement shall commence upon written request of Lessee given to City no later than six (6) months prior to the end of each lease term.

1.6 **Expiration.** If, upon the end of the initial fifteen (15) year term, a renewal is not successfully negotiated, this Lease shall terminate and be subject to Section 5.2(b) of this Agreement.

1.7 **Lease Rate.** The lease rate for the Premises described in Section 1.1 during the initial term of this Agreement shall be $2,000 (two thousand) per acre (calculated at $25,000 land value x 0.08 rent rate = $2,000 per acre) paid in twelve (12) equal monthly installments as follows:

1. Upon execution of this Lease Agreement, Lessee commits to pay a security deposit equal to one year's rent plus applicable leasehold excise tax. This deposit shall be paid in lieu of the first year's monthly lease payments, and shall be delivered to the City no later than ten (10) business days after the effective date of this Agreement as defined in Section 1.3 above. Thereafter, monthly rent payments on the annual amount due shall commence on either: 1) the beginning of the 19th month after the effective date of this Agreement (the month of signing counts as month one); or 2) the first full month post-completion of the loop track, whichever occurs earlier. The security deposit shall be applied to the first year's rent, and all rent payments thereafter shall be paid on a monthly basis and due by 1600 hours (4:00 p.m.) on the 5th day of the month in which it is due. If the 5th day of the month falls on a weekend or holiday, Lessee's rent payment is due the first business day after the 5th when the City of Richland is open to the public for business transactions.

2. On December 31, 2019 and December 31, 2024, respectively, the annual lease rate will increase based on inflation, calculated by using the November 2014 CPI-W, the November 2019 CPI-W, and the November 2024 CPI-W as

published by the U.S. Bureau of Labor and Statistics. This is calculated by taking the current rent and multiplying as follows: [1 + (CPI-W 2019 – CPI-W 2014)/CPI-W 2014] for the rent increase effective January 1, 2020, and [1 + CPI-W 2024 – CPI-W 2019)/CPI-W 2019)] for the rent increase effective January 1, 2025.

3. Leasehold Excise Tax. In addition to the rent amount as identified and calculated above, Lessee is also required to pay to the City of Richland leasehold excise tax as assessed by the Washington State Department of Revenue pursuant to RCW 82.29A, or as hereafter amended. The City shall calculate and notify Lessee of its monthly excise tax obligation, which shall be paid simultaneously with Lessee's monthly rent obligation. City shall remit Lessee's monthly leasehold excise tax to the Washington State Department of Revenue on Lessee's behalf. The 2013 leasehold tax rate is 12.84% of taxable rent; Lessee shall pay each year per the current adjusted rate for the year in which payment is made.

4. Late Payments. Any rent or leasehold excise tax payment not paid within ten (10) days of the due date shall accrue interest on the unpaid amount at the rate of one and one-half percent of the late payment for each month or portion of month by which the payment is delayed.

1.8 **Permitted Uses.** The Lessee shall use the Premises for the purpose of receiving, shipping, and trans-loading of rail cars holding products listed in Exhibit B. All storage and handling of materials shall meet code requirements as established in the Richland Municipal Code.

1.9 **Prohibited Uses.** The Lessee shall not use the Premises for the purpose of receiving, shipping, storing, or trans-loading of rail cars holding products listed in Exhibit C.

1.10 **Uses Requiring City Approval.** For uses not identified in Exhibits B and C as incorporated by reference in Sections 1.6 and 1.7 herein, Lessee shall submit a written request to the City's Economic Development Manager requesting authorization for the use. Upon receipt, City staff shall review the proposed use, and may authorize a temporary, one-time thirty (30) day approval for the transport and/or storage of said use, or the City may deny Lessee's request. Either decision rests within the City's sole discretion. Any request by Lessee to permanently expand the uses allowed under Exhibit B of this Agreement must be submitted in writing to the City's Economic Development Manager and presented to Council for approval.

SECTION 2
TRACK CONSTRUCTION, MAINTENANCE, RIGHTS, FEES & OPTION

2.1 **Purchase Option.** For a period of five (5) years after completion of rail loop track infrastructure, Lessee shall have an option to purchase real property located within the rail loop track at a price of $25,000 per acre. Thereafter, the purchase price shall be negotiated in good faith based upon City listings for similarly-situated property. Approval of any purchase during the Option period shall be subject to the City's approval of the intended use of the property, and shall also be subject to a reversionary clause in the event the property is not developed consistent with the intended use or City-prescribed construction schedules.

2.2 **Limited Non-Compete.** During the term of this initial Lease, the City shall not offer for sale or lease property within the loop track to third parties engaged in the business of shipping or trans-loading commodities used for animal feed. Exhibit D identifies the properties to which this limited non-compete applies. This limited non-compete shall expire after the initial 15-year term.

2.3 **Option to Purchase Remaining Interior Property.** Once development has occurred on no fewer than sixty (60) acres of the interior rail loop property, Lessee shall have the option to buy the remaining interior property within the rail loop, as well as the land underlying the loop that is the subject of this Lease. This option shall be separately negotiated between the parties upon written notice by Lessee of Lessee's intent to execute the option to purchase. For purposes of this section, development is defined as physical improvements built on the property (e.g., development storage space or buildings).

2.4 **Loop Parcel Marketing.** The City may market for lease or sale the property within or adjacent to the loop track subject to the limitations set forth in Section 2.2.

2.5 **Track Rights and Charges.** During the term of this Lease, unless otherwise agreed in writing by the Parties, Lessee shall be responsible for scheduling and use of the track by Lessee and any third parties subject to a Rail Operations Plan that includes the following:

1. Lessee shall provide tariffs for use of the loop track which shall be approved by the City. The tariffs may have yearly escalators based upon the Consumer Price Index ("CPI") for King County, Washington.
2. Lessee shall establish hours of operation and operational details for third party users. The final Rail Operations Plan shall be submitted no later than sixty (60) business days prior to commencement of the use of the rail loop track. Lessee is required to obtain City approval of the final Rail Operations Plan no later than fifteen (15) days prior to use of the loop track. Upon approval, the final Rail Operations Plan shall become Exhibit E of this Agreement. If a draft and final Rail Operations Plan is not agreed upon by

both Parties by said dates, this Agreement shall terminate unless an extension is mutually agreed upon in writing.

3. Lessee, or its agents or assigns, shall perform maintenance on the loop track, at all times maintaining the Premises and Lessee's improvements in a clean and safe condition and in good repair and operating condition in accordance with industry standards. The rail loop track and rail leads shall be maintained to the standards described in Exhibit F herein, referred to as the Rail Track Maintenance Standards.
4. Neither Lessee, nor any third party, shall utilize the loop track for storage of rail cars. All entities must trans-load in accordance with the applicable demurrage time schedules detailed in the final Rail Operations Plan.
5. The Lessee shall allow BNSF Railway and the Union Pacific Railroad, or their agents, to deliver trains directly to the Lessee and/or third parties using the rail loop track so long as tariffs are paid in accordance with the final Rail Operations Plan.
6. Lessee and City are each authorized to grant access to third parties for use of the rail loop track.
7. Lessee agrees to keep the rail loop track clear when not in use by a unit train in order to allow other third parties to exercise access rights.
8. Under no circumstance shall Lessee use the Rail Wye Tracks for the storage of rail cars.
9. Lessee shall comply with all city, state, and federal codes, and shall be in compliance with relation to noise, dust, and odor, and other regulations not specified herein.

2.6 Lessee Improvements

1. Lessee Construction. No construction activities shall occur until an authorized City representative has issued a Notice to Proceed (NTP).
2. Rail Loop Track. The Lessee shall, within eighteen (18) months of the effective date of this Lease, construct and build an operational rail loop track on the Premises, at Lessee's sole cost and expense, as generally shown on Exhibit A ("Rail Loop Track"). At a minimum, the Rail Loop Track must meet FRA Class II railroad guidelines and be approved for unit train operation by BNSF Railway and Union Pacific Railroad.
3. Additional Track and Minimum Standards. Lessee shall, within twelve (12) months of the effective date of this Lease, construct and build rail tracks connecting the City's rail line to the rail loop track, at Lessee's sole cost and expense, as also generally shown on Exhibit A ("Rail Wye Tracks"). The Rail Wye Tracks will be located on City and Port property. At a minimum, the Rail Wye Tracks must meet FRA Class II railroad guidelines and be approved for unit train operation by BNSF Railway and Union Pacific Railroad.

4. Service Road. Lessee shall, within twelve (12) months of the effective date of this Lease, construct and build an operational road along the perimeter of the Rail Loop Track and along the Rail Wye Tracks, at Lessee's sole cost and expense ("Service Road"). The Service Road must be capable of accommodating service inspections of rail cars and unit trains, as well as provide emergency vehicle access to the interior of the rail loop. The Service Road must be in compliance with City codes and permitting. Rail operations shall not occur until service roads are constructed and in place.

5. Site Plans. Construction of the rail loop is subject to approval of the City's planning process. Failure to receive the proper approvals through the building application process will result in City's termination of this Lease without penalty. Lessee shall be responsible to pay for and obtain all necessary permits for Lessee-initiated improvements.

6. Insurance Requirements of Contractors/Subcontracts. Lessee is solely responsible for determining the insurance coverage and limits required for all contractors or subcontractors involved in construction of the improvements contemplated under this Lease Agreement, which determination shall be made in accordance with reasonable and prudent business practices.

7. Protection of Property from Construction Liens. Lessee shall not permit any mechanics', materialmen's, contractors' or subcontractors' liens arising from any work or improvement performed by or for Lessee to be enforced against the Premises, however it may arise. Lessee may withhold payment of any claim in connection with a good faith dispute over an obligation to pay, so long as City's property interests are not jeopardized. Lessee shall defend and indemnify City against all liability and loss of any type arising out of the construction of improvements on the Property by Lessee. Unless caused by City, its agents or contractors, Lessee shall reimburse the City for all sums paid according to this paragraph, together with the City's reasonable attorney's fees and costs plus interest on those sums at the legal rate.

2.7 **Right to Mine, Mineral License, American Rock Products.** During the term of the Lease, Lessee shall allow American Rock Products (ARP) the exclusive right to mine, process, remove and store aggregate materials. ARP shall not use the License Location for any other purpose without the written consent of the City. The City shall not use the License Location, nor grant any other party the right to use the License Location, for any other purpose without the express written consent of ARP. Upon Lessee's commencement of construction of the railroad spur and loop, the City shall send ARP written notice that ARP's exclusive right to mine, process, store and remove aggregate materials from the License Location shall now be limited to two (2) years from date of the City's written notice, or until such time as ARP gives notice to the City of its intent to cease mining operations and thereafter completes its reclamation obligations, whichever occurs first. Neither Lessee, nor Lessee's agents or assigns, shall interfere with ARP's ability to mine, process, remove or store aggregate materials from the License Location, and shall, to the extent practicable, prevent, minimize

and/or remove physical obstacles to ARP's mining operation caused by the rail loop construction.

2.8 **Performance and Maintenance Bond.** Lessee shall provide the City with a performance bond, or other agreed form of security in an amount not less than the annual rent under the lease times fifteen (15) years, which is equal to the total value of this Lease Agreement. Lessee or its primary contractor shall also provide a construction bond in an amount of not less than four million five hundred thousand dollars (4.5 million), which is equal to the value of all improvements contemplated under this Lease Agreement. Each bond shall be executed on forms provided by the City, and must be issued by a company registered to do business in the State of Washington.

2.9 **Approval Process.** In connection with Lessee's improvements, the City may impose reasonable requirements on Lessee and on operators, contractors and agents performing work for the Lessee, including, but not limited to, the requirement to submit: names of proposed contractor(s), proposed plans and specifications is such detail as is determined necessary by the City, a site-use plan, an erosion/sediment control plan, and environmental controls. The City shall have thirty (30) days from the submission of required information to approve or disapprove the proposed work, or to approve the proposed work subject to certain conditions. Lessee shall provide "as-built" drawings to the City within thirty (30) days after completion of any work. This approval process is in addition to any permitting or regulatory process to which the city may be a party.

2.10 **Joint Rail Access.** No action shall be taken by Lessee to restrict the fair, equal, and competitive joint use or access opportunity of the BNSF Railway or the Union Pacific Railroad, or their agents, to operate on the Premises with their equipment and employees.

2.11 **City Inspections.** A joint inspection by the City and Lessee of the Premises and Lessee's improvements shall be performed annually each September during the Lease Term, at an agreed-upon reasonable time, to assess the condition of the entire Premises and Lessee's improvements, including the environmental condition, and to document any necessary maintenance and repairs. The joint inspection shall be documented in writing by the City, and shall include a list of all necessary maintenance and repairs to the Premises and improvements as agreed by the parties during the joint inspection. A copy of the joint inspection report produced by the City shall be provided to Lessee within thirty (30) days after completion of the joint inspection. Lessee shall expeditiously correct all condition deficiencies identified in the joint inspection report to the satisfaction of the City.

2.12 **Monthly Reporting.** Beginning the second full month that the rail loop is operational, Lessee shall provide a monthly report to the City summarizing all rail activity and rail car counts (volumes) on the Premises during the preceding

month. This report shall, at a minimum, show the number of rail cars broken down by railroad, as well as rail content handled on the Premises. Lessee shall immediately notify the City of all emergencies, accidents, and incidents occurring on the Premises, and shall contact emergency responders when warranted by the circumstances of any such emergency, accident or incident.

2.13 **City Obligations.** The City shall be obligated to perform the following:

1. Acquire an access/easement to City property for the purpose of Lessee's construction of the Rail Wye Tracks.
2. The City reserves the right to add rail switches and associated rail trackage to the Rail Loop Track to tie third-party rail spurs into the Rail Loop Track, the Rail Wye, or any other trackage. The City may construct new rail infrastructure, including new rail tracks, on the Premises, provided the construction or existence of such infrastructure does not materially interfere with Lessee's operations.

SECTION 3
STANDARD CONDITIONS

3.1 **Anti-Discrimination.** Lessee shall not discriminate against any person or persons because of race, religion, color, sex, national origin, or sexual orientation in the conduct of its operation hereunder.

3.2 **Assignment.** The permission herein granted shall not be assignable or transferable by operation of law, nor shall the Lessee assign, transfer, mortgage, pledge or encumber the same or any structure or thing erected, constructed or maintained by the Lessee pursuant to the permission herein granted, except with the prior written consent of the City. Notwithstanding the above, any easements granted shall run with the property.

3.3 **Contracting Officer.** The Economic Development Manager for the City of Richland or his/her designated representative shall be the contracting officer who shall act as the agent of the City under this Agreement. Lessee shall be responsible for notifying the City of a current contact person for the Lessee in the event of an emergency.

3.4 **Emergency Services.** The Lessee shall coordinate with the City of Richland Fire Department in all matters concerning fire safety and emergency vehicle access. City reserves the right at all times and without notice to access the Premises for emergency services.

3.5 **Indemnification/Hold Harmless.** Lessee shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Lessee's, or its

contractor's or subcontractor's use of premises, or from any activity, work or thing done, permitted, or suffered by the Lessee in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

(a) In enforcing this obligation, Lessee shall also bear sole responsibility for all losses or damages arising from the operation of the rail loop track, including:

1. The condition, use, occupancy, repair, or maintenance of the Premises.
2. Lessee's non-observance or non-performance of any law, ordinance, or regulation applicable to the rail loop track or the Premises.
3. Willful or negligent acts or omissions of the Lessee.
4. Costs incurred by the Lessor in obtaining possession of the Premises after default by the Lessee.
5. Costs incurred by the Lessor upon surrendering possession or early termination of the term of this Lease by Lessee.
6. Enforcement of any covenants in this Agreement. This includes, without limitation, any liability for injury to the person or property of Lessee, its agents, officers, employees, or invitees.

(b) Lessee waives all claims against City for damages for loss of business, damage to equipment used in or upon or about the Premises, or for injury to Lessee, its agents, officers, employees, invitees in or about the Premises, or from any cause arising at any time for any reason, other than for City's sole negligence or willful misconduct.

(c) Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Lessee and the City, its officers, officials, employees, and volunteers, Lessee's liability hereunder shall be only to the extent of the Lessee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Lessee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

3.6 **Insurance.** Lessee shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with Lessee's operation and the use of the leased Premises. Additionally, the City shall require any third party lessees or lot owners

to acquire property and casualty insurance naming Lessee as an additional insured and requiring a certificate of insurance naming Lessee as an additional insured.

(a) No Limitation. Lessee's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Lessee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

(b) Minimum Scope of Insurance. Lessee shall obtain insurance of the types described below:

1. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover Premises and contractual liability. The City shall be named as an insured on Lessee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.

2. Property insurance shall be written on an "all risk" basis.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

(c) Minimum Amounts of Insurance. Lessee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than $2,000,000 each occurrence; $6,000,000 general aggregate.

2. Property insurance shall be written covering full value of Lessee's property and improvements with no co-insurance provisions.

(d) Other Insurance Provisions. The Lessee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain:

1. That they shall be primary insurance with respect to the City. Any insurance, self- insurance, or insurance pool coverage maintained by the City shall be excess of the Lessee's insurance and shall not contribute with it.

2. Lessee's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

(e) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

(f) Verification of Coverage. Lessee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Lessee.

(g) Waiver of Subrogation. Lessee and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the Premises. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

(h) Failure to Maintain Insurance. Failure on the part of the Lessee to maintain the insurance as required shall constitute a material breach of this Lease Agreement, upon which the City may, after giving five (5) business days' notice to the Lessee to correct the breach, terminate the Lease for cause.

3.7 **Laws, Licenses and Permits.** The Lessee at Lessee's own expense, shall comply with all federal, state and city laws and regulations with regard to construction, licenses or permits to do business, and all other matters. Further, Lessee shall comply with all laws and regulations governing rail operations.

3.8 **Taxes.** All sales taxes, leasehold excise taxes, and other applicable taxes shall be coded to the City of Richland.

3.9 **Sanitation.** In addition and without limitation, the Lessee shall at all times during the term of this Lease, at its own expense, keep and maintain the area identified in Exhibit A hereof free from litter or debris.

3.10 **Utilities.** The Lessee shall, at its own expense, furnish and pay for all utilities as may be required under building and operating permits.

3.11 **Construction.** Construction of facilities and all accessory amenities such as parking, access streets, utilities, etc. completed by the Lessee shall be the responsibility of the Lessee. All improvements shall be to City of Richland standards. All plans shall be submitted, reviewed, and approved by the City prior to construction.

SECTION 4
HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE

4.1 **Definition.** "Hazardous Materials" as used herein shall mean:

(a) Any toxic substances or waste, sewage, petroleum products, radioactive substances, medical, heavy metals, corrosive, noxious, acidic, bacteriological or disease-producing substances or any dangerous waste or hazardous waste as defined in the Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105) or as defined in the Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or

(b) "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA") as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.) and Washington's Model Toxics Control Act ("MTCA") as now existing or hereafter amended (RCW Ch. 70.105); or

(c) Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

4.2 **Use of Hazardous Substances.** Lessee covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, or above the property, except in accordance with all applicable laws.

4.3 **Environmental Compliance.**

(a) Lessee shall, at Lessee's own expense, comply with all federal, state and local laws, ordinances and regulations now or hereafter affecting the Premises, City's business, or any activity or condition on or about the Premises, including, without limitation, all laws, ordinances and regulations related to Hazardous Materials, all laws relating to creation of noise, light and glare, the creation of dust, smoke or other emissions into the air and all other environmental laws relating to the improvements on the Premises, soil and groundwater, storm water discharges, or the air in and around the Premises, as well as such rules as may be formulated by the City ("the Laws"). Lessee warrants that its business and all activities to be conducted or performed in, on, or about the Premises shall comply with all the Laws. Lessee agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, pollution control systems, or other installations that may be necessary at any time during the term of this Agreement to comply with the Laws.

(b) Lessee shall not cause or permit to occur any violation of the Laws on, under, or about the Premises, or arising from Lessee's use or occupancy of the Premises, including, but not limited to, soil and ground water conditions.

(c) Lessee shall promptly provide all information regarding any activity of Lessee related to hazardous Materials on or about the Premises that is requested by the City. If Lessee fails to fulfill any duty imposed under this paragraph within a reasonable time, City may do so; and in such case, Lessee shall cooperate with City in order to prepare all documents City deems necessary or appropriate to determine the applicability of the Laws to the Premises and Lessee's use thereof, and for all compliance therewith, and Lessee shall execute all documents promptly upon City's request. No such action by City and no attempt made by City to mitigate damages shall constitute a waiver of any Lessee's obligations under this paragraph.

(d) Lessee shall, at Lessee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities ("the Authorities") under the Laws.

(e) Should any Authority demand that a cleanup plan be prepared and that a cleanup be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Agreement at or from the Premises and that is not the result of the acts or omissions of the City, or which arises at any time from Lessee's use of occupancy of the Premises, then Lessee shall, at Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Lessee shall carry out all such cleanup plans. Any such plans and cleanup are subject to City's prior written approval.

(f) If a release of Hazardous Substances occurs in, on, under, or above the Property, or other property, arising out of any action, inaction, or event described or referred to in this document, Lessee shall at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substance. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed with all applicable laws, rules, ordinances, and permits. Lessee shall be solely responsible for all cleanup, administrative, and enforcement costs of governmental agencies, including natural resource damage claims, arising out of any action, inaction, or event described or referred to in this document.

4.4 Indemnification.

(a) Lessee shall be fully and completely liable to the City for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any Authority with respect to Lessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials in or about the Premises, common area, or buildings. Lessee shall indemnify, defend, and save the City harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed upon City (as well as City's attorney's fees and costs) by any Authority as a result of Lessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials, or from Lessee's failure to provide all information, make all submissions, and take all steps required by all Authorities under the Laws.

(b) Lessee shall indemnify and hold City harmless from any and all claims, liabilities, lawsuits, damages, and expenses including reasonable attorney's fees for bodily injury or death, property damage, loss, or costs caused by or arising from the use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by Lessee or any of its agents, representatives or employees in, on, or about the Premises occurring during the term of this Agreement.

(c) City shall indemnify and hold the Lessee harmless from any and all claims, liabilities, lawsuits, damages, and expenses, including reasonable attorney's fees arising from third party actions brought against Lessee that are caused by or arise from the use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by City or any of its agents, representatives or employees in, on, or about the Premises.

4.5 Reporting Requirements. Lessee shall comply with the Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities, and shall provide to City a full copy of such filing or report as submitted within fifteen (15) days of such submission.

4.6 Right to Check on Lessee's Environmental Compliance. City expressly reserves the right, and Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Premises as City, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems.

4.7 Remedies. Upon Lessee's default under this Section, Hazardous Materials and

Environmental Compliance, City shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to the City:

(a) At City's option, to terminate this Agreement immediately, notwithstanding the notice of Section 6.8 and the buyback provisions of Section 5; and/or

(b) At City's option, to perform such response, remediation and/or cleanup as is required to bring the Premises and any other areas of City property affected by Lessee's default into compliance with the Laws and to recover from Lessee all of the City's costs on connection therewith; and/or

(c) To recover from Lessee any and all damages associated with the default, including, but not limited to, response, remediation and cleanup costs and charges, civil and criminal penalties and fees, adverse impacts on marketing the Premises or any other adjacent area of City property, loss of business and sales by City and other City lessees, diminution of value of the Premises and/or other adjacent areas owned by City, the loss or restriction of useful space on the Premises and/or other adjacent areas owned by City, any and all damages and claims asserted by third parties, and City's attorney's fees and costs.

4.8 **Remediation on Termination of Agreement.** Upon the expiration or earlier termination of this Agreement, Lessee shall remove, remediate or cleanup any Hazardous Materials on or emanating from the Premises, provided that the presence of Hazardous Materials arises from Lessee's use or occupancy of the Premises or Lessee's acts or omissions exacerbate the cost of remediation and Lessee shall undertake whatever other action may be necessary to bring the Premises into full compliance with the Laws ("Termination Cleanup"). The process for such Termination Cleanup is subject to City's prior written approval. If Lessee fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, City may elect to perform such Termination Cleanup after providing Lessee with written notice of the City's intent to commence Termination Cleanup, and after providing Lessee a reasonable opportunity, which shall be not less than ninety (90) days after such notice (unless City is given notice by a government agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time, in which case City shall give Lessee notice of such shorter time), to commence or resume the Termination Cleanup process. If City performs such Termination Cleanup after said notice and Lessee's failure to perform same, Lessee shall pay all City costs.

4.9 **Survival.** Lessee's obligations and liabilities under this Section, Hazardous Materials and Environmental Compliance, shall survive the expiration of this Agreement.

4.10 **Third Parties.** Lessee shall require of third party lessee or owner, within the interior or adjacent to the loop, to comply with Section 4 of this Agreement.

SECTION 5
TERMINATION & LOOP TRACK BUYBACK

5.1 Termination. This Agreement may be terminated as set forth below subject to the Buyback provisions contained herein.

(a) For Cause. Any failure on the part of the Lessee to comply with any or all parts of this Agreement may result in termination of this Agreement for "just cause." "Just cause" shall include, but is not limited to, repeated violations of minor aspects of this Agreement, or a single violation of this Agreement which causes or may cause significant property damage or threatens the health, safety or welfare of citizens of Richland or customers of the Lessee. Prior to termination, the parties will schedule a meeting within forty-eight (48) hours of receipt of written notice to resolve the problem or concern. Termination may be initiated for failure to cure any violation within sixty (60) days. Lessee may seek a hearing before the City Council if good cause exists for the failure to cure within the prescribed period. The Council may thereafter extend the cure period. Any waiver of an infraction by the City shall not be deemed to become a waiver of any other infraction which may occur.

Breach of Contract: Other defined events or thresholds that, if remain uncured with reasonable notice, provide the City the authority to terminate include:

1. Failure to maintain roads.
2. Failure to comply with a City-approved tariff structure.
3. Failure to allow use of the track to paying third parties.
4. Failure to address nuisance activity.
5. Failure to safely operate the track.
6. Failure to comply with City code requirements.
7. Failure to generate rail traffic (less than 1,200 cars annually).
8. Failure to maintain insurance as provided herein.
9. Other items that may be defined by mutual agreement and incorporated herein as an exhibit to this Lease Agreement.

(b) Without Cause. Either party may terminate this Agreement without cause by giving the other party a minimum of ninety (90) business days' written notification. However, termination shall not preclude Lessee from access rights to the Rail Loop Track under the same terms as any third party user.

(c) If the Lessee terminates the Agreement per Section 5.1(b), Lessee shall not be compensated. Lessee will remove the improvements at Lessee's

expense, or the City will have the option to take possession and ownership of the improvements (at no charge).

(d) If the rail loop has been abandoned, vacated, and/or partially or fully removed, this Agreement shall be terminated and will be considered a "for cause" termination subject to Section 5.2(b). In the event of termination for the reason provided herein, and the Lessee does not remove within thirty (30) days' written notice the stockpiled material, supporting structures, buildings and other improvements placed upon the Premises by the Lessee, the City may, at its option: 1) on the payment of one dollar ($1.00) take title to said property and/or material; or 2) dismantle, remove and dispose of such property at the City's discretion, and charge to the Lessee a fee for dismantling, removing, transporting and disposing of said property and/or material.

5.2 **Buyback Provisions.** Upon termination of this Lease Agreement, the City and Lessee have the following options:

(a) If the City terminates this Agreement per Section 5.1(b) "without cause" and the loop track continues to be in use, the City shall have the option to purchase the rail loop track improvements at the value agreed upon in the buyback schedule shown in Exhibit G. In the event the City terminates "without cause," the Lessee shall have a right as a third party to utilize the rail loop according to the Rail Operations Plan.

(b) If the City terminates "for cause" under Section 5.1(a), the City has the option to either take possession and ownership of the improvements (at no charge) or require Lessee to remove the improvements at Lessee's expense.

SECTION 6
MISCELLANEOUS PROVISIONS

6.1 **Time of the Essence.** Time is of the essence of this Lease, and for each and every covenant or condition which must be performed hereunder.

6.2 **Dispute Resolution.** City and Lessee agree to negotiate in good faith for a period of thirty (30) business days from the date of notice of any dispute between them prior to exercising their rights under this Agreement, or under law. All disputes between the City and the Lessee not resolved by negotiation between the parties may be arbitrated only by mutual agreement of the City and the Lessee. If not mutually agreed to resolve the claim by arbitration, the claim will be resolved by legal action. Venue shall be Benton County Superior Court. Arbitration of all claims will be in accordance with the Mandatory Arbitration Rules of Benton & Franklin Counties. In any dispute, the substantially prevailing party shall be entitled to reasonable attorney fees and costs.

6.3 **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable as written, the remainder of the Agreement or the applications of the remainder of the Agreement shall not be affected.

6.4 **Integration.** This Lease Agreement contains the entire agreement of the parties hereto and supersedes all previous understandings and agreements, written and oral, with respect to this transaction. Neither party shall be liable to the other for any representations made by any person concerning the premises or regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement. This Agreement may be amended only by written instrument executed by Lessor and Lessee or their lawful successors and assigns subsequent to the date hereof.

6.5 **Survival of Obligations.** In the event of termination of this Agreement for any reason, the obligations of Lessee to restore the Property, and to indemnify the City as set forth above, shall service termination.

6.6 **Exhibits and Addenda.** All exhibits and addenda to which reference is made in this Lease are incorporated in the Lease by the respective references herein. References made to "this Lease" include matters incorporated by reference.

6.7 **Captions.** The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Lease or any part or parts of this Lease.

6.8 **Notice.** Whenever any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal delivery (including delivery by written electronic transmission) or by certified, registered or express United States mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:

TO LESSEE:
Central Washington Transfer Terminal
Attn: Dennis Kyllo
Central Washington Transfer Terminal
Attn: Dennis Kyllo
427 W 1st Avenue
Spokane, WA 99201
(509) 623-1144
dkyllo@commoditiesplus.com

TO CITY:
City of Richland
Attn: Economic Development Manager
975 George Washington Way
PO Box 190, MS 18
Richland, WA 99352
Phone: (509)942-7583
FAX: (509)942-5666

Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof or two (2) business days after having been mailed as provided above, as the case may be.

6.9 Legal Relationship: No partnership, joint venture or joint undertaking shall be construed from the existence of this Agreement, and except as herein specifically provided, neither party shall have the right to make any representations for, act on behalf of, or be liable for the debts of the other. All terms, covenants and conditions to be observed and performed by either of the parties hereto shall be joint and several if entered into by more than one person.

6.10 Warranty of Authority. The persons executing and delivering this Lease on behalf of City and Lessee each represent and warrant that each of them is duly authorized to do so, and that execution of this Lease is the lawful and voluntary act of the person or entity on whose behalf they purport to act.

IN WITNESS WHEREOF, the City has executed this Agreement on the date shown next to its signature and Lessee has accepted on the date shown next to its signature.

Signed this _____ day of _____, 2013.

CITY OF RICHLAND - Lessor		WASHINGTON TRANSFER TERMINAL Lessee	
By: Cynthia D. Johnson	Date	By: Dennis Kyllo	Date
Its: City Manager		Its:	

ATTESTED:

_____
Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

_____
Heather Kintzley, City Attorney

STATE OF WASHINGTON)
) ss.
County of _____)

On this day personally appeared before me DENNIS KYLLO, to me known to be the individual described in and who executed the within and foregoing Ground Lease Agreement, and acknowledged that he or she signed the same as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ___ day of _____, 2013.

_____
Print Name: _____

_____
NOTARY PUBLIC in and for the State of Washington, residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
County of Benton)

On this _____ day of _____, 2013, before me personally appeared CYNTHIA D. JOHNSON, known to be the CITY MANAGER and/or representative for CITY OF RICHLAND and the person who executed the within and foregoing Ground Lease Agreement and acknowledged that the said instrument is to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____
NOTARY PUBLIC in and for the State of Washington, residing at: _____
My Commission Expires: _____

EXHIBITS

- Exhibit A - Map of Rail Loop Track on Leased Property
- Exhibit B – Permitted Uses
- Exhibit C- Non-Permitted Uses
- Exhibit D – Map of Purchase Option and Non-Compete Areas of Property
- Exhibit E – Final Operations Plan
- Exhibit F - Rail Track Maintenance Standards
- Exhibit G – Buyback Schedule

HORN RAPIDS RAIL LOOP
LEASE-EXHIBIT A

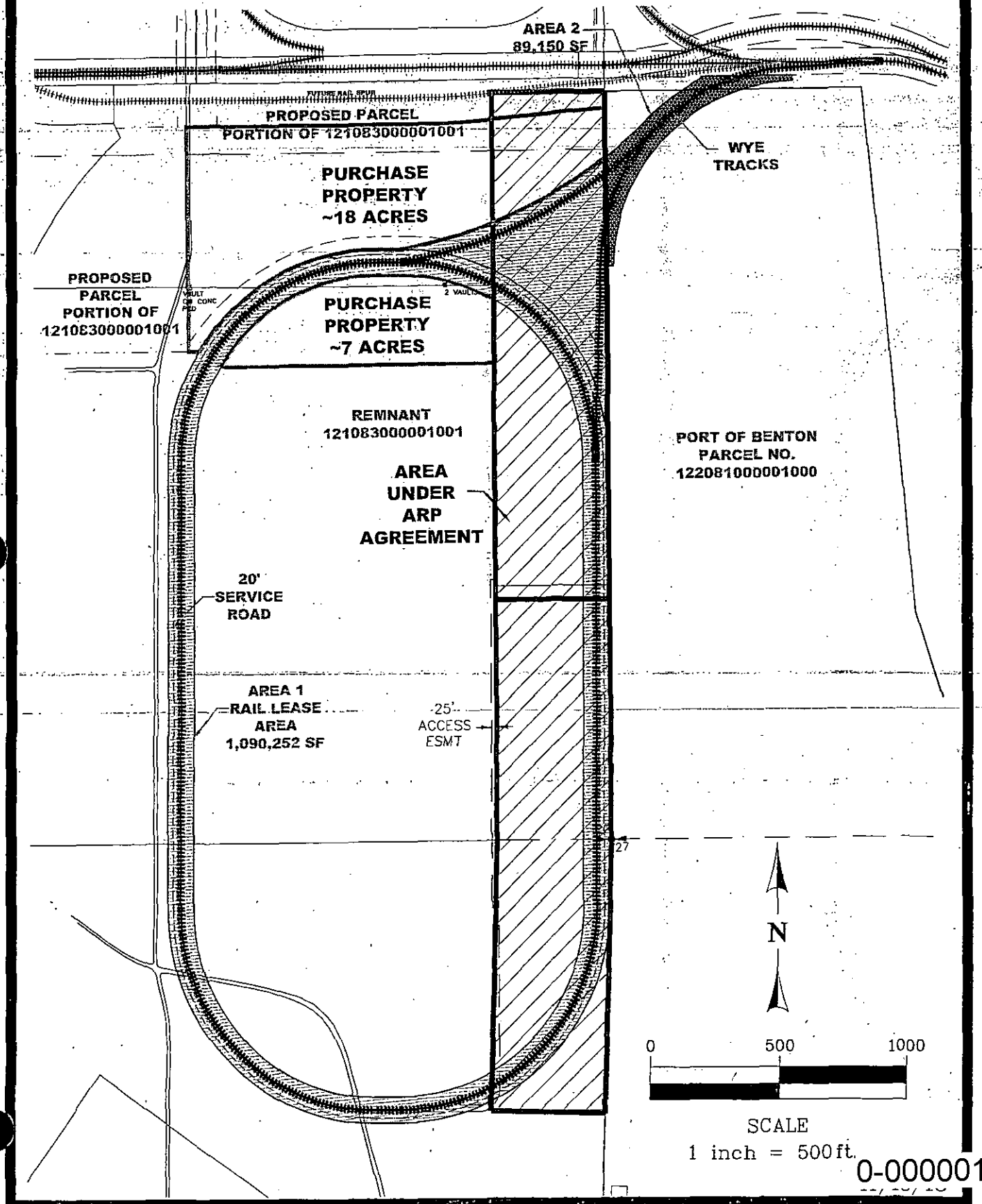


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Exhibit B – Permitted Uses

The following list is items that might be shipped to or from the proposed loop track to be built in Richland. This list is general in nature and is **not** meant to be exclusive of products outside of the "not allowed" list.

Ag-Products:

- Wheat & its by-products such as screenings, Millfeed, mids, flour, etc.
- Corn & its by-products such as screenings, DDG, corn gluten, germ, hominy, meals, etc.
- Beans & its-by-products such as oil, meal, soy hull pellets, etc.
- Sugar beets
- Molasses
- Hay (grasses or alfalfa)
- Barley (Malt, sprouts, brewery products, etc.)
- Blood meal
- Citrus products
- Cotton seed, meal & oils
- Animal Fat
- Feather meal
- Fish products
- Linseed (meal & oils)
- Canola (meal & oils)
- Oats & by-products
- Meat & bone meal
- Peanuts & by-products
- Poultry by-products
- Rice & by-products
- Sunflowers & by-products
- Milk & By-Products
- Yeast
- Crop Seeds
- Fruits
- Vegetables

General Categories: (Agricultural-related)

- Fertilizers
- Phosphates
- Potash
- Amino Acids
- Minerals for feed
- Vegetable oils & meals
- Animal Fats

Non-Agricultural-related:

- Metal goods (i.e. windmills, steel, pipe, etc.)
- Lumber products (i.e. wood, sawdust, wood chips, finished goods, etc.)
- Machinery (i.e. tractors, farm equipment, etc.)

Containerized items:

- For companies such as Wal-Mart, Target, Costco, etc.

Fuels:

- Ethanol
- *Diesel*

***Fuels: All fuel storage needs to be above ground and meets *all city building* and zoning codes.**

***All uses (such as woodchips, fuels, fertilizers, etc.) will have to be handled, stored and transported according to all safety, ecology, federal, state and local municipal standards.**

Exhibit C- Non-Permitted Uses

- Coal
- Radioactive waste,
- Hazardous waste
- Any other product that the City determines is a dust or odor nuisance per city of Richland code.

HORN RAPIDS RAIL LOOP
NON COMPETE AREAS
LEASE-EXHIBIT D

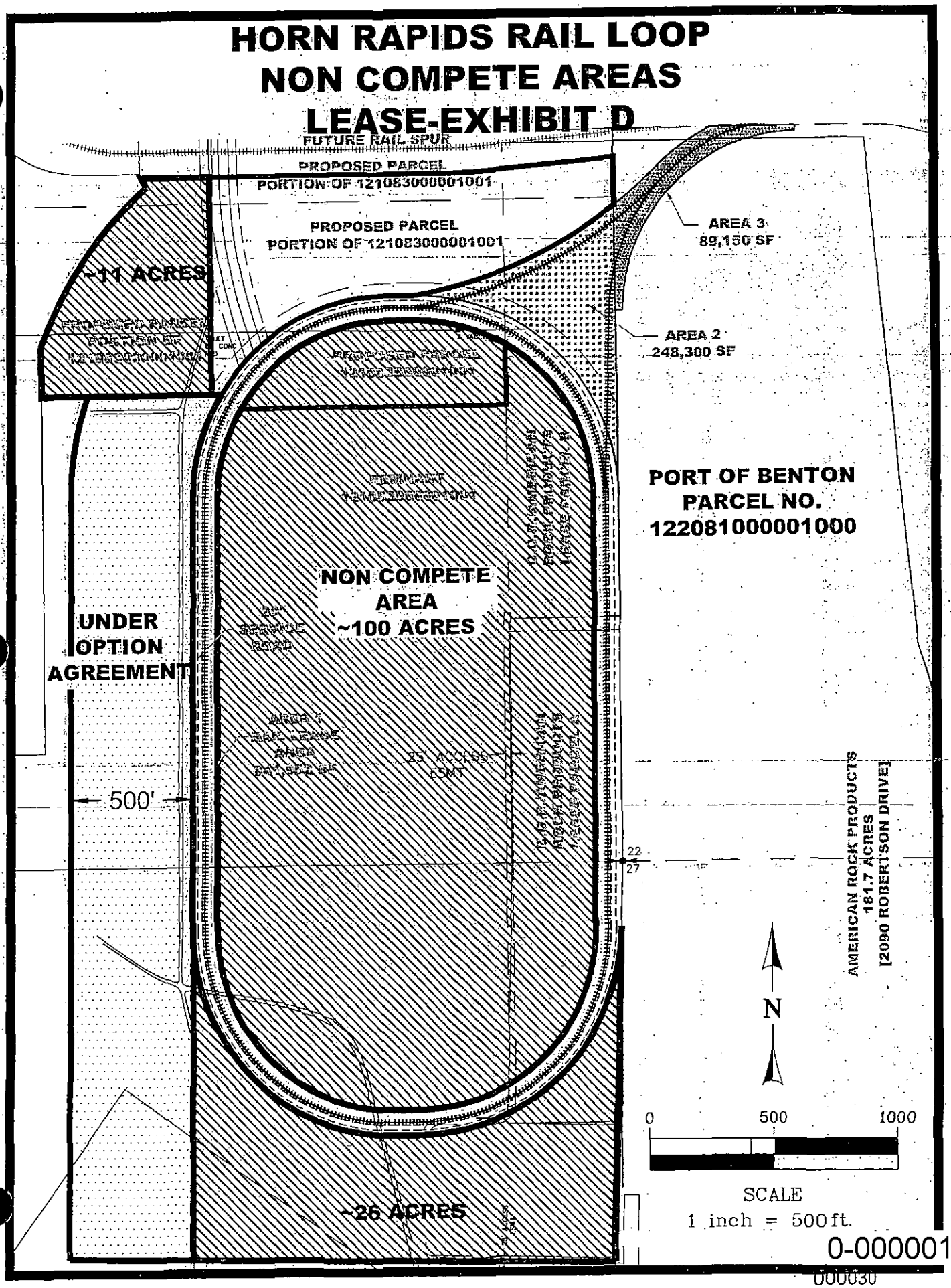

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Exhibit E – Final Rail Operations Plan

[To be inserted after approved by City]

Exhibit F - Rail Track Maintenance Standards

The Rail Track shall be maintained, at a minimum, to the following standards:

1. The track improvements on the Terminal are maintained to FRA Class 2 standards or better regarding roadbed, geometry, track structure, and track appliances and other track related devices;
2. Roadbed is maintained so as to avoid the roadbed becoming compromised;
3. Ballast shall not show evidence of holding water, shall be full section with full fractured ballast, including full cribs, and have functional walkways consistent with the original plans;
4. Vegetation is not growing in the track structure and vegetation of the balance of the Terminal will be in a manageable condition;
5. 90% of the ties (cross and switch) shall be non-defective (as defined by the FRA) and no locations will exist where there are two adjacent defective ties;
6. Rail surface shall be free of visible defects and the rail profile shall be ground consistent with the original rail profile;
7. Maximum allowable head wear and gage face wear will not exceed 5/16 inch;
8. Joints shall be tight with all bolts, washers, and nuts present and tight;
9. Loaded track gage will be within ½ inch of unloaded standard gage;
10. Horizontal alignment will be within 1 inch of original As-built alignment and vertical alignment shall be within ½ inch deviation from uniform within a 62' cord;
11. All other track materials (small items such as tie-plates, spikes, bolts and anchors) and special track work components shall be present and in serviceable condition, consistent with the original As-built configuration; and
12. All switches, lights, crossings, and other related-rail improvements shall be present and in safe and serviceable condition, consistent with the original as-built configuration.

Exhibit G - Buyback Schedule

Commodities Plus Rail Loop - Buy Back Schedule — Proposed

	Original Asset	Spurs, switches, embankment, and track improvements
(beginning of operation)	$ 4,500,000	Estimate, Exact amount to be determined and agreed to.

Year	Value	Buyback Amount 120% of remaining value
1	$ 4,500,000	N/A
2	$ 4,200,000	$ 5,040,000
3	$ 3,900,000	$ 4,680,000
4	$ 3,600,000	$ 4,320,000
5	$ 3,300,000	$ 3,960,000
6	$ 3,000,000	$ 3,600,000
7	$ 2,700,000	$ 3,240,000
8	$ 2,400,000	$ 2,880,000
9	$ 2,100,000	$ 2,520,000
10	$ 1,800,000	$ 2,160,000
11	$ 1,500,000	$ 1,800,000
12	$ 1,200,000	$ 1,440,000
13	$ 900,000	$ 1,080,000
14	$ 600,000	$ 720,000
15	$ 300,000	$ 360,000
16	$0	$0

Value is estimate beginning of year. 1st year value is agreed value of approved asset.
Straight line depreciation of value based on 15 years.
Year of operation begins when rail loop is completely operational.
Can't buyback first year of operation. Buyback option starts at beginning of 2 year of operation.

*Estimated buyback schedule proposed by City.

[An adjusted buyback schedule based on exact amount of actual rail loop investment to be inserted after approved by City]

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This Agreement for Purchase and Sale of Real Property ("Agreement") is made and entered into this ___ day of November, 2013 between the **CITY OF RICHLAND**, a Washington municipal corporation (hereinafter referred to as "Seller"), and **CENTRAL WASHINGTON TRANSFER TERMINAL**, a Delaware limited liability company (hereinafter referred to as "Purchaser").

1. Purchase and Sale of Property. Seller agrees to sell and Purchaser agrees to purchase, on the terms hereafter stated all of the following described property (collectively, the "Property"):

1.1. The Property. The land involved in this transaction is located in the City of Richland, Benton County, Washington, and is legally described as follows:

(See Exhibit A)

1.2 Scrivener's Errors. In the event of an error in the legal description, the parties agree that either party or a scrivener may correct the error.

1.3 Laws and Rights. It is understood that the sale and conveyance to be made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws, orders, rules and regulations, and any and all outstanding rights of record or which are open and obvious on the ground.

1.4 Timing of Conveyance. The Property described in Section 1.1 shall be conveyed to Purchaser by a statutory warranty deed ("deed") subject to the permitted exceptions and at the time of payment. The deed shall be delivered to Purchaser at closing.

2. Purchase Price. The estimated purchase price for the Property is the sum of five hundred and sixty two thousand and five hundred dollars and no cents ($562,500) computed on a price of twenty-two thousand and five hundred dollars and no cents ($22,500) per acre for 25 (twenty-five) acres of property. The actual purchase price shall be calculated per actual acreage described in the legal description (Exhibit A). The actual purchase price shall be paid by Purchaser to Seller, and shall be deposited in an escrow account with Tri-City Title and Escrow ("Title Company"). The funds shall be deposited in the following manner: ten thousand dollars ($10,000) earnest money shall be deposited within ten (10) business days after the date of execution of this Agreement by both parties, and the balance of the purchase price upon closing. For purposes of calculating time, the date of signing shall not count as the first business day. In the event the earnest money is not deposited in escrow by the close of business on the tenth (10th) business day after the date of execution of this

contract, this agreement shall automatically terminate. If, for any reason, the Purchaser terminates this Purchase and Sale Agreement after the due diligence period and prior to closing, the costs incurred by Seller for any services rendered for this specific project shall be deducted from the earnest money deposit. The Purchaser shall be entitled to any interest accrued on the earnest money deposit.

3. Conditions Precedent to Sale. This Agreement is made and executed by the parties hereto subject to the following conditions precedent:

3.1. Title Review. Within ten (10) business days after the final parcel description is approved by the Seller and Purchaser, Seller shall request from Tri-City Title and Escrow a preliminary title report on the Property and copies of all documents referred to therein. Said title report and related documents shall be provided to Purchaser as soon as possible, but in any event, no later than thirty (30) days before closing. Seller shall procure said title report and related documents at its sole cost and expense.

3.2. Due Diligence. Upon execution of this Agreement by both parties, Purchaser is granted a due diligence period until and including thirty (30) business days after receipt of the title report described in Section 3.1 above. Said due diligence period may be extended an additional thirty (30) business days upon written agreement by the Purchaser and Seller. Purchaser may conduct, at its own expense, a full review of legal, title, environmental and any other related issues. Seller will promptly provide to Purchaser copies of all documentation and reports relating to the Property, including, but not limited to, soil tests, environmental reports and similar reports. If, in Purchaser's opinion, the results of said review are unsatisfactory, Purchaser may, at its option, terminate this Agreement by giving Seller written notice of termination prior to the end of the due diligence period. In the event of termination by Purchaser under this section, this Agreement shall immediately terminate and be without further force and effect, and without further obligation of either party to the other. Upon notice of termination during the due diligence period, receipted costs incurred by the Seller for any services rendered specific to this project shall be deducted from the earnest money deposit. The earnest money deposited under Section 2 of this Agreement shall be forfeited in its entirety to Seller as liquidated damages should Purchaser notify Seller of its intent to terminate this Agreement at any time after expiration of the due diligence period.

3.3. Council Approval. The closing of this transaction is contingent upon approval of this Agreement by the City Council of the City of Richland. In the event the Richland City Council determines not to approve this Agreement, this Agreement shall immediately terminate and be without further force and effect, and without further obligation of either party to the other.

4. Closing. On or before the date of closing, Purchaser shall deliver to Tri-City Title and Escrow the actual purchase price and closing costs for the Property in the

form approved by the escrow company less the earnest money previously paid and interest on the earnest money deposit. Seller shall deliver the deed, as approved by Purchaser, to Tri-City Title and Escrow for placing in escrow. Title Company shall be instructed that when it is in a position to issue a standard owner's policy of title insurance in the full amount of the purchase price, insuring fee simple title to the Property in Purchaser, than Title Company shall record and deliver to Purchaser the deed and issue and deliver to Purchaser the standard owner's policy of title insurance.

4.1. Closing Costs. Each party shall pay its own attorney's fees. Seller shall pay one-half of all transfer taxes, recording costs, escrow closing costs, if applicable, and the full premium for a standard owner's policy of title insurance. Purchaser shall pay one-half of all transfer taxes, recording costs and escrow closing costs. Any other closing costs not specifically addressed in this Agreement shall be apportioned according to the customary practices for commercial real estate transactions.

4.2. Closing Date. The closing of the transaction and delivery of all items shall occur at Tri-City Title and Escrow, and shall occur on a date specified by Seller and communicated in writing to Purchaser. Closing shall occur no later than thirty (30) business days after the execution of the Ground Lease Agreement between the City of Richland and Washington Transfer Terminal related to the construction, maintenance, and operation of a rail loop.

5. Title. Upon closing of escrow as set forth in Section 4, title to the Property shall be conveyed by Seller to Purchaser by a duly executed statutory warranty deed.

6. Covenants, Representations and Warranties.

6.1. Seller's Covenants. Seller hereby covenants and agrees as follows:

6.1.1. From the date of this Agreement through the closing date, the Seller shall not make any material alterations to the Property or to any of the licenses, permits, legal classifications or other governmental regulations relating to the Property, nor enter into any leases or agreements pertaining to the Property without the Purchaser's prior written consent.

6.1.2. During the contract period, Seller shall not voluntarily cause to be recorded any encumbrance, lien, deed of trust, easement or the like against the title to the Property without Purchaser's prior consent.

6.1.3. Seller shall use its best efforts to remove all disapproved exceptions described in the preliminary title report.

6.1.4. During the contract period, Seller will operate and maintain the Property in a manner consistent with Seller's past practices relative to the Property and so as not to

cause waste to the Property.

6.1.5. Seller shall reasonably cooperate with Purchaser to obtain approvals and permits for the development of the Property.

6.1.6. Seller has or is able to comply with Washington law regarding the surplus and sale of the Property.

6.1.7. Utilities (water, sewer, and power) are available in the Logston Utility Corridor along the west border of the parcel. Purchaser will be required to extend utilities into the parcel to their new structures. Purchaser will be responsible for designing and constructing needed service laterals, and for obtaining all permits and paying all fees associated with utility connection and use.

6.1.8. The Seller will record necessary easements to provide ingress/egress to the Property. The Seller will consult with the Purchaser to locate a suitable ingress/egress location and agreed-upon dimensions for these easements to the property.

6.1.9. Seller and Purchaser further agree that other agreed-upon infrastructure improvements will be memorialized in a separate Infrastructure Agreement executed by both parties and herein incorporated by reference. In the event this Purchase and Sale Agreement is terminated by either party prior to the transfer of land ownership contemplated herein, the Infrastructure Agreement shall become null and void with no enforceability or continuing obligation by either party.

6.2. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties to Purchaser, each of which shall be true on the date hereof, throughout the contract period, and on the date of closing. Seller shall immediately provide Purchaser with written notice of any event which would make any representation or warranty set forth below incorrect or untrue.

6.2.1. With one exception, Seller has full power and authority to enter into and carry out the terms and provisions of this Purchase Agreement and to execute and deliver all documents which are contemplated by this Agreement. All actions of Seller necessary to confer such authority upon the persons executing this Purchase Agreement and such other documents have been, or will be, taken. The one exception relates to an option agreement between the City of Richland and EUCON/American Rock Products (contract C126-04) dated April 19, 2004. To effectuate this transaction with Purchaser, Seller has renegotiated the option agreement with EUCON/American Rock Products and will repurchase the property from EUCON/American Rock Products at the closing of this purchase and sale with Purchaser. The City will close on the EUCON/American Rock Products property simultaneously with the CWTT agreements.

However, the City's repurchase of the EUCON/American Rock Products property must to be recorded first.

6.2.2. Seller is a Washington municipal corporation, duly formed and organized, validly existing and in good standing under the laws of the State of Washington.

6.2.3. Seller has not received any written notice from any governmental authorities or regulatory agencies that eminent domain proceedings for the condemnation of the Property are pending or threatened.

6.2.4. Seller has not received any written notice of pending or threatened investigation, litigation or other proceeding before a local governmental body or regulatory agency which would materially and adversely affect the Property.

6.2.5. Seller has not received any written notice from any governmental authority or regulatory agency that Seller's use of the Property is presently in violation of any applicable zoning, land use or other law, order, ordinance or regulation effecting the Property.

6.2.6. No special or general assessments have been levied against the Property except those disclosed in the preliminary title report, and Seller has not received written notice that any such assessments are threatened.

6.2.7. Seller is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

6.3. Purchaser's Representations. Purchaser hereby makes the following representations to Seller, each of which shall be true on the date hereof and on the date of closing.

6.3.1. Purchaser has full power and authority to enter into and carry out the terms and provisions of this Purchase Agreement and to execute and deliver all documents which are contemplated by this Agreement. All actions of Purchaser necessary to confer such authority upon the persons executing this Purchase Agreement and such other documents have been, or will be, taken.

6.3.2. Purchaser represents that it has sufficient funds to close this transaction.

6.3.3. Purchaser is a limited liability company in good standing under the laws of its formation. In the event this statement is false, the person or person signing on behalf of the company shall be personally liable under this contract.

6.3.4. Purchaser represents that the property will be developed as a bulk trans-

loading facility utilizing an adjacent rail loop also proposed and anticipated to be developed by the Purchaser. Prior to closing, the Purchaser agrees to provide a site plan indicating how the twenty-five (25) acres will be developed. Deviation from the Purchaser's intended use must be authorized by the Seller in writing. Failure to obtain the Seller's permission for any deviation from the intended use stated herein shall subject the Property to the Reversionary Clause in Section 10.13. Nothing in this section alleviates the Purchaser from obtaining the necessary approvals, authorizations or permits required for the development of the Property for the intended use.

6.4. Survival of Covenants. The covenants, representations, and warranties contained in Section 6 of this Agreement shall survive the delivery and recording of the deed from the Seller to the Purchaser.

7. Casualty and Condemnation.

7.1. Material Casualty or Condemnation. If, prior to the closing date: (i) the Property shall sustain damage caused by casualty which would cost ten thousand dollars ($10,000) or more to repair or replace; or (ii) if a taking or condemnation of any portion of the Property has occurred, or is threatened which would materially affect the value of the Property, either the Purchaser or Seller may, at its option, terminate this Agreement by providing written notice to the other party within two (2) days' notice of such event. If, prior to the closing date, neither party provides said termination notice within such two (2) day period, the closing shall take place as provided herein with a credit against the purchase price in an amount equal to any insurance proceeds or condemnation awards actually collected by Seller. At closing, Seller shall assign to Purchaser Seller's full interest in any insurance proceeds or condemnation awards which may be due but unpaid to Seller on account of such occurrence.

7.2. Immaterial Casualty or Condemnation. If prior to closing date, the Property shall sustain damage caused by casualty which is not described in Section 7.1., or a taking or condemnation has occurred, or is imminently threatened, which is not described in Section 7.1., neither Purchaser nor Seller have the right to terminate this Agreement. Closing shall take place as provided herein with a credit against the Purchase Price equal to the cost to repair that portion of the Property so damaged by insured casualty, or an amount equal to the anticipated condemnation award, as applicable. At closing, Purchaser shall assign to Seller all rights or interest in and to any insurance proceeds or condemnation awards which may be due on account of any such occurrence.

8. Purchasers' Remedies. In the event of material breach of this Agreement by Seller, Purchaser shall have, as their sole remedies: (a) the right to pursue specific performance of this Agreement, (b) the right to terminate this Agreement and (c) all remedies presently or hereafter available at law or in equity. Purchaser hereby waives

all other remedies on account of a breach hereof by Seller.

9. Liquidated Damages. In the event of material pre-closing default by Purchaser in the performance of their obligations hereunder, Seller shall have the right to terminate this Agreement without further obligations to Purchaser and keep the earnest money deposit as liquidated damages. Purchaser agrees that it is difficult to assess the amount of damages incurred by the Seller in the event of a default by the Purchaser. The parties therefore agree that, as of the date of this contract, the amount of the earnest money deposit is a reasonable estimate of the damages incurred by Seller.

10. Miscellaneous.

10.1. Finder's Fee. Purchaser and Seller each agree that a real estate finder's fee ("Real Estate Compensation") is not due to each other or to any third party. Each party hereby agrees to indemnify and defend the other against and hold the other harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorney's fees, resulting from any claims for Real Estate Compensation by any person or entity other than provided herein. The provisions of this section shall survive the closing.

10.2. Time of the Essence. Time is of the essence of every provision of this Agreement.

10.3. Notices. Whenever any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal delivery (including delivery by written electronic transmission) or by certified, registered or express United States mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:

TO PURCHASER:
Central Washington Transfer Terminal
Attn: Dennis Kyllo
427 W 1st Avenue
Spokane, WA 99201
(509) 623-1144
dkyllo@commoditiesplus.com

TO SELLER:
City of Richland
Attn: Economic Development Manager
975 George Washington Way
PO Box 190, MS 18
Richland, WA 99352
Phone: (509) 942-7763

Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof or two (2) business days after having been mailed as provided above, as the case may be.

10.4. Assignments and Successors. Purchaser may not assign this Agreement

without Seller's consent. Any assignment made without Seller's consent is null and void, and does not relieve the Purchaser of any liability or obligation hereunder.

10.5. Captions. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

10.6. Exhibits. All exhibits attached hereto shall be incorporated by reference as if set out in full herein.

10.7. Binding Effect. Regardless of which party prepared or communicated this Purchase Agreement, this Purchase Agreement shall be of binding effect between Purchaser and Seller only upon its execution by an authorized representative of each such party.

10.8. Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Purchase Agreement and that the normal rule of construction providing that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Purchase Agreement or any amendment or exhibits hereto. This is a fully integrated Agreement. There are no additional terms, conditions, or obligations binding upon the parties unless specifically referenced herein.

10.9. Counterparts. This Purchase Agreement may be executed in several counterparts, each of which shall be an original, but all of such counterparts shall constitute one such Agreement.

10.10. Cooperation and Further Assurances. Each party shall cooperate with the other in good faith to achieve the objectives of this Agreement. The parties shall not unreasonably withhold responses to requests for information, approvals, or consent provided for in this Agreement. The parties agree to take further action and execute further documents, both jointly or within their respective powers and authority, as may be reasonably necessary to implement the intent of this Agreement.

10.11. Full Performance and Survival. The delivery of the deed and any other documents and instruments by Seller and the acceptance and recordation thereof by Purchaser shall effect a merger and be deemed the full performance and discharge of the obligations on the part of Purchaser and Seller to be performed hereunder. Certain clauses, covenants, warranties and indemnifications specifically provided herein or that can only be performed after closing shall survive the closing.

10.12. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. The parties agree that Benton County is the appropriate venue for filing of any civil action arising out of this

Agreement, and both parties expressly agree to submit to personal jurisdiction in Benton County Superior Court.

10.13. Reversionary Clause and Option to Repurchase/Reclaim. This Property is being sold to Purchaser in anticipation of the development of a bulk trans-load facility. The Seller reserves a reversionary interest to reclaim title to the Property under the following circumstances:

10.13.1. If Purchaser fails to submit an application to Seller for approval of building plans within six (6) months of closing; or

10.13.2. If Purchaser does not initiate construction of its trans-load facility within eighteen (18) months of closing.

10.14. Reconveyance. Seller shall reclaim this Property by refunding the actual purchase price without interest. Seller will not assume any liability for expenses incurred by Purchaser in conducting this transaction. Purchaser agrees to reconvey title in fee to Seller within sixty (60) days of receipt of notice from Seller seeking reconveyance of Property pursuant to Section 10.13.2 of this Agreement. Purchaser may, in its sole discretion, remove any improvements or fixtures made or provided by Purchaser prior to reconveyance. This reversionary right is exclusive to the Seller and shall be exercised at Seller's sole discretion. Seller shall be under no obligation to exercise this reversionary right. This reversionary right survives forty-eight (48) months after closing or until such time as building commences, whichever is earlier. In the event Purchaser desires to sell to a third party during the forty-eight (48) month reversionary period, Purchaser must obtain Seller's approval for any resale of the Property within the forty-eight (48) month reversionary period. Seller shall grant or deny such approval for resale within its sole discretion.

10.15. Scrivener. The party drafting this Agreement is the City of Richland. The City of Richland makes no representations regarding the rights or responsibilities of Purchaser under this Agreement. Purchaser is encouraged to review the completed contract with counsel before signing this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the day and year first above written.

CITY OF RICHLAND - Seller	CENTRAL WASHINGTON TRANSFER TERMINAL - Purchaser
By: Cynthia D. Johnson	By: Dennis Kyllo

Its: City Manager Its:

ATTESTED:

Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

Heather Kintzley, City Attorney

STATE OF WASHINGTON)
) ss.
County of _____)

On this day personally appeared before me DENNIS KYLLO, to me known to be the individual described in and who executed the within and foregoing Agreement for Purchase of Real Property, and acknowledged that he or she signed the same as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ___ day of _____, 2013.

Print Name:

NOTARY PUBLIC in and for the State of Washington, residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
County of Benton)

On this _____ day of _____, 2013, before me personally appeared CYNTHIA D. JOHNSON, known to be the CITY MANAGER and/or representative for CITY OF RICHLAND and this person that executed the within and foregoing Agreement

for Purchase of Real Property and acknowledged that the said instrument is to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

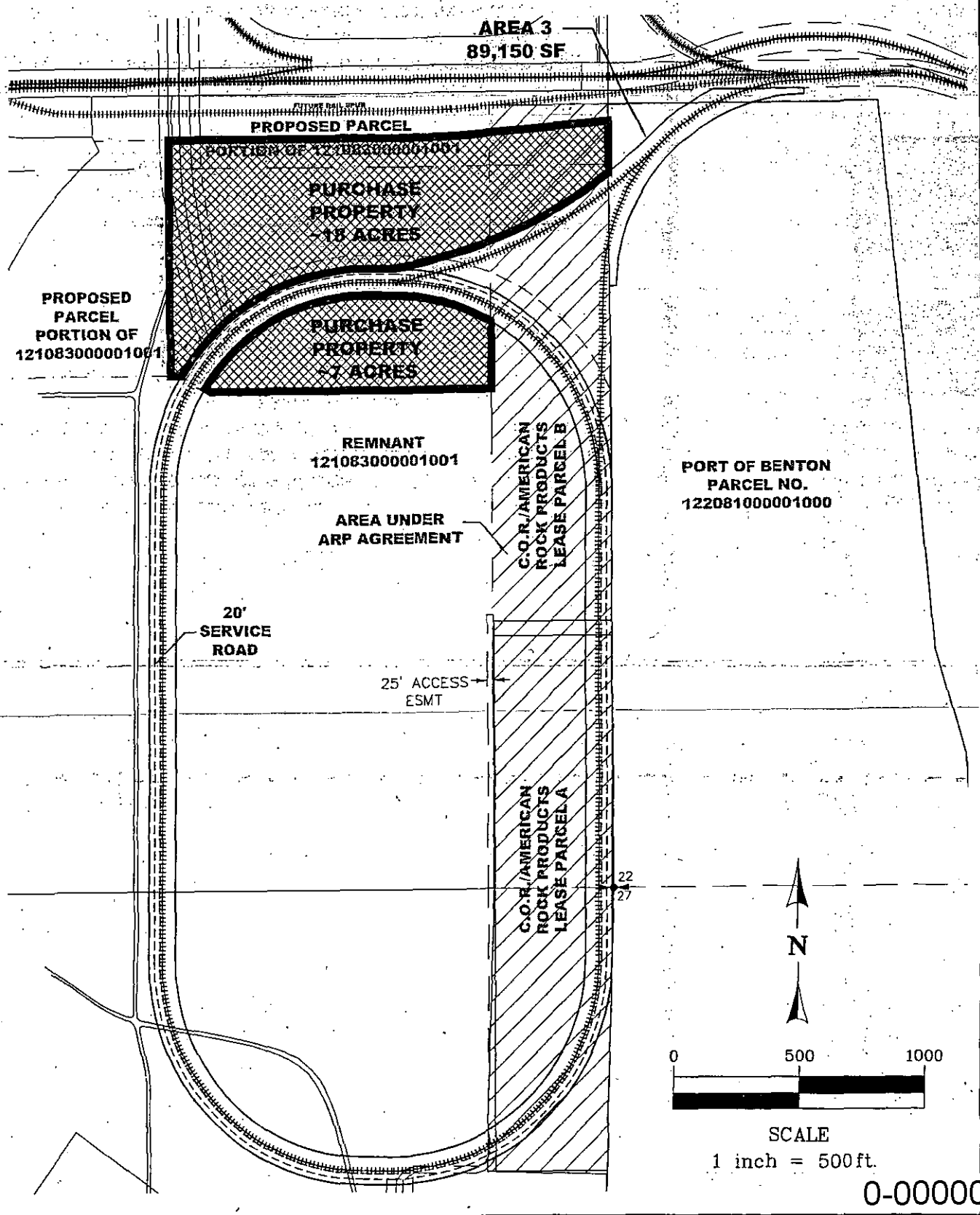
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____

NOTARY PUBLIC in and for the State of Washington, residing at: _____

My Commission Expires: _____

HORN RAPIDS RAIL LOOP
PURCHASE AND SALE AGREEMENT
EXHIBIT A



City of Richland

Infrastructure Agreement

This Infrastructure Agreement ("Agreement") is made and entered into by and between the **CITY OF RICHLAND**, a municipal corporation of the State of Washington, hereinafter referred to as "City," and **CENTRAL WASHINGTON TRANSFER TERMINAL LLC.**, a Delaware limited liability company, hereinafter referred to as "CWTT." CWTT and City are sometimes herein individually referred to as a "Party" or collectively as the "Parties."

I. RECITALS

WHEREAS, CWTT has entered into an Agreement to purchase certain real property ("Purchase Agreement") consisting of approximately twenty-five (25) acres located along Battelle Boulevard, Richland, Washington, as more particularly described on attached Exhibit A and depicted on Exhibit B ("Owner Property"), which CWTT desires to develop, including the construction of several buildings; and

WHEREAS, City desires to facilitate CWTT's development by developing public infrastructure that will serve CWTT's property and City property, described as the construction of a public street, Logston Boulevard, starting from Battelle Boulevard and extending approximately two thousand (2,000) lineal feet of road south; and

WHEREAS, the development of public infrastructure under this Agreement will benefit property of both City and CWTT in the form of improved accessibility and increased property values;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

II. AGREEMENT

1. DEVELOPMENT OBLIGATIONS

1.1 *City Contribution.* City shall expend funds ("Development Funds") for the building of two thousand lineal feet of road (shown in Exhibit C) in an amount equal to the difference between the Benton County 2019 assessed value of Owner Property (shown in Exhibit B) less the 2013 Benton County assessed value of Owner Property, which is $401,468.12 ($16,058.72 per acre x 25 acres), multiplied by ten percent (10%). For clarity: (2019 assessed value – 2013 assessed value) x .10 = development fund amount].

1.2 *Development Funding True-Up.* On August 1, 2019, the Parties shall mutually cooperate to determine whether the actual amount City has then expended in Development Funds exceeds the development fund amount, and, if such an

excess exists, Owner shall pay the excess amount to City no later than August 31, 2019.

2. CONDITIONS AND TERM

2.1 *Effective Date and Term.* This Agreement, although executed on the date of signature of the second party, shall become effective fifteen (15) calendar days after closing on the Purchase and Sale Agreement between the City of Richland and Washington Transfer Terminal, LLC for purchase of the Owner Property. In the event the City of Richland and Washington Transfer Terminal fail to close on the Purchase and Sale Agreement referenced herein, this Infrastructure Agreement shall terminate, and the parties shall have no obligations hereunder. This Agreement shall terminate on August 31, 2019, or upon full payment of any obligation due under Section 1.2 above, whichever date occurs last in time.

2.2 *CWTT Bid Notice.* Prior to commencement of construction of the infrastructure contemplated under this Agreement, the City shall provide CWTT with all bid award information. "Bid award information" includes the City's call for proposals, and the scope of work/specifications related to the project contemplated under this Agreement. Commencement of construction shall be conditioned upon CWTT approving, in writing, all bid award information. If CWTT does not approve all bid award information within a reasonable time, this Agreement shall automatically terminate and be of no further force and effect.

2.3 *Commencement of Construction.* Construction on the infrastructure contemplated under this Agreement shall commence once the rail loop is "under construction" as determined by the issuance of all necessary permits and the commencement of grading activities on site.

3. GENERAL

3.1 *Amendment.* No Amendment to this Agreement shall be made unless mutually agreed to by the Parties in writing.

3.2 *Assignment/Successors.* This Agreement shall be binding upon the heirs, successors, assigns of any or all of the Parties hereto.

3.3 *Entire Agreement.* This Agreement contains the entire agreement of the parties hereto and supersedes all previous understandings and agreements, written and oral, with respect to this transaction. Neither party shall be liable to the other for any representations made by any person concerning the premises or regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement.

3.4 *Governing Law/Forum Selection.* Unless otherwise controlled by federal law, the interpretation and enforcement of this Agreement shall be governed by the laws of the State of Washington. The parties agree that Benton County is the appropriate venue for filing of any civil action arising out of this Agreement. User expressly agrees to submit to personal jurisdiction in Benton County Superior Court.

3.5 *Notice.* Any notice or demand required or permitted to be given under this Agreement shall be sufficient if in writing and sent by registered or certified mail, return receipt requested, or by overnight courier, or hand delivered, to the address of the Parties set forth below. Any Party may give notice in the manner provided in this Section to the other Parties of a change of address. Any notice shall be deemed to have given on the date it is deposited in the U.S. Postal Service mail, delivered to the overnight courier, with postage prepaid, or upon hand delivery, as the case may be.

TO THE CITY:
City of Richland
Attn: Economic Development Manager
P.O. Box 190, MS 18
Richland, WA 99352
Phone: (509) 942-7763

TO CWTT:
Central Washington Transfer Terminal
Attn: Dennis Kyllo
427 W 1st Avenue
Spokane, WA 99201
(509) 623-1144
dkyllo@commoditiesplus.com

3.6 *Severability.* If any provision of this Agreement conflicts with applicable law or its application is found to be invalid, the remainder of this Agreement shall not be affected and to this end, the terms of this Agreement are declared to be severable.

3.7 *Legal Action.* In the event legal action is necessary to enforce any of the provisions of this Agreement, the parties agree that the prevailing party will be awarded its reasonable attorney's fees and costs in action.

3.8 *Notice of Agreement.* Either Party may record with Benton County a document providing notice of the existence of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day shown next to their signatures below.

CITY OF RICHLAND	CENTRAL WASHINGTON TRANSFER TERMINAL
By: Cynthia D. Johnson Date	By: Dennis Kyllo Date
Its: City Manager	Its:

ATTESTED:

Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

Heather Kintzley, City Attorney

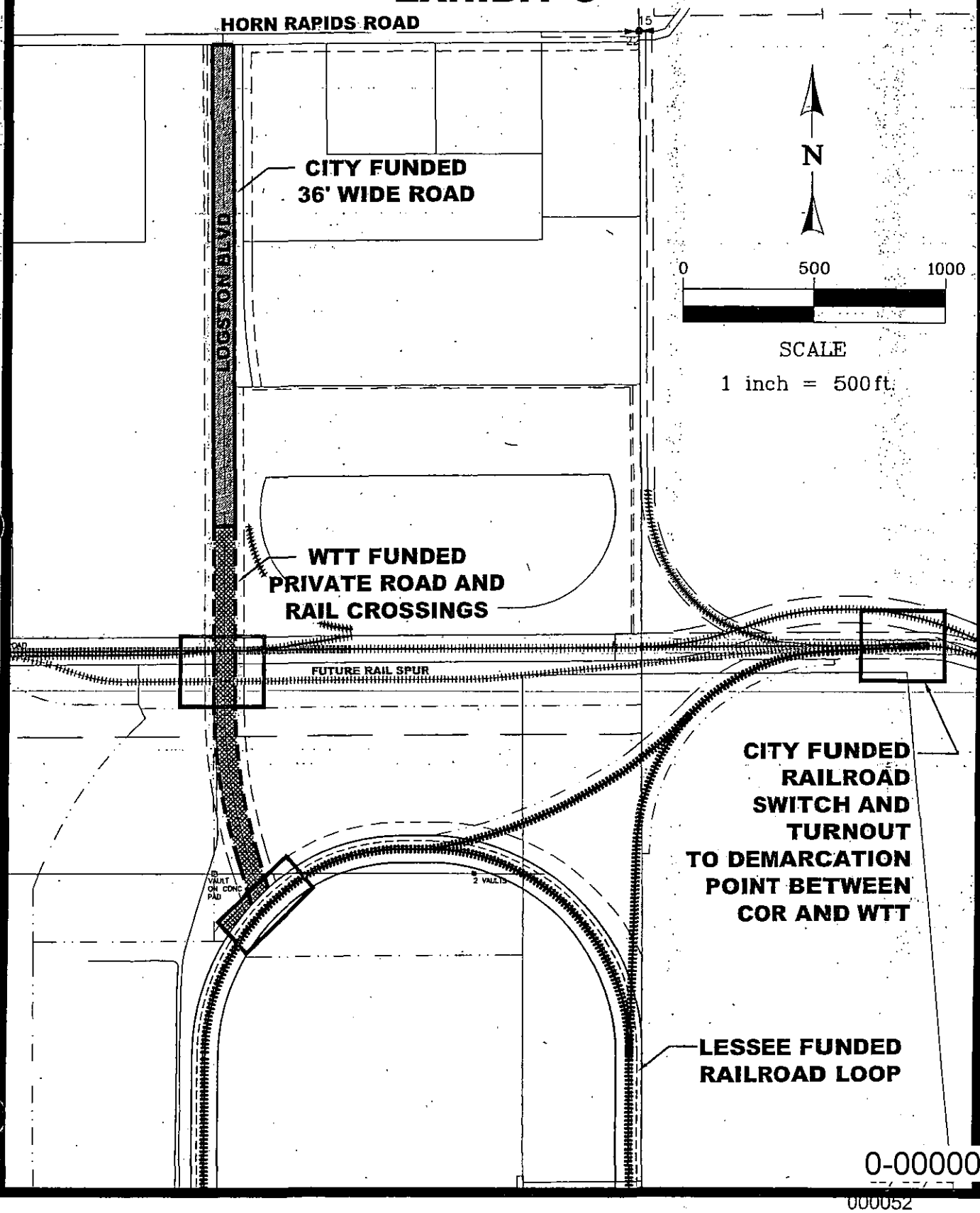
EXHIBIT A- LEGAL DESCRIPTION OF PURCHASED PROPERTY

(To be inserted when purchase is executed)

EXHIBIT B- MAP OF PURCHASED PROPERTY

(To be inserted when purchase is executed)

HORN RAPIDS RAIL LOOP
INFRASTRUCTURE AGREEMENT
EXHIBIT C



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AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
AND
CANCELLATION OF OPTION

AMERICAL ROCK PRODUCTS

This Agreement for Purchase and Sale of Real Property and Cancellation of Option ("Agreement") is made and entered into this ___ day of November, 2013, between **AMERICAN ROCK PRODUCTS**, a Washington Corporation (hereinafter referred to as "Seller" or "ARP"), and the **CITY OF RICHLAND**, a Washington municipal corporation (hereinafter referred to as "Purchaser" or "City").

RECITALS:

On or about April 26, 2004, the City as Seller and ARP as Purchaser entered into a Purchase and Sale Agreement relating to the real property legally described in Exhibit A hereto ("Purchased Property"). ARP became the owner of record of the Purchased Property on or about April 30, 2004. Simultaneous with the execution of the Purchase and Sale Agreement, the City as Seller and ARP as Purchaser entered into an Option Agreement governing a second parcel of real property legally described in Exhibit "B" hereto ("Option Property").

To facilitate the development of the Horn Rapids Rail Loop, the City desires to reacquire the Purchased Property from ARP and cancel ARP's Option on the Option Property. ARP is willing to sell the Purchased Property to the City, and further agrees to the cancellation of its option on the Option Property, pursuant to the terms and conditions set forth herein.

1. Property and Sale of Property. ARP agrees to sell and City agrees to purchase, on the terms hereafter stated, the Purchased Property legally described in Exhibit A hereto, situated in the City of Richland, Benton County, Washington, together with all improvements thereon (if any) and all mineral and resource rights, including ground-water rights, held by ARP.

1.1. Scrivener's Errors. In the event of an error in the legal description, the parties agree that either party or a scrivener may correct the error.

1.2. Laws and Rights. It is understood that the sale and conveyance to be made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws, orders, rules and regulations, and any and all outstanding rights of record or which are open and obvious on the ground.

1.3. Timing of Conveyance. The Purchased Property described in Section 1 shall be conveyed to City by a Statutory Warranty Deed ("Deed") subject to the permitted

exceptions and at the time of payment, which shall be rendered to ARP at the time of closing. The Deed shall be delivered to City at closing.

2. Cancellation of Option. At the time of closing of the purchase of the Purchased Property, ARP agrees to the cancellation of its option governing the Option Property described in Exhibit B hereto, situated in the City of Richland, Benton County, Washington, on the terms hereafter stated. Cancellation shall be evidenced and effectuated by the execution and recording of the Termination of Purchase Option attached hereto as Exhibit C.

3. Consideration. The consideration for both the sale of the Purchased Property and the release of the Option governing the Option Property is as follows:

a. Cash Consideration. City shall pay ARP the Purchase Price of two hundred seventy thousand eight hundred seventy-five dollars and 27/100 cents ($270,875.27) for the Purchased Property, and the sum of twenty thousand dollars and 00/100 cents ($20,000.00) for the cancellation of the Option Agreement, said consideration collectively referred to hereafter as the cash consideration. The total cash consideration shall be deposited by City into an escrow account with Cascade Title Company, and shall be paid to ARP at closing subject to all adjustments and proration as may be provided for elsewhere herein.

b. Non-Cash Consideration. In addition to the cash consideration to be paid to ARP, City hereby agrees to enter into a Mineral Extraction License Agreement in the form attached hereto as Exhibit D. The purpose of the License Agreement is to allow ARP, as part of the consideration for the property purchase and release of option provided herein by ARP, to conduct at ARP's sole expense (but at no further charge from the City), removal and processing of sand and gravel and related activities on the property described in Exhibits A and B hereto, and on such other real property as described in the License Agreement.

4. Conditions Precedent to Sale and Option Cancellation. This Agreement is made and executed by the parties hereto subject to the following conditions precedent:

4.1. Title Review. Within ten (10) business days of executing this Agreement, City shall obtain a title report for the Purchased Property and the Option Property. For purposes of calculating time, the date of signing shall not count as the first business day. City expressly agrees that all exceptions, defects and encumbrances that were of record when City originally sold the Purchased Property to ARP and granted an option in the Option Property to ARP are hereby accepted by City in connection with this transaction.

4.1.1. New Exceptions. To the extent there are exceptions, defects and encumbrances of record that have arisen since the original closing, City will notify ARP in writing within ten (10) business days from the execution of this Agreement of any such

new exceptions, defects and encumbrances to which City objects ("title objections"). ARP shall then have ten (10) business days from receipt of City's notice of title objections to give City written notice either that: 1) ARP shall, before closing, remove all identified title objections at no cost to City, and in each such case ARP shall promptly provide City with evidence satisfactory to City of ARP's ability to so remove such title objections; or 2) ARP elects in its sole discretion not to cause one or more of such title objections to be removed. ARP's determination not to cause one or more title objections to be removed shall not constitute default, but shall entitle City to terminate this Agreement with no penalty by giving ARP notice thereof within ten (10) business days of receiving ARP's notice of non-removal. If City fails to deliver timely written notice of termination, then City shall be deemed to have waived its title objections.

4.1.2. Monetary Encumbrances. Notwithstanding anything in this Agreement to the contrary, ARP shall remove all monetary encumbrances and monetary defects that have not been prorated at or before closing. The terms "monetary encumbrances" or "monetary defects" as used herein mean encumbrances or defects to title that by their terms require the payment of money, whether in installments or at a fixed time or otherwise, including, but not limited to, mortgages, deeds of trust, mechanics' or materialmen's liens, but shall not include liens associated with public improvement districts and special assessments. If monetary encumbrances or monetary defects exist as to either the Purchased Property or the Option Property that are not cured or waived in a timely manner, this Agreement shall terminate with no penalty.

4.1.3. Other Due Diligence. City has conducted a full review of legal, title, environmental, archaeological and any other related issues and subject to the terms, conditions and representations herein, has completed its due diligence on both the Purchased Property and the Option Property with the current available information. ARP shall provide to City copies of all documentation and reports that it has in its possession (other than those documents and reports previously provided to ARP by City) relating to both the Purchased Property and the Option Property, including, for example, soil tests, environmental reports and similar reports. City reserves the right to terminate this Agreement with no penalty if, within fifteen (15) business days of receipt of additional reports and documentation from ARP, the City determines that the review of the reports is, in its sole opinion, unsatisfactory. In the event of termination by City under this section, this Agreement shall immediately terminate and be without further force and effect, and without further obligation of either party to the other.

4.2. Council Approval. The closing of this transaction is contingent upon approval by the City Council of the City of Richland. In the event the Richland City Council determines not to approve this Agreement, this Agreement shall immediately terminate with no penalty and be without further force and effect, and without further obligation of either party to the other.

4.3. Third Party Option Rights. Pursuant to this Agreement, ARP is releasing its Option interest on the Option Property, legally described herein in Exhibit A, as previously acquired pursuant to a 2004 Real Estate Option Agreement between the City of Richland

and American Rock Products. ARP makes no warranties or representations of any nature as to the existence (or lack thereof) of any other interests or encumbrances effecting the Option Property.

4.4. Proposed Loop Project. The City of Richland has the option to terminate this Agreement with no penalty in the event the Purchase and Sale Agreement with Central Washington Transfer Terminal for purchase of 25 acres terminates or does not reach closing for any reason.

4.5. Execution of Lease Agreement. Concurrent with closing on this Purchase and Sale Agreement and Cancellation of Option, the parties shall execute a License Agreement authorizing ARP's ongoing gravel and sand removal on the subject properties as described in said License Agreement attached as Exhibit D. In the event this Purchase and Sale Agreement and Cancellation of Option with ARP terminates or does not reach closing, neither party has any further obligation to enter said License Agreement.

5. Closing. On or before the date of closing, as described below, City shall deliver to the escrow company, Cascade Title Company, the total cash consideration in the form of a certified or cashier's check. ARP shall deliver the statutory warranty deed, as approved by City, to Cascade Title Company for placing in escrow. ARP shall also deliver the executed Termination of Purchase Option to Cascade Title Company, and the parties shall have executed the License Agreement and delivered a copy thereof to Cascade Title Company. Cascade Title Company shall be instructed that when it is in a position to issue a standard owner's policy of title insurance in the full amount of the Purchase Price, insuring fee simple title to the Purchased Property in City, Cascade Title Company shall record and deliver to City the deed; and issue and deliver to City the standard owner's policy of title insurance. Cascade Title Company shall also record the Termination of Purchase Option and Memorandum of License Agreement in the form attached hereto as Exhibit G.

5.1. Closing Costs. Each party shall pay its own attorney's fees. ARP shall pay all transfer taxes, recording costs, and escrow closing costs, if applicable. City will pay the full premium for a standard owner's policy of title insurance. Real property taxes (excluding assessments) for the then-current tax year relating to the Purchased Property shall be prorated. All unpaid assessments, if any, existing as of the closing date shall be prorated between City and Seller as of the closing date. Any other closing costs not specifically addressed in this Agreement shall be apportioned according to the customary practices for commercial real estate transactions.

5.2. Closing Date. Closing on this Purchase and Sale Agreement is contingent upon the City's successful closing of the Purchase and Sale Agreement with Central Washington Transfer Terminal. Therefore, the closing of this transaction with ARP shall occur simultaneously with the City's closing on the Purchase and Sale Agreement with Central Washington Transfer Terminal, or within two business days thereafter. The closing of this transaction, and delivery of all items, shall occur at Cascade Title Company.

6. Covenants, Representations and Warranties.

6.1. Seller's Covenants. Seller hereby covenants and agrees as follows:

6.1.1. From the date of this Agreement through the closing date, Seller shall not make any material alterations to the Purchased Property, or to any of the licenses, permits, legal classifications or other governmental regulations relating to the Purchased Property or the Option Property, nor enter into any leases or agreements pertaining to the Purchased Property or the Option Property without City's prior written consent.

6.1.2. From the date of this Agreement through the closing date, ARP shall not voluntarily cause to be recorded any encumbrance, lien, deed of trust, easement or the like against the title to the Purchased Property or against the Option Property without City's prior consent.

6.1.3. From the date of this Agreement through the closing date, ARP will operate and maintain the Purchased Property in a manner consistent with ARP's past practices relative to the Property and so as not to cause waste to the Purchased Property.

6.2. Seller's Representations and Warranties. ARP hereby makes the following representations and warranties to City, each of which shall be true on the date hereof, throughout the contract period, and on the date of closing. ARP shall immediately provide Purchaser with written notice of any event which would make any representation or warranty set forth below incorrect or untrue. In addition to any other remedies available at law or in equity, City may elect to terminate this Agreement without penalty upon notice from Seller prior to closing that one or more of the representations or warranties contained herein are incorrect or untrue.

6.2.1. ARP has full power and authority to enter into and carry out the terms and provisions of this Agreement, and to execute and deliver all documents which are contemplated by this Agreement. All actions of ARP necessary to confer such authority upon the persons executing this Agreement and such other documents have been, or will be, taken.

6.2.2. ARP is a Washington corporation, duly formed and organized, validly existing and in good standing under the laws of the State of Washington. ARP holds title to the Purchased Property in fee subject to any encumbrances of record, and is legally authorized to transfer ownership of said property.

6.2.3. ARP has not received any written notice from any governmental authorities or regulatory agencies that eminent domain proceedings for the condemnation of the Purchased Property or the Option Property are pending or threatened.

6.2.4. ARP has not received any written notice of pending or threatened investigation, litigation or other proceeding before a local governmental body or regulatory agency which would materially and adversely affect the Purchased Property or the Option Property.

6.2.5. ARP has not received any written notice from any governmental authority or regulatory agency that ARP's use of the Purchased Property is presently in violation of any applicable zoning, land use or other law, order, ordinance or regulation effecting the Property.

6.2.6. No special or general assessments have been levied against the Purchased Property except those disclosed in the Preliminary Title Report, and ARP has not received written notice that any such assessments are threatened.

6.2.7. ARP is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code.

6.2.8. ARP represents and warrants that, to the best of its knowledge and belief, there are no hazardous substances in, on, or under the Purchased Property that are in quantities or in concentrations that violate any applicable state, federal or local laws. For purposes of this representation, "Hazardous Substances" means any substance, material or waste that is designated or regulated as "toxic," "hazardous," "pollutant," or "contaminant" or a similar designation or regulation under any federal, state or local law (whether under common law, statute, regulation or otherwise) or judicial or administrative interpretation of such, including, without limitation petroleum or natural gas.

6.2.9. Seller represents and warrants that, to the best of its knowledge and belief, the Purchased Property is not an archeologically significant site.

6.3. Purchaser's Representations and Warranties. City hereby represents and warrants to ARP as follows:

6.3.1. Purchaser has full power and authority to enter into and carry out the terms and provisions of this Purchase Agreement and to execute and deliver all documents which are contemplated by this Agreement. All actions of Purchaser necessary to confer such authority upon the persons executing this Purchase Agreement and such other documents have been, or will be, taken.

6.3.2. City is a municipal corporation, duly formed and organized, validly existing and in good standing under the laws of the State of Washington.

6.3.3. Purchaser represents that it has sufficient funds to close this transaction.

6.4. Survival of Covenants. The covenants, representations, and warranties of the ARP and the City contained in Section 6 of this Agreement shall survive both the

delivery and recording of the deed from the ARP to the City, and the cancellation of the Option.

7. Casualty and Condemnation.

7.1. Material Casualty or Condemnation. If, prior to the closing date: (i) the Purchased Property shall individually sustain damage caused by casualty which would cost ten thousand dollars ($10,000.00) or more to repair or replace; or (ii) if a taking or condemnation of any portion of either the Purchased Property has occurred, or is threatened, which would materially affect the value of the property, either City or ARP may, at its option, terminate this Agreement by providing written notice to the other party within two (2) days' notice of such event. If, prior to the closing date, neither party provides said termination notice within such two (2) day period, the closing shall take place as provided herein with a credit against the purchase price in an amount equal to any insurance proceeds or condemnation awards actually collected by ARP. At closing, ARP shall assign to City all of ARP's interest in any insurance proceeds or condemnation awards which may be due but unpaid to ARP on account of such occurrence.

7.2. Immaterial Casualty or Condemnation. If prior to the closing date, the Purchased Property shall sustain damage caused by casualty which is not described in Section 7.1., or a taking or condemnation has occurred, or is threatened, which is not described in Section 7.1., neither City nor ARP shall have the right to terminate this Agreement. Closing shall take place as provided herein with a credit against the purchase price equal to the cost to repair that portion of the Purchased Property so damaged by insured casualty, or an amount equal to the anticipated condemnation award, as applicable. At closing, City shall assign to ARP all rights or interest in and to any insurance proceeds or condemnation awards which may be due on account of any such occurrence.

8. City's Remedies. In the event of material breach of this Agreement by ARP, City shall have, as its sole remedies: (a) the right to pursue specific performance of this Agreement; (b) the right to terminate this Agreement; and (c) all remedies presently or hereafter available at law or in equity.

9. ARP's Remedies. In the event of material breach of this Agreement by City, ARP shall have, as its sole remedies: (a) the right to pursue specific performance of this Agreement; (b) the right to terminate this Agreement; and (c) all remedies presently or hereafter available at law or in equity.

10. Miscellaneous.

10.1. Finder's Fee. City and ARP each agree that a real estate finder's fee is not due to each other or any other. Each party hereby agrees to indemnify and defend the other against and hold the other harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, resulting from any claims for a Finder's Fee made as a result of the indemnifying party's conduct. The provisions of this section shall survive the closing.

10.2. Time of the Essence. Time is of the essence of every provision of this Agreement.

10.3. Notices. Whenever any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal delivery (including delivery by written electronic transmission) or by certified, registered or express United States mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:

TO SELLER:
American Rock Products
Attn: Michael D. McKinney
4418 E. 8th Avenue
Spokane Valley, WA 99212
Phone: (509) 533-1683
Fax: (509) 533-1644

TO PURCHASER:
City of Richland
Attn: Economic Development Manager
975 George Washington Way
PO Box 190, MS-18
Richland, WA 99352
Phone: (509) 942-7763
FAX: (509) 942-5666

Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof or two (2) business days after having been mailed as provided above, as the case may be.

10.4. Captions. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

10.5. Exhibits. All exhibits attached hereto shall be incorporated by reference as if set out herein in full herein.

10.6. Binding Effect. Regardless of which party prepared or communicated this Agreement, this Agreement shall be of binding effect between City and ARP only upon its execution by an authorized representative of each such party.

10.7. Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and all related documents, and that the normal rule of construction providing that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto. This is a fully integrated Agreement. There are no additional terms, conditions, or obligations binding upon the parties unless specifically referenced herein.

10.8. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, but all of such counterparts shall constitute one such Agreement.

10.9. Cooperation and Further Assurances. Each party shall cooperate with the other in good faith to achieve the objectives of this Agreement. The parties shall not unreasonably withhold responses to requests for information provided for in this Agreement. The parties agree to take further action and execute further documents, both jointly or within their respective power and authority, as may be reasonably necessary to implement the intent of this Agreement. Provided, however, that nothing in this section affects a party's right to make any decision that is determined to be within that party's sole discretion.

10.10. Waiver of Disclosure Statement. City expressly waives the right to receive a Seller's Commercial Real Estate Disclosure Statement provided for by RCW 64.06.

10.11. Full Performance and Survival. The delivery of the deed and any other documents and instruments by Seller and the acceptance and recordation thereof by Purchaser shall effect a merger and be deemed the full performance and discharge of the obligations on the part of Purchaser and Seller to be performed hereunder. Certain clauses, covenants, warranties and indemnifications specifically provided herein or that can only be performed after closing shall survive the closing.

10.12. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington. The parties agree that Benton County is the appropriate venue for filing of any civil action arising out of this Agreement, and both parties expressly agree to submit to personal jurisdiction in Benton County Superior Court.

10.13. Scrivener. The party drafting this Agreement is the City of Richland. The City of Richland makes no representations regarding the rights or responsibilities of ARP under this Agreement. ARP is encouraged to review the completed contract and all relevant documents with counsel before signing this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the day and year first above written.

CITY OF RICHLAND - PURCHASER	**AMERICAN ROCK PRODUCTS-SELLER/OPTION RELEASOR**
By: Cynthia D. Johnson Its: City Manager	By: _____ Its: _____

ATTESTED:

Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

Heather Kintzley, City Attorney

STATE OF WASHINGTON)
) ss.
County of Benton)

On this ____ day of _____, 2013, before me personally appeared CYNTHIA D. JOHNSON, known to be the CITY MANAGER and/or representative for CITY OF RICHLAND, and the person who executed the within and foregoing Agreement for Purchase of Real Property and acknowledged that the said instrument is to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____
NOTARY PUBLIC in and for the State of Washington, residing at: _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
County of _____)

On this day personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing Agreement for Purchase of Real Property and Cancellation of Option, and acknowledged that he or she signed the same as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ___ day of _____, 2013.

_____
Print Name:

_____
NOTARY PUBLIC in and for the State of Washington, residing at: _____
My commission expires: _____

Exhibit A – Legal Description of Repurchase Property

Portion of West half of Section 22, Township 10 North, Range 28 East, and of Northwest quarter of Section 27, Township 10 North, Range 28 East, W.M., records of Benton County, Washington, described as follows:

Beginning at the South one-quarter corner of said Section 22, thence North 0°5' 15" East, along the North-South centerline of said Section 22, a distance of 917.34 feet; thence North 89°35'5" West, 448.00 feet; thence South 0°5'15" West, parallel to said centerline, 910.99 feet; thence South 2°02'03" West, parallel to the North-South centerline of Section 27, Township 10 North, Range 28 East, W.M., 1,033.67 feet; thence South, 89°35'05" East 448.17 feet to a point on the said North-South centerline of said Section 27; thence North 2°02'03" East along said centerline, 1,027.31 feet to the Point of Beginning.

HORN RAPIDS RAIL LOOP
PSA AND CANCELLATION OPTION
EXHIBIT A

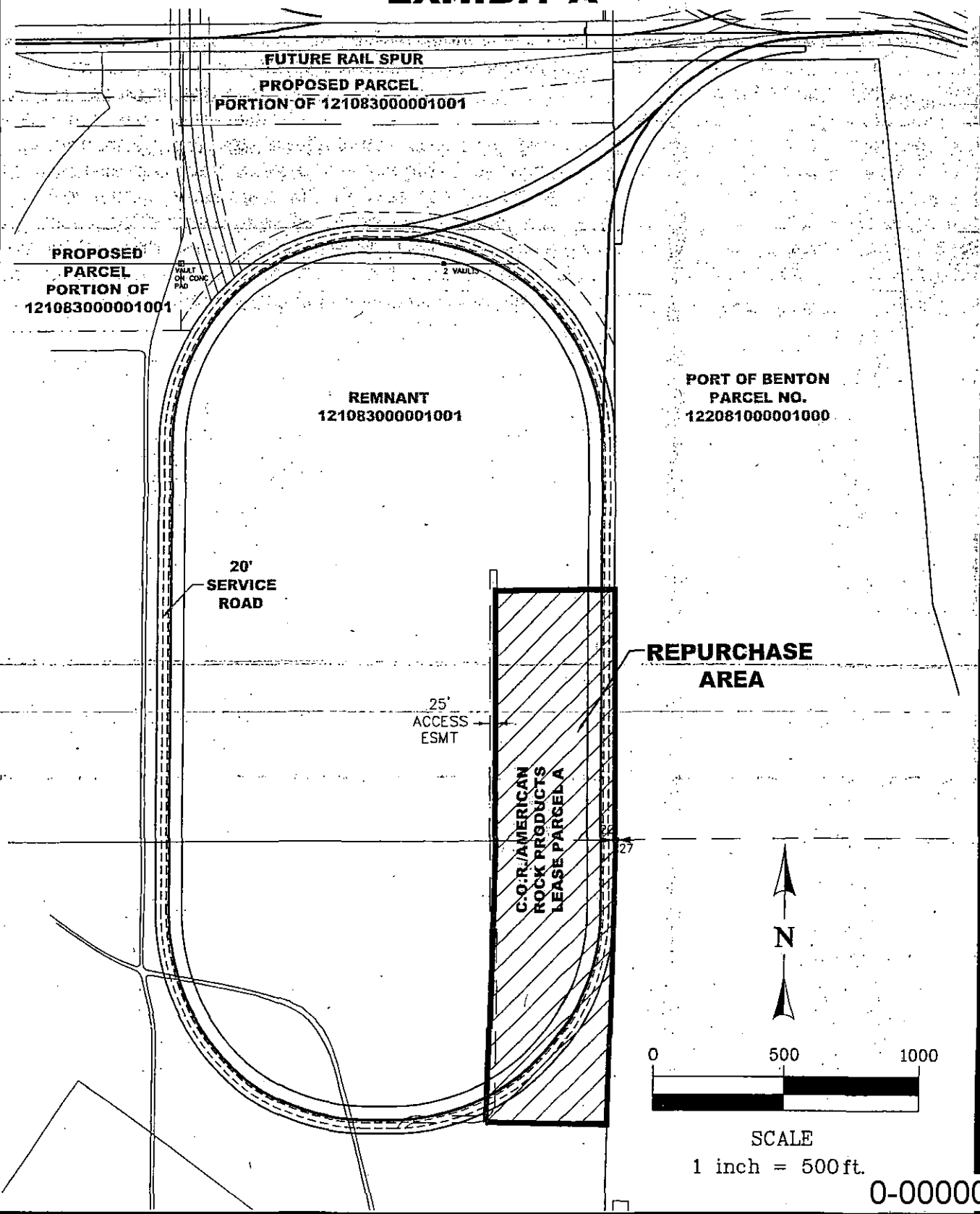

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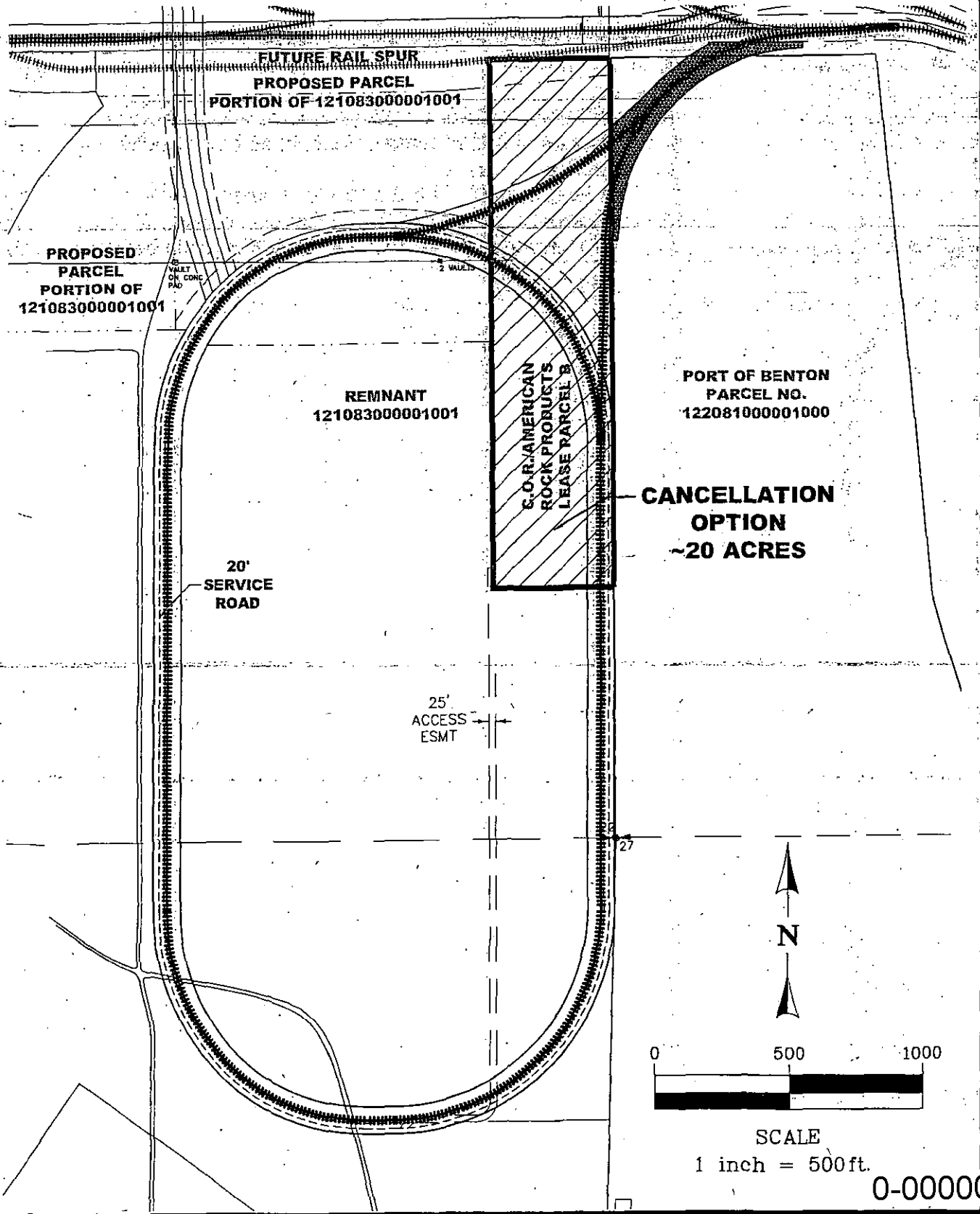
Exhibit B – Legal Description of Option Property

Portion of West half of Section 22, Township 1 0 North, Range 28 East, W.M., records of Benton County, Washington, described as follows:

Beginning at the South one-quarter corner of said Section 22, thence North 0°5'15" East, along the North-South centerline of said Section 22, a distance of 917.34 feet to the True Point of Beginning,
Thence, continuing along said North-South centerline, North 0°5'15" East, 1,944.65 feet; thence North 89°35'5" West, 448.00 feet; thence South 0°25'15" West, parallel to said centerline, 1,944.65 feet; thence South 89°35'05" East, 448.00 feet to the True Point of Beginning.

HORN RAPIDS RAIL LOOP
PSA AND OPTION CANCELLATION
EXHIBIT B



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001130

After recording please return to:
Heather Kintzley, City Attorney
City of Richland
P.O. Box 190 MS 07
Richland, WA 99352

TERMINATION OF PURCHASE OPTION

This Termination of Purchase Option ("Termination") is dated as of November ___, 2013 by and between the **City of Richland**, a Washington municipal corporation (hereinafter referred to as "City"), and **American Rock Products**, a Washington corporation (hereinafter referred to as "ARP").

I. Recitals

WHEREAS, City and ARP entered into a Real Estate Option Agreement on April 19, 2004 relating to certain real property located in the City of Richland, County of Benton, State of Washington (the "Property") legally described as:

> Portion of West half of Section 22, Township 10 North, Range 28 East of the Willamette Meridian, records of Benton County, Washington, described as follows:
>
> Beginning at the South one-quarter corner of said Section 22, thence North 0°5'15" East, along the North-South centerline of said Section 22, a distance of 917.34 feet to the True Point of Beginning.
>
> Thence, continuing along said North-South centerline, North 0°5'15" East, 1,944.65 feet; thence North 89°35'5" West, 448.00 feet; thence South 0°25'15" West, parallel to said centerline, 1,944.65 feet; thence South 89°35'05" East 448.00 feet to the True Point of Beginning.
>
> CONTAINS 20.0 ACRES MORE OR LESS; and

WHEREAS, City and ARP caused to be recorded under Auditor File No. 2004-014978 in the Official Records of Benton County, Washington a Memorandum of Real Estate Option Agreement in order to put interested parties on notice of the Purchase Option; and

WHEREAS, the Purchase Option has been terminated and is no longer of any force or effect; and

WHEREAS, City and ARP now desire to cause this Termination to be recorded in the Official Records of Benton County, Washington in order to put interested parties on notice that the Purchase Option has been terminated.

II. Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and ARP hereby (a) terminate the Purchase Option, (b) agree that the Purchase Option has terminated, and (c) agree that the Purchase Option is void and of no force or effect.

IN WITNESS WHEREOF, City and ARP have executed this Termination as of the date first written above.

CITY OF RICHLAND

By: Cynthia D. Johnson
Its: City Manager

AMERICAN ROCK PRODUCTS

By: _____
Its: _____

ATTESTED:

Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

Heather Kintzley, City Attorney

STATE OF WASHINGTON)
) ss.
County of Benton)

On this _____ day of _____, 2013, before me personally appeared CYNTHIA D. JOHNSON, known to be the CITY MANAGER and/or representative for CITY OF RICHLAND, and the person who executed the within and foregoing Termination of Purchase Option and acknowledged that the said instrument is to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____
NOTARY PUBLIC in and for the State of Washington, residing at: _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
County of _____)

On this day personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing Termination of Purchase Option, and acknowledged that he or she signed the same as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ___ day of _____, 2013.

_____
Print Name:

_____
NOTARY PUBLIC in and for the State of Washington, residing at: _____
My commission expires: _____

LICENSE AGREEMENT FOR MINING AND REMOVAL OF AGGREGATE

This License Agreement for mining and removal of aggregate ("License Agreement") is entered into this ___ day of _____, 2013, by and between the **CITY OF RICHLAND**, a municipal corporation of the State of Washington (hereinafter referred to as "City"), and **AMERICAN ROCK PRODUCTS, INC.**, a Washington corporation, (hereinafter referred to as "ARP").

I. RECITALS

WHEREAS, simultaneous to the execution of this License Agreement, the Parties have entered into a "Agreement for Purchase and Sale of Real Property and Cancellation of Option" ("Purchase and Option Cancellation Agreement") whereby City has agreed to reacquire from ARP the parcel of real property it sold to ARP in 2004, described in Exhibit A, herein; and

WHEREAS, in addition to the sale to City of the real property identified in Exhibit A, ARP has also agreed to cancellation of an option that was previously granted to it by City to purchase real property described in Exhibit B herein; and

WHEREAS, the non-cash consideration for the transaction described in the Purchase and Option Cancellation Agreement included the granting by City to ARP of the right to mine and remove aggregate from parcels A and B as identified on Exhibits A and B, and from that portion of an adjacent parcel identified as the Railroad Loop site and depicted on the map attached hereto as Exhibit C. Collectively, the two parcels identified in Exhibits A and B, and the Railroad Loop portion of Exhibit C herein shall be referred to as the License Location; and

WHEREAS, this Agreement is necessary to grant permission to ARP to mine, process, remove and store aggregate materials from the License Location to fulfill City's non-cash consideration obligation supporting the Agreement for Purchase and Option Cancellation Agreement executed in connection herewith.

NOW THEREFORE, in consideration of the agreements and covenants contained herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and ARP agree as follows:

II. AGREEMENT

1. Terms of License. While this License Agreement is in effect:

   a) ARP shall have the exclusive right to mine, produce, store and remove aggregate materials from the License Location. ARP shall mine no closer than 5 (five) feet above groundwater level as shown on Exhibit B.

   b) ARP shall not use the License Location for any other purpose without the written

consent of the City.

c) City shall have the right to construct a railroad spur and loop across the License Location in the approximate area depicted on Exhibit C.

d) The City shall not use the License Location, nor grant any other party the right to use the License Location, for any other purpose without the express written consent of ARP.

e) ARP and the City shall coordinate the timing of construction of the railroad spur and loop, and the timing and location of ARP's mining, storage and production activities so as to maximize the mining resource located on the License Location, the economic recovery of the resource by ARP, and to facilitate the most efficient and cost effective construction possible of the railroad spur and loop.

f) In the event City does not construct the railroad spur and loop at the License Location, ARP shall still have the exclusive right to mine, produce, store and remove aggregate materials from the License Location in accordance with the terms of this Agreement, and City will not develop or engage in the construction of any building or improvement on the License Location (other than the railroad spur and loop) without the express written consent of ARP.

2. Duration of License. This License Agreement shall be in effect from the date of closing of the purchase and sale and cancellation of option transactions contemplated by the Purchase and Option Cancellation Agreement, and shall continue in effect for a period of five (5) years, or until ARP gives notice to the City of its intent to cease mining operations and thereafter completes its reclamation obligations, whichever occurs first.

a) City shall give ARP written notice when construction on the proposed rail loop is imminent. Once construction of the rail loop commences, ARP has an option for up to two (2) years to extract the aggregate from within the rail loop. Further, once construction of the rail loop commences, ARP cannot store material within the rail loop area, and shall be required to reclaim the ground after gravel removal in order to level the ground for use.

b) Once the rail loop is constructed and is operational, ARP shall schedule any resource recovery operations that need to take place inside the loop area during the months of December through April. If, after loop operations have begun, ARP has a need to conduct resource recovery operations outside of this anticipated resource removal season (December - April), ARP shall coordinate and schedule such use and access with the City and the rail loop operator(s) in such a manner so as to minimize any potential disruption of the rail loop and ARP's operations.

3. Reclamation Plan. ARP has previously permitted and filed a Reclamation Plan covering the real property described in Exhibits A and B. The Reclamation Plan delineates the condition in which the parcels described in Exhibits A and B shall be left by ARP after removal of the aggregate. The City, at its election, may excavate the Railroad Loop property depicted on Exhibit C. If the City chooses to do so, ARP shall be entitled to remove the aggregate produced by the City's excavation from the Railroad Loop area, and any reclamation of the Railroad Loop area shall be the responsibility of the City. In the event ARP excavates the Railroad Loop area, the City shall identify the precise boundaries for excavation and notify ARP by written notice. ARP shall be responsible for actual excavation and for returning the property to the condition required by any reclamation plan agreed to between the City and ARP, and/or required by any local or state agencies. The City shall be responsible for any permitting obligations related to its use of the License Location. ARP will provide the City a copy of the Reclamation Plan already provided to Washington Department of Natural Resources.

   a) Based upon the City's development plans for the License Location, the City may direct ARP to deposit topsoil in certain areas, and to deposit other types of fill materials in other areas. ARP shall cooperate with the City in the manner of the restoration of the overburden and fill to the extent the City's directions are consistent with the Reclamation Plan previously developed for Parcels A and B, and any future reclamation plan developed for the Railroad Loop area, and provided that such directions do not materially increase the cost to ARP to restore and reclaim the License Location.

   b) To the extent reasonably practicable, any topsoil or overburden which is removed shall be stored on-site or in the most operationally-practical location as determined by ARP.

4. Aggregate Storage. ARP may also use the License Location for storage of aggregate removed from the License Location so long as such use does not interfere with the City's use of the Property. The term "aggregate" shall include all rock, sand or other materials mined from the License Location for use, storage, removal or resale by ARP. This term shall not include any top soil or overburden which is removed, but remains on the Property for eventual reuse for reclamation of the Property.

5. Access to License Location. At all times during the term of this Agreement, ARP shall have adequate access to the License Location to allow ARP to conduct the activities contemplated by this Agreement in an economical and efficient manner. This shall include access over any railroad spur that may ultimately be constructed on the License Location.

6. Inspections. The City shall have the right enter the License Location at any time to inspect the License Location to ensure that ARP is performing in accordance with the provisions of this Agreement. The City shall notify ARP of its intent to inspect,

and shall conduct any such inspections at reasonable times so as not to disrupt ARP's operations.

7. Maintenance of the License Location. ARP shall at all times maintain the areas it is actively using within the License Location, including storage areas, free from waste and debris related to its operations and use of the property. ARP shall have no duty to maintain areas used by the City or other invitees of the City.

8. Indemnification/Hold Harmless.

a) Indemnification/Hold Harmless of City by ARP. ARP shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Licensee's, or its contractor's or subcontractor's, use of the Premises, or from any activity, work or thing done, permitted, or suffered by the Licensee in or about the Premises, to the extent such injury or damage shall have been caused by the negligence or intentional conduct of Licensee or any of its employees or agents.

It is further specifically and expressly understood that the indemnification provided herein constitutes ARP's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification and does not include or extend to any claim by ARP's employees directly against ARP. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

b) Indemnification/Hold Harmless of ARP by City. The City shall defend, indemnify and hold harmless ARP, its officers, directors, employees and agents from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the City's, or its contractor's or subcontractor's, use of the Premises, or from any activity, work or thing done, permitted, or suffered by the City in or about the Premises, to the extent such injury or damage shall have been caused by the negligence or intentional conduct of the City or any of its employees or agents.

It is further specifically and expressly understood that the indemnification provided herein constitutes the City's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification and does not include or extend to any claim by the City's employees directly against the City. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

9. Insurance. ARP shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may

arise from or in connection with the performance of the work hereunder by ARP, their agents, representatives, employees or subcontractors.

a) No Limitation. ARP's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of ARP to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

b) Minimum Scope of Insurance. ARP shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on Lessee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage. There shall be no endorsement or modification of the Commercial General Liability Insurance for liability arising from explosion, collapse or underground property damage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

c) Minimum Amounts of Insurance. ARP shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate and $2,000,000 products-completed operations aggregate limit.

d) Other Insurance Provision. ARP's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of ARP's insurance, and shall not contribute with it.

e) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

f) Verification of Coverage. ARP shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of ARP before commencement of the work.

g) Subcontractors. ARP shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

h) Notice of Cancellation. Within two (2) business days of receipt of such notice, ARP shall provide the City and all additional insureds for this work with written notice of any policy cancellation.

i) Failure to Maintain Insurance. Failure on the part of ARP to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to ARP to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

10. Taxes, License and Permits. ARP agrees to pay for all labor, employee benefits, materials, equipment, and tools necessary for the performance of its work at the License Location, and to obtain all applicable state and local licenses and permits necessary for the performance of said activities. ARP shall pay all state and local taxes which may become due and payable as a result of ARP's use or occupation of the License Location, which may be due and payable as a result of ARP's mining, processing, removal, storage or sale of materials removed from the License Location. ARP accepts the full and exclusive liability for payment of all such costs and expenses, and shall hold the City harmless from any liens, claims, judgments, expenses or costs, including attorney's fees, arising from a claim for the payment of such costs and expenses. The City shall be liable for all real estate property taxes and assessments for the License Location, if any.

11. Protection of Property from Construction Liens. ARP shall not permit any mechanics', materialmen's, contractors' or subcontractors' liens arising from any work performed by or for ARP to be enforced against the Property, however it may arise. ARP may withhold payment of any claim in connection with a good faith dispute over an obligation to pay, so long as City's Property interests are not jeopardized.

12. Default. In the event of any default by ARP or City under this Agreement, the non-defaulting party shall give the defaulting party written notice of default.

a) If the default creates an imminent danger of injury to persons or property, the defaulting party shall promptly undertake to cure the default, and shall have cured the default within three (3) days of the receipt of the notice of default.

b) Other defaults shall be cured within thirty (30) days of the receipt of the notice of default. In the event the nature of the default is such that it cannot be cured within thirty (30) days, the defaulting party shall submit a plan to the non-defaulting party for curing the deficiencies within the same thirty (30) day period, and if accepted by the non-defaulting party, the defaulting party will thereafter have a reasonable amount of time consistent with the plan to cure the default.

c) If the non-defaulting party fails to cure a default (or otherwise submit an acceptable plan for doing so) within the time provided, then the non-defaulting party shall have all remedies available to it at law and equity, including but not limited to, termination of this Agreement and the right to seek damages therefrom. Notwithstanding the foregoing, the termination of this Agreement shall not terminate ARP's obligation to restore any of the property in accordance with any filed Reclamation Plan.

13. Notices. Whenever any party hereto shall desire to give or serve upon the other any notice, demand, request or other communication, each such notice, demand, request or other communication shall be in writing and shall be given or served upon the other party by personal delivery (including delivery by written electronic transmission) or by certified, registered or express United States mail, or Federal Express or other commercial courier, postage prepaid, addressed as follows:

TO ARP:	TO THE CITY:
American Rock Products Attn: Michael D. McKinney 4418 E. 8th Avenue Spokane Valley, WA 99212 Phone: (509) 533-1683 Fax: (509) 533-1644	City of Richland Attn: Economic Development Manager 975 George Washington Way PO Box 190, MS 18 Richland, WA 99352 Phone: (509)942-7583 FAX: (509)942-5666

Any such notice, demand, request or other communication shall be deemed to have been received upon the earlier of personal delivery thereof or two (2) business days after having been mailed as provided above, as the case may be.

14. Assignment. ARP may assign this Agreement to a wholly-owned subsidiary of Eucon Corporation without the prior written consent of the City. No other assignments of this Agreement shall be made without the written consent of City, which shall be made or denied in its sole discretion. No assignment shall relieve ARP of its obligations under this Agreement.

15. Entire Agreement. This Agreement contains the entire agreement of the parties hereto and supersedes all previous understandings and agreements, written and oral. Neither party shall be liable to the other for any representations made by any person concerning the Premises or regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement. This Agreement may be amended only by written instrument executed by the parties or their lawful successors and assigns subsequent to the date hereof.

16. Governing Law/Forum Selection. Unless otherwise controlled by federal law, the interpretation and enforcement of this Agreement shall be governed by the laws of the State of Washington. The parties agree that Benton County is the appropriate venue for filing of any civil action arising out of this Agreement. User expressly agrees to submit to personal jurisdiction in Benton County Superior Court.

17. Attorney's Fees. In any action arising under this Agreement, the prevailing party shall be entitled to recover all costs incurred in such action including reasonable attorney fees. For the purposes of this paragraph, an arbitration or administrative hearing shall be considered an action.

18. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable as written, the remainder of the Agreement or the applications of the remainder of the Agreement shall not be affected.

IN WITNESS WHEREOF, the parties have entered into this Agreement the day and year first above written.

CITY OF RICHLAND

By: Cynthia D. Johnson
Its: City Manager

AMERICAN ROCK PRODUCTS

By: _____
Its: _____

ATTESTED:

Marcia Hopkins, City Clerk

APPROVED AS TO FORM:

Heather Kintzley, City Attorney

STATE OF WASHINGTON)
) ss.
County of Benton)

On this ____ day of _____, 2013, before me personally appeared CYNTHIA D. JOHNSON, known to be the CITY MANAGER and/or representative for CITY OF RICHLAND, and the person who executed the within and foregoing License Agreement for Mining and Removal of Aggregate and acknowledged that the said instrument is to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

_____
NOTARY PUBLIC in and for the State of Washington, residing at: _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
County of _____)

On this day personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing License Agreement for Mining and Removal of Aggregate, and acknowledged that he or she signed the same as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ___ day of _____, 2013.

_____
Print Name:

_____
NOTARY PUBLIC in and for the State of Washington, residing at: _____
My commission expires: _____

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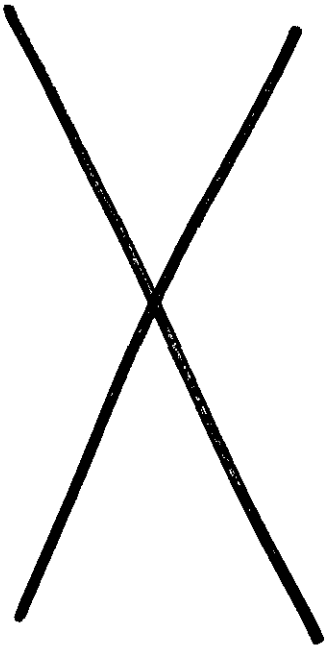

Exhibit No. SM-1T

WUTC DOCKET TR-130499
EXHIBIT SM-1TR
ADMIT ☒ W/D ☐ REJECT ☐

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK AND CITY OF RICHLAND Petitioners, vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD Respondents.	DOCKET TR-130499 PRE-FILED REBUTTAL TESTIMONY OF SPENCER MONTGOMERY

1. INTRODUCTION

Spencer Montgomery is a transportation planner with J-U-B ENGINEERS. Mr. Montgomery assisted in preparing the J-U-B Center Parkway Extension Traffic Study, dated March 2013 ("Traffic Study"). The Traffic Study was submitted as an attachment to the City of Kennewick's petition for an at-grade crossing at Center Parkway. Testimony submitted by Mr. Norris on behalf of Tri-City & Olympia Railroad ("TCRY") claimed review and analysis of the Traffic Study.

Mr. Montgomery's rebuttal testimony begins by setting forth his credentials and experience with comprehensive transportation planning in the Tri-Cities. Next, Mr. Montgomery

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reviews Mr. Norris's credentials. Then, Mr. Montgomery demonstrates that the proposed crossing addresses an acute public need by reducing emergency response times. Finally, Mr. Montgomery addressees Mr. Norris's questions regarding diverting traffic from Columbia Center Boulevard and queuing.

2. CREDENTIALS

Q: *State your name, position, years in that position, and relevant background experience.*

A: My Name is Spencer Montgomery, I am a Transportation Planner with J-U-B ENGINEERS, Inc. located in Kennewick, Washington. I have been in this position for over 12 years. I earned a Master's degree in Urban and Regional Planning with an emphasis in transportation. I have over 23 years of experience working about half of that time for the Metropolitan Planning Organization in Denver, CO and half as a consultant. I have assisted with the preparation of Regional Transportation Plans and served on a Railroad Issues Task Force evaluating the safety and utility of several crossings. I was born and raised in the Tri-Cities and have been active in dozens of planning studies and traffic analyses of the transportation system in the Tri-Cities for more than a decade.

3. OVERVIEW OF THE PROPOSED CROSSING

Q: *State your understanding of the proposed at-grade crossing.*

A: The Cities of Kennewick and Richland have pursued an at-grade crossing for Center Parkway to provide improved emergency response, congestion relief, and alternate routes to both Columbia Center Boulevard and Steptoe Street. The crossing will have supplementary safety measures to make the crossing as safe as possible. It is an important component in the network that serves this portion of the region.

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4. RESPONSE TO GARY NORRIS'S TESTIMONY: CREDENTIALS & COMPREHENISVE PLANNING

Q: *Did you read and analyze the pre-filed testimony of Mr. Gary Norris, submitted on behalf of Tri-City & Olympia Railroad ("TCRY").*

A: Yes. To inform my testimony, I also read the pre-filed testimony of Randolph V. Peterson, and the pre-filed testimony and responsive testimony of Kevin Jeffers and John Deskins.

Q: *Is Mr. Norris qualified to make an assessment for this proposed crossing in the Tri-Cities?*

A: Mr. Norris appears qualified in the traffic-engineering field and in the preparation of traffic studies. Mr. Norris also stated specific experience evaluating the impact of railroad crossing closures. However, this petition to create an at-grade crossing does not involve a railroad crossing closure.

In addition, Mr. Norris lacks a working knowledge and understanding of the comprehensive planning efforts undertaken by the community, the City of Kennewick, the City of Richland, and the Benton-Franklin Council of Governments to comprehensively improve traffic conditions in the area of the proposed intersection (including Columbia Center Mall), which, in turn, impact traffic conditions for the broader planning region. The multi-jurisdictional decision to extend Center Parkway across the railroad tracks was made as a result of a long history of efforts to provide alternative routes and improve circulation.

The transportation system works as a whole. If the region cannot move cars, then it also cannot move trucks. If the system cannot move trucks, then there are delays in loading and unloading rail freight. Mr Norris's testimony fundamentally misses this critical point because he does not have experience related to comprehensive transportation planning in the Tri-Cities.

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Q: *How would you summarize Mr. Norris's testimony?*

A: Mr. Norris believes that an at-grade crossing at Center Parkway is not warranted because, in his opinion, there is not an acute public need for this crossing.

Q: *Do you agree with Mr. Norris's assessment?*

A: No. As previously discussed, the crossing is the product of a comprehensive planning effort that is geared to improve the region's transportation network. In addition, and as discussed in greater detail below, the crossing will advance an acute public need by improving emergency response times.

5. RESPONSE TO GARY NORRIS'S TESTIMONY: EMERGENCY RESPONSE TIME

Q: *Does Mr. Norris have an opinion as to whether the proposed crossing will improve emergency response times?*

A: Yes. He believes that the crossing does not address an acute public need on the basis of improved emergency response times. He also believes that Center Parkway will be unreliable because of being closed for rail purposes.

Q: *Do you agree with Mr. Norris's assessment?*

A: No. For two primary reasons.

First, I disagree with Mr. Norris's assessment that the Traffic Study was too narrow. The Traffic Study concluded that a 48-second reduction in emergency response time applies to much of the area shown in the graphic (Figure 2 on page 7 in the Traffic Study). More specifically, Mr. Norris indicates (on page 5, lines 17-21) that the Traffic Study should have considered, but did not consider, the entire service area and not one specific site, such as the Holiday Inn. Mr.

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Norris fails to understand that the Holiday Inn is representative of approximately half of the area shown, and it was used for demonstrative purposes.

Second, I disagree with Mr. Norris's statement that the proposed crossing will be unreliable as an emergency route (page 6, lines 1-2). As an initial matter, the existing usage of the railway is minimal and future usage of the track is highly speculative, as identified in greater detail in Kevin Jeffers' responsive testimony. My initial estimates show that the track will be closed less than 1% of the time, which is not a significant enough closing to merit particular attention from emergency response vehicles to alter their route of travel. In addition, traffic congestion on Columbia Center Boulevard makes it difficult for emergency response vehicles to navigate that roadway because existing traffic often cannot move aside to let emergency vehicles through. Emergency vehicles are also slowed on Columbia Center Boulevard by the existing four traffic signals on this roadway.

When comprehensively reviewing the transportation system, the proposed crossing addresses an acute public need by providing a new emergency route (and linked corridor) that reduces emergency response times by 48 seconds from the Kennewick fire station #63 and by 1 minute 24 seconds from Richland fire station #72, to put it under the 5 minute city standard at 4:18. The time advantages of the proposed crossing will improve the probability of the best outcome for those in need of emergency services.

6. RESPONSE TO GARY NORRIS'S TESTIMONY: DIVERTING TRAFFIC FROM COLUMBIA CENTER BOULEVARD

Q: *Did you review Mr. Norris's pre-filed testimony on page 7, lines 7-9?*

A: Yes. He believes that the proposed crossing will divert traffic from the "safer separated grade crossing" on Columbia Center Boulevard to the "inherently dangerous" at-grade crossing on Center Parkway (page 7, lines 7-9).

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Q: *Do you agree with Mr. Norris's assessment?*

A: Our Traffic Study indicates that some traffic will be diverted from Columbia Center Boulevard, as well as Steptoe Street to Center Parkway. However, the assertion that this will create a greater risk for drivers is unsupported. As an initial matter, the crossing at Center Parkway will include supplemental safety measures to protect the crossing public. Also, trips diverted from Steptoe Street to Center Parkway will have a higher level of crossing protection. Mr. Norris also fails to recognize that the new crossing is a component of a comprehensive transportation plan that will improve overall transportation safety, not just on Center Parkway, but throughout the broader planning area. Two examples: 1) the crossing will reduce traffic on Columbia Center Boulevard and therefore the number of accidents on that high accident corridor, and 2) the rates that motorists interact with pedestrians and bicyclists at the Mall will be reduced. Mr. Deskins' pre-filed testimony addresses these items in greater detail (Exhibit JD-1T, pages 3-4).

7. RESPONSE TO GARY NORRIS'S TESTIMONY: QUEUING ANALYSIS.

Q: *Mr. Norris's testimony states that additional queuing analysis is required for the proposed crossing. Do you agree with Mr. Norris's assessment?*

A: No. On page 8, lines 13-16 of his pre-filed testimony, Mr. Norris calls for an evaluation of the Gage Boulevard / Center Parkway intersection, indicating that the distance of 1,000 feet from the crossing could be blocked by the queuing. A simple comparison of the directional volumes indicates that the queues extending back from Tapteal (which was evaluated in our study), and the fact that it is a stop-controlled intersection, shows that it is highly unlikely that the southbound queue at Gage Boulevard (a roundabout intersection) will back up to the crossing. This concern in Mr. Norris's testimony is also inconsistent with his opinion that the volume reductions on existing facilities are not substantial, but still significant enough to warrant a queuing analysis.

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8. DECLARATION

I, Spencer Montgomery, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED REBUTTAL TESTIMONY OF SPENCER MONTGOMERY is true and correct to the best of my knowledge and belief.

DATED THIS 22 day of October, 2013.

Spencer Montgomery

SPENCER MONTGOMERY

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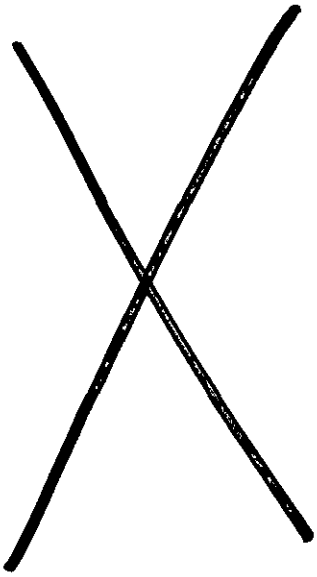

EXHIBIT NO. GAN-1T

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WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK and CITY OF RICHLAND Petitioners vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD CO., BNSF RAILWAY and UNION PACIFIC RAILROAD Respondents.	DOCKET NO. TR-130499-P PRE-FILED TESTIMONY OF GARY A. NORRIS

1 SUMMARY OF TESTIMONY

Gary A. Norris, P.E., P.T.O.E of DN Traffic Consultants, Preston, WA has been retained by Respondent Tri-City & Olympia Railroad Co. ("TCRY") to evaluate whether there is a need for the at-grade crossing of the TCRY rail line at the proposed Center Parkway location. Based on his expertise, calculations and

review of the documents, reports and Pre-Filed Testimony, he concludes that Petitioners have failed to demonstrate an "acute need" for the subject crossing and identifies the deficiencies in Petitioners' analysis. Mr. Norris also addresses the likely adverse impacts of the proposed at-grade crossing.

2 BACKGROUND

Q. State your name, occupation and business affiliation.

A. My name is Gary A. Norris. I am a principal with the firm of DN Traffic Consultants in Preston, WA.

Q. State your qualifications to provide expert testimony in this matter.

A. I am a licensed Professional Engineer in the States of Washington, Oregon, Virginia, and Maryland. I am also certified as a Professional Traffic Operations Engineer by the Transportation Professional Certification Board, Inc. I am also a member of the Institute of Transportation Engineer's (ITE) Safety Council, and the Chairman of the Washington State Section ITE Safety Committee. I was also Past President of the Washington State Section ITE. I have a BS and MS in Civil Engineering from the University of Washington with a focus on traffic engineering and planning.

Q. State any other relevant background experience or qualifications.

A. I have been actively engaged in traffic engineering work for 40 years. I have worked as a traffic engineer for the Cities of Seattle, Bellevue and Renton. As a private consultant, I was engaged with the Washington State Department of Transportation - Rail Office in the preparation of traffic studies to evaluate the impact

of railway crossing closures throughout the state. I am currently the Washington State Section ITE representative on the Target Zero advisory committee and a former member of the Washington State Traffic Safety Commission.

Q. Identify the materials which you reviewed in arriving at your opinions and providing this testimony.

A. I reviewed the following:

1. Petitioner's Prefiled Testimony; August 2013
2. Center Parkway Extension and Railroad Crossing Traffic Study; J-U-B Engineers, Inc. March 2013
3. Grade Separation Evaluation Documents
4. Environmental Checklist, Section 14
5. Supplemental Sheet for Non-project Actions
6. Railroad Crossing Sight Distance
7. 2007 Preliminary WUTC Order; January 26, 2007
8. Traffic Impacts at Richland Junction; HNTB; November 7, 2005
9. North Center Parkway Extension Gage Boulevard to Tapteal Drive Design Report; SCM Consultant; August 2002
10. Respondent's Response to Petitioners' Data Request, September 4, 2013
11. Respondent's Response to UTC Staff Data Requests Nos. 2-5 to Tri-City & Olympia Railroad, September 24, 2013

3 THE STANDARD FOR WUTC AUTHORIZATION OF AN AT-GRADE CROSSING

Q. State your understanding of what factors need be present for the Commission to grant a Petition for an at-grade crossing.

A. The Washington Utilities and Transportation Commission (WUTC) under RCW 81.53 has authority to "grant or deny petitions for opening at-grade crossings". The Commission has stated it "will direct the opening of an at-grade crossing within its jurisdiction when the inherent and site-specific dangers of the crossing are moderated to the extent possible with modern design and signals and when there is an acute public need which outweighs the resulting danger of the crossing. Such needs which have been found appropriate include the lack of a reasonable alternate access for public emergency services and the sufficiency of alternate grade crossings, perhaps because of traffic in excess of design capacity." Source: Docket TR-040664; Initial Order Denying Petition; Page 4; par 10; January 26, 2007. Although it is necessary to show why a "grade separated crossing isn't practicable" it is first necessary to show why there is an "acute need" for a crossing.

4 SUMMARY OF EXPERT OPINION AND CONCLUSION

Q. What is your opinion and conclusion regarding whether Petitioners have met the standard for approval of an at-grade crossing.

A. It is my conclusion the information provided by the Petitioners fails to document there is an "acute public need" for the extension of North Center Parkway. My reasoning and support for that conclusion is set forth below.

5 LACK OF "ACUTE PUBLIC NEED" FOR ADDITIONAL ACCESS FOR PUBLIC EMERGENCY SERVICES

Q. Have the Petitioners shown an "acute public need" for the proposed crossing to provide additional access for public emergency services?

A. Petitioners have failed to show an "acute public need' for additional access for public emergency services.

Q. State the reasons for that conclusion.

A. The J-U-B report fails to document the lack of reasonable alternate access for public emergency services. The study focuses on alternative travel times from two (2) Fire Stations south of the railway to the Holiday Inn on the north side of the railway. The study indicates Kennewick Station #3 can serve the Holiday Inn within 2:48 minutes. This is well within the City's objective of responding to emergency calls within five (5) minutes from time of dispatch. Source: City of Richland Comprehensive Plan; CF5-3; Reference given in Pre-Filed Testimony by Rick Simon, Development Services Manager, City of Richland.

The J-U-B study notes that the North Center Parkway Extension would improve emergency response times by about 30% to the Holiday Inn. However, this is a narrow focus. When comparing response times with and without connection, a more general focal point for the affected area should be used. The study should have considered, but did not consider, the entire service area and not one specific site.

Although, it is recognized the extension of North Center Parkway, may improve access times to certain locations, it should also be noted the proposed

extension will be unreliable as an emergency route because of the unpredictability of train delays. Train traffic has the potential to block the crossing for up to two minutes for each train event. Such additional delay would negate any benefit realized from the new crossing.

The JUB traffic analysis failed to evaluate the potential of increased train traffic on traffic operations at adjacent intersections. There is evidence that train traffic is likely to increase substantially in the future, increasing such delays. Source: Respondent's Response to Petitioners' Data Request, September 4, 2013; Respondent's Response to UTC Staff Data Requests Nos. 2-5 to Tri-City & Olympia Railroad, September 24, 2013.

It is concluded the benefits to emergency response time are not significant enough to outweigh the adverse impacts to safety created with a new at-grade crossing. Furthermore, the potential for delay related to train crossings would make the route unreliable and force emergency vehicles to use routes which provide a more reliable response time, especially where increased train traffic is likely to extend such delays in the future.

6 LACK OF "ACUTE PUBLIC NEED" FOR AN ADDITIONAL CROSSING TO ADDRESS LACK OF ROADWAY CAPACITY

Q. Have the Petitioners shown an "acute public need" for the proposed crossing to address lack of roadway capacity?

A. Petitioners have failed to show an "acute public need" for the proposed crossing to address lack of roadway capacity.

Q. State the reasons for that conclusion.

A. The traffic study states the North Center Parkway Extension is a minor arterial planned to provide relief to both Steptoe Street and Columbia Center Boulevard. Source: Center Parkway Extension and Railroad Crossing Traffic Study; J-U-B Engineers, Inc., March 2013; page 11; par 3; Sentence 6.

The crossing at Columbia Center Boulevard is a separated grade crossing. Steptoe has an at-grade crossing. Diversion of traffic from Columbia Center Boulevard to the proposed Center Parkway would have the effect of diverting traffic from a safer separated grade crossing to an inherently dangerous at-grade crossing. Diversion from Steptoe replaces one at-grade crossing with another with no net train/vehicle safety enhancement.

The study notes that with the construction of the proposed crossing, the PM peak hour volume (future 2033 forecast year) will decrease on Columbia Center Boulevard by 210 vehicles and 310 vehicles per hour respectively on Steptoe Street, although, the exact locations of these volume changes are not specified in the report. Traffic volumes on North Center Parkway south of Gage and Tapteal Drive are noted to increase in volume 220 and 330 vehicles per hour respectively. There are estimated to be minor changes in traffic at other locations.

The question is: do these traffic volume changes resulting from the proposed crossing have a significant impact on arterial or intersection operations (LOS)? The report fails to identify any capacity deficiencies resulting from these volume increases

and in fact presents no evaluation of existing or future traffic conditions without the proposed crossing. The analysis therefore fails to answer this question.

Also, what is missing in this volume summary is the relative magnitude the volume changes represent. The study needs to, but does not, document the percent increase or decrease in traffic along with the volume. In some cases, in particular Columbia Center Boulevard, a decrease of 210 vehicles (per hour) is a relatively inconsequential change considering the total two-way volume on this arterial. According to our calculations, the volume change is less than 5%. A change of plus or minus five (5) percent is considered to be within the "margin of error" for traffic counts such that the impact of these volume changes would be undetectable in a typical traffic volume study.

The study notes that analysis of the Gage Boulevard/Center Parkway intersection was not necessary due to the distance from the railway crossing (1,000 feet +/-) and therefore contains no such analysis; I disagree. This intersection and the queue impact should be evaluated as it has the potential to queue cars back to and across the railway. No attempt has been made to conduct such evaluation or consider its impact.

In order to present a better representation of the congestion relief benefits (or lack thereof) of the North Center Parkway Extension, the intersection LOS and delay should be reported for several of the surrounding arterial intersections, with and without the North Center Parkway Extension. This data has not been provided.

At a minimum, the report should document the LOS changes at intersections along the Columbia Center Boulevard and Steptoe Street corridors with and without the proposed extension. This data has not been provided.

The study estimates that the traffic queues as a result of a 2-minute crossing delay (train time and crossing gate times) will not be significant. It is estimated that a modest increase of 30 seconds in train delay could result in the southbound queue tracks extending back and into the Tapteal Drive/North Center Parkway intersection. Again, there was no evaluation of this possibility.

Finally, no consideration has been given to the substantial likelihood of increased crossing delays in the future due to longer trains, such as 100 car+ "unit trains" and the increase in frequency of other trains.

7 ADDRESSING OTHER BENEFITS IDENTIFIED BY PETITIONERS

Q. What is your analysis of the "other benefits" from the proposed crossing suggested by Petitioners?

A. In all cases, it is believed the Petitioner's information should address the issue of "acute need" as defined to allow a new at grade crossing. The J-U-B traffic study identifies other potential benefits of constructing North Center Parkway Extension across the railway but none that provide substantial documentation of an "acute need" for the proposed extension, specifically, completion of the grid network and improved access; I address each in turn.

Completion of the Grid Network. Extension of North Center Parkway between Gage Boulevard and Tapteal Drive would obviously fill in the local grid

network and provide additional north-south access to developed and undeveloped properties on both sides of the railway. However, the proposed roadway section is relatively short and the potential for extension of North Center Parkway north of Tapteal Drive is constrained by SR 204.

As such, the proposed Center Parkway extension's "grid system completion" benefit is limited to the local properties that are adjacent to it, primarily those north of the railway. If this missing link were significant in reducing traffic volumes on adjacent roadways and thereby reducing congestion, an "acute need" could be served. In fact, no such reduction in traffic volumes or congestion is documented.

Improved Access. It appears from a review of the documents, the proposed North Center Parkway Extension facilitates better access for adjacent commercial properties rather than mitigating capacity deficiencies on the surrounding arterials. As such, this information does not support the requirement that the Petitioner's must show there is an "acute need" for the crossing to address capacity deficiencies. No capacity deficiencies are identified.

The study states the North Center Parkway Extension improves accessibility for the commercial properties in the immediate vicinity. It would appear from the study the roadway is more of a benefit to local area properties and not as much a benefit to surrounding arterials. The study needs better identification of the traffic that will use the crossing. The local access provision of the proposed North Center Parkway suggests a better functional classification of the roadway would be "Collector

Arterial" which focuses on local access as opposed to a "Minor Arterial" which has a greater emphasis on moving traffic along the corridor.

The study fails to demonstrate that the proposed crossing would improve current and future roadway capacity deficiencies by diverting traffic away from neighboring arterials such as Columbia Center Boulevard and Steptoe Street and thereby satisfy an "acute public need." The study also fails to address whether the new crossing will promote new development through the provision of new roadways which provide access to individual adjacent properties. Therefore, there has been a failure to demonstrate any public need for the crossing, let alone an "acute public need."

8. ADVERSE IMPACTS OF PROPOSED AT-GRADE CROSSING

Q. Identify adverse impacts of the proposed crossing.

A. The City noted design issues which will impact the safety of the crossing. These issues include approach sight distance for vehicles approaching the railway from the north and south; the grade of North Center Parkway at 6 percent; and the super-elevation of the rails. Source: TR 130499-P; Petition to Construct a Highway-Rail Grade Crossing; April 8, 2013. Each of these geometric features creates additional adverse impacts for motorists and non-motorized users of the roadway.

Testifying in support of the Petition, Kevin Jeffers, acknowledged he had calculated the probability of a train incident as 0.145; or one incident every 6.9 years. Source: Pre-Filed Testimony of Kevin M. Jeffers, P.E.; page 7; Line 14; August 30, 2013. Virtually, all the Petitioner's testimony indicated the risk of a train incident was

worth the benefit of enhanced circulation created by the extension of North Center Parkway. A train incident could be anything from a minor fender bender to a fatal crash of a van load of young people traveling to a school event.

As a member of the Target Zero program, we asked ourselves how many fatalities were acceptable on an annual basis in the United States. The group offered various numbers from hundreds to thousands. When asked how many fatalities are you willing to accept in your family the number was "zero". The same question applies here, "Are the Petitioner's willing for the expected train incident to involve their loved ones?"

8 SUMMARY OF TESTIMONY AND CONCLUSIONS

Q. Summarize your testimony and conclusions.

A. In summary, it is my opinion, after thorough review of the Petitioners' documentation, they failed to meet the litmus test established by the WUTC, i.e. there must be an "acute need" for the Commission to permit an at-grade crossing.

The Commission has defined an "acute need" as a lack of reasonable access for emergency services or mitigation of deficiencies in available traffic moving capacity. The Petitioner's studies and testimony have failed to show that these requirements exist. The WUTC specifically identified these requirements for the Petitioners in their previous opinion. Failure by the Petitioners to address these requirements appears to be an admission that such conditions do not exist at this location.

Rather, the proposed extension would serve to provide additional access to existing and future development along North Center Parkway. There is no

documentation, in any report or testimony, to support the premise that any significant benefit in terms of accessibility is realized by these properties above what they have today.

The bases of law and fact previously used by the WUTC to reject the prior Petition of the Cities of Kennewick and Richland for a new at-grade crossing at Center Parkway remain today. Although the Cities have provided additional documentation of the issues associated with constructing the crossing as well as measures intended to mitigate the safety issues associated with the at-grade crossing, they have failed to provide documentation which shows the lack of reasonable access for emergency services and capacity deficiencies on the surrounding arterials which would warrant the construction of a new crossing.

Therefore, it is my recommendation the petition be denied.

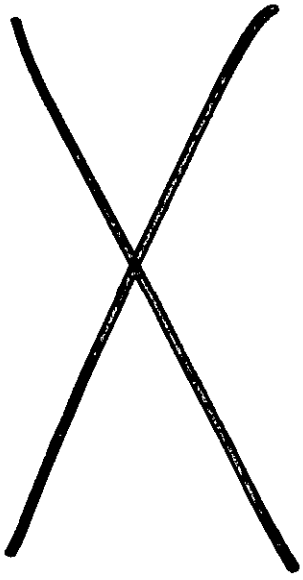
9 DECLARATION

I, Gary A. Norris, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED TESTIMONY OF GARY A. NORRIS is true and correct to the best of my knowledge and belief.

DATED this 1ST day of October, 2013.

Gary A. Norris

Gary A. Norris



WUTC DOCKET TR-130499
EXHIBIT GAN-1-TR
ADMIT ☒ W/D ☐ REJECT ☐

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WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK and CITY OF RICHLAND Petitioners vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD CO., BNSF RAILWAY and UNION PACIFIC RAILROAD Respondents.	DOCKET NO. TR-130499-P PRE-FILED REBUTTAL TESTIMONY OF GARY A. NORRIS

1. SUMMARY OF REBUTTAL TESTIMONY

Gary A. Norris, P.E., P.T.O.E of DN Traffic Consultants, Preston, WA has been retained by Respondent Tri-City & Olympia Railroad Co. ("TCRY") to evaluate whether the documentation provided by the Petitioners substantiated the need for a new at-grade crossing of the TCRY rail line at the proposed Center Parkway location. This rebuttal testimony responds to the WUTC Staff testimony and concludes that that

testimony, which relies upon the testimony of the Petitioner, fails to show an "acute public need" for any crossing at the proposed location and identifies the deficiencies in the WUTC Staff testimony as well as the testimony of Petitioners upon which that Staff testimony relies.

2. BACKGROUND

Q. *State your name, occupation, business affiliation and qualifications to provide expert testimony in this matter and relevant background experience or qualifications.*

A. My name is Gary A. Norris. I am a principal with the firm of DN Traffic Consultants, Preston, WA. My qualifications are as set forth in the Pre-Filed Testimony of Gary A. Norris in this matter at page 2 line 6 through page 3 line 3.

3. SUMMARY OF RESPONSE TO WUTC STAFF TESTIMONY OF KATHY HUNTER

Q. Have you reviewed the WUTC Staff testimony of Kathy Hunter?

A. Yes I have.

Q. Please summarize your rebuttal response to that testimony.

A. Ms. Hunter's testimony regarding purported emergency response times is based on unsubstantiated or poorly documented assumptions. A significant portion of Ms. Hunter's testimony is devoted to the "Diagnostic Review" performed at the proposed crossing location. Diagnostic Review does not answer the question of whether or not a crossing of the railway is required but addresses existing and potential crossings to determine what can be done to maintain or improve safety. Ms. Hunter's testimony also addresses at some length the "practicability" of grade separation versus an at-grade crossing at the proposed North Center Parkway location. However, the "practicability" of a grade-separated crossing becomes an issue only upon a showing that a crossing is necessary as a result of an "acute public need" which neither the WUTC Staff testimony nor the testimony of the Petitioners demonstrates. In my opinion, none of the testimony in this proceeding demonstrates any need for the subject crossing, let alone an "acute," i.e., extremely great or serious, crucial or critical, need.

4. RESPONSE TIME TESTIMONY DOES NOT DEMONSTRATE AN "ACUTE PUBLIC NEED" FOR THE PROPOSED CROSSING

Q. Does the WUTC Staff testimony demonstrate an acute public need for the crossing based on emergency response time?

A. In my opinion it does not. First, Ms. Hunter's testimony provides no independent factual information regarding emergency response times, but instead is based solely on the testimony of the following individuals: Richard Baynes, Director of Fire and Emergency Services, City of Richland; Chris Skinner, Chief of Police, City of Richland; Rick Simon, Development Service Manager, City of Richland; Neil Hines, Fire Chief, City of Kennewick; John Deskins, Traffic Engineer, City of Kennewick; and Kenneth Hohenberg, Chief of Police, City of Kennewick.

Each of the individuals testified that the proposed crossing would improve response time. The testimony of Mr. Baynes assumes the accuracy of the JUB Report's conclusions regarding reduction of response time to a point site, the Holiday Inn hotel. (Baynes, p. 4, lines 8-10) The testimony of all of these witnesses appears based upon assumptions regarding traffic congestion on the proposed crossing as opposed to traffic congestion on the existing parallel roadways and alternative emergency response routes. There is however, no documentation presented in this case which compares the anticipated congestion on the proposed crossing compared to parallel routes (Columbia Center Boulevard and Steptoe Street) or otherwise scientifically substantiates the cited testimony relied on by Ms. Hunter.

Q. *Is there data or computation support for the conclusion that response times would be improved?*

A. The expectation that emergency response time will be improved appears to emanate from the JUB traffic analysis which identifies travel time from the two fire stations to the Holiday Inn on the north side of the railway. As noted in my initial testimony, there is no documentation in the JUB report of the factors used in estimating emergency response time and thus no substantiation of its conclusions in this regard.

Q. In your opinion, are there other deficiencies in the WUTC Staff testimony analysis of "acute public need?"

A. Yes. Ms. Hunter's testimony identifies standards established by National Fire Protection Association (NFPA) as the basis to establish "acute public need". According to her testimony, "the NFPA states in section 5.2.4.1.1 that 'fire suppression resources shall be deployed to provide for the arrival of any engine company within a 240-second travel time to 90 percent of the incidents . . . '." (Hunter, p 20, lines 16 to 18.) Her testimony goes on to state "Likewise , in section 5.3.3.3.2, NFPA standards state, "The fire department's EMS for providing a first responder with AED shall be deployed to provide for the arrival of a first responder with AED company within a 240-second travel time to 90 percent of the incidents." (Hunter, p. 20, lines 18 to 22.) Ms. Hunter testifies that "This means the NFPA sets the standard response time to emergency situations for fire departments and medics at 4 minutes 90 percent of the time." (Hunter, p. 21, lines 2 to 4) She suggests, based on the findings of the JUB Report, that the proposed crossing will help achieve this standard. (Hunter, p. 21, lines 4 to 8.)

However, the Kennewick station already provides this standard of service with a reported response time of 2:48, well below the "standard" 4 minute response time. Secondly, there is no consideration of the fact that the Richland station may be already achieving this standard as well. The standard requires a 240 second response time to 90 percent of the incidents. There is no data on the location of the incidents in this service area. If 90 percent of the incidents occur south of the railway this standard may already be met without the proposed crossing. The fact remains the WUTC Staff testimony has failed to demonstrate that this is an issue by citation to facts as opposed to assumptions.

Q. Do you take issue with any other portions of the WUTC Staff testimony?

A. Yes. I disagree with Ms. Hunter's analysis support of her opinion that the accident potential is lower than stated in Kevin Jeffers testimony. Ms. Hunter selected a single crossing similar to the proposed Center Parkway crossing in terms of train and

vehicular traffic volumes and control strategies. Using that crossing she conducted an FRA model analysis with the result illustrating the probability of an accident at 0.018701 percent for any one year period. This analysis is faulty because she selected an existing crossing which is already in the FRA data base used to develop the model. The model reflects the crash history of all similar crossings to develop the forecast. If Kathy stumbled on a crossing with a lower probability there must be data within the model that represents a higher probability in order for the evaluation of the proposed Center Parkway, with similar conditions, to be higher than Ms. Hunter's sample data point.

I also disagree with the accuracy of Ms. Hunter's testimony that there will be no school buses using this crossing. Her statement was based on a comment by City of Kennewick that this (Center Parkway) is not a school bus route. School bus routing is a very dynamic operation. School districts evaluate and revise their bus routings on an annual basis. Further, there remains the possibility the route could be used on a random basis for school bus circulation, for example by out of town buses going to the Holiday Inn to stay while participating in sporting or other high school events. The possibility of school bus utilization of the proposed crossing cannot be disregarded.

Finally, there is testimony to support anticipated substantial increase of train traffic and speeds at the location of the proposed crossing. (Testimony of Randolph Peterson, p. 5, line 3, through p. 6 line 6.) Ms. Hunter fails to address this variable in her analysis of safety or acute public need.

5. SUMMARY OF TESTIMONY AND CONCLUSIONS.

Q. Please summarize your rebuttal testimony and conclusions.

A. In my original testimony, I identified in detail how the Petitioners failed to establish an acute public need for the proposed crossing, or any crossing, at the identified location.

Nothing in the WUTC Staff testimony provides factual, supportable data that suggests the proposed Center Parkway railway crossing addresses an acute public need. At best, the proposed crossing may provide additional access to the Holiday Inn

and other businesses. However, that access does not demonstrate an "acute public need".

Thus, assessing all testimony, the Petitioners have failed to show an acute public need for this crossing because:

- There is no analysis of capacity issues on parallel roadways which would generate the need for an additional crossing. In fact, there is no comparison of the delay on Center Parkway with the crossing to other parallel routes. Actual delay could be worse on Center Parkway.
- There is no consideration of future train operation on the impact of Center Parkway in terms of vehicular delay, congestion, and safety. Substantial train activity and the resulting closure of the crossing could make this an unreliable route for emergency response.
- There is no documentation which suggests the proposed crossing will reduce emergency response for 90 percent of the incidents;

Thus my opinion remains unchanged: Petitioners have failed to demonstrate the "acute public need" for this crossing which outweighs the adverse impacts. As a result, the Petition should be denied.

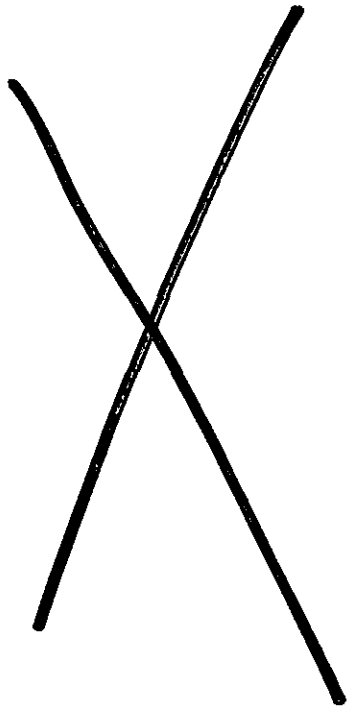
6. DECLARATION

I, Gary A. Norris, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED REBUTTAL TESTIMONY OF GARY A. NORRIS is true and correct to the best of my knowledge and belief.

DATED THIS 21st day of October, 2013.

Gary A. Norris

Gary A. Norris



SECTION FOUR

POPULATION

WASHINGTON GROWTH MANAGEMENT ACT REQUIREMENTS

Goals and policies concerning population growth focus on the promotion of contiguous and orderly development and the provision of urban services to such development. The Washington State Growth Management Act (GMA) requires the Land Use Element to include population densities and estimates of future growth (RCW 36.70A.070(1)). The Benton County-Wide Planning Policies contain several provisions addressing population growth and capacity. They include agreement or cooperation in determining the following:

- The portion of the 20-year population forecast allocated to the City of Richland
- The boundaries of the urban growth area
- The amount of land necessary to provide sufficient service capacity to meet projected populations at urban densities and service standards
- Consistency with Benton County-Wide Planning Policies.

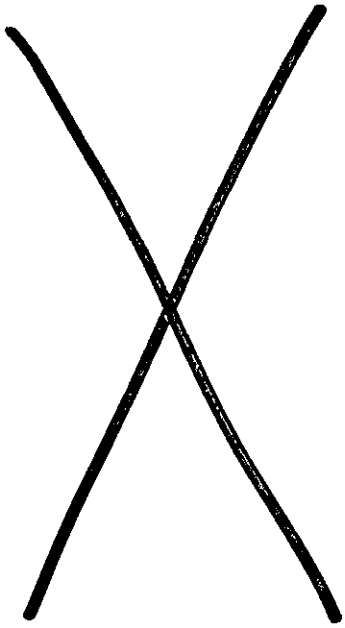
OFM POPULATION FORECASTS

As mandated by the GMA, the OFM provided population estimates for Benton County through 2025, allocated among the county's cities and unincorporated areas. The population allocated to the cities by Benton County is based upon the OFM's 2002 population estimate for the county. The official high OFM 2025 population forecast for the City of Richland is 63,030, which represents 28% of the Benton County population forecast.

TABLE LU-2 OFM 2002 POPULATION PROJECTIONS[1]

BENTON COUNTY	2003	2005	2010	2015	2020	2025
LOW	142,475	143,052	147,531	151,304	154,328	156,633
INTERMEDIATE	142,475	151,522	161,236	169,528	177,388	184,818
HIGH	142,475	164,553	180,423	195,296	210,205	225,108
HIGH PROJECTION ALLOCATION[2]						
JURISDICTION	2003	2005	2010	2015	2020	2025
BENTON CO.	33,169	37,847	41,497	44,918	48,347	51,775
BENTON CITY	2,624	3,291	3,609	3,906	4,204	4,502
KENNEWICK	54,751	62,530	68,561	74,212	79,878	85,541
PROSSER	4,838	4,937	5,413	5,859	6,306	6,753
RICHLAND	38,708	46,075	50,518	54,683	58,858	63,030
WEST RICHLAND	8,385	9,873	10,825	11,718	12,612	13,507

1 OFM Projections (January 30, 2002)
2 Population allocations based on Benton County - 23%, Benton City - 2%, Kennewick - 38%, Prosser - 3%, Richland - 28%, West Richland - 6%
3 2000 Census

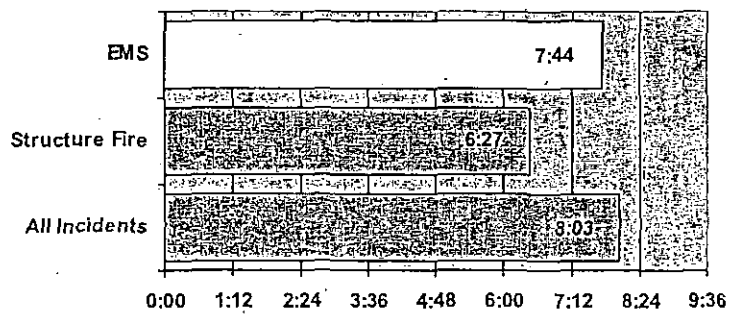


Response times of 5 minutes within the City has been established as the historical minimum LOS for all calls in the city and desired goal of achieving 5-minute response times 90% of all calls as identified in previous comprehensive plans. Due to increased service demands and continued growth farther away from our resources, our department is unable to deliver this level of service throughout our community (see "Time Response" bar graph below). By adding resources, both facilities and staff whenever a predetermined number of homes lie outside the 4-minute drive time from existing facilities, the Fire & Emergency Services Department will be able to provide a more consistent level of service throughout our community. Recommended benchmarks are identified in CFPS Goal #1, Policies 1 and 2.

The transportation system also has an effect on the LOS of fire and emergency services. In order to keep response times low, the Fire Department depends on an efficient transportation system in good repair. The layout of streets, their widths and condition, and secondary access routes directly affect response times. Since these considerations are built into future City LOS standards, it is assumed that future transportation improvements will promote more efficient fire and emergency service activities.

CURRENT RESPONSE TIMES

City of Richland Fire & Emergency Services has established a response performance objective that calls for the first unit to arrive at an emergency incident within five minutes or less from the time of dispatch (notification of response unit), 90% of the time. The bar graph below shows response performance for only those incidents in the city for the 2002-2003 study period.



FUTURE DEFICIENCIES

Population growth and urban sprawl/urban growth boundary expansion will increase demand for fire and emergency medical services. The City will need additional firefighters, equipment and facility space. Expected growth is likely to have the following direct effects on fire and emergency services:

- Reduced emergency response time resulting from traffic congestion
- Additional demand on water supply
- Additional time needed to review plans, inspect buildings, and perform related activities
- Additional needs for timely data to quantify LOS; performance delivered, service levels, and to forecast service demands
- Increased number of emergency calls (increased out of service time/reduced resource availability).

Policies in the Comprehensive Plan call for the City to act aggressively to meet LOS standards for fire and emergency services. The LOS standard of a 5-minute response time 90% of the time (from time of dispatch to time-on-scene) for high priority calls will be maintained. Maintaining this standard will likely require additional facilities and staffing in South Richland in the City View area and south of Badger Mountain. In addition, it is recommended that the north station be relocated further north and auto aid agreements with neighboring jurisdictions be enhanced..

Fire and emergency services LOS standards are based on a combination of national, state and local standards and input from citizen advisory groups (2003 strategic plan and 2004 facility deployment plan). The LOS standards are for the City of Richland and do not include West Richland and portions of unincorporated Benton County where the Richland Fire Department currently provides emergency medical services for over 10,000 people.

Expected increases in the demand for key fire and emergency services are as follows:

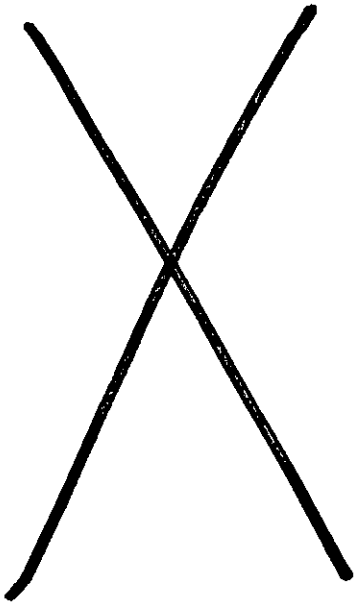
- Additional Requests for Emergency Services: Increased population and continued development further away from emergency service facilities and resources decrease our ability to serve the community. City of Richland experienced a 58% increase in request for service from 1994 to 2004 while only experiencing a 23% increase in population.
- Additional Personnel Needed: 3 firefighters and 3 captains to maintain a consistent level of service throughout the community to maintain a 5-minute response time as desired LOS (time of dispatch to time on-scene).
- Additional Fire Vehicles Needed: 1 fire engines and 2 ambulances for a total of 3 vehicles.
- Additional Facility Need: New facility in South Richland to compliment current Richland and District 4 fire stations. Relocation of fire station in North Richland to compliment current Richland and Hanford fire department facilities. New facility South of Badger Mountain when the area is annexed into the city and a predetermined demand for service is reached. If Council decided to extend Swift Boulevard east of Howard Amon Park the City would need to relocate the central fire station. The construction of a Badger Mountain station, relocation of the central fire station, apparatus and staffing costs associated with these two facilities are not currently addressed in the Comprehensive Plan.

Station 72, a 6,220-square-foot facility staffed by three shifts of three firefighters, currently serves the area south of the Yakima River. Due to rapid growth and current LOS in the southwest area of Richland, it is necessary to construct and staff a new fire and emergency services facility in South Richland to compliment station 72.

Response time in North Richland could be improved by relocating the existing North Fire Station to a site that compliments Hanford fire facilities and our central fire station. Location should be positioned to take advantage of rapid access to arterial roadways.

The following assumptions were made for staffing and equipment needs and costs at a typical fire station:

- Construction and staffing of a new facility in southwest Richland - 2006
- Three firefighters with annual salaries of $85,000 (including benefits)
- Three captains with annual salaries of $105,000 (including benefits)
- One fire engine at a cost of $320,000
- One ambulance at a cost of $145,000
- Station construction cost of $2,800,000



(Chapter 10.93 RCW). By signing this agreement, the jurisdictions agree to provide cooperative enforcement of the law beyond their territorial boundaries as requested by the jurisdiction in need of assistance.

LEVEL OF SERVICE

LOS for police protection is expressed in terms of response times and staffing levels as shown in Table CF-23. The base criteria affecting LOS are the population served and the number of calls for service. In determining future needs for police service facilities within the City of Richland, the 2004 LOS staffing ratio of 1.36 commissioned police officers per 1,000 population will be used. This compares to a statewide average of 1.62 commissioned officers per 1,000 population (1995) for cities of similar size (25,000 to 50,000 residents). For response time LOS, an average response time goal of 5 minutes for high priority calls will be used. The existing range of 1- to 5-minute response times meets this LOS.

TABLE CF-12 POLICE SERVICES LEVEL OF SERVICE

LOS Type	LOS Standard
Staffing Level	1.36 commissioned officers per 1,000 population
Response Time	1 - 5-minute average, high priority calls

FUTURE DEFICIENCIES

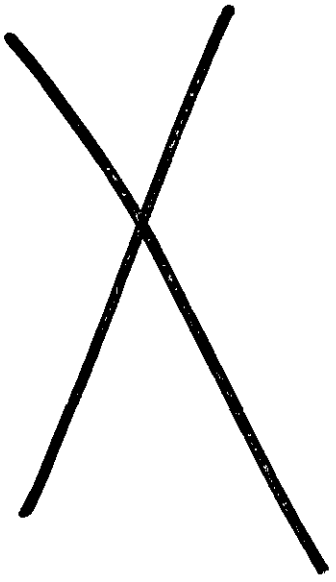
Under policies of the *Comprehensive Plan*, the City will act aggressively to meet LOS standards for the provision of public safety services. Future growth will increase demand for police protection services and police department community programs. The demand for additional police officers will result in a related need for equipment and support staff.

RECOMMENDATIONS

The City will need to address any deficiencies in police services that result from development. This could involve all of the improvements described above and/or some of the following options:

- Compliance with goals and policies of the Plan.
- Encouraging site designs that reduce opportunities for crime.
- Requiring increased staffing levels to meet state averages.
- Continued promotion of crime prevention programs.
- Follow the department mission statement and strategic positioning document as it relates to a safe community.

Relaxing the LOS standard is not recommended because Richland's standard is already below the statewide average for cities of its size.



CAPITAL FACILITIES PLAN

RCW 36.70A.020 (12); RCW 36.70A.070; RCW 36.70.030; RCW 36.70A.120; WAC 365-195-315; WAC 365-195-070.

INTRODUCTION

PURPOSE

The Capital Facilities Plan (CFP) is a key component for local government planning. Capital facilities generally represent the basic infrastructure and key amenities for a community and that are provided by the public agencies. It generally includes water, sanitary sewer, storm water, solid waste management, streets, parks, police, and fire. Major public projects such as convention centers, city halls, and sports arenas also fall under the capital facilities category, since they provide important civic services to the community. Quality of life in a community largely depends on the availability and adequacy of these facilities.

By the year 2029, Kennewick's population is expected to reach 93,286. This would be a 25% increase of the City's existing official population of 74,665. One of the challenges to accommodate this growth is to make sure that there is adequate infrastructure to meet the civic needs for all residents. The CFP aims to use sound fiscal policies to provide adequate public facilities consistent with the City's land use plan and long-term vision. The purpose of the CFP is to create one comprehensive document that integrates the City's Capital Improvement Plan (CIP) and Budget in the Comprehensive Plan in order to make the Comprehensive Plan a reality.

STATUTORY REQUIREMENTS

RCW 36.70A.120 states that each jurisdiction planning under GMA is required to make capital budget decisions in conformity with its comprehensive plan. Two of the GMA planning goals are focused towards the Capital Facilities Plan:

Goal 1. Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

Goal 12. Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Within the GMA framework (RCW 36.70A.070), this document discusses the following:

- Inventory of the existing facilities
- Forecast of the future needs for at least 20 year planning period
- Proposed location and capacities of the future needs
- Six-year financing plan, and
- Reassessment of the land use plan

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LEVEL OF SERVICE (LOS)

The City establishes certain Levels of Services (LOS) standards in order to ensure that adequate facilities are available at a consistent level. Level of Service is closely tied with concurrency requirements. "Concurrency" according to WAC 365-195-210 means that adequate public facilities are available without decreasing the levels of services when the impacts of development occur. Concurrency is mandated for transportation facilities. It is also recommended under the GMA guidelines that at least domestic water systems and sanitary sewer systems be added to the concurrency list and be applicable within the urban growth areas. The City has established mandatory LOS for "category one" facilities. This includes transportation, water and sewer. Transportation LOS is discussed into greater detail under the transportation subsection in the Infrastructure Element. The City's LOS standards for "category two" facilities serve as a tool to monitor the existing service and forecast future needs.

Table 10: Level of Service

Facility	LOS
Domestic Water	170 gallons per capita per day
Domestic Sewer	120 gallons per capita per day
Commercial or Industrial Water & Sewer	Per Water & Sewer System Plan
Stormwater Detention	25 year storm
Fire Response	5 minutes response time for 90% of events
Emergency Medical Response	4 minutes response time for 90% of events
Fire Service	1.32 fire fighters per 1000 population
Law Enforcement	1.38 officers per 1000 population
Parks and Recreation Park Land	3 acres of parkland per 1,000 population

PARK STANDARDS

National park standards shown in Table-11 identifies standards for park demands based on the community or neighborhood levels. It uses the unit acres/1000 population to measure the demand, and number of parks required. City of Kennewick Parks and Recreation Plan has combined the community and neighborhood park classifications for the purpose of establishing level of service, which is 3 acres per 1000 population.

Table 11: National Park Standards

Park Classification	*NRPA Standard* in acres per 1,000 population
Neighborhood Parks	2.00
Community Parks	8.00

Source: Kennewick Comprehensive Parks and Recreation Plan

The recommended park size for Kennewick is shown in Table-12.

Table 12: Kennewick Park Standards for Park Size

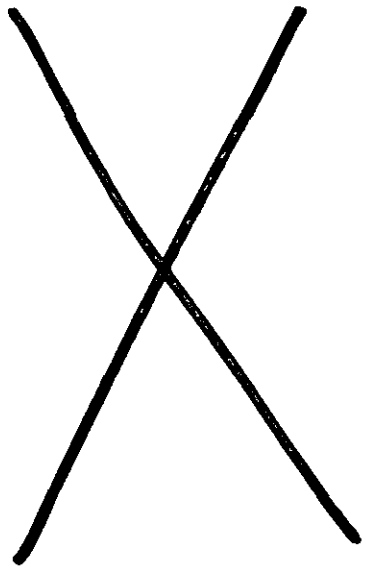
Park Classification	*Desirable Park Size in acres*
Neighborhood Parks	5-10
Community Parks	10-25
Urban/ Regional park	75 minimum

BEST MANAGEMENT PRACTICE

Best management practice in operation and resource utilization greatly impacts the LOS of any facilities. For example, the Water System Plan promotes water conservation by raising awareness among citizens regarding water usage, repairing leaks in the system, and using efficient equipments and proper maintenance. Water intertie between Cities of Kennewick and Richland assure availability of an emergency water supply from one system to the other should either system fails.

The three City Fire Departments and five local Fire Districts work closely together in supporting each other when help is needed. Through well established mutual aid and auto aid agreements the fire/EMS agencies are able to assist in a manner that provides coverage to the entire Tri Cities community.

The transportation system also has an effect on the LOS of fire and Emergency Medical Services (EMS). In order to keep response times to a minimum, the Fire Department depends on an efficient and well-maintained transportation system. Proper planning of future and existing street networks in conjunction with fire station placement will reduce the need for additional stations without increasing the response time. In addition a well planned and maintained transportation system provides the critical infrastructure for community emergency evacuation during an emergency.



The six-year transportation projects have estimated costs and funding sources identified in the CIP program. The City relies on assistance from state and federal funding to implement the planned transportation improvements. If these sources of funding are not available for some reason, the City does have several options for making up the shortfalls:

- Use funds from another project that could be delayed without detriment.
- Enact impact fees, special taxes, tools, assessments, or other revenue sources available to the City.
- Develop a concurrency agreement stating that the necessary improvements will be provided within six years.
- Change the land use pattern to lower the number of trips to meet the LOS standards.
- Deny the land use proposal generating the need for the improvement.

The City's priority would be to make up any shortfalls with funds from another source. If this could not be done and the concurrency ordinance applies to the project, the City could either deny the proposed development or reassess the land uses in the area. This would be done to determine if changes to the land uses could be made that would result in a reduced LOS for the proposed project. If a project would have the potential to affect a neighboring transportation system, the proposal could be referred to the Regional Transportation Planning Organization (RTPO) for intergovernmental consideration.

The Transportation Improvement Program (TIP) is prepared by the Benton-Franklin Council of Governments to meet state and federal guidelines. The TIP is required for applications for state and federal transportation funding. Proposed projects are prioritized based on available funding and the BFCG must certify that the TIP is in conformance with the Regional Transportation Plan.

IDENTIFICATION OF SYSTEM EXPANSION TO MEET CURRENT & FUTURE DEMANDS

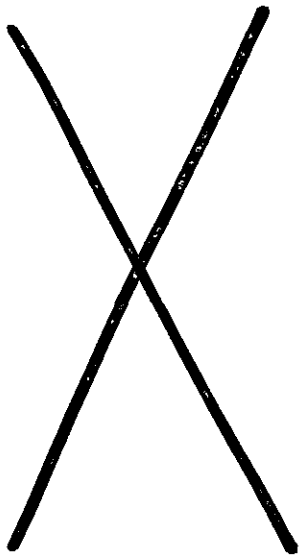
The Capital Improvement Program (CIP) is updated biennially even though long-range projects, designed to meet both current and future needs may be altered during each review. Long-range decision-making and budgeting is coordinated through the CIP.

The following eight Capital Improvements are identified as Major Transportation Projects in the Capital Improvement Program 2009-2014 for the City of Kennewick.

Table 16: Major Projects

Project	Description	Funding	Project Time
1. Olympia Street – 27th Ave. to SR 397	Roadway construction from County Road 397 (Finley Intertie) to 27th Avenue. Curb & gutter improvements, storm drainage, sidewalk, landscaping, lighting, and traffic control	Urban Arterial Street Fund Revenue Sources: Capital Improvement Fund Transfer, STP Direct Allocation & TIB Grant	2011-2012

2. Steptoe – 10th Avenue (5 Corners) to Gage Blvd.	Roadway construction from 10th Ave. to Gage Boulevard. Curb & gutter improvements, storm drainage, sidewalk, landscaping, lighting, and traffic control	Urban Arterial Street Fund Revenue Sources: Capital Improvement Fund Transfer, STP Competitive Grant, TIB Grant, & Developer Contribution Based on the funding availability of Local Revitalization Financing (LRF) grant and the Councilmanic bond	2009-2016 Phase 1 – Center Parkway to Gage Blvd to be constructed in 2010-2011
3. Steptoe – 10th Avenue (5 Corners) to Gage ROW	Design (in progress), right-of-way acquisition (in progress), environmental permitting (complete) and public involvement (complete) for future roadway construction	Capital Improvement Fund Revenue Sources: Capital Improvement Fund & City of Richland Based on the funding availability of Local Revitalization Financing (LRF) grant and the Councilmanic bond	2005-2012
4. 10th Avenue (5 Corners) to Columbia Center Blvd.	Roadway construction, curb & gutter improvements, storm drainage, sidewalks, landscaping, lighting, and traffic control.	Urban Arterial Street Fund Revenue Sources: Capital Improvement Fund Transfer, TIB Grant, & Developer Contribution	2009-2015
5. Cascade Street – 27th Avenue Refurbishment	Roadway construction on Cascade Street from 34th Avenue to 27th Avenue, and 27th Avenue from Dayton Street to Washington Street. Replace existing pavement to 30 feet & add storm drainage.	Capital Improvement Fund Revenue Source: Capital Improvement Fund, Grant	2015 Roadway has had BST in 2007
6. Hildebrand Blvd. from 10th to Southridge	Roadway construction per the standards street design and per the Southridge subarea plan	Based on the funding availability of Local Revitalization Financing (LRF) grant.	Expected start time 2011
7. Southridge Infrastructure Improvements	Roadway construction projects	Based on the funding availability of Local Revitalization Financing (LRF) grant.	Expected start time 2011



PREFACE

The Benton-Franklin Council of Governments (BFCG) serves as the lead agency for both the Tri-Cities Metropolitan Planning Organization (MPO) and the Benton-Franklin-Walla Walla Regional Transportation Planning Organization (RTPO). In accordance with state and federal transportation planning requirements, the BFCG has coordinated with area jurisdictions in the development of this combined Regional and Metropolitan Transportation Plan.

The intents of this long-range transportation plan are to establish the vision for the region and provide the means to attain that vision. It identifies the issues and concerns associated with the transportation system in the region, as well as the policies and specific programs intended to address those concerns. The plan provides an inventory of the current system as well as providing metropolitan area forecasts for population, employment, and traffic to be anticipated during the life of the plan.

Development of the *2011-2032 Metropolitan & Regional Transportation Plan* required the efforts of local area planners and engineering staff from each of the BFCG's member agencies. In addition, elected officials from each agency aided in formulating the policies contained in the plan and the review of its' content. BFCG staff was integral in providing the layout of the plan, the coordination of interacting with the many members, as well as the collection of information and efforts described within the plan. Without the collective effort of all involved, successful formulation of the plan would not be possible.

The *2011-2032 Metropolitan &Regional Transportation Plan* (RTP) replaces the 2006-2025 RTP. This combined urban/rural document eliminates duplication; provides a comprehensive vision for the entire region; and meets both the state planning requirements of the Growth Management Act (GMA) and the federal requirements of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

Over the coming years this plan will be updated to reflect policy changes, technological advances, funding options, and other "course corrections." This document is intended to be a dynamic guide to achieving the regional vision.

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EXECUTIVE SUMMARY

THE PLAN

This Metropolitan and Regional Transportation Plan (RTP) is a compilation of coordinated city, county, and state planning efforts for the Tri-Cities Urban Area (MPO) and the Benton-Franklin-Walla Walla Counties region (RTPO). The plan is in accord with state and federal guidelines and requirements.

The plan is based on least cost planning methodologies to attain the most cost-effective facilities, services, and programs that function as an integrated multi-modal regional transportation system; ensures preservation of that system; and makes efficient use of facilities to relieve congestion and maximize mobility of people and goods.

The plan presents regional level of service standards; evaluates the operational level of service of regional facilities for current conditions and for ten and twenty year horizons; assesses current and future capacity deficiencies; presents short, medium, and long-range transportation projects of each regional jurisdiction; presents a financial plan demonstrating how the transportation plan will be implemented; and includes goals, policies, and action strategies to guide the planning process for the next twenty years.

The plan establishes consistency with the jurisdictional six-year Transportation Improvement Programs (TIPs) and the MPO/RTPO TIP; the transit development programs of Ben Franklin Transit and Valley Transit; the land use and transportation elements of city and county comprehensive plans; and the Washington Transportation Plan.

BACKGROUND

The RTP was developed through a cooperative process that involved the BFCG, WSDOT, the public, and the efforts of the three counties, 13 cities, four ports, and two transit agencies that constitute the MPO/RTPO of the region.

The analysis for the Tri-Cities Urban Area and periphery utilized a computer traffic model to forecast future traffic volumes and levels of service. The Tri-Cities model area includes the Tri-Cities urbanized area and some adjacent areas in Benton, Franklin, and Walla Walla counties, including travel to and from the Hanford Reservation. Those future travel demand estimates were direct results of forecasts of changes in the level of urban development. One of the most important aspects of the urban transportation planning process is the forecasting of future development in terms of population and employment.

Total population within the Tri-City model area during 2010 was nearly 214,000. By 2020, the area is forecast to grow by 48,565 people for a total population over 263,500. During the second decade, the addition of nearly 48,000 is forecast to bring the 2030 total population to 310,504 people within the model area. This equates to model area increase of 96,527 over the twenty-year period, or an annual increase of 2.3 percent.

Employment and forecasted employment is stated by number of employees for most land use categories. There are, however, some categories that are measure in other means - such as schools being reflected by the number of students, or hotels being measured by the number

of rooms for example. For the purposes of discussion, employment values within this section refer only to those categories measured by employee.

Within the model area in 2010, total employees were estimated at 69,271. Forecasted employment for 2020, show an increase of 6,249 employees bringing the area total to 75,520. By the year 2030, an additional 11,675 employees were forecast to be employed within the area resulting in a total of 87,195. Employment forecasts are reflective of the anticipated downturn in total employment associated with the Hanford cleanup mission. In total, employment forecasts show an increase of nearly 18,000 employees or an annual growth rate of 1.3 percent for the twenty-year period.

MAJOR REGIONAL ISSUES

Regional transportation issues that were identified by the local transportation committees when developing the plan were:

Preservation and Maintenance. Smaller jurisdictions have difficulty transferring general revenues to street maintenance when those funds are severely needed. Additionally, much of the available grant funding is restricted to federally classified routes, leaving local road maintenance underfunded. Long-term maintenance deferral leads to system deterioration.

Safety Deficiencies. Physical deficiencies or items that do not meet current engineering standards may include horizontal and vertical alignments, intersections, stopping sight distance, inadequate or nonexistent shoulders, narrow lanes, roadside hazards, lack of protective guardrails, narrow bridges, and warning devices at railroad crossings. Obtaining funds to implement remedial measures is an on-going problem.

Automobile Dependence. Both the volumes of traffic on our streets and highways and the vehicle miles traveled by individual vehicles are increasing. Funding capacity improvements to keep pace with the demand is an on-going challenge.

The Hanford Site work commute changed when the Department of Energy eliminated their bus fleet and allowed private vehicles on the site. A BFCG survey performed every other year finds the daily Hanford-bound commute through Richland consisting of approximately 88 percent single-occupancy and 10 -12 percent carpool and vanpool. The nuclear waste treatment plant currently under construction is adding another 1,000-2,000 workers (numbers fluctuate) into the Hanford commute.

The morning commute to Hanford on SR 240 operates well within the capacity of this corridor due to staggered and variable work shifts. However, the afternoon return commute is more compressed, resulting in significantly more congestion and delays.

Ben Franklin Transit's vanpool program helps ease the Hanford corridor congestion.

The Tri-Cities area was again granted a two year exemption (effective June 30th 2011) from implementing a state mandated Commute Trip Reduction Program that will affect major employers, including the Department of Energy and their prime Hanford contractors.

Inter-City Bus Service. In 2004, Greyhound discontinued service to Connell, Prosser, Richland and Walla Walla. With WSDOT support, the "Grape Line" bus service has attempted to fill part of that void between Pasco and Walla Walla.

Stampede Pass Rail Impacts. Reopening the Stampede Pass rail line has resulted in traffic impacts in Pasco, Kennewick, Prosser, and other communities up the Yakima Valley. Grade separations have been constructed at the Interstate 82 Kiona Interchange (Exit 96), Ainsworth Avenue (SR 397) in Pasco and Columbia Center in Kennewick. In 2011 BNSF is scheduled to begin bridge construction for a grade separated crossing of Steptoe Street as part of a joint Kennewick/Richland project extending Steptoe Street between Clearwater Avenue and Gage Boulevard. Additional work is needed.

Snake River Draw Down/Dam Breaching. The impacts to road and rail transportation associated with the potential loss of barge traffic on the Snake River are extensive. There is no mechanism in place to finance the capacity improvements that would be needed to continue those freight commodity movements. The BFCG Board has gone on record (resolution) opposing any dam breaching or pool draw downs.

Columbia and Snake River Dredging. The Columbia River Channel Improvements Project was a collaborative effort between the U.S. Army Corps of Engineers and six lower Columbia River ports to improve navigation by deepening the navigation channel to accommodate the current fleet of international bulk cargo and container ships. The Corps completed the last section of the Project in November 2010, finishing an effort that took more than 20 years to complete. The project deepened the Columbia River by three feet, to 43 feet along a 103-mile stretch of river from the Pacific Ocean to Portland, Oregon. Additionally, following favorable court action, the Corps of Engineers completed the necessary dredging on the Snake River in the winter of 2005-2006. Siltation is again expected to necessitate dredging in 5-7 years.

Seasonal Weight Restrictions. Seasonal weight restrictions during freeze/thaw cycles of late winter and early spring affect 85 percent of the regional rural county freight and goods routes. This impacts delivery of farm commodities from scattered rural storage facilities to railheads and water ports. The process of all-weather surfacing these vital freight routes is moving slowly for lack of adequate funds.

Preservation of Light Density Rail Lines. Four light density, or branch lines, operate in the RTPO. Branch line operations provide competitive alternatives to shipping by barge or truck as well as reducing traffic congestion and maintenance requirements on state and local roads. Branch lines tend to operate on slim profit margins, resulting in deferred maintenance and potential abandonment. State financial support and a grain car program have helped to keep them running. Continued support will likely be needed to preserve these freight options.

Decline of Dedicated Transportation Funds. The 1999 repeal of the State Motor Vehicle Excise Tax was followed by two subsequent state gasoline tax increases. One of those increases marginally addressed funds for cities and counties, extending city and county transportation program needs.

The growth in the state's population, number of licensed vehicles, and vehicle miles traveled indicate the need for appropriate increases in transportation funding for cities and counties to offset increased maintenance costs, pavement overlays and capacity improvement needs. The Washington Transportation Plan further emphasizes those needs.

GOALS AND POLICIES

Regional transportation goals and policies were developed by the Transportation Technical Advisory Committee and Policy Advisory Committee, public input, and the BFCG to guide jurisdictional actions related to transportation planning. As an integral part of the adopted plan, the goals and policies should be reviewed on an ongoing basis for currency and consistency. Agencies may choose to adopt some or all of the policy statements as part of their local transportation or land use planning processes. The policies include:

1. Access
2. Efficiency
3. Balance
4. Safety & Security
5. Safety Conscious Planning
6. Environmental Responsibility
7. Transportation Financing
8. Intergovernmental Cooperation
9. Citizen Involvement and Public Education
10. Livability, Sustainability, & Land Use
11. Pedestrians and Bicycles
12. Transit Element
13. Transportation Demand Management/ Commute Trip Reduction
14. Streets and Highways
15. Air/Waterways/Rail
16. Freight Movement
17. Intermodalism
18. Transportation and Economic
19. Maintenance and Preservation

TRI-CITIES DEFICIENCY ANALYSIS (MPO)

City of Richland - Current congestion exists upon George Washington Way's (GWW) southern portion, with numerous delays experienced at signalized intersections with local cross-streets. SR 240 eastbound, between Route 10 and Stevens Drive, operates under congestion during the PM commute, while the SR 240 southbound "Bypass" traffic experiences delays at the six signalized intersections within this section. SR 240 eastbound ramp to I-182 westbound (toward Queensgate Drive) experiences congestion associated with the higher volumes and required weave movements accessing the westbound ramps.

Forecasts for the year 2020 show conditions along GWW will worsen with congested segments appearing further north. The I-182/GWW interchange will become increasingly busy, with some movements likely near capacity. SR 240 eastbound between Kingsgate Way and Stevens Drive is forecast to operate as congested. The Duportail Bridge and associated Duportail Extension (to Stevens Drive) will draw significant traffic volumes and improve conditions at both Aaron Drive and Queensgate Drive. With that said, the SR 240 eastbound ramp to I-182 eastbound will remain a location of concern.

2030 forecasts show the extension of Jones Road, coupled with anticipated reduction of employment in further reaches of the Hanford Site, will reduce congestion upon SR 240 eastbound between Kingsgate Way and Stevens Drive. However, conditions along the SR 240 Bypass are expected to worsen between SR 224 (Van Giesen Street) and Duportail Street in the southbound direction. Conditions along GWW southbound are forecast to be congested entirely when south of Lee Boulevard, with increasing congestion at the I-182/SR 240 interchanges at Aaron and GWW. Queensgate Avenue is forecast to operate as congested in the vicinity of the I-182 interchange while roundabouts at Columbia Park Trail and Tapteal Drive are forecast to operate near, or above, capacity by 2030. Gage Boulevard is forecast to operate with some segments congested and others at, or near, capacity.

City of West Richland - Currently there are no major deficiencies apparent within the city, however forecasts for the years 2020 and 2030 indicate SR 224 westbound will approach capacity in some locations. The extension of Keene Road to Twin Bridges Road is expected to provide an attractive alternative for Hanford commuters who have traditionally used the SR 240 Bypass. Further connection to I-82 with the Red Mountain Interchange will provide much easier access into and out of the city from points west and south of the area.

City of Kennewick - Currently, congestion exists upon portions of Gage Boulevard, primarily in the eastbound direction. US 395 travelers experience numerous delays at the signalized intersections with local streets. Clearwater Avenue also experiences significant delay in both directions due to the numerous signalized intersections present on the corridor. The US 395 "Blue" Bridge (southbound) is near congested levels, with improvements at the US 395/SR 240 interchange appearing to handle current volumes well.

Forecasts for the year 2020 show conditions forecast to improve along Gage Boulevard, with the Steptoe Street Corridor extended to Southridge sub-area, though portions of Gage Boulevard will continue to operate at levels near congestion. Improvements adjacent US 395 in the Southridge area will draw large volumes to the newly developed area, with model forecasts showing both 27th Avenue and Hildebrand Road as congested at points east of US 395. SR 240 eastbound between Columbia Center Boulevard and Edison Street is forecast to near congested levels. The US 395 "Blue" Bridge southbound is forecast to be at congested levels with the northbound approach also forecast as congested. SR 397, south of 10th Avenue is forecast to operate at congested levels, though largely a factor of its lower classification capacity.

By the year 2030, Gage Boulevard is forecast to be congested in both directions (adjacent Steptoe). SR 240 eastbound, between Columbia Center Boulevard and Edison Street, will continue to operate near congested levels. Hildebrand Road and 27th Avenue (east of US 395) are forecast to operate at congested levels. Portions of US 395 southbound are nearing congested levels with the US 395 "Blue" Bridge forecast to be above levels of congestion *in both directions* by the year 2030. Conditions along SR 397 (south of 10th Avenue) are forecast with congestion with congestion reaching further southeast than seen in 2020 forecast.

Benton County (Urban) - Current conditions show congested levels upon SR 240 eastbound between Route 10 and Twin Bridges Road. Other areas on the urban fringe appear to operate at comfortable levels at this time, though there are some spot operational concerns at specific locations.

Forecasts for 2020 indicate the SR 240 eastbound segment identified as congested today will experience lighter volumes if Hanford employment reductions occur as anticipated. Portions of SR 397 in the Finley area are expected to approach congested levels by 2020.

The 2030 model forecasts show that the Red Mountain Interchange will be an attractive route for some north-south commutes in the area. By 2030, segments of SR 224 could approach congested levels without sufficient improvement to accompany the interchange project. *Development of the Badger sub-area in Richland is forecast to lead to some congestion along* Reata Road near Leslie. Forecasted congestion will spread southward along SR 397 in the Finley area, primarily in the southbound direction.

City of Pasco - Currently, congestion exists in the I-182/Road 100 vicinity and also the I-182/Road 68 area. Congestion is primarily upon Broadmoor Parkway, Road 68, and Burden Boulevard as travelers negotiate the signals and ramp movements in these areas. The US 395 segment between Kartchner Street and Court Street experiences some congestion as numerous ramp movements and weaves are present in this portion.

By the year 2020, forecasts indicate the I-182 ("Richland-Pasco") Bridge will near levels of congestion. Ramps to and from Road 100 are expected to be congested as is Broadmoor, north of I-182. Conditions at Road 68/Burden Boulevard are forecast to be congested in north, south, and east directions. US 395 southbound ramps from US 395 (from Spokane Street) and loop ramp to Blue Bridge are both forecast to operate at congested levels by this time.

In the 2030 forecast, volumes upon the I-182 Bridge (eastbound) *are forecast to grow beyond the volumes of any other roadway in the urban area* - and operate at levels of congestion. Improvements are planned for the Road 100 interchange, but those associated ramp improvements are forecast to be at congested levels by 2030. Interchange projects at Road 52 and an Underpass at Road 76 result in better conditions at Road 68/I-182. The forecasts for US 395 (southbound) continue to show levels of congestion between Kartchner and Court Streets. In the 2030 forecasts, congested levels are found on US 395 southbound ramps with mainline volumes nearing congested levels.

Franklin County (Urban) - The model area roadways for Franklin County operate at comfortable levels at this time with only operational concerns at spot locations. Forecasts include few Franklin County roadway improvements on the urban fringe. Of those, only the extension of Road 100 (Broadmoor) is forecast to operate near a congested level. This is most likely a factor of the lower capacity associated with rural road segments. The intersection of Columbia River Road/Taylor Flats Road/Dent Road/Clark Road will experience a significant amount of traffic by 2030 and these volumes should be kept in mind when design of the planned improvements is begun.

Urban Area Summary - For the most part, forecasted congestion is upon segments that area professionals would intuitively expect. Area staff seem to have a good understanding of the needs and expected areas of future growth. The project lists contained within both 2020 and 2030 "Build" scenarios do help alleviate the congested conditions forecasts for most areas. It is evident, however, that not all congestion problems can be solved through the limited resources available at the local level. The SR 240, I-182, and US 395 corridors and their interactions with the local road systems will continue to be an area of required focus as locals struggle gaining access to and across the state facilities. Additionally, and perhaps of greater concern, is the congested levels of traffic forecast for the Tri-City area's two highest capacity bridges, the I-182 "Pasco-Richland" Bridge and the US 395 "Blue Bridge".

REGIONAL DEFICIENCY ANALYSIS (RTPO)

Rural Benton County

In large measure, road access for rural and agricultural areas in rural Benton County is good and improving. However, the road system may be considered to provide less than convenient access to some of the outlying rural areas.

Congestion challenges are absent on county roads serving rural or agricultural areas; existing Level of Service (LOS) is B or higher. Generally, principle road concerns in rural areas are "all weather" access for agricultural product transport, and more direct farm-to-market routes for agricultural products.

Benton City

All of Benton City's functionally classified streets are predicted to operate at LOS A or B in the Year 2030, with one exception. State Route (SR) 225, which is contiguous with components of the Benton City street system from the Yakima River north to SR 240, is forecast to operate at LOS D by 2020. This is a situation which Benton City and WSDOT should monitor over time.

Prosser

Most segments of the Prosser street system currently operate at LOS B or better. Projected volumes based on traffic count data suggest the downtown area south of the railroad tracks is the area of town most prone to future congestion. Because increased downtown business activity would lead to increased congestion, Prosser's 2011 Comprehensive Plan reduces the downtown LOS threshold to "D" in order to accommodate the City's vision for a more robust downtown. The remainder of Prosser's street system has an LOS threshold of "C".

Higher traffic volumes are also projected north of the Yakima River on Wine Country Road. Recent improvements on Wine Country Road were designed to accommodate these higher traffic volumes. However, continued intensification of growth accessing the intersections at the I-82 interchange and Merlot Drive in the north part of the city will require a major street improvement project at some point during the planning period.

Rural Franklin County

Most of Franklin County's functionally classified rural roads currently operate at LOS A or B. A few segments operate at LOS C, the regionally adopted standard. In 20 years, segments of Road 68 North and Taylor Flats Road may degrade to LOS D and merit future monitoring. These segments constitute a very small percentage of the classified rural road system. As such, traffic congestion is generally not a problem in rural Franklin County.

Connell

Calculations based on traffic counts performed prior to completion of the Coyote Ridge Correctional Facility expansion show all of Connell's functionally classified streets operating at Level of Service (LOS) "A" or "B" through the Year 2030 except for portions of Columbia Avenue north of Elm Street where higher traffic volumes may occur. Traffic flow, operating speeds, and maneuverability on most of the street system is expected to be at acceptable levels through the planning period. The need to widen Columbia Avenue beyond the current three lanes would be near the end of the 20-year horizon of the Plan. The effects of Coyote Ridge expansion on population-related and employment-related trips need to be more closely examined.

Kahlotus
All of Kahlotus' functionally classified streets, including State Routes 21, 260, and 263, are projected to operate at LOS A in the Year 2030. Anticipated need is likely to be in the form of street maintenance and the necessity for wider streets with curbs, gutters, and sidewalks.

Mesa
All of Mesa's functionally classified streets are projected to still operate at LOS A during the life of the Plan. Therefore, projects are generally triggered by pavement condition and the need for wider streets with curbs, gutters, and sidewalks.

Rural Walla Walla County
Overall, traffic congestion is not a problem on Walla Walla County's rural roads. All of the County's roads currently operate at LOS A or B, and population growth in the rural County has been slow - less than one percent/year between 2000 and 2010. None of the County-controlled roadways are projected to exceed their level of service standard by the year 2030.

Urban Walla Walla County
Capacity deficiencies may develop on roads currently under county jurisdiction but in the adopted Walla Walla or College Place Urban Growth Area over the twenty-year life of the Plan. Cooperation between neighboring jurisdictions is essential in addressing maintenance and capacity issues because City growth and the expansion of city limits could encompass those areas within that time frame.

Prescott
All of Prescott's functionally classified streets, including SR 124, are predicted to operate at LOS A or B throughout the 20-year planning period. Therefore, projects are generally triggered by pavement condition and the need for wider streets with curbs and sidewalks. The city's ability to finance such improvements relies upon securing state and/or federal funding.

Waitsburg
The City of Waitsburg is unique in that the two principal arterials in town are actually State highways: State Route 12 (Coppei Avenue) and State Route 124 (Preston Avenue), which are maintained by the State Department of Transportation. The state routes are projected to operate at LOS A or B, as are all of Waitsburg's remaining streets.

Walla Walla
Streets in Walla Walla generally operate at acceptable levels of service. Several deficiencies were identified in the 2004 Traffic Circulation Study; however, changes to the regional transportation network have occurred since then, altering conditions defined in that report. Regional changes to the urban area traffic system since the Study, altering conditions defined in that report.

Changes to the City's transportation network have occurred since that time. A project to reconstruct 13th Avenue from Abadie Street to Cherry Street to minor arterial standard is scheduled for construction in 2012. Additionally, the Myra Road - SR 125 to Garrison Creek project, which includes a grade separated intersection, is being studied.

College Place

Most streets in College Place currently operate at acceptable levels of service. As noted with Walla Walla, deficiencies were identified in the 2004 Walla Walla/College Place Traffic Circulation Study.

Improvements to the local transportation network are also underway. The City of College Place is also reconstructing and improving roughly a mile of Whitman Drive from Larch to Academy Drive with completion anticipated by November 2011. Additionally, the City is planning the reconstruction of Rose Avenue, a principal east-west arterial from Myra Road through College Avenue, a principal north-south arterial.

WSDOT - RTPO

Analysis of state routes in the rural RTPO region has determined that very few potential capacity challenges over the life of the plan.

SR 125 through Walla Walla functions as a city street with numerous intersections, traffic signals and commercial activities. The inherent congestion and delay are not conducive to through travel. There have been discussions between urban area jurisdictions and WSDOT to transfer jurisdictional responsibilities for the existing SR 125 and the new Myra Road, which would become the new SR 125.

SR 225 extends from Interstate 82 through Benton City to SR 240 at Horn Rapids, serving as Benton City's main street. Hanford commuters dominate peak volumes on this two-lane roadway and the route should be monitored for capacity problems.

FINANCIAL PLAN

The 22-year financial plan is required to be constrained to reflect what realistically may be done with available revenues during the 22-year planning horizon. This requirement means that the improvements included in the plan, and the maintenance and preservation of the existing transportation system, must be affordable within already available and projected sources of revenue.

The Tri-Cities metropolitan area transportation system is forecast to cost $1,062 million to maintain and provide needed improvements over the next 22 years. Of this total, $474 million (45%) will be needed to maintain and operate the system, and $589 million (55%) will be available for improvements. At the end of the 22-year planning horizon, the MPO will have an estimated $30 million surplus. In addition, the MPO will need to generate an additional $110 million in revenue to fund projects identified as unmet need.

The balance of the regional transportation system outside the MPO area is estimated to cost $1,065 million to maintain and provide needed improvements over the next 20 years. Of this total, $476 million (45%) will be needed to maintain and operate the system, and $589 million (55%) will be available for improvements. At the end of the 20-year planning horizon, the rural RTPO planning area will have a remaining estimate of -$29 million. In addition to this shortfall, the rural RTPO will need to generate an additional $68 million in revenue to fund projects identified as unmet need.

The MPO/RTPO members have indicated any funding shortfalls, excluding the planning projects, will be reduced to a manageable level and/or eliminated as project priorities and plans are defined and future transportation improvement plans are developed.

CONCLUSIONS

Public investment in the transportation system is essential to the health, safety, and economic prosperity of the region. The RTP identifies cost-effective transit and highway improvements, using each mode of travel where it is best suited to meet the travel demand of the community.

The future regional transportation system must be consistent with the land use goals and plans of each of the jurisdictions. Ensuring orderly growth is essential to the success of the transportation system. Lack of agreement between land use and transportation planning will result in unnecessary capital investment, underused facilities, or under-designed roadways incapable of serving the demand.

The Regional Transportation Plan is a planning and programming tool to assist in solving regional transportation problems. The RTP provides a basis for assessing the impacts of years 2020 and 2030 travel demand, and requires periodic updates to remain consistent with community goals.

The RTPO shall review the RTP biennially for currency and shall update it at least every five years to incorporate changing conditions and financial reality.

The BFCG will monitor the performance of the RTP and compare with the updated local comprehensive plans; thus, continuously gathering information about programs and projects implemented from this plan. This information will tell us how well the plan is being executed and the effectiveness of proposed strategies. It will also provide feedback to policy makers and the public on whether the policies and provisions in the RTP are helping to realize the preferred future for the region.

PLAN AND POLICY IMPLICATION

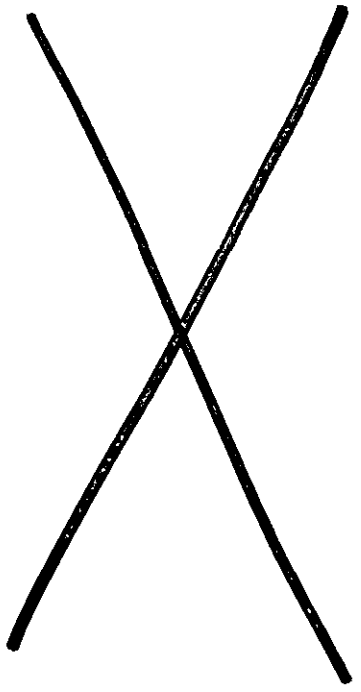
This Regional Transportation Plan was developed jointly by the Benton-Franklin Council of Governments and member jurisdictions, including the Washington State Department of Transportation. Adoption of the plan by the BFCG Board includes the following:

- Endorsement of regional transportation system components, including the street and highway system, public transit systems, regional airport system, water and land-based freight systems, and a commuter management program.

- Identification and documentation of transportation system deficiencies including: travel corridors with inadequate capacity to meet current and future travel demand; the need for transit to capture a higher percent of work trips; and the need to decrease the numbers of drive alone work trips by increasing the ridesharing and park & ride programs.

- Recognition of a state mandate to possibly have Commute Trip Reduction Plans and Ordinances in place.

- Endorsement of the level of transportation investment needed to adequately serve current and anticipated growth.
- Endorsement of the regional transportation planning framework as the process for achieving a unified direction on transportation polices and coordination with comprehensive land use planning.
- Completion of a federal requirement as a condition for receiving federal Surface Transportation Program funding, and as a basis for review of projects proposed for funding within the near-term Transportation Improvement Program (TIP).
- Implementation of the transportation plan, including transit plans, by the responsible jurisdictions.
- Establishment of consistency between this plan, the MPO/RTPO six-year Transportation Improvement Program (TIP), and the Washington Transportation Plan.



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APPENDIX H

RTPO PROJECT LISTINGS FOR URBAN AND RURAL JURISDICTIONS

The following pages contain project listings for each jurisdiction within the RTPO, based upon anticipated revenues (see Chapter 9). Project lists are divided into two periods, 2011-2020 and 2021-2032.

Those jurisdictions that fall within the model area are listed first in this appendix as "Urban", followed by project lists from the "Rural" jurisdictions. Due to the model area stretching out into rural portions adjacent the Tri-City metro area, there are some projects indicated to be urban that actually fall outside the currently recognized FHWA urban/rural boundary. They are included within those listings to allow evaluation of projects upon the fringe of the metro area. It is anticipated that these areas will become urban within the twenty two- year planning timeframe of this RTP.

Urban Project Listings

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Urban Projects			
Benton County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
*Piert RD SR 397 to Bowles	Construct a two lane collector road	$3,745,666	2011
Olympia St. Kennewick C.L to SR 397	Reconstruct a two lane collector road	$126,282	2011
Hildebrand Kennewick City limits to KCL	Construct a two lane collector road phased	$610,420	2016.
Badger/Wiser Deceleration Lane	Construct Badger Road Deceleraton lane at Wis	$437,055	2016
TOTAL 2011-2020		$4,919,423	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2032 Urban Projects			
Benton County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Finley Rd. SR397 to SR 397	Reconstruct a two lane collector road	$3,749,481	2021
27th Avenue Oak St. to SR 397	Reconstruct a two lane collector road	$1,034,625	2022
TOTAL 2021-2032		$4,784,106	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Urban Franklin County			
Project Name	*Description*	*Project Cost (YOE)*	*Year of Const.*
*Road 100 & Dent Rd. Connection	Construct new road	$2,586,250	2011
Road 68 (Court St. to Argent Road)	Widen to 4 lanes	$1,379,500	2013
Argent Road (Road 52 to Road 68)	Widen to 3 or 4 lanes	$1,172,500	2015
Road 68 N. (Pasco C/L to Taylor Flats Rd.)	Widen to 4 lanes	$965,600	2016
Total Cost 2011-2020		$6,103,850	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2032 Projects			
Urban Franklin County			
Project Name	*Description*	*Project Cost (YOE)*	*Year of Const.*
Wernett Road (Road 72 to Road 76)	Reconstruct and Hard Surface	$413,850	2021-2030
Road 60 (Park Street to Court Street)	Reconstruct and Widen	$1,379,500	2021-2030
Wernett Road (Road 76 to Court Street)	Construct New Road	$689,750	2021-2030
Court Street Intersections	Install Signalization	$689,750	2021-2030
Road 60 (Court Street to Argent Road)	Reconstruct and Widen	$2,069,250	2021-2030
Road 52 (Sylvester Street to Argent Road)	Reconstruct and Widen	$2,069,250	2021-2030
Argent Road Intersections Improvments	Install Turn Lanes and Signalization	$1,379,500	2021-2030
Total Cost 2021-2032		$8,690,850	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
Unmet Need - Urban			
Franklin County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Riverview Wide	Reconstruct and Widen	$1,000,000	
Riverview Wide	Improve Intersections and Install Signalization	$1,000,000	
TOTAL		$2,000,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan 2011-2020 Projects Kennewick			
Project Name	*Description*	*Project Cost (YOE)*	*Year of Const.*
Steptoe Street Phase 2	New construction - sidewalks, curbs, streetlights, signals, railroad grade separation. Signals @ Center Parkway & Steptoe (City of Richland jurisdiction) and at Steptoe & Clearwater.	$7,758,750	2011
US 395/Ridgeline & Hildebrand Intersection Improvements	Reconstruct intersection to provide added right-turn lanes northbound and southbound as well as upgrade to full five lane with right-turn lanes on Hildebrand & Ridgeline at the intersections	$4,603,525	2011
Southridge Blvd - Ridgline to Hildebrand	Construct missing sections, roundabout at Ridgeline, signal at Hildebrand	$2,700,045	2011
Plaza Way - Ridgeline to existing	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Ridgeline, Signal @ Plaza/Hildebrandt and at Plaza/Southridge	$1,086,225	2011
Ridgeline - Zintel Way to US 395	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Zintel Way	$786,220	2011
Ridgeline - US 395 to Southridge Blvd	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Plaza Way, roundabout @ Southridge	$786,220	2011
Zintel Way - Arthur to Ridgeline	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Ridgeline	$1,231,055	2011
Sherman Road - Ridgeline to Hildebrand	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Ridgeline	$1,313,815	2011
Ridgeline - Sherman to Southridge	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Southridge. Roundabouts at Ridgeline and Plaza Way, Ridgeline and Southridge Blvd, and Ridgeline and Zintel.	$1,515,543	2011
45th Ave./Olympia St. Intersection Imp.	New roundabout, and widen intersection.	$243,108	2011
Columbia Drive	Resurfacing	$232,763	2011
Fruitland - 1st to Columbia Dr	Resurfacing	$87,933	2011
1st Washington to SR395	Resurfacing	$72,415	2011
Canal Dr - Fruitland to Washington	Resurfacing	$62,070	2011
27th Ave - Vancouver to Olympia	Resurfacing	$124,140	2011
19th Ave - Vancouver to Washington	Resurfacing	$186,210	2011
Edison - Canal Dr to Columbia Park Trail	Resurfacing	$51,725	2011
27th Ave - Ely to Vancouver	Resurfacing	$56,898	2011
Olympia St - Kennewick Ave to 27th	Resurfacing	$263,798	2011
1st Ave - Fruitland to Washington	Resurfacing	$62,070	2011
Gum St - 10th to SR395	Resurfacing	$62,070	2011
Edison St - 10th to Clearwater	Resurfacing	$150,003	2011
Volland St - Clearwater to Canal Dr	Resurfacing	$150,003	2011
Clearwater And Leslie Intersection	Construct roundabout (City of Richland lead)	$310,350	2011
Steptoe Street Phase 3	Reconstruction - sidewalks, curbs, streetlights, signals, roundabout @ 5 corners (possibly two acting as one, but model as one).	$3,859,090	2012
Center Parkway Extension - Gage to Tapteal	Joint project with Richland - New roadway, curb & gutter, sidewalk, illumination	$2,565,600	2012
Olympia Street	Reconstruction, roadway widening, illumination, sidewalks	$4,062,200	2012
10th Avenue - CCB to 5 Corners	Street Improvements (TWLTL added)	$5,345,000	2012
Clearwater Avenue - Edison Street to US 395	Resurfacing	$1,389,700	2012

(Kennewick 2011-2020 Projects continued)

27th Ave - Union to SR395	Resurfacing	$181,730	2012
Edison Street - Clearwater to Hood	Widening, add bike lanes, dedicated turn lanes at intersections	$1,320,215	2012
Edison Street - Okanogan to Canal Drive	Widening, add bike lanes, dedicated turn lanes at intersections	$1,047,620	2012
Gum Street Sidewalks	Sidewalks	$133,625	2012
Hildebrand Blvd - US 395 to City Limits	New construction - 2 lanes each direction with median	$4,855,400	2013
Hildebrand Blvd - City Limits 5 corners	New construction - 2 lanes each direction with median, roundabout @ 5 corners	$2,471,840	2013
Southridge Blvd - Hildebrand to 27th	Construct missing sections, signal at Hildebrand	$1,445,585	2013
Canal Drive - US 395 To Washington	Resurfacing	$830,936	2013
Vista Way	Resurfacing	$104,833	2013
Edison St - Clearwater to Canal Dr	Resurfacing	$1,324,200	2013
Clearwater Ave/Edison Intersection Imp.	Upgrade Signal, Widen Intersection,	$320,015	2013
Canal Drive Sidewalks	Sidewalks North side of roadway	$137,938	2013
Center Parkway - Hildebrand to I-82	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabout @ Hildebrand	$5,690,000	2014
CCB - Deshutes to Quinault	Resurfacing	$1,889,080	2014
Quinault - Center Parkway to CCB	Resurfacing	$921,780	2014
Kennewick Avenue - Morain to Union	Reconstruction & widening, curb, gutter and sidewalk	$961,610	2014
Center Parkway - Grandridge to Gage	Resurfacing	$386,925	2015
Cascade Street - 27th to 45th	Reconstruction	$4,103,750	2015
Columbia Overlook Phase 2	Sidewalk, northside landscaping, rock wall , streetscape, park & ride	$3,517,500	2015
Grandridge And Young Street	New Roundabout	$293,125	2015
Tri-City Gateway Landscaping	Along SR-395 in Southridge Area	$649,366	2016
10th Avenue - Clearwater to "5 corners"	Reconstruction, roadway widening (TWLTL), illumination, sidewalks	$1,862,250	2017
10th & Morain Traffic Signal	New Signal & turn-lanes	$372,450	2017
Clearwater & Canal WB Right Turn Lane	Add a right turn lane	$434,525	2017
Clearwater & Edison WB	Add a right turn lane and widen southbound appoach for a left-turn lane	$310,375	2017
Clearwater & Arthur Street Signal	New Signal	$434,525	2017
Clearwater & 10th Avenue	New signal or roundabout	$651,788	2017
Kennewick & Yelm Signal Upgrade	New Poles and Equipment	$279,338	2017
Deschutes & Center Parkway Roundabout	Mini roundabout	$93,113	2017
Metaline Avenue - Kellogg to Edison	Widening, add bike lanes, curb, gutter, sidewalk	$1,464,970	2017
Citywide Traffic Signal System	New signal system software, communications	$765,600	2018
27th Avenue & Washington Street Signal	Signal or Roundabout	$701,800	2018
10th Avenue/SR 397	Install signal or roundabout	$720,775	2019
Total YOE Cost 2011-2020		$81,797,119	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan 2021-2032 Projects Kennewick			
Project Name	*Description*	*Project Cost (YOE)*	*Year of Const.*
Christensen Road Interchange @ US-395	New Interchange	$17,243,750	2021
8th Avenue	Gum to 10th Ave Street Improvements	$2,207,200	2022
Canal Drive	Quinalt to Yost Street Improvements	$827,700	2022
Canal Drive	US 395 to Kent Street Improvements	$4,138,500	2022
Kennewick Avenue	Union to Morain Street Improvements	$1,069,113	2023
Vancouver Street	45th Avenue to 36th Avenue - Street Improvements	$1,400,193	2023
Rainier Street	7th Ave to 27th Ave Street Improvements	$2,414,125	2023
Center Parkway	New Construction, Interchange @ I-82	$10,346,250	2023
Ridgeline - Clodfelter to Sherman	New construction (5 lanes)- sidewalks, curbs, streetlights, roundabouts @ Clodfelter and Center Parkway.	$8,277,000	2024
1st Avenue - Washington To SR 397	Resurfacing	$228,997	2024
Citywide Traffic Signal System Upgrade/Retiming	New signal system software, communications equipment and retiming	$1,103,600	2024
27th Avenue	Reconstruction, curb and gutter, sidewalks, illumination, signal or roundabout	$2,069,250	2024
10th Avenue - Union To Us 395	Resurfacing	$496,620	2025
10th Avenue - Us 395 To Olympia	Resurfacing	$496,620	2025
Union Street - 10th To Clearwater	Resurfacing	$606,980	2025
Union Street - 27th To 10th	Resurfacing	$488,343	2025
Kennewick Avenue - US 395 To Morain	Resurfacing	$220,720	2025
Kennewick Avenue - Olympia To Dayton	Resurfacing	$278,659	2026
27th Avenue	Resurfacing	$493,861	2026
Clearwater - Columbia Center Blvd To Leslie	Resurfacing	$1,020,830	2026
Hood & Neel Roundabout	Mini roundabout	$68,975	2026
Miscellaneous Streetscape	Citywide	$441,440	2027
Columbia Center Blvd. Safety Improvements	Channelization and signalization improvements; safety analysis	$1,213,960	2027
Downtown Revitalization - Canal Drive	Enhancement work, ornamental street lighting, pedestrian facilities, downtown revitalization project	$689,750	2027
Kennewick Avenue	Reconstruction & widening, curb, gutter and sidewalk	$758,725	2027
Columbia Center Blvd.- Deschutes to Quinault	Widening	$3,034,900	2028
46th Avenue - Steptoe to Clodfelter	New construction	$1,379,500	2028
Downtown UPRR/BNSF Grade Separation	Railway Crossing Grade Separation for the Downtown	$22,072,000	2030
Total YOE Cost 2021-2020		**$85,087,560**	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan 2011-2032 Unmet Need Kennewick			
Edison /BNSF Grade Separation	Railway Crossing Grade Separation	$ 13,000,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
City of Richland			
Project Name	*Description*	*Project Cost (YOE)*	*Year of Const.*
Citywide Pedestrian, ADA and School Routes Projects	Const. Sidewalks, ADA Facilities and Improve School Walking Routes	$229,810	Annually
Keene Road Phase 3B	Principal Arterial, Convert Railroad Bridge w/ Four Lanes, Barrier Separated Pathway	$4,448,350	2011
Westcliffe Boulevard, Brantingham Road to Keene Road	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes, Traffic Signal	$537,940	2011
Center Parkway Tapteal to South City Limits	Collector Arterial, Two-Lane w/turn Lane, 30 mph	$213,800	2012
Vantage Highway Trail, Babe Ruth Fields to Stevens	New 12' multi-use pathway	$801,750	2012
Swift Corridor Improvements, Stevens Drive to George Washington Way	Mill and overlay street, widen sidewalks, add decorative street lighting, irrigation, street trees and landscaped medians	$1,421,770	2012
Elementary Street and Keene Road Traffic Signal	New Signalized Intersection	$220,700	2013
Duportail St. Bridge Over Yakima River	4-Lane Bridge with Bike lanes, Sidewalks and Lighting	$35,863,750	2013
Rachel Road - Steptoe Street to Leslie Road	Construct 2 lanes w/ curb, gutter, sidewalks, bike lanes and turn lanes as needed	$2,155,136	2013
Bellerive Drive - Broadmoor Street to Rachel Road	Construct 2 lanes w/sidewalks and bike lanes	$882,800	2013
Queensgate Drive Bike/Ped Trail	12-ft Paved Trail Keene Road to Columbia Park Trail	$142,250	2014
Steptoe Street and Tapteal Drive Realignment	Realign Roadway and Construct Roundabout	$1,707,000	2014
Stevens Drive Extension - Wellsian Way to Lee Blvd.	Minor Arterial, Two-Lane w/turn Lane, Sidewalks, Bike Lanes. Signal @ Wellsian	$1,407,000	2015
Kingsgate Way and SR 240 Traffic Signal	New Signalized Intersection	$234,500	2015
Duportail Street, Ph. 1 - SR 240 to Wellsian Way	Minor Arterial, Two Lane w/turn Lane, Sidewalks, Bike Lanes	$1,713,940	2016
Stevens Drive Bike/Ped Trail	12-ft Paved Trail From Spengler to Horn Rapids Road	$543,150	2016
Queensgate Drive Extension Phase 1 - Keene to Shockley	Collector, Two-Lane w/turn lane, sidewalks, bike lanes	$1,086,300	2016
Columbia Park Trail - Steptoe to West C/L	Minor Arterial, Two Lane w/ left Turn Lane, Sidewalks, Bike Lanes	$1,931,200	2016
Robertson Boulevard Extension - West end of road to Kingsgate Way	Unclassified, Two Lane, Sidewalk on one side	$1,911,910	2017
Kennedy Road - Duportail to West C/L	Minor Arterial, Two Lane w/left Turn, Sidewalk, Bike Lanes	$1,489,800	2017
Queensgate Drive Phase 2 - Westgate to Rachel	Collector, Two-Lane w/turn lane, sidewalks, bike lanes	$3,227,900	2017
Gage Boulevard Extension - West End at Morency to west City Limits (Queensgate I/S)	Minor Arterial, Two Lane w/turn Lane, Sidewalks, Bike Lanes	$3,190,000	2018
University Drive - Kingsgate Way to Stevens	Minor Arterial, Two Lane w/turn Lane, Sidewalks, Bike Lanes	$1,914,000	2018
Logston Blvd. Extension - Robertson to Railroad Spur (University Dr)	Collector, Two Lane w/turn Lane, Rural Street Section w/Street Lights & Shoulders	$2,358,900	2019
Comstock Street - GWW to Wellsian	Collector, Two Lane w/left Turn Pockets, Sidewalks, Bike Lanes	$1,572,600	2019
Stevens Drive, Knight Street Traffic Signal	New Signalized Intersection	$242,100	2020
Rachel Road - Leslie Road to Steptoe Street	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$2,421,000	2020
Mellissa Street - Brantingham Road to Sequoia Avenue	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$470,750	2020
Total YOE Cost 2011-2020		$74,340,106	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2032 Projects			
City of Richland			
Project Name	*Description*	*Project Cost (YOE)*	*Year of Const.*
Citywide Pedestrian, ADA and School Routes Projects	Const. Sidewalks, ADA Facilities and Improve School Walking Routes	$236,038	Annually
Battelle Blvd. - Kingsgate Way to Blanchard Blvd.	Collector, Two Lane w/left Turn Lane, Rural Street Section w/Street Lights & Bike Lanes	$1,241,550	2021
Englewood Drive - Keene Road to Glenwood Ct.	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$1,310,525	2021
Leslie Road and Reata Road Traffic Signal	New Traffic Signal	$303,490	2022
Gala Way - Melissa Street to Meadow Hills Drive	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$689,750	2022
Twin Bridges Road - SR 240 to South City Limits	Minor Arterial, Two-Lane, 40 mph	$1,214,901	2024
Leslie Road and Rachel Traffic Signal	New Traffic Signal	$303,490	2024
SR 240 and Twin Bridges road Traffic Signal	New Traffic Signal	$303,490	2025
Goethals Dr. and Lee Blvd. Traffic Signal	New Traffic Signal	$303,490	2025
Horn Rapids Rd. - Stevens Dr. to Twin Bridges Rd.	Minor Arterial, Two Lane w/turn Lane, 50 mph	$6,427,216	2026
Twin Bridges Road - SR240 to Horn Rapids Road	Collector, Two Lanes w/left Turn lane, Sidewalks, Bike Lanes	$3,448,750	2026
University Drive - Kingsgate Way to Logston Blvd.	Minor Arterial, Two Lane w/turn Lane, Sidewalks, Bike Lanes	$2,483,100	2026
Unnamed Street No. 3 - Heritage Hills to Columbia Park Trail	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$1,655,400	2027
Blanchard Boulevard and SR 240 Traffic Signal	New Traffic Signal	$303,490	2027
Logston Boulevard and SR 240 Traffic Signal	New Traffic Signal	$303,490	2027
Van Giesen and Thayer Traffic Signal	New Traffic Signal	$275,900	2028
SR 224/SR 240 Grade Separation, Terminal Dr. to Birch	Principal Arterial, Preliminary Engineering for Six Lanes, Elevated Interchange/On-Off Ramps	$48,282,500	2028
Beardsley Road - Horn Rapids to SR 240	Minor Arterial, Two Lane w/turn Lane, 50 mph	$2,390,611	2029
Heritage Hills Dr. - Unnamed Street No. 3 to Allenwhite Drive	Collector, Two Lane, Sidewalks	$758,725	2029
Center Parkway and Tapteal Dr. Traffic Signal	New Traffic Signal	$303,490	2029
Hagen Road - SR 240 to Airport Entrance	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$3,034,900	2029
Van Giesen St. Jones Road Traffic Signal	New Traffic Signal	$303,490	2030
Leslie Road and Columbia Park Trail Traffic Signal	New Traffic Signal	$303,490	2030
Blanchard Blvd - Horn Rapids Road to SR 240	Collector, Two Lane w/left Turn Lane, Sidewalks, Bike Lanes	$3,034,900	2030
Jones Road (Kingsgate) - SR 224 to SR 240	Minor Arterial, 2 Lane w/left Turn Lane, Rural Section w/Street Lights & Bike Lanes	$6,238,099	2030
Total YOE Cost 2021-2032		$85,454,275	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
City of West Richland			
Project Name	Description	Project Cost (YOE)	Year of Const.
City Wide Street Lighting Program	Annual Improvements	$229,810	2011-2020
City Wide Pavement Rehab. Program	Annual Improvements	$1,895,933	2011-2020
City Wide Storm Drainage Program	Annual Improvements	$459,620	2011-2020
Keene Rd./Kennedy Rd. Traffic Signal	Install traffic signal	$103,450	2011
Keene Rd. Overlay	HMA overlay from Bombing Range Rd. to SR 224	$817,255	2011
Paradise Way Widening	Construct 3 lanes from S.45th to Belmont Blvd.	$341,400	2014
S.38th Ave./SR224 Traffic Signal	Install traffic signal	$273,120	2014
Bombing Range Rd.-Phase 8	Construct 3 lanes from Silver Lake Ct. to CL	$578,104	2014
Keene Rd. Phase 4	SR224 to Ruppert Rd.	$2,203,168	2014
Paradise Way Extension-Phase 2	Construct 3 lanes from Belmont to SR 224	$2,845,000	2014
Keene Road Pathway-Phase 3	12' HMA Path from S.Highlands Blvd. to Belmont	$182,080	2014
Grosscup Blvd./SR224 Traffic Signal	Install traffic signal	$281,400	2015
Paradise Way Extension-Phase 3	Construct 3 lanes from SR224 to Ruppert Rd.	$1,758,750	2015
Belmont Blvd. Phase 2	Construct collector from Paradise Way to SR224	$2,247,683	2015
Keene Rd. Phase 2 & 3 Widening	Widen to 4 lanes from Bombing Range to SR224	$1,448,400	2016
S. 38th Ave. Phase 2	Construct 3 lanes from Grant St. to South CL	$2,414,000	2016
Keene Road/Belmont Blvd. Traffic Signal	Install Traffic Signal	$301,750	2016
Total Cost 2011-2020		$18,380,923	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2032 Projects			
City of West Richland			
Project Name	Description	Project Cost (YOE)	Year of Const.
City Wide Street Lighting Program	Annual Improvements	$236,038	2021-2030
City Wide Pavement Rehab. Program	Annual Improvements	$1,947,312	2021-2030
City Wide Strom Drainage Program	Annual Improvements	$472,076	2021-2030
Keene Rd. Phase 5	Construct 2 lanes from Ruppert Rd. to Twin Br.	$2,640,363	2016
Bombing Range/Kennedy Rd. Traffic Signal	Install Traffic Signal	$331,080	2021
Keene Rd. Pathway Phase 4	12' HMA Pathway from Belmont Blvd. to SR 224	$482,825	2022
Keene Rd./SR224 Traffic Signal	Install Traffic Signal	$331,080	2024
Paradise Way/SR224 Traffic Signal	Install Traffic Signal	$331,080	2025
Belmont Blvd./Keene Rd. Traffic Signal	Install Traffic Signal	$331,080	2026
Total Cost 2021-2032		$7,102,934	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2032 Unmet Need			
West Richland			
Project Name	Description	Project Cost	Year of Const.
Red Mtn. Interchange (WSDOT)	WSDOT construct interchange	$2,000,000	2028

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
City of Pasco			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Argent Road Improvements	Widen between 20th Ave and Rd 36 w/signal	$1,603,500.	2012
Heritage Rail Spur	Construct spur from Oregon to E. Pasco	$1,603,500	2012
I-182 Corridor Improvements Study	Road 52 to Road 76	$160,350	2012
Harris Road Realignment	Broadmoor to Sandifur	$267,250	2012
4th Avenue Corridor	I-182 to Sylvester Street	$1,699,710	2012
SR 12 Interchange Study (City share)	"A" Street to SR 12	$11,035	2013
Road 100 and Argent Road Signal	Install signals	$220,700	2013
Powerline Road	Road 68 to Road 100: Construct new arterial	$1,103,500	2013
Road 100 Improvements	Chapel Hill to Court Street	$662,100	2013
Sacagawea Trail (Bike Path)	Lower Dike (Rd 52 to Rd 72)	$682,800	2014
Sandifur Parkway	Widen road from Road 52 to Road 60	$284,500	2014
Chapel Hill Extension	Road 68 to Road 84	$910,400	2014
Cresent Road	Road 108 to FCID Canal	$170,700	2014
Road 68 and Court Improvements	Install round-about & or signals	$351,750	2015
Road 76	Widen road from Argent Road to Chapel Hill	$469,000	2015
Madison and Burden Road Signal	Install signals	$241,400	2016
Road 44 and Argent Signal	Install signals	$241,400	2016
Lewis Street Overpass	Oregon to 2nd Avenue: Build new overpass & street	$30,175,000	2016
Lewis & Clark One-Way Couplets	2nd Avenue to 10th Avenue	$2,414,000	2016
Heritage Blvd and A Street Signal	Install signals	$248,300	2017
Heritage Blvd and E. Lewis Signal	Install signals	$255,200	2018
Total Cost 2011-2020		$43,776,095	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2032 Projects			
City of Pasco			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Court Street Widening	Widen from Road 44 to Road 68	$275,900	2021-2030
Signal Improvements on Court Street	Install three signals west of Road 44	$827,700	2021-2030
I-182 Off/On Ramp at Rd. 52	Construct on/off ramps to Argent Rd	$2,759,000	2021-2030
Burden Blvd / I-182 On Ramp	Construct west bound on ramp	$6,897,500	2021-2030
I-182 / Broadmoor EB Off Loop	Finish interchange	$2,759,000	2021-2030
I-182 / Road 76 Underpass	Construct underpass at Road 76	$9,656,500	2021-2030
SR 395 / Foster Wells Interchange	Construct new interchange	$3,448,750	2021-2030
Total Cost 2021-2032		$26,624,350	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2032 Unmet Need			
City of Pasco			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Oregon RR Overpass (SR397)	Construct overpass over tracks	$10,000,000	
A Street RR Overpass	Construct overpass tracks	$10,000,000	
SR 395 Court Street Improvements	Reconstruct north end of blue bridge	$20,000,000	
SR12 / A Street (Tank Farm) Interchan	Construct new interchange	$25,000,000	
Total Unmet Need 2011-2032		$65,000,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan 2011-2020 Projects Washington State Department of Transportation		
PIN	Project Title	2011-2020
501212I	US 12/SR 124 Intersection - Build Interchange *	15,911,996
501204X	US 12/A St and Tank Farm Intersections - Interchange Feasibility Study *	110,553
5012XXX	US 12/SR 124 Intersection Vic - Build Park and Ride Lot	300,000
5182XXX	I-182/Broadmoor Blvd-Road 100 and Road 68 Vicinity - Access Improvements	5,000,000
518201V	I-182/Pasco Vicinity - Install 4-Strand Cable Median Barrier	485,182
5182XXX	I-182/Queensgate Park & Ride Improvements	500,000
5182XXX	I-182/Richland to Pasco - ITS	530,000
5182XXX	I-182/Richland to Pasco - Signal Improvements	145,000
518202H	I-182/Road 100 Interchange Vicinity - Improvements *	304,318
518202T	I-182/Road 68 Interchange - Interstate Safety *	35,267
5182XXX	I-182/Road 68 Interchange - ITS	310,000
5182XXX	I-82/Region Signal Improvements	80,000
5240XXX	SR 240/Blanchard Blvd Intersection - Traffic Signal	350,000
5240XXX	SR 240/Edison St I/C - EB Off Ramp Improvements and Signal	2,000,000
524002S	SR 240/Kennewick Vicinity - Install 4-Strand Cable Median Barrier	138,116
5240XXX	SR 240/Logston Blvd - Traffic Signal	350,000
5240XXX	SR 240/Richland Vic to US 395 - Signal Improvements	110,000
5240XXX	SR 240/Twin Bridges Road - Traffic Signal	350,000
524002C	SR 240/Yakima River Vic - Remediation of Failing Wetland Mitigation Site *	384,956
539502L	US 395/Columbia Dr to SR 240 - Rebuild Interchange *	1,577,855
5395XXX	US 395/I-82 to I-182 Planning Study	200,000
5395XXX	US 395/Kennewick to Kartchner St Interchange - Signal Improvements	120,000
5395XXX	US 395/Kennewick to SR 26 - ITS	425,000
5395XXX	US 395/Vista Way - Intersection Improvements	2,500,000
5397XXX	Oregon Drive & James Street Traffic Signal**	300,000
* Note, projects with an asterix are under construction.		
** denotes a project modeled under 2020-2032 scearnio		

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan 2021-2032 Projects Washington State Department of Transportation		
PIN	Project Title	2021-32
5182XXX	I-182/Queensgate to SR 240 Vic EB Phase 2 - Interchange Improvements*	13,000,000
5182XXX	I-182/SR 240/George Washington Way - Interchange Improvements	4,000,000
5224XXX	SR 224/62nd Pl to SR 240 Intersection - Construct Two-way Left-Turn Lane	5,900,000
5224XXX	SR 224/S 62nd Ave, S 41st Ave, S 40th Ave, Bombing Range Rd, 38th Ave - Intersection Improvements and Signals	3,100,000
524003G	SR 240/SR 224/Van Giesen Street - Intersection Improvements	691,535
5240XXX	SR 240/Van Giesen - Build Interchange	45,000,000
5240XXX	SR 240/Columbia Center to Edison - Add Lanes*	6,900,000
* Projects added within March, 2012 revision and not included within 2030 Build scenario		
	WSDOT Urban Unmet Needs	
5395XXX	US 395/Lewis Street - Interchange Improvements	5,400,000
5012XXX	US 12/Lewis Street to Snake River - Build Interchange	26,800,000
	Total	32,200,000

Rural Project Listings

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Rural Projects			
Benton County			
Project Name	Description	Project Cost	Year of Const.
Clodfelter Rd. Bently to C. Williams	Reconstruct & construct a two lane collector road	$2,155,000	2011
Locust Grove Rd. Clodfleter to Edwards	construct a two lane collector road	$1,345,000	2011
Nine Canyon Rd. Mills to SR 397	Reconstruct a two lane collector road	$3,045,000	2012
Nine Canyon Rd. Beck to Mills	Reconstruct a two lane collector road	$2,826,000	2013
Nine Canyon Rd. Coffin to Beck	Reconstruct a two lane collector road	$3,260,000	2014
Travis Rd - Sellards Rd. to Henson Rd.	Reconstruct a two lane collector road	$1,500,000	2014
Sellards Rd. 221 to Travis Rd.	Reconstruct a two lane collector road	$4,650,000	2014
Bert James Rd. Sellards to SR 221	Reconstruct a two lane collector road	$4,150,000	2015
Knox Rd. District Line to Truhlicka	Reconstruct a two lane collector road	$2,500,000	2016
Knox Rd. Trulicka to OIEH	Reconstruct a two lane collector road	$2,283,000	2017
Hanks Rd. Crosby to Aller	Reconstruct a two lane collector road	$2,750,000	2017
Coffin Rd. Nine Canyon to Meals	construct a two lane collector road	$5,800,000	2018
Meals Rd beginning of pavmnt to Ayers	construct a two lane collector road	$2,717,000	2019
Christy Rd. BNSF RR Xing to Plymouth	Reconstruct a two lane access road	$3,150,000	2020
TOTAL		$42,131,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Rural Projects			
Benton County			
Project Name	Description	Project Cost	Year of Const.
District Line Road - Hanks Rd. to Knox Rd.	Reconstruct two lane collector road	$445,000	2022
Old Inland Empire Hwy - Chandler to Rayhill Rd..	Reconstruct two lane collector road	$1,200,000	2023
Case Road - OIEH to Hanks Rd.	Reconstruct two lane collector road	$2,500,000	2024
Goose Gap Road - Goose Gap Rd. to Dallas Rd.	Construct new two lane access road	$550,000	2025
County Well Road - SR221 to Webber Canyon Rd.	Reconstruct two lane collector road	$950,000	2025
Corral Creek Road - OIEH to SR225	Reconstruct two lane collector road	$1,450,000	2026
DNR Road No. 1 - SR224 to Col Solare	Construct new two lane access road	$600,000	2026
DNR Road No. 2 - Col Solare to Sunset Rd.	Construct new two lane access road	$900,000	2026
Meals Road - Coffin Rd. to Piert Rd.	Reconstruct two lane collector road	$4,900,000	2027
Canoe Ridge Road - Sonova to 100 Cirlcle Farm	Construct new two lane access road	$910,000	2028
Canoe Ridge Road - 100 C.F. to Bert James Rd.	Construct new two lane access road	$2,730,000	2028
Bert James Road - Canoe Ridge Rd. to Horrigan Rd.	Construct new two lane access road	$7,000,000	2029
Bert James Road - SR14 to Canoe Ridge Rd.	Construct new two lane access road	$1,540,000	2030
TOTAL		$25,675,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Franklin County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Pasco Kahlotus Road 1	Reconstruct and Resurface to All-weather standard	$1,765,000	2011
Filbert Bridge Replacement	Replace structure with New Bridge	$468,000	2011
Taylor Flats Bridge Widening	Widen Structure to Current Bridge Standards	$300,000	2012
Access Road to Juniper Dunes	Construct New Access Road into Juniper Dunes Area	$1,500,000	2012
Pasco Kahlotus Road Overlay	Reconstruct and Resurface to All-weather standard	$2,500,000	2013
County Paving Priority Program	Improve various gravel roads to Hard Surface	$743,000	2013
Dent Rd & Inter. @ Rd. 68/T. Flats	Reconstruct Intersection (RAB) and Dent Road to Easy Street	$1,000,000	2014
Ringold Hill Safety Improvements	Install guardrail, minor widening; slope flatening and	$500,000	2014
Pasco Kahlotus Road 5	Reconstruct, Realign and Resurface to All-weather	$1,500,000	2014
County Wide Illumination Projects	Add Illumination and Signing	$500,000	2014
Intersection Approach Program	Improve approaches to Hard Surfacing at intersections	$150,000	2014
Frontier/East Elm Connection	Construct New Road connecing Frontier to E. Elm	$1,000,000	2014
Glade North Overlay III	Reconstruct to All-weather standard	$600,000	2015
Pasco Kahlotus Road 2	Reconstruct and Resurface to All-weather standard	$1,500,000	2015
Pasco Kahlotus Road 3	Reconstruct, Realign and Resurface to All-weather	$2,000,000	2015
Glade North Road Overlay IV	Reconstruct to All-weather standard	$1,000,000	2016
New Block 17 Road	Construct new road on new alignment	$1,000,000	2016
East Elm Road Extension	Construct new road on new alignment	$5,000,000	2016
Commercial/Tank Farm Road	Construct New Frontage Road from Tank Farm to PK	$4,000,000	2016
Pasco Kahlotus Road 4	Reconstruct, Realign and Resurface to All-weather	$2,500,000	2016
Coyan Road	Reconstruct Road including R/R Overpass	$2,000,000	2016
County Wide Safety Projects	Bridge Rail Retrofits, Guardrail Improvements & Ditch/Slope work	$2,000,000	2017
County Wide Bridge Replacement	Replace Structures with New Bridges	$3,000,000	2017
Total Cost 2011-2020		$36,526,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
Franklin County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Hollingsworth Road I	Reconstruct to All-weather standard	$2,000,000	
Phend/Frontier/E. Elm Loop	Resurface to All-weather Standard	$8,000,000	
Hendricks Road I	Reconstruct to All-weather standard	$2,000,000	
Hendricks Road II	Reconstruct to All-weather standard	$4,000,000	
Palouse Falls Road	Improve to Hard Surfacing	$1,000,000	
Railroad Avenue	Reconstruct to All-weather standard	$3,000,000	
Glade North Road Overlay V	Reconstruct to All-weather standard	$3,500,000	
Sagehill Road III	Reconstruct to All-weather standard	$3,500,000	
County Wide Safety Projects	Flatten Slopes, Guardrails and other safety features	$1,000,000	
Total Cost 2021-2032		$28,000,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2030 Unmet Need			
Franklin County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Glade North Road Widening I	Widen to 4 lanes including Safety Improvements	$3,000,000	
Glade North Road Overlay VI	Reconstruct to All-weather standard	$2,500,000	
Taylor Flats Road	Reconstruct to All-weather standard	$5,000,000	
Selph Landing Road	Reconstruct, Realign and Resurface to All-weather	$3,000,000	
Hollingsworth Road II	Reconstruct to All-weather standard	$5,000,000	
Russell Road	Reconstruct to All-weather standard	$3,500,000	
County Wide Illumination Projects	Add Illumination and Signing	$1,000,000	
County Wide Bridge Replacements	Replace Structures with New Bridges	$2,000,000	
Glade North Road Widening II	Widen to 4 lanes including Safety Improvements	$4,000,000	
PH 15	Reconstruct, Realign and Resurface to All-weather	$7,500,000	
TOTAL		$36,500,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Walla Walla County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Old Milton Highway Mp 1.3- Mp 2.1	Reconstruct And Realign Road	$1,600,000	2011
Goble Bridge	Bridge Replacement, Reconstruct Road	$500,000	2012
Reser Road Mp 0.0 - Mp 0.5	Reconstruct Road	$1,300,000	2012
Fishhook Park Road Mp 3.59 - Mp 4.32	Bridge Replacement, Reconstruct Road	$600,000	2012
Gardena Br. Gardena Touchet Road	Bridge Replacement, Reconstruct Road	$6,000,000	2013
Gardena S. Br. Touchet Gardena Road	Bridge Replacement, Reconstruct Road	$500,000	2013
Prospect Ave. Mp 0- 0.4 & Mp 0.6 - 0.9	Reconstruct Road	$2,500,000	2013
Berney No 2 Bridge	Bridge Replacement	$1,500,000	2014
Sudbury Road Mp 11.6 Mp 17.0	Reconstruct Road	$1,650,000	2014
Harvey Shaw Road Mp 3.4 - Mp 3.5	Erosion	$1,000,000	2014
Ennis Bridge On Brown Road	Replace Bridge	$400,000	2015
Blue Creek Bridge	Deck Repair	$750,000	2015
Cottonwood Road Mp 0.47 - Mp 0.81	Bridge Replacement, Reconstruct Road	$3,000,000	2015
Mill Creek Road Mp 0.0 - Mp 11.0	Bridge Replacement, Reconstruct Road	$14,600,000	2016
Bussell Road Mp 0.5 - Mp1.43	Reconstruct Road	$1,500,000	2016
Mill Creek Road Widening 1 Mile	Widen Shoulders Overlay Road	$1,500,000	2016
Luckenbill Road Mp3.6 - Mp 4.5	Bridge Replacement, Reconstruct Road	$1,200,000	2017
Hart Road Mp 6.8 -Mp 7.8	Reconstruct Road	$1,200,000	2017
Lewis Peak Rd Mp 0.0 - Mp9.24	Reconstruct Road	$5,000,000	2017
Taumarson Road Mp 0.1 - Mp 1.0	Reconstruct Road	$2,500,000	2018
Lyons Ferry Road Mp1.5 -Mp 3.2	Reconstruct/Realign Road	$1,300,000	2018
Plaza Way Mp 1.06- Mp1.8	Reconstruct/Realign Road	$2,000,000	2019
Cottonwood Road Mp 0.81 - Mp 1.47	Reconstruct Road	$3,500,000	2019
Hart Road Mp 1.8 - Mp 2.6	Reconstruct Road	$2,200,000	2020
Russell Creek Road Mp 2.3 - Mp 3.5	Reconstruct Road	$2,300,000	2020
TOTAL COST		$60,100,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
Walla Walla County			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Eureka N. Road Mp 3.3 - Mp 4.6	Reconstruct Road	$2,300,000	2021
Luckenbill Road Mp 7	Replace Bridge	$2,000,000	2021
Middle Waitsburg Rd Mp 11.8 - Mp 12.8	Reconstruct/Realign Road	$1,000,000	2022
Walter Bridge On Hart Road	Replace Bridge	$750,000	2022
Smith Springs Road Mp 3.3 - Mp 3.6	Reconstruct Road	$900,000	2023
Russell Creek Road Mp 0.0 Mp 0.8	Reconstruct Road	$2,600,000	2023
Paxton Bridge	Replace Bridge	$3,800,000	2023
Humorist Road Mp 4.24 - Mp 4.43	Widen/ Reconstruct Road	$5,000,000	2024
Middle Waitsburg Rd Mp 5.9 - Mp 7.3	Reconstruct Road	$4,000,000	2024
Middle Waitsburg Rd Mp 7.9 - Mp 9.0	Reconstruct Road	$1,500,000	2024
Pine Creek No 2 Bridge	Replace Bridge	$3,500,000	2025
Last Chance Road Mp 0.97 - Mp 1.0	Shoulder Widening	$1,000,000	2025
L. Monumental Road Mp 6.3 Mp 7.6	Reconstruct Road	$3,700,000	2026
L. Whetstone Road Mp 0.0 - Mp 2.2	Reconstruct Road	$1,350,000	2026
Harvey Shaw Road Mp 7.6 - Mp 8.3	Reconstruct Road	$2,900,000	2027
Lyons Ferry Road Mp 14.3 - Mp 14.9	Reconstruct Road	$2,300,000	2027
Lovers Lane Mp 0 - Mp 1.25	Reconstruct Road	$1,500,000	2028
Electric Avenue Mp 6.4 - Mp 6.8	Reconstruct Road	$2,000,000	2028
Electric Avenue Mp 0.0 - Mo 0.86	Reconstruct Road	$2,000,000	2028
Middle Waitsburg Rd Mp 7.6 - Mp 11.8	Reconstruct Road	$4,400,000	2029
Sheffler Road Mp 0.0 - Mp 8.0	Reconstruct Road	$11,000,000	2030
TOTAL		$59,500,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Prosser			
Project Name	Description	Project Cost	Year of Const.
6th Street: Sherman to BNSF RR	Rebuild, Curb, Gutter, Sidewalk, Drainage, Illum.	$587,000	2011
Kinney Way/Concord Way/Market Sidewalks	Park Ave. to SR22 - Curb, Sidewalk	$685,000	2011
Wamba Rd.: OIEH to Merlot	Rebuild, Widen, Curb, Sidewalk, Drain., Illum., Bike L	$1,498,000	2011
Sheridan Ave. Phase 2: WCR to 6th Street	Reconst., C, G, S, Drainage, Illum., Bike Lane	$1,259,000	2012
Byron Rd.: Sheridan to West City Limits	Reconst., C, G, S, Drainage, Illum., Bike Lane	$2,535,000	2013
OIEH: WCR to West City Limits	Reconst., Widen, C, G, S, Drainage, Illum., Bike Lane	$2,752,000	2013
Wamba Rd.: WCR to OIEH	Reconst., Widen, C, G, S, Drainage, Illum., Bike Lane	$552,000	2013
WCR/Gap Rd./Merlot Dr./CR12 Intersection	Reconstruct, Roundabout	$2,373,000	2013
Alexander Ct.: Highland Dr. to Paterson-Phse. 1	Reconstruct, Widen, Bike Lane	$945,000	2014
Nunn Rd.: WCR to West City Limits	Reconst., Widen, C, G, S, Drainage, Illum., Bike Lane	$1,305,000	2014
Alexander Ct.: WCR to Highland Dr. -Phase. 2	Rebuild, Widen, Curb, Sidewalk, Drain., Illum., Bike L	$317,000	2015
Benson Ave.: Mercer Ct. to Alexander Ct.	Reconst., C, G, S, Drainage, Illum., Bike Lane	$572,000	2015
OIEH: WCR to Grant	Rebuild, Widen, Curb, Sidewalk, Drain., Illum., Bike L	$3,158,000	2015
7th Street: WCR to Meade	Rebuild, Widen, Curb, Sidewalk, Drain., Illum., Bike Ln	$400,000	2016
Highland Dr.: Alexander Ct. to SR22	Rebuild, Widen, Curb, Sidewalk, Drain., Illum., Bike Ln	$1,061,000	2016
Downtown Intersections:5th Street	Planing, Overlay, C, G, S, Drain., ADA Ramps	$325,000	2016
Guernsey: Park Ave. to Prosser Ave.	Ln	$530,000	2017
Sister Streets Improvements	Reconst., Widen, C, G, S, Drainage, Illum.,	$1,600,000	2018
Total Cost 2011-2020		$22,454,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
Prosser			
Project Name	Description	Project Cost	Year of Const.
Brown: Park Ave. to Bennett Ave.	Reconst., Widen, C, G, S, Drain.,	$562,000	2021
Bennett ave.: 6th to Florence	Reconstruct, Bike Lane	$1,230,000	2021
Yakima Ave.: Brown to 6th	Reconstruct, Widen, C, G, S; Drain., Illum., Bike Ln	$2,560,000	2023
WCR: Exit 80 to East Wittkopf Loop	Overlay	$1,739,000	2024
Memorial: Meade to Playfield	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$905,000	2025
Playfield; 6th to Memorial	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$650,000	2026
Bennett Ave.: 8th to East Termination	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$500,000	2027
8th: Bennett to Meade	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$375,000	2027
Dudley: Bennett to 7th	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$950,000	2028
Sommers: Memorial to 7th	Reconstruct, Widen, C, G, S, Drain., Illum., Bike Ln	$450,000	2028
Grant Ave.: 6th to 8th	Rebuild	$550,000	2029
Grant Ave.: 8th to 10th	Rebuild	$650,000	2030
Total Cost 2021-2020		$11,121,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Connell			
Project Name	Description	Project Cost	Year of Const.
W. Adams St. Reconstruction	N.Columbia Ave. to N. 5th Ave.	$720,000	2011
Columbia Ave. Seal Coat	SR 260 to SR 395	$140,000	2011
Street Preservation	Ongoing Street Maintenance	$80,000	2011
Old Railroad ROW Pedestrian Path	Pioneer Park to Hertiage Park	$100,000	2012
E. Birch St. Reconstruction	S. Columbia Ave. to Pioneer Park	$680,000	2013
E. Davis St. Reconstruction	N. Almira Ave. to N. Chelan Ave.	$550,000	2015
Date St. Sidewalk	S. Columbia Ave. to Pioneer Park(1 side)	$75,000	2016
Total Cost 2011-2020		$2,345,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
Connell			
Project Name	Description	Project Cost	Year of Const.
E. Clark St. Reconstruction	N. Columbia Ave. to Ford St.	$1,500,000	2017
Total Cost 2021-2020		$1,500,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2030 Unmet Need			
Connell			
Project Name	Description	Project Cost	Year of Const.
Connell Interchange	Hwy 395 @ Columbia /Lind	$18,000,000	
TOTAL		$18,000,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Mesa			
Project Name	*Description*	*Project Cost*	*Year of Const.*
May Avenue South	Pepiot to Farrell: water line, sewer line, curb, gutter & sidewalk	$583,000	2015
Total YOE Cost 2011-2020		$583,000	

2021-2030 Projects			
Mesa			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Manton Way	Chip seal	$35,000	2021
Pepiot Road	SR 17 to E. School drive: curb, gutter, sidewalk	$280,000	2021
Petra Court	Oil Shoot	$10,000	2021
May Avenue North	160 feet: water, sewer, curb, gutter, sidewalk & paving	$130,000	2021
Total Cost 2021-2020		$455,000	

2011-2030 Unmet Need			
Mesa			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Judson Street	Chip seal	$10,000	
Caldona Avenue	Chip seal	$10,000	
Lewis Court	Base course and oil shot	$20,000	
Third Avenue	Chip seal	$6,000	
Peabody North	Extension	$80,000	
First Avenue North	Chip seal	$5,000	
Columbia Street	Chip seal	$5,000	
Sheffield Road	Chip seal & shoulder work	$30,000	
First Avenue	Overlay: Pepiot to Manton; curb & sidewalk: Columbia to Manton	$400,000	
Park Avenue	Overlay, sidewalk & parking at park	$350,000	
Rowell Avenue	Chip seal	$10,000	
Franklin Street	Chip seal	$5,000	
Angeline Street	Chip seal	$3,000	
Old Town Road	Chip seal w/shoulder work	$30,000	
Lucille Street	Chip seal	$3,000	
Farrell Street	Chip seal	$3,000	
TOTAL		$970,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Kahlotus			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Violet, Weston & West Martin	Curb, Gutter, Sidewalk, ACP & Drainage	$310,000	2015
Total Cost 2011-2020		$310,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
Kahlotus			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Lake Road	Paved Road w/drain ditches	$310,000	2021
Total Cost 2021-2020		$310,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2030 Unmet Need			
Kahlotus			
Project Name	*Description*	*Project Cost*	*Year of Const.*
West Martin Sidewalk	Curb, Gutter & Sidewalk	$100,000	
Westin Sidewalk	Curb, Gutter & Sidewalk	$160,000	
Durham Street	Chip seal	$25,000	
Courtright Street	Chip seal	$15,000	
Maryland Street	Chip Seal	$10,000	
Washington Street	Chip seal	$10,000	
Westin Street	Chip Seal	$20,000	
West Martin Street	Chip seal	$15,000	
Violet Street	Chip seal	$5,000	
TOTAL		$100,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
City of Walla Walla			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Rose Street Sidewalk Improvements	Woodland to 12th Avenue	$251,000	2011
13th Avenue and Rose Signalization	New signal	$240,510	2011
Alder HSIP Project	Pedestrian improvements on Alder and Rose	$398,000	2011
Alder Street Improvements	Reconst. Signals at Colville, 1st Ave and 3rd Ave	$1,675,700	2011
Rose Street Reconstruction	2nd Avenue to Palouse Street	$859,348	2011
Orchard Street Sidewalk Improvements	9th Ave to Chase Street	$464,330	2012
13th Avenue Improvements Phase 11	Gap project between Cherry and Abadie Streets	$816,215	2012
Mill Creek at 2nd Ave Bridge	Rehabilitate Existing Bridge	$200,000	2012
Yellowhawk Creek at Sturm Ave Bridge	Rehabilitate Existing Bridge	$200,000	2012
Myra Road - SR125 to Garrison	Lowering intersection	$4,616,000	2013
Main-Palouse-Boyer Accessibility	Accessibility improvements- audible & ADA	$104,632	2013
3rd and Alder Signal Improvements	Signal improvements	$250,000	2014
Plaza Way Improvements	Widening, signal improvements,9th to Tietan St.	$2,168,200	2015
3rd and Tietan Signalization	New signal	$350,000	2015
Boyer Street Bicycle Improvements	Bike Route improvement from Main to Wilbur	$280,000	2015
Wilbur Avenue Reconstruction	Whitman Street to Bryant Avenue	$2,500,000	2015
Mill Creek Trail Re-pave	resurface exist. Path from Cambridge St to Tausick Way	$200,000	2016
9th Ave and Plaza Way/Dalles Military	Intersection geometric and signal improvements	$1,763,750	2016
9th Avenue Sidewalk	Garrison Crk to Dalles-Military	$82,000	2016
Wilbur Avenue Extension	New street from Bryant Ave to Reser Rd	$4,875,000	2016
Orchard Street Reconstruction	Chase to 3rd Avenue	$1,200,000	2017
Audible Accesible Signal Improvements	2-3 signals upgraded to APS capbablilty	$120,000	2018
TOTAL		$23,614,685	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
City of Walla Walla			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Myra Road - SR125 to Taumarson	New Construction	$3,367,000	2021
9th and Main Signal	Signal improvements	$250,000	2021
Chestnut & Howard	Intersection realignment and new signal	$733,000	2021
Howard and Abbott Signalization	New signal	$250,000	2021
9th and Pine Signalization	New signal	$250,000	2021
Clinton Street Reconstruction	Isaacs Ave to Alder Street	$1,500,000	2021
Avery and Rose Signalization	New signal	$250,000	2021
School Avenue Improvements	Reconstruct from Reser Rd to Byrant Ave	$4,000,000	2021
School Avenue Improvements Phase II	Reconstruct from Byrant Ave to Pleasant St.	$2,000,000	2022
Melrose Street Reconstruction	Wilbur Avenue to Airport Way	$3,500,000	2023
Alder and Tausick Intersection	Improve intersection	$300,000	2024
Isaacs Avenue Improvements	Tausick Way to WWCC entrance	$1,500,000	2024
Tietan Street Improvements	4th Avenue to Plaza Way	$1,905,000	2025
Alder and Division Signalization	New signal	$250,000	2025
N. 4th Avenue Improvements	Moore to Rees Avenue	$1,600,000	2026
Sportsplex Pedestrian Bridge	Across Mill Creek	$450,000	2026
Alder Street Re-channelization	7th Avenue to Palouse Street	$1,000,000	2027
Park Street Bike and Pedestrian	Boyer to Whitman	$125,000	2027
Cherokee Street Reconstruction	3rd Avenue to 2nd Avenue	$667,000	2028
9th and Alder Signal Upgrade	Replace span wire signals	$250,000	2028
Electric Avenue Improvements	Extend new street from Myra Road to Woodland Ave	$2,000,000	2029
Avery Street Improvements	Rose Street to Electric Avenue	$1,500,000	2029
9th Avenue Corridor Signal Interconnect	Plaza Way to Rose Street	$200,000	2030
New Street (Not yet named)	Extend new street from Myra Road to Woodland Ave	$200,000	2030
Wilbur and Melrose Signalization	New signal	$250,000	2030
Bryant and Howard Signalization	New signal	$250,000	2030
TOTAL		$28,547,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
College Place			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Whitman Central Corridor Project	Reconstruction, signal, ADA improvements, multi-use path, sidewalks, and storm improvements	$2,500,000	2011
Rose Street Reconstruction	Remove & Replace base & asphalt, curb & gutter replacement where needed, re-striping	$1,800,000	2012
Taumarson Road	Reconstruction, curb, gutter, & multi-use path, storm	$1,000,000	2012
Total Cost 2011-2020		$5,300,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
College Place			
Project Name	*Description*	*Project Cost*	*Year of Const.*
College Avenue	Reconstruction, curb, gutter, & sidewalk replacment, ADA improvements, storm, & signals	$4,500,000	2021
Total Cost 2021-2020		$4,500,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2030 Unmet Need			
College Place			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Davis Avenue	New street construction, bridge, realignment	$4,000,000	2022
Larch Extension North	Reconstruction, widening, curb, gutter, & sidewalk, ADA improvements, round-about	$1,500,000	
Larch Avenue Reconstruction (4th - 12th)	Reconstruction, ADA improvements	$1,000,000	
Total Unmet Need		**$2,500,000**	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
Waitsburg			
Project Name	Description	Project Cost	Year of Const.
Touchet River Levee Walking Trail		$10,000	2014
School Sidewalks:	Highschool to Athletic Facility	$114,000	2013
W. Seventh St: Main St. Arnold Lane	Reconstruction and S. Sidewalk	$777,000	2012
TOTAL		$901,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
Waitsburg			
Project Name	Description	Project Cost	Year of Const.
Bolles Rd.: Main to WCL (Reconstruct & Widen)		$550,000	2021 (2015)
W. Seventh St: Bridge Rehabilitation		$1,000,000	2021 (2020)
TOTAL		$1,550,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2030 Unmet Need			
Waitsburg			
Project Name	Description	Project Cost	Year of Const.
Taggart Rd.: NCL to SR 12 (Extend & Straighten)		$500,000	2021
Main St. Bridge.: Bridge Rehabilitation		$2,000,000	2025
Preston Ave: Bridge Rehabilitation*		$3;500,000	2030
Citywide Stormwater		$250,000	2020
Millsite repurposing		$2,000,000	2025
TOTAL		$8,250,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2011-2020 Projects			
City of Prescott			
Project Name	*Description*	*Project Cost*	*Year of Const.*
A Street: 2nd to 4th	Widen, Resurface, Storm Drains	$75,000	2013
A Street: 2nd to RR	Widen, Resurface, Storm Drains	$80,000	2015
First St.: A St. to E St.	Resurface, Gutter, Storm Drains, Sidewalk	$110,000	2018
Total Cost 2011-2020		$265,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan			
2021-2030 Projects			
City of Prescott			
Project Name	*Description*	*Project Cost*	*Year of Const.*
Railroad Ave.: A St. to C St. and F St. to G St.	Widen, Resurface, Storm Drains	$110,000	2021-2030
4th St.: A St. to F St.	Widen, Resurface, Storm Drains	$150,000	2021-2030
Total Cost 2021-2020		$260,000	

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan					
2011-2020 Projects					
Washington State Department of Transportation					
This list is based on current funding levels and does not account for any new revenue packages. *The project cost column give a range of cost, because projects are not clearly defined to give actual costs.* *$ is up to $1 million* *$$ is $1 to $10 million* *$$$ is $10 to $30 million* *$$$$ is over $30 million*					
012	311.58	311.59	US 12-Nine Mile Creek vicinity MP 314.45	Flatten slopes through rock cut.	$
012	355.05	377.18	US 12/Waitsburg to Tucannon River-Roadside Safety	Removed fixed objects and install guardrail.	$
012	288.86	338.32	US-12 ITS (Pasco to Walla Walla)	Full Arterial ITS in both directions	$
014	152.15	180.68	SR 14/Benton County Roadside Safety Improvements	Remove fixed objects, install guardrail and flatten slopes along SR 14.	$$
014	179.87	180.08	SR 14-Plymouth Road/McNary Court I/S South MP 179.95 to MP 180.17	Construct intersection improvements.	$$
017	1.57	1.58	SR 17/Benton, Franklin and Walla Walla Counties - Guardrail Upgrade	Update nonstandard guardrail north of Mesa on SR 17	$
024	43.32	43.7	SR 24/Vernita Bridge Rail Retrofit	The existing bridge rail at Vernita will be brought up to current standards.	$
082	36.02	82.06	I-82 Yakima to Prosser-Weather and Radio Stations	Will install four environmental sensor stations with snap shot cameras on the I-82 corridor from Union Gap to Prosser.	$
082	98.97	100.47	I-82/Red Mountain Vicinity - Pre-Design Analysis	This project will perform planning and pre-design analysis for a proposed I-82 Red Mountain interchange and SR 224 connector as identified in the Red Mountain Area Plan.	$
224	0.1	0.13	SR 224/SR 225 - Benton City - Construct Intersection Improvements (Phase 1)	This project will construct a roundabout at the intersection of SR 224 and SR 225 in Benton City to eliminate a chokepoint for West Richland and Benton City commuters. The roundabout will work to improve the flow of traffic, reduce accidents, and provide capacity for increased traffic from future developments. The existing park and ride lot will be relocated to the east and the westbound off ramp will be relocated to the roundabout.	$$
082	82.06	82.07	I-82/Prosser Vic-WIM	Prepare the Prosser Vicinity for weigh in motion (WIM) equipment.	$
124	0	44.68	SR 124/Benton, Franklin and Walla Walla Counties - Guardrail Upgrade	The nonstandard guardrail along SR 124 east of Pasco needs updated. By updating the guardrail this project will maintain the safe operation of the highway.	$
125	4.45	5.39	9th Ave (SR 125) Corridor Signal Interconnect	Interconnect signals on 9th Ave.	$
125	5.27	5.28	Ninth Ave (SR 125) and Alder St	Traffic Signal Improvements.	$
125	5.33	5.34	Ninth Ave (SR 125)/Main St Signal Improvement	Upgrade the signal	$
125	0	2.35	SR 125/College Place - Signal Coordination	College Place Signal Coordination	$
241	8	25.18	SR 241/Sunnyside to SR 24-Roadside Safety	Install a guardrail and remove fixed objects, improving the safety of the highway.	$$
260	7.37	23.21	SR 260/Benton, Franklin and Walla Walla Counties - Guardrail Upgrade	Updates the nonstandard guardrail on SR 260 from the vicinity of Connell to Kahlotus.	$
395	62.5	62.51	US 395/Nordhein Road Vicinity Guardrail	Updates the nonstandard guardrail on US 395/Nordhein Road vicinity.	$
730	0	6.08	SR 730/Benton, Franklin and Walla Walla Counties - Guardrail Upgrade	Upgrades nonstandard guardrail on SR 730 south of Wallula.	$

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan

2021-2030 Projects

Washington State Department of Transportation

This list is based on current funding levels and does not account for any new revenue packages.
The project cost column give a range of cost, because projects are not clearly defined to give actual costs.
$ is up to $1 million
$$ is $1 to $10 million
$$$ is $10 to $30 million
$$$$ is over $30 million

012	319.85	322.67	US 12/Touchet, Nine Mile Hill to Woodward Canyon Vic - Phase 7A	Existing US 12 from Nine Mile Hill to the near Woodward Canyon is a two-lane roadway with multiple driveways and access points. Substantial truck traffic and recreational vehicles conflict with faster moving vehicles. Currently US 12 slow through the town of Touchet and passes through a school crossing zone. This project will construct a new four-lane divided highway north of existing US 12, adding capacity and improve safety along this section of US 12. Access to the highway will be limited to county road intersections with turn pockets conflicts should be minimized while vehicles enter and leave the roadway.	$$$$
012	319.88	325.28	US 12/Walla Walla, Woodward Canyon Vic to Frenchtown Vic - Phase 7B	US 12 from near Woodward Canyon to the Frenchtown Monument is a two-lane roadway with multiple driveways and access points. Substantial truck traffic and recreational vehicles conflict with faster moving vehicles. Currently, US 12 slow through the town of Lowden. This project will construct a new four-lane divided highway north of US 12, adding capacity and potentially improving safety along this section of US 12. Access to the highway will be limited to county road intersections with turn pockets for minimizing conflicts with vehicles entering and leaving the roadway.	$$$$
024	38.43	43.51	SR 24/Vernita (Columbia River to SR 240) - Construct Truck Climbing Lane	Construct additional lane to accommodate freight movement. This will move the high percentage of trucks	$$
082	99.27	100.27	I-82/Red Mountain Vicinity - Build Interchange (Phase 2)	Improved access to the I-82 corridor between Benton City and the I-82/I-182 Interchange is crucial to ensure enhanced economic vitality for this region. A new I-82 interchange and new connection to SR 224, east of Benton City, will provide direct interstate access to and from developments in West Richland while improving emergency response times to the entire area. Preliminary results from an economic study of a new interchange at this location show the benefits far exceed the cost.	$$$$
125	4.62	4.63	Orchard: 9th (SR 125) to 3rd	Reconstruct/signal @ 9th	$
395	62.69	63.75	US 395/Lind Rd - Improve Intersection	Construct improvements to the existing at-grade intersection. The specific improvements are yet to be determined.	$

Port Project Listings

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan		
2011-2020 Projects		
Port of Benton		
Project Name	*Description*	*Project Cost*
George Washington Way Sidewalk	6' sidewalk west side of George Washington Way - Horn Rapids Road to University	$226,000
Railroad Bridge Replacement	Columbia Park Trail Railroad Bridge - replace wood structure	$750,000
Fermi Road Construction	Construct new road from existing north end to University Road	$400,000
Larson Road Construction	Construct new road from Battelle Blvd to Horn Rapids Road	$650,000
Battelle Blvd Traffic Signal	Reconstruct and upgrade traffic signal at Battelle Blvd and George Washington Way	$200,000
Horn Rapids Road Extension	Extend Horn Rapids Road from George Washington Way to Columbia River	$250,000
South Richland Rail Transload Facility	Upgrade existing siding	$750,000
Wamba Road Construction	Reconstruct roadway from Merlot Drive to OIEH	$800,000
Benitz Road Construction	Reconstruct roadway from Wine Country Road to Yakima River	$250,000
Lee Road Construction	Reconstruct roadway from Benitz Road to POB Boundary.	$625,000
1st Street Construction	Extend 1st Street 2000 feet west of Stevens Drive	$1,500,000
TOTAL		$6,401,000

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan		
2011-2020 Projects		
Port of Pasco		
Project Name	*Description*	*Project Cost*
BPIC Rail Hub Ph. 5	Add 1 mile of intermodal rail to Big Pasco	$1,400,000
Heritage Rail Extension	Add 1 mile of industrial track near Heritage IC	$1,600,000
Burlington Road at Foster Wells Bus. Park	New 1/2 mile 3-lane road and utilities	$1,500,000
Ainsworth Avenue Reconstruction Ph. 1	Reconstruct 1/2 mile of road at Big Pasco	$300,000
Argent Road Widening	Add right turn lane to Argent from 20th to I-182	$300,000
Osprey Pointe Phase 2 & 3	Road & infrastructure improvements	$2,000,000
TOTAL		$7,100,000

Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan		
2021-2032 Projects		
Port of Pasco		
Project Name	*Description*	*Project Cost*
Marine Terminal Road Improvements	Improve 1 mile of roads (Wash St, River St, 9th)	$2,000,000
Big Pasco Rail Rehabilitation	Reconstruct 5 miles of rail at Big Pasco	$2,500,000
TOTAL		$4,500,000

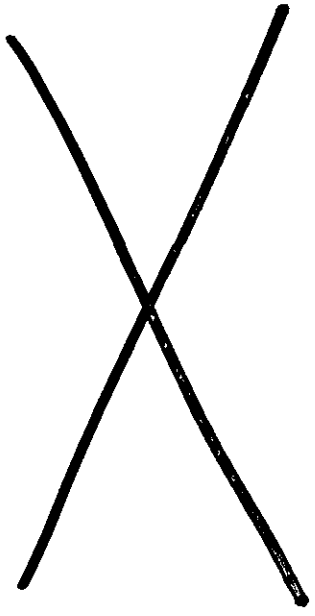
Transit Agency Vehicle and Equipment Replacement Plans

Ben Franklin Transit 2011-2020 Purchases			
Each	Vehicles	Year	Project Cost
13	Buses	2011	$ 4,687,500
Varies	(CCES) Computers, Communications Equipment, Software	2011	$ 187,500
0	Dial-A -Ride	2011	$ -
0	Vans	2011	$ -
3	Buses	2012	$ 1,000,000
Varies	CCES	2012	$ 194,063
30	Dial-A -Ride	2012	$ 3,000,000
40	Vans	2012	$ 1,000,000
7	Buses	2013	$ 2,500,000
Varies	CCES	2013	$ 312,500
7	Dial-A -Ride	2013	$ 625,000
19	Vans	2013	$ 475,000
8	Buses	2014	$ 2,968,750
Varies	CCES	2014	$ 312,500
12	Dial-A -Ride	2014	$ 1,092,750
32	Vans	2014	$ 787,500
8	Buses	2015	$ 2,968,750
Varies	CCES	2015	$ 312,500
12	Dial-A -Ride	2015	$ 1,092,750
32	Vans	2015	$ 787,500
8	Buses	2016	$ 2,968,750
Varies	CCES	2016	$ 312,500
12	Dial-A -Ride	2016	$ 1,092,750
32	Vans	2016	$ 787,500
8	Buses	2017	$ 2,968,750
Varies	CCES	2017	$ 312,500
12	Dial-A -Ride	2017	$ 1,092,750
32	Vans	2017	$ 787,500
8	Buses	2018	$ 2,968,750
Varies	CCES	2018	$ 312,500
12	Dial-A -Ride	2018	$ 1,092,750
32	Vans	2018	$ 787,500
8	Buses	2019	$ 2,968,750
Varies	CCES	2019	$ 312,500
12	Dial-A -Ride	2019	$ 1,092,750
32	Vans	2019	$ 787,500
8	Buses	2020	$ 2,968,750
Varies	CCES	2020	$ 312,500
12	Dial-A -Ride	2020	$ 1,092,750
32	Vans	2020	$ 787,500
Subtotal			$ 50,112,063

Ben Franklin Transit 2021-2030 Purchases			
Each	Vehicles	Year	Project Cost
8	Buses	2021	$ 2,968,750
Varies	CCES	2021	$ 312,500
12	Dial-A -Ride	2021	$ 1,092,750
32	Vans	2021	$ 787,500
8	Buses	2022	$ 2,968,750
Varies	CCES	2022	$ 312,500
12	Dial-A -Ride	2022	$ 1,092,750
32	Vans	2022	$ 787,500
8	Buses	2023	$ 2,968,750
Varies	CCES	2023	$ 312,500
12	Dial-A -Ride	2023	$ 1,092,750
32	Vans	2023	$ 787,500
8	Buses	2024	$ 2,968,750
Varies	CCES	2024	$ 312,500
12	Dial-A -Ride	2024	$ 1,092,750
32	Vans	2024	$ 787,500
8	Buses	2025	$ 2,968,750
Varies	CCES	2025	$ 312,500
12	Dial-A -Ride	2025	$ 1,092,750
32	Vans	2025	$ 787,500
8	Buses	2026	$ 2,968,750
Varies	CCES	2026	$ 312,500
12	Dial-A -Ride	2026	$ 1,092,750
32	Vans	2026	$ 787,500
8	Buses	2027	$ 2,968,750
Varies	CCES	2027	$ 312,500
12	Dial-A -Ride	2027	$ 1,092,750
32	Vans	2027	$ 787,500
8	Buses	2028	$ 2,968,750
Varies	CCES	2028	$ 312,500
12	Dial-A -Ride	2028	$ 1,092,750
32	Vans	2028	$ 787,500
8	Buses	2029	$ 2,968,750
Varies	CCES	2029	$ 312,500
12	Dial-A -Ride	2029	$ 1,092,750
32	Vans	2029	$ 787,500
8	Buses	2030	$ 2,968,750
Varies	CCES	2030	$ 312,500
12	Dial-A -Ride	2030	$ 1,092,750
32	Vans	2030	$ 787,500
Subtotal			$ 51,615,000
Total			$ 101,744,063

Valley Transit 2011-2030 Vehicle and Equipment Replacement Plan		
Valley Transit 2011-2020 Vehicle and Equipment Replacement Plan		
Project Name	Description	Project Cost
2011 Purchase Three (3) Dial-A-Ride Mini-Buses	(2) Replacement and (1) Expansion Mini-Buses	$350,949
2011 Purchase One Low Floor Shuttle Bus	(1) Expansion Shuttle-Bus	$175,000
2011 Purchase and Install Thirteen (13) Shelters	(13) Install Passenger Waiting Shelters at Various Locations	$112,000
2011 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$101,100
2012 CNG Safety and Mitigation for CNG Vehicles	Facility Safety Improvements to Operate and Maintain CNG Vehicles	$800,000
2012 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$71,672
2012 Purchase Administrative Support Van	Replace (1) Administrative Support Van	$27,353
2012 Purchase Maintenance Service Truck	Replace One (1) Maintenance Department Service Truck	$30,635
2012 Reconstruction of Parking Lot	Reconstruction of Parking Lot at Main Facility	$87,000
2012 Regional Transfer Center Ticket Office Expansion	Construct Passenger Waiting Area at Downtown Transfer Center	$106,000
2012 Replace One (1) CNG Powered 35-foot Transit Bus	Trolley Replica Bus	$543,000
2012 Replace Three (3) 30-ft, Low-Floor Transit Buses	Trolley Replica Buses	$1,593,000
2012 Replace Three (3) CNG-Mini Buses	Purchase (3) Replacement CNG Powered Mini-Buses	$599,000
2013 Main Facility Improvements	Energy Conservation and Building Improvements	$1,226,250
2013 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$88,902
2014 Purchase One Fork Lift	Replace (1) Maintenance Department Fork Lift	$30,000
2014 ADA Improvements at Bus Stops	ADA Improvements to Legacy Bus Stops	$287,000
2014 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$110,575
2015 Replace Three (3) Low-Floor Trolley Buses	Trolley Replica Buses	$1,720,461
2015 Market Station Multi-modal Station	Construction of Downtown Multi-Modal Station	$2,000,000
2015 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$127,381
2016 Replace Two (2) Low-Floor Trolley Buses	Trolley Replica Buses	$1,199,736
2016 Replace Four (4) Dial-A-Ride Mini-Buses	Purchase Four (4) Replacement CNG Powered, Low-Floor Mini-Buses	$612,964
2016 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$114,643
2017 Replace Four (4) Low-Floor Trolley Buses	Trolley Replica Buses	$2,434,251
2017 One Tractor	Replace (1) Maintenance Tractor Used for Snow Removal	$50,386
2017 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$122,027
2018 Replace One (1) Low Floor Shuttle Bus	Purchase One (1) Replacement Shuttle-Bus	$239,751
2018 One Operations Support Van	Replace (1) Operations Support Supervisor Van	$135,138
2018 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$123,868
2019 Replace Three (3) Dial-A-Ride Mini-Buses	Purchase Three (3) Replacement CNG Powered, Low-Floor, Mini-Buses	$526,128
2019 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$127,602
2020 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$134,020
Total Project Cost 2011-2020		$16,007,792

Valley Transit 2021-2030 Vehicle and Equipment Replacement Plan		
Project Name	Description	Project Cost
2021 Replace Four (4) Dial-A-Ride Mini-Buses	Purchase Four (4) Replacement CNG Powered, Low-Floor Mini-Buses	$767,528
2021 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$159,189
2022 Replace Three (3) Low-Floor Trolley Buses	Replace Three (3) 30-foot Trolley Buses with 30-foot CNG, Low-floor Trolley Replica Buses	$2,357,040
2022 One Maintenance Service Truck	Replace Maintenance Department Service Truck	$48,033
2022 One Administrative Support Van	Replace (1) Administrative Support Van	$42,886
2022 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$145,192
2023 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$171,893
2024 Replace One 30-foot Low-Floor Trolley Bus	Trolley Replica Bus	$810,825
2024 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$157,485
2025 Replace Three (3) CNG-Mini Buses	Purchase (3) Replacement CNG Powered Mini-Buses	$689,100
2025 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$185,825
2026 Replace Three (3) Low-Floor Trolley Buses	Trolley Replica Buses	$2,821,590
2026 One Fork Lift	Replace (1) Maintenance Department Fork Lift	$30,000
2026 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$171,013
2027 Replace Four (4) Dial-A-Ride Mini-Buses	Purchase Four (4) Replacement CNG Powered, Low-Floor Mini-Buses	$1,005,276
2027 One Tractor	Replace (1) Maintenance Tractor Used for Snow Removal	$79,000
2027 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$201,104
2028 One Operations Support Van	Replace (1) Operations Support Supervisor Van	$211,881
2028 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$185,906
2029 Replace Five (5) Low-Floor Trolley Buses	Trolley Replica Buses	$5,381,925
2029 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$217,868
2030 Replace Four (4) Low-Floor Trolley Buses	Trolley Replica Buses	$4,503,592
2030 Misc Capital Equipment Replacement	On-Going Replacement of Capital Equipment	$202,298
Total Project Cost 2021-2030		$20,546,449



WUTC DOCKET TR-130499
EXHIBIT GAN-10-X
ADMIT ☒ W/D ☐ REJECT ☐

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	DOCKET TR-090912
	)	
CITY OF RICHLAND,	)	ORDER 01
	)	
Petitioner,	)	ORDER GRANTING PETITION TO
	)	RECONSTRUCT THE STEPTOE
	)	STREET HIGHWAY-RAIL GRADE
	)	CROSSING AND MODIFY ACTIVE
TRI-CITY AND OLYMPIA	)	WARNING DEVICES
RAILROAD and PORT OF BENTON	)	
	)	
Respondents.	)	USDOT: 310397T
.....	)	

BACKGROUND

1 On June 15, 2009, the city of Richland (City or Petitioner) filed with the Washington Utilities and Transportation Commission (Commission), a petition seeking approval to reconstruct a railroad-highway grade crossing and modify existing warning devices. The city of Richland is a first-class city and modifications to railroad-highway grade crossings are generally not subject to Commission review or approval (RCW 81.53.240). However, the City, under the provisions of RCW 81.53.291, has elected Commission review of the proposed modifications to the Steptoe Street highway-rail grade crossing and requested an order be issued in response to the petition. The crossing is identified as USDOT #310397T and is located at the intersection of Steptoe Street and the respondents' tracks in the city of Richland, Benton County.

2 The respondents, Tri-City and Olympia Railroad and Port of Benton have consented to entry of an Order by the Commission without further notice or hearing. The Port of Benton owns the tracks at this location and Tri-City and Olympia Railroad is the operator.

3 Steptoe Street is a five-lane principal arterial with two southbound and two northbound lanes. The City estimates average daily vehicle traffic over the crossing at 15,000 which includes two percent commercial motor vehicle traffic and eight school bus trips. The posted vehicle speed is 35 miles per hour. The tracks at this location are classified as main line by the Tri-City and Olympia Railroad. Average daily train traffic is two to four freight trains operating at 10 miles per hour. No passenger trains operate on this track.

4 Railroad warning devices at the intersection of Steptoe Street and the respondent's tracks consist of advance warning signs, pavement markings, cross-bucks, cantilever mounted gates and 12 inch flashing lights.

5 Currently, Tapteal Drive extends to the east of Steptoe Street and is stop-controlled at Steptoe Street just south of the grade crossing. Tapteal Drive is a three-lane collector road with average daily vehicle traffic of 800. The posted speed limit is 30 miles per hour. Tapteal Drive serves a nearby developing commercial area.

6 The City intends to construct a west leg to Tapteal Drive for commercial development purposes. The City and the Tri-City and Olympia Railroad have done extensive research into the safest and most efficient way to move traffic through the area and across the tracks. They propose to realign the east leg of Tapteal Drive, and construct the west leg, to intersect Steptoe Street coincident with the rail crossing. The end result is a highway intersection on top of a highway-rail grade crossing. The City's consulting engineer has determined that this is the safest and most efficient of many alternatives considered. The Tri-City and Olympia Railroad concurs.

7 In order to improve traffic flow at the highway intersection and enhance the safety at the railroad grade crossing, the City proposes to construct a roundabout to provide traffic control for the new highway intersection/grade crossing.

DISCUSSION

8 The City involved Commission Staff (Staff) in discussions about this project from its conception. Locating a roundabout and a highway rail grade crossing at one location is an unusual concept that is generally viewed negatively by the rail crossing safety community. The United States Department of Transportation, Federal Highway Administration (FHWA), in its highway design manual, describes the center crossing of railroad tracks through a roundabout as "Not Desirable."

9 Staff shares the concerns of other rail crossing safety experts and concurs with FHWA's view that the center crossing of railroad tracks through a roundabout is undesirable. However, the City, at Staff's request, conducted extensive research and outreach related to the proposed intersection/roundabout design. The results of these efforts are fully documented in an extensive and thorough report. The report contains the results of the city consultant's operational analysis; comments received from stakeholders and other design professionals; and a summary of literature used in developing the project.

10 The consultant's report concludes, in summary, that while the roundabout design with a railroad crossing through the central circle is unique, it is an appropriate design for the grade crossing at the Steptoe Street/Tapteal intersection. This design eliminates the problems of queuing vehicles across the tracks that might occur at a traditional signalized or stop controlled intersection with a rail crossing nearby. This design also provides the best level of service for the vehicular traffic. Locating the crossing gates outside the roundabout near cantilevered light structures is similar to a standard rail crossing configuration and should be easily understood by drivers. Use of standard signing and appropriately placed safety devices will ensure that this railroad crossing through a roundabout operates at least as safely as any other at-grade railroad crossing.

11 Staff continues to have some reservations about the design of this crossing configuration, not because Staff doubts the integrity, competence or professionalism of the engineers and other design experts involved in this project, but because it is unfamiliar, relatively untried, and new in Washington State. Utah and Florida have similar roundabouts with railroad crossings in the central circle in operation today. The roundabout crossing in Utah was constructed in 2003 and involves two tracks that accommodate light rail traffic. The train traffic is high volume with trips every 15 minutes. There have been no rail related accidents at this crossing. The roundabout in Florida was constructed in1999 and an average of 28 trains per day, traveling up to 60 miles per hour, cross the roundabout/rail crossing. There have been five reported vehicle to vehicle accidents, none involving the train. Staff is convinced that the City and the Tri-City and Olympia Railroad have performed their due diligence in developing this design concept for the Steptoe/Tapteal intersection.

FINDINGS AND CONCLUSIONS

12 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington having jurisdiction over public railroad-highway grade crossings within the state of Washington. *RCW 81.53.*

13 (2) The railroad-highway grade crossing at the intersection of Steptoe Street and the respondent's tracks in Richland, Washington, identified as USDOT #310397, is a public railroad-highway grade crossing within the state of Washington.

14 (3) RCW 81.53.261 requires the Commission grant approval prior to any changes to public railroad-highway grade crossings within the state of Washington in non-first class cities. *See also WAC 480-62-150.*

15 (4) The city of Richland is a first-class city and modifications to railroad-highway grade crossings are generally not subject to Commission review or approval (RCW 81.53.240). However, the city, under the provisions of RCW 81.53.291, has elected Commission review of the proposed modifications to the Steptoe Street highway-rail grade crossing.

16 (5) Commission Staff investigated the petition and recommended that it be granted, subject to specified conditions.

17 (6) After reviewing the city of Richland's petition filed on June 15, 2009, and giving due consideration to all relevant matters and for good cause shown, the Commission grants the petition.

ORDER

THE COMMISSION ORDERS:

18 The city of Richland's petition to reconstruct and modify warning devices at a railroad-highway grade crossing, located at the intersection of Steptoe Street, Tapteal Drive, and the respondent's tracks in Richland, Washington, is granted. Approval of the petition is subject to the following conditions:

(1) Traffic control devices must comply with all applicable standards specified in the U.S. Department of Transportation *Manual on Uniform Traffic Control Devices.*

(2) The modifications must conform to those described in the petition.

(3) The City of Richland must notify the Commission upon completion of the modifications authorized in this Order. Acceptance of the modifications is subject to inspection by Commission Staff, and verification that the crossing is in full compliance with applicable laws, regulations, and the conditions specified in this Order.

The Commissioners have delegated authority to the Secretary to enter this Order pursuant to RCW 80.01.030 and WAC 480-07-904((1)(a).

DATED at Olympia, Washington, and effective July 2, 2009.

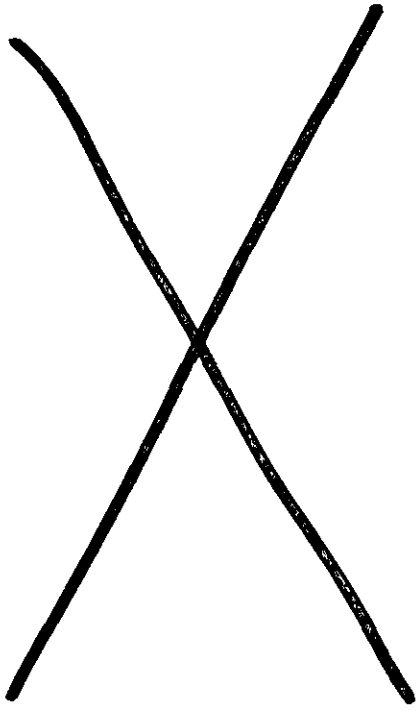
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER
Executive Director and Secretary

NOTICE: This is an order delegated to the Secretary for decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least fourteen (14) days a listing of all matters delegated to the Secretary for decision. You may seek Commission review of this decision. You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site. The Commission will schedule your request for review for consideration at a regularly scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.

The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.

This notice and review process is pursuant to the provisions of RCW 80.01.030 and WAC 480-07-904(2) and (3).

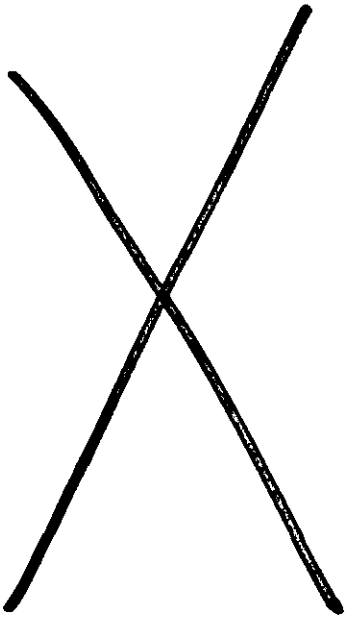


WUTC DOCKET TR-130499
EXHIBIT GAN-11-X
ADMIT ☒ W/D ☐ REJECT ☐

Loss Date: Location Comments

Tri-City Railroad

Week 39	240 Xing	High Vehicle struck xing - unreported
9/10/12	Airport Xing	Granite Construction - to be added to 05/10 final claim
8/30/12	Steptoe	P/U tk struck crossing
8/3/12	Steptoe	broken gate arm - driver left the scene but later found
5/10/12	Airport Xing	Hit and run but driver self reported later - Claim 1 of 2
1/5/12	Airport Xing	Semi truck/Frontier Transport
8/30/11	SR 240/Van Giesen	
7/5/11	Steptoe	Convertible hit crossing
12/28/10	Airport	6 bolts
10/4/10	SR 240/Airport Xing	Walters
9/2/10	240 Xing	Jon reported a hit and run
8/10/10	SR 240/Airport	Walters
3/18/10	SR 240/Duportail	
1/16/10	Van Giesen	
12/30/09	Steptoe	
11/13/08	SR 240/Duportail	Fire on track
9/2/08	Hwy 240/Van Giesen	Intermountain West driver



WUTC DOCKET TR-130499
EXHIBIT GAN-13-X
ADMIT ☒ W/D ☐ REJECT ☐

PREFACE

WHAT THIS DOCUMENT IS ABOUT

This document presents a new Comprehensive Plan for the City of Richland. The Plan is a guide for all future activities by City government.

The Comprehensive Plan is the result of a *five-year development process.* The City of Richland's Community Development Department and Physical Planning Commission spearheaded the process, which involved the participation of citizen groups and individuals from government agencies and the broader community.

WHAT IS A COMPREHENSIVE PLAN?

WHY WE PLAN

Cities and other government jurisdictions adopt comprehensive plans to serve as guides for future activities. A comprehensive plan does not carry the weight of law. Rather, it is a policy statement that points the way to a future in which the City of Richland thrives and maintains all the qualities its citizens value. The vision, goals and policies included in a plan are developed through extensive communication with a wide range of groups and individuals.

The City uses the policies in a comprehensive plan as a sort of yardstick for its future activities, particularly the crafting of ordinances that relate to zoning, land use, and development. The plan provides a consistent framework for legislative and administrative action, always steering the City toward the desired future and away from a patchwork of laws and rules that conflict with the vision or with one another.

WHAT'S IN A COMPREHENSIVE PLAN?

Every comprehensive plan must include key pieces to fulfill its purpose of providing a yardstick for future government activities. The following terms have special meanings in comprehensive planning, and it's important to understand their meaning and purpose:

Vision Statement -The Vision Statement is the target the City decides to aim for. It is a verbal picture of what Richland will be like at the end of the period covered by a comprehensive plan. An *important* part of future decision-making should be to ask, "Which of our choices will best help us become like the city described in the vision statement?"

Existing Conditions Inventory -We can't decide how to get from the present to our desired future without a clear picture of where we are today. That's why comprehensive plans must include a detailed inventory of the existing state of the City: How are our roads? Is our water system adequate to accommodate future growth? Do we have the parks and other recreation facilities to satisfy the community's desire for such public amenities?

Goals -If the Vision Statement defines the target for comprehensive planning, then goals are like individual points on the target. We set as goals the distinct achievements we hope for: Maintain

adequate and affordable housing; avoid traffic congestion; protect natural resources; ensure economic vitality. We have reached our vision if all our goals are accomplished.

Policies -Goals are what we want to accomplish; policies define how we accomplish them. For each goal established in a comprehensive plan, one or more policies define the steps that goal calls for. If we have a goal of protecting natural resources, for example, we might establish a policy that development shall be restricted on and near wetlands.

Planning Horizons - A comprehensive plan must define time frames for achieving its vision and goals. These time frames are called the planning horizons. In Washington State, comprehensive plans use both a six-year short-term planning horizon and a 20-year long-term planning horizon. The long-term planning horizon is the full period for achieving the vision in our Vision Statement. The short-term planning horizon is the period for which we can make more concrete plans for specific steps toward our goals.

These are the features that a comprehensive plan needs to include in order to act as our yardstick for the future. The comprehensive plan must apply these features to specific aspects of the City's life. The parts of a plan addressing each of these are commonly called "elements." Under State law, all Washington city and county comprehensive plans must address at least five specific "elements": *land use, transportation, utilities, capital facilities, and housing.* Each element includes an inventory of existing conditions as well as goals and policies specific to the element. In addition to the required five elements, the City of Richland has chosen to include an optional, economic development element, in this Comprehensive Plan.

The final feature of comprehensive plans in Washington is a Finance Plan. This is the proposal for specific capital improvements required over the short-term (six-year) planning horizon. It describes projects to be carried out, their estimated costs, a schedule for completing them, and a plan to pay for them.

HOW A COMPREHENSIVE PLAN IS USED

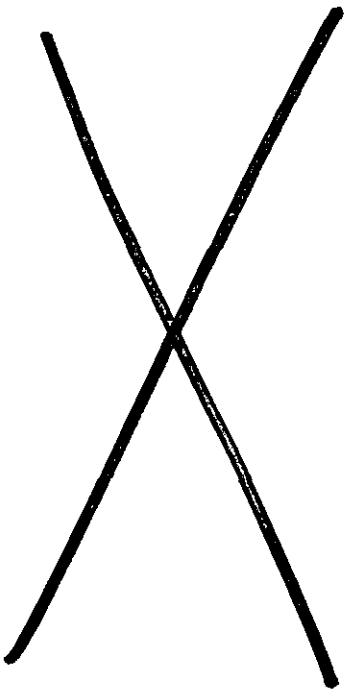
After the Richland City Council formally adopts the new Comprehensive Plan, steps can be taken to put the vision in place. Revisions to the City's zoning code, for example, will help achieve the goals laid out in the land use element. Formal approval of a six-year Capital Facilities Plan will earmark funds for improvement projects that will help achieve goals in many of the Plan elements.

Ordinances may be passed to achieve goals such as protection of the natural environment. The City may mount marketing programs in line with goals from the economic development element.

In short, over the 20-year planning horizon of the Plan, its contents will be referred to again and again as the City Council and various city departments make decisions on laws, rules, regulations, and programs. Always, the underlying motivation will be to see to it that the City of Richland in 20 years is as close as we can make it to the city of the future described in the Vision Statement. This is what the community said it wants during the lengthy development of the Comprehensive Plan, and it is what the Plan will continually help to bring about.

RULES FOR COMPREHENSIVE PLANS

WASHINGTON STATE GROWTH MANAGEMENT ACT



Policy 1 - The City will encourage new development consisting of a variety of land uses adjacent to existing development, which will take advantage of the existing infrastructure network.

Policy 2 - Where the service demands of proposed projects exceed the City's adopted level of services standards, the City will apply conditions on development approvals to ensure that adequate public services are provided in a reasonable time frame.

LU Goal 2. The City will promote industrial development to provide employment for its residents, and strengthen and expand the tax base through its land use policies.

Policy 1 - The City will accommodate a variety of industrial uses ranging from manufacturing and processing to technology and business parks.

Policy 2 - The City will create a "Business/Research Park" land use category to accommodate high tech business interests, research-oriented industrial development and corporate office development.

Policy 3 - The City will create innovative land use categories and zoning classifications to implement the economic development strategies.

Policy 4 - In areas where residential uses are in close proximity to industrial lands, the City shall develop land use regulations to protect the adjacent residential uses. Limitations on industrial uses and restrictions including such items as increased building setbacks, more stringent landscaping standards, restrictions on outdoor storage, architectural controls, outdoor lighting standards and appropriate access controls shall be implemented.

Policy 5 - The City will accommodate the continued use of the Port of Benton barging facilities in North Richland, while maintaining the current generally undeveloped condition of the shoreline area.

LU Goal 3. The City will promote commercial growth and revitalization that serves residents and strengthens and expands the tax base.

Policy 1 - The City will accommodate all types of commercial land uses including retail and wholesale sales and services, and professional services.

Policy 2 - The City will create new land use and zoning designations to facilitate both new development and redevelopment where required to implement the City's goals.

Policy 3 - The City will work to develop an attractive Central Business District and to revitalize declining commercial areas.

Policy 4 - The City will endeavor to locate neighborhood oriented commercial land uses in Neighborhood Activity Centers.

SECTION THREE

DESCRIPTION OF LAND USE

LAND USE UNDER THE COMPREHENSIVE PLAN

The Comprehensive Plan land use map (Figure LU-4) defines Richland's new UGA and establishes how land is to be used for development throughout the UGA. The Plan defines new categories of land uses. The land use designations of the Comprehensive Plan provide adequate land capacity within the existing city limits to accommodate projected growth. The UGA primarily allows for expansion of industrial development north of the city limits and the provision of urban levels of service to existing residents to the south.

The acreage devoted to each use is summarized below:

LAND USE DISTRIBUTION

Agriculture (AG) - This category includes uses devoted primarily to the tilling of soil, the raising of crops, horticulture, livestock, poultry, feed lots, and related commercial and industrial activities. It allows residential densities up to 1 dwelling unit per 5 acres.

Low Density Residential (LDR) - The LDR category includes single-family residential uses with an average density of 3.5 dwelling units per acre.

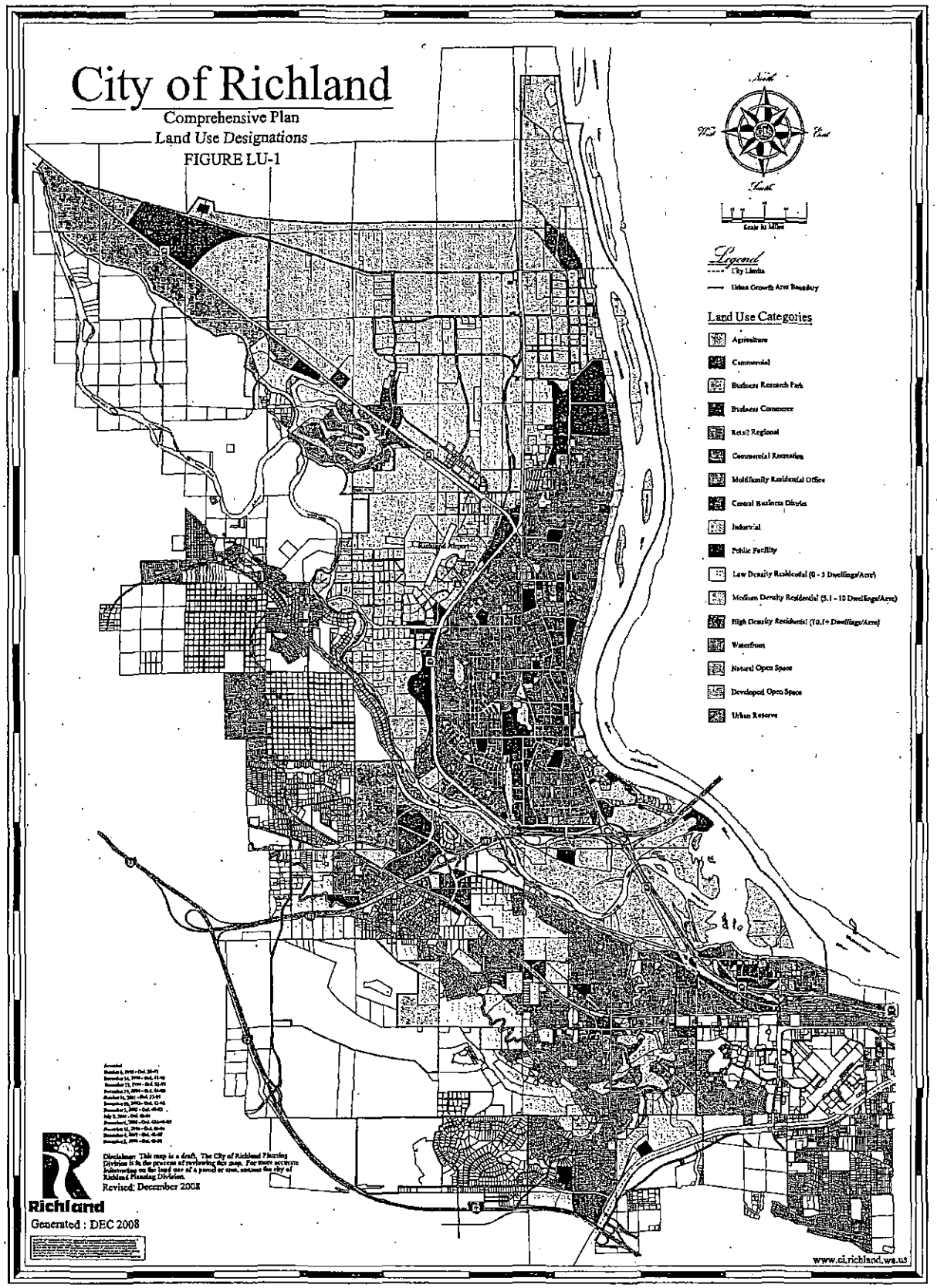
Medium Density Residential (MDR) - The MDR category includes single-family residential uses with an average density of 8 dwelling units per acre.

High Density Residential (HDR) - The HDR category includes multifamily residential uses with an average density of 15 dwelling units per acre. In transitional areas between more intensive commercial uses and lower density residential uses, limited office/institutional uses may also be located within the HDR designated areas.

Commercial (C) - The commercial land use category includes a variety of retail, wholesale, and office uses. Within this category are professional business offices, hotels, motels, and related uses. It also includes a variety of retail and service uses oriented to serving residential neighborhoods, such as grocery stores, hardware supply, and garden supply. Other commercial uses include automobile-related uses, and uses that normally require outdoor storage and display of goods. In transitional areas between more intensive commercial uses and lower density residential uses, high-density residential development may also be located within the Commercial designated areas.

Central Business District (CBD) - This classification includes a mix of residential, retail, service, and business uses, that provide for the daily convenience needs of on-site and nearby employees and residents. The purpose is to provide for pedestrian and transit-oriented high density employment and cultural uses together with limited complementary retail and higher density residential, and other compatible uses that enhance the Central Business District.

Waterfront (WF) - The Waterfront category includes a variety of water-oriented uses such as marinas, boat docks, resorts, mixed commercial/residential development, hotels, motels, and offices along the


City of Richland
Comprehensive Plan
Land Use Designations
FIGURE LU-1
Legend
City Limits
Urban Growth Area Boundary
Land Use Categories
Agriculture
Commercial
Business Research Park
Business Commerce
Retail Regional
Commercial Recreation
Multifamily Residential Office
Central Business District
Industrial
Public Facility
Low Density Residential (0 - 5 Dwellings/Acre)
Medium Density Residential (5.1 - 10 Dwellings/Acre)
High Density Residential (10.1+ Dwellings/Acre)
Waterfront
Natural Open Space
Developed Open Space
Urban Reserve
Richland
Generated : DEC 2008
Revised: December 2008
www.ci.richland.wa.us

Columbia River shoreline. The intent is to bring significant development to the Columbia riverfront that is consistent with the City's vision and that incorporates public access recreational features and attractive and high quality development.

Industrial (I) - This category includes a variety of light and heavy manufacturing, assembly, and warehousing and distribution uses. It also includes uses devoted to the sale of retail and wholesale products manufactured on-site, and a variety of research and development uses for science-related activities.

Business/Research Park (BRP) - The Business/Research Park designation provides for a variety of office and research and development facilities in a planned business park setting. Permitted uses include science-related research and development and testing facilities; administrative offices for those uses; and other general office uses.

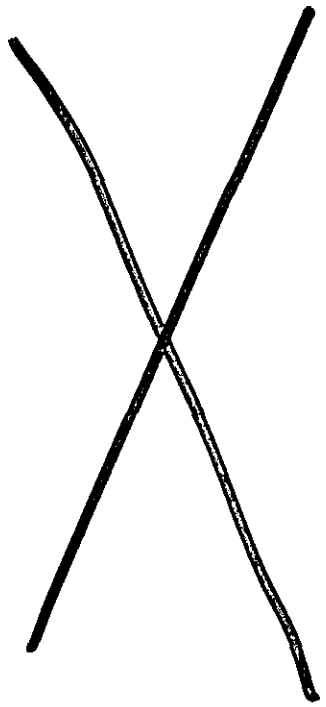
Public Facility (PF) - This category includes a variety of public and institutional uses including facilities operated by federal, state, county, municipal, or other government agencies; public educational institutions; public libraries; hospitals; cemeteries; and some developed parks.

Developed Open Space (OSD) - This category includes golf courses, federal power transmission and irrigation wasteway easements, private open space, riverfront parks, undeveloped parks, and parks intended for long-term open space.

TABLE LU-1 DISTRIBUTION OF LAND DESIGNATIONS UNDER THE COMPREHENSIVE PLAN

Land Use Designation	Within City Limits		Unincorporated Urban Growth Area		Total Acreage	
Agriculture	716	(2.84%)	0	(0.00%)	716	(2.34%)
Commercial	880	(3.49%)	180	(3.31%)	1,060	(3.46%)
Industrial	4,119	(16.35%)	1,039	(19.12%)	5,158	(16.84%)
Natural Open Space	2,271	(9.01%)	227	(4.18%)	2,498	(8.16%)
Developed Open Space	2,124	(8.43%)	144	(2.65%)	2,268	(7.40%)
Public Facility	1,063	(4.22%)	33	(0.61%)	1,096	(3.58%)
Low Density Residential	4,445	(17.64%)	695	(12.79%)	5,140	(16.78%)
Medium Density Residential	1,479	(5.87%)	0	(0.00%)	1,479	(4.83%)
High Density Residential	513	(2.04%)	0	(0.00%)	513	(1.67%)
Business Research Park	805	(3.19%)	383	(7.05%)	1,188	(3.88%)
Waterfront	143	(0.57%)	0	(0.00%)	143	(0.47%)
Urban Reserve	1,225	(4.86%)	0	(0.00%)	1,225	(4.00%)
Central Business District	226	(0.90%)	0	(0.00%)	226	(0.74%)
Island View Business Commerce	40	(0.16%)	0	(0.00%)	40	(0.13%)
Island View General Commercial	57	(0.23%)	0	(0.00%)	57	(0.19%)
Island View Commercial Recreation	51	(0.20%)	0	(0.00%)	51	(0.17%)
Island View Retail Regional	31	(0.12%)	0	(0.00%)	31	(0.10%)
Island View Multi-Family Residential	16	(0.06%)	0	(0.00%)	16	(0.05%)
Area in River	2,629	(10.43%)	152	(2.80%)	2,781	(9.08%)
Right of Way	2,364	(9.38%)	464	(8.54%)	2,828	(9.23%)
Undesignated*	0	(0.00%)	2,116	(38.95%)	2,116	(6.91%)
Total	25,197		5,433		30,630	

*Undesignated land refers to the 2,100 acre expansion of the City's Urban Growth Area that was granted to Richland through action of the Benton County Board of Commissioners in 2006. To date a comprehensive plan for this expanded Urban Growth Area has not yet been completed and so carries no specific land use designation(s) yet.



SECTION TWO

GOALS & STRATEGIES

In 2003, the City of Richland and its economic development partners, represented by the Strategic Plan Task Force, developed the Richland Economic Development Strategic Plan. The community changed since the City adopted the plan and many elements and actions of the plan are complete. A few of the major changes and accomplishment are noted below.

PNNL's Research Campus of the Future (Capabilities Replacement Project) and the associated development of a private sector research campus, in addition with the expansion of WSU-TC into a four-year institution, creates a real opportunity for a post-Hanford economy that has not been available before.

The implementation of development plans for Columbia Point, City View, Tapteal, and Horn Rapids residential eliminates the strategic nature of these developments and puts them in the mode of completion. While there is still room to develop, the strategic questions of why, what and how have been answered.

The increased urbanization of the downtown. With various developments pushing the skyline up, and increasing the population density of downtown Richland, there is an opportunity to revitalize Richland's Central Business District.

Richland is in the process of updating its Strategic Plan, provided below is the Goals and Strategies from the 2003 Economic Development Strategic Plan.

ED Goal 1: The economy of the City is diversified, consisting of a balanced mix of high technology companies, professional firms, office operations, retail trade, and tourism.

Strategy 1.1 Expand and improve business retention and expansion program to provide outreach and assistance to existing firms.

Strategy 1.2 Enhance Richland's ability to recruit new businesses and industries.

ED Goal 2: Richland is recognized nationally for the high level of R&D occurring at PNNL and for the entrepreneurial activity of numerous technology-based firms located in the community's technology parks and incubators.

Strategy 2.1 Form a Technology Task Force (TTF) to develop a detailed strategy for creating technology businesses in the City of Richland.

Strategy 2.2 Assist in creating experienced entrepreneurs and managers of *entrepreneurial concerns.*

Strategy 2.3 Identify sources of financing and to facilitate the availability of this financing to deserving firms.

Strategy 2.4 Enhance Richland's physical and business environment for technology-based companies.

Strategy 2.5 Lay groundwork to develop potential entrepreneurs.

ED Goal 3: Richland is known for its positive business environment and its strong technology base.

Strategy 3.1 Create a new and more positive image for the community. Reinforce this image by enhancing conditions within the community.

ED Goal 4: The telecommunications and information technology infrastructure in Richland supports the growth of New Economy business and industry in the City.

Strategy 4.1 The City, through its participation in TRIDEC's IT Task Force, will encourage the expansion of broadband fiber capabilities within its commercial areas as well expanding the number of service providers.

ED Goal 5: The economic development program and activity of the City of Richland works collaboratively with TRIDEC and the Tri-Cities Visitor and Convention Bureau to foster a successful regional economic development and marketing effort.

Strategy 5.1 Create a seamless, collaborative, low-cost and effective marketing effort designed to recruit new businesses, expand existing businesses, and build a positive national image.

ED Goal 6: Richland has established a sense of place that appeals to citizens of all ages. The City has become the entertainment and upscale retail center for the Tri-Cities with a range of retail and service businesses that meet the needs of local residents and visitors to the community.

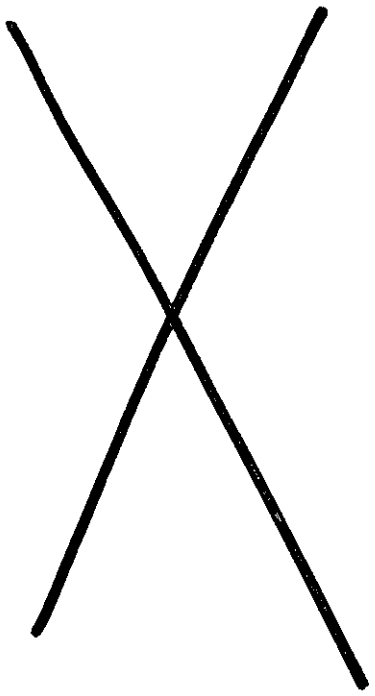
Strategy 6.1 Stimulate the development of sophisticated retail and entertainment venues.

Strategy 6.2 Assist current retailers to enhance their skills and profit opportunities through training and enhanced networking approaches.

Strategy 6.3 Enhance the range of tourist attractions within the city.

Strategy 6.4 Refine its planning and zoning process to facilitate upscale retail development and encourage infill in the Downtown and Uptown Districts.

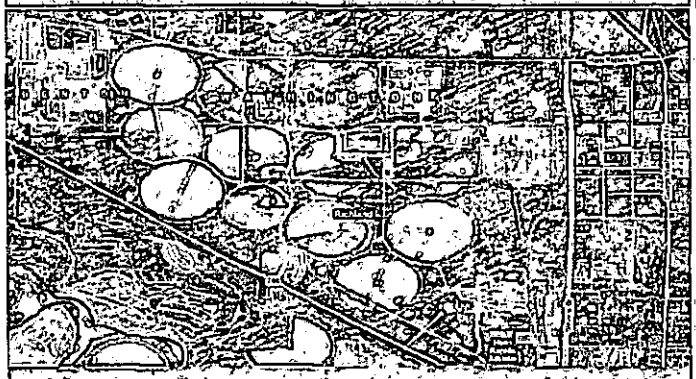
Strategy 6.5 Promote performing arts venues and activities.

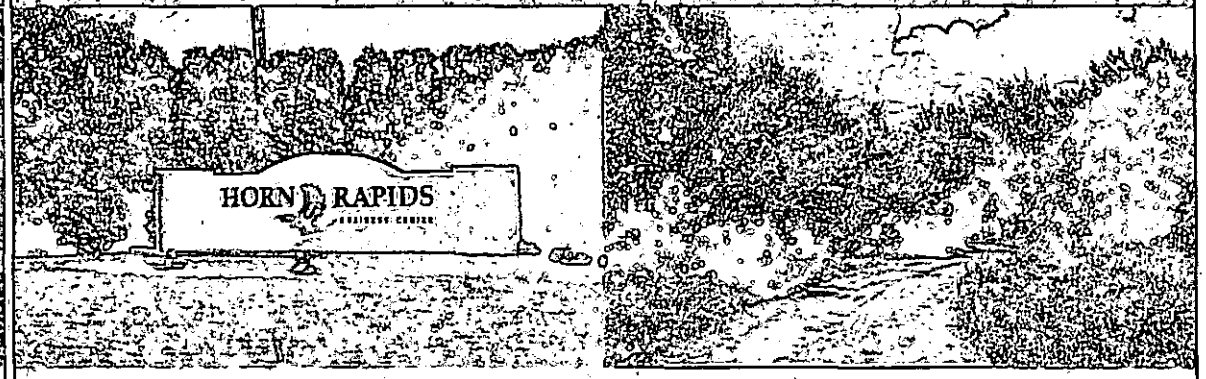


APRIL 2011

CITY OF RICHLAND

HORN RAPIDS MASTER PLAN UPDATE





MacKay & Sposito, Inc.

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Derrick Smith, PE, Senior Vice President

Contents

1. Executive Summary

The Horn Rapids Master Plan (HRMP) area is an approximately 2,466 acre industrial and business center development serving as a gateway to the City of Richland, Washington (City). With outstanding transportation access, the HRMP has been envisioned as an employment center for the community and is anticipated to provide employment and business opportunities for the region. The area generally resembles a large triangle, bounded on the first side by Horn Rapids Road, on the second side by the Landfill and Twin Bridges Road and on the third side by State Route 240 (SR 240). The site hosts a variety of existing industrial and business center uses. The Hanford Nuclear Reservation, located to the north of the site, is the dominant land use in the area. The Horn Rapids residential planned community, comprising 835 acres, is the major land use to the south and west. The Columbia River lies about three miles to the east and the Yakima River is about one mile to the west. The Vicinity Map (Figure 1) shows the general location of the HRMP in relation to the Tri-Cities. The HRMP was initially adopted in 1995 and the changes in the region over the last 16 years highlight the need to re-evaluate how to better leverage the economic opportunity of this area as a burgeoning employment center.

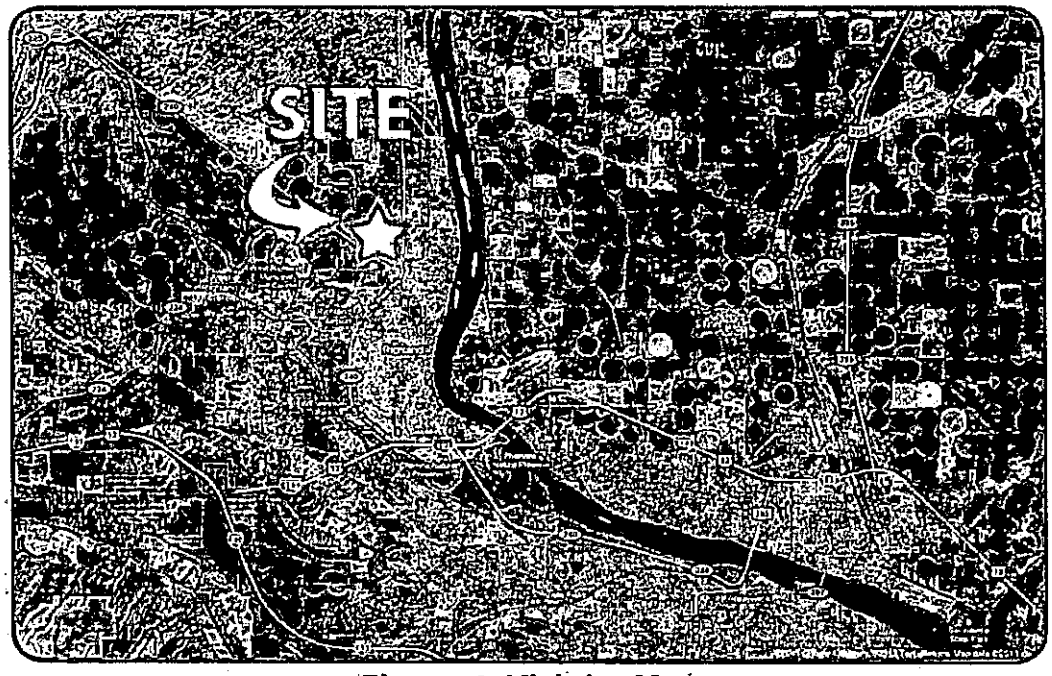


Figure 1: Vicinity Map

The City initiated the HRMP to assess existing land uses and infrastructure, evaluate the untapped potential that the site possessed, and provide some guidelines for future development. This plan looks at the opportunities and challenges associated with developing the site. It also aims to balance the land requirements of current and future industrial and business uses. Staff met with key stakeholders at several City departments, including Public Works, Development Services, Parks, Energy Services, Survey and Economic Development, as well as the Port of Benton to solicit input on the HRMP update. Through these meetings, current issues and concerns were identified and recommendations for the updated plan were established.

The HRMP envisions the area as an active and vital employment and economic center, attracting new development, reinvestment and employment. This is realized with attractive buildings and practical streetscapes that enhance the marketability of the area. These improvements also serve to reinforce its place as a gateway to the community of Richland. Further, the updated master plan recognizes the requirements of large industrial-scale businesses. The HRMP provides for large-acreage users and lays out a plan that assures functional circulation patterns are provided and associated infrastructure needs are sufficiently met.

Three specific focal areas emerged during our HRMP update discussions with stakeholders:

1) Road standards for circulation systems within the HRMP needed to be agreed upon and adopted as part of the update process. Providing this consistency will sustain transportation functions and establish predictability through the permitting processes.

2) Open space areas needed to be re-evaluated, both for suitability of location as well as for landscape design standards. The initial plan envisioned a more manicured campus style of development that does not reflect development that has occurred on the site and is not the best fit for the climate or the region.

3) Development standards needed to be devised for the project to assure consistent growth patterns and provide the City with continuing oversight as parcels are sold.

1.1 Purpose of Plan

The HRMP supplements the Richland Comprehensive Plan and supersedes the previous Master Plan adopted in 1995. The HRMP presents the vision and policies related to the future development of properties within what is now the Horn Rapids Industrial Park and the Horn Rapids Business Center and consolidates this into one master plan for both areas.

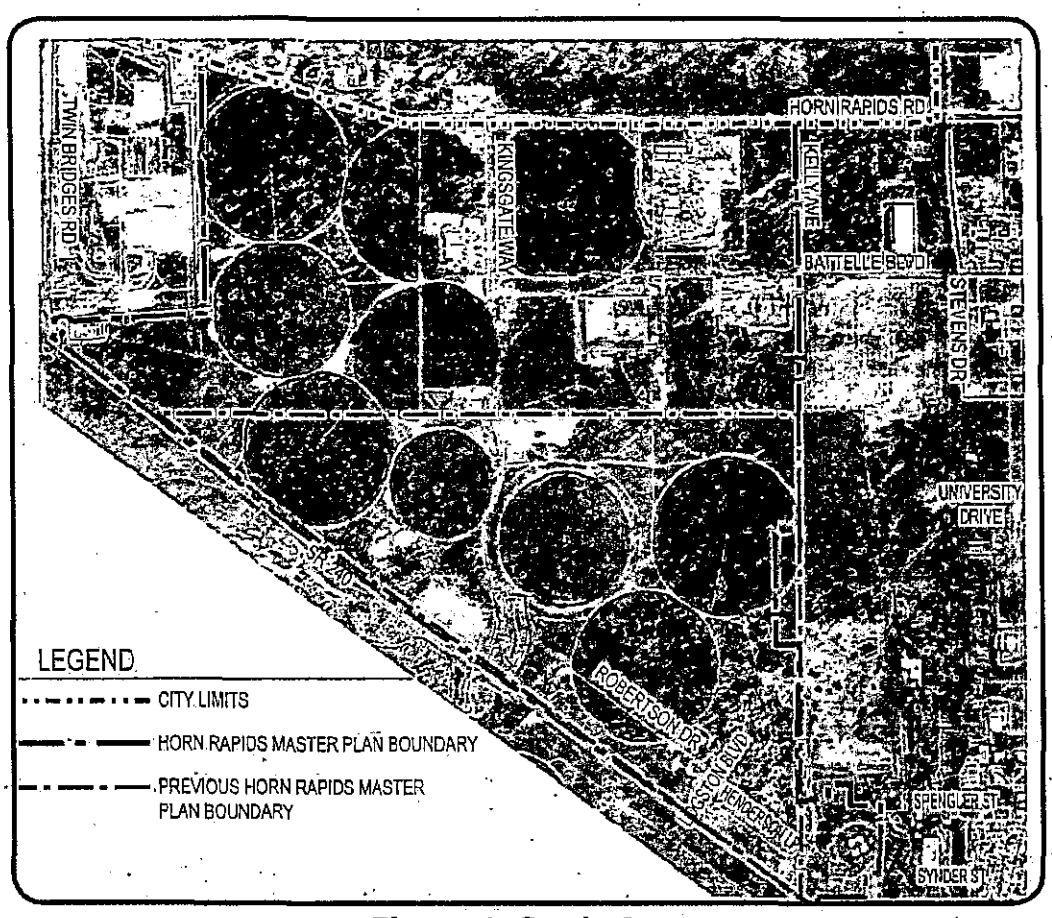


Figure 2: Study Area

In 1995, the City of Richland adopted a Master Plan to guide the development of the Business Center portion of the planning area. Since then, the master plan area has undergone significant changes. These include the development of business and industry onsite, as well as the associated infrastructure. This updated Plan adjusts for these changes as well input from current stakeholders. It addresses both the opportunities and constraints presented by the site and provides guidance for future development. It also ensures the needed infrastructure relates to adjacent properties and c ders existing development on the site. Unlike the original plan, the update also includes the land in the Horn Rapids Industrial Park.

T HRMP represents a long term vision with flexible plan implementation approaches that respect market conditions and interests within the Plan's

anticipated 20 to 30 year build-out period. The Plan area is anticipated to continue to develop as a major employment center in Richland. In addition to employment center uses, the HRMP also provides open space and recreational amenities which will guide the development within this gateway to the City.

It is anticipated that the Horn Rapids Business Center will continue to grow and provide solid tax revenue generation for the City by appealing to companies and businesses associated with the Hanford Reservation as well as companies seeking a high quality business environment for their employees. Finally, supplemental planning and development efforts for the surrounding properties will also have an impact on how the Horn Rapids planning area ultimately builds out.

1.2 Planning Process

The update process began with interviews of key city staff responsible for transportation planning, energy services, survey, sanitary sewer, public water, storm facilities, development review and economic development. The goal of these meetings was to identify existing facilities, previous and ongoing issues as well as planned improvements for the area. Preliminary development alternatives were identified and a second round of stakeholder interviews was held.

Based on feedback received during the second round of stakeholder interviews, changes were made to the plan documents and prepared for review by the Planning Commission. The Planning Commission reviewed a draft of this plan in a public workshop on February 9, 2011.

2. Existing Conditions

The Study Area Plan (Figure 2) identifies the current status of the property as of the end of 2010. The HRMP is located on the north side of SR 240, about seven miles northwest of the City of Richland. The property, which is triangular shaped, consists of approximately 2,466 acres. As noted in the executive summary, the site is bounded on one side by Horn Rapids Road, on the second side by the Richland Landfill and the extension of Twin Bridges Road and on the third side by SR 240. The Hanford Nuclear Reservation is the dominant land user in the area and is located to the north and east of the site. The Horn Rapids residential master planned community, comprising of 835 acres, is the major land use to the south and west. The Columbia River lies about three miles to the east and the Yakima River is about one mile to the west. A legal description for the boundary can be found in Appendix A.

2.1 Land Use and Zoning

As seen in Figure 3: "City of Richland Zoning Map", zoning in the HRMP is primarily heavy and medium industrial with a small amount of general business. The surrounding area consists of a mix of neighborhood retail business, limited business, agriculture and multiple family residence.

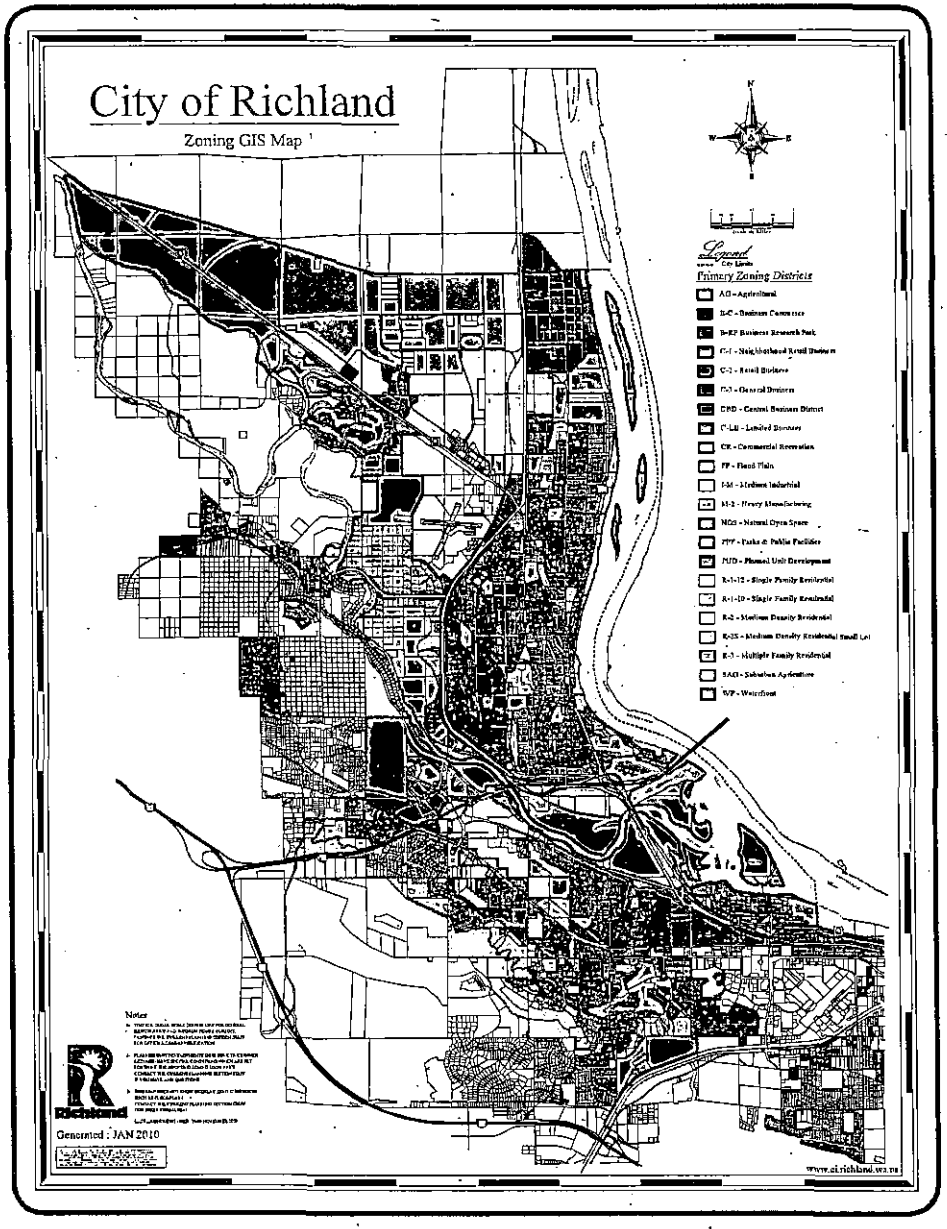


Figure 3: City of Richland Zoning Map

Land Use Designations

The Land Use Plan contains four (4) separate land use designations which are identified below and illustrated in the Land Use Plan (Figure 4). These land use categories are intended to accommodate the City of Richland's ability to recruit new business opportunities. They are also anticipated to promote development which will provide employment for its residents and strengthen and expand its tax base. The following land use categories will be encouraged to implement sustainable development principles.

Industrial Land Use

The medium industrial use district (I-M) is a zone providing for

limited manufacturing, assembly, warehousing and distribution operations and retail and wholesale sales of products manufactured on the premises or products allied thereto; and administrative and research and development facilities for science-related activities and commercial uses that are supportive and compatible with other uses allowed in the district. Regulations are intended to prevent frictions between uses within the district, and also to protect nearby residential districts. This zoning classification is intended to be applied to some portions of the City that are designated Industrial under the City of Richland Comprehensive Plan.

The heavy manufacturing district (M-2) is intended primarily for heavy manufacturing and other closely related uses. Regulations for this district are intended to provide protection principally against effects harmful to other districts. This zoning classification is intended to be applied to some portions of the City that are designated Industrial under the City of Richland Comprehensive Plan.

EcoPark
The area designated EcoPark on the Land Use Plan is intended to be developed under the Heavy Industrial code, but is specifically identified for uses that are compatible to the adjacent landfill.

Commercial Land Use
The general business use district (C-3) is intended to provide a use district for commercial establishments which require a retail contact with the public together with incidental shop work, storage and warehousing, or light manufacturing and extensive outdoor storage and display, and those retail businesses satisfying the essential permitted use criteria of the C-2 (Retail Business) use district. This zoning classification is intended to be applied to some portions of the City that are designated commercial under the City of Richland Comprehensive Plan.

Business Center Land Use
The Business Research Park use classification (B-RP) is intended to provide location for a range of business research and business park uses, including office and administrative uses, designed to be conducted wholly within enclosed buildings. It is also a purpose of this land use classification to protect a portion of the existing industrial land base for research park facility development, which provides high-technology employment opportunities. Light manufacturing uses that compliment the business park or research park use, may be permitted if pertinent to the primary use. The business research park zoning classification provides opportunities for employment in modern, attractive buildings on well-landscaped sites which may be close to residential areas.

Open Space
The Parks and Public Facilities district (PPF) is a use classification intended to provide areas for retention of public lands necessary for open spaces, parks, playgrounds, trails, and structures designed for public recreation and to provide areas for the location of buildings and structures for public education, recreation, and other public and semi-public uses.

The Natural Open Space district (NOS) is a use classification intended to provide area for the retention of publicly owned, natural open spaces, that due to their proximity to wetlands, shorelines, flood plains, or critical habitat areas are too sensitive for intensive use or development.

2.2 Capital Facilities, Public Services and Utilities

Transportation

Built transportation infrastructure in the vicinity of Horn Rapids includes road, railroad and bike lanes. SR 240 runs the length of the southeast boundary of the site. Horn Rapids Road travels the entire north boundary of the HRMP study area. Kingsgate Way bisects the site, connecting Horn Rapids Road and SR 240. The site is also served by rail which connects from the east. This rail, owned by The City of Richland connects to the Port of Benton owned rail lines to the east. This portion of the Port of Benton rail is operated by Tri-City and Olympia Railroad Company (TCRY). (See Figure 10: "Transportation Plan" for a graphic showing additional transportation infrastructure.)

Water

There are two existing pressures zones onsite, roughly divided by a north-south line approximately 1,200 feet east of Kingsgate Way. Pressure Zone 1 is below 600 feet and Pressure Zone 2 is above 600 feet. An existing 30-in diameter concrete lined steel water main runs northwest along SR 240 and the southern boundary of the site. This line connects to an existing 20-in diameter line across SR 240 to serve the residential community to the south. A booster pump station is located on the north side of SR 240 at the end of this main, near the northwest corner of Phase 1, providing the pressure for Pressure Zone 2 above 600 feet. This 30-in main also feeds a 16-in diameter in Logston Blvd and 10-in diameter main in Henderson Loop serving the developed portions of Phase 1.

An existing 16-in diameter line in Horn Rapids Road, 12-in diameter line in Battelle Blvd., and 20-in diameter line in Kingsgate Way serve existing properties in the industrial area. Of these, only the existing 16-in line in Horn Rapids Road is looped. The loop continues down Twin Bridges Road to the west of the landfill, turns east up Battelle Blvd., crosses southeast to Lowe Blvd, and turns southwest and crosses SR 240 to connect to the existing 20-in line through the residential master planned community mentioned previously. See Figure 6: "Water Plan" for additional existing water infrastructure.

Sanitary Sewer

There are three existing sanitary sewer basins onsite. An existing 12-in diameter sewer main in Kingsgate Way, 21-in main in Robertson Drive and 42-in main in Henderson Loop all drain to the southeast. The existing 16-in main in Battelle Blvd drains east to Stevens Drive. Tributary to this line is also an existing lift station at Areva that has been identified for decommissioning. Finally, an existing 18-in sewer line that crosses SR 240 at the southeast corner of the ball fields and drains to the residential master planned community south of SR 240. (See Figure 7: "Sewer Plan" for additional existing sewer infrastructure.)

Storm Facilities

The existing storm drainage systems onsite appear to utilize a combination of ditches and dispersed overland sheetflow. Existing roadways with curb-and gutter have curb-cuts or inlet pipes allowing stormwater runoff to drain into roadside ditches or swales.

Electricity

Power to the east side of the site is currently provided from two existing City of Richland substations. The Snyder substation supplies one feeder to

the southern and far western portion of the site, and can be expanded by two more feeders. The First Avenue substation provides two feeders to the northeast and north central parts of the site, but can be expanded by an additional two feeders to accommodate heavier industrial power users. There is a third existing substation located near the intersection of Stevens Drive and Horn Rapids Road, though this does not appear to serve any of the future development contemplated in the Horn Rapids Master Plan. (Additional existing service is shown in Figure 9: "Electrical Plan".)

Other Plans – The Port of Benton

The Port of Benton owns land directly to the east of the HRMP. This land has been master planned for heavy industrial uses, similar in nature to those proposed in the industrial portions of the HRMP. Provisions have been made to extend a road stub for access as well as associated utilities.

3. Goals and Objectives

The HRMP goals and objectives focus on the City's vision for the Master Plan area. The HRMP is consistent with the Comprehensive Plan goals and policies. This alignment of goals will further encourage the HRMP goals in an area identified for employment growth. The new goals and objectives are listed below, following the Comprehensive Plan element goal most closely associated with it. These include goals pertaining to Land Use, Transportation, Public Facilities, Landscape and Open Space, and Economic Development.

Horn Rapids Master Plan Goals and Objectives

3.1 Land Use and Community Development

Comprehensive Plan Land Use Goal 2: The City will promote industrial development to provide employment for its residents, and strengthen and expand the tax base through its land use policies.

Goal 1: Create an attractive, well-designed industrial, office and commercial center consistent with the goals and policies set forth in the Richland Comprehensive Plan.

Objective 1.1 Adopt specific development standards for the HRMP that compliment the Richland Development Code and propose necessary amendments to the master plan to allow a mixture of light industrial, warehouse, related office, general office, and other ancillary uses.

Objective 1.2 Support the presence and further development of a mix of large and small industrial and business uses that meet employment density and wage targets.

Objective 1.3 Encourage a sustainable approach to site design. Development should follow the sustainability principles of equity, economic development, design, and environment.

Objective 1.4 Continue to support the development of the EcoPark portion of the site.

3.2 Transportation and Circulation

Goal 2: Develop an efficient and safe circulation system for private vehicles, commercial vehicles, emergency vehicles, pedestrians, and cyclists both into and throughout the HRMP area.

Objective 2.1 Develop and implement Road Standards as part of the Master Plan process.

Objective 2.2 Construct and improve street, pedestrian, and bicycle connections to allow for safe and efficient access throughout the Horn Rapids

Business Park.

Objective 2.3 Consider alternate road widths and or unique approaches to streetscape design to accommodate vehicle and bicycle transportation, enhance pedestrian safety and encourage walkability where appropriate.

Objective 2.4 Identify an easement area for the future railroad loop.

3.3 Public Facilities and Services

Comprehensive Plan Utility Element Goal 1: The City will provide existing levels of service to current customers and establish policies to extend utility systems to meet new development requirements.

Goal 3: Ensure that new and existing development will be adequately served by municipal services and facilities.

Objective 3.1 Extend water, sewer and storm drainage systems in the area to support maximum development. Explore the viability of other financing options to fund infrastructure improvements.

Objective 3.2 Encourage the use of creative sustainable approaches to reducing runoff and managing stormwater such as rain gardens and rainwater collection for use in industrial operations and landscape maintenance as appropriate.

Objective 3.3 Preserve a parallel waterline for additional capacity and to irrigate crop circles

3.4 Landscape, Open Space and Recreation

Comprehensive Plan Land Use Goal 6: The City will protect and conserve its natural resources and critical lands and provide public access based on ability of the resource to support the use.

Goal 4: Provide for recreation, open space and landscaped areas by creating a cohesive open space plan.

Objective 4.1 Determine the amount of active recreational and passive open spaces necessary to meet the future needs of the business park and the community as a whole.

Objective 4.2 Encourage the preservation and enhancement of existing natural features.

Objective 4.3 Promote the use of native and drought tolerant landscaping material where possible.

Objective 4.4 Design location of trails, open space, and parks to incorporate areas of geological or environmental significance including steep slopes, wetlands, natural drainage patterns, and contours.

3.5 Economic Development

Richland has established a sense of place that appeals to citizens of all ages. The City has become the entertainment and upscale retail center for the Tri-Cities with a range of shopping and service business that meet the needs of local residents and visitors to the community.

Goal 5: Create a development plan which will protect and enhance long term economic and social interests.

Objective 5.1 Create an economic development climate that supports the existing business community and promotes new business opportunity.

Objective 5.2 Provide the necessary infrastructure to capture employment and industrial growth

Objective 5.3 Provide areas to accommodate a balance of intensity of uses which will enhance Richland's ability to recruit new business opportunities.

4. Land Use Plan and Zoning

4.1 Land Use Designations

The City of Richland zones that encompass the proposed Master Plan have been discussed previously under section "2. Existing Conditions".

Figure 4: "Land Use Plan" shows how these areas are allocated on the site.

The uses shown on the Land Use Plan are general in nature and reflect the existing underlying zoning designations. This Plan does not propose any changes to existing zoning.

4.2 Land Use Summary Table

Land Use Summary Table

Development in the HRMP is intended to provide an attractive employment and economic center, which will draw new development and employment to the area. The Land Use portion of the plan is essential in creating desirable forms of development that captures future growth. The Master Plan is intended to provide for large-acreage users as well as business and commercial uses, civic and open spaces, and other uses that strengthen the City of Richland's economic base. The Land Use Summary Table below provides an overall summary of the land uses with acreages.

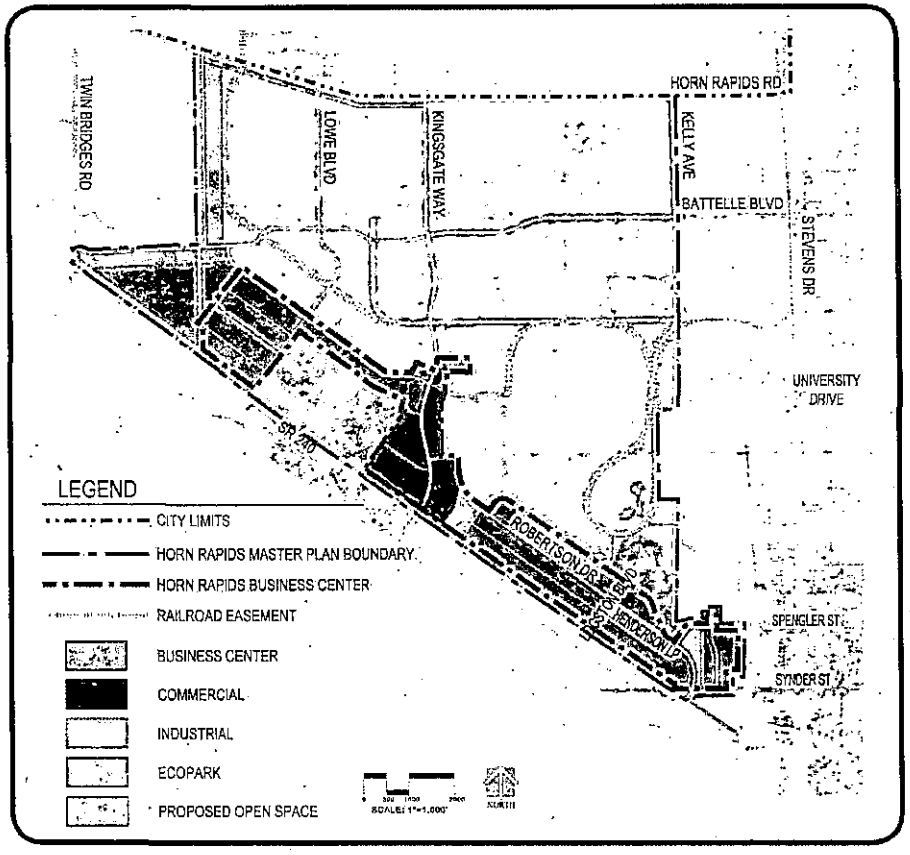


Figure 4: Land Use Plan

Table: Total Land Use Areas

Land Use Designation	Acres	Percent of Total
Business Center/Commercial	380	17%
Industrial	1533	68%
EcoPark	58	3%
Open Space	277	12%

4.3 Design Standards

In order to ensure that the HRMP achieves its potential and that proposed uses are fully integrated, design standards have been drafted to address key site design related issues. The Design Standards are included in Appendix B and include an Architectural Review process that requires applicants seek approval from the Horn Rapids Architectural Review Committee prior to issuance of a building permit. Such oversight will assure project compliance with the standards set forth in this section.

4.4 Sustainable Principles

The HRMP is intended to be developed with sustainable design principles that attract business with operational characteristics that limit their impacts on the natural environment. The HRMP seeks to reduce waste, pollution, energy use, and water consumption within the plan area. The area's sustainability strategy affects land use planning, public infrastructure, transportation, business operation practices, and area maintenance.

Below are guidelines that ensure future development and land use activities within the Master Plan area are more sustainable.

Waste Reduction

•Construction Waste: Encourage that site development and building construction are designed and managed to minimize the amount of materials used on a given project. Projects should seek to minimize waste sent to landfills and explore options to repurpose excess materials for local reuse. New development should utilize durable building materials with longer life spans.

•Recycling: Individual business operations should be planned and/or modified to ensure waste materials are sorted for recycling and reuse. Users should coordinate with local waste management haulers to ensure facilities and resources are adequate to accommodate the recyclable materials generated from the plan area. Examine options to consolidate recycling within the area.

•Composting: Require existing landscaping material and organic waste to be composted or reused. Explore options to provide composting on individual project sites, a central district facility, or collection by the local waste management hauler.

Pollution

•Local Materials: Encourage development projects to use locally available materials to reduce carbon emissions caused by transport. Ensure that local building codes and development standards do not otherwise require construction materials that are only available from far away origins.

•Stormwater Treatment/Water Quality: Require that stormwater generated from paved surfaces is adequately cleaned and purified before it is discharged into the natural system. Require water quality facilities for streets, parking areas, roof tops; treatment requirements are applicable to both public and private developments.

• rnative Transportation: Create a transportation network and building pattern that encourages transit use, pedestrian and bicycle travel,

carpooling, and ridesharing. Develop a trail/multi-use path network to promote bicycle mobility.

•Landscaping and Tree Planting: Install native plant and tree species as part of all new development to offset carbon emissions. Explore opportunities to use vegetation in lieu of fence and wall construction.

Energy Conservation

•Solar Orientation: Individual development and buildings should be sited and oriented to capitalize on solar exposure to lessen energy demands related to lighting and heating.

•Landscaping for shade and cooling: Require landscaping along exterior building walls to provide shade and cooling.

•Daylighting buildings: Encourage the design of buildings with architectural features and utilize sunlight for interior illumination. Ensure that public structures in parks and recreational areas include daylighting elements to offset energy consumption.

•Solar/Wind Harvesting: Explore opportunities to install solar and wind harvesting elements on large buildings to offset energy consumption and to capitalize on their large surface coverage. Explore opportunities to use solar and wind harvesting devices in large openspaces.

Water Conservation

•Native/Drought Tolerant Landscaping: Limit landscaping material to native or climate adapted plant species.

•Rain Water Harvesting: Encourage the collection of rain water for irrigation purposes. Consider the design and construction of harvesting facilities for recreation and other public areas.

•Water Efficient Utilities: Require buildings and recreational facilities to be constructed with water efficient utilities (i.e. toilets, sinks, showers, etc.).

4.5 EcoPark Overview

The area designated EcoPark on the Land Use Plan (Figure 4) is intended to be developed under the Heavy Industrial code, but is specifically identified for uses that are compatible and complementary to the adjacent landfill. Currently, several businesses are operating in this area and the HRMP seeks to formally recognize this developing business node. The HRMP identified appropriate access to facilitate future expansion of EcoPark uses and to assure orderly development of the node. A strip of Open Space is located between the access road and the landfill in order to recognize an existing utility easement that is located on the site.

The HRMP encourages the siting of appropriate businesses in this area and creates a conceptual plan for infrastructure provision as the area builds ut. A rail easement will be reserved along the backside of the EcoPark lots to allow for maximum flexibility for future development. Being that rail is rapidly changing element of the industrial environment, the City wishes to provide suitable locations for this type of business. The City understands nat the demands may change as the industry evolves.

5. Parks, Trails, and Open Space

Parks, Trails, and Open Space Analysis

The HRMP provides comprehensive planning for parks, trails and open space. This plan provides a variety of recreational opportunities within the Master Plan as well as connections to the surrounding community.

The aim of the Parks, Trails and Open Space Plan is to address the goals of the City's Comprehensive Plan. This includes the objectives of the City's Recreation, Open Space, and Historical Site Policies as well as Environmental Policies.

In order for in the HRMP to fulfill the intentions of the City's Comprehensive Plan, it is essential that the proposed trails and open spaces be fully integrated to existing infrastructure. The trails in the HRMP link directly to existing on-street bike paths on Kingsgate Way and Battelle Blvd. Additionally, they tie into the existing Class I trail and on-street bike path on Stevens Drive. The proposed trail on SR 240 directly aligns with proposed connections to both the northwest and the southeast of the HRMP. (See Figure 5: "Parks, Trails and Open Space Plan".)

The trails in the open space plan connect key destinations in Horn Rapids. The Richland Babe Ruth Complex as well as the proposed community park and sports complex are accessible by trail. The main industrial roads have a separated trail paralleling them.

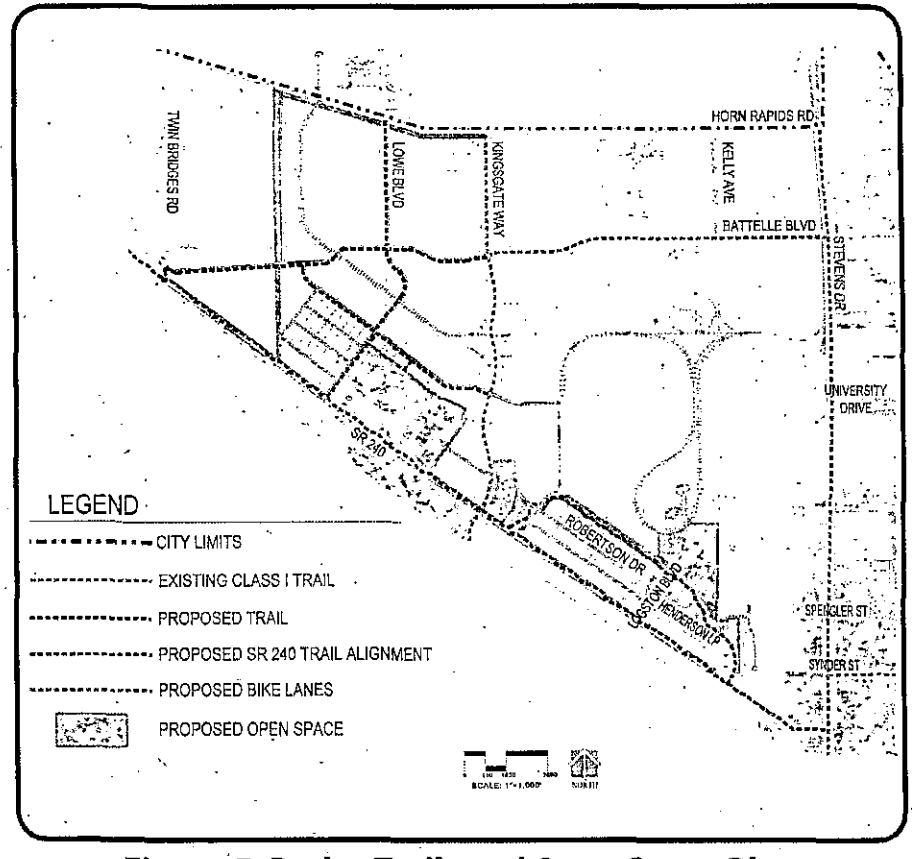


Figure 5: Parks, Trails and Open Space Plan

Throughout the HRMP, numerous trail loops have been developed. These loops provide users opportunity and variety. Trails will encircle the existing and proposed business centers as well as the larger industrial areas.

One of the functions of the trail as it passes to the north of the existing Horn Rapids Business Center is to define the boundary between the existing Business Center and the proposed Industrial Center to the north. This trail will provide recreational opportunities for employees working in Horn Rapids as well as residents of nearby communities.

S al additional factors influence the design and layout of the trails and open spaces. One important consideration is the natural character of the s ncluding slope and aspect. From numerous locations along the trails, visitors can enjoy open vistas of surrounding hills.

The desire to preserve natural site features also aids in determining the siting of trails and open space. To the northeast of the existing business center, open space helps protect an existing wetland. The trail is routed around the edges of the wetland area to the greatest extent possible. Other than the trail itself, this area is left undeveloped to the greatest extent possible. In this way, visitors have access to a diversity of ecological environments.

A typical section of trail paralleling the road includes a 14 foot wide asphalt trail shouldered by a 16 foot vegetated stormwater swale and a 15 foot utility easement. The swale and the utility easement serve to buffer the trail from the road and other site development.

Trails traveling through the larger tracts of open space wind through undeveloped corridors ranging from 100 to 500 feet in width. A typical segment of this trail includes native undisturbed vegetation as well as replanted native upland steppe vegetation.

The extension of utilities from Logston Boulevard northward requires that the disturbed portion of the wetland be mitigated. This mitigation occurs in land set aside as open space near the existing wetland. It is comprised of native wetland and transitional species plantings and is described in further detail in "Section 8: Wetland Impacts & Mitigation".

6. Utilities

Utility Analysis

The HRMP area includes several sites that are ready for development as demonstrated on the existing utility plans as well as the availability of other infrastructure necessary to serve the site. Full build-out can be accommodated with key investments in sewer, water, rail, water and the other utility systems provided for in this Section.

6.1 WATER

The water system that will serve Horn Rapids consists of two pressure zones (see Figure 6: "Water Plan"). Pressure zone 1 will be below 600 feet and pressure zone 2 will be above 600 feet.

Water lines are proposed in all of the major proposed roadways including 12-in DI in Lowe Boulevard and along the west side of the EcoPark. There is uncertainty as to the required size of the proposed water lines, especially in the industrial area where there is the potential for a high water-user such as a processing facility. Therefore, prior to final decision on pipe sizing, some limited modeling effort will need to take place using expected demands based on property acreage and type of use. The size of the existing lines in the Kingsgate area are based on similar modeling which was conducted during the preparation of the Comprehensive Plan, and can likely serve as a model for this effort. The water system will be designed and constructed to provide for the demand of development as well as the minimum fire flow rates as required by the City of Richland Building Codes and Fire Marshall.

Additionally, a proposed 8-in stub is provided at the south end of the Port of Benton property as well as a proposed 12-in stub at the northwest corner for looping purposes

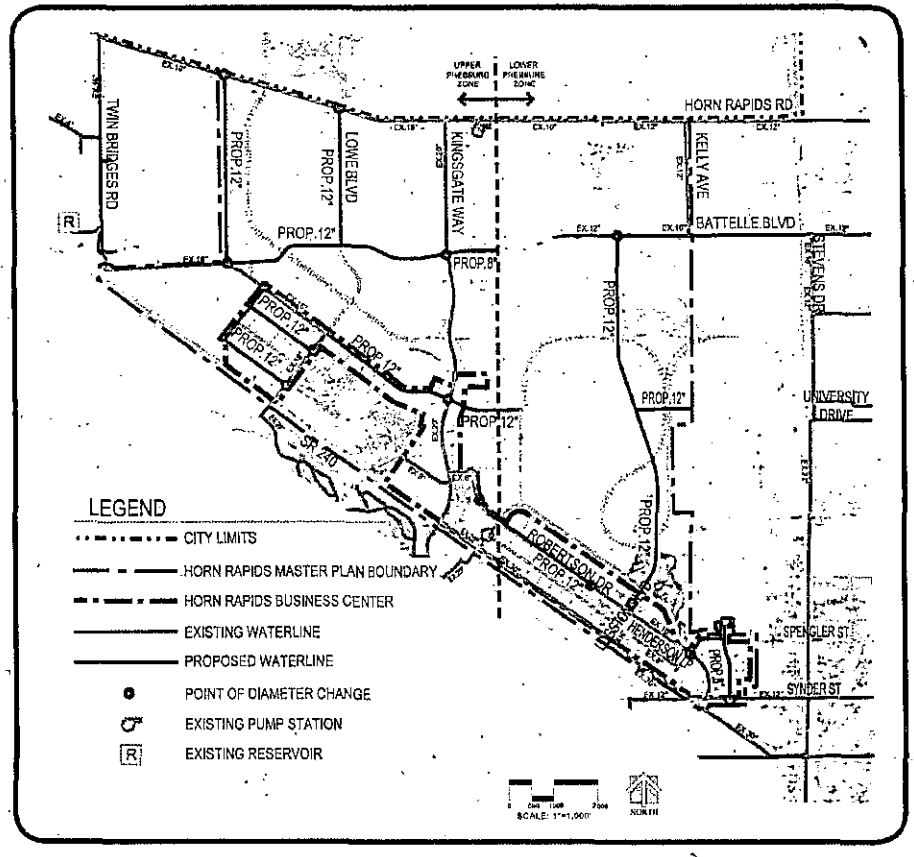


Figure 6: Water Plan

6.2 SANITARY SEWER

Wherever possible, all sanitary sewer improvements will be constructed in the public right-of-way. Where construction in the public right-of-way is not possible, they will be provided an access and maintained easement. In general, Business Center roadways contain an 8-in diameter sewer main, while Industrial roadways contain a 12-in diameter sewer main. Deviations from this standard can be seen in Figure 7: "Sewer Plan". Sanitary sewer infrastructure will be installed with each Phase of the Business Center and as needed in the Industrial area. There is an existing 12-in diameter sewer main in Kingsgate Way, 21-in main in Robertson Drive and an existing 42-in main in Henderson Loop. Phases 1 and 2 of the Business Center as well as the majority of the Industrial lands will be served by collectors and laterals connected to this system. Phase 3 of the Business Center will be collected in a proposed 12-in in Lowe Blvd., and drain into a proposed 18-in main running southeast along SR 240 just south of Phase 2, and ultimately into the residential master planned community south of SR 240.

During construction of Business Center Phase 1, a 24-in diameter sewer main will be also constructed from Areva, near the northeast corner of Horn Rapids, south to the stub of Logston Blvd. This sewer main will be located in an easement, and is designed to allow the existing life-station at Areva to be decommissioned. This line will also provide future sanitary sewer service to properties east of Kingsgate Way. A portion of the 24-in sewer line to Areva will be located in a wetland area. An access road as well as appropriate wetland mitigation will need to be provided for that work. (See Figure 7: "Sewer Plan")

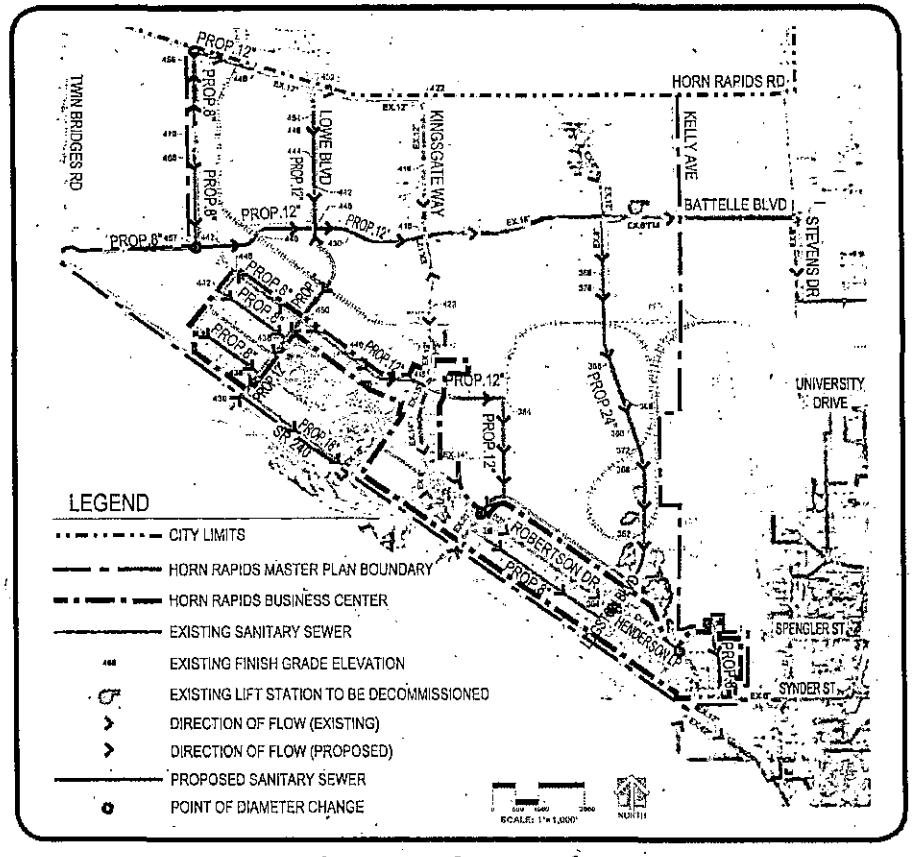


Figure 7: Sewer Plan

It is important that impacts to the identified wetlands be minimized where possible. Unfortunately, the proposed 24-in diameter sewer main must run a significant distance at a flat slope. This constraint limits the number of bends and manholes which can be placed in the sewer line. As part of this study, several alternatives were evaluated. It was determined that complete avoidance of the wetlands was difficult or impossible while maintaining gravity flow. However, there are existing disturbances within the wetlands (i.e. existing roads / trails) which could be used to lessen wetland impacts. T e options will be evaluated more closely during design, when more detailed field information is available. The ultimate goal will be to provide a g ty sewer solution while minimizing wetland impacts.

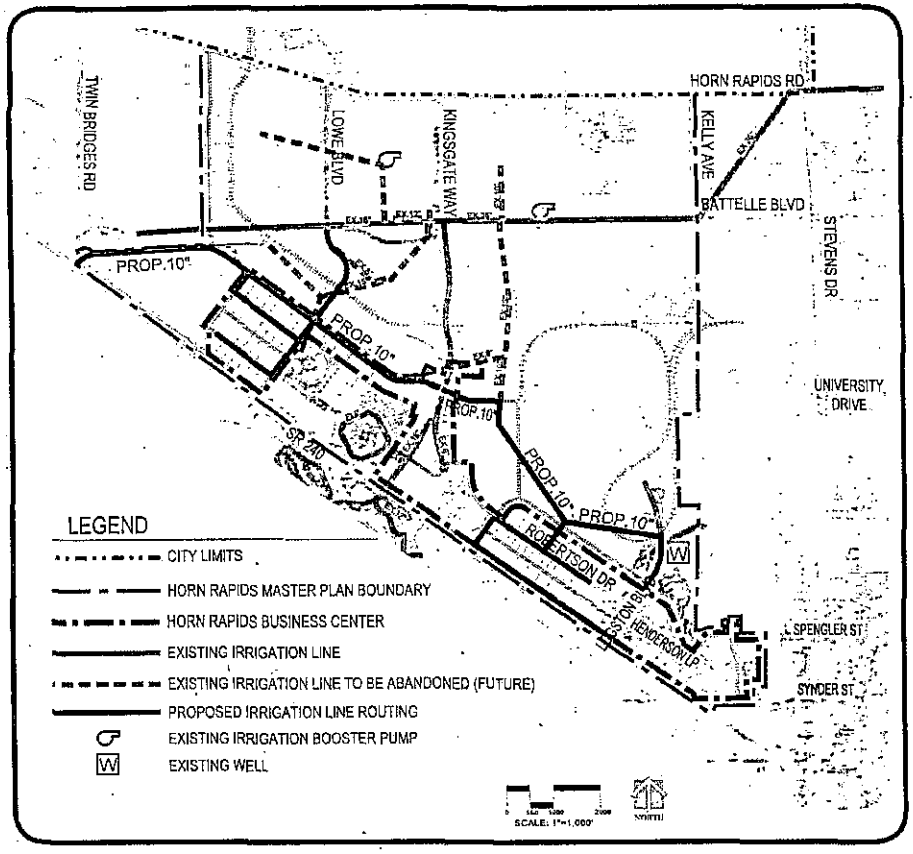


Figure 8: Irrigation Plan

6.3 IRRIGATION

Irrigation water may be distributed from two different sources which would serve separate systems (see "Irrigation Plan" Figure 8). The primary source is the existing agricultural system which is currently used to irrigate crop circles in what will be the industrial park. These water rights may be used for the irrigation of developed lots, specifically in the business park area. Irrigation in the industrial park is not anticipated due to the significantly lower road and frontage standards for this land use. A second available source of irrigation water is an existing well located northeast of the intersection of Robertson Drive and Logston Boulevard. This source may be used to serve the Phase 1 Business Center on a separate system, or interconnected with the primary system to provide additional water. New irrigation lines will be constructed per the Irrigation Plan. For the purposes of the cost estimate it was assumed that only the existing primary irrigation system would be used. The portions of the existing irrigation system no longer required may be abandoned in place or removed and disposed of as needed. The phasing of the cost estimate also assumes that Phase 1 A commercial area will be temporarily served the by the existing 12-in line used to irrigate the crop circle there, and that line will be abandoned only after the construction of the proposed 10" line up to University Drive. It is assumed this permanent connection will be constructed with the Phase 1B improvements.

At this time M&S has not conducted a full accounting of the acres of water right available to Horn Rapids development, but due to the nature of developed properties they are likely more than sufficient to accommodate all future irrigation needs. There may be some possibility of converting the excess irrigation water right to domestic water right to add to the City's existing water system, but that is well outside of the scope of this work.

6.4 STORMWATER

Stormwater runoff from the roadways will be handled in grass-lined swales which shall not only collect and treat the stormwater, but detain it for infiltration or evaporation. Stormwater runoff from individual properties shall be handled onsite and treated either through oil-water separators or grass-lined biofiltration swales prior to infiltration. Due to high infiltration rates in this area and low rainfall, quantity of runoff is not considered an issue; however low-points where large volumes of runoff would tend to pond in the case of catastrophic system failure should have an outfall to low undeveloped land.

6.5 ELECTRICAL

The power for Horn Rapids will be supplied from two existing and one future City of Richland substations (see Figure 9 "Electrical Plan"). The Snyder substation will supply three feeders and the University Drive substation will supply four feeders to serve the east half of the project. A new substation with 4-5 feeders will be constructed near the southwest corner of Allvac-Richland to serve primarily the new industrial users on the west side of Horn Rapids. A new 115KV transmission like will be located in a 100' wide north-south corridor along the west side of the EcoPark and down across SR 240 to a second new substation planned to serve future development on the south side of SR 240. (See Figure 9: "Electrical Plan")

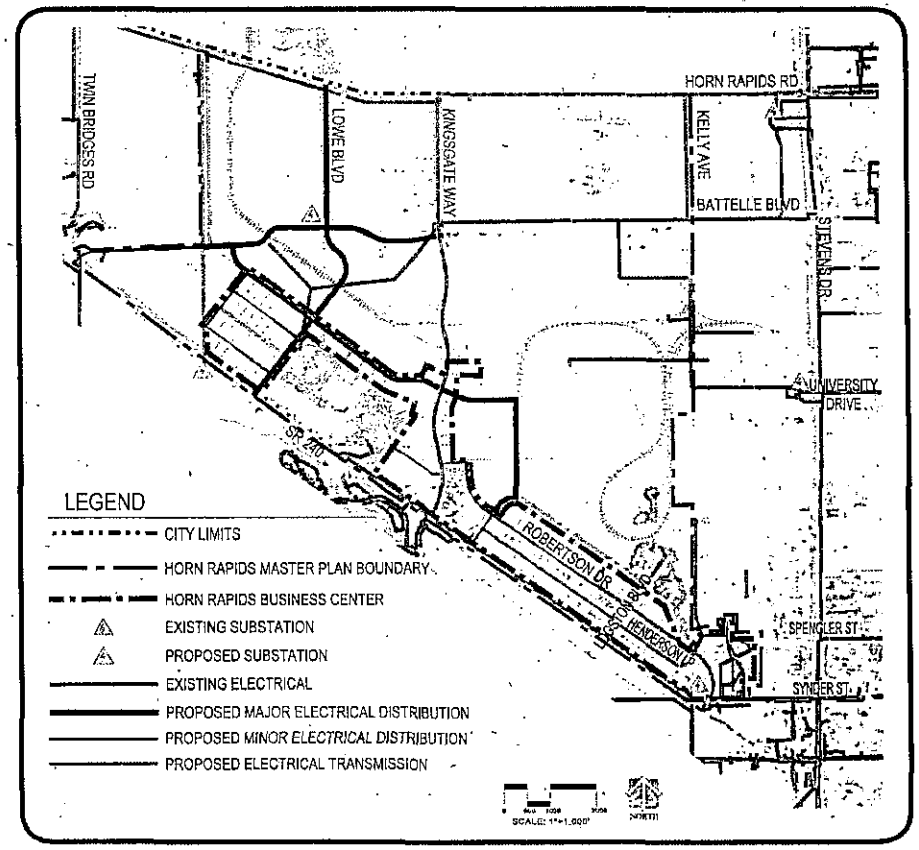


Figure 9: Electrical Plan

6.6 NATURAL GAS

There is an existing 4-in natural gas line in Robertson Avenue, an existing 8-in line in SR 240, and an existing 8-in line in Kingsgate Way. Included in the lineal footage road costs is the assumption that conduit for natural gas will be included in the utility easement. No separate plan is provided.

6.7 TELECOMMUNICATIONS

Business center and Industrial tenants have a wide range of potential te ommunications infrastructure needs. Included in the lineal fo ge road costs it is assumed that conduit for telecommunications in tructure will be included in the utility easement and no separate

plan is provided.

6.8 TYPICAL UTILITY SECTION

All of the streets shall have utilities placed in the general locations shown in the section below (see "Transportation Plan", Figure 10). A utility easement is provided on both sides of Industrial and Business Center roadways sections, immediately outside of the right-of-way, and shall be used for all underground electrical, telephone, cable T.V. and communications utilities as well as above-ground vaults or junction boxes. Under no circumstances will these be placed in the grass-lined swales.

7. Transportation

There is tremendous growth potential within the boundaries of the HRMP, with extensive pre-planning already undertaken to assure appropriate circulation systems. The Transportation Plan (Figure 10) identifies the transportation improvement projects that can be completed for continued growth.

7.1 Transportation Analysis

The road network plan and associated phasing of construction improvements has been designed to comply with the following policies of the Comprehensive Plan:

•The City should ensure that direct access is provided to property through the development of a network of collector and access streets, whose design would be as unobtrusive as possible to serve, rather than be the dominant feature of the area.

•The City should ensure that transportation facilities are designed to be aesthetically pleasing.

•The City should ensure the improvement of existing circulation systems to provide for maximum efficiency in vehicle movement.

•The City should encourage the development and enhancement of principle entrance ways into Richland.

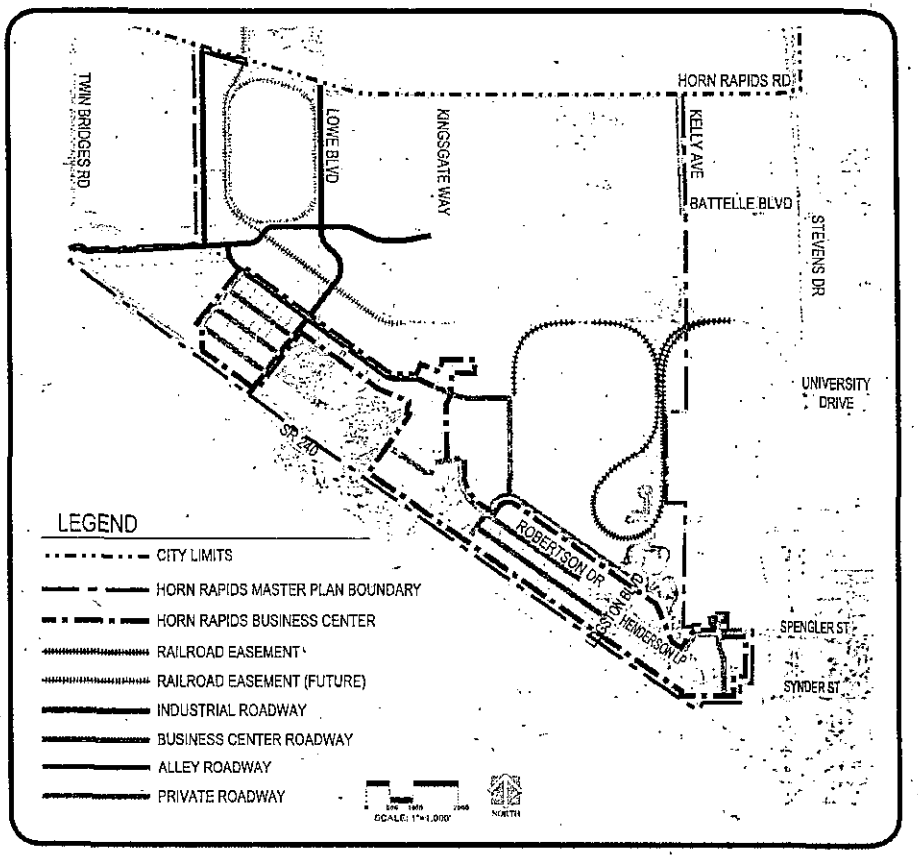


Figure 10: Transportation Plan

•The City should ensure that there is adequate access and transportation facilities should be provided to industrial sites.

•The City should ensure vehicular traffic to industrial sites is be routed away from the central business route.

The primary components of the existing road network serving Horn Rapids are SR 240 along the south boundary, Horn Rapids Road which runs a[illegible] the north boundary, and Kingsgate Way a north-south principal arterial which runs between them roughly bisecting the property. Ultimately it [illegible] planned to extend Kingsgate Way to the south through the residential master planned community and connect to Van Giesen Street, thereby p[illegible]ding a new route to Van Giesen Street for Hanford-related traffic.

Additional access points to SR 240 will be limited to those approved by the Washington State Department of Transportation (WSDOT). Currently the Robertson Avenue and Logston Boulevard provide access to SR 240 on the east for Phase 1. Additional connections of Lowe Boulevard and University Drive on the west side serving Phase 3 are proposed. WSDOT intersection spacing requirements for state highways should allow the connection of Lowe Boulevard without issue, however the connection of University Way on the far west corner of the property could pose an issue due to its proximity to the existing intersection of Twin Bridges Road at the southwest corner of the Richland Landfill. This connectivity will require further evaluation and coordination with WSDOT.

As part of the Master Plan, a series of internal collector streets are also proposed. These streets which will distribute traffic between the major roads, individual properties, and other internal streets would primarily serve the proposed Business Park. Two of these roadways, Robertson Avenue and Logston Boulevard, are extensions of existing streets. The remaining roadways are new alignments. Collectors are only proposed in the Business Center area so as to retain the maximum flexibility and parcel size within in the Industrial Park. However, it is likely that additional collector streets will be required as the Industrial Park develops.

7.2 Road Standards and Road Sections

Industrial Roadway Section

The proposed industrial roadway section shown below consists of an 85' right-of way with a three lane street and grass-lined swales on either side for collection and treatment of stormwater. The west or south side of the roadway has a 10' asphalt trail with 2' gravel shoulders for pedestrian and bicycle connectivity. A 15' utility easement is located on both sides of the street, immediately outside of the right-of-way. (See Figure 11: "Industrial Roadway Section")

Business Center Roadway Section

The proposed business center roadway section shown below consists of a 75' right-of way, three lane street with monolithic curb and gutter and grass-lined swales on both sides for collection and treatment of stormwater. Stormwater will be routed to the swales through curb-cuts. The east or north side of the roadway has a 6' concrete sidewalk. A 10' utility easement is located on both sides of the street, immediately outside of the right-of-way. (See Figure 12: "Business Center Roadway Section")

Alley Section

The proposed alley section shown below consists of a 69' right-of way, three lane street with monolithic curb and gutter and grass-lined swales on both sides for collection and treatment of stormwater. Stormwater will be routed to the swales through curb-cuts. There is no sidewalk or trail associated with the alley. A 10' utility easement is located on both sides of the street, immediately outside of the right-of-way. (See Figure 13: "Alley Section")

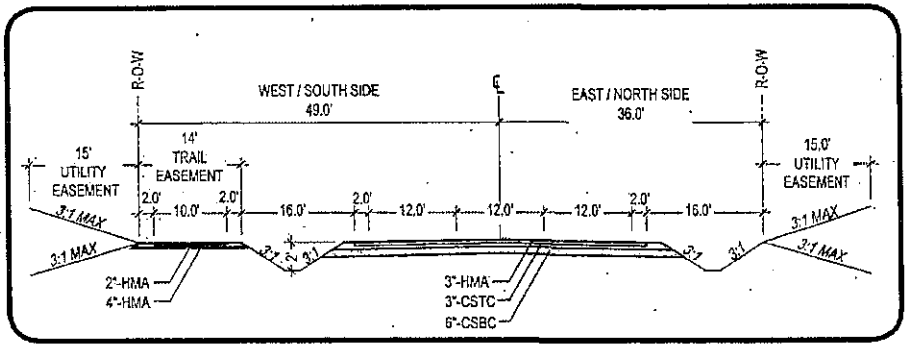


Figure 11: Industrial Roadway Section

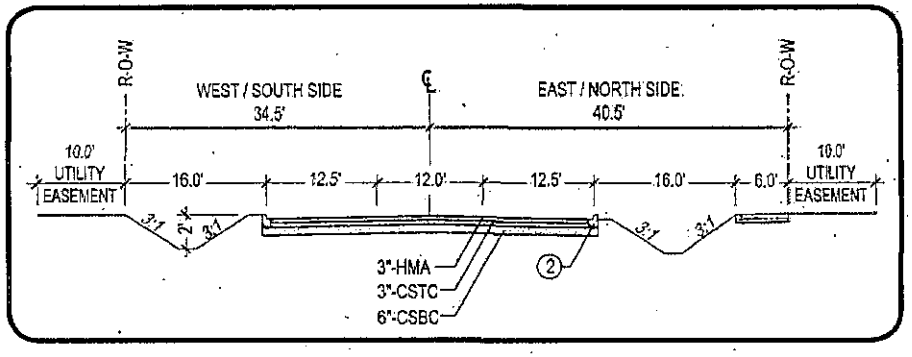


Figure 12: Business Center Roadway Section

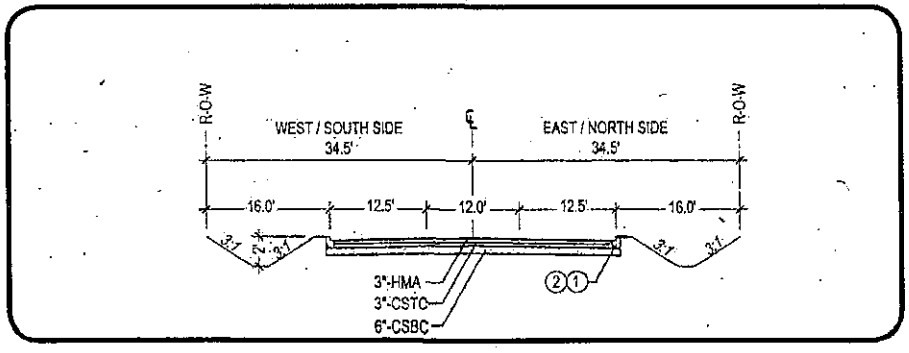


Figure 13: Alley Section

7.3 RAILROAD

Rail will be extended from the existing spur west of Kingsgate Way at the southeast corner of the WHECO property. The new spur will be approximately 1.5 miles in length and will run northwest, paralleling the proposed extension of University Drive, before turning north along the eastern edge of the EcoPark and terminating just south of Horn Rapids Road. Railroad crossing will be constructed on the proposed Lowe Boulevard and Battelle Boulevard. (see Yellow, "Proposed Rail Line (Future)" in Figure 14).

A railroad loop will also be constructed on the south side of the existing private rail between the existing rail line and the Port of Benton Property. This new loop will be approximately 0.3 miles wide (east-west) and 0.7 miles long (north-south), with the easternmost end on the Horn Rapids Master Plan boundary. (see Red, "Proposed Rail Line" in Figure 14).

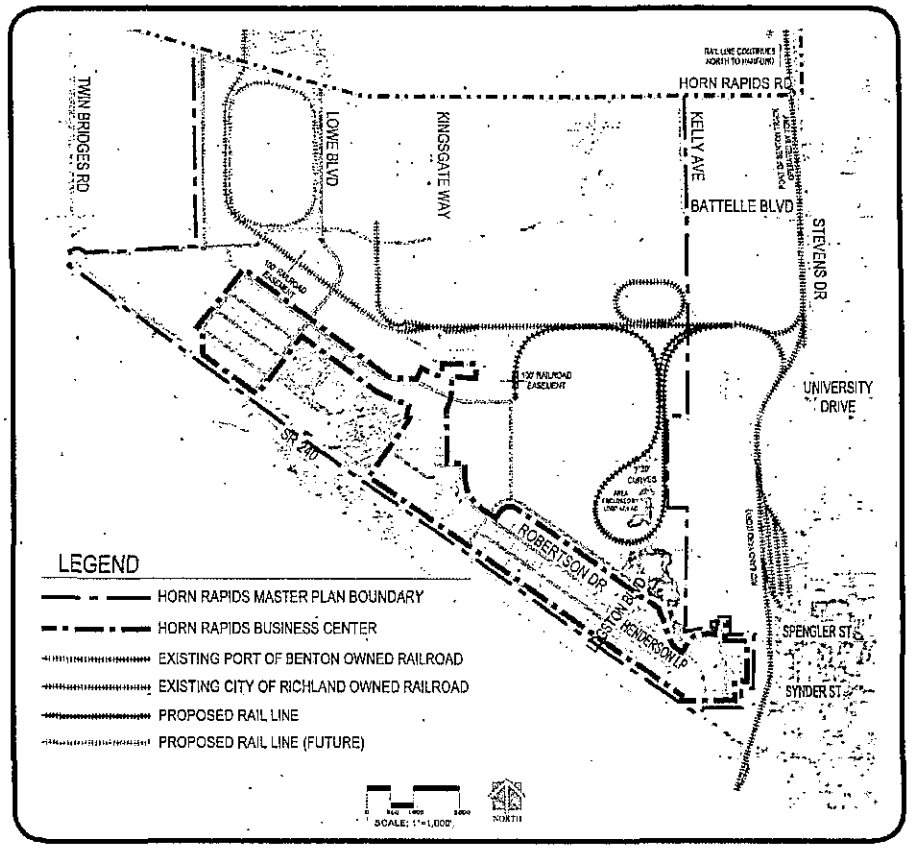


Figure 14: Railroad Infrastructure Plan

8. Wetland Impacts and Mitigation

Nine separate wetlands were previously identified and delineated within the HRMP. These consist of Category II and III depressional wetlands, all containing similar hydrophytic vegetation, hydric soils, and hydrology. The proposed water and sanitary sewer utility alignment will impact two wetlands, Wetlands D and F, and their associated wetland buffers. Impacts consist of excavating a 3.5 ft trench in the wetlands to install water and sanitary sewer utilities. Once the trenching is complete, a 12-foot maintenance road will be installed over the utility alignment. The estimated impact to these wetlands is 4,932 sq ft to Wetland D (rated as Category II) and 34 sq ft to Wetland F (rated as Category III). The proposed alignment for Logston Boulevard will impact the buffer area of Wetland J. The estimated impact to this buffer area is 9,856 sq ft. (See Figure 15: "Wetland Impacts and Mitigation Plan")

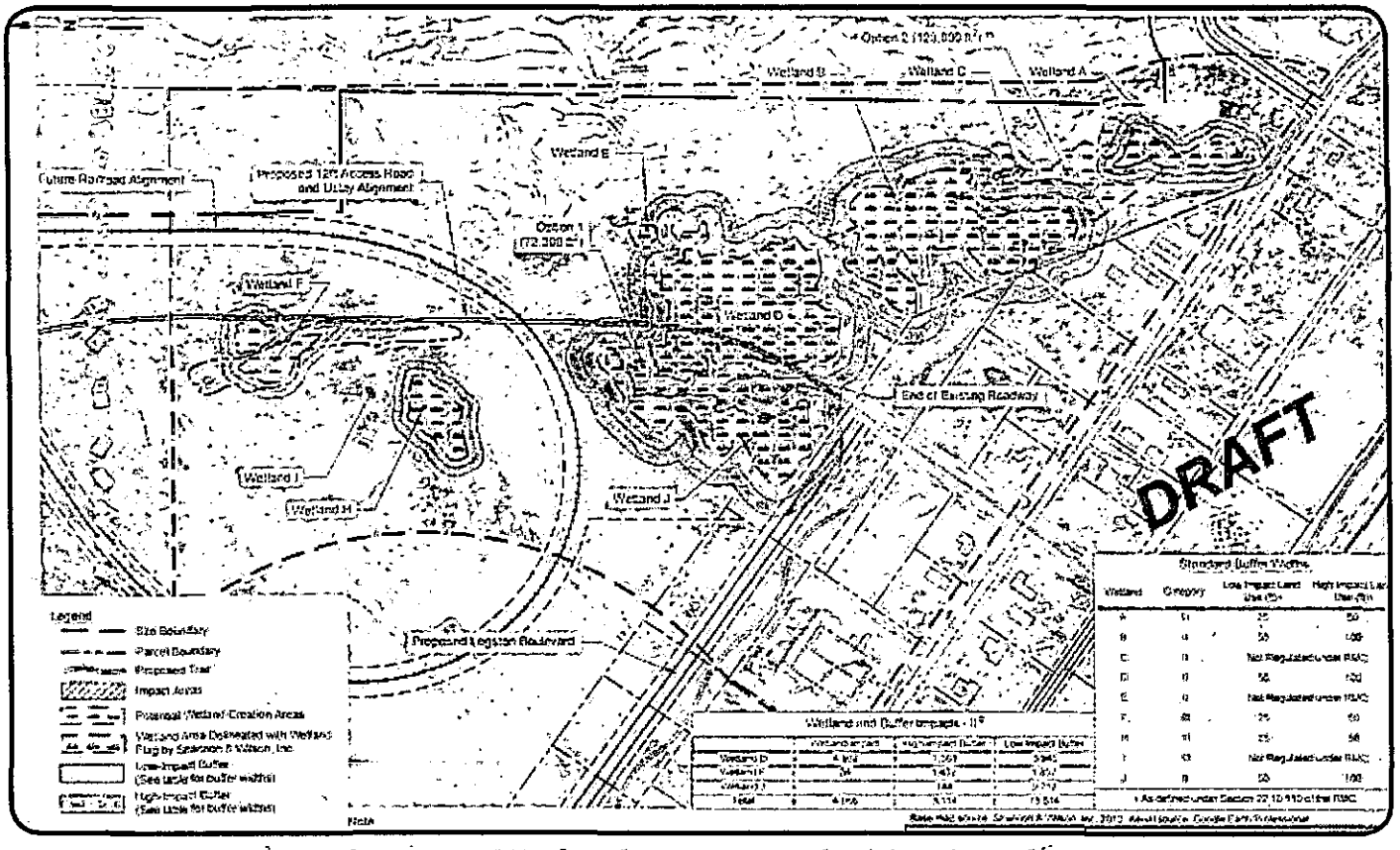


Figure 15: Wetland Impacts and Mitigation Plan

The land use pattern minimizes wetland and buffer impacts. Logston Boulevard was re-designed to avoid all impacts to the wetlands. Alternate alignments for the utilities were considered, however, due to property locations and utility access requirements impacts were unavoidable. The site as already proven to be favorable for wetland creation due to the high water table and easy colonization by native hydrophytic vegetation. This lows for flexible, onsite, in-kind mitigation that can be tailored to meet mitigation requirements. Our recommendation for mitigation is to create ategory II forested wetland area by connecting the southern end of Wetland D to Wetland J. Due to the current condition of the wetlands, wetland

enhancement alone is not expected to adequately mitigate for the anticipated loss of wetland area and functions. These impacts will require 14,864 sq ft of wetland creation for mitigation as required under RMC Section 22.10.130. Buffer mitigation can be accomplished by additional wetland creation and/or incorporating invasive species control in the buffer areas near the mitigation site.

Under the Richland Municipal Code (RMC Section 22.10.120), Washington Department of Ecology (Ecology) regulations unavoidable impacts must be mitigated by providing compensation. These wetlands have been determined by the US Army Corps of Engineers (USACE) to be isolated and therefore not subject to USACE regulation; however they will be regulated by the City and Ecology. As the current project plans will have permanent impacts to the wetland area, it is anticipated that wetland and buffer mitigation will be required by the City and Ecology.

9. Infrastructure Costs

General concepts for the provisions of basic infrastructure are illustrated and described in the previous sections. These infrastructure concepts are meant to inform and guide future development decisions; however, in all likelihood, the final design will vary from these concepts. Therefore, the rough cost estimates based on the Plan's concepts provide information to inform what one approach would look like and might cost in today's dollars. These Cost Estimates can be found in Appendix C. Figure 16 sets out a conceptual phasing plan associated with the Cost Estimates providing for logical project boundaries that can respond to market demands.

This estimate represents an engineer's opinion of costs based on the conceptual Master Plan, assumptions of unit prices, and past experiences. It does not represent a guaranteed development cost.

Utilities were generally estimated on a per lineal foot basis, inclusive of all tees, connections, valves, poles, backfill, excavation and other appropriate items incidental to the utility line. Two new substations are included in the Industrial estimate as directed by the West Richland power engineers. Cost-sharing and alternative funding mechanisms may be pursued for these large capital improvements.

Three road sections are proposed with the Master Plan update. These are Industrial, Business Center, and Alley. The costs for each were developed from measured material quantities and unit prices (in 2010 dollars), then converted to an average cost per lineal foot of roadway. These average costs were used in the estimates for each section for ease of approximation. All rail crossings were assumed to be at-grade. Any other rail crossing configuration would add substantial additional costs.

The Cost Estimate is divided into five sections:

- Phase 1A – Business Center east of Kingsgate Way to the eastern boundary of the Master Plan.

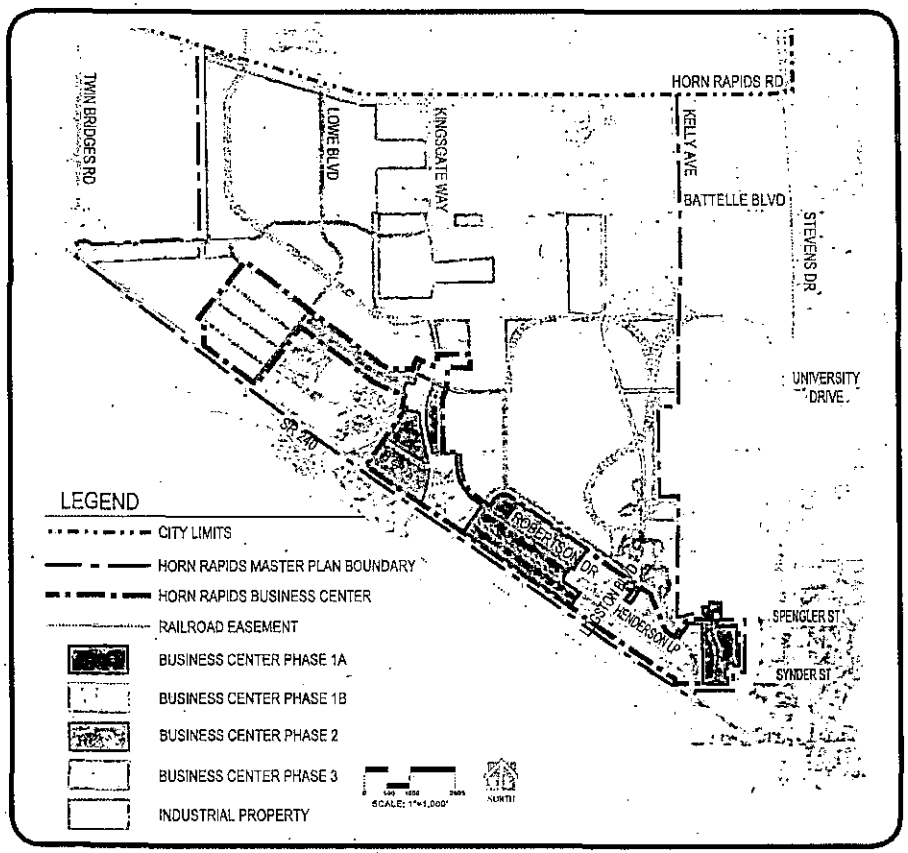


Figure 16: Cost Estimate Plan

Table: Proposed Development Areas

Land Use Designation	Acres	Percent of Total
Business Center	259	20%
Industrial Property	1006	80%

•Phase 1B – Other Phase 1 development not shared by the Business Center such as the sewer main to Areva and associated pump-station decommissioning.

•Phase 2 – Business Center west of Kingsgate Way and east of Lowe Blvd.

•Phase 3 – Business Center west of Lowe Blvd. to the western boundary of the Master Plan at Twin Bridges Road.

•Industrial – All Industrial lands including potential rail improvements.

The Industrial land development costs are included together as a separate phase, however this is not intended to indicate that these improvements will be built at once or the order in which they will be constructed relative to the Business Center Phases. This estimate is only intended to capture all of the costs associated with the full build-out of all industrial lands. It it assumed that the improvements will be built as needed, as users come to the park.

The total development cost for Phases 1A, 2, and 3 of the Business Center (including hard costs, engineering, permitting, construction administration, etc.) were divided across developable acres served to yield an anticipated cost per developable square foot. This number can inform future lot prices. The development cost for business Center Phase 1B, though constructed concurrently with Phase 1A, is allocated to the Industrial lands in the cost per developable acre calculations as those improvements serve industrial lands.

10. Implementation

10.1 Economic Development Strategy

Over the life of the HRMP, many important decisions will be made. These choices will impact how development evolves and the specific phasing of improvements. A range of ways to fund the basic infrastructure, with site specific infrastructure connections being the responsibility of the developer of the individual sites, could be available to the City, for example:

-Public/Private Development Agreements: New development agreements between the City and a developer specifying financing needs and responsibilities for infrastructure needs that serve a wider area than the developer is contemplating.

-Tax Increment Financing (TIF) or Local Revitalization Financing (LRF). This is a method of distributing property tax collections within designated areas to finance infrastructure improvements within these designated areas. Under the TIF method, infrastructure is financed by the incremental increase in tax revenue that is made possible by infrastructure improvement within the designated area. The City has been successful in obtaining an allocation under the State's current LRF program.

-Grant Opportunities: While no specific grant opportunities have been identified that would be a good match for needed improvements in the HRMP, over the build out period of development, grant opportunities will likely emerge. HRMP includes aspects that should make it attractive for grants that promote economic development, especially in these current times of economic recession

-Local Improvement District (LID): The City can work with purchasers/developers to establish a local improvement district which includes an agreed upon repayment schedule based on agreed upon equitable criteria; the City sells bonds to cover the costs of infrastructure to be built within the district, and the owners/developers pay off the bonds through regular payments usually over a 10 to 20 year period.

Appendix A - HRMP Boundary Legal Description

HORN RAPIDS - R.A.I.S.E DESCRIPTION

A PORTION OF LAND LYING IN SECTIONS 14,15,16,17,19,20,21,22,23,26,27,28 AND 34, ALL WITHIN TOWNSHIP 10 NORTH, RANGE 28 EAST, W.M., CITY OF RICHLAND, STATE OF WASHINGTON, BEING DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT BEING THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY SR-240 AND THE NORTH SECTION LINE OF SECTION 34, SAID POINT ALSO BEING THE NORTH QUARTER CORNER OF SAID SECTION 34; THENCE NORTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 16,200 FEET MORE OR LESS TO THE EASTERLY RIGHT-OF WAY LINE OF TWIN BRIDGES ROAD; THENCE NORTHERLY ALONG SAID EASTERLY RIGHT-OF-WAY LINE TO THE NORTH LINE OF SAID SECTION 19; THENCE EASTERLY ALONG SAID NORTH LINE OF SECTION 19, 2 FEET MORE OR LESS TO THE COMMON SECTION CORNER OF SECTIONS 17, 18, 19 & 20; SAID SECTION CORNER BEING ON THE SOUTH LINE OF THAT PROPERTY KNOW AS THE CITY OF RICHLAND LANDFILL, AND THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 20 BEARS NORTH 86°37'55" EAST A DISTANCE OF 2618 FEET MORE OR LESS; THENCE CONTINUING ALONG SAID PROPERTY LINE THE FOLLOWING FIVE COURSES;

1. EASTERLY ALONG THE NORTHERLY SECTION LINE OF SECTION 20 A DISTANCE OF 100.00 FEET TO A POINT IN A CHAIN LINK FENCE;

2. THENCE LEAVING SAID SECTION LINE ALONG SAID CHAIN LINK FENCE SOUTH 03°19'06" EAST A DISTANCE OF 399 FEET MORE OF LESS TO THE CORNER THEREOF:

3. THENCE CONTINUING ALONG SAID CHAIN LINK FENCE AND EXTENDING BEYOND A CORNER THEREIN, NORTH 86°40'54" EAST A DISTANCE OF 2,497 FEET MORE OR LESS TO THE SOUTHERLY PROJECTION OF THE NORTH-SOUTH CENTERLINE OF SECTION 17 THROUGH THE SAID NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 20:

4. THENCE NORTH 00°15'25" WEST A DISTANCE OF 400.91 FEET ALONG SAID SOUTHERLY PROJECTION TO SAID NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 20:

5. THENCE CONTINUING NORTH 00°15'25" WEST A DISTANCE OF 3809.00 FEET MORE OR LESS TO THE SOUTHERLY RIGHT-OF-WAY LINE OF HORN RAPIDS ROAD; THENCE SOUTHEASTERLY ALONG THE SOUTHERLY LINE THEREOF A DISTANCE OF 3,700 FEET MORE OR LESS TO AN ANGLE POINT THEREIN;

THENCE EASTERLY, CONTINUING ALONG THE SOUTH RIGHT-OF-WAY LINE THEREOF A DISTANCE OF 9,300 FEET MORE OR LESS TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF STEVENS DRIVE; THENCE NORTHERLY ALONG THE WESTERLY LINE THEREOF A DISTANCE OF 2,700 FEET MORE OR LESS TO A POINT ON THE WESTERLY PROJECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF A ROAD KNOWN AS GEORGE WASHINGTON WAY AS SHOWN ON RECORD OF SURVEY 3673, SAID COUNTY SURVEY RECORDS; THENCE SOUTHEASTERLY ALONG SAID NORTHERLY LINE THEREOF A DISTANCE OF 800 FEET MORE OR LESS TO A POINT THE NORTH BOUNDARY OF THAT TRACT OF LAND CONVEYED TO THE PORT OF BENTON, AS DESCRIBED IN UIT CLAIM DEED FROM THE U.S.A. TO THE PORT OF BENTON, RECORDED IN AUDITOR'S FILE NO. 521608, RECORDS OF BENTON COUNTY: THENCE STERLY ALONG SAID NORTH BOUNDARY A DISTANCE OF 1,667.00 FEET MORE OR LESS TO THE ORDINARY HIGH WATER LINE OF THE COLUMBIA

RIVER: THENCE SOUTHERLY ALONG SAID WATER LINE A DISTANCE OF 8,200 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SECTION 24; THENCE WESTERLY ALONG SAID SOUTH LINE A DISTANCE OF 85.00 FEET MORE OR LESS TO THE COMMON SECTION CORNER OF SECTIONS 23, 24, 25 & 26 BEING ON THE CENTERLINE OF SPROUT ROAD AS SHOWN IN RECORD OF SURVEY 1199; THENCE CONTINUING ALONG SAID CENTERLINE AND THE SOUTH LINE OF SECTION 23 A DISTANCE 2,765 FEET MORE OR LESS TO THE CENTERLINE OF SAID GEORGE WASHINGTON WAY; THENCE NORTHERLY ALONG SAID CENTERLINE OF GEORGE WASHINGTON WAY 532 FEET MORE OR LESS TO THE EASTERLY PROJECTED CENTERLINE OF CURRY ROAD AS SHOWN ON RECORD OF SURVEY 4048 (CURRY STREET); THENCE WESTERLY ALONG SAID PROJECTED CENTERLINE A DISTANCE OF 1,009 FEET MORE OR LESS TO A POINT ON THE WEST BOUNDARY OF "PARCEL A" AS DEPICTED IN RECORD OF SURVEY 4104; SAID POINT ALSO BEING ON THE CAMP HANFORD LINE; THENCE SOUTHERLY ALONG A PORTION OF THE WEST LINE OF "PARCEL A" AND ALONG THE CAMP HANFORD LINE A DISTANCE OF 2,940 FEET MORE OR LESS TO AN ANGLE POINT MARKED BY A BRASS DISK, "CH-10-1"; SAID ANGLE POINT BEING ON THE WESTERLY LINE OF "PARCEL B" OF SAID RECORD OF SURVEY 4104; THENCE SOUTHWESTERLY CONTINUING ALONG SAID WESTERLY BOUNDARY A DISTANCE OF 1,600 FEET MORE OR LESS TO THE NORTH RIGHT-OF-WAY LINE OF SPENGLER STREET; THENCE WESTERLY ALONG SAID NORTH LINE A DISTANCE OF 1,500 FEET MORE OR LESS TO THE SAID WEST RIGHT-OF-WAY LINE OF STEVENS DRIVE; THENCE SOUTHERLY ALONG SAID WEST LINE A DISTANCE OF 1,300 FEET MORE OR LESS TO THE NORTH RIGHT-OF-WAY LINE OF SNYDER STREET; THENCE WESTERLY ALONG SAID NORTH LINE A DISTANCE OF 1,200 FEET MORE OR LESS TO THE WEST LINE OF A PARCEL OWNED BY THE PORT OF BENTON AS DESCRIBED IN DEED 2001-006829, RECORDS OF BENTON COUNTY, WASHINGTON; THENCE NORTHERLY ALONG SAID WEST LINE THEREOF A DISTANCE OF 1,300 FEET MORE OR LESS TO A SOUTHERLY LINE OF SAID PARCEL; THENCE WESTERLY ALONG SAID SOUTHERLY LINE A DISTANCE OF 1,350 FEET MORE OR LESS TO THE WEST LINE THEREOF; ALSO BEING A POINT ON THE EASTERLY LINE OF "TRACT A" AS SHOWN IN RECORD OF SURVEY 2056, SAID COUNTY RECORDS; THENCE SOUTH ALONG THE SOUTHERLY PROJECTION OF THE WEST LINE THEREOF A DISTANCE OF 240 FEET MORE OR LESS TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF ROBERTSON DRIVE; THENCE SOUTHEASTERLY, SOUTHERLY, AND SOUTHWESTERLY ALONG THE SAID RIGHT-OF-WAY LINE OF ROBERTSON DRIVE AND THE SOUTHWESTERLY PROJECTION THEREOF A DISTANCE OF 1,500 FEET MORE OR LESS TO THE NORTH LINE OF SAID SR240; THENCE NORTHWESTERLY ALONG THE NORTH LINE THEREOF A DISTANCE OF 340 MORE OR LESS TO THE SAID TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE RIGHT-OF-WAY FOR SAID GEORGE WASHINGTON WAY AND SPROUT ROAD.

THIS DESCRIPTION IS FOR PLANNING PURPOSES ONLY AND NOT TO BE USED IN THE TRANSFER OF REAL PROPERTY.

Appendix B - Development Standards

Horn Rapids Master Plan

Development Standards

City of Richland, Washington
January 2011

Table of Contents

I. Introduction

A. Purpose Statement

The City of Richland's Horn Rapids Business Center and Industrial Park is a unique property located at the north end of the City north of State Route 240, south of the Hanford Reservation and east of the Landfill and Twin Bridges Road. The Business Center portion of the master planning area was established in 1995 and in 2011 the master plan was expanded to include all of the Business Center and the Industrial Park properties.

These Development Standards were created to govern new development and redevelopment within the Business Center located in the Horn Rapids Master Planning area. Application of these Standards will attract new industry and jobs to the site and ensure that development within the boundaries of the Horn Rapids Master Plan complies with the vision for the area.

B. Richland Municipal Code References

All references to the Richland Municipal Code (RMC) in these Development Standards are based on the RMC as current through January, 2011. Subsequent changes to the RMC may require amendments to these standards if deemed appropriate and necessary by the City Planning Commission and the Design Review Committee.

C. Relationship to Richland Municipal Code

Developments within the HRMP must comply with the relevant provisions of the RMC. Where these Development Standards do not address an item that is addressed in the RMC, the RMC standard(s) must be met.

D. Definitions

The following definitions apply to these Development Standards only; they are not intended to provide clarification of words or terms used in any other document or code.

1. Design Review Committee (DRC) – review body whose purpose is to ensure that development proposals within the HRMP comply with these Development Standards.
2. Heat Island Effect – the phenomenon of warmer temperatures being experienced in urban landscapes compared to adjacent rural or natural areas as a result of solar energy retention by constructed surfaces.
3. Nose-to-nose parking – a parking configuration where parking stalls facing each other share a common front line.
4. Redevelopment – the addition or replacement of impervious surfaces (including buildings) totaling 2,000 square feet or more on a site with 35% or more existing impervious coverage.
5. Required yard – also referred to as a "setback". A required yard is an area set aside along each property line in which structures are prohibited and landscaping or other such treatment is required.

E. Abbreviations

DRC = Design Review Committee
HRMP = Horn Rapids Master Plan
RMC = Richland Municipal Code

II. Procedures

A. Establishment of Design Review Committee (DRC)

1. Purpose. The Design Review Committee will be responsible for reviewing all proposed development and redevelopment within the HRMP for compliance with these Development Standards, which may include site inspection(s). The DRC may also choose to lessen or enhance certain standards on a case-by-case basis, depending on circumstances. The DRC will not issue development permits of any kind.

2. Limitations. Approval from the DRC does not constitute project entitlement. The DRC is an initial review body that determines if a project meets these Development Standards. The DRC has no authority to issue development permits of any kind. All proposed developments and redevelopments within the HRMP shall require review and approval by the City of Richland and other agencies as applicable. All permits authorizing development must be obtained from the City and other agencies as applicable prior to construction.

3. Timing. The City shall establish the DRC coincident with the adoption of the Horn Rapids Master Plan.

4. Membership. The DRC will be comprised of the Economic Director of the City of Richland or designee who have sufficient experience to review site planning; landscape design; stormwater management; and economic development. The DRC may also choose to include a design professional, under contract with the City.
5. Bylaws. The City shall adopt Bylaws for the DRC to further govern such items as its responsibilities, membership, and enforceability.

B. Application for DRC Review

1. Submittal Timing. All proposed projects within the HRMP must undergo review by and receive written approval from the DRC prior to a development application being submitted to the City of Richland or other applicable agency.

2. Minimum Submittal Requirements. The following items shall be submitted to the Economic Development Director or his/her designee, who will then forward the items to the DRC. The DRC retains the right to request additional information as it deems necessary.
   a. Site plan to include:
      i. Site size, dimensions, and north orientation.

ii. Location of all existing and proposed improvements, including (but not limited to) buildings, parking and circulation areas, driveways, sidewalks, setbacks, easements, trash enclosures, signs, stormwater facilities, and outdoor lighting. Existing conditions may be shown on a separate plan if preferred.

b. Landscape plan to include:
   i. Proposed landscape plantings, including size at planting and typical spacing.
   ii. Any proposed irrigation system.
c. Lighting plan showing location and type(s) of proposed lighting.
d. Architectural drawings, including floor plans, rendered elevations, and building materials and colors and pallets.
e. Details of features such as trash enclosures, fences, signs, outdoor lighting, and LID stormwater control measures.
f. A narrative explaining any special circumstances (if applicable).

3. Review Timelines. The DRC shall review and respond to the applicant within 15 calendar days of submittal. The DRC may approve the project, request additional information, or deny the project. If additional information is requested, the DRC shall review and respond to the additional information within 10 calendar days of submittal.

4. Appeals. All petitions are subject to the applicable provisions within the RMC.

C. Variances and Deviations

1. Generally. The DRC has discretion to grant variances and deviations to these Development Standards after review of a variance request. The DRC cannot grant variances to the requirements of the City of Richland or other applicable agencies.

2. Submittal Requirements. In addition to the submittal requirements listed in section II.B.2, variance and deviation requests shall include a written narrative explaining the reason the variance is necessary. Plans or exhibits may also be necessary, depending upon the nature of the request.

3. Approval Criteria. The DRC may approve a variance request if the applicant shows that the proposed standard provides an equivalent or greater benefit than the adopted standard, and that the overall project will still meet the Purpose Statement listed at section I.A of these Development Standards.

4. Review. The DRC shall review variances in the same timeframes as listed in section II.B.3. The DRC may approve, deny, or request additional information regarding a variance request.

D. Enforcement of Standards

1. The DRC, at its option, may treat any failure to comply with these Standards as a default, or in the alternative, may proceed as follows:

If, within 30 days of written notice to the tenant, tenant has not begun to repair or correct the deficiencies stated in the notice, the DRC may enter into a contract for the repair or correction of such deficiencies and the tenant shall reimburse the DRC for the costs of such repairs or corrections, plus 10% for the DRC's administrative expenses. Failure to pay such amounts within 10 days of invoice shall be deemed a default and subject to interest at the prime rate. The DRC reserves the right for itself or designees to enter upon the premises for the purpose of inspecting, repairing or correcting deficiencies.

III. Uses and Dimensions

A. Uses

1. The HRMP area is zoned for heavy industrial and business commercial uses. The current zoning of the property is M-2 Heavy Manufacturing, I-M Medium Industrial, and C-3 General Business. All proposed uses within the HRMP shall be either permitted, conditional, or prohibited as specified in the RMC Chapters 23.22 and 23.26.

B. Lot Requirements

1. Minimum lot area, minimum lot frontage, maximum lot coverage, yard requirements, and maximum height shall be as set forth in RMC as specified in the underlying zoning code.

C. City Codes

1. Development standards contained herein apply to all development within the HRMP area in addition to, not instead of, the design standards and specifications contained in the RMC.

IV. Development Standards

A. Access and Circulation

1. Applicability. This section shall apply to all new development and all redevelopment, including building and parking lot expansions, within the HRMP. Redevelopment is defined as the addition or replacement of impervious surfaces (including buildings) totaling 2,000 square feet or more on a site with 35% or more existing impervious coverage.

2. Vehicle Access Standards.
   a. General Policy. Vehicle access shall be provided from abutting rights-of-way and/or private roadways to each lot within the HRMP.
   b. Joint Access.
      i. Joint Access. Tenants may design and utilize joint accesses, where feasible, for adjacent sites within the HRMP in order to minimize the total number of driveways.

ii. DRC Review. The DRC shall review proposed joint accesses between parcels. The DRC will recommend approval of proposed joint access.
iii. Reciprocal Access Agreement. The applicant shall submit to the DRC and the City of Richland a reciprocal access agreement or other legal covenant running with the land to formalize the joint access prior to commencement of construction. The agreement must be signed by all affected property owners or tenants, shall be notarized, and shall be recorded with the County Auditor prior to construction.

3. Rail.
   a. Intent. The City recognizes that potential tenants may desire access to rail for movement of freight and manufactured products. Therefore, it is the City's intent to provide rail access in the HRMP as feasible and to minimize road crossings.
   b. Right-of Way/Easements. The City shall designate and set aside right-of-way or easements for future rail lines and rail access as indicated in within the HRMP.
   c. Location. Areas for loading and unloading of rail cars shall be in the rear of lots, except where the only access to a rail line is in a location other than the rear of the lot.

B. Parking and Loading

1. Applicability. This section shall apply to all new development and all redevelopment within the HRMP. Developments shall provide at least the minimum number of required off-street parking stalls as required by the RMC, at all times. Any parking variances or exceptions above and beyond those required by the RMC must also be reviewed and approved by the DRC.

2. Parking Lot Design & Location.
   a. Location. Parking shall be provided on the same lot as the use, except when a shared parking agreement is in place.
   b. Exception for Shared Parking. Parking may be permitted as part of a shared parking lot with an adjacent property, subject to DRC review and city approval. In such cases, a shared parking agreement signed by all involved property owners and/or tenants shall be submitted to the DRC and the City of Richland. The agreement shall be notarized and recorded with the County Auditor's office prior to construction. A reciprocal access agreement may also be required.
   c. Surface Material. In order to enhance the aesthetic characteristics of development within the HRMP, all off-street parking and maneuvering areas are required to be comprised of an all-weather hard surface such as asphalt or concrete. Pervious pavement and pervious pavers are allowed. The DRC may permit other materials to be used on a case-by-case basis. Additionally, the DRC will allow the front 2' of parking stalls to be landscaped with groundcover plants, so long as the vehicle is prevented from overhanging into a required yard by a curb or wheel stop.

5. Required Loading.
   a. Commercial, industrial, public utilities, and other similar uses as determined by the DRC shall provide loading berths as follows:

Gross Floor Area (square feet)	Number of Required Loading Berths
Less than 5,000 sf	0
5,000 to 29,999 sf	1
30,000 to 99,999 sf	2
100,000+ sf	3

   b. Office buildings, public buildings, schools, and other similar uses as determined by the DRC shall provide loading berths as follows:

Gross Floor Area (square feet)	Number of Required Loading Berths
Less than 30,000 sf	0
30,000 to 99,999 sf	1
100,000+ sf	2

6. Loading Dimensions. Loading berths within the HRMP are required to be at least 12' wide, 35' long, and have a minimum vertical clearance of 14'.

7. Loading Area Surfacing. All loading berths and adjacent vehicle maneuvering areas are required to be comprised of an all-weather hard surface such as asphalt or concrete. Pervious pavement and pervious pavers are encouraged. The DRC may permit other materials to be used on a case-by-case basis.

C. Solid Waste Storage

1. Applicability. All buildings and uses within the HRMP are required to set aside areas for the collection and storage of solid waste.

2. Amount of Storage Required.
   a. Office, Industrial, and Institutional Buildings. Office, industrial and institutional buildings and similar uses as determined by the DRC shall provide a minimum storage area of 10 square feet plus 4 square feet per 1,000 square feet of gross floor area or fraction thereof. For example, a 10,000 square foot building would require 10 square feet plus 40 square feet (4 square feet per 1,000 square feet of floor area), for a total of 50 square feet for solid waste storage containers.
   b. Commercial Buildings. Commercial buildings and similar uses as determined by the DRC shall provide a minimum storage area of 10 square feet plus 10 square feet per 1,000 square feet of gross floor area or fraction thereof. For example, a 10,000 square foot building would require 10 square feet plus 100 square feet (10 square feet per 1,000 square feet of floor area), for a total of 110 square feet for solid waste storage containers.

3. Solid Waste Storage Design & Location.
   a. Design.
      i. Receptacle Size. The applicant shall contact the City of Richland Solid Waste Division for information regarding the dimensions of the receptacles, in order to best design the solid waste storage area to accommodate those receptacles and to provide adequate access to those receptacles.
      ii. Screening Materials. Applicants are encouraged to use materials that are harmonious with the building materials of the primary use for screening the solid waste storage area. Solid waste screening must be at least 70% opaque where visible from a right-of-way or abutting property. Examples of acceptable materials include block walls, masonry walls, wood or metal fences. Chain link fences are permitted so long as they include slats or are screened with landscaping as described in section III.C.3.a.iv. Gates are acceptable for screening so long as they are at least 70% opaque. Solid waste screening will be reviewed by the DRC.
      iii. Shared Use Storage Areas. The DRC must review and approve the use of a shared solid waste storage area for multiple uses. In such cases, the applicable screening standards must still be met, except that the storage area does not need to be screened from the buildings that share its use.
      iv. Landscape Screening. When chain link fences without slats are used to enclose a solid waste storage area, a minimum 6' high landscape screen (size at planting) must be provided around the outside of the fence, except for the side from which the storage area is accessed. Landscape screening of solid waste storage areas shall consist of evergreen plantings, such as arborvitae, to be approved by the DRC.
   b. Location. Solid waste storage requirements can be met with one or more locations, including both interior and exterior areas, subject to review by the DRC.

D. Outdoor Storage

1. Requirements. Outdoor storage areas may be located in the rear and side yards, but shall not extend into landscape setback areas. In no even shall outdoor storage occur within 35 feet of the front property line.

2. Fencing. Outdoor storage areas may be fenced. All proposed fencing in the HRMP shall be reviewed by the DRC.

3. Screening and Buffering. Outdoor storage areas shall be screened from adjacent properties, with a partially site obscuring screen such as a slatted chain link fence or equivalent landscape screen. The screening shall be a minimum 6' in height.

E. Streets and Frontages

1. Street Standards.
   a. Industrial Street Design. In general, new public streets within the Horn Rapids Industrial Park as designated in the Horn Rapids Master Plan shall be designed and constructed per Figure 8 below. All applicable street improvements along a project's frontage shall be completed prior to occupancy of the proposed building. Where a sidewalk will be located on only one side of the street, the DRC shall determine on which side the sidewalk shall be placed.
   b. Business Center Street Design. In general, new public streets within the Horn Rapids Business Center as designated in the Horn Rapids Master plan shall be designed and constructed per Figure 9 below. All applicable street improvements along a project's frontage shall be completed prior to occupancy of the proposed building.
   c. Alleys. All proposed alleys within the Horn Rapids Business Center shall be constructed per Figure 10 below. The DRC will determine when access from an alleyway is appropriate.

2. Street Standards

Figure 4: Business Center Street Section

Figure 5: Alley Section

3. Street Lighting.
   a. General Provisions. Street lights shall be required along all streets within the HRMP, whether public or private. Street light design and location shall be to City of Richland Standards. All street lights shall be shielded to prevent undue light pollution. Acorn style lights are not allowed. Unless otherwise approved by the DRC, cobra head style street lights shall be used.

F.Signs

1. Applicability. Signs are an important element contributing to the identity of the HRMP and are intended to add to the aesthetic appeal of the area. The use of signage shall be coordinated with landscape and building elements and shall complement the overall design of the project. Consistent colors materials and typography for all signs will contribute to the visual quality of the HRMP. This section shall apply to all new signs proposed within the HRMP. Approvals from the DRC and the City of Richland are required prior to installation of new signage.

2. Permitted Signs. Signs within the HRMP shall be governed by the provisions of RMC. All signs will be professionally manufactured out of durable materials. No more than one sign per street frontage shall be permitted, unless specifically authorized under RMC. All signs will be reviewed by the DRC.

4. Prohibited Signs. Flashing and rotating signs: billboards; roof signs; temporary signs, including but not limited to banners, reader boards, and A-frames; signs placed on fences; signs painted on exterior surfaces of any building and vehicles used as signs are not permitted.

3. Location and Design Standards. All signs shall be integrated with the architectural and landscape design of the HRMP and shall be in scale with their surroundings. Sign design and location shall be governed by the provisions of the RMC.

G. Stormwater Control

All new development and redevelopment within the HRMP will be required to provide stormwater control in accordance with the applicable provisions of the RMC.

H. Architectural

1. Applicability. The provisions of this section shall apply to all new structures (as defined by the Richland Municipal Code) and modifications to existing structures within the HRMO. Architectural plans shall be submitted to the DRC for review and approval.

2. Architectural Style.
   a. Contemporary Styles. The use of contemporary architectural styles is strongly encouraged. . Pole buildings are not allowed in the HRMP.
   b. Materials. Buildings can be constructed of concrete tilt up panels, brick, natural stone, or wood. Metal buildings are allowed in general. However, due to the need to control the aesthetics of the HRMP from the access roads and trails, metal buildings visible from these areas must include a higher standard of materials and architectural design. The DRC will review building design and retain the right to deny construction of a metal building in those locations if the visual impact is deemed unacceptable.

3. Building Exteriors.
   a. Materials, Colors, and Details. High quality building materials of a permanent low-maintenance type shall be used on all exterior walls of a building. Design and color shall be used consistently throughout each site. The use of two or more exterior colors is strongly encouraged to enhance the building. All exterior colors and materials shall enhance the visual quality of the HRMP and shall be approved by the DRCb. Articulation/Relief. The use of such features as parapets, canopies, and fascias is an option and is encouraged to break up large, uniform wall surfaces. Such features shall be in proportion to wall height and building mass.
   c. Metal-Clad Buildings. Metal-clad buildings are allowed in general. Metal buildings will be reviewed by the DRC to ensure that high structural and aesthetic standards are maintained, especially highly visible building sites.

4. Use of Solar Panels. The installation of solar panels is permitted as long as they are not highly visible or cause glare from roads, trails, and adjacent properties. Solar panel usage can provide "off the grid" energy and reduce the visual scale of the rooftop. The installation of solar panels may also be an effective means to screen rooftop equipment.

I. Site Landscaping

1. Applicability. In order to enhance the aesthetics within the HRMP, landscaping shall be required for all new development and redevelopment. Development and redevelopment proposals shall comply with the standards of this section.
2. Screening and Buffering. All landscaping, screening and buffering shall comply with the provisions of the RMC. The DRC may impose additional landscape, buffer or screening standards, to areas adjacent to the wetland or park areas, to assure compatibility between uses. Recommendations will be provided by the DRC on a case by case basis.
3. Survival. Appropriate measures shall be taken, e.g., installations of watering systems, to assure landscaping success. If plantings fail to survive, it is the responsibility of the property owner to replace them.

J. Fencing

1. Perimeter Fencing. To enhance the visual appeal of the HRMP from off-site properties, fencing along the perimeter boundaries of the HRMP shall be of a consistent type, height, and material(s) as designated by the DRC. All proposed fencing in the HRMP shall be reviewed by the DRC.

2. Internal Fencing.
   a. Requirements. Fencing is not required between properties internal to the HRMP. However, where fencing between properties is proposed, the fencing shall at a minimum be made of chain link and shall be 6' in height above finished grade.
   b. Additional Height or Security. If additional fence height or security measures (such as lights or barbed wire) are desired, applicants may request approval for such measures from the DRC and the City of Richland.
   c. Solid Fences. The DRC may approve the use of solid fences (100% opaque) in lieu of landscape screening in side and rear yards. When such fences are approved, the interior yards must still be planted with groundcover plants or turf. No fence shall be located in the front yard.

K. Site Lighting

1. Applicability. All new development and redevelopment within the HRMP shall include appropriate lighting for parking and pedestrian circulation areas, at a minimum. Tenants may also choose to light outdoor work and storage areas, subject to DRC approval.

2. General Provisions. Site lighting design and location shall be to City of Richland Standards. All lighting shall be shielded to prevent undue light pollution. Acorn style lights are not allowed.

3. Timed Lighting. In order to limit light pollution, the City encourages tenants to install external lights that are timed to shut off after normal working hours, so long as safety is not impeded.

Appendix C - Cost Estimate

Horn Rapids Conceptual Master Plan

1.00		**Industrial Roadway Section**			
0.72	TN	*Furnish and Install HMA Class PG 64-28 (3" Thick)*	$ 76.00	$ 55	
0.45	TN	Furnish and Install Crushed Surfacing Top Course (3" Thick)	$ 16.50	$ 7	
0.90	TN	Furnish and Install Crushed Surfacing Base Course (6" Thick)	$ 16.50	$ 15	
66.00	SF	Subgrade Prep	$ 0.20	$ 13	
2.00	SF	Furnish and Install Crushed Surfacing Top Course Shoulder (3" Thick) ($16.50/TO	$ 0.21	$ 0	
1.00	LF	Striping	$ 0.60	$ 1	
1.00	LF	Power	$ 60.00	$ 60	
2.00	LF	Stormwater Swale (Includes Earthwork, Seeding, Placement, Etc)	$ 4.25	$ 9	
1.00	LS	Street Lights (Every 300')	$ 16.67	$ 17	
1.00	LF	Fiber	$ 15.00	$ 15	
1.00	LF	Other Dry Utilities	$ 30.00	$ 30	
0.12	TN	Trail-Furnish and Install HMA Class PG 64-28 (2" Thick)	$ 85.00	$ 10	
0.20	TN	Trail-Furnish and Install Crushed Surfacing Top Course (4" Thick)	$ 20.00	$ 4	
9.44	CY	Earthwork (3' Depth Over Full ROW Width)	$ 6.00	$ 57	
				$ 293	per LF

1.00		**Business Center Roadway Section**			
0.65	TN	Furnish and Install HMA Class PG 64-28 (3" Thick)	$ 76.00	$ 49	
0.45	TN	Furnish and Install Crushed Surfacing Top Course (3" Thick)	$ 16.50	$ 7	
.90	TN	Furnish and Install Crushed Surfacing Base Course (6" Thick)	$ 16.50	$ 15	
66.00	SF	Subgrade Prep	$ 0.20	$ 13	
2.00	LF	Furnish and Install Concrete Curb and Gutter	$ 10.00	$ 20	
6.00	SF	6' Wide (4" conc.) Sidwalk w/base	$ 6.00	$ 36	
1.00	LF	Striping	$ 0.60	$ 1	
1.00	LF	Power	$ 60.00	$ 60	
0.00	LF	Fiber	$ 15.00	$ -	
2.00	LF	Stormwater Swale (Includes Earthwork, Seeding, Placement, Etc)	$ 4.25	$ 9	
1.00	LS	Street Lights (Every 300')	$ 16.67	$ 17	
1.00	LF	Other Dry Utilities	$ 30.00	$ 30	
9.44	CY	Earthwork (3' Depth Over Full ROW Width)	$ 6.00	$ 57	
				$ 314	per LF

1.00		**Alley Section**			
0.65	TN	*Furnish and Install HMA Class PG 64-28 (3" Thick)*	$ 76.00	$ 49	
0.45	SF	Furnish and Install Crushed Surfacing Top Course (3" Thick)	$ 16.50	$ 7	
0.90	SF	Furnish and Install Crushed Surfacing Base Course (6" Thick)	$ 16.50	$ 15	
43.00	SF	Subgrade Prep	$ 0.20	$ 9	
2.00	LF	Furnish and Install Concrete Curb and Gutter	$ 10.00	$ 20	
1.00	LF	Power	$ 60.00	$ 60	
2.00	LF	Stormwater Swale (Includes Earthwork, Seeding, Placement, Etc)	$ 4.25	$ 9	
9.44	CY	Earthwork (3' Depth Over Full ROW Width)	$ 6.00	$ 57	
				$ 169	per LF

Business Center Phase 1 A

	Unit	Description of Work	Unit Price	
		Administration		
1	LS	Equipment Mobilization (5%)	$ 179,394.37	$ 179,394
1	LS	Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	$ 71,757.75	$ 71,758
1	LS	Construction Bonds and Permits (1%)	$ 35,878.87	$ 35,879
				$ 287,031
		Roads		
7,033	LF	Business Center Roadway Section	$ 314.00	$ 2,208,362
3,469	LF	Alley Section	$ 169.00	$ 586,261
				$ 2,794,623
		Non-Road Work		
92	AC	Misc Site Work (Includes Utility Stubs and Basic Cleanup for Sale as Needed)	$ 2,000.00	$ 184,120
				$ 184,120
		Open Space		
8.7	AC	Open Space	$ 1,000.00	$ 8,747
25.8	AC	Open Space (240 Trail Alignment)	$ 1,000.00	$ 25,764
				$ 34,510
2,162	LF	**Trail**		
260	TN	Furnish and Install HMA Class PG 64-28 (2" Thick)	$ 85.00	$ 22,120
432	SF	Furnish and Install Crushed Surfacing Top Course (4" Thick)	$ 20.00	$ 8,648
30,268	SF	Subgrade Prep	$ 0.20	$ 6,054
8	EA	Bollards	$ 800.00	$ 6,400
8,648	SF	Restoration along Trail in Open Space	$ 0.35	$ 3,027
				$ 46,249
		Utilities		
		Utility Misc		
10	EA	Pothole Existing Utilities	$ 200.00	$ 2,000
		Sewer		
360	LF	24" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 45.00	$ 16,200
4,846	LF	8" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 17.50	$ 84,805
13	EA	48" San. Manholes (Approx 400' Spacing)	$ 2,350.00	$ 30,550
2	EA	Connection to Ex. Main	$ 1,500.00	$ 3,000
		Water		
4	EA	Hot-tap Existing	$ 2,500.00	$ 10,000
3,177	LF	12" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 40.00	$ 127,080
2,657	LF	8" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 66,425
		Irrigation		
1	EA	Tap Existing Irrigation	$ 1,500.00	$ 1,500
7,473	LF	10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 186,825
				$ 528,385

(1) SUBTOTAL CONSTRUCTION	$ 3,587,887.31
(2) Administration	287,030.98
(3) Planning Level Contingency (25%)	$ 968,729.57
(4) SUBTOTAL CONSTRUCTION (1+2+3)	$ 4,843,647.87
(5) Contractor General Overhead and Profit (10%)	$ 484,364.79
(6) Tax (8.3% of (4+5))	$ 442,225.05
(7) Construction Total (4+5+6)	$ 5,770,237.70

PROFESSIONAL SERVICES

1	LS	Engineering	$ 774,984	$ 774,984
1	LS	Environmental Permitting	$ 251,152	$ 251,152
1	LS	Construction Staking	$ 53,818	$ 53,818
1	LS	Construction Administration	$ 107,637	$ 107,637
SUBTOTAL				$ 1,187,591

COST PER ACRE

Total (6 + Professional Services)	$ 6,957,8
Developable Acres Served	92
Cost per Developable Acre	$ 75,620
Cost per Developable Square Foot	$ 1.74

Business Center Phase 1 B

	Unit	Description of Work	Unit Price	
		Administration		
1	LS	Equipment Mobilization (5%)	$ 225,442.47	$ 225,442
1	LS	Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	$ 90,176.99	$ 90,177
1	LS	Construction Bonds and Permits (1%)	$ 45,088.49	$ 45,088
				$ 360,708
		Roads		
7,743	LF	*Business Center* Roadway - Logston Boulevard	$ 314.00	$ 2,431,302
				$ 2,431,302
		Open Space		
11.1	AC	Open Space	$ 1,000.00	$ 11,057
				$ 11,057
5,890	LF	Trail		
709	TN	Furnish and Install HMA Class PG 64-28 (2" Thick)	$ 85.00	$ 60,263
1,178	SF	Furnish and Install Crushed Surfacing Top Course (4" Thick)	$ 20.00	$ 23,560
82,460	SF	Subgrade Prep	$ 0.20	$ 16,492
8	EA	Bollards	$ 800.00	$ 6,400
23,560	SF	Restoration along Trail in Open Space	$ 0.35	$ 8,246
				$ 114,961
		Mitigation		
143,005	SF	Mitigation for Logston Extension	$ 5.00	$ 715,025
				$ 715,025
		Utilities		
		Sewer		
1	LS	Decomissioning Pump Station	$ 10,000.00	$ 10,000
8,893	LF	24" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 45.00	$ 400,185
3,829	LF	12" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 21.00	$ 80,409
32	EA	48" San. Manholes (Approx 400' Spacing)	$ 2,350.00	$ 75,200
2	EA	Connection to Ex. Main	$ 1,500.00	$ 3,000
1	EA	60" Std. MH @ Ex. Main	$ 5,000.00	$ 5,000
		Water		
3	EA	Hot-tap Existing	$ 2,500.00	$ 7,500
11,544	LF	12" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 40.00	$ 461,760
		Irrigation		
1	EA	Tap Existing Irrigation	$ 1,500.00	$ 1,500
7,678	LF	10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 191,950
				$ 1,236,504

(1) SUBTOTAL CONSTRUCTION	$ 4,508,849.47
(2) Administration	360,707.96
(3) Planning Level Contingency (25%)	$ 1,217,389.36
(4) SUBTOTAL CONSTRUCTION (1+2+3)	$ 6,086,946.79
(5) Contractor General Overhead and Profit (10%)	$ 608,694.68
(6) Tax (8.3% of (4+5))	$ 555,738.24
(7) Construction Total (4+5+6)	$ 7,251,379.71

PROFESSIONAL SERVICES					
1	LS	Engineering	$ 973,911	$	973,911
1	LS	Environmental Permitting	$ 315,619	$	315,619
1	LS	Construction Staking	$ 67,633	$	67,633
1	LS	Construction Administration	$ 135,265	$	135,265
SUBTOTAL				$	1,492,428
		Total (6 + Professional Services)		$	8,743,809

Business Center Phase 2

	Unit	Description of Work	Unit Price	
		Administration		
1	LS	Equipment Mobilization (5%)	$ 108,515.22	$ 108,515
1	LS	Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	$ 43,406.09	$ 43,406
1	LS	Construction Bonds and Permits (1%)	$ 21,703.04	$ 21,703
				$ 173,624
		Roads		
5,313	LF	Industrial Roadway - University Way, Lowe Blvd	$ 293.00	$ 1,556,709
				$ 1,556,709
		Non-Road Work		
55	AC	Misc Site Work (Includes Utility Stubs and Basic Cleanup for Sale as Needed)	$ 2,000.00	$ 110,800
				$ 110,800
		Open Space		
25.8	AC	Open Space (240 Trail Alignment)	$ 1,000.00	$ 25,764
				$ 25,764
416	LF	**Trail**		
50	TN	Furnish and Install HMA Class PG 64-28 (2" Thick)	$ 76.00	$ 3,806
83	SF	Furnish and Install Crushed Surfacing Top Course (4" Thick)	$ 20.00	$ 1,664
5,824	SF	Subgrade Prep	$ 0.20	$ 1,165
4	EA	Bollards	$ 800.00	$ 3,200
1,664	SF	Restoration along Trail in Open Space	$ 0.35	$ 582
				$ 10,417
		Utilities		
		Utility Misc		
4	EA	Pothole Existing Utilities	$ 200.00	$ 800
		Sewer		
2,707	LF	18" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 35.00	$ 94,745
4,985	LF	12" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 21.00	$ 104,685
20	EA	48" San. Manholes (Approx 400' Spacing)	$ 2,350.00	$ 47,000
2	EA	Connection to Ex. Main	$ 1,500.00	$ 3,000
		Water		
2	EA	Hot-tap Existing	$ 2,500.00	$ 5,000
3,224	LF	12" Ductile Iron Water Main (Includes 2-16" x 12" Tees, all valves, TB, etc.)	$ 40.00	$ 128,960
		Irrigation		
2	EA	Tap Existing Irrigation	$ 1,500.00	$ 3,000
3,177	LF	10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 79,425
				$ 466,615

(1) SUBTOTAL CONSTRUCTION	$ 2,170,304.35
(2) Administration	173,624.35
(3) Planning Level Contingency (25%)	$ 585,982.17
(4) SUBTOTAL CONSTRUCTION (1+2+3)	$ 2,929,910.87
(5) Contractor General Overhead and Profit (10%)	$ 292,991.09
(6) Tax (8.3% of (4+5))	$ 267,500.86
(7) Construction Total (4+5+6)	$ 3,490,402.82

PROFESSIONAL SERVICES				
1	LS	Engineering	$ 468,786	$ 468,786
1	LS	Environmental Permitting	$ 151,921	$ 151,921
1	LS	Construction Staking	$ 32,555	$ 32,555
1	LS	Construction Administration	$ 65,109	$ 65,109
SUBTOTAL				$ 718,371

COST PER ACRE

Total (6 + Professional Services)	$ 4,208
Developable Acres Served	
Cost per Developable Acre	$ 84,058
Cost per Developable Square Foot	$ 1.93

Business Center Phase 3

	Unit	Description of Work	Unit Price	
		Administration		
1	LS	Equipment Mobilization (5%)	$ 160,983.22	$ 160,983
1	LS	Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	$ 64,393.29	$ 64,393
1	LS	Construction Bonds and Permits (1%)	$ 32,196.64	$ 32,197
				$ 257,573
		Roads		
1,715	LF	Industrial Roadway - University Way	$ 293.00	$ 502,495
6,635	LF	Business Center Roadway Section	$ 314.00	$ 2,083,390
				$ 2,585,885
		Non-Road Work		
57	AC	Misc Site Work (Includes *Utility Stubs and Basic Cleanup for* Sale as Needed)	$ 2,000.00	$ 114,700
				$ 114,700
		Open Space		
17.3	AC	Open Space (240 Trail Alignment)	$ 1,000.00	$ 17,299
				$ 17,299
		Utilities		
		Utility Misc		
5	EA	Pothole Existing Utilities	$ 200.00	$ 1,000
		Sewer		
4,998	LF	8" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 17.50	$ 87,465
13	EA	48" San. Manholes (Approx 400' Spacing)	$ 2,350.00	$ 30,550
2	EA	Connection to Ex. Main	$ 1,500.00	$ 3,000
		Water		
3	EA	Hot-tap Existing	$ 2,500.00	$ 7,500
4,921	LF	12" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 40.00	$ 196,840
		Irrigation		
1	EA	Tap Existing Irrigation	$ 1,500.00	$ 1,500
6,957	LF	10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 173,925
				$ 501,780

(1) SUBTOTAL CONSTRUCTION	$ **3,219,664.33**
(2) Administration	**257,573.15**
(3) Planning Level Contingency (25%)	$ **869,309.37**
(4) SUBTOTAL CONSTRUCTION (1+2+3)	$ **4,346,546.85**
(5) Contractor General Overhead and Profit (10%)	$ **434,654.69**
(6) Tax (8.3% of (4+5))	$ **396,839.73**
(7) Construction Total (4+5+6)	$ **5,178,041.26**

PROFESSIONAL SERVICES

1	LS	Engineering	695,447.50	$ 695,447
1	LS	Environmental Permitting	225,376.50	$ 225,377
1	LS	Construction Staking	48,294.97	$ 48,295
1	LS	Construction Administration	96,589.93	$ 96,590
SUBTOTAL				**1,065,708.89**

COST PER ACRE

Total (6 + Professional Services)	$ **6,243,750**
Developable Acres Served	
Cost per Developable Acre	$
Cost per Developable Square Foot	$ 2.50

0-000001865

001297

Industrial

	Unit	Description of Work	Unit Price	
		Administration		
1	LS	Equipment Mobilization (5%)	$ 1,050,861.00	$ 1,050,861
1	LS	Project Maintenance, Erosion Control, Watering, Clearing and Grubbing (2%)	$ 420,345.00	$ 420,345
1	LS	Construction Bonds and Permits (1%)	$ 210,173.00	$ 210,173
				$ 1,681,379
		Roads		
19,467	LF	Industrial Roadway	$ 293.00	$ 5,703,831
				$ 5,703,831
		Open Space		
49	AC	Open Space	$ 1,000.00	$ 49,220
				$ 49,220
		Railroad		
15,228	LF	New Track (Southeast Industrial Loop)	$ 150.00	$ 2,284,200
2,513	LF	New Track (Southeast Industrial Spur)	$ 150.00	$ 376,950
16,461	LF	New Track (Northwest Industrial Loop and Extension to Horn Rapids)	$ 150.00	$ 2,469,150
3	EA	At-Grade Crossing (Includes Concrete Planks, Rey-Laying the Tracks, Control Arms, Bungalow, Etc)	$ 400,000.00	$ 1,200,000
				$ 6,330,300
		Utilities		
		Utility Misc		
10	EA	Pothole Existing Utilities	$ 200.00	$ 2,000
		Sewer		
9,286	LF	12" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 21.00	$ 195,006
5,979	LF	8" Gravity Sewer Includes Excavation, Trench Safety, Backfill (Std. Rigid PVC conforming to ASTM D-1784)	$ 17.50	$ 104,633
39	EA	48" San. Manholes (Approx 400' Spacing)	$ 2,350.00	$ 91,650
6	EA	Connection to Ex. Main	$ 1,500.00	$ 9,000
		Water		
4	EA	Hot-tap Existing	$ 2,500.00	$ 10,000
12,495	LF	12" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 40.00	$ 499,800
1,119	LF	8" Ductile Iron Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 27,975
		Irrigation		
4	EA	Tap Existing Irrigation	$ 1,500.00	$ 6,000
6,312	LF	10" PVC Water Main (Includes 2-Tees, 1-Cross, and all valves, TB, etc.)	$ 25.00	$ 157,800
		Power Transmission		
2	EA	New Substation	$ 3,750,000.00	$ 7,500,000
7,000	LF	OH Transmission	$ 40.00	$ 280,000
2,500	LF	OH Distribution	$ 20.00	$ 50,000
				$ 8,933,864

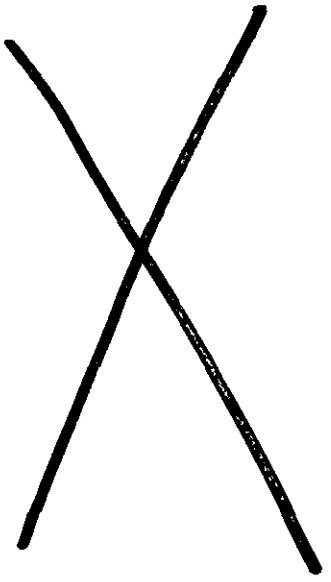
(1) SUBTOTAL CONSTRUCTION	$ 21,017,214.68
(2) Administration	1,681,379.00
(3) Planning Level Contingency (25%)	$ 5,674,648.42
(4) SUBTOTAL CONSTRUCTION (1+2+3)	$ 28,373,242.10
(5) Contractor General Overhead and Profit (10%)	$ 2,837,324.21
(6) Tax (8.3% of (4+5))	$ 2,590,477.00
(7) Construction Total (3+4+5)	$ 33,801,043.31

PROFESSIONAL SERVICES				
1	LS	Engineering	4,539,718.74	$ 4,539,719
1	LS	Environmental Permitting	1,471,205.03	$ 1,471,205
1	LS	Construction Staking	315,258.22	$ 315,258
1	LS	Construction Administration	630,516.44	$ 630,516
SUBTOTAL				6,956,698.42

COST PER ACRE

Total (6 + Professional Services)	40,757,741.74
Additional Total for Phase 1B Improvements	8,743,808
Total Cost of Improvements Allocated to Serve Industrial Lands	49,501,550
Developable Acres Served	938.56
Cost per Developable Acre	$ 52,742
Cost per Developable Square Foot	$ 1.21

Appendix D - Resolution No. 51-11



WUTC DOCKET TR-130499
EXHIBIT GAN-17-X
ADMIT ☒ W/D ☐ REJECT ☐

Jeremy Eckert

From: Kevin Jeffers <Kmje@deainc.com>
Sent: Wednesday, November 13, 2013 10:34 PM
To: Hunter, Kathy (UTC)
Cc: Jeremy Eckert
Subject: RE: LOS for Steptoe and Columbia Center Boulevard

Kathy –

I have conferred with Spencer Montgomery and John Deskins. To answer your question, the Steptoe and Columbia Center Blvd. have LOS issues, as identified below:

Columbia Center Boulevard at Quinault intersection
Currently: Eastbound left-turn movement is LOS E; Overall LOS C.
By 2028: Eastbound left-turn movement will be LOS F; Overall LOS F

Steptoe at Gage Intersection
Currently: Southbound left-turn movement is LOS F; Overall LOS E
By 2028: Three out of four left-turn movements would be LOS F; Overall LOS E.

To address the LOS issues (in addition to achieving other LOS standards, such as emergency response times), the City's Comp Plan calls for the construction of the crossing that is the subject of this petition. The crossing is also included in the Benton Franklin COG Transportation Model. In other words, this petition is an act in comprehensive planning – the City has identified transportation-related issues and it is implementing its comprehensive plan to address those issues.

Kevin Jeffers
O: 253-250-0674
C: 360-280-5570
DEA x20674

From: Hunter, Kathy (UTC) [mailto:khunter@utc.wa.gov]
Sent: Wednesday, November 13, 2013 12:14 PM
To: Kevin Jeffers
Subject: LOS for Steptoe and Columbia Center Boulevard

Kevin,

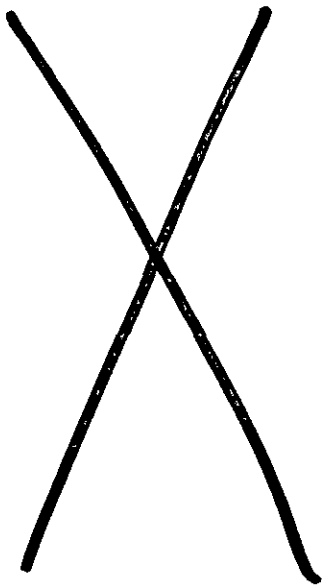
Thanks for tracking down the LOS information for Steptoe and Columbia Center Boulevard. If possible, could I get the information via email. I may want to use this information when I testify and in order to do this, it needs to be written and subject to being shared with all parties.

Thanks for your help.

Kathy Hunter, Deputy Assistant Director, Transportation Safety
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250

Olympia, WA 98504-7250

Office Telephone: (360) 664-1257
Cell: (360) 701-1612
Fax: (360) 586-1150



The TCRR testimony documents led me to go a little deeper into some data we could find. The 2:48 response from KFD Station 63 surprised me when it showed up there. I did not notice it as much in the context of the JUB report.

We have looked at several addresses in the Tapteal area and then several addresses around the Mall By the Mall, PF Changs area off the existing Center Parkway (the route we will use with this crossing). Rather than mean times I looked at median times, knowing that there are always going to be outliers due to crews out of position or on other calls. My numbers here will also include turn out time, which is about 1 minute depending on the call type (Dress in full bunker gear or not). Here is what I see:

Tapteal addresses:

KFD (only 4 calls) median time = 7 minutes 20 seconds
RFD (38 calls) median time = 5 minutes 50 seconds

By the Mall addresses:

KFD (29 calls) median time = 4 minutes 12 seconds
RFD (10 calls) median time = 4 minutes 18 seconds

I don't like the data from KFD for Tapteal because there are too few numbers but even if we take the average of their best 2 times it is about 5 minutes and 50 seconds.

If we add some seconds for the greater distance once the responders cross over the new crossing and down into Tapteal we are still about one full minute better off and at the 5 minute (1 minute turnout and 4 minutes driving) standard we have for the City.

WUTC DOCKET TR-130499
EXHIBIT GAN-18-X
ADMIT ☒ W/D ☐ REJECT ☐

ADDRESSES NEAR THE MALL

RFD

01187	3/27 9:25	3/27 9:31	5.97 622	86		8108	GAGE	BLVD	63	637
05235	12/30 21:14	12/30 21:18	4.10 321	34	33	8108	GAGE	BLVD	63	637
01169	3/23 21:01	3/23 21:05	4.13 321	32		8108	GAGE	BLVD	63	637
02003	5/28 14:01	5/28 14:05	4.38 321	34	33	8108	GAGE	BLVD	63	637
02168	6/15 17:21	6/15 17:25	4.20 311	70		8108	GAGE	BLVD	63	637
			4.56							

00315	1/25 2:01	1/25 2:06	5.47 311	33		8110	GAGE	BLVD	63	637
00857	3/6 17:54	3/6 17:58	4.22 710	86	63	8110	GAGE	BLVD	72	637
03925	10/18 18:34	10/18 18:42	7.28 551	92		8110	GAGE	BLVD	63	637
03347	8/18 15:55	8/18 15:59	4.00 552	31		8110	GAGE	BLVD	71	637
			5.24							

00014	1/1 17:16	1/1 17:19	2.63 321	30		8300	GAGE	BLVD	63	637

4.68 MEAN
4.30 MEDIAN

KFD

01778	3/23 21:01	3/23 21:05	4.13 321	33	34	8108	GAGE	BLVD	63	637
07691	12/30 21:14	12/30 21:18	4.10 321	34		8108	GAGE	BLVD	63	637
04983	9/7 12:40	9/7 12:46	5.52 622	86		8108	GAGE	BLVD	63	637
04446	8/12 14:09	8/12 14:13	4.60 321	33	34	8108	GAGE	BLVD	63	637
01747	3/29 2:18	3/29 2:24	6.12 442	86		8108	GAGE	BLVD	63	637
01245	3/9 13:05	3/9 13:08	3.27 321	30		8108	GAGE	BLVD	63	637
06551	11/6 17:18	11/6 17:26	8.10 321	33	34	8108	GAGE	BLVD	63	637
01033	2/25 21:03	2/25 21:09	5.33 742	86		8108	GAGE	BLVD	63	637
03077	6/15 17:21	6/15 17:25	4.20 321	31		8108	GAGE	BLVD	63	637
01176	2/26 13:56	2/26 14:03	6.98 714	86	63	8108	GAGE	BLVD	63	637
02355	4/26 6:39	4/26 6:44	5.20 731	64	86	8108	GAGE	BLVD	63	637
02645	5/9 14:25	5/9 14:29	3.02 321	30		8108	GAGE	BLVD	63	637
00587	1/26 19:36	1/26 19:42	5.32 741	86	62	8108	GAGE	BLVD	63	637
02443	5/3 17:27	5/3 17:30	3.12 321	32		8108	GAGE	BLVD	63	637
			4.93							

00504	1/25 2:01	1/25 2:05	4.00 321	33		8110	GAGE	BLVD	63	637
01200	3/6 17:54	3/6 17:58	4.22 745	86		8110	GAGE	BLVD	63	637
05017	9/9 19:01	9/9 19:04	3.43 321	30		8110	GAGE	BLVD	63	637
05513	10/18 18:34	10/18 18:41	6.50 741	86	64	8110	GAGE	BLVD	63	637
03224	6/16 13:47	6/16 13:50	3.12 321	33	34	8110	GAGE	BLVD	63	637
06671	11/7 15:34	11/7 15:37	2.97 321	33	34	8110	GAGE	BLVD	63	637
07372	12/11 22:31	12/11 22:37	6.13 710	86	63	8110	GAGE	BLVD	63	637
00537	1/27 13:16	1/27 13:20	3.18 321	31		8110	GAGE	BLVD	63	637
02730	5/13 17:36	5/13 17:39	3.63 321	32		8110	GAGE	BLVD	63	637
			4.13							

04902	8/23 20:23	8/23 20:26	3.25 321	33	34	8200	GAGE	BLVD	63	637
01792	3/28 17:47	3/28 17:51	3.72 321	33		8220	GAGE	BLVD	63	637
			3.48							

3725	8/14 8:06	8/14 8:15	8.92 733	86		8236	Gage		63	
3639	8/9 15:30	8/9 15:33	2.48 743	00		8236	Gage	BLVD	63	
05850	9/29 22:40	9/29 22:55	14.40 622	86		8236	GAGE	BLVD	63	637
			8.60							

00016	1/1 17:11	1/1 17:19	7.77 321	30		8300	GAGE	BLVD	63	637

5.09 MEAN
4.20 MEDIAN

ADDRESSES ON TAPTEAL

KFD

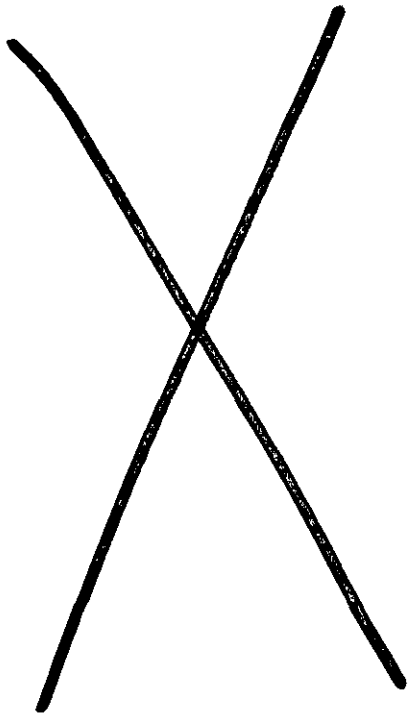
02612	5/7 11:18	5/7 11:34	15.83	321	33	1451	TAPTEAL	DR	72	721
03961	7/29 17:44	7/29 17:52	7.33	142	11	1451	Tapteal	DR	72	721
			11.58							
3155	6/24 18:02	6/24 18:09	7.20	730	62	1480	Tapteal	DR	72	721
05406	10/18 20:44	10/18 20:48	4.52	311	33	1491	Tapteal	DR	72	721

9.29 MEAN
7.33 MEDIAN

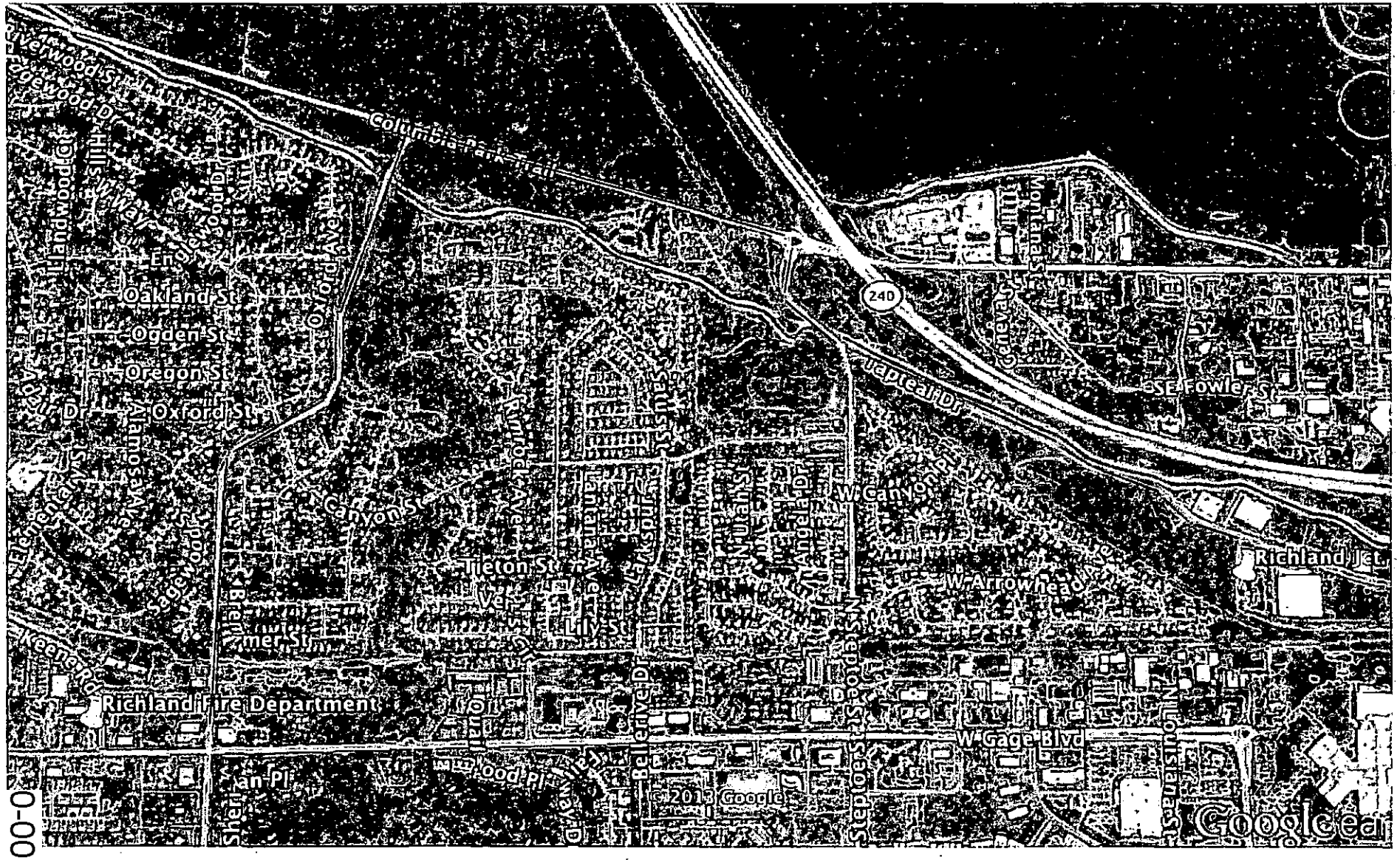
RFD

03703	10/3 19:00	10/3 19:05	5.15	321	31	1430	TAPTEAL	DR	72	721
03339	9/6 14:38	9/6 14:43	4.97	321	34 33	1430	TAPTEAL	DR	72	721
01835	5/20 17:31	5/20 17:35	4.33	740	86 63	1430	TAPTEAL	DR	72	721
01030	3/19 9:55	3/19 10:01	5.83	740	86	1430	TAPTEAL	DR	72	721
02015	5/29 9:43	5/29 9:49	6.22	321	31	1430	TAPTEAL	DR	72	721
02084	5/23 15:21	5/23 15:27	5.42	321	31	1430	TAPTEAL	DR	72	721
04654	11/7 11:45	11/7 12:55	69.25	740	86	1430	TAPTEAL	DR	72	721
04611	11/4 9:14	11/4 9:18	4.40	745	86	1430	TAPTEAL	DR	72	721
04505	10/28 16:52	10/28 16:56	3.80	745	86	1430	TAPTEAL	DR	72	721
04485	10/27 8:41	10/27 8:44	3.83	740	86	1430	TAPTEAL	DR	72	721
02011	5/28 23:25	5/28 23:32	7.07	321	33	1430	TAPTEAL	DR	72	721
			10.93							
03690	9/5 0:13	9/5 0:19	6.73	142	11 86	1451	TAPTEAL	DR	72	721
04391	12/21 13:43	12/21 13:45	2.05	321	34 33	1451	TAPTEAL	DR	72	721
0412	2/5 23:43	2/5 23:47	4.83	735	86	1451	TAPTEAL	DR	72	721
01491	4/15 23:24	4/15 23:32	7.88	321	34 32	1451	TAPTEAL	DR	72	721
03376	8/28 12:51	8/28 12:57	5.47	321	34 33	1451	TAPTEAL	DR	72	721
00222	1/16 13:31	1/16 13:36	5.50	321	34 33	1451	TAPTEAL	DR	72	721
04965	12/23 23:00	12/23 23:06	5.72	321	31	1451	TAPTEAL	DR	72	721
02748	7/9 17:19	7/9 17:24	5.42	321	32	1451	TAPTEAL	DR	72	721
04672	11/22 10:53	11/22 11:02	8.65	321	34 32	1451	TAPTEAL	DR	72	721
			5.81							
02962	8/24 18:44	8/24 18:50	6.50	740	60	1457	TAPTEAL	DR	72	721
00457	2/1 12:56	2/1 13:01	4.12	631	86	1480	TAPTEAL	DR	72	721
03255	8/30 8:32	8/30 8:38	5.58	740	86	1480	TAPTEAL	DR	72	721
02941	8/8 0:20	8/8 0:21	0.32	900	86	1480	TAPTEAL	DR	72	721
3076	10/1 12:42	10/1 12:51	8.35	735	86	1480	TAPTEAL	DR	71	721
02498	7/4 18:34	7/4 18:41	6.87	740	86	1480	TAPTEAL	DR	72	721
2113	6/24 18:04	6/24 18:09	5.57	740	86	1480	TAPTEAL	DR	72	721
1817	6/1 11:37	6/1 11:43	5.80	321	31	1480	TAPTEAL	DR	72	721
1486	5/4 16:26	5/4 16:32	6.63	745	80	1480	TAPTEAL	DR	72	721
3271	10/16 10:38	10/16 10:45	6.60	745	86	1480	TAPTEAL	DR	72	721
3205	10/11 9:14	10/11 9:21	7.58	745	86	1480	TAPTEAL	DR	72	721
01632	5/4 20:18	5/4 20:25	7.63	740	86	1480	TAPTEAL	DR	72	721
01761	5/14 7:41	5/14 7:48	6.87	735	86 63	1480	TAPTEAL	DR	72	721
00752	2/25 8:00	2/25 8:03	2.93	740	60	1480	TAPTEAL	DR	72	721
00740	2/24 16:43	2/24 17:00	17.05	733	86	1480	TAPTEAL	DR	72	721
00738	2/24 16:03	2/24 16:06	2.42	740	86	1480	TAPTEAL	DR	72	721
			6.29							
03361	9/30 16:50	9/30 16:57	6.80	322	34 32	1491	TAPTEAL	DR	72	721
03586	10/18 20:44	10/18 20:56	11.78	321	34 32	1491	TAPTEAL	DR	72	721
			9.29							

7.68 MEAN
5.81 MEDIAN



WUTC DOCKET 1K-130499
EXHIBIT GAN-19-X
ADMIT ☒ W/D ☐ REJECT ☐



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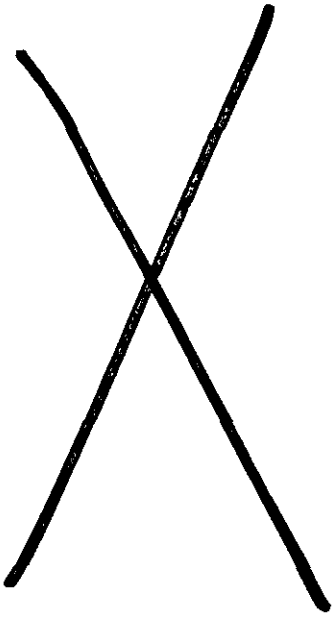


10. Produce copies of all documents pertaining to, supporting, analyzing, reviewing or reporting on the assertions made in paragraph 10 of Section 7 of the Petition (Alternatives to the Proposal).

11. State in detail how construction of the proposed crossing would alleviate or improve the "unusual access arrangement" identified in paragraph 10 of Section 7.

12. Produce copies of all documents pertaining to, supporting, analyzing, reviewing or reporting on the information provided in response to Request No. 11 herein.

13. Produce copies of all documents pertaining to, supporting, analyzing, reviewing or reporting on the assertions made in each of the numbered paragraphs of Section 8 of the Petition (Sight Distance).

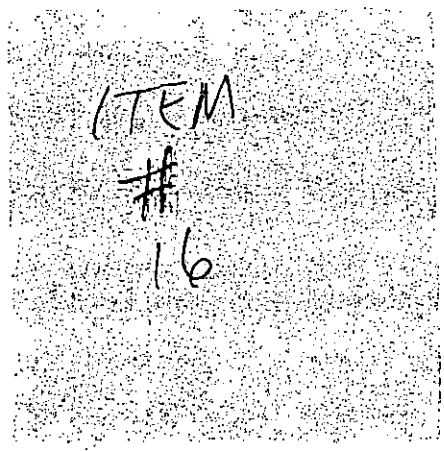
14. Produce copies of all documents pertaining to, supporting, analyzing, reviewing or reporting on the assertions made in each of the numbered paragraphs of Section 10 of the Petition (Proposed Warning Signals or Devices).

15. Produce copies of all documents pertaining to, supporting, analyzing, reviewing or reporting on the assertions made in each of the numbered paragraphs of Section 11 of the Petition (Additional Information).

16. Produce copies of all documents pertaining to, supporting, analyzing, reviewing or reporting on the assertions made in the document entitled "Center Parkway Extension and Railroad Crossing Traffic Study, March 2013" including all data compilations, drafts, revisions or prior versions thereof.

17. Produce copies of all notes, studies, reports, correspondence, emails, agreements, contracts or other documents pertaining to the document entitled "Center Parkway Extension and Railroad Crossing Traffic Study, March 2013" or to any drafts, revisions or prior versions thereof.

18. Produce copies of all documents pertaining to, supporting, analyzing, reviewing or reporting on the assertions made in the Appendix to the Petition, including all data compilations, drafts, revisions or prior versions of all documents contained therein.


ITEM
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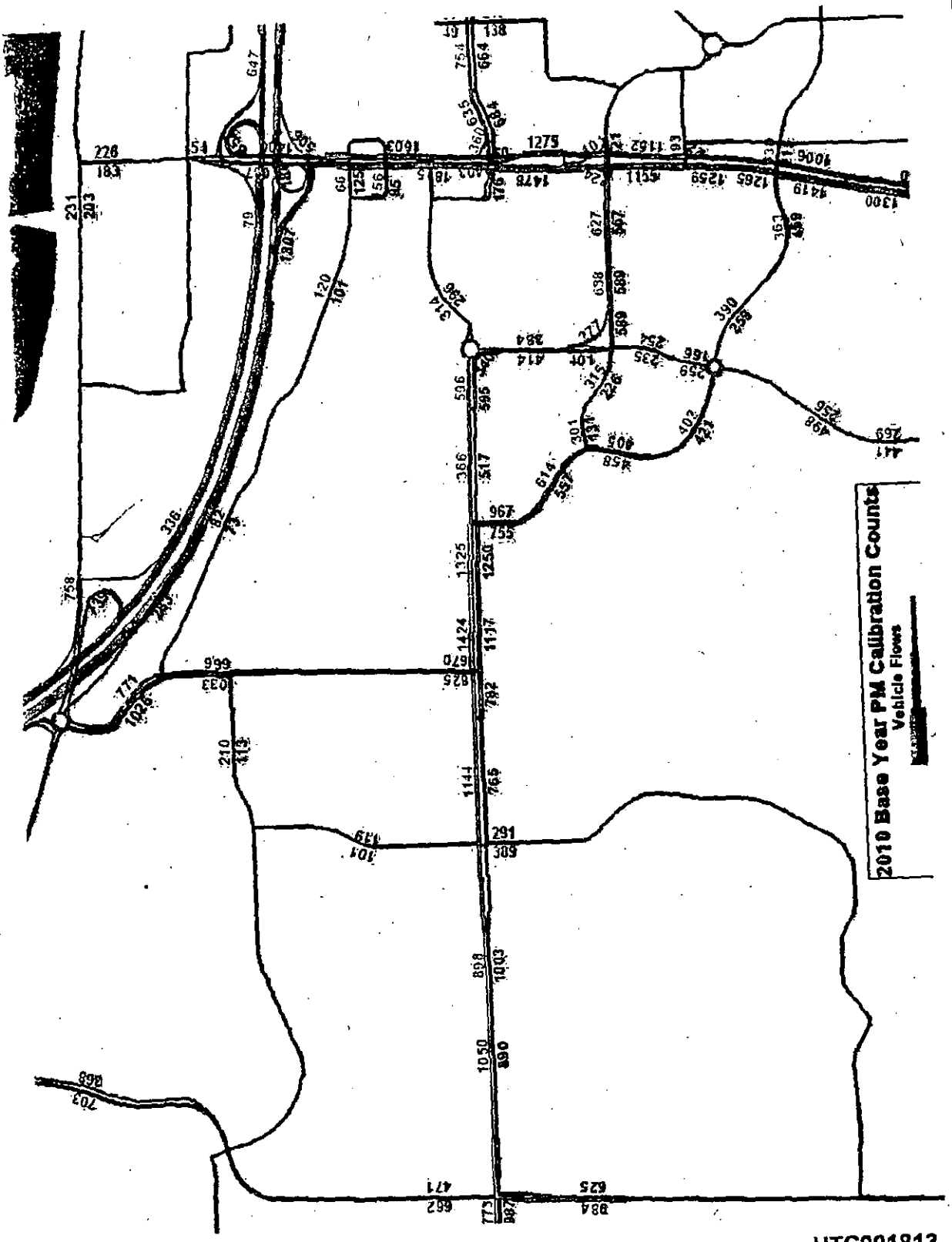

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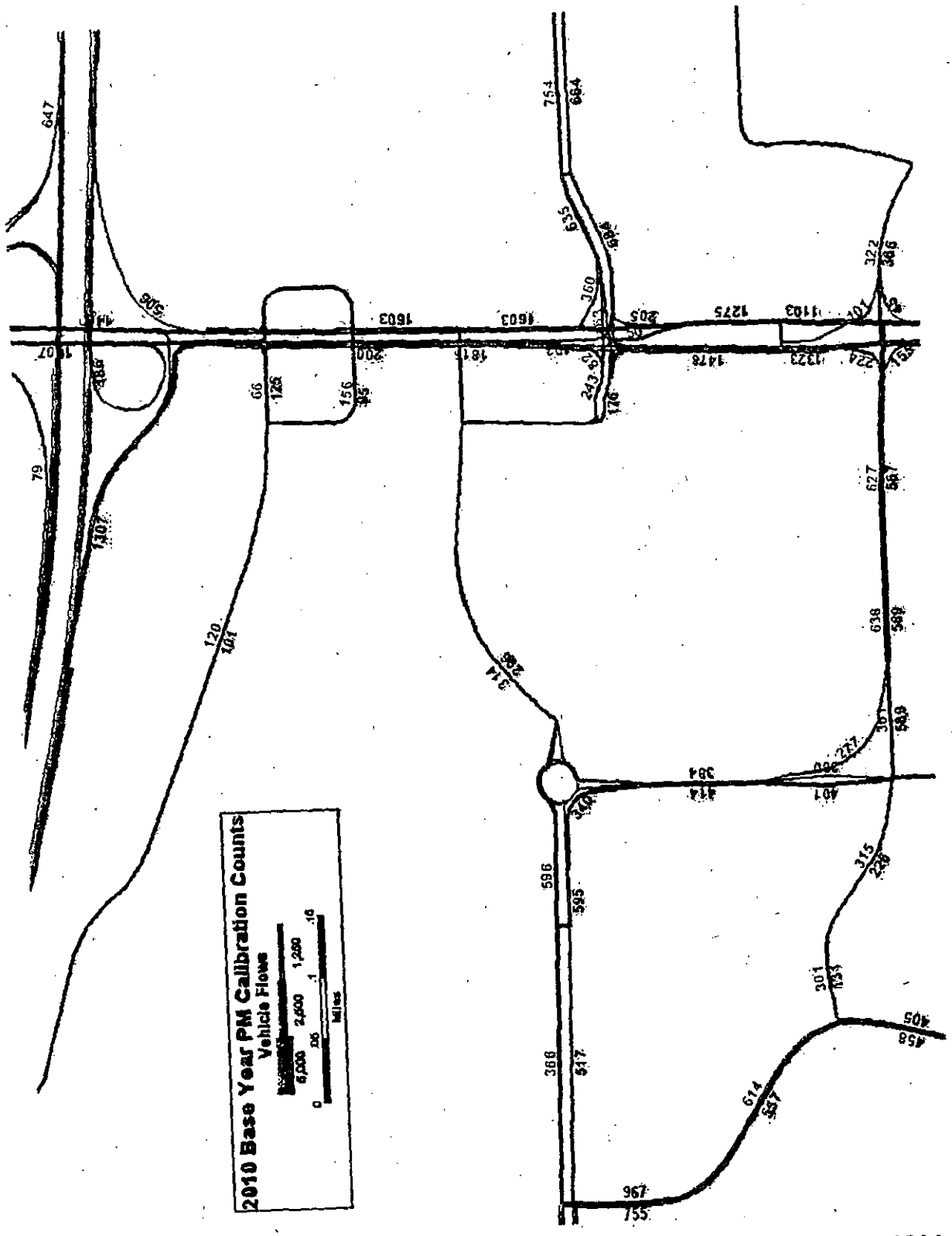
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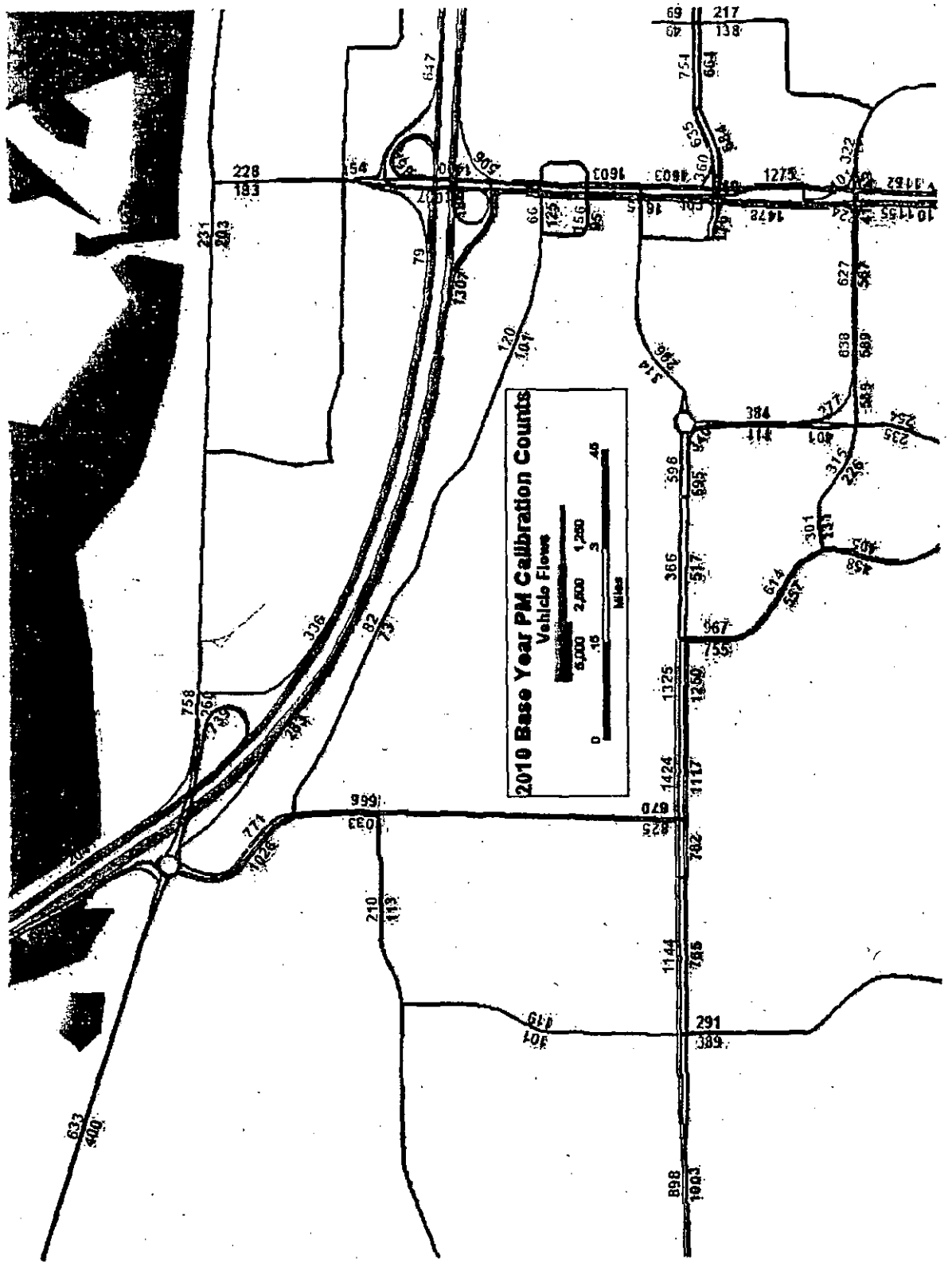
Vehicle Flows
6,000
2,600
1,200
0
.05
.1
.15
Miles

UTC001814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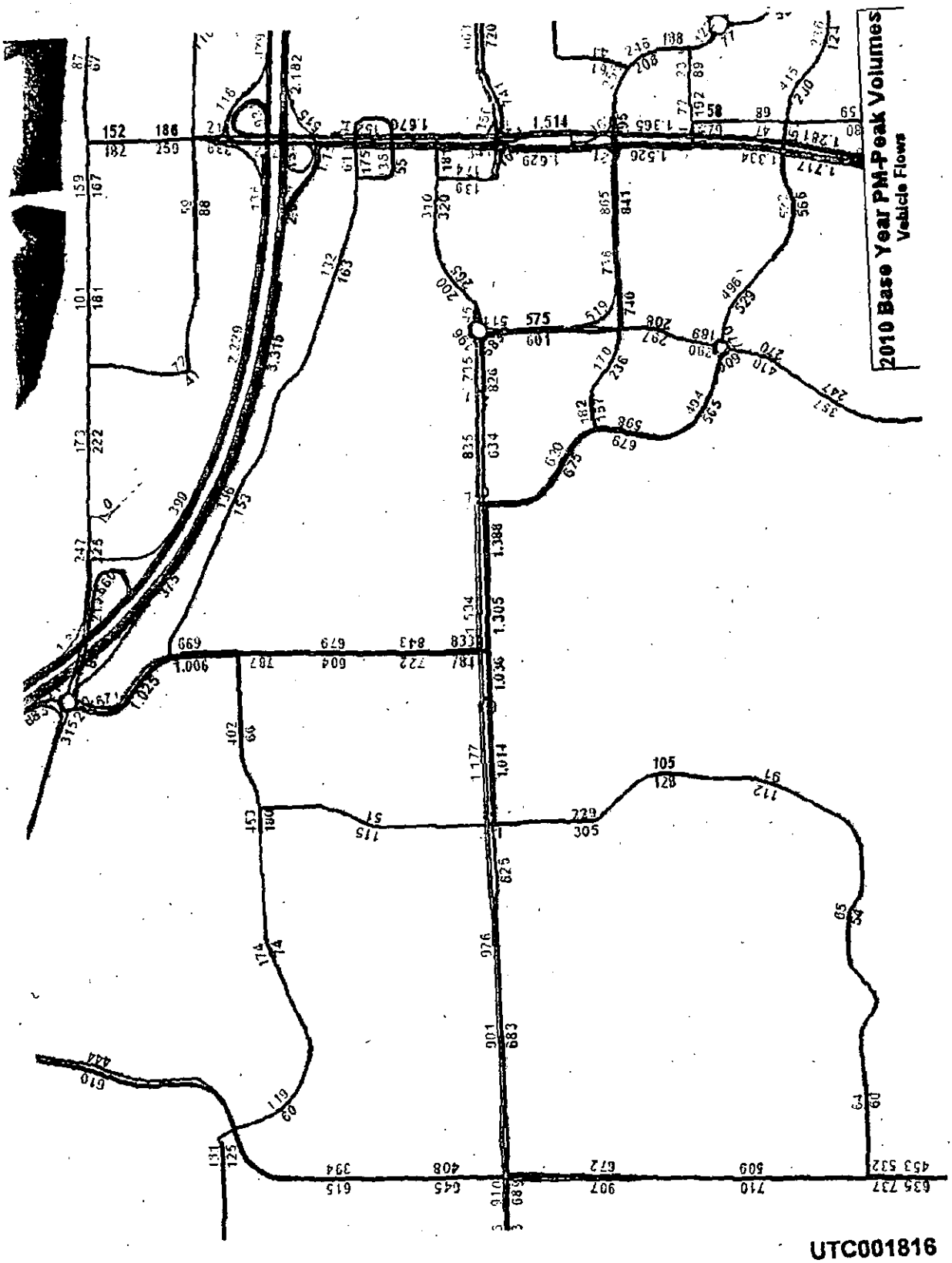
Vehicle Flows
0
15
6,000
2,600
1,200
3
45
Miles

UTC001815



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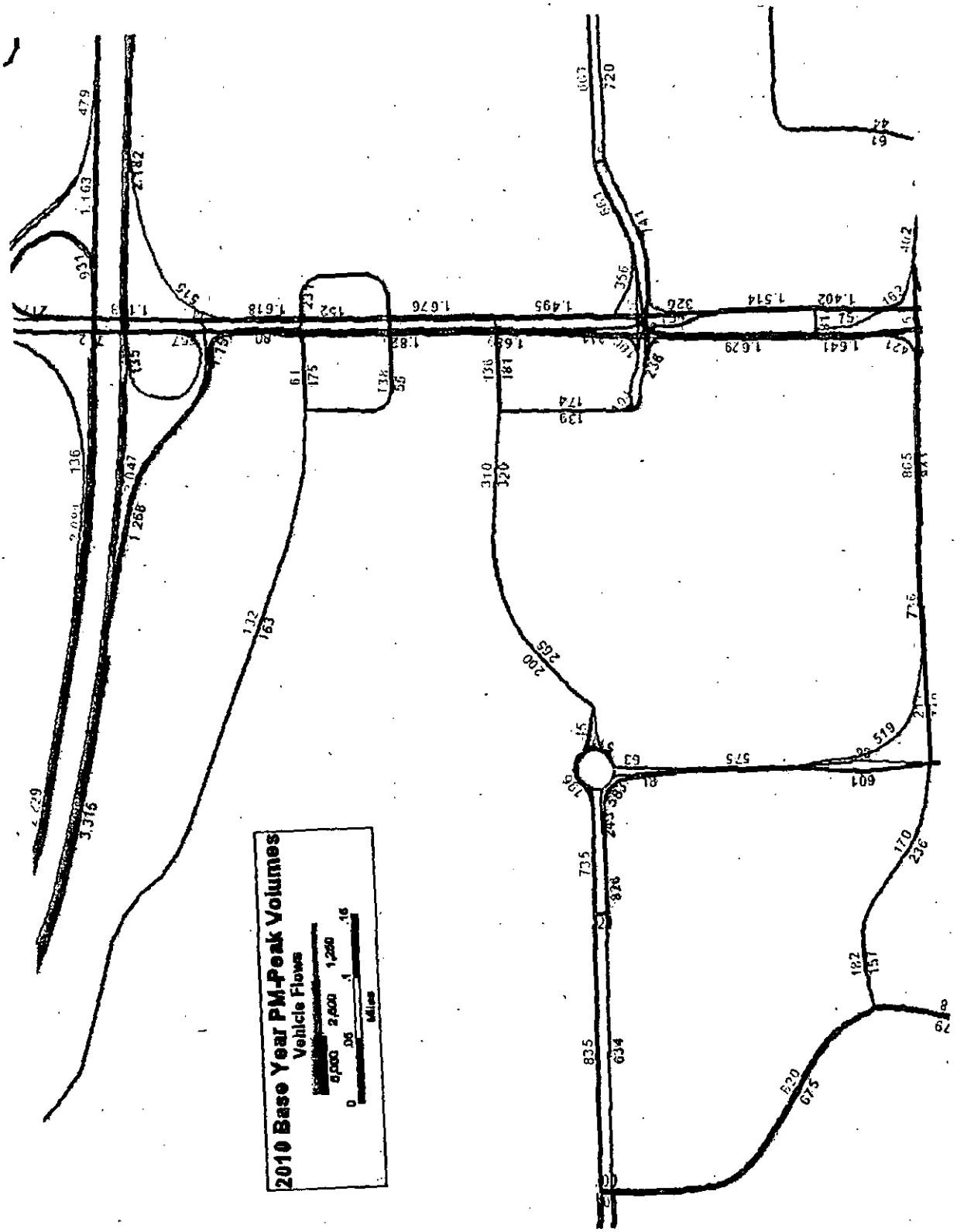
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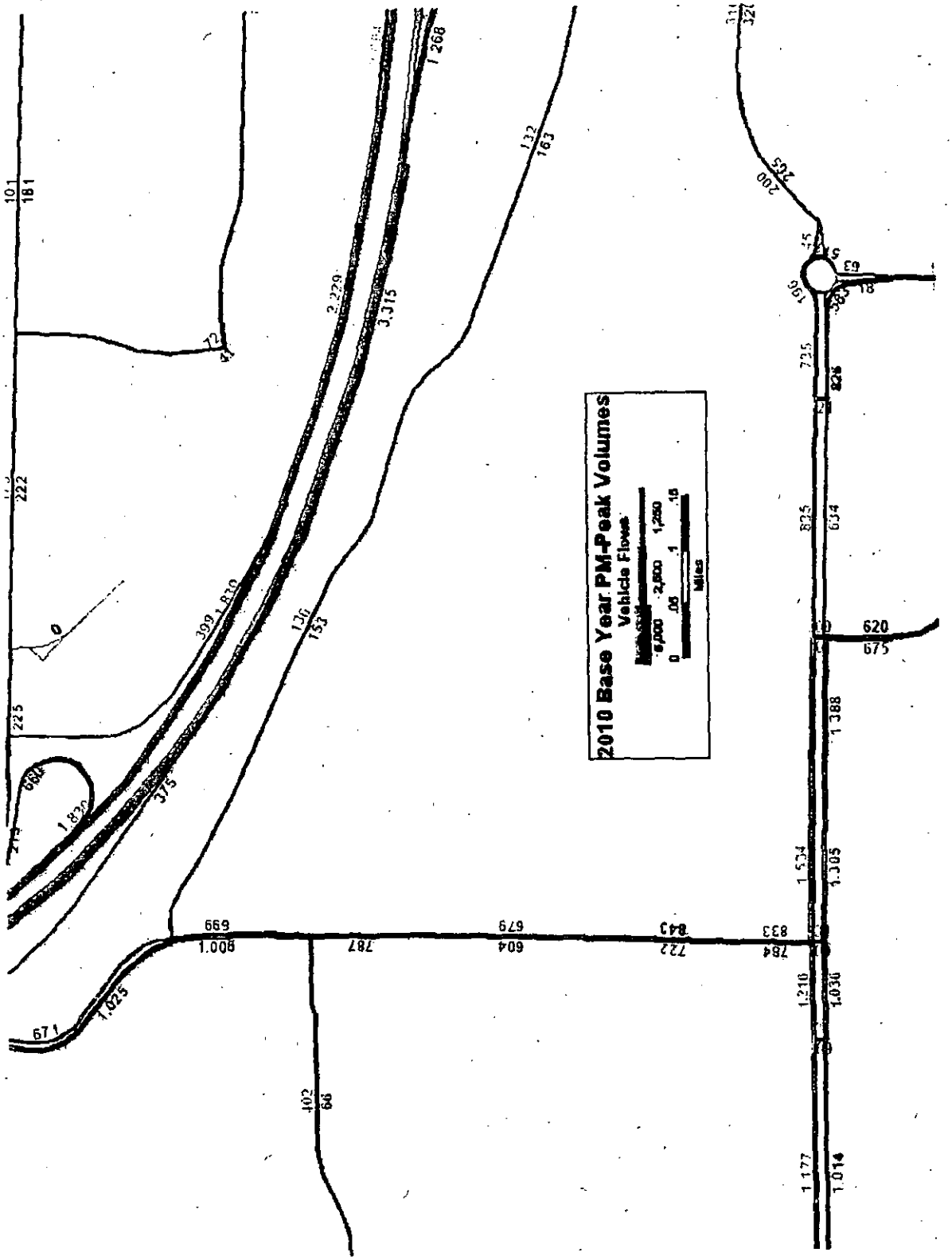
Vehicle Flows
8,000
2,600
1,200
0
.05
.1
.15
Miles

UTC001817



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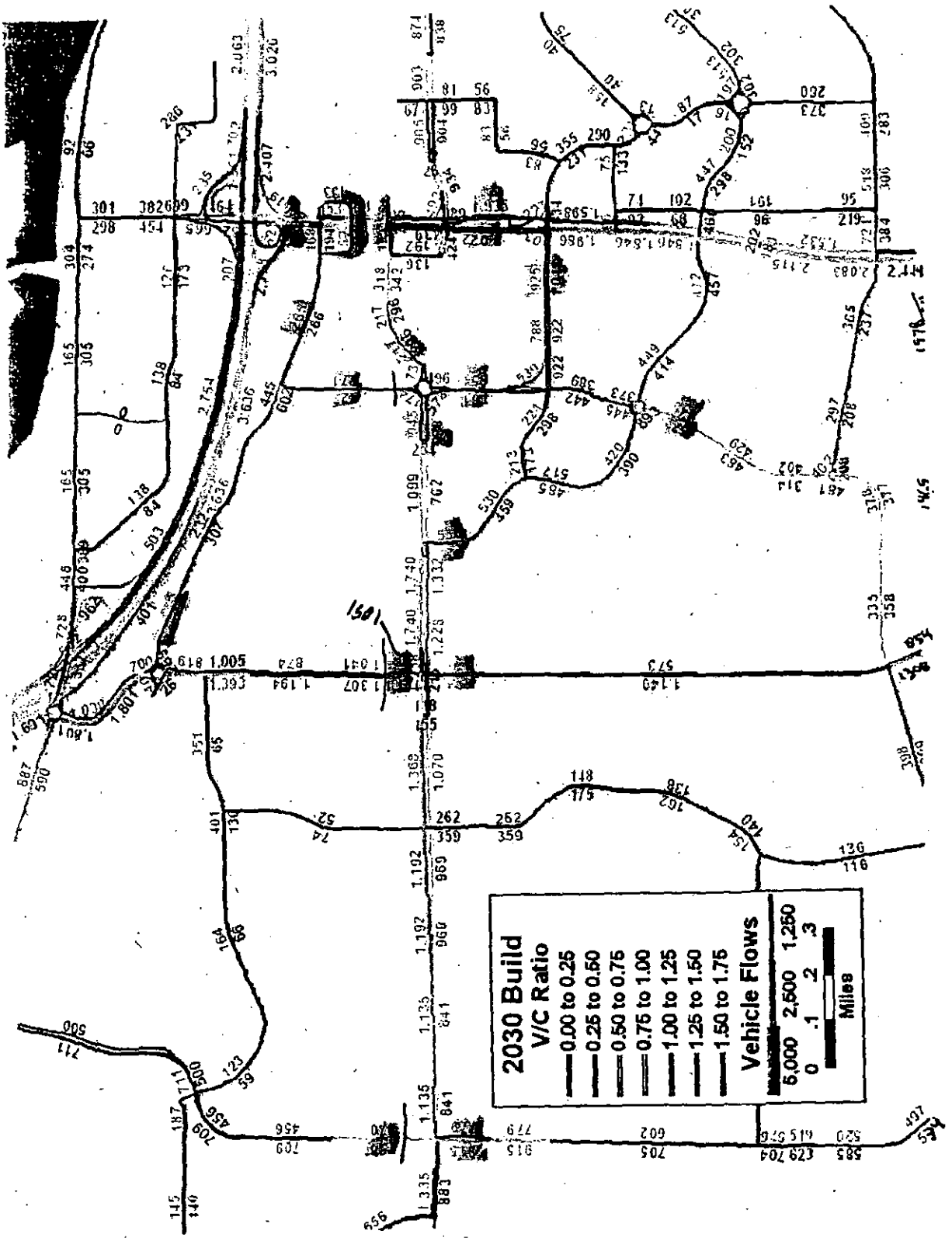
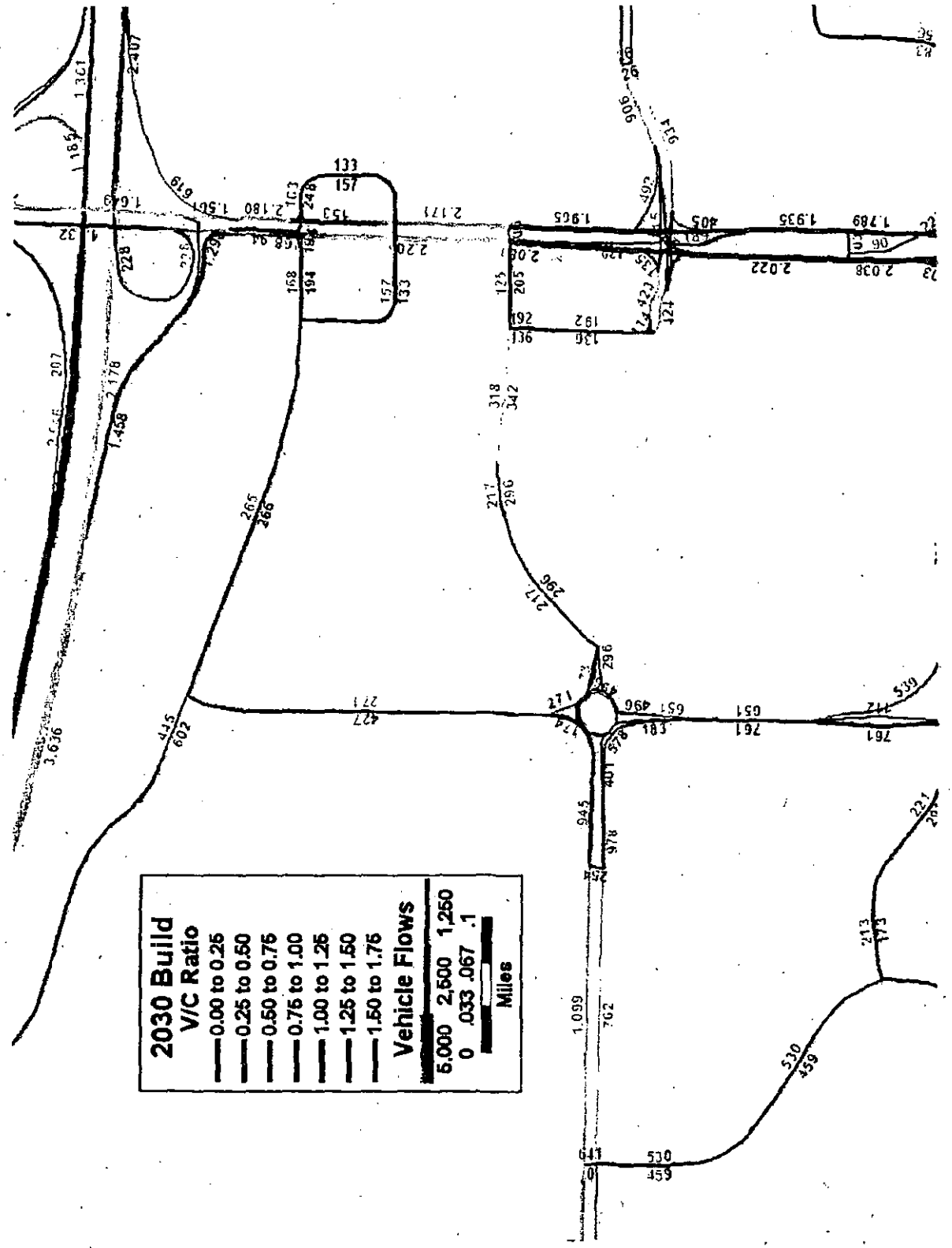

2030 Build
V/C Ratio
0.00 to 0.25
0.25 to 0.50
0.50 to 0.75
0.75 to 1.00
1.00 to 1.25
1.25 to 1.50
1.50 to 1.75
Vehicle Flows
5,000 2,500 1,250
0 .1 .2 .3
Miles
1501

UTC001819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V/C Ratio
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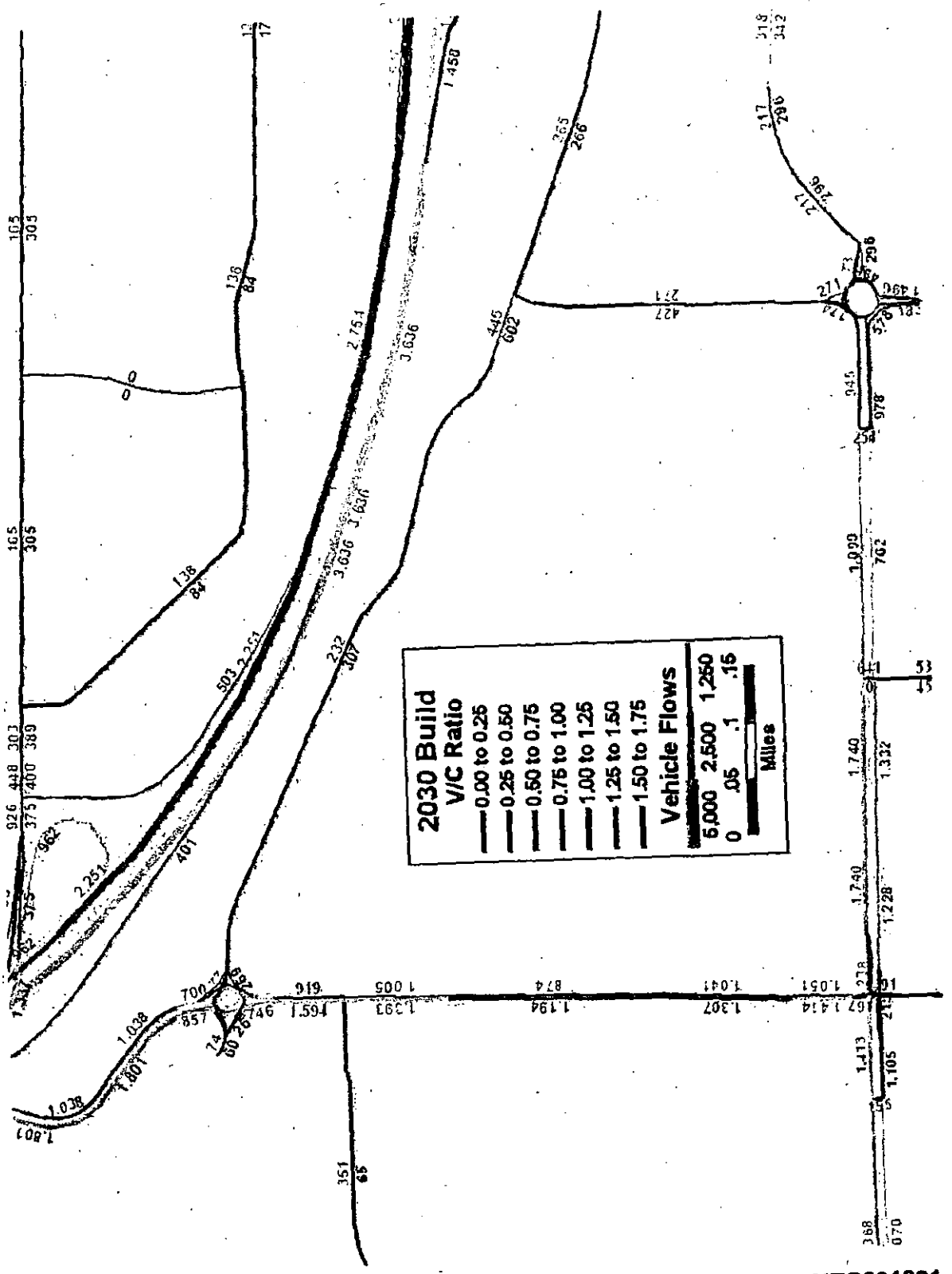
0.25 to 0.50
0.50 to 0.75
0.75 to 1.00
1.00 to 1.25
1.25 to 1.50
1.50 to 1.75
Vehicle Flows
5,000 2,500 1,250
0 .033 .067 .1
Miles

UTC001820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V/C Ratio
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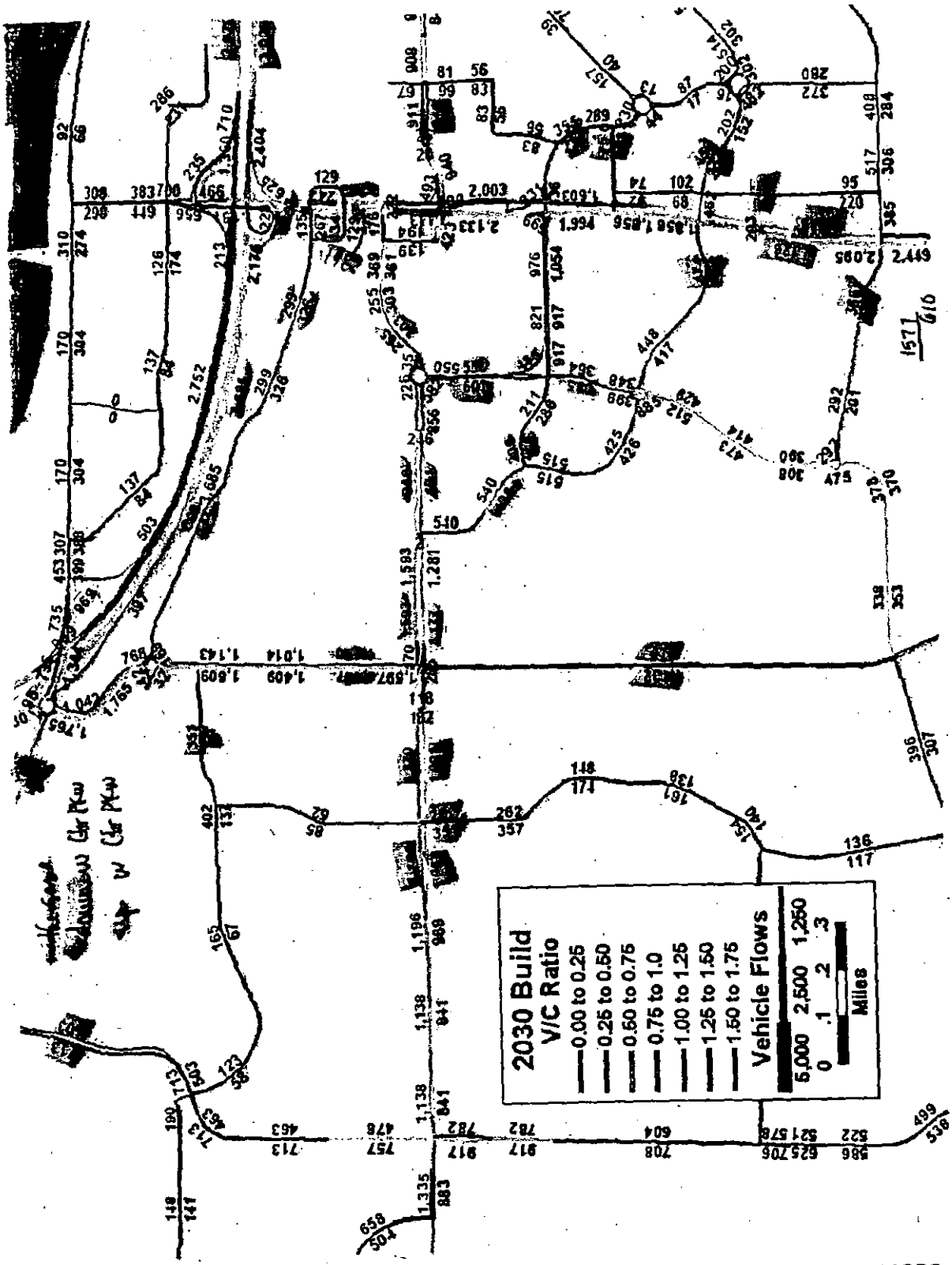
0.25 to 0.50
0.50 to 0.75
0.75 to 1.00
1.00 to 1.25
1.25 to 1.50
1.50 to 1.75
Vehicle Flows
5,000 2,500 1,250
0 .05 .1 .15
Miles

UTC001821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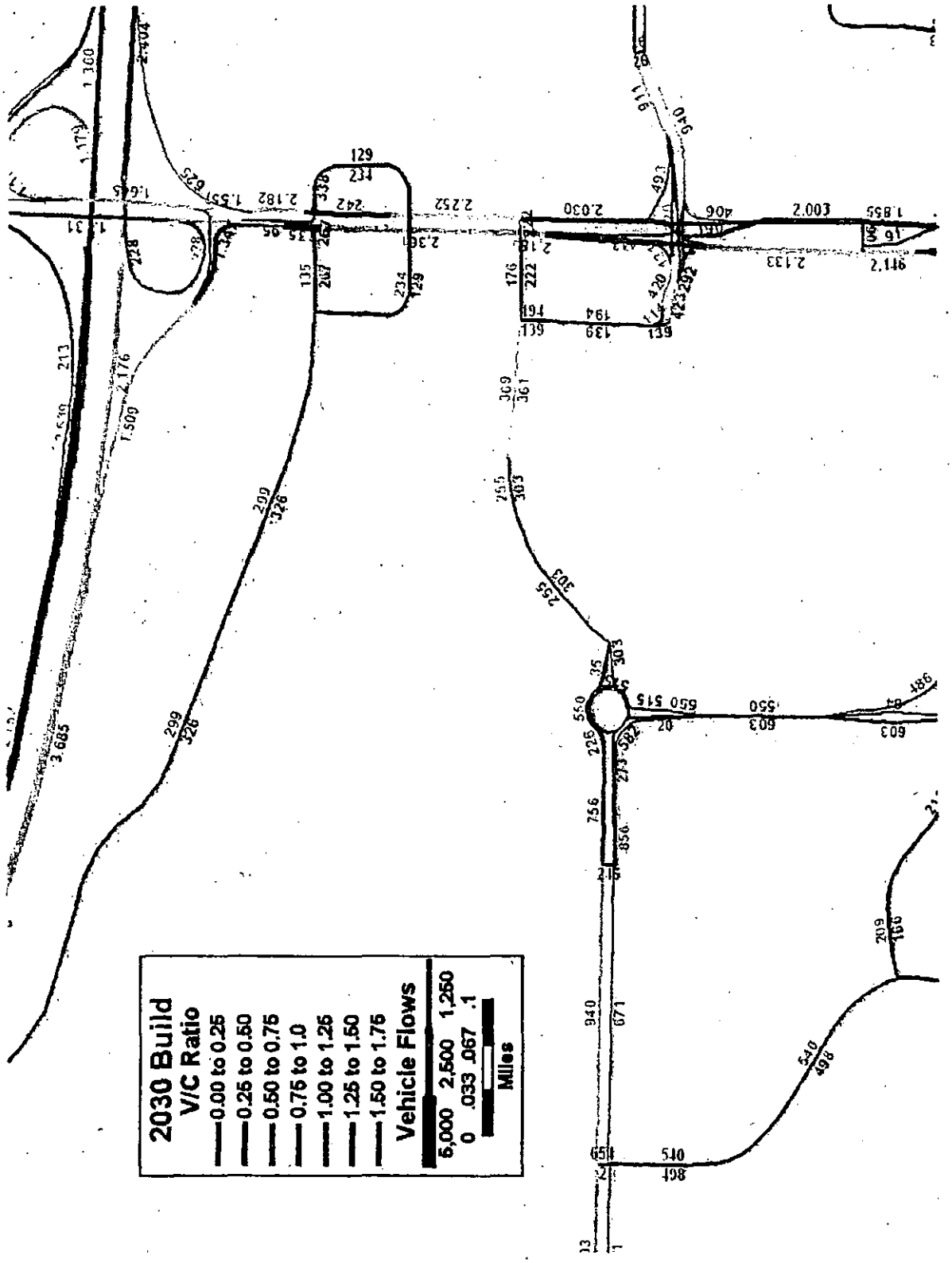
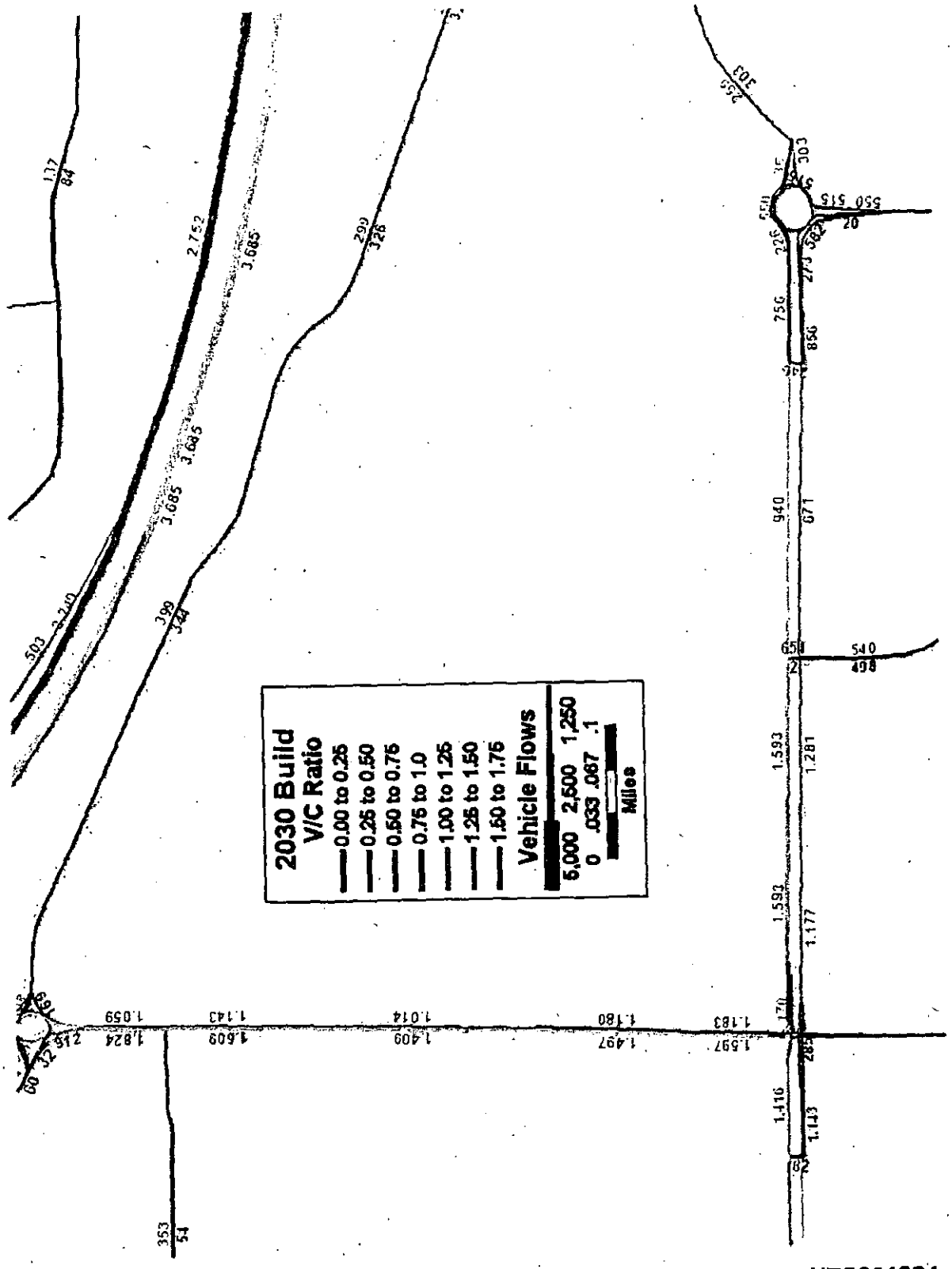
V/C Ratio
0.00 to 0.25
0.25 to 0.50
0.50 to 0.75
0.75 to 1.0
1.00 to 1.25
1.25 to 1.50
1.50 to 1.75
Vehicle Flows
5,000 2,500 1,250
0 .1 .2 .3
Miles

UTC001822


2030 Build
V/C Ratio
0.00 to 0.25
0.25 to 0.50
0.50 to 0.75
0.75 to 1.0
1.00 to 1.25
1.25 to 1.50
1.50 to 1.75
Vehicle Flows
5,000 2,500 1,250
0 .033 .067 .1
Miles

UTC001823


2030 Build
V/C Ratio
0.00 to 0.25
0.25 to 0.50
0.50 to 0.75
0.75 to 1.0
1.00 to 1.25
1.25 to 1.50
1.50 to 1.75
Vehicle Flows
5,000 2,500 1,250
0 .033 .067 .1
Miles

UTC001824

UTC001825

CENTER PARKWAY TRAFFIC STUDY
TRAFFIC FORECAST

Location	2010 Calibration Ground Counts NB/WB	2010 Calibration Ground Counts SB/EB	2010 Regional Model NB/WB	2010 Regional Model SB/EB	2030 Model Without Center Pkwy NB/WB	2030 Model Without Center Pkwy SB/EB	2030 Model With Center Pkwy NB/WB	2030 Model With Center Pkwy SB/EB	2033 * Without Center Pkwy NB/WB	2033 * Without Center Pkwy SB/EB	2033 * With Center Pkwy NB/WB	2033 * With Center Pkwy SB/EB	2033 ADT w/o Center Pkwy	2033 ADT with Center Pkwy
Taptesl W/CCB	120	101	132	163	299	326	265	266	290	210	260	210	4600	4400
Taptesl W/Center Pkwy	120	101	132	163	298	326	445	602	290	210	400	430	4600	7700
Taptesl E/ Steptoe	82	73	136	153	399	344	232	307	250	170	150	150	3900	2800
CCB s/SR 240	1906	1981	1618	1724	2182	2250	2180	2202	2700	2710	2690	2650	50100	49400
Mall E/Ctr Pkwy	314	296	200	265	255	303	217	296	420	350	370	340	7100	6600
Gage W/Steptoe	1144	765	1117	1014	1370	1081	1368	1090	1470	860	1470	850	21600	21500
Gage E/Steptoe	1424	1117	1534	1305	1593	1177	1740	1228	1550	1060	1690	1100	24200	25800
Gage W/Ctr Pkwy	596	595	735	826	756	856	945	978	640	650	790	750	11900	14300
Taptesl Overpass	156	95	138	55	234	129	157	133	280	230	190	240	4700	4000
Leslie N/Gage	471	662	408	645	476	757	470	754	580	810	570	810	12900	12800
Steptoe N/Gage	670	825	833	784	1183	1597	1051	1414	1000	1760	890	1560	25600	22700
Center Pkwy N/Gage	–	–	–	–	–	–	271	427	–	–	340	420	–	7000
CCB N/Canal Dr	1603	1815	1676	1825	2252	2361	2171	2205	2260	2470	2170	2300	43800	41400
Leslie S/Gage	625	984	672	907	782	917	778	915	760	1040	760	1040	16700	16700
Steptoe S/Gage	–	–	–	–	574	1132	573	1140	600	1190	600	1200	16600	16700
Grandridge S/Gage	967	755	620	675	540	498	530	459	880	580	870	540	13500	13100
Center Pkwy S/Gage	384	414	575	601	550	603	651	761	390	440	470	540	7700	9400
CCB S/Canal Dr	1275	1478	1514	1629	2003	2133	1935	2022	1770	2030	1710	1920	35200	33600
Center Pkwy s/G'Ridge	256	498	270	410	429	512	445	522	430	650	440	660	10000	10200
Quinault W/CCB	627	567	865	841	976	1054	925	1042	740	750	700	740	13800	13300
Cordon Line N/Gage	2744	3302	2917	3254	3911	4715	3963	4800	4120	5270	4160	5330	87000	87900

*Model Growth Rate Perpetuated from 2030 to 2033

Cordon S/Gage	3251	3631	3381	3812	4449	5283	4468	5297	4400	5280	4410	5240	89700	89500

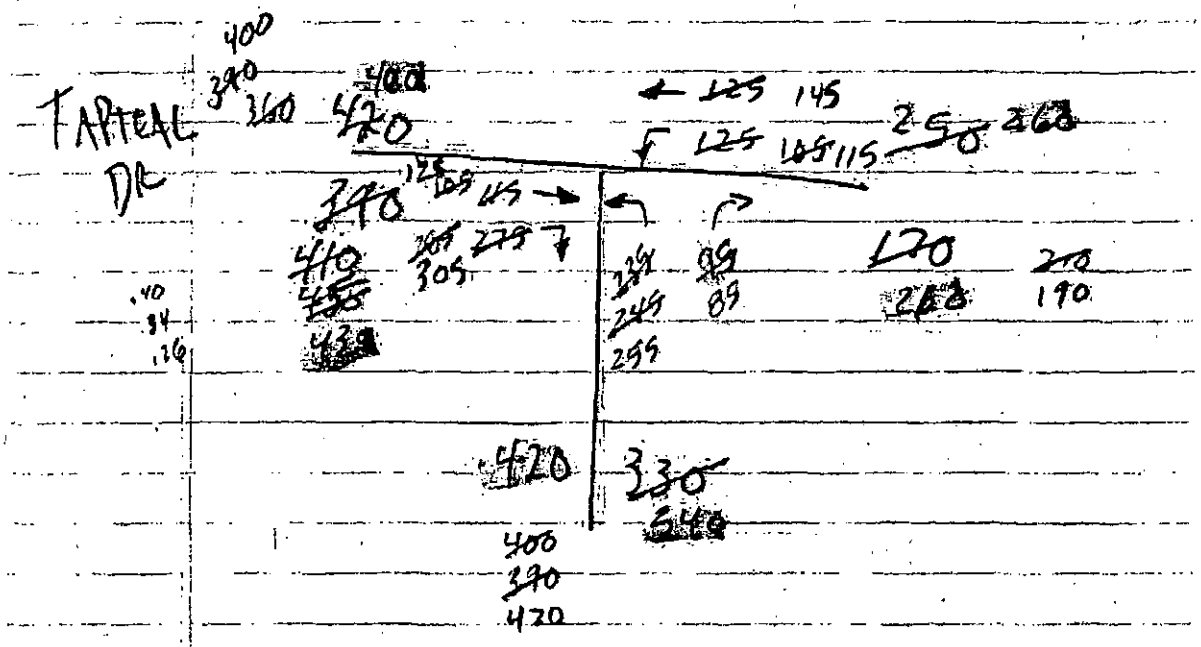
Cordon Growth Rate '10 - 30 3928.8 1.5% per 4741.3 1.9% per yr

4464.8 1.4% per 5236.3 1.6% per yr

560 2014 forecast
1.6% per yr

757.13 in 2033
5200 ADT in 2014

2033



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CENTER PARKWAY K FACTOR

% of ADT during Pk Hr

Gage	e/o	Steptoe	9.67	(1998)
Steptoe	w/o	Gage	9.81	1998 —
CCB	s/o	Fowler	10.1	2010
"	s/o	WB on ramp	10.3	2010 —
Gage	e/o	Belleview	9.46	2010
Steptoe	w/o	Canyon	9.7	2010
"	w/o	Taptkal	9.91	2010
Taptkal	w/o	Loop	12.46	2010
"	e/o	"	11.95	2010
	e/o	Steptoe	11.45	2010
Taptkal loop	s/o	Taptkal	11.99	2010 —
Castle	w/o	Gage	11.03	2010 —
"	s/o	"	10.41	2010

Center Pkwy

Cordon line 10.8% during PM Pk

[redacted]

UTC001828

0-000001896
001324

420 PK Hr

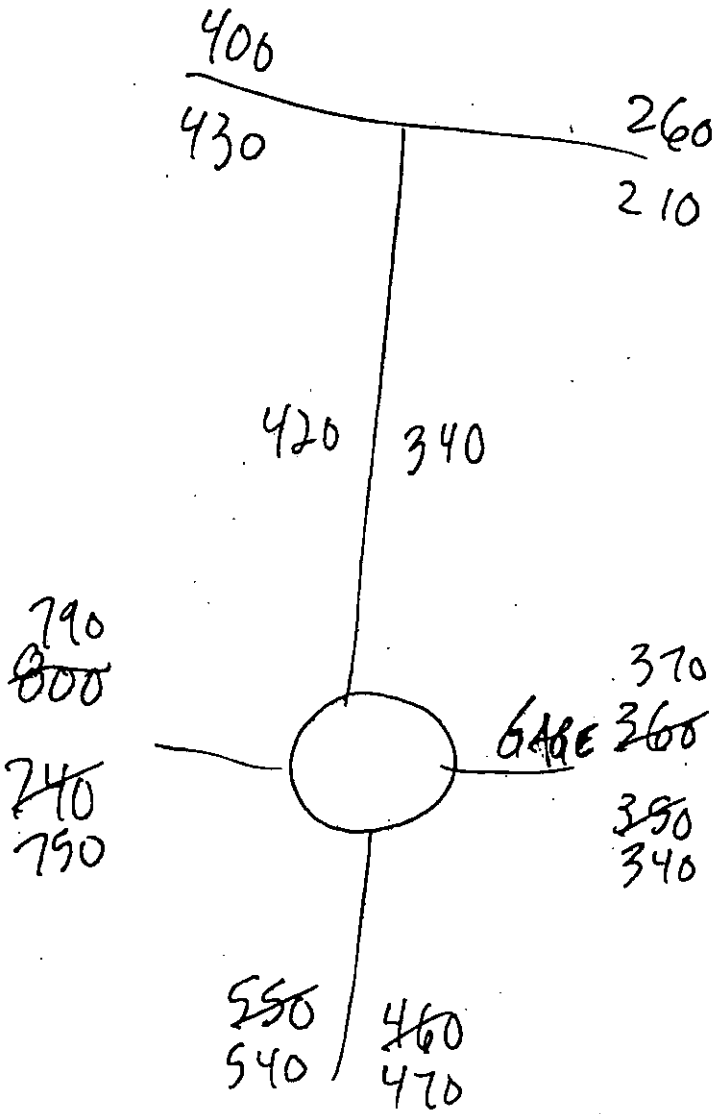
10 MPH = 52,800

1500' long train = 30 cars * 50

$\frac{1500}{52800}$ = .0284 hr

= 1.7 min

= 12 vehicles, or ~~300~~'



	2010
IN	~~1980~~
OUT	~~2040~~ 2010

UTC001829

News

Washington State Department of Transportation

WSDOT Functional Classification M

Tools

Legend | Zoom | Basemap | Tips

Functional Class

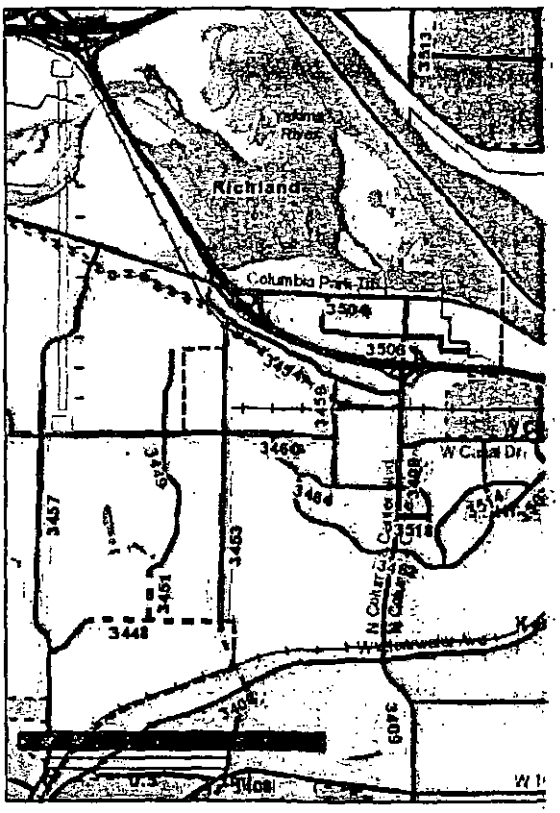
Rural	Urban	
01	11	Interstate
	12	Other Fwy Expwy
02	14	Other Principal Arterial
06	16	Minor Arterial
07		Major Collector
	17	Collector
08		Minor Collector
	32	Proposed Other Fwy Expwy
22	34	Proposed Other Principal Arterial
26	36	Proposed Minor Arterial
27	37	Proposed Major Collector
28		Proposed Minor Collector

Other

City Limit

Urban Area

Functional Class Route Identifier



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001326

38th Ave County Road Improvement District Travel Time Calculations
Decision Point for Shortest Route Calculations
Future (Build)

	Route/Direction of Travel			
	KFD		RFD	
	Existing	Proposed	Existing	Proposed
Total Distance (miles)	1.20	1.09	2.47	2.13
Distance at 25 MPH	0.40	0.13	0.00	0.00
Distance at 30 MPH	0.30	0.36	0.86	0.16
Distance at 35 MPH	0.50	0.60	0.00	0.35
Distance at 40 MPH	0.00	0.00	1.61	1.62
Travel time at 25 MPH (min)	0.96	0.31	0.00	0.00
Travel time at 30 MPH (min)	0.60	0.72	1.72	0.32
Travel time at 35 MPH (min)	0.86	1.03	0.00	0.60
Travel time at 40 MPH (min)	0.00	0.00	2.42	2.43
Total Estimated Travel Time (min)	2.42	2.06	4.14	3.35

to Tapteal & Center Parkway.

3.67 3.22

Assumptions:

Quinault - Belfair to Columbia Center Blvd	686	feet	0.13	miles	25	MPH
Quinault - Columbia Center Blvd to Center Pkwy	1901	feet	0.36	miles	30	MPH
Center Pkwy - Quinault to Gage	1320	feet	0.25	miles	35	MPH
Center Pkwy - Gage to Tapteal	1848	feet	0.35	miles	35	MPH
Columbia Center - Quinault to Tapteal	2640	feet	0.50	miles	35	MPH
Belfair - Columbia Center to Tapteal	1426	feet	0.27	miles	25	MPH
Tapteal - Belfair to Center Pkwy	1584	feet	0.30	miles	30	MPH
Tapteal - Center Pkwy to Steptoe	3696	feet	0.70	miles	30	MPH
Stepoe - Gage to Tapteal	3221	feet	0.61	miles	40	MPH
Gage - Keene to Leslie	845	feet	0.16	miles	30	MPH
Gage - Leslie to Steptoe	5280	feet	1.00	miles	40	MPH
Gage - Steptoe to Center Parkway	3274	feet	0.62	miles	40	MPH
			5.25			

Existing Emergency Response Mid-Point

	Route/Direction of Travel			
	KFD		RFD	
	Existing	Proposed	Existing	Proposed
Total Distance (miles)	1.63	1.70	2.04	2.13
Distance at 25 MPH	0.40	0.13	0.00	0.00
Distance at 30 MPH	0.73	0.97	0.43	0.16
Distance at 35 MPH	0.50	0.60	0.00	0.35
Distance at 40 MPH	0.00	0.00	1.61	1.62
Travel time at 25 MPH (min)	0.96	0.31	0.00	0.00
Travel time at 30 MPH (min)	1.46	1.94	0.86	0.32
Travel time at 35 MPH (min)	0.86	1.03	0.00	0.60
Travel time at 40 MPH (min)	0.00	0.00	2.42	2.43
Total Estimated Travel Time (min)	3.28	3.28	3.28	3.35

to Tapteal & Center Parkway.

3.67 3.83

Assumptions:

Quinault - Belfair to Columbia Center Blvd	686	feet	0.13	miles	25	MPH
Quinault - Columbia Center Blvd to Center Pkwy	1901	feet	0.38	miles	30	MPH
Center Pkwy - Quinault to Gage	1320	feet	0.25	miles	35	MPH
Center Pkwy - Gage to Tapteal	1848	feet	0.35	miles	35	MPH
Columbia Center - Quinault to Tapteal	2640	feet	0.50	miles	35	MPH
Belfair - Columbia Center to Tapteal	1426	feet	0.27	miles	25	MPH
Tapteal - Belfair to Center Pkwy	1584	feet	0.30	miles	30	MPH
Tapteal - Center Pkwy to Steptoe	3696	feet	0.70	miles	30	MPH
Stepoe - Gage to Tapteal	3221	feet	0.61	miles	40	MPH
Gage - Keene to Leslie	845	feet	0.16	miles	30	MPH
Gage - Leslie to Steptoe	5280	feet	1.00	miles	40	MPH
Gage - Steptoe to Center Parkway	3274	feet	0.62	miles	40	MPH
			5.25			

Decision Point for Shortest Route Calculations

	Route/Direction of Travel			
	KFD		RFD	
	Existing	Proposed	Existing	Proposed
Total Distance (miles)	1.11	1.18	2.27	2.33
Distance at 25 MPH	0.40	0.13	0.00	0.00
Distance at 30 MPH	0.21	0.45	0.66	0.36
Distance at 35 MPH	0.50	0.60	0.00	0.35
Distance at 40 MPH	0.00	0.00	1.61	1.62
Travel time at 25 MPH (min)	0.96	0.31	0.00	0.00
Travel time at 30 MPH (min)	0.42	0.90	1.33	0.71
Travel time at 35 MPH (min)	0.86	1.03	0.00	0.60
Travel time at 40 MPH (min)	0.00	0.00	2.42	2.43
Total Estimated Travel Time (min)	2.24	2.24	3.74	3.74
	3.38	3.51		

Assumptions:

Quinault - Belfair to Columbia Center Blvd	686	feet	0.13	miles	25	MPH
Quinault - Columbia Center Blvd to Center Pkwy	1901	feet	0.36	miles	30	MPH
Center Pkwy - Quinault to Gage	1320	feet	0.25	miles	35	MPH
Center Pkwy - Gage to Tapteal	1848	feet	0.35	miles	35	MPH
Columbia Center - Quinault to Tapteal	2640	feet	0.50	miles	35	MPH
Belfair - Columbia Center to Tapteal	1426	feet	0.27	miles	25	MPH
Tapteal - Belfair to Center Pkwy	1584	feet	0.30	miles	30	MPH
Tapteal - Center Pkwy to Steptoe	3696	feet	0.70	miles	30	MPH
Stepoe - Gage to Tapteal	3221	feet	0.61	miles	40	MPH
Gage - Keene to Leslie	845	feet	0.16	miles	30	MPH
Gage - Leslie to Steptoe	5280	feet	1.00	miles	40	MPH
Gage - Steptoe to Center Parkway	3274	feet	0.62	miles	40	MPH
			5.25			

Decision Point for Shortest Route Calculations

	Route/Direction of Travel			
	KFD		RFD	
	Existing	Proposed	Existing	Proposed
Total Distance (miles)	0.00	1.36	1.16	0.00
Distance at 25 MPH	0.00	0.13	0.00	0.00
Distance at 30 MPH	0.00	0.36	0.16	0.00
Distance at 35 MPH	0.00	0.25	0.00	0.00
Distance at 40 MPH	0.00	0.62	1.00	0.00
Travel time at 25 MPH (min)	0.00	0.31	0.00	0.00
Travel time at 30 MPH (min)	0.00	0.72	0.32	0.00
Travel time at 35 MPH (min)	0.00	0.43	0.00	0.00
Travel time at 40 MPH (min)	0.00	0.93	1.50	0.00
Total Estimated Travel Time (min)	0.00	2.39	1.82	0.00

1.16 1.36

Assumptions:

Quinault - Belfair to Columbia Center Blvd	686	feet	0.13	miles	25	MPH
Quinault - Columbia Center Blvd to Center Pkwy	1901	feet	0.36	miles	30	MPH
Center Pkwy - Quinault to Gage	1320	feet	0.25	miles	35	MPH
Center Pkwy - Gage to Tapteal	1848	feet	0.35	miles	35	MPH
Columbia Center - Quinault to Tapteal	2640	feet	0.50	miles	35	MPH
Belfair - Columbia Center to Tapteal	1426	feet	0.27	miles	25	MPH
Tapteal - Belfair to Center Pkwy	1584	feet	0.30	miles	30	MPH
Tapteal - Center Pkwy to Steptoe	3696	feet	0.70	miles	30	MPH
Stepoe - Gage to Tapteal	3221	feet	0.61	miles	40	MPH
Gage - Keene to Leslie	845	feet	0.16	miles	30	MPH
Gage - Leslie to Steptoe	5280	feet	1.00	miles	40	MPH
Gage - Steptoe to Center Parkway	3274	feet	0.62	miles	40	MPH
			5.25			

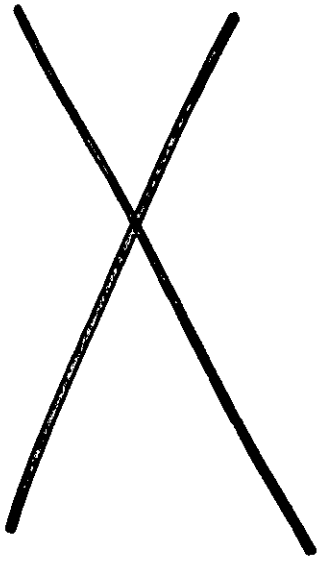

Exhibit No. RVP-1T

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WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK and CITY OF RICHLAND Petitioners vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD CO., BNSF RAILWAY and UNION PACIFIC RAILROAD Respondents.	DOCKET NO. TR-130499-P PRE-FILED TESTIMONY OF RANDOLPH V. PETERSON

1 SUMMARY OF TESTIMONY

Randolph V. Peterson is the Managing Member of Respondent Tri-City & Olympia Railroad Co. ("TCRY"). His testimony addresses the current rail use of the track over which the Petition seeks to construct an at-grade crossing, the

history of Petitioners' efforts to construct such a crossing and the dangers of that crossing.

2 BACKGROUND

Q. State your name, occupation and business affiliation.

A. My name is Randolph V. Peterson. I am the Managing Member of Tri-City Railroad Company, LLC which does business as Tri-City & Olympia Railroad Company. I will refer to that railroad as "TCRY" which is our rail carrier designation.

Q. State your qualifications to provide expert testimony in this matter.

A. I have been the Managing Member of TCRY since its formation in 1999. TCRY has been involved in railroad activities in the Richland/Kennewick area since its formation. I am personally familiar with the rail operations of TCRY.

Q. Describe your history in railroad operations in Richland/Kennewick.

A. I have been involved in railroading in this area since March, 1998. At that time, a company that I headed leased the 1171 Building from the Department of Energy to conduct railcar and locomotive repair operations. In August, 1998, the DOE conveyed this property along with "Southern Connection of the Hanford Railroad," consisting of approximately 16 miles of track, to the Port of Benton.

3 HISTORY OF TCRY OPERATIONS ON THE "SOUTHERN CONNECTION"

Q. Describe the history of TCRY railroad operations on the "Southern Connection."

A. In June, 2000, the Surface Transportation Board granted TCRY a "Lease and Operation Exemption" on this trackage. In August, 2002, the Port of Benton leased the 1171 Building and the "Southern Connection" track to TCRY. TCRY has operated on this track continuously under that lease which is currently in force until March 31, 2022, with an option to extend until 2032 at TCRY's sole election.

4 CURRENT RAIL TRAFFIC AND SPEEDS AT THE LOCATION OF THE PROPOSED CROSSING

Q. Describe TCRY's operations on this track.

A. TCRY has continuously operated using this track as its mainline as a rail carrier engaged in interstate commerce. It has interchanged railcars with both the Union Pacific Railroad ("UPRR") and the BNSF Railway Co. ("BNSF") during that time. In 2009, TCRY ceased interchanging with the BNSF, but continues to interchange with the UPRR on a daily basis.

Q. Does the Petition seek authority to construct an at-grade crossing over the track leased to TCRY by the Port of Benton.

A. Yes. The Petition seeks to construct an at-grade crossing over two tracks at the Center Parkway location – TCRY's mainline and its active run-through siding.

Q. Describe TCRY's current operations on the track at the location of the proposed at-grade crossing.

A. TCRY operates as a "rail carrier" as defined by the Surface Transportation Board. TCRY conducts interstate rail operations on its mainline from Monday through Friday and as required on weekends. The proposed at-grade crossing would

bisect the TCRY mainline as well as TCRY's active run-through siding which is used by TCRY for its train management, including interchange.

Q. Do other railroads also move on the TCRY mainline?

A. Both the BNSF and the UPRR also move trains on TCRY's mainline at the proposed at-grade crossing location. Specifically, UPRR moves unit trains consisting of 100 plus railcars on TCRY's mainline.

Q. Describe the current rail traffic at the proposed at-grade crossing location.

A. At present TCRY operates between 10 to 20 trains each week on its mainline through that location, not including "unit trains." BNSF operates 10 trains per week through that location. UPRR moves unit trains consisting of 100+ cars through that location.

Q. State the number of times railcars have moved over the proposed at-grade crossing in 2012 and 2013.

A. Based upon an eight month actual count, TCRY projects a total of 4,620 railcar trips over the proposed crossing by its own trains and UPRR unit trains and an additional 498 railcar trips over the proposed crossing by BNSF trains for a total of 5,118 railcars passing over the proposed crossing in 2013. In 2012, combined TCRY, UPRR and BNSF traffic consisted of 4,458 railcars passing over the proposed at-grade crossing.

Q. State the current maximum train speed at the location of the propose at-grade crossing.

A. Twenty-five miles per hour.

5 ANTICIPATED INCREASE IN RAIL TRAFFIC AND TRAIN SPEEDS

Q. Does TCRY anticipate an increase in its rail traffic at this location?

A. Based on current business, TCRY anticipated annual rail traffic increases of approximately 20% each year which would result in total railcar traffic over the proposed crossing in 2014 of more than 6,200 railcar trips per year. TCRY anticipates a dramatic increase in total train traffic, through this location in the next ten years due to a number of factors.

Q. Please describe those factors.

A. There a number of examples of rail projects underway requiring service which can only be provided by moving trains on the TCRY mainline over the proposed at-grade crossing location. Additional customers will be locating operations on the loop track transload facility served by TCRY on the Horn Rapids Spur. Also, TCRY is aware that ConAgra Lamb Weston has entered into an agreement to purchase property on the Horn Rapids Spur to construct a cold storage warehouse facility as early as 2014/2015. That facility will generate a huge railcar traffic increase on the TCRY mainline at the proposed at-grade crossing location. In addition, the City of Richland plans to construct one or more "loop tracks" to handle 100+ car unit trains on the Horn Rapids Spur.

Q. What is your best estimate of the increase in rail traffic?

A. All of these factors demonstrate a likely increase in rail traffic on TCRY's mainline at the location of the proposed at-grade crossing which I believe, in the near

future, will reach or exceed 40,000 railcar trips per year, many of which will be unit trains of approximately 100+ railcars each.

Q. Do you anticipate an increase in train speeds at the proposed location?

A. When rail volume increases as anticipated, it is inevitable that train speeds will ultimately increase as well, making the ill-conceived proposed at-grade crossing even more dangerous.

6 INHERENT RISKS

Q. Based on your knowledge and experience, do you believe that an at-grade crossing at Center Parkway is in the best interest of the public?

A. No. In addition to all the factors I have cited, increasing the number of at-grade crossings on the TCRY mainline can only increase the likelihood that a serious accident will occur. I find no logic in the Cities' desire to divert traffic from the inherently safe separated-grade crossing at Columbia Center Blvd. to the inherently dangerous proposed at-grade crossing at Center Parkway with less than 1,500 feet between them.

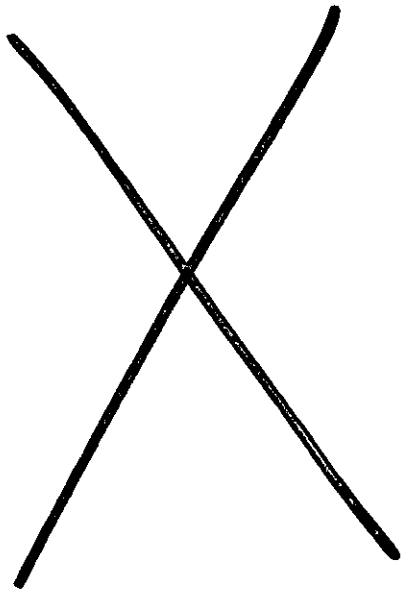
7 DECLARATION

I, Randolph V. Peterson, declare under penalty of perjury under the laws of the State of Washington that the foregoing PRE-FILED TESTIMONY OF RANDOLPH V. PETERSON is true and correct to the best of my knowledge and belief.

DATED this 30 day of September, 2013.

Randolph Peterson

RANDOLPH V. PETERSON



WUTC DOCKET TR-130499
EXHIBIT RVP-2-X
ADMIT ☒ W/D ☐ REJECT ☐

Docket TR-130499
UTC Staff Data Request Nos. 2-5 to BNSF Railway
October 1, 2013
Page 1

UTC STAFF DATA REQUEST NO. 2:

How many trains per day does BNSF Railway operate at the location of the proposed crossing?

BNSF ANSWER:

One.

UTC STAFF DATA REQUEST NO. 2:

Do you anticipate any change in the number of BNSF Railway trains traveling over the track at this location within the next ten years? If yes, please describe the change.

BNSF ANSWER:

Objections: overbroad, calls for speculation. Without waiving these objections, unknown.

UTC STAFF DATA REQUEST NO. 3:

At the location of the proposed crossing:

a. What is the maximum legal operating train speed?
b. What is the maximum time table speed of BNST Railway trains?
c. At what speed do BNSF Railway trains usually travel?

BNSF ANSWER:

a. 25 mph b. 25 mph c. Up to 25 mph

UTC STAFF DATA REQUEST NO. 4:

What is the average number of cars or length of the trains that BNSF Railway operates at the location of the proposed crossing?

BNSDF ANSWER:

Six cars.

UTC STAFF DATA REQUEST NO. 4:

Do you anticipate any changes in the length of trains that travel over the track at this location within the next ten years? If yes, describe the change.

BNSF ANSWER:

Objections: Overbroad, calls for speculation. Without waiving these objections, unknown.

UTC STAFF DATA REQUEST NO. 5:

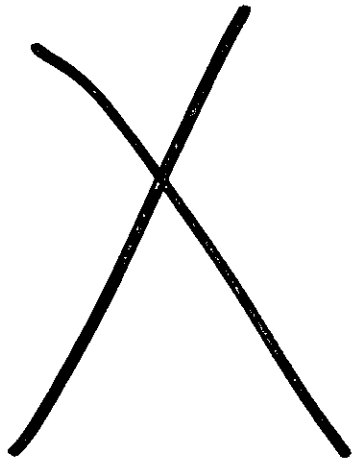
Please clarify the number and type of tracks proposed at the crossing. If a siding is present, will switching occur over the crossing? If yes, please describe the frequency of switching operations, the length of time the crossing will likely be blocked due to switching operations and any other impact on the crossing attributable to switching operations.

BNSF ANSWER:

Objections: vague, the information is more easily obtainable from another source, lack of foundation. Without waiving these objections, BNSF is not proposing any number or type of tracks at the crossing.

DATED this 1st day of October, 2013.

Richard Wagner
(206) 625-6152



Brandon L. Johnson
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Paul J. Petit
MT Bar No. 3051
General Counsel -
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WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK and CITY OF RICHLAND Petitioners vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD CO., BNSF RAILWAY and UNION PACIFIC RAILROAD Respondents.	DOCKET NO. TR-130499-P RESPONDENT'S RESPONSE TO UTC STAFF DATA REQUESTS NOS. 2-5 TO TRI-CITY & OLYMPIA RAILROAD

RESPONDENT TRI-CITY AND OLYMPIA RAILROAD CO. ("TCRY") pursuant to WAC 480-07-400, responds to UTC STAFF DATA REQUESTS NOS. 2-5 as follows:

UTC STAFF DATA REQUEST NO. 2: How many trains per day does Tri-City & Olympia Railroad operate at the location of the proposed crossing? Do you anticipate

any change in the number of Tri-City & Olympia Railroad trains traveling over the track at this location within the next ten years? If yes, please describe the change.

RESPONSE: On average at present TCRY operates between two (2) to four (4) trains per each weekday through the location, exclusive of "unit trains." In addition BNSF Railway Co. ("BNSF") operates on average two (2) trains per each weekday through the location. However, in addition to these trains, Union Pacific Railroad ("UPRR") moves "unit trains" consisting of on average 100 cars through this location on a periodic basis as customer needs demand and interchanges these railcars with TCRY at the TCRY rail yard north of the location. More detail regarding recent and anticipated railcar activity through the location by both TCRY and BNSF was provided in Respondent's Response to Petitioners' Data Request, a copy of which is attached hereto, Responses to Data Requests Nos. 21 and 22. Please note that the summary of number of railcars provided in Responses to Data Requests Nos. 21 and 22 reflect car count, which must be doubled to reflect number of trips over the rail at the proposed crossing. Therefore, for 2013, TCRY projects a total of 4,620 railcar trips over the proposed crossing by its own trains and an additional 498 railcar trips over the proposed crossing by BNSF trains for a total of 5,118 railcars passing over the proposed crossing per year.

TCRY moves railcars interchanged to it by the UPRR. However, TCRY, UPRR and BNSF each has the right to operate directly through this location. TCRY anticipates a dramatic increase in the number of trains that it operates and expects a similar increase in the number of trains which BNSF and UPRR operate through this location in the next ten years due to a number of factors, including:

a. Anticipated growth in UPRR and TCRY business reflecting increases in daily train operations and unit train operations as a result of additional customers locating on the transload facility serviced by TCRY on the City of Richland's Horn Rapids Spur.

b. Anticipated growth in BNSF, UPRR and TCRY railcar volume as a result of likely construction of the ConAgra Lamb Weston cold storage warehouse facility as described in the attached Response to Data Requests Nos. 21 and 22.

c. Anticipated growth in BNSF, UPRR and TCRY railcar volume as a result of likely construction of one or more "loop track" facilities off the Horn Rapids Spur.

All of these factors demonstrate a likely increase in rail traffic across the location of the proposed crossing which could, in the near future, reach or exceed 20,000 railcar trips per year, many of which will be "unit trains" of approximately 100 railcars each.

UTC STAFF DATA REQUEST NO. 3:

At the location of the proposed crossing:

a. What is the maximum legal operating train speed?

b. What is the maximum timetable speed of Tri-City & Olympia Railroad trains?

c. At what speed do Tri-City & Olympia Railroad trains usually travel?

RESPONSE:

a. 25 mph.

b. 20 mph.

c. 20 mph.

Notwithstanding the foregoing, it is anticipated that train speeds at the location of the proposed crossing will increase in the near future. UPRR has recently invested approximately $10 million to upgrade its track over which TCRY now also operates from Kennewick to locations on the Port of Benton track and the Horn Rapids Spur. The Port of Benton has received a grant to rebuild a rail bridge on its line, leased to TCRY. In addition, the Port of Benton has commissioned a study on the current status of its rail and the possibility of upgrading that rail to handle traffic at higher speeds. The anticipated increase in rail traffic referred to in Response to UTC Data Request

No. 3, combined with improvements of both the UPRR and Port of Benton tracks, will undoubtedly lead to higher operating speeds in the future.

UTC STAFF DATA REQUEST NO. 4:

What is the average number of cars or length of the trains that Tri-City & Olympia Railroad operates at the location of the proposed crossing? Do you anticipate any changes in the length of trains that travel over the track at this location within the next ten years? If yes, describe the change.

RESPONSE: At present, TCRY trains average roughly 15 cars per train, not including "unit train" operations. As noted in Response to Request No. 2 and described in detail in the attached Responses to Requests Nos. 21 and 22 TCRY anticipates a substantial increase in both the number of trains and the number of cars per train which will operate through the location of the proposed crossing.

UTC STAFF DATA REQUEST NO. 5:

Please clarify the number and type of tracks proposed at the crossing. If a siding is present, will switching occur over the crossing? If yes, please describe the frequency of switching operations, the length of time the crossing will likely be blocked due to switching operations, and any other impact on the crossing attributable to switching operations.

RESPONSE: A switch and siding as well as the TCRY main line are present at this location within what is shown as the "Port of Benton" railroad right of way on the attached Exhibit A (Center Parkway Right-of-Way Survey). Switching will occur over the crossing. TCRY has used, and intends to use, this siding for both car storage and switching. As rail traffic increases as anticipated, TCRY will likely need to utilize this siding more frequently for switching operations. Although the length of time that the crossing will be blocked due to car spotting and car switching operations on this siding will certainly increase the total time that the crossing will be blocked, TCRY can not estimate what that length of time will be.

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Paul J. Petit
MT Bar No. 3051
General Counsel
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WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK and CITY OF RICHLAND Petitioners vs. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD CO., BNSF RAILWAY and UNION PACIFIC RAILROAD Respondents.	DOCKET NO. TR-130499-P RESPONDENT'S RESPONSE TO PETITIONERS' DATA REQUEST

RESPONDENT TRI-CITY AND OLYMPIA RAILROAD CO. ("Respondent") pursuant to WAC 480-07-400, responds to the data request of Petitioners, City of Kennewick and City of Richland, dated August 20, 2013. Respondent's response is timely pursuant to WAC 480-07-150.

Response to Data Requests Nos. 1-9. TCRY further asserts that whether it participated in any of the various planning identified in these Requests is wholly irrelevant to the issues raised, and the Petitioners' burden, in this proceeding. TCRY produces in Response to these Data Requests copies of its communications with the Benton Franklin Council of Governments and notes relating to communications with that entity relating to rail service. TCRY has no other documents within the scope of these Requests.

Response to Data Request No. 10: See documents produced herewith and labeled as in response to this Data Request.

Response to Data Request No. 11: This Data Request makes reference to crossings "labeled and identified in data request #9" although Response to Data Request No. 10 was clearly intended. See documents produced Response to Data Request No. 10.

Response to Data Request No. 12: This Data Request makes reference to crossings "labeled and identified in data request #9" although Response to Data Request No. 10 was clearly intended. TCRY objects to this Data Request on the grounds that the occurrence of specific incidents endangering public health at other rail crossings on the TCRY rail line is not relevant to whether Petitioners can overcome their burden of demonstrating a need for an inherently dangerous at-grade crossing at Center Parkway. Notwithstanding that objection, TCRY asserts that no train-vehicle collision has occurred at any of the identified crossings during its operation of the TCRY/Port of Benton Rail, incidents involving vehicles striking crossing signal apparatus and driving through closed crossing gate arms have been numerous. Although TCRY does not maintain complete records in this regard, a representative sample of the incidents in question is identified in the spreadsheet produced in Response to Data Request No. 12.

Response to Data Request No. 13: This Data Request makes reference to crossings "labeled and identified in Data Request #9" although Response to Data

Request No. 10 was clearly intended. TCRY does not maintain its records in a manner which would allow it to allocate delay to specific incidents.

Response to Data Request No. 14: TCRY does not maintain its records in a manner which would allow it to allocate delay to specific incidents.

Response to Data Request No. 15: TCRY does not maintain its records in a manner which would allow it to allocate revenue loss to all incidents. TCRY has documented its costs in connection with specific crossing damage claims. See documents produced herewith and labeled as in response to this Data Request.

Response to Data Request No. 16: TCRY objects to this Data Request on the grounds that it asserts and is based on the claim that TCRY has made a "statement regarding the site-specific dangers" of the proposed Center Parkway at-grade crossing. As factual support for its opposition, TCRY will provide expert testimony that there is no need for any crossing at Center Parkway. That work is ongoing and will be made available to Petitioners pursuant to the case schedule. Therefore, not constructing a crossing, or constructing a separated-grade crossing, at this location would fully *mitigate* the site-specific dangers of an at-grade crossing.

Response to Data Request No. 17: TCRY objects to this Data Request on the grounds that it asserts and is based on the "claimed impacts on the spur" which are irrelevant to the Petitioners' statutory burden. TCRY also objects to classifying the rail at the proposed crossing site as a "spur" because the rail line is part of the interstate rail system on which TCRY operates as a common carrier and interchange carrier for the Union Pacific Railroad. As factual support for its opposition, TCRY will provide expert testimony that there is no need for any crossing at Center Parkway. That work is ongoing and will be made available to Petitioners pursuant to the case schedule. Therefore, not constructing a crossing, or constructing a separated-grade crossing, at this location would eliminate all "impacts on the spur."

Response to Data Request No. 18: TCRY does not believe that Petitioner has demonstrated that access for public emergency services is unreasonable, or that there is a need for any crossing at Center Parkway.

Response to Data Request No. 19: As factual support for its opposition, TCRY will provide expert testimony that there is no need for any crossing at Center Parkway. That work is ongoing and will be made available to Petitioners pursuant to the case schedule. Therefore, not constructing a crossing, or constructing a separated-grade crossing, at this location would eliminate all "impacts on the spur."

Response to Data Request No. 20: As factual support for its opposition, TCRY will provide expert testimony as part of its pre-filed testimony that there is no need for any crossing at Center Parkway. That work is ongoing and will be made available to Petitioners pursuant to the case schedule. Therefore, not constructing a crossing, or constructing a separated-grade crossing, at this location would eliminate all considerations of practicality of alternatives to an at-grade crossing.

Response to Data Request No. 21: TCRY currently uses the railway which is the subject of the Petition for at-grade crossing as an interchange carrier for the Union Pacific Railroad to provide service to customers on the TCRY/Port of Benton rail and on the Horn Rapids Spur of the City of Richland. (See Response to Data Request No. 10) TCRY operates each week day on this line, with trains traversing the proposed crossing location at least twice and on occasion four times per day. The number of railcars moved by TCRY over the proposed crossing location in 2011, 2012 and 2013 (through August) by commodity, inbound and outbound, are as shown on the document produced in Response to Request No. 21. TCRY also supplies the following summary and projection for the total for 2013 (based on 8 months actual):

	2011	2012	2013 (8 MONTHS)	2013 (PROJECTED
TOTAL RAILCARS	2060	1999	1540	2310

Without significant change in customer needs, TCRY anticipates annual increases in railcar traffic of approximately 20% each year. However, TCRY is aware that ConAgra Lamb Weston has entered into an agreement to purchase property in the Horn Rapids Industrial Park area to construct a cold storage warehouse facility

which could be served by TCRY as well as by Union Pacific Railroad and BNSF Railway Company directly. In addition, TCRY understands that development plans are proceeding to construct one or more "loop tracks" in the same area as shown by the documents produced in Response to Request No. 24. In addition, TCRY's affiliated company, 10 North Washington Ave, LLC, has constructed, is utilizing, and plans to expand its business on its "loop track" located on the Horn Rapids Spur, the location of which is shown on documents produced in Response to Request No. 24. All of these development factors demonstrate a likely substantial increase in rail traffic at the proposed crossing the near future which could easily approach 20,000 railcars per year, many of which will be single commodity unit trains of in excess of 100 railcars. All reasonable inquiry demonstrates the substantial likelihood that train traffic at the proposed crossing location will increase substantially in the future and that the number of unit trains as a percentage of total traffic will increase as well. In addition, TCRY is aware that the Port of Benton has commissioned an evaluation of the potential to upgrade its track to accommodate this increased rail traffic and higher speeds on the existing rail, all of which will substantially increase the danger of an at-grade crossing at Center Parkway.

Response to Data Request No. 22: BNSF Railway Company currently uses the railway which is the subject of the Petition for at-grade crossing to provide direct service without interchange to specific customers on the TCRY/Port of Benton rail and on the Horn Rapids Spur of the City of Richland. As the operating railroad on the TCRY/Port of Benton rail, TCRY identifies the movements of BNSF trains and railcars. The number of railcars moved by BNSF over the proposed crossing location in 2011, 2012 and 2013 (through August) with a projection for the total for 2013 (based on 8 months of 2013) are as follows:

	2011	2012	2013 (8 MONTHS)	2013 (PROJECTED
TOTAL RAILCARS	273	230	166	249

TCRY is not privy to BNSF plans and projections regarding future train traffic across the proposed Center Parkway crossing site. However, the elements identified in Response to Data Request No. 21 strongly suggest the likelihood of substantial BNSF rail traffic increase in the near future, either to service a proposed "loop track" or to service the ConAgra Lamb Weston cold storage warehouse facility to be constructed in the Horn Rapids Industrial Park area.

Response to Data Request No. 23: TCRY objects to this Data Request on the grounds that increased costs which TCRY will inevitably incur are not relevant to the statutory burden that Petitioners must meet to justify an inherently dangerous at-grade crossing.

Response to Data Requests Nos. 24 and 25: See documents produced herewith and labeled as in response to these Data Requests.

DATED THIS 4th day of September, 2013.

Paul J. Petit, MSBA # 3051
One of the Attorneys for
Respondent Tri-City & Olympia
Railroad Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served this day by email on all parties of record in this proceeding by email to the parties identified below:

P. Stephen DiJulio Jeremy Eckert Foster Pepper PLLC 1111 3rd Avenue, Ste. 3400 Seattle, WA 98101 *dijup@foster.com* *eckej@foster.com*	Peter Beaudry Public Works Director City of Kennewick 210 West 6th Avenue P.O. Box 6108 Kennewick, WA 99336-0108 Peter.beaudry@ci.kennewick.wa.us

Terrell A. Anderson Manager, Industry & Public Projects Union Pacific Railroad Co. 9451 Atkinson St. Roseville, CA 95747 *taanders@up.com*	Steven W. Smith Assistant Attorney General 1400 S. Evergreen Park Drive S.W. P.O. Box 40128 Olympia, WA 98504-0128 *ssmith@utc.wa.gov*
Tom A. Cowan Cowan Moore Slam and Luke P.O. Box 927 Richland, WA 99352 *tcowan@cowanmoore.com*	Scott D. Keller Port of Benton 3100 George Washington Way Richland, WA 99354 *keller@portofbenton.com*
Tom Montgomery Kelsey Endres Montgomery Scarp, PLLC 1218 Third Ave., Ste. 2700 Seattle, WA 98101 *tom@montgomeryscarp.com* *Kelsey@montgomeryscarp.com*	Richard Wagner Manager Public Projects BNSF Railway 2454 Occidental Ave. S. Ste. 2D Seattle, WA 98134 *richardwagner@bnsf.com*
Carolyn Larson Dunn Carney Allen Higgins and Tongue LLP 851 SW Sixth Ave. Ste. 1500 Portland, OR 97204 *cll@dunn-carney.com*	

A courtesy copy email was also sent to:

Adam E. Torem
Administrative Law Judge
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, WA 98504-7250
atorem@utc.wa.gov

DATED this 4th day of September, 2013, at Kennewick, Washington.

Christine Photides

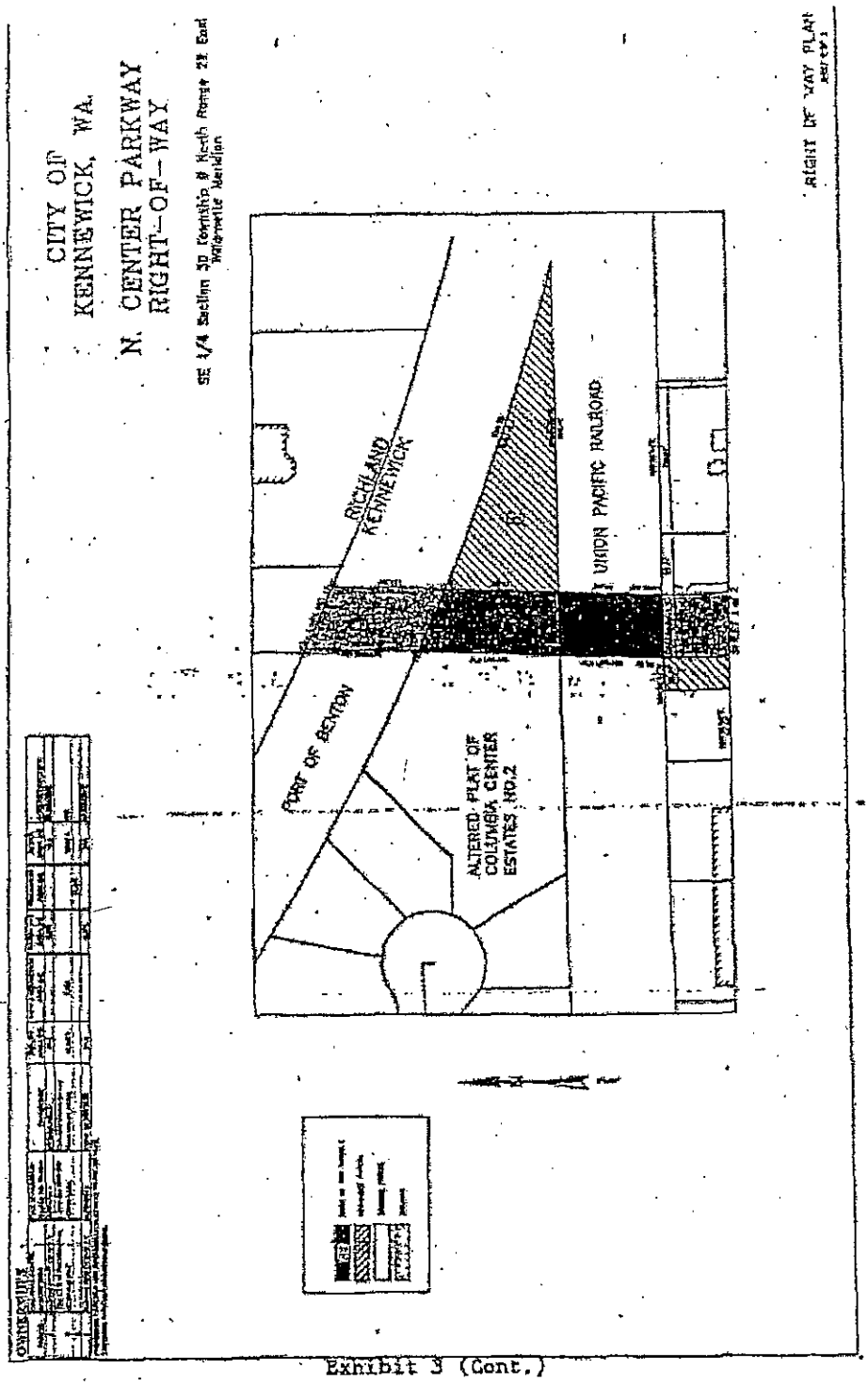
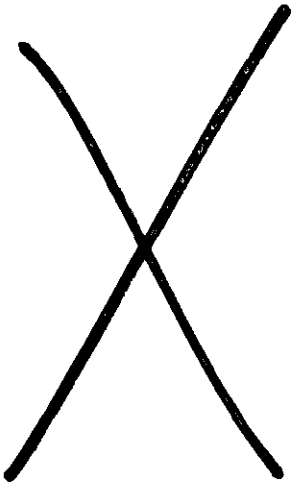


Exhibit 3 (Cont.)



Docket TR-130499
UTC Staff Data Request Nos. 2-5 to Union Pacific Railroad Co.
September 11, 2013
Page 1

Response Prepared By: Carolyn L. Larson (based on conversations with Cliff Mallett and Jeff Jarvis of UPRR)
Telephone: 503-417-5462
Response Prepared On: September 24, 2013

UTC STAFF DATA REQUEST NO. 2:

How many trains per day does Union Pacific Railroad Co. operate at the location of the proposed crossing? Do you anticipate any change in the number of Union Pacific Railroad Co. trains traveling over the track at this location within the next ten years? If yes, please describe the change.

RESPONSE: Union Pacific occasionally runs unit trains over the Port's main track, but has not done so yet in 2013. UP believes it ran about 12 unit trains over this track in the past 4-1/2 years. UP cannot predict how many it will run in the future.

UTC STAFF DATA REQUEST NO. 3:

At the location of the proposed crossing:

a. What is the maximum legal operating train speed?
b. What is the maximum time table speed of Union Pacific Railroad Co. trains?
c. At what speed do Union Pacific Railroad Co. trains usually travel?

RESPONSE: The track in question is not owned by UP and UP does not set the maximum operating speed. UP believes the time table speed is 15 mph. UP trains travel through the proposed crossing area at 15 mph.

UTC STAFF DATA REQUEST NO. 4:

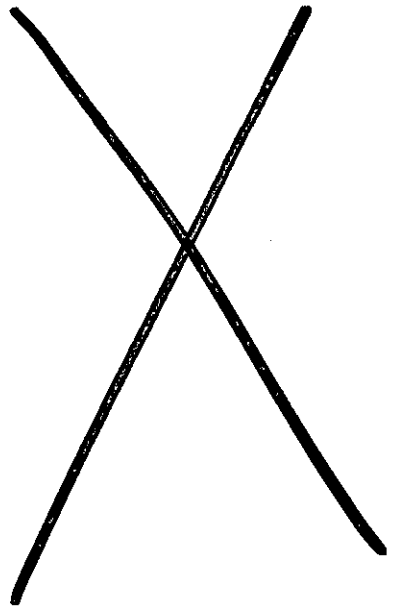
What is the average number of cars or length of the trains that Union Pacific Railroad Co. operates at the location of the proposed crossing? Do you anticipate any changes in the length of trains that travel over the track at this location within the next ten years? If yes, describe the change.

RESPONSE: When UP runs unit trains, they are generally 80-110 cars long. UP cannot predict future train lengths.

UTC STAFF DATA REQUEST NO. 5:

Please clarify the number and type of tracks proposed at the crossing. If a siding is present, will switching occur over the crossing? If yes, please describe the frequency of switching operations, the length of time the crossing will likely be blocked due to switching operations and any other impact on the crossing attributable to switching operations.

RESPONSE: Union Pacific is not involved in designing the crossing. UP's understanding of the proposal has been that there would be only one track at the crossing and that the Port's siding as well as the former UP tracks that are currently in the roadway alignment would be removed. UP has moved its interchange point with TCRY and does not perform switching or interchange operations in this area.



Lisa Anderson <lisaanderson11@mac.com> August 27, 2013 2:22 PM
To: Paul Petit
Fwd: BFCOG Meeting

Lisa Anderson
Vice-President of Administrative Services
Corporate Secretary
Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067
lisaanderson11@me.com

WUTC DOCKET TR-130499
EXHIBIT RVP-5-X
ADMIT ☒ W/D ☐ REJECT ☐

Begin forwarded message:

From: Lisa Anderson <lisaanderson11@mac.com>
Subject: BFCOG Meeting
Date: September 6, 2012 9:33:58 AM CDT
To: Randolph Peterson <rvpeterson@mac.com>, Rydel Peterson <rydel@tcry.com>, Paul Petit <paulpetit@tcry.com>
Cc: Rhett Peterson <rhettwater@mac.com>

Good morning~

Yesterday Rhett and I attended the Benton Franklin Council of Governments Open House to present the Transportation Improvement Plan rough drafts. The final copies are due in November.

The goal was for each community to present a map along with a list of projects or goals for improvement from 2013 - 2018.

I wanted to get there a bit early but noticed that we were the only ones there for viewing even at 4:30.

Participants were asked to sign in and identify their association with a business along with contact information. We were welcomed by the BFCOG staff and it was then shared with us that usually no one attends. Last year one person attended so we had already doubled their numbers and they were pleased.

Items of interest are as follows:

1. Port of Benton - The Port provided a map and had a representative there but did not approach us or offer any discussion. The bridge project was listed mapped along with a road at the north end of the yard and a South Transload Center.

2. City of Kennewick - Very nice gentleman explained his map to us. It did not contain a list of projects but rather color coding in areas of proposed improvement and whenever we asked about anything he was very open to sharing information. The primary projects we learned about were numerous sidewalks. They are also going to retime the signals.

3. City of Richland - Jeffrey Peters, Civil Engineer III was asked to introduce himself to us by one of the hosts from the BFCOG. She wanted to make sure we were able to talk about his TIP because he came unprepared without a map and we would not have known there was anyone there from Richland. He said he was new to the open house and forgot to bring a map. He did, however, bring a list of projects that Rhett asked to review. During Rhett's review he answered questions and was interested in our involvement. Although not quite as eager as the other stations we visited, he did share a lot of information and some of it on his own. Regarding Center Parkway the list of projects contains a code for planned or proposed funding. It will be updated before the final TIP as he says they have secured funding equal to 2.4 million. They are in the NEPA stage of the project. They will be making minor design changes to the plans. The next step will be negotiations of easements. Jeffrey will be involved in this process.

Jeffrey discussed the change in funding that certain awards can be moved from project to project or location to location. This does not impact all unused funding awards. Rhett maybe you can help me out with more on this one? There was a specific example of what they were going to do.

When we began our discussion with Jeffrey the City of Kennewick rep was still with us as well as the host. It was suggested that .pdfs of the maps be available on the BFCOG website in addition to providing the list of projects as they have in the past. Whether they choose to do that or not, we asked Jeffrey at the end to email us both the map and list and exchanged business cards. I will reach out to him with an email.

Rhett, please add anything I missed or make corrections.

It was really informative and most people were very willing to share information.

Thank you.

Lisa Anderson
Manager of Bookkeeping
Tri-City & Olympia Railroad (TCRY)
(509) 371-8313 ext. 305
cell: (360) 239-9067
fax: (509) 582-4964
lisaanderson11@me.com

Lisa Anderson <lisaanderson11@mac.com> August 27, 2013 2:23 PM
To: Paul Petit
Fwd: BF Council of Governments

Lisa Anderson
Vice-President of Administrative Services
Corporate Secretary
Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067
lisaanderson11@me.com

Begin forwarded message:

From: Rydel Peterson <rydel@tcry.com>
Subject: Re: BF Council of Governments
Date: March 5, 2013 1:44:10 PM CST
To: Martha Torres <martha.a.torres@me.com>
Cc: Tobi Peterson <tobipeterson@tcry.com>, rvpeterson <rvpeterson@me.com>, "Lisa C. Anderson" <lisaanderson11@mac.com>, Rhett Peterson <rhettwater@mac.com>

Who should go ?

On Mar 5, 2013 9:29 AM, "Martha Torres" <martha.a.torres@me.com> wrote:

> Good morning,
>
> Attached is a Save the Date letter from the Benton-Franklin Council of Governments and WA DOT for your review.
>
> Thank you,
>
> Matty Torres
> Office Assistant
> Tri-City & Olympia Railroad
> (509) 371-8313 ext. 313
> fax: (509) 582-4964
> martha.a.torres@me.com

Lisa Anderson <lisaanderson11@mac.com> August 27, 2013 2:23 PM
To: Paul Petit
Fwd: TCRY Information

Lisa Anderson
Vice-President of Administrative Services
Corporate Secretary
Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067
lisaanderson11@me.com

Begin forwarded message:

From: Lisa Anderson <lisaanderson11@mac.com>
Subject: Re: TCRY Information
Date: September 3, 2012 2:05:17 PM CDT
To: Len Pavelka <lpavelka@bfcog.us>

Len,

Looks good~

We just completed the project referred to at the end.

I will circulate for input but it will not be returned prior to your open house.

Thank you.

Lisa Anderson
Manager of Bookkeeping
Tri-City & Olympia Railroad (TCRY)
(509) 371-8313 ext. 305
cell: (360) 239-9067
fax: (509) 582-4964
lisaanderson11@me.com

On Aug 23, 2012, at 2:04 PM, Len Pavelka wrote:

> Lisa - The information you helped me with last year is attached.
>
> Thanks for your help.
>
> Len

Len Pavelka.AICP
Transportation Planning Specialist III
Benton-Franklin Council of Governments
PO Box 217
1622 Terminal Drive
Richland, WA 99352
Phone: (509) 943-9185
Fax: (509) 943-6756
Email: lpavelka@bfcog.us

<TCRY.docx>

Lisa Anderson <lisaanderson11@mac.com> August 28, 2013 8:52 PM
To: Paul Petit
Fwd: Good Roads Report

---------- Forwarded message ----------
From: **Len Pavelka** <lpavelka@bfcog.us>
Date: Mon, Aug 15, 2011 at 4:41 PM
Subject: RE: Good Roads Report
To: Lisa Anderson <lisa@tcry.com>

Lisa - This is perfect. I have one question:

"Currently, the railroad is teaming up with PNNL on a new project using the RPMP equipment erected on site in 2005."

What is RPMP an acronym for? I will probably spell it out.

Thanks.

Len

From: Lisa Anderson [mailto:lisaanderson@tcry.com]
Sent: Monday, August 15, 2011 2:14 PM
To: Len Pavelka
Cc: Lisa Anderson
Subject: Re: Good Roads Report

Len,

Hope this helps~

Let me know if you wish for any further assistance.

Thank you.

Lisa Anderson
Manager of Bookkeeping
Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067

fax: (509) 582-4964
lisaanderson@tcry.com

On 8/8/11 10:00 AM, "Len Pavelka" <lpavelka@bfcog.us> wrote:

Lisa - I was just reviewing last year's copy and comparing it with the news items on the TCRY website. I cobbled this together.

If you could get me something by Wednesday, that would be great. That's when the draft copy of the entire document is mailed out to the membership for review and comment on 8/17. If you can't get me edits until Friday, it can still go in the final.

From: Lisa Anderson [mailto:lisaanderson@tcry.com]
Sent: Monday, August 08, 2011 8:39 AM
To: Len Pavelka
Subject: Re: Good Roads Report

Len,

Good morning,

I could return the documents quicker if you provide your roughdraft for this year as well.

If you need us to create something it may be the end of the week.

Thank you.

Lisa Anderson
Manager of Bookkeeping
Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067
fax: (509) 582-4964
lisaanderson@tcry.com

On 8/5/11 10:51 AM, "Len Pavelka" <lpavelka@bfcog.us> wrote:
Lisa - The file we discussed is attached. It is part of a document for the Benton Franklin Walla Walla Good Roads and Transportation Association called the 2010 Transportation Infrastructure Report. The report surveys the current status of multiple transportation modes and needs in the three county area.

The attached file is from the 2010 report. I'm updating text for the 2011 report.

Thanks for your help.

Len

Len Pavelka AICP
Transportation Planning Specialist III
Benton-Franklin Council of Governments
PO Box 217
1622 Terminal Drive

Richland, WA 99352
Phone: (509) 943-9185
Fax: (509) 943-6756
Email: lpavelka@bfcog.us

--

Thank you,

Lisa Anderson
Manager of Bookkeeping
Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067
fax: (509) 582-4964
lisaanderson@tcry.com

Lisa Anderson <lisaanderson11@mac.com>
To: Paul Petit <paulpetit@tcry.com>
Fwd: Good Roads Report

August 28, 2013 8:51 PM

1 Attachment, 12 KB

---------- Forwarded message ----------
From: **Len Pavelka** <lpavelka@bfcog.us>
Date: Mon, Aug 8, 2011 at 12:00 PM
Subject: RE: Good Roads Report
To: Lisa Anderson <lisa@tcry.com>

Lisa - I was just reviewing last year's copy and comparing it with the news items on the TCRY website. I cobbled this together.

If you could get me something by Wednesday, that would be great. That's when the draft copy of the entire document is mailed out to the membership for review and comment on 8/17. If you can't get me edits until Friday, it can still go in the final.

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Subject: Re: Good Roads Report

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Thank you.

Lisa Anderson
Manager of Bookkeeping
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cell: (360) 239-9067
fax: (509) 582-4964
lisaanderson@tcry.com

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The attached file is from the 2010 report. I'm updating text for the 2011 report.

Thanks for your help.

Len

Len Pavelka AICP
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Benton-Franklin Council of Governments
PO Box 217
1622 Terminal Drive
Richland, WA 99352
Phone: (509) 943-9185
Fax: (509) 943-6756
Email: lpavelka@bfcog.us

--
Thank you.

Lisa Anderson
Manager of Bookkeeping
Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067
fax: (509) 582-4964
lisaanderson@tcry.com

Draft TCRY-...docx (12 KB)

The Tri-City & Olympia Railroad Company

The Tri-City & Olympia Railroad Company has contracted with the Port of Benton to maintain and operate about 16 miles of rail formerly owned by the Department of Energy (DOE). DOE had planned to close the line when the port stepped in (1998) to preserve the line in hopes of spurring economic development in North Richland.

Along with the rail line, the port received 760 acres of land and numerous buildings from the DOE for economic development purposes. The area is now called the Port of Benton Manufacturing Mall. The railroad operates from Kennewick (UP track but connection to both UP and BNSF mainlines) through Richland to the Manufacturing Mall and also services the City of Richland's Horn Rapids Industrial Site via a spur line built by the city in 1999.

~~The Port of Benton has recently extended a 1,300 foot rail spur to their new Transload Facility. In 2008 the Port received a $250,000 loan from the Rail Bank Program to assist in the construction of this spur.~~

~~In addition, Tri-City & Olympia Railroad is in the process of constructing a loop track and bulk grain offloading facility on the spur for offloading grain unit trains. Design of additional new spur construction is also underway.~~

In early January 2011, TCRY announced completion of a new loop track to provide rail service to industry on the City of Richland's Horn Rapids Spur. The new Rail Loop Track will allow receipt and origination of Unit Trains of various products including agricultural products reducing truck traffic congestion in the Tri-Cities area for movement of these products.

In April, 2011, Perma-Fix Environmental Services, Inc. completed the new rail line connecting the Department of Energy's (DOE) Hanford Site and the Perma-Fix Northwest Richland (PFNW) facility in Richland. The new rail line is expected to help reduce the amount of waste on public roads and provide for a much faster and safer means of transporting waste directly to the PFNW facility.

Lisa Anderson <lisaanderson11@mac.com>
To: Paul Petit <paulpetit@tcry.com>
Fwd: Good Roads Report

August 28, 2013 8:51 PM

1 Attachment, 11 KB

---------- Forwarded message ----------
From: **Len Pavelka** <lpavelka@bfcog.us>
Date: Fri, Aug 5, 2011 at 12:51 PM
Subject: Good Roads Report
To: Lisa Anderson <lisa@tcry.com>

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Thanks for your help.

Len

Len Pavelka AICP

Transportation Planning Specialist III

Benton-Franklin Council of Governments

PO Box 217

1622 Terminal Drive

Richland, WA 99352

Phone: (509) 943-9185

Fax: (509) 943-6756

Email: lpavelka@bfcog.us

--
Thank you.

Lisa Anderson
Manager of Bookkeeping
Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067
fax: (509) 582-4964
lisaanderson@tcry.com

TCRY-2010.docx (11 KB)

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In addition, Tri-City & Olympia Railroad is in the process of constructing a loop track and bulk grain offloading facility on the spur for offloading grain unit trains. Design of additional new spur construction is also underway.

Lisa Anderson <lisaanderson11@mac.com> August 28, 2013 8:51 PM
To: Paul Petit <paulpetit@tcry.com>
Fwd: Good Roads Report

1 Attachment, 26 KB

---------- Forwarded message ----------
From: **Lisa Anderson** <lisa@tcry.com>
Date: Mon, Aug 15, 2011 at 4:21 PM
Subject: Re: Good Roads Report
To: Len Pavelka <lpavelka@bfcog.us>
Cc: Lisa Anderson <lisa@tcry.com>

Len,

Hope this helps~

Let me know if you wish for any further assistance.

Thank you.

Lisa Anderson
Manager of Bookkeeping
Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067
fax: (509) 582-4964
lisaanderson@tcry.com

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>
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> **Sent:** Monday, August 08, 2011 8:39 AM
> **To:** Len Pavelka
> **Subject:** Re: Good Roads Report
>
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Lisa Anderson
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Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067
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PO Box 217
1622 Terminal Drive
Richland, WA 99352
Phone: (509) 943-9185
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Email: lpavelka@bfcog.us

--
Thank you.

Lisa Anderson
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cell: (360) 239-9067
fax: (509) 582-4964
lisaanderson@tcry.com

BFCOG Tran....doc (26 KB)

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In May, 2011, TCRY completed building 234' of track at the B Reactor in the Hanford Reservation. The track will enable display of old locomotives as part of tours of the old reactor provided by Mission Support Alliance. The track project was a collaborative effort between Grant Construction, Barnhart Crane and the railroad.

Currently, the railroad is teaming up with PNNL on a new project using the RPMP equipment erected on site in 2005.

Ongoing economic development projects by the Railroad have resulted in the addition of 5 new tenants in the Manufacturing Mall this year.

TCRY's outlook continues to be positive with anticipated growth in the upcoming months due to the many benefits of shipping by rail.

Lisa Anderson <lisaanderson11@mac.com> August 28, 2013 8:48 PM
To: Paul Petit
Fwd: Good Roads Report email 1 of 2

From: Lisa Anderson
Sent: Mon 8/8/2011 3:29 PM
To: Rydel Peterson
Subject: FW: Good Roads Report email 1 of 2

Rydel,

The Benton Franklin Council of Governments produces a regional transportation report every 5 years with annual updates.

Apparently they include rail information. On Friday for the first time I was contacted by this gentleman below for input on our own information that is included in the report.

I asked that he provide what was in the document last year and what he is proposing to put in this year.

He would like confirmation that he has included our highlights and any other interesting items we wish to include this year.

Do you have any thoughts on our participation?

Lisa Anderson
Manager of Bookkeeping
Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067
fax: (509) 582-4964
lisaanderson@tcry.com

—— Forwarded Message
From: Len Pavelka <lpavelka@bfcog.us>
Date: Fri, 5 Aug 2011 10:51:16 -0700
To: Lisa Anderson <lisaanderson@tcry.com>
Subject: Good Roads Report

Lisa - The file we discussed is attached. It is part of a document for the Benton Franklin Walla Walla Good Roads and Transportation Association called the 2010 Transportation Infrastructure Report. The report surveys the current status of multiple transportation modes and needs in the three county area.

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Len

Len Pavelka AICP
Transportation Planning Specialist III
Benton-Franklin Council of Governments
PO Box 217
1622 Terminal Drive
Richland, WA 99352
Phone: (509) 943-9185

Fax: (509) 943-6756
Email: lpavelka@bfcog.us

—— End of Forwarded Message

Thank you.

Lisa Anderson
Manager of Bookkeeping
Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067
fax: (509) 582-4964
lisaanderson@tcry.com

Lisa Anderson <lisaanderson11@mac.com> August 28, 2013 8:48 PM
To: Paul Petit
Fwd: Good Roads Report - Email 2 of 2

---------- Forwarded message ----------
From: **Rydel Peterson** <Rydel@tcry.com>
Date: Wed, Aug 10, 2011 at 9:01 AM
Subject: RE: Good Roads Report - Email 2 of 2
To: Lisa Anderson <lisa@tcry.com>

please re-send the attachment, for I could not open in this format

---

From: Lisa Anderson
Sent: Mon 8/8/2011 3:30 PM
To: Rydel Peterson
Subject: FW: Good Roads Report - Email 2 of 2

—— Forwarded Message
From: Len Pavelka <lpavelka@bfcog.us>
Date: Mon, 8 Aug 2011 10:00:54 -0700
To: Lisa Anderson <lisaanderson@tcry.com>
Subject: RE: Good Roads Report

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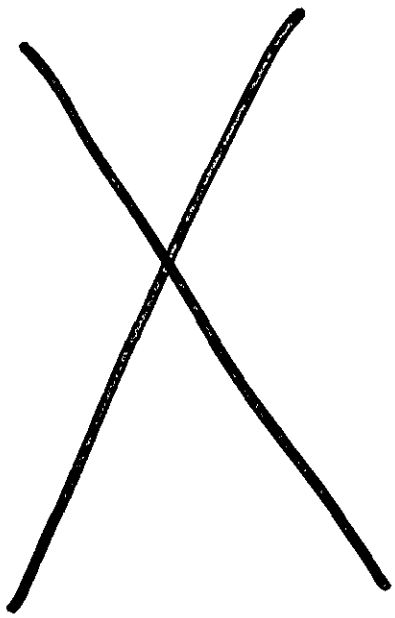
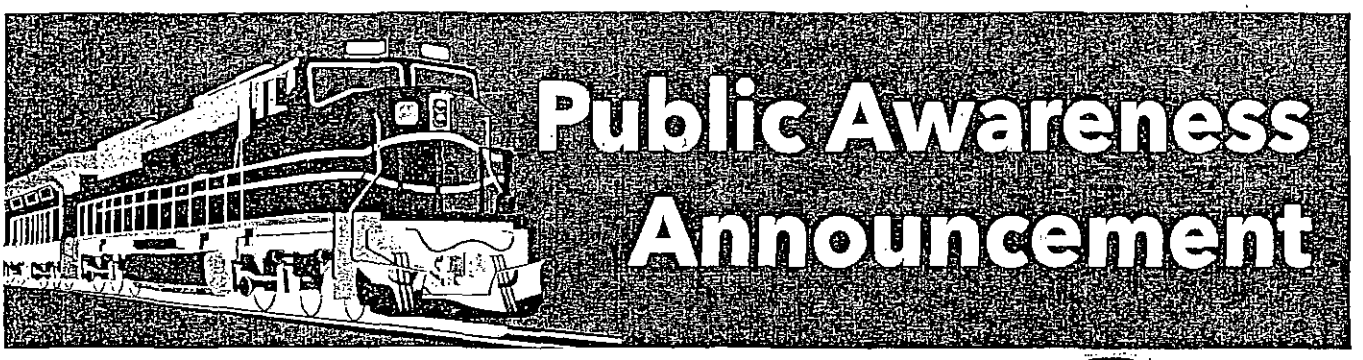
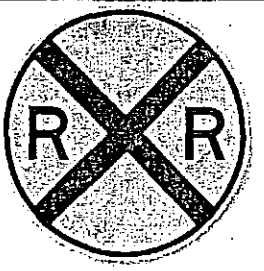
--
Thank you.

Lisa Anderson
Manager of Bookkeeping
Tri-City & Olympia Railroad (TCRY)
cell: (360) 239-9067
fax: (509) 582-4964
lisaanderson@tcry.com





Richland City Council will formally consider a new project bringing mile long trains through Richland at all hours.



Thousands More Train Cars!

WUTC DOCKET TR-130499
EXHIBIT RVP-6-X
ADMIT ☒ W/D ☐ REJECT ☐

Creates More:

Safety Concerns
Blaring Train Horns
Crossing Delays

Tuesday
5th
NOVEMBER

WHEN:

Tuesday, November 5th at 7:30PM in the Council Chambers at Richland City Hall

505 Swift Blvd. Richland, WA

TO LEARN MORE

Contact your Councilmembers:

Mayor John Fox (509) 375-0117
jfox@ci.richland.wa.us

Dave Rose (509) 946-5116
drose@ci.richland.wa.us

Sandra Kent (509) 521-9350
skent@ci.richland.wa.us

Phillip Lemley (509) 375-4828
plemley@ci.richland.wa.us

Brad Anderson (509) 943-2313
banderson@ci.richland.wa.us

Terry Christensen (509) 943-5223
tchristensen@ci.richland.wa.us

Bob Thompson (509) 627-5517
bthompson@ci.richland.wa.us

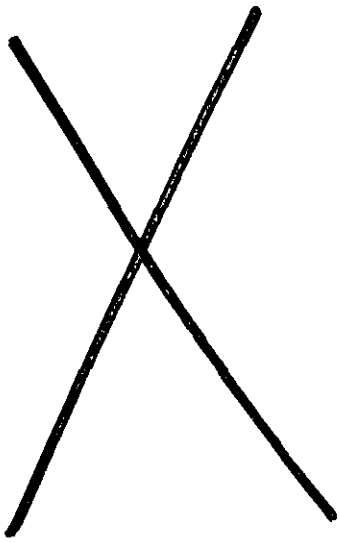
Call Richland City Hall at:

(509) 942-7327

This Public Awareness Announcement is brought to you by TCRY 10 N Washington Street, Kennewick, WA 99

0-000001952

001374



WUTC DOCKET TR-130499
EXHIBIT RVP-7-X
ADMIT ☒ W/D ☐ REJECT ☐

C60-08

AGREEMENT TO PROVIDE ENGINEERING FOR MODIFIED RAILROAD CROSSING AT STEPTOE STREET

This Agreement , made by and between the **CITY OF RICHLAND**, a Washington municipal corporation ("City") and **TRI-CITY RAILROAD COMPANY, LLC**, a Washington limited liability company ("TCRY"), is related to the engineering design of a modified at-grade railroad crossing at Steptoe Street in Richland, WA.

I. Recitals

WHEREAS, the City and a nearby property owner have developed plans to modify the existing at-grade crossing of the Port of Benton railroad at Steptoe Street; and

WHEREAS, the TCRY operates and maintains the Port of Benton Railroad under a lease with the Port of Benton; and

WHEREAS, the City recognizes the TCRY's need to ensure the safe and efficient operation of its trains, particularly at at-grade street intersections; and

WHEREAS, the TCRY recognizes the City's interest in facilitating well-designed urban transportation improvements, including rail, vehicle, and pedestrian facilities; and

WHEREAS, the City recognizes that the TCRY incurs costs related to City street modifications projects.

NOW, THERFORE, THE PARTIES AGREE HERETOFORE AS FOLLOWS:

II: Agreement

1. TCRY shall be responsible for all railroad related decisions, activities, and interpretations associated with the Steptoe/Tapteal Intersection Railroad Crossing.

2. TCRY will be responsible for all engineering design, procurement, construction, and installation of railroad related equipment and crossing features. This will include the testing and acceptance of all railroad related systems.
   a. TCRY will contract with a professional engineering firm to complete the engineering design for the railroad-related equipment. The engineering scope of work shall include preparation of final, construction ready engineering plans and specifications stamped by a qualified professional engineer. TCRY will complete its contractual obligations with its engineering firm to ensure timely completion of the engineering work.

3. The City of Richland will be responsible for all engineering design, procurement, and installation of street and utility related improvements up to the edge of rail bed or rail crossing surface panels.
   a. The City will contract with a professional engineering firm to complete engineering design for the street, traffic control system, and utilities. The

engineering scope of work shall include preparation of final, construction ready engineering plans and specifications stamped by a qualified professional engineer. The City will complete its contractual obligations with its engineering firm to ensure timely completion of the engineering work.

4. Payment of Expenses. The City will compensate TCRY the sum of $ 50,000 to provide the engineering design for the railroad-related equipment, inclusive of all engineering, legal, and administrative costs. The City will make payment as follows:
   a. $20,000 within 30 days of executing this Agreement.
   b. $15,000 within 30 days of submittal, by the TCRY's engineering firm, of a 75% set of engineering plans and specifications.
   c. $15,000 within 30 days of submittal, by the TCRY's engineering firm, of construction ready engineering plans and specifications.

5. Right of Entry. TCRY hereby grants the City and its professional engineering firm a right of entry onto TCRY right of way for the purposes of conducting topographic surveys and other field investigations related to design of the proposed modifications. Persons proposing to conduct work on TCRY right of way shall provide a minimum of 24 hours notice to TCRY Operations staff. Any ground-disturbing activities shall occur only after written authorization from TCRY.

6. Prior Agreements/Entire Agreement: The terms and conditions in this Agreement supersede all prior and contemporaneous agreements or understandings that the parties may have as they pertain to the subject matter of this agreement. All pre-existing easements, crossing permits, or licenses with and among other parties shall remain unaffected by this Agreement.

7. Applicable Law: All questions concerning the interpretation or application of provisions of this agreement shall be decided according to the laws of the State of Washington. Venue of any action based on this Agreement shall be Benton County Superior Court. All such work shall be performed under normal company practices and the applicable requirements of the State of Washington and of the United States Department of Transportation, Federal Highway Administration; as set forth in 23 CFR Part 646 Subpart B.

8. *Amendments*: This Agreement may be amended only by written agreement of TCRY and the City of Richland. It is anticipated that, following completion and acceptance of the engineering design, the TCRY and City will negotiate a separate agreement defining roles and responsibilities for construction of the modified at-grade crossing which is to be designed under this Agreement.

9. Notices: All notices and other communications provided for herein shall be validly given, made or served, in writing and delivered personally or sent by certified mail postage prepaid, to the addresses listed below.

TCRY	CITY
Randolph Peterson	Public Works Director
2579 Stevens Drive (P.O. Box 1700)	City of Richland
Richland, WA. 99352	505 Swift Boulevard
	Richland, WA. 99352
Telephone (509) 371-8313	Telephone (509) 942-7500

Or to such other parties as designated in writing and delivered to the party receiving notice as provided herein.

10. Assignment: This Agreement will inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that the parties hereto may not assign this Agreement without the prior written consent of the non-assigning party, which may not be unreasonably withheld or delayed.

11. Attorney's Fees: Should it become necessary to enforce any provisions of this Agreement by use of any court action or proceeding, the prevailing party shall be entitled to a reasonable attorney's fee, costs and expenses.

12. Miscellaneous: The waiver of the breach of any provision herein by either party shall in no way impair the right of either party to enforce that provision in any subsequent breach thereof.

13. Term: The Design/Engineering phase of this Agreement shall be completed on or prior to November 30, 2008. The City and TCRY anticipate negotiating and executing a separate construction agreement on or prior to December 31, 2008.

14. Dispute Resolution: Should a matter which is subject to this Agreement come under dispute, the parties agree to diligently seek a resolution between the TCRY's owner and the City's Public Works Director within 15 days notice one to the other.

15. Termination: The Parties shall exert their best efforts to complete the terms of this agreement in a reasonable and timely manner. The City reserves the right to terminate this Agreement for reasons of insufficient funding after providing thirty (30) days written notice to TCRY. Should the terms of this Agreement not be timely completed, and the dispute resolution process not resolve the issues to a mutually satisfactory result, this Agreement may be terminated by providing thirty (30) days written notice from one party to the other. At the end of thirty days, and the failure of the parties to reach agreement on completing the terms of this Agreement, this Agreement can be declared abandoned by either party and the terms shall become null and void.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the 2nd day of June, 2008.

CITY OF RICHLAND:

By: _____
Cynthia D. Johnson, City Manager

TRI-CITY RAILROAD COMPANY

By: _____ /for
Randolph Peterson, CEO

ATTEST:

_____
Debra Barham, Deputy City Clerk

APPROVED AS T FORM:

_____
Thomas O. Lampson, City Attorney

C60-08

AMENDMENT NO. 1 TO AGREEMENT TO PROVIDE ENGINEERING FOR MODIFIED RAILROAD CROSSING AT STEPTOE STREET

This Amendment modifies the Agreement, dated June 2, 2008, made by and between the **CITY OF RICHLAND**, a Washington municipal corporation ("City") and **TRI-CITY AND OLYMPIA RAILROAD COMPANY, LLC**, a Washington limited liability company ("TCRY"), related to the engineering design of a modified at-grade railroad crossing at Steptoe Street in Richland, WA.

I. Recitals

WHEREAS, the City and TCRY entered into an agreement, dated June 2, 2008, related to engineering design of a modified at-grade railroad crossing at Steptoe Street; and

WHEREAS, during implementation of the agreement the City and TCRY mutually agreed to consult with at-grade railroad crossing safety experts from the Washington State Utilities and Transportation Commission (WUTC). The result of this consultation was an intersection design not contemplated during preparation of the agreement and engineering scopes of work; and

WHEREAS, the City and TCRY mutually agreed to suspend engineering work in order to allow the City to petition the WUTC for a formal review and administrative order for the intersection and at-grade crossing design. The TCRY and Port of Benton signaled their support for the proposed design by waiving their right to a formal hearing at the WUTC; and

WHEREAS, on July 2, 2009, the WUTC issued its Order No. 1 on Docket No. TR-090912 providing direction for design of the modified at-grade crossing and street intersection; and

WHEREAS, the City and TCRY wish to revise the agreement to reflect the WUTC order and provide for the timely and efficient completion of project engineering.

NOW, THERFORE, THE PARTIES AGREE TO THE FOLLOWING AMENDMENTS TO THE AGREEMENT:

II: Agreement

1. TCRY will direct its contracted professional engineer to cease engineering design work under the original scope of work.

2. TCRY will contract with a professional engineering firm to provide review of at-grade railroad crossing features. The review shall ensure compliance with the WUTC order and conformance to TCRY / Port of Benton equipment standards and policies.

3. The City of Richland will amend its engineering contract to include relocation of existing at-grade railroad warning system equipment and modification to that equipment as

needed to comply with the WUTC order and conform to TCRY / Port of Benton equipment standards and policies.

4. Payment of Expenses. In addition to payment already made the City will reimburse TCRY the sum of $6,000 for engineering design work completed prior to suspension of design work. In addition the City shall reimburse TCRY, on a time and materials basis, up to $6,000 for engineering review of design plans prepared by the City's engineering firm.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement amendment as of the 1 day of Sept, 2009.

CITY OF RICHLAND:

By: _____ for
Cynthia D. Johnson, City Manager

TRI-CITY & OLYMPIA RAILROAD COMPANY

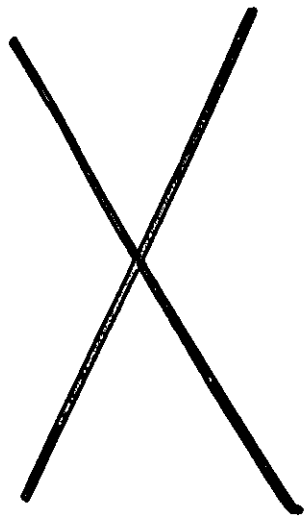
By: _____
Ryder Peterson, Vice President

ATTEST:

_____
Debra Barham, Deputy City Clerk

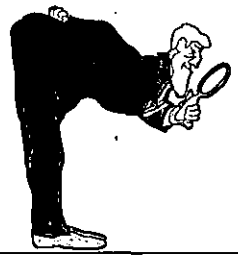
APPROVED AS TO FORM:

_____
Thomas O. Lampson, City Attorney



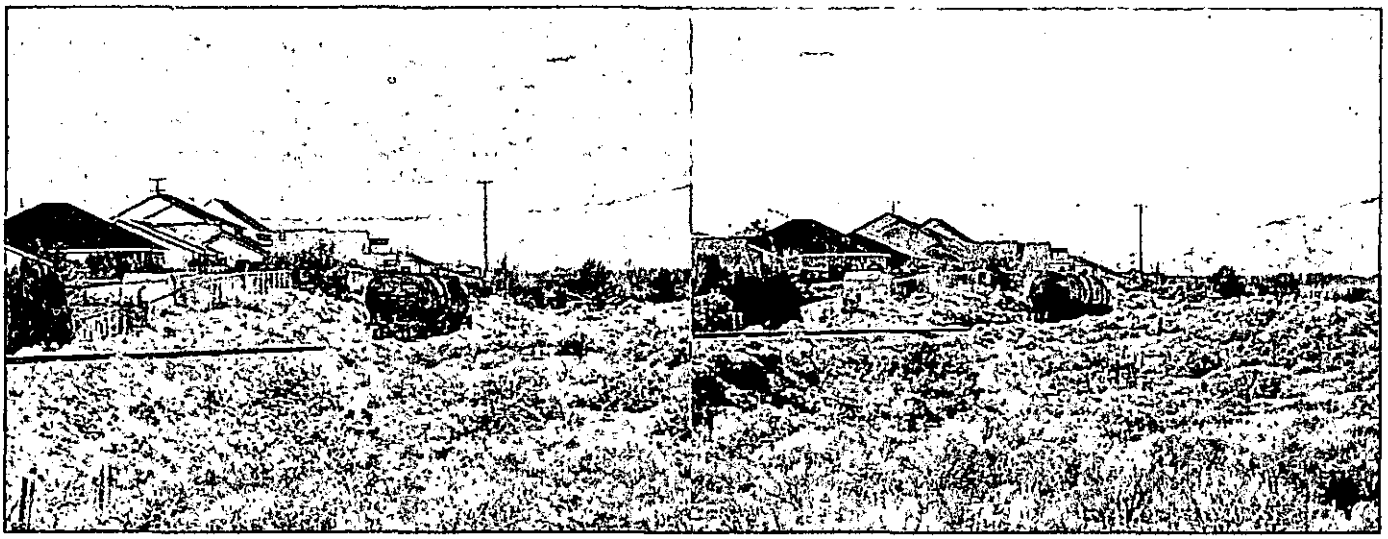
PUBLIC WORKS ENGINEERING

Daily Inspection Report



Richland

Contractor:	**Date:** October 3, 2013
Project Name: Railroad	**Day:** Thursday
Labor:	**Weather:** Sunny, low 43° high 68°,
Equipment: 2 JBS rail cars	**Photos taken:** Yes



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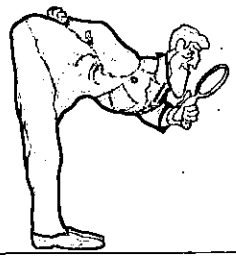
Signature: Donna Stewart	Page 1 of 1

WUTC DOCKET TR-130499
EXHIBIT RVP-9-X
ADMIT ☒ W/D ☐ REJECT ☐

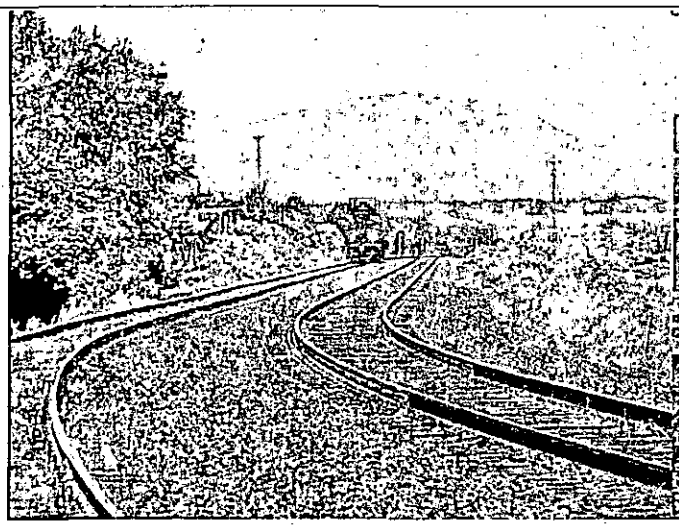
PUBLIC WORKS ENGINEERING

Daily Inspection Report



Richland

Contractor:	**Date:** October 4, 2013
Project Name: Railroad	**Day:** Friday
Labor:	**Weather:** Sunny, low 43° high 68°,
Equipment: 2 JBS rail cars	**Photos taken:** Yes



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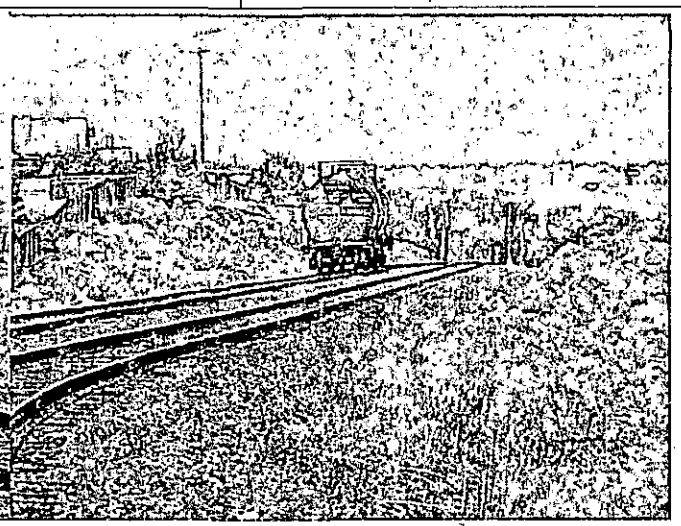

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Signature: Donna Stewart	Page 1 of 1

0-000001962

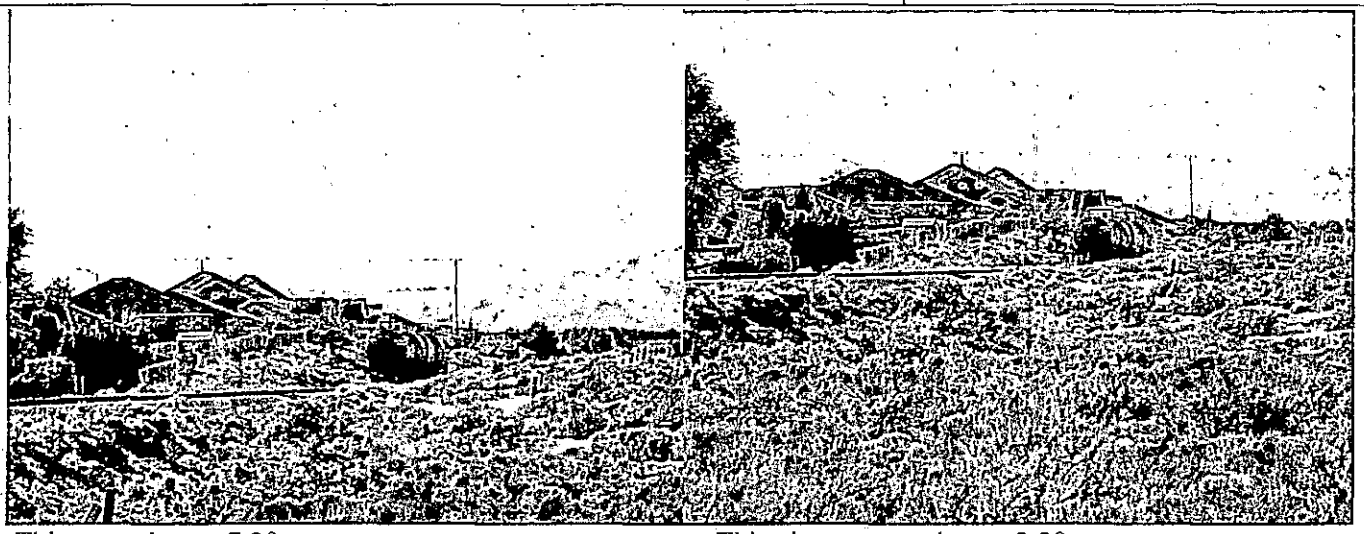
001382

PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 7, 2013
Project Name: Railroad	**Day:** Monday
Labor:	**Weather:** Sunny, low 43° high 68°,
Equipment: 2 JBS rail cars	**Photos taken:** Yes



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This picture was taken at 3:30 pm

Signature: Donna Stewart	Page 1 of 1

0-000001963

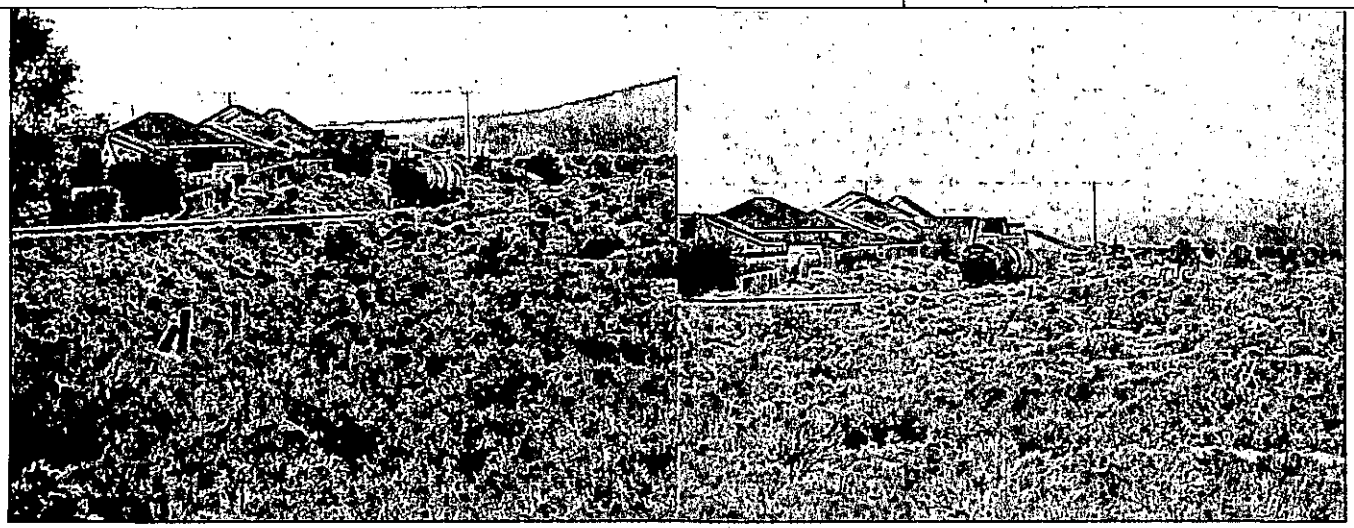
001383

PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 8, 2013
Project Name: Railroad	**Day:** Tuesday
Labor:	**Weather:** Cloudy, low 43° high 68°,
Equipment: 2 JBS rail cars	**Photos taken:** Yes



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Signature: Donna Stewart	Page 1 of 1

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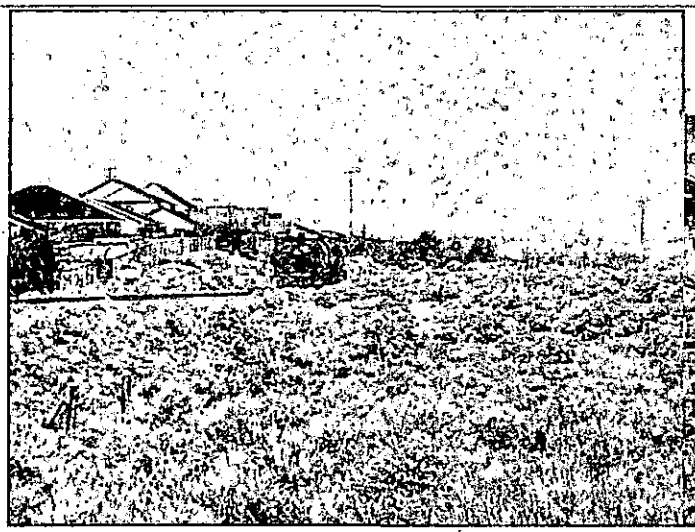
001384

PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 9, 2013
Project Name: Railroad	**Day:** Wednesday
Labor:	**Weather:** Cloudy, low 43° high 68°,
Equipment: 2 JBS rail cars	**Photos taken:** Yes



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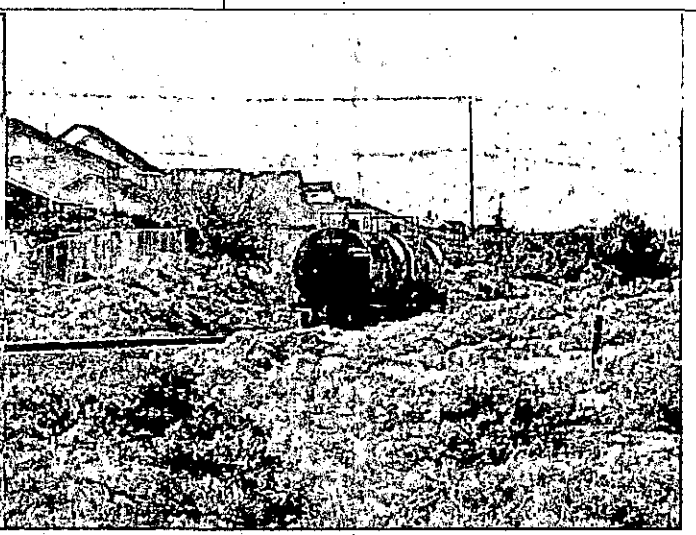

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Signature: Donna Stewart	Page 1 of 1

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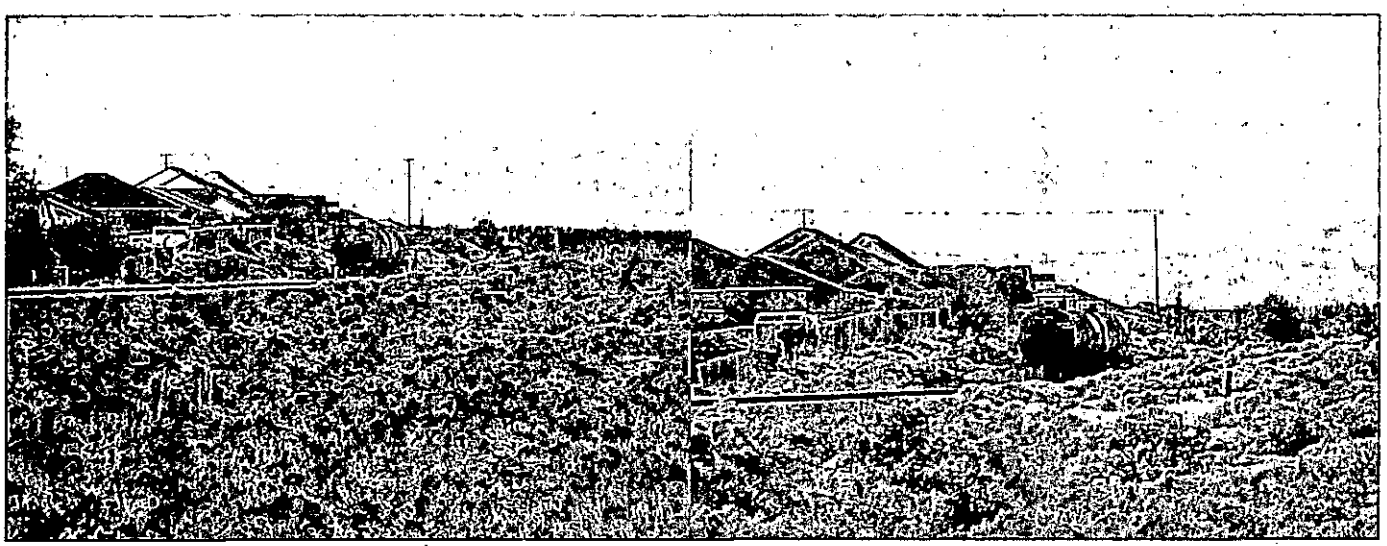
PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 10, 2013
Project Name: Railroad	**Day:** Thursday
Labor:	**Weather:** Sunny, low 43° high 68°,
Equipment: 2 JBS rail cars	**Photos taken:** Yes



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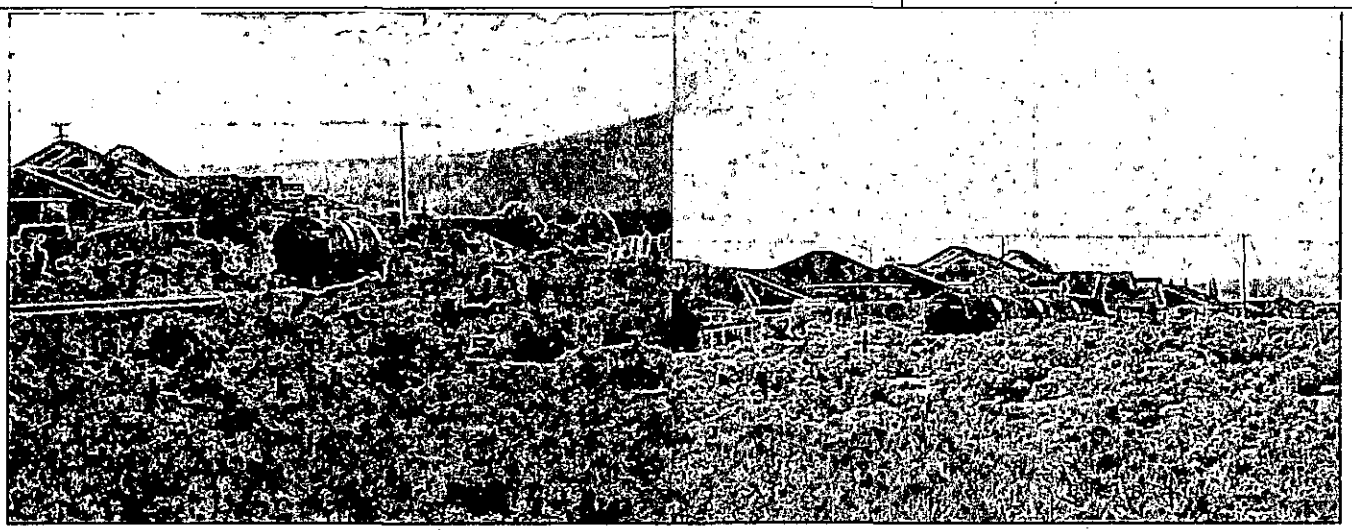
001386

PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 11, 2013
Project Name: Railroad	**Day:** Friday
Labor:	**Weather:** Cloudy, low 43° high 68°,
Equipment: 2 JBS rail cars in morning and 3 in the afternoon	**Photos taken:** Yes



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001387

PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 14, 2013
Project Name: Railroad	**Day:** Monday
Labor:	**Weather:** Sunny, low 43° high 68°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes

This was taken at 7:30 am

This picture was taken at 3:15 pm

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PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 15, 2013
Project Name: Railroad	**Day:** Tuesday
Labor:	**Weather:** Sunny, low 43° high 68°, .
Equipment: 3 JBS rail cars	**Photos taken:** Yes

This was taken at 8:30 am

This picture was taken at 3:30 pm

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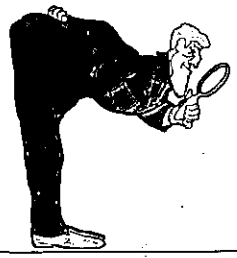
001389

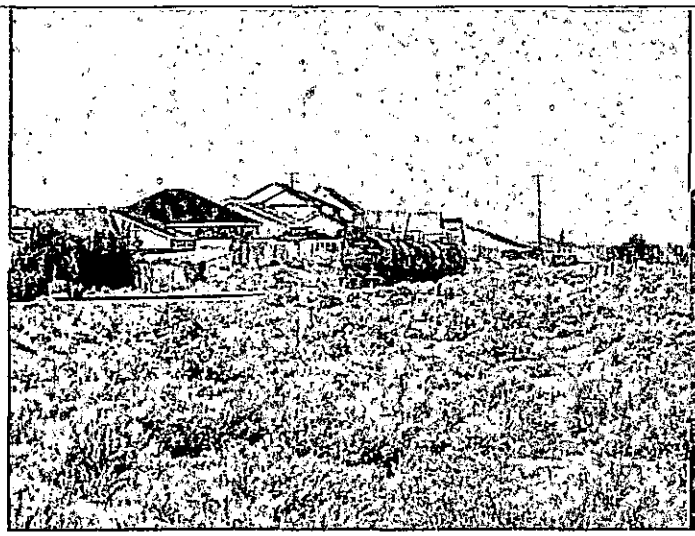
PUBLIC WORKS ENGINEERING

Daily Inspection Report



Richland

Contractor:	**Date:** October 16, 2013
Project Name: Railroad	**Day:** Wednesday
Labor:	**Weather:** Sunny, low 43° high 68°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



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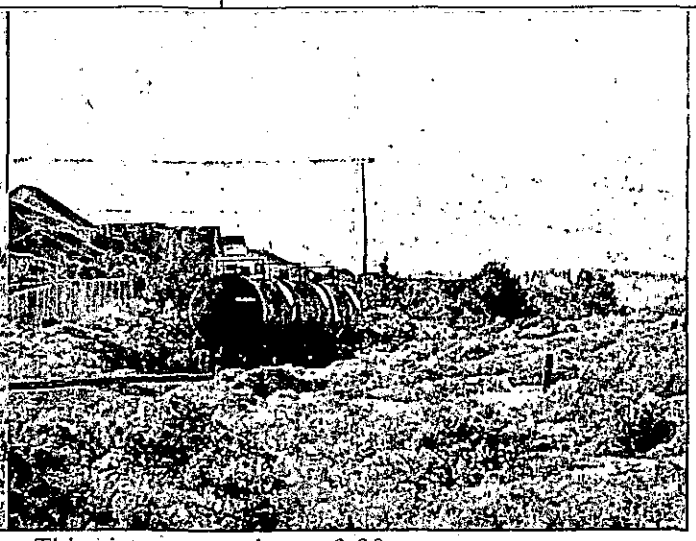

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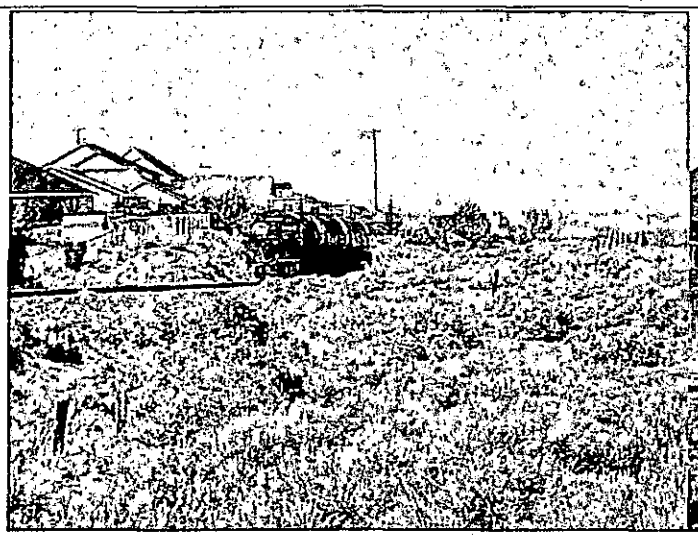
PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 17, 2013
Project Name: Railroad	**Day:** Thursday
Labor:	**Weather:** Sunny, low 43° high 68°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



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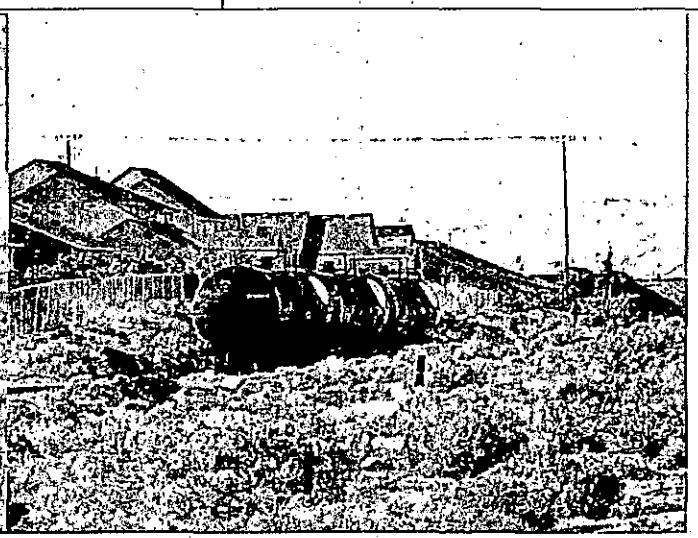

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Signature: Donna Stewart	Page 1 of 1

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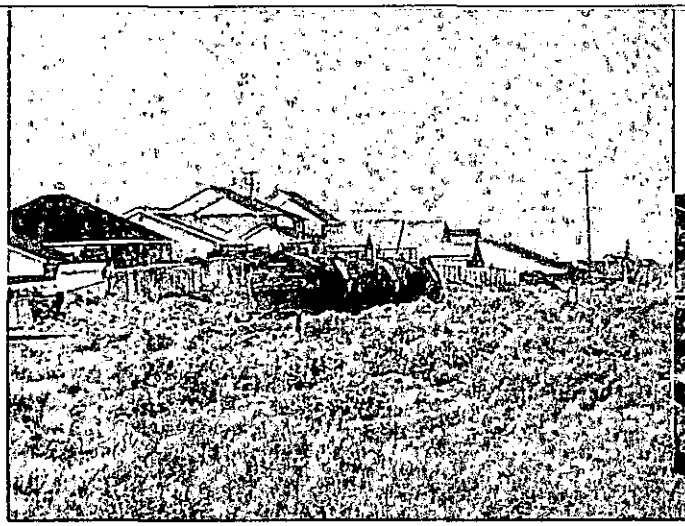
001391

PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 18, 2013
Project Name: Railroad	**Day:** Friday
Labor:	**Weather:** Sunny, low 43° high 68°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



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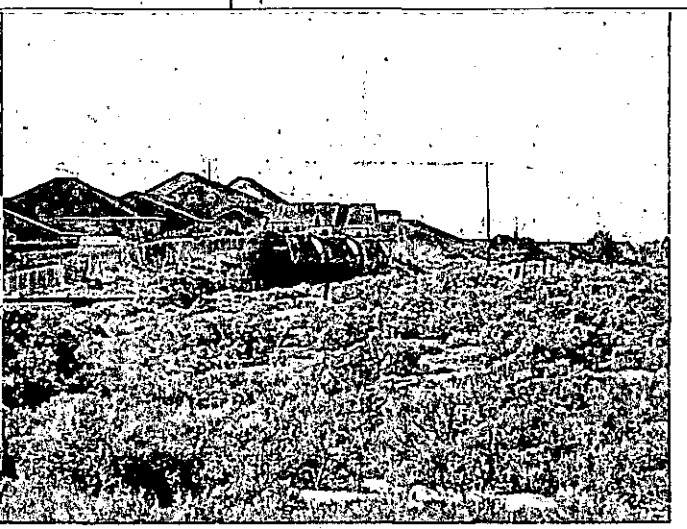

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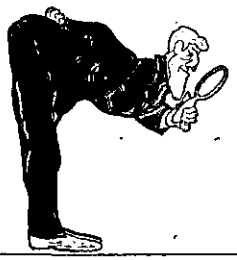
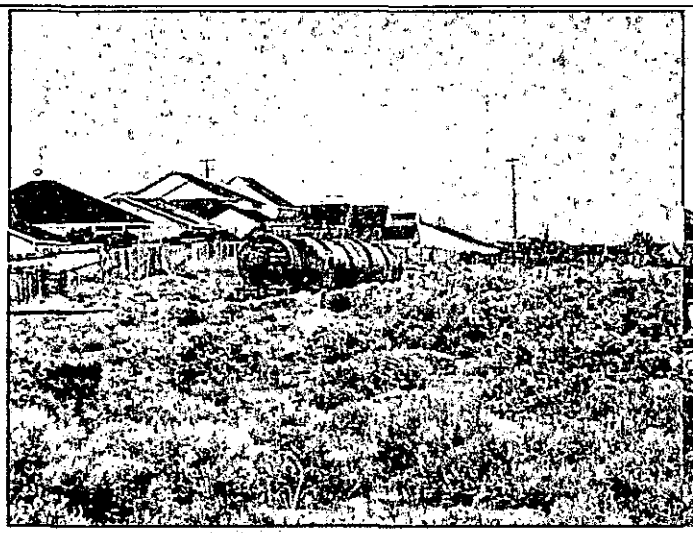
PUBLIC WORKS ENGINEERING

Daily Inspection Report



Richland

Contractor:	**Date:** October 21, 2013
Project Name: Railroad	**Day:** Monday
Labor:	**Weather:** Sunny, low 43° high 68°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



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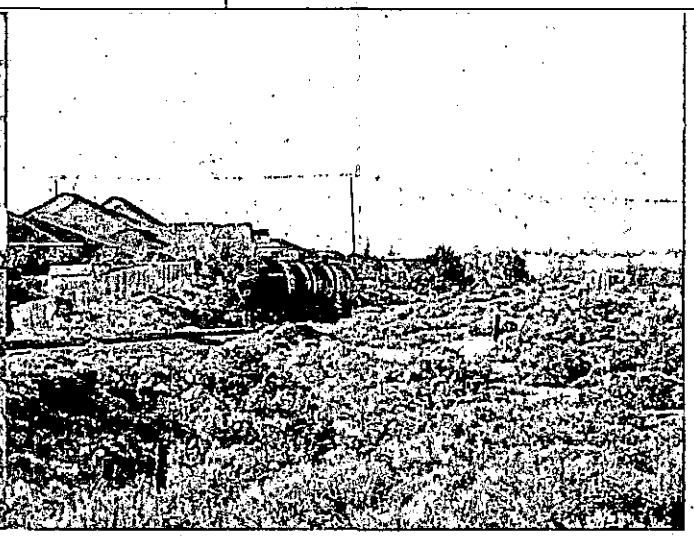

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Signature: Donna Stewart	Page 1 of 1

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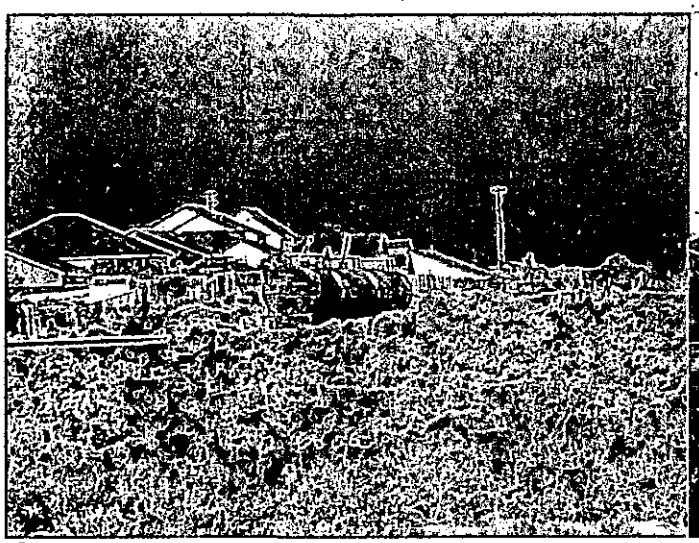
PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 22, 2013
Project Name: Railroad	**Day:** Tuesday
Labor:	**Weather:** Sunny, low 43° high 68°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



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Signature: Donna Stewart	Page 1 of 1

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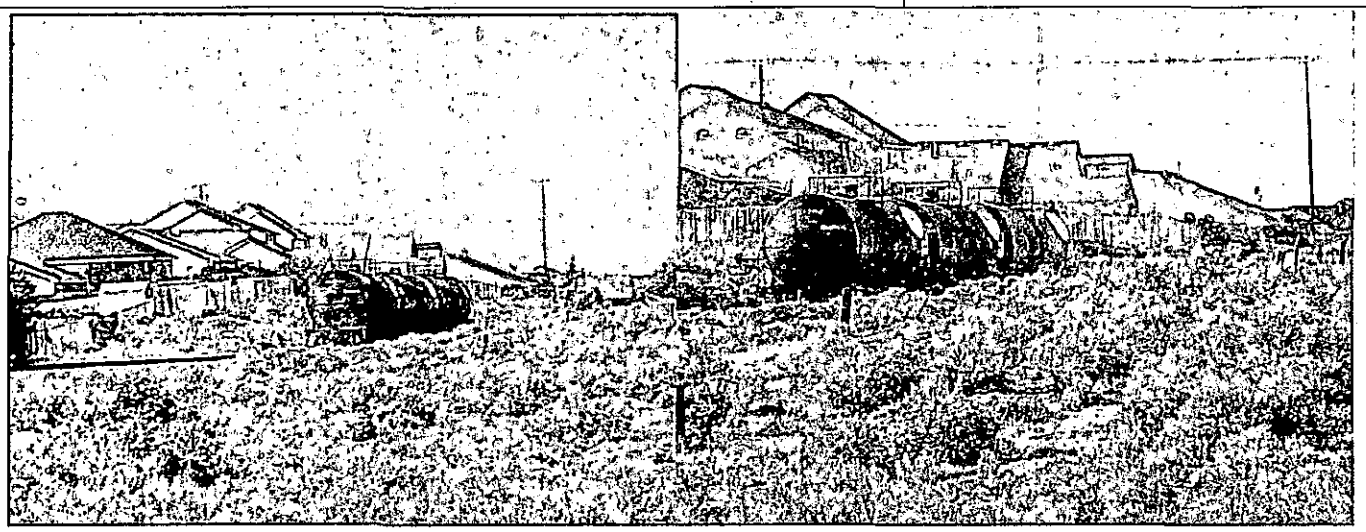
PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 23, 2013
Project Name: Railroad	**Day:** Wednesday
Labor:	**Weather:** Sunny, low 43° high 68°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



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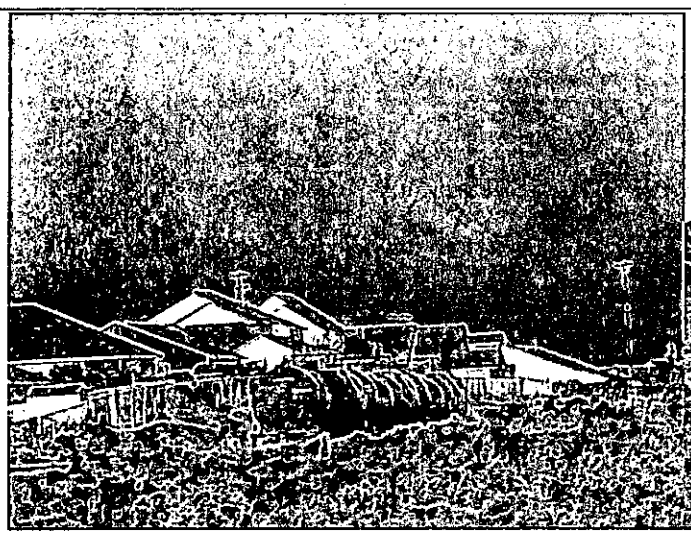
PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 24, 2013
Project Name: Railroad	**Day:** Thursday
Labor:	**Weather:** Sunny, low 43° high 68°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



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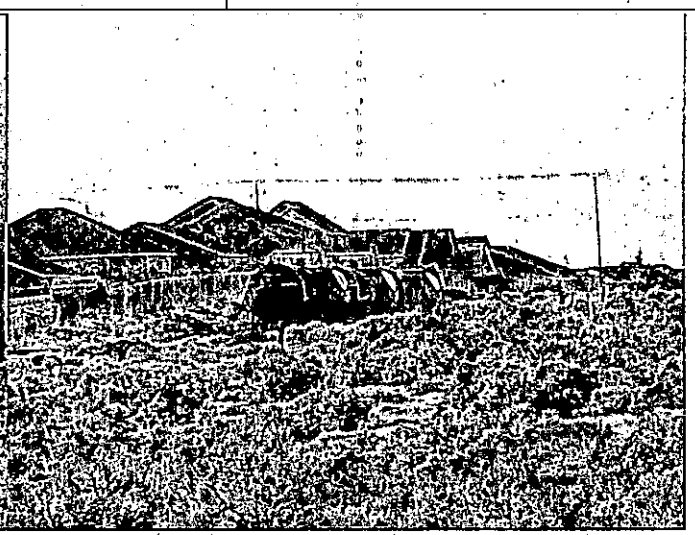

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Signature: Donna Stewart	Page 1 of 1

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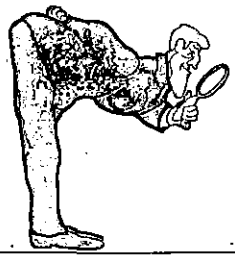
001396

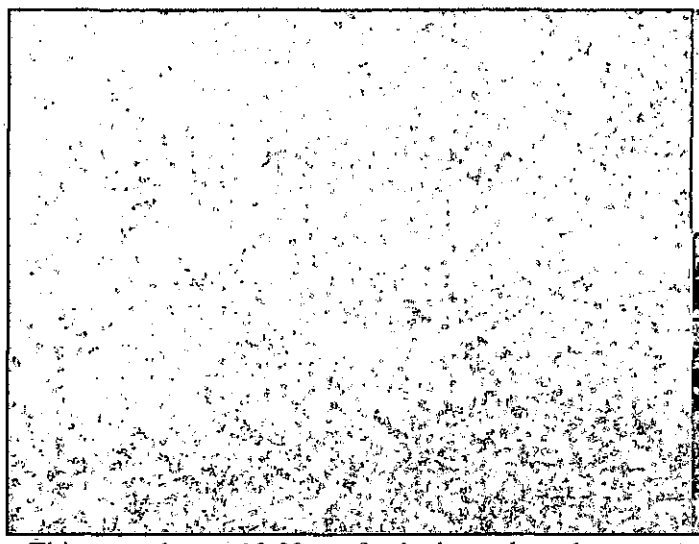
PUBLIC WORKS ENGINEERING

Daily Inspection Report



Richland

Contractor:	**Date:** October 25, 2013
Project Name: Railroad	**Day:** Friday
Labor:	**Weather:** Sunny, low 43° high 65°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



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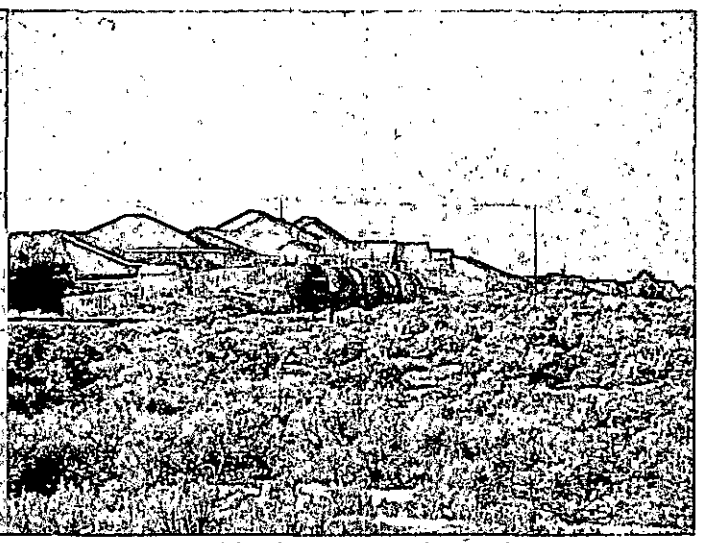

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Signature: Donna Stewart	Page 1 of 1

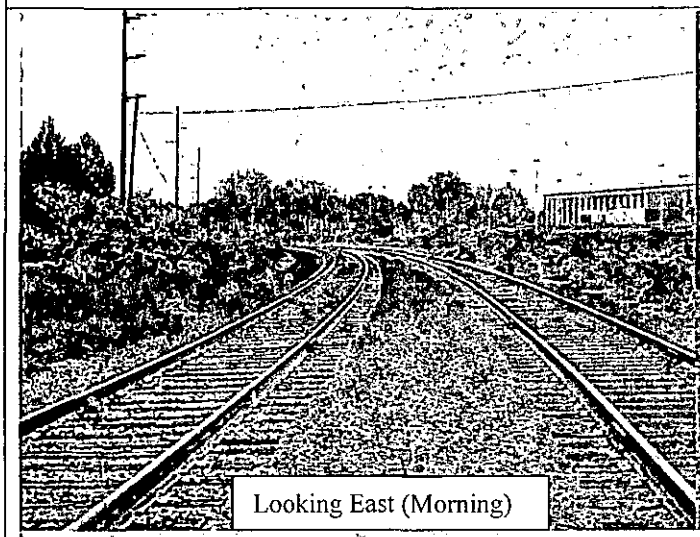
0-000001977

PUBLIC WORKS ENGINEERING

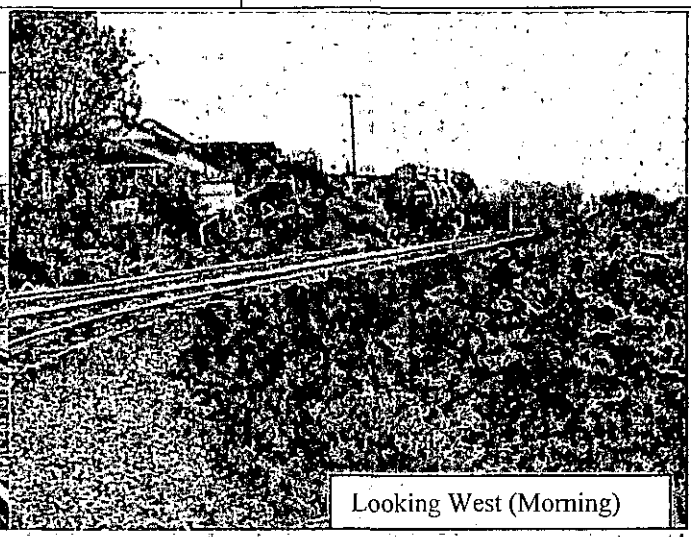
Daily Inspection Report

Richland

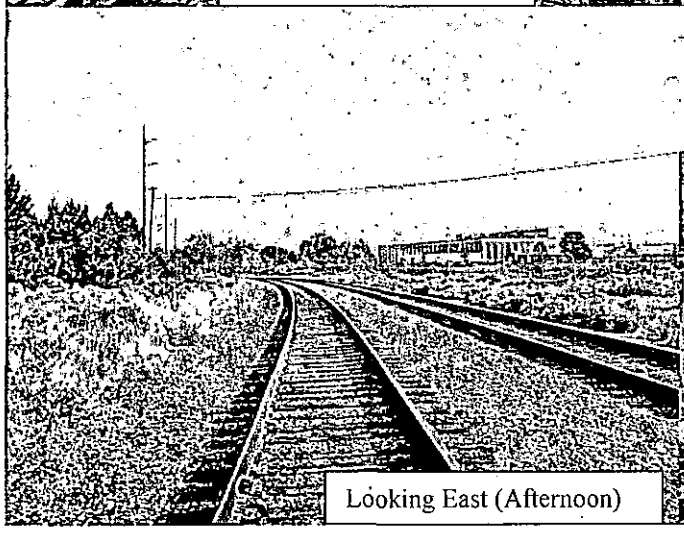
Contractor:	**Date:** October 28, 2013
Project Name: Railroad	**Day:** Monday
Labor:	**Weather:** Cloudy, low 29° high 56°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



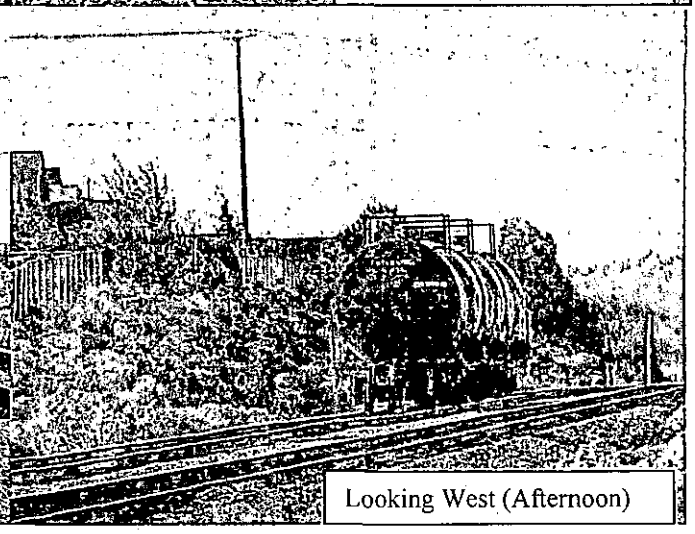
Looking East (Morning)



Looking West (Morning)



Looking East (Afternoon)



Looking West (Afternoon)

Signature: Donna Stewart	Page 1 of 1

0-000001978

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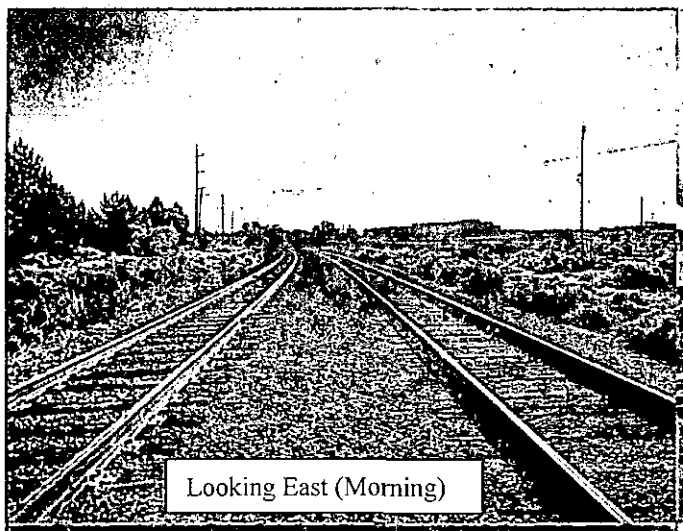
PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** October 29, 2013
Project Name: Railroad	**Day:** Tuesday
Labor:	**Weather:** Sunny, low 32° high 54°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes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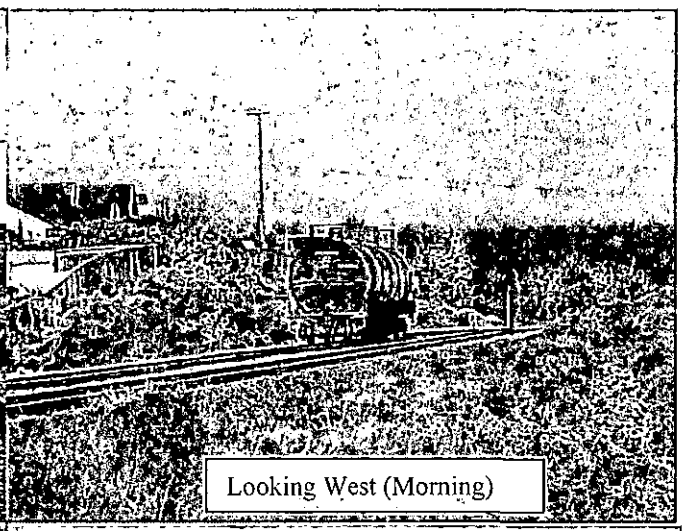
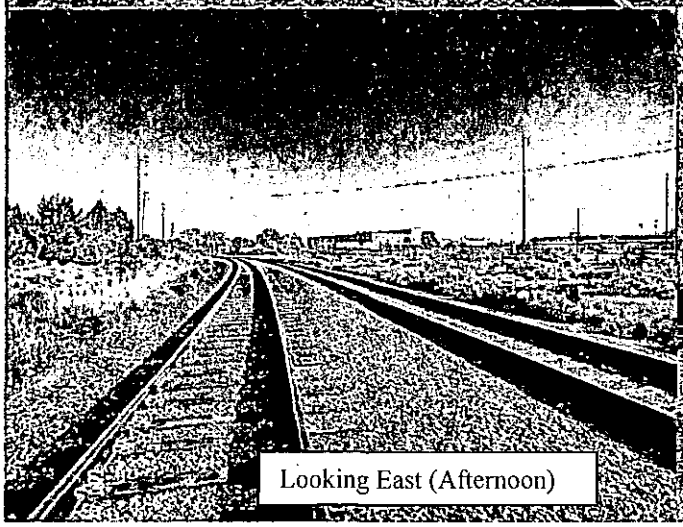

Looking West (Morning)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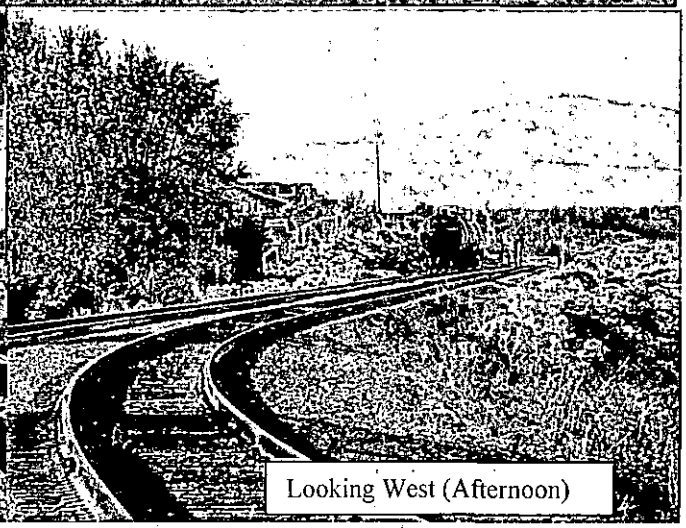
Looking West (Afternoon)

Signature: Donna Stewart	Page 1 of 1

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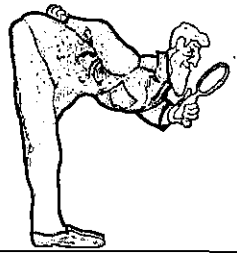
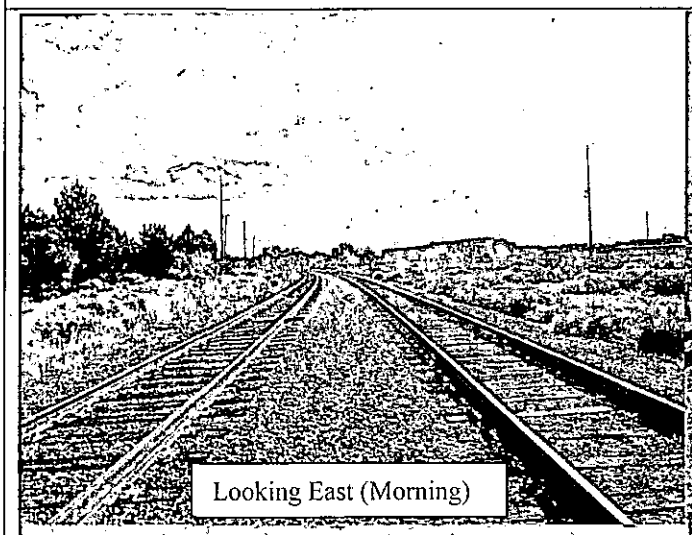
PUBLIC WORKS ENGINEERING

Daily Inspection Report

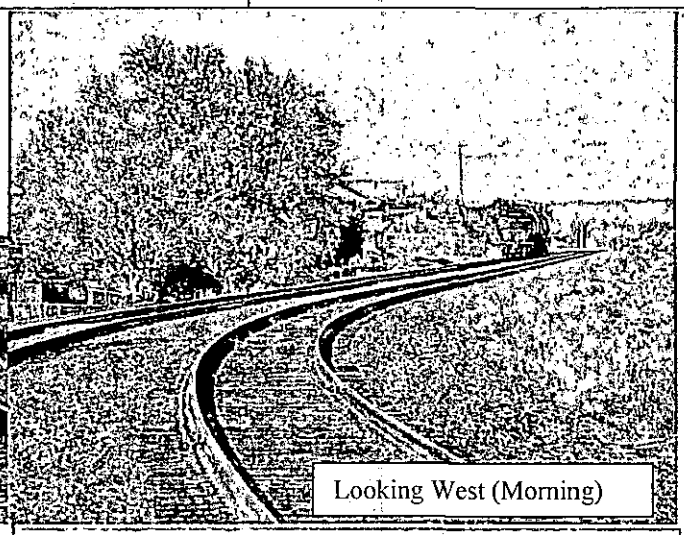


Richland

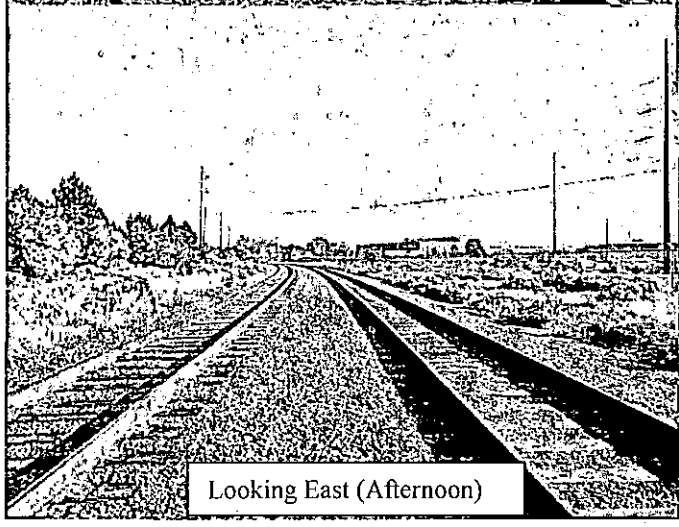
Contractor:	**Date:** October 30, 2013
Project Name: Railroad	**Day:** Wednesday
Labor:	**Weather:** Sunny, low 37° high 58°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



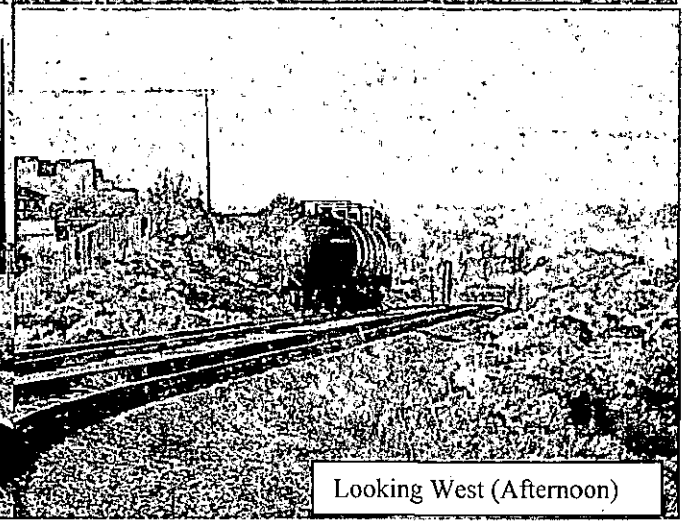
Looking East (Morning)



Looking West (Morning)



Looking East (Afternoon)



Looking West (Afternoon)

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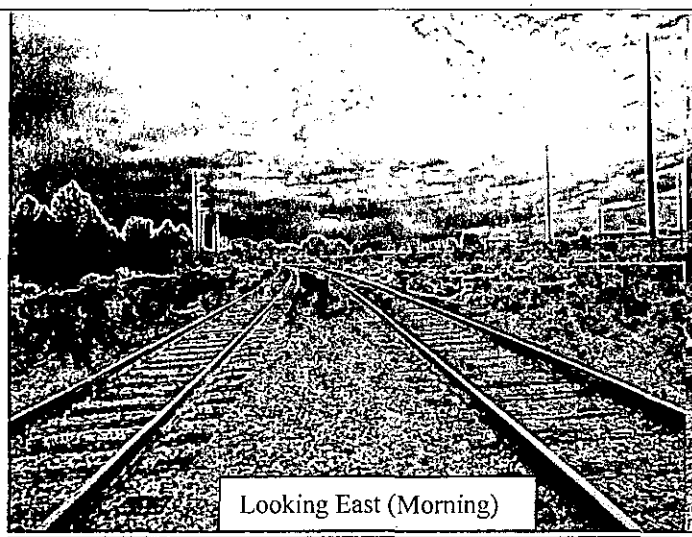
PUBLIC WORKS ENGINEERING

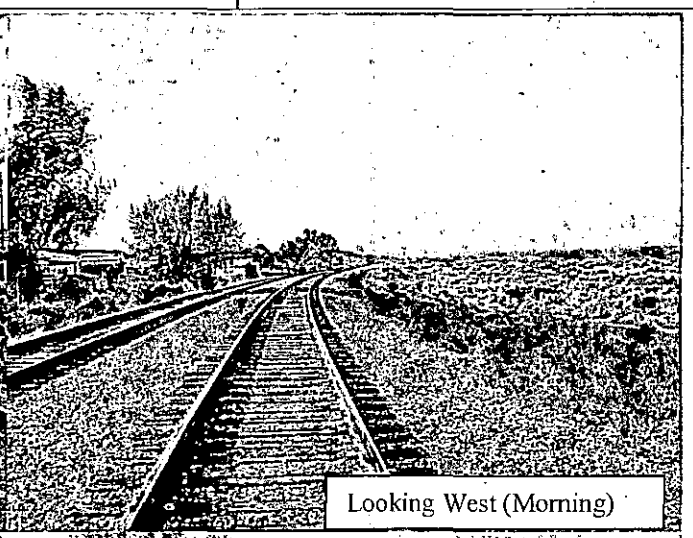
Daily Inspection Report

Richland

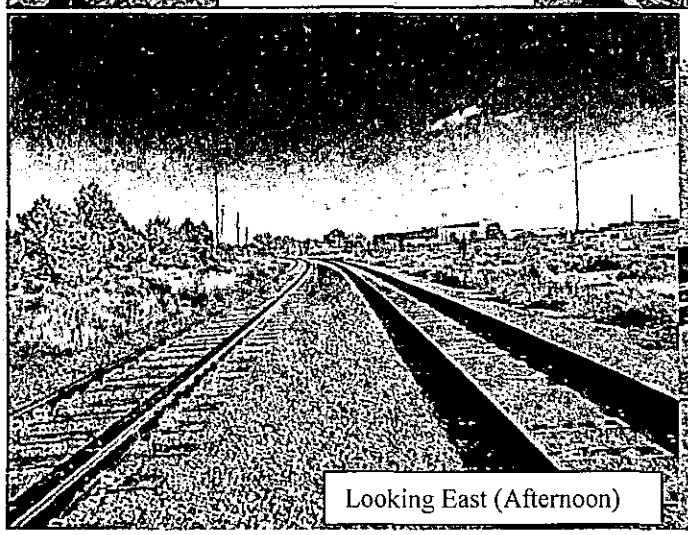
Contractor:	**Date:** October 31, 2013
Project Name: Railroad	**Day:** Thursday
Labor:	**Weather:** Cloudy, low 29° high 56°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



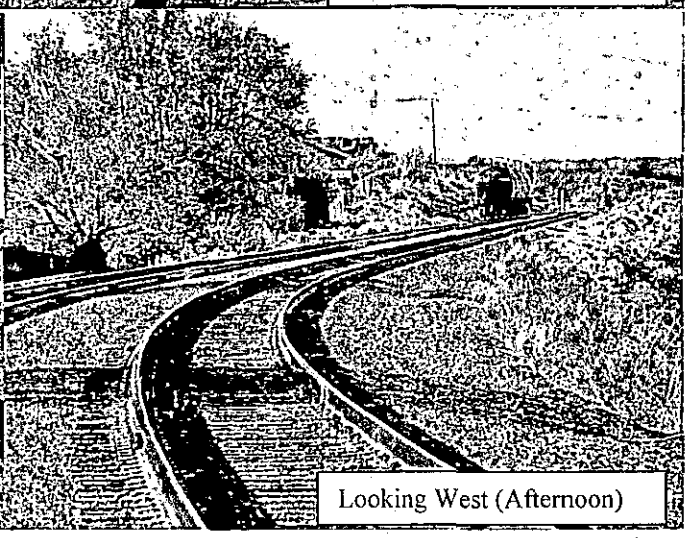
Looking East (Morning)



Looking West (Morning)



Looking East (Afternoon)



Looking West (Afternoon)

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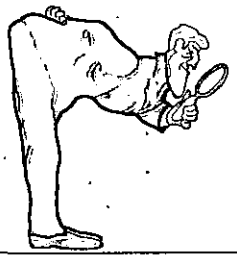
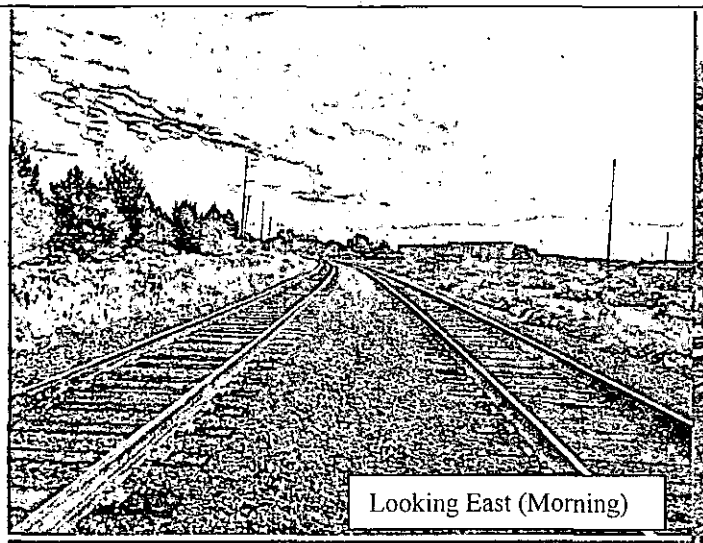
PUBLIC WORKS ENGINEERING

Daily Inspection Report

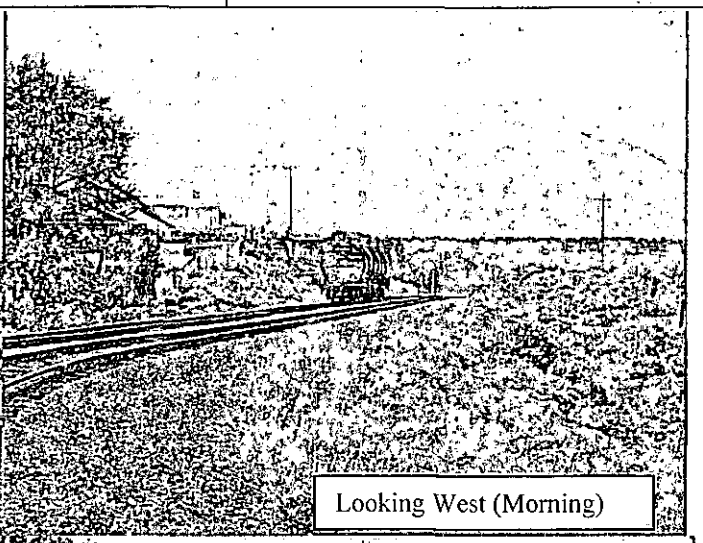


Richland

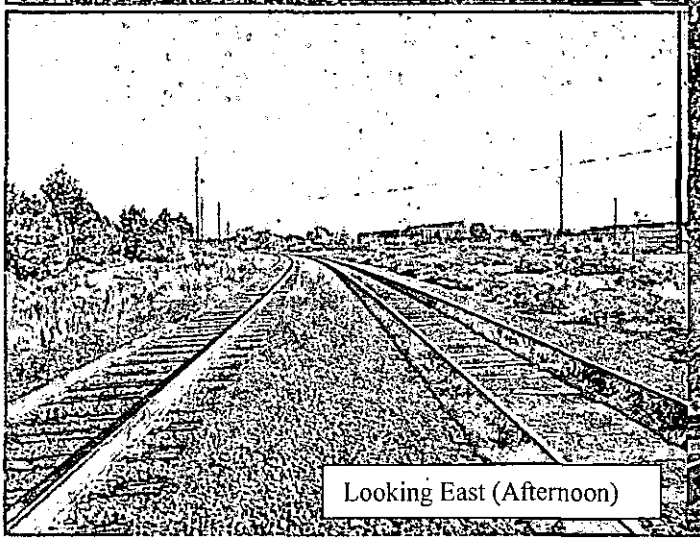
Contractor:	**Date:** November 1, 2013
Project Name: Railroad	**Day:** Friday
Labor:	**Weather:** Sunny, low 37° high 49°,
Equipment: 3 rail cars.	**Photos taken:** Yes



Looking East (Morning)



Looking West (Morning)



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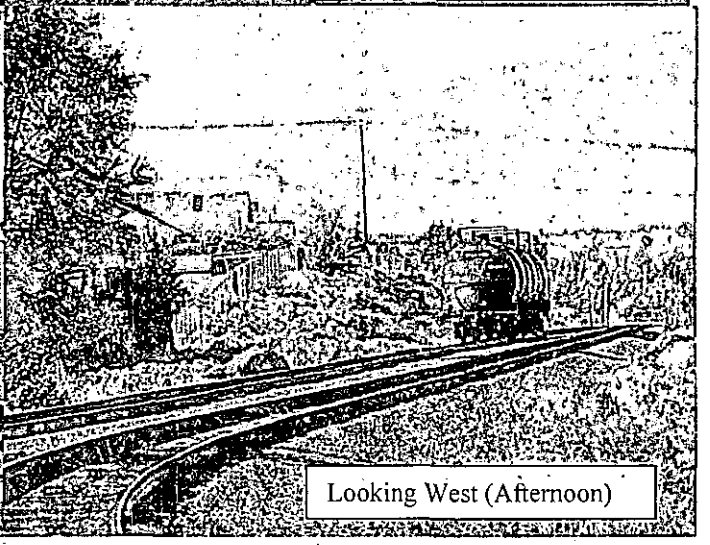

Looking West (Afternoon)

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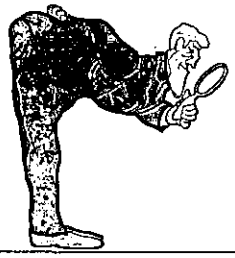
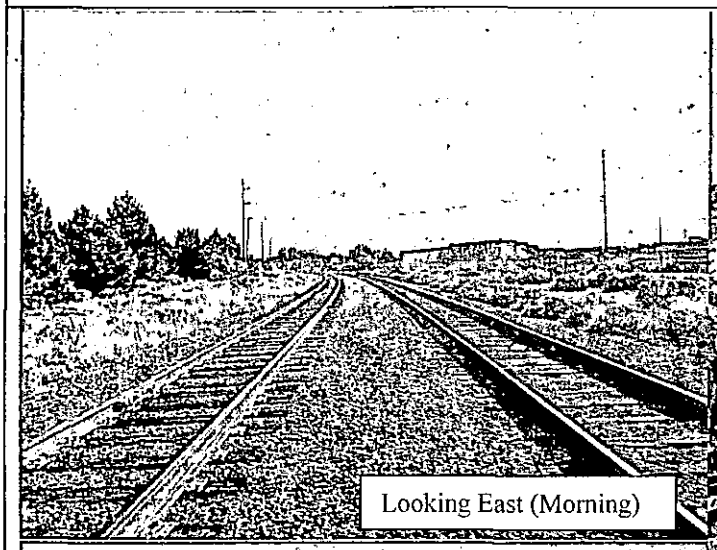
PUBLIC WORKS ENGINEERING

Daily Inspection Report

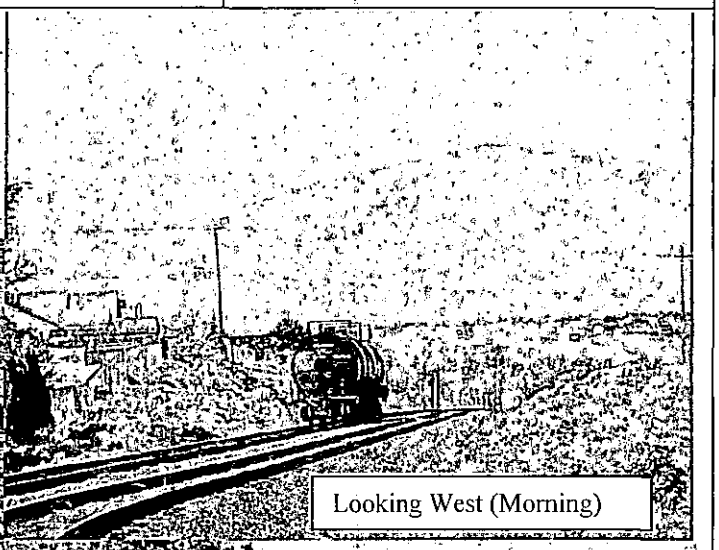


Richland

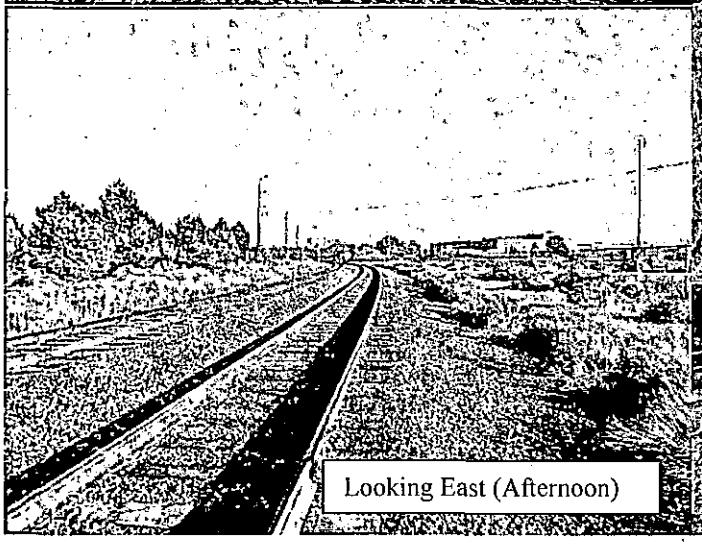
Contractor:	**Date:** November 4, 2013
Project Name: Railroad	**Day:** Monday
Labor:	**Weather:** Sunny, low 37° high 49°,
Equipment: 3 rail cars	**Photos taken:** Yes



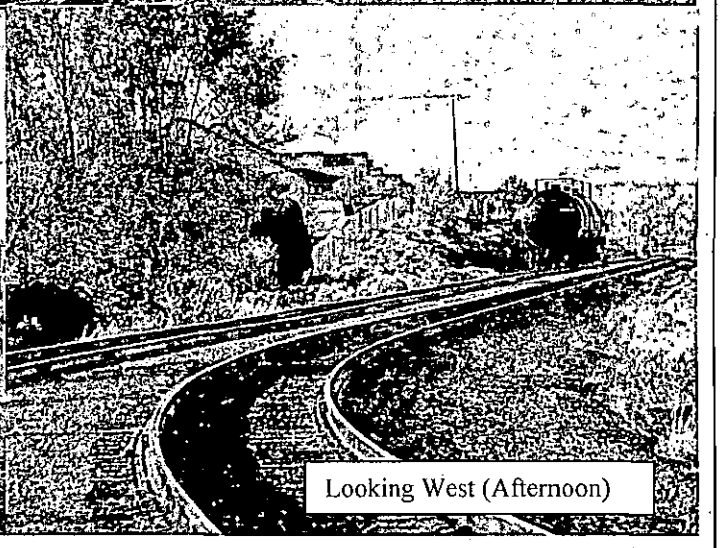
Looking East (Morning)



Looking West (Morning)



Looking East (Afternoon)



Looking West (Afternoon)

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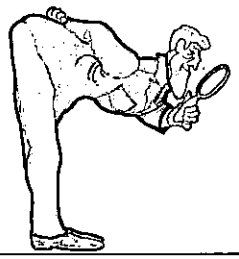
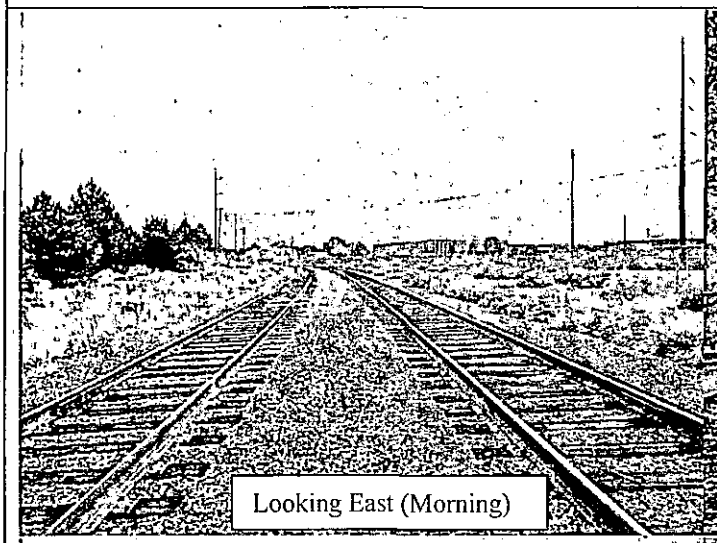
PUBLIC WORKS ENGINEERING

Daily Inspection Report



Richland

Contractor:	**Date:** November 5, 2013
Project Name: Railroad	**Day:** Tuesday
Labor:	**Weather:** Cloudy, low 26° high 47°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



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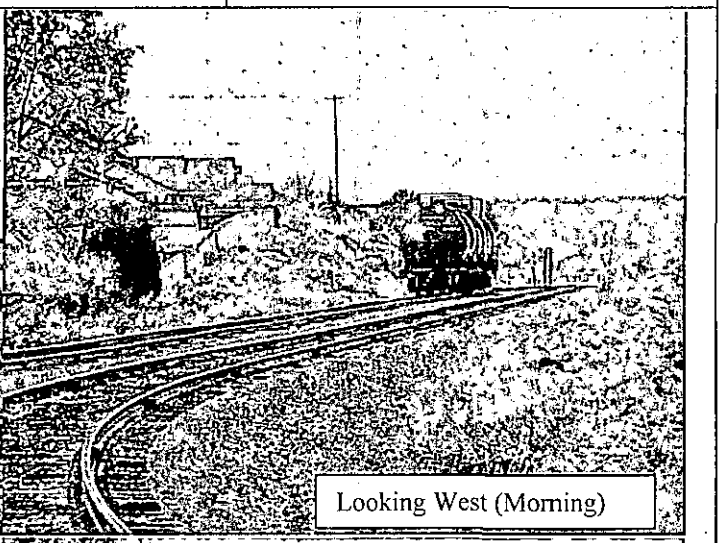

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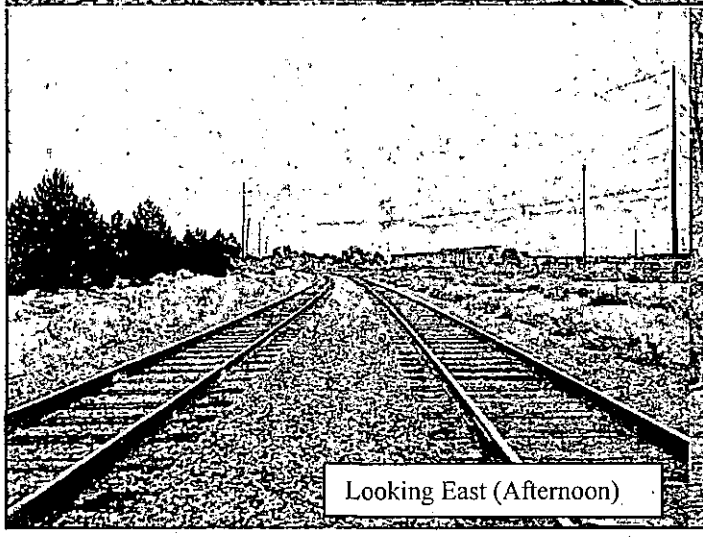

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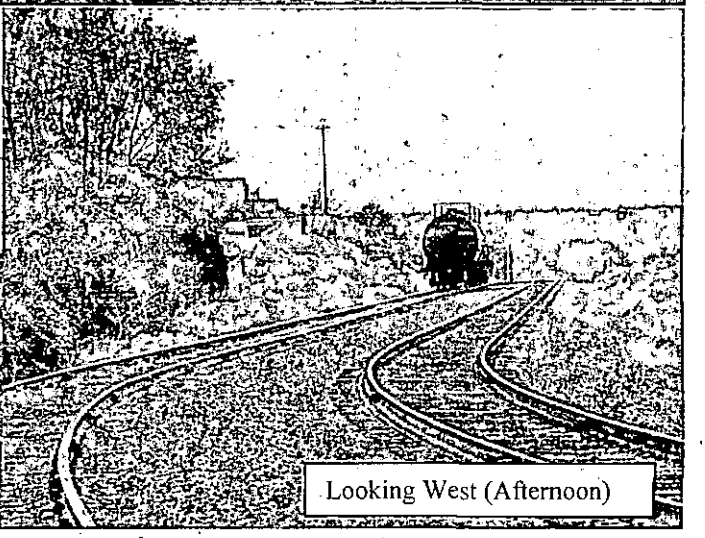

Looking West (Afternoon)

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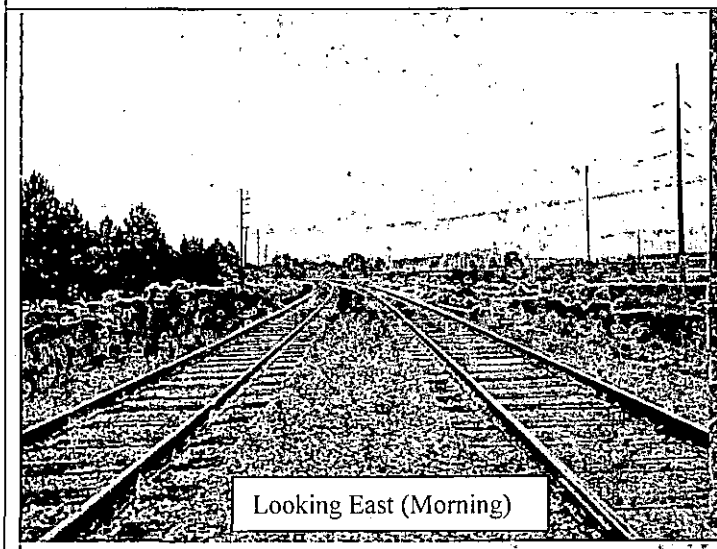
PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** November 6, 2013
Project Name: Railroad	**Day:** Wednesday
Labor:	**Weather:** Cloudy, low 33° high 48°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



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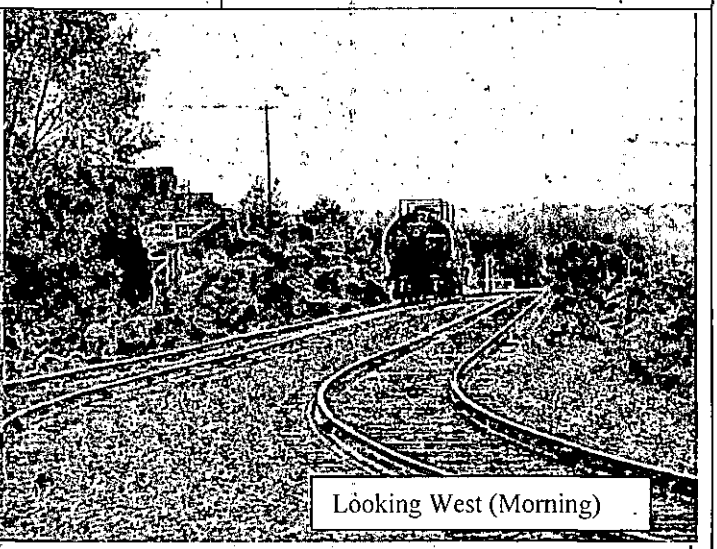
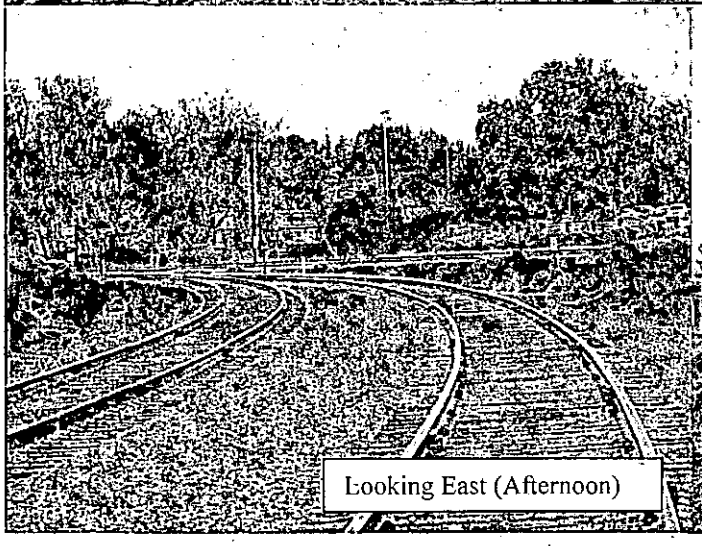
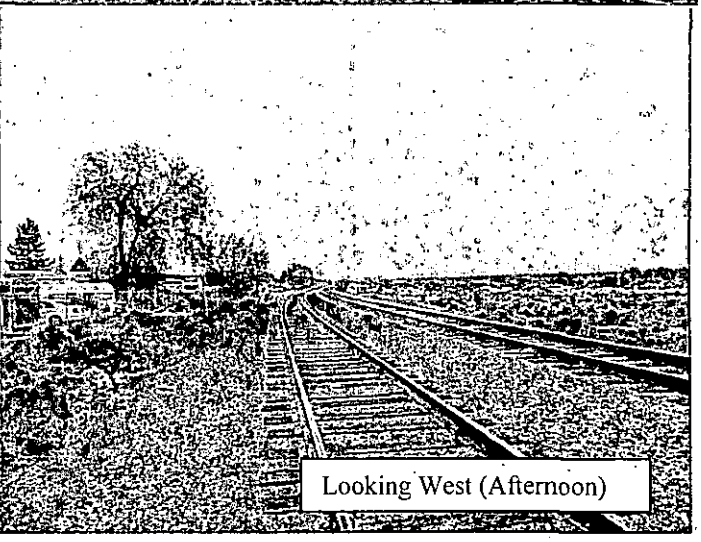


Looking West (Morning)



Looking East (Afternoon)



Looking West (Afternoon)

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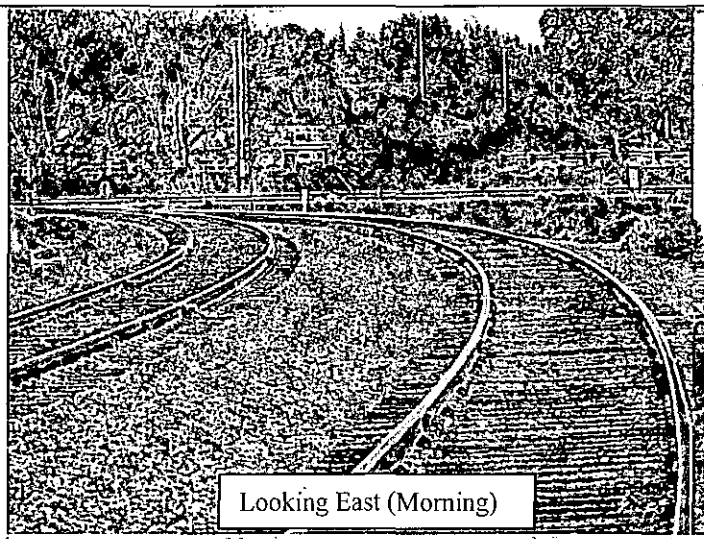
PUBLIC WORKS ENGINEERING

Daily Inspection Report

Richland

Contractor:	**Date:** November 7, 2013
Project Name: Railroad	**Day:** Thursday
Labor:	**Weather:** Cloudy, low 41° high 52°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



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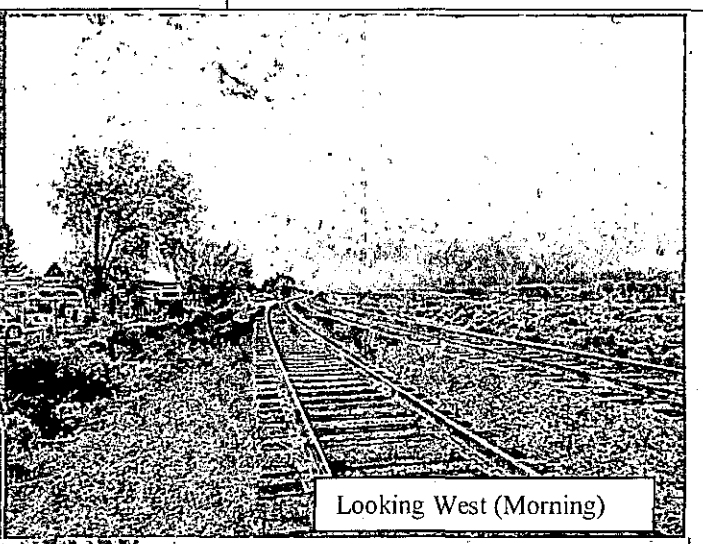

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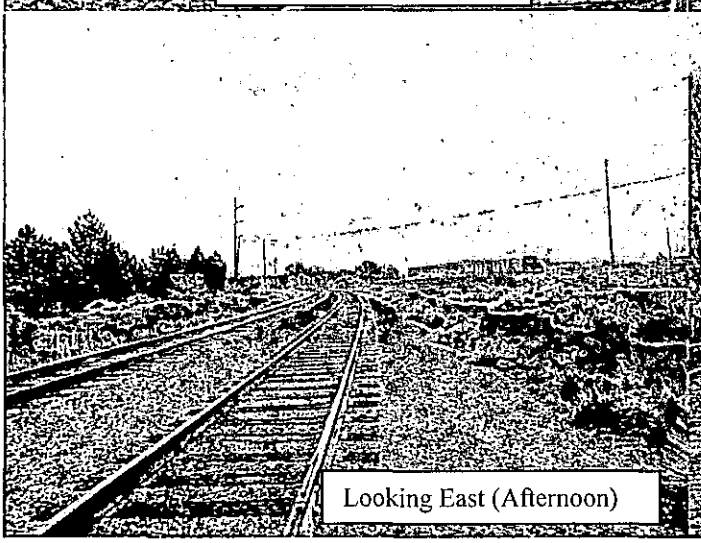

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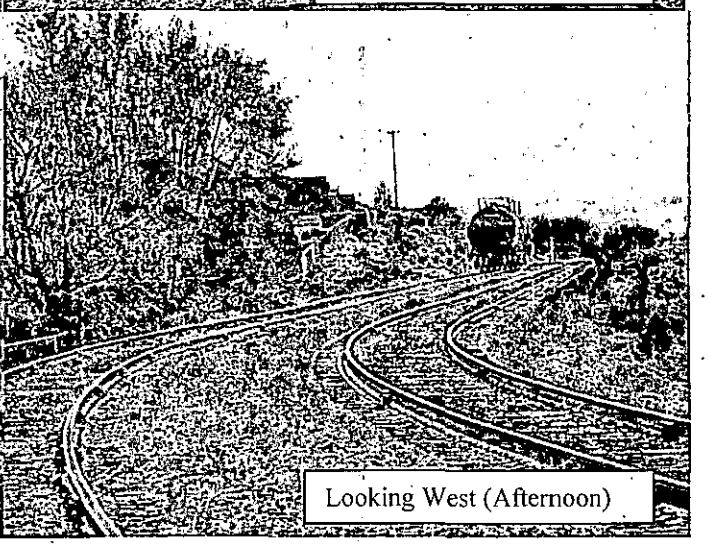

Looking West (Afternoon)

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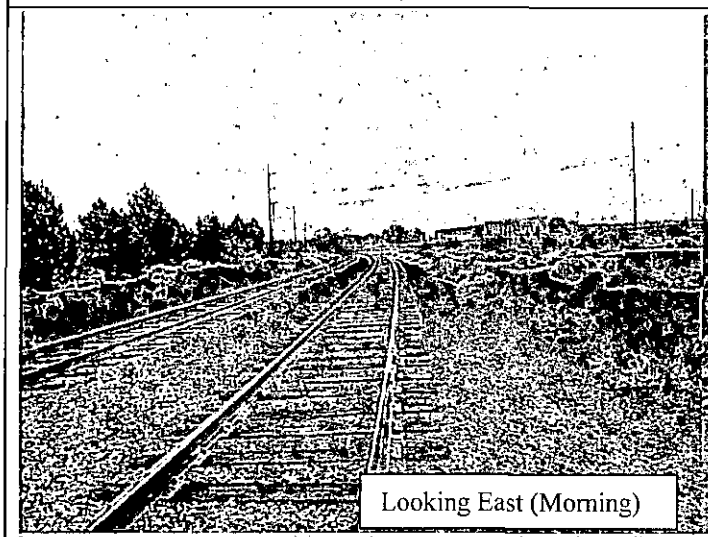
PUBLIC WORKS ENGINEERING

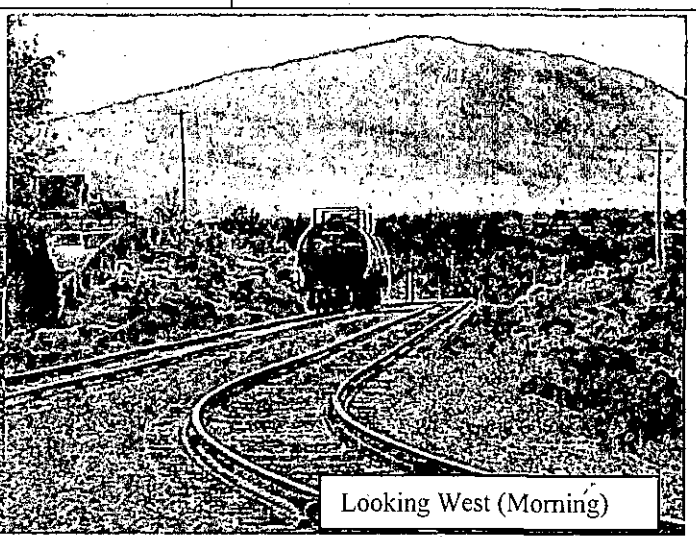
Daily Inspection Report

Richland

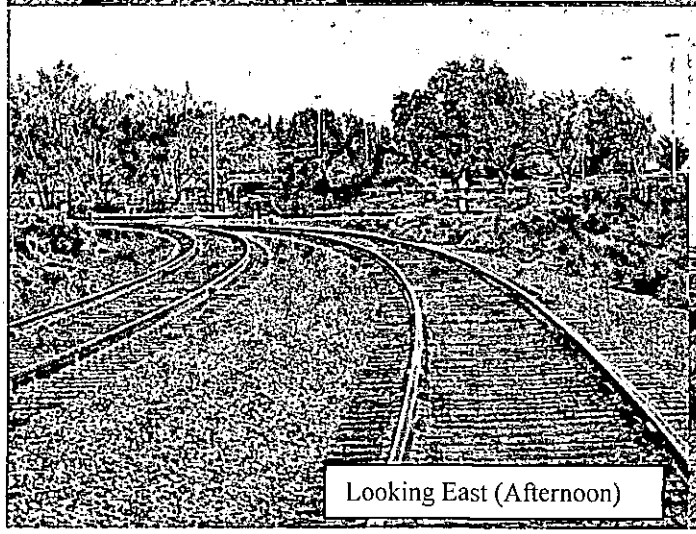
Contractor:	**Date:** November 8, 2013
Project Name: Railroad	**Day:** Friday
Labor:	**Weather:** Cloudy, low 45° high 56°,
Equipment: 3 JBS rail cars	**Photos taken:** Yes



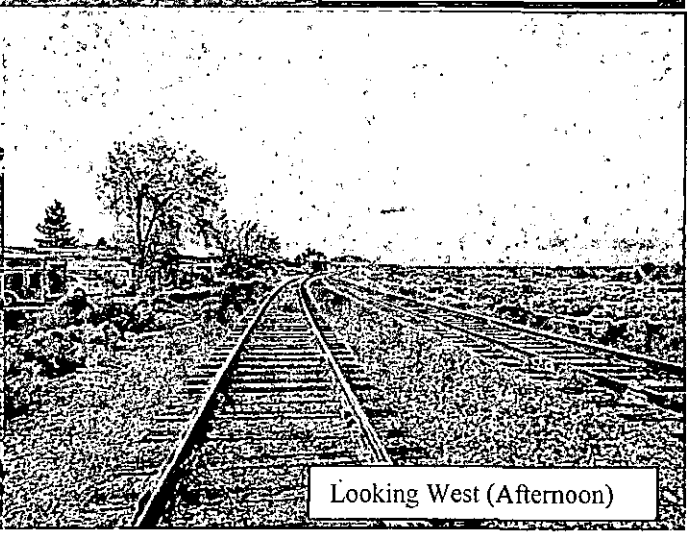
Looking East (Morning)



Looking West (Morning)



Looking East (Afternoon)



Looking West (Afternoon)

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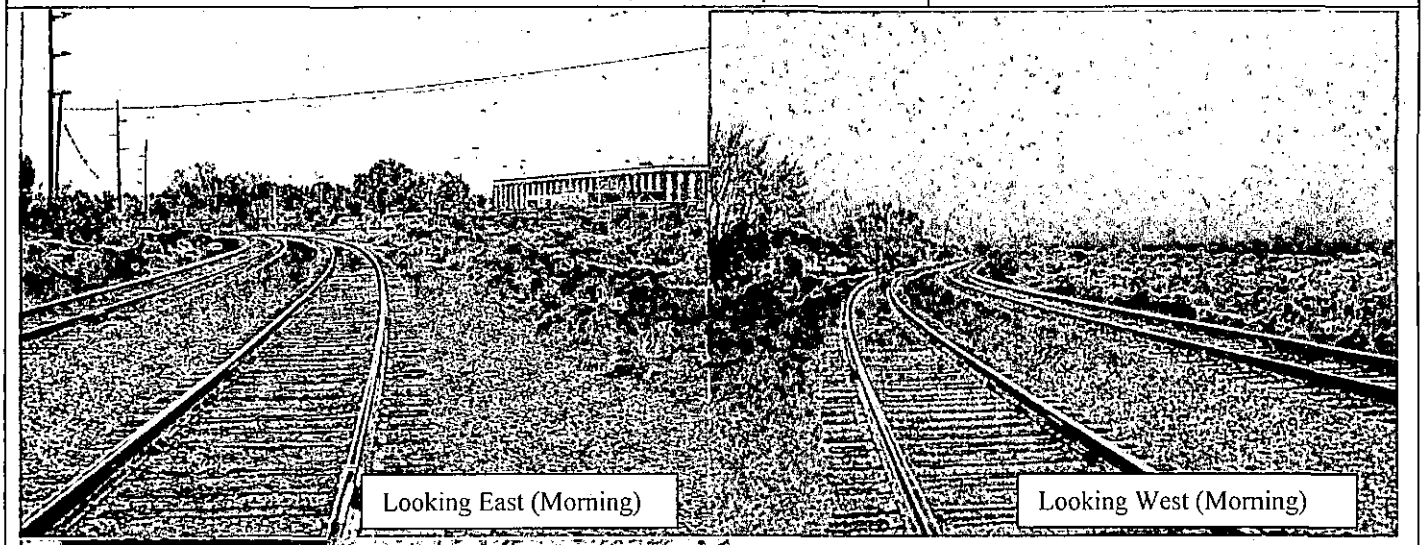
PUBLIC WORKS ENGINEERING

Daily Inspection Report

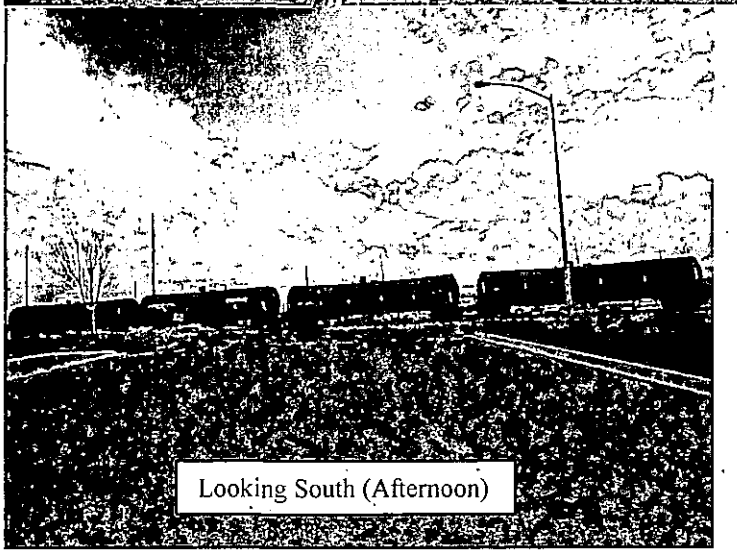
Richland

Contractor:	**Date:** November 12, 2013
Project Name: Railroad	**Day:** Tuesday
Labor:	**Weather:** Cloudy, low 45° high 56°,
Equipment: No rail cars in morning, 4 in the afternoon	**Photos taken:** Yes



Looking East (Morning)

Looking West (Morning)



Looking South (Afternoon)

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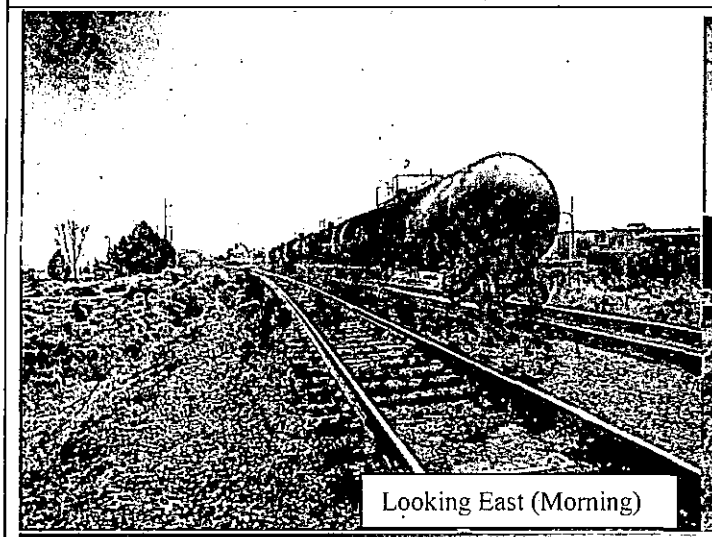
PUBLIC WORKS ENGINEERING

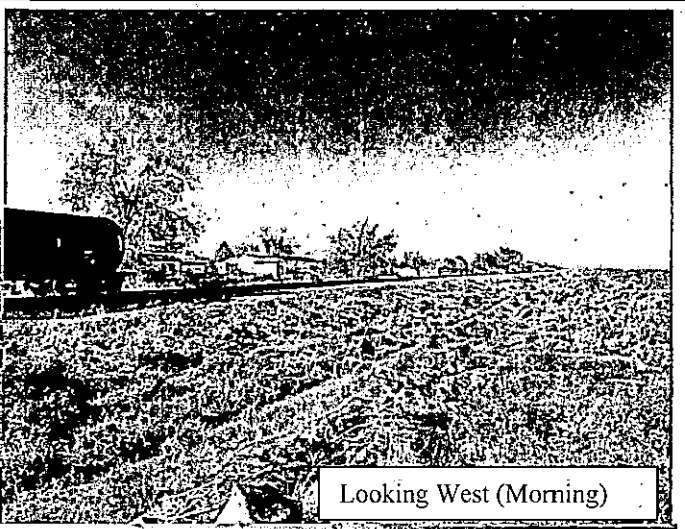
Daily Inspection Report

Richland

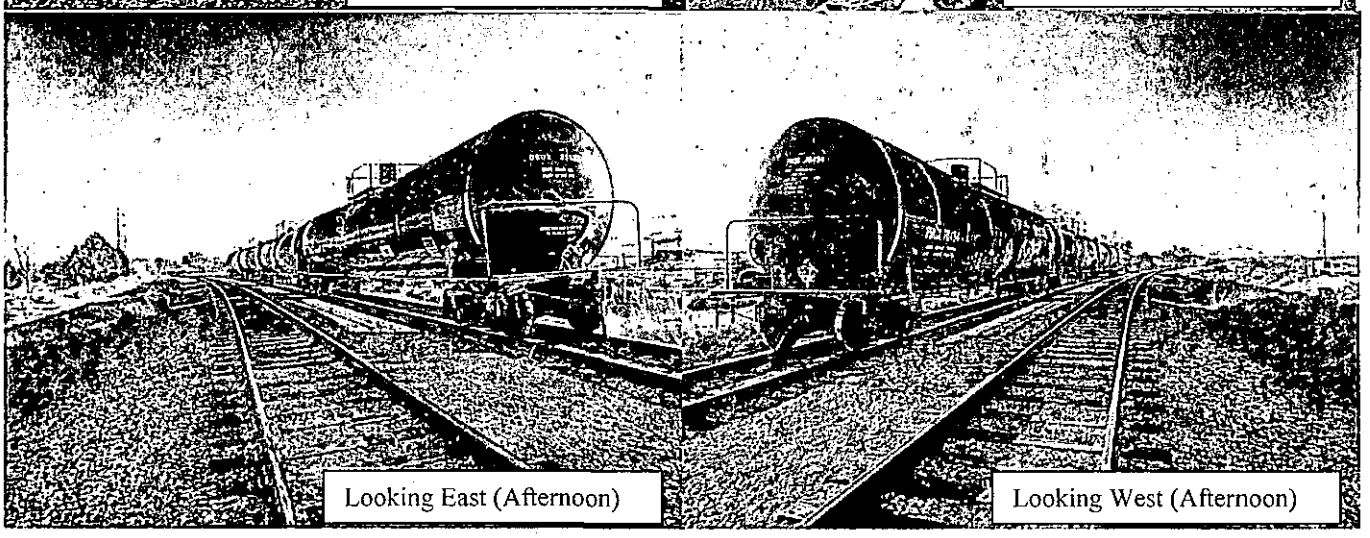
Contractor:	**Date:** November 13, 2013
Project Name: Railroad	**Day: Wednesday**
Labor:	**Weather:** Sunny; low 28° high 60°,
Equipment: 4 rail cars	**Photos taken:** Yes



Looking East (Morning)



Looking West (Morning)



Looking East (Afternoon)

Looking West (Afternoon)

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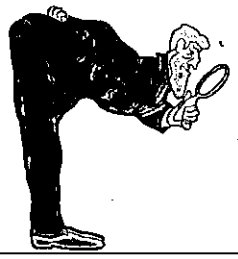
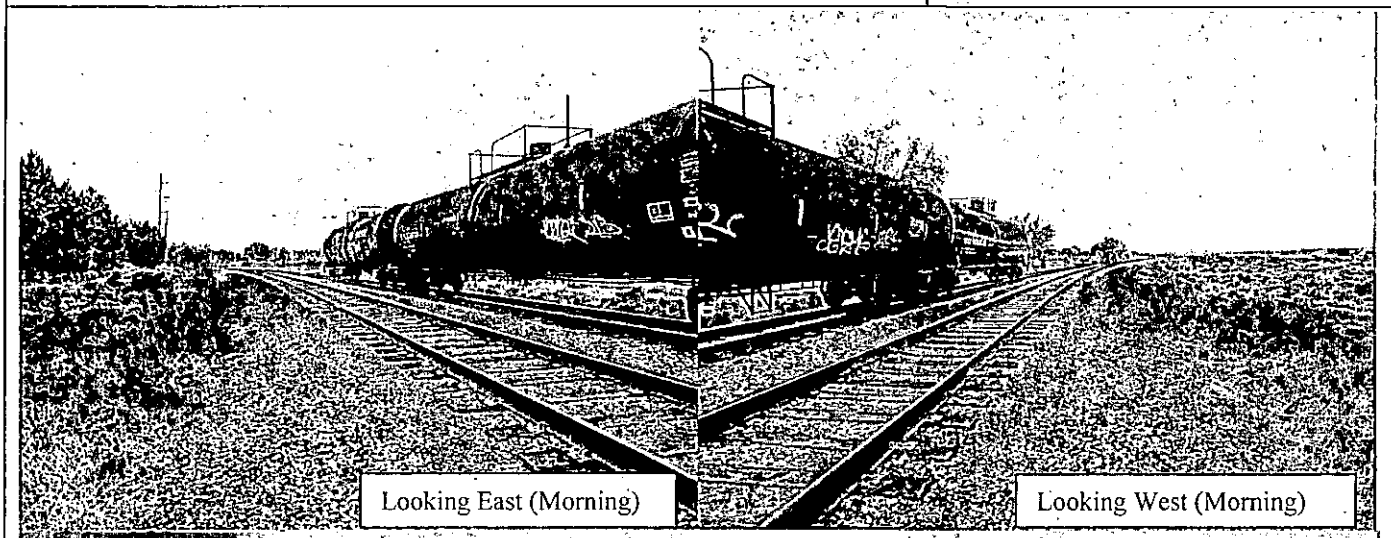
PUBLIC WORKS ENGINEERING

Daily Inspection Report



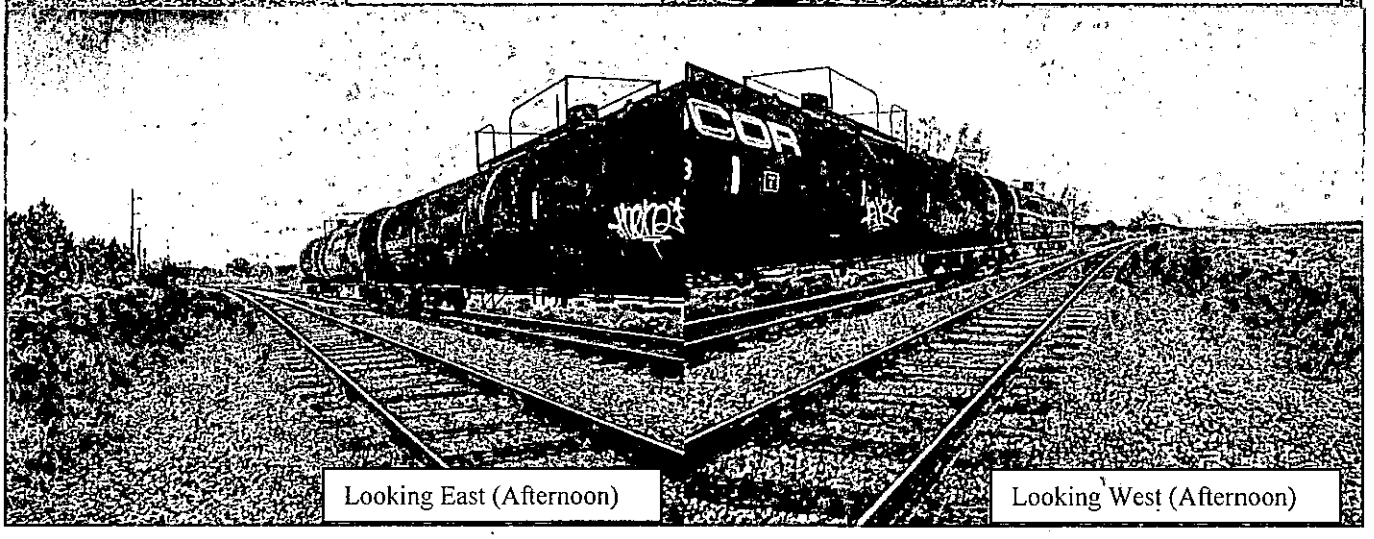
Richland

Contractor:	**Date:** November 14, 2013
Project Name: Railroad	**Day:** Thursday
Labor:	**Weather:** Sunny, low 28° high 48°,
Equipment: 4 rail cars	**Photos taken:** Yes



Looking East (Morning)

Looking West (Morning)



Looking East (Afternoon)

Looking West (Afternoon)

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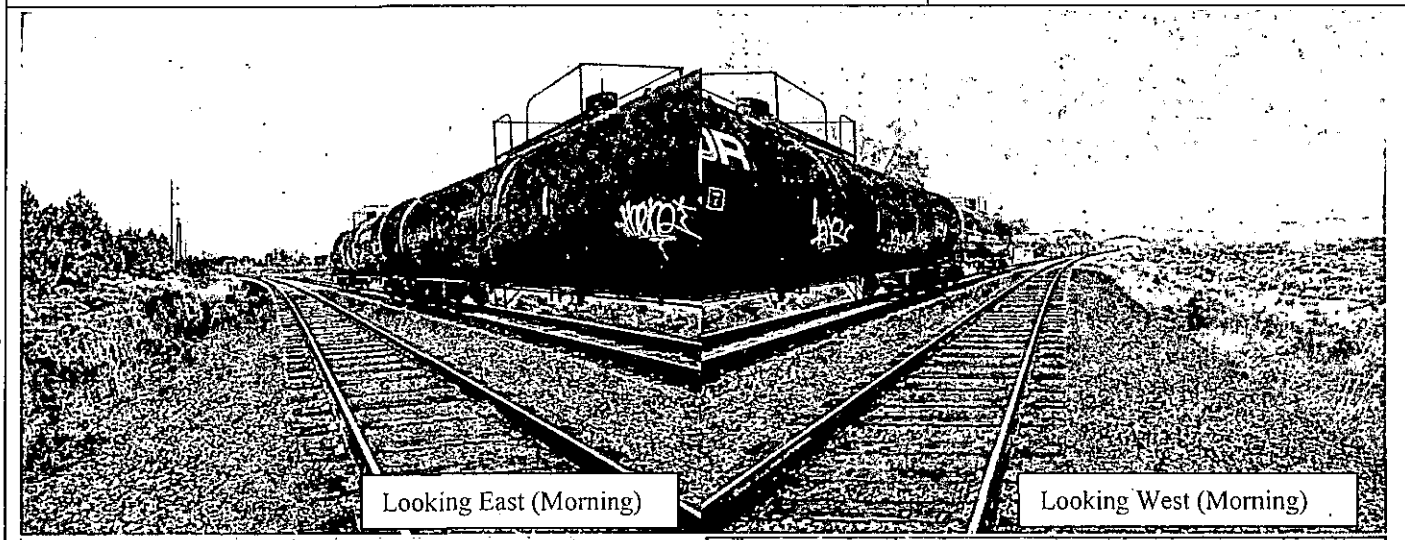
PUBLIC WORKS ENGINEERING

Daily Inspection Report

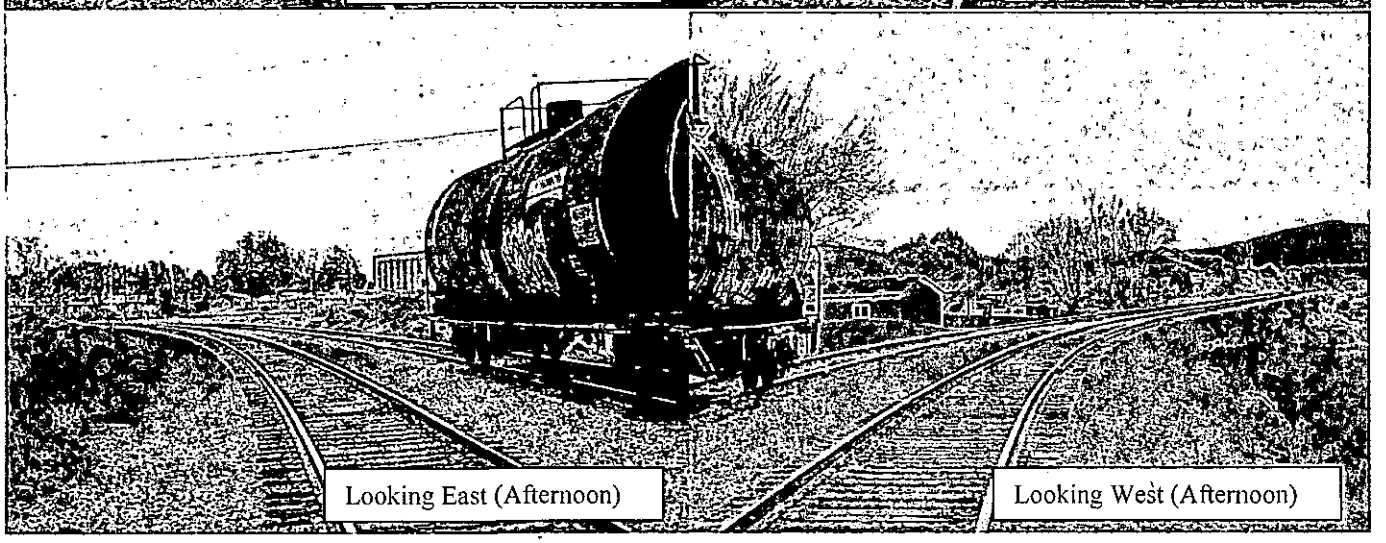
Richland

Contractor:	**Date:** November 15, 2013
Project Name: Railroad	**Day:** Friday
Labor:	**Weather:** Cloudy, low 37° high 49°,
Equipment: 4 rail cars	**Photos taken:** Yes



Looking East (Morning)

Looking West (Morning)



Looking East (Afternoon)

Looking West (Afternoon)

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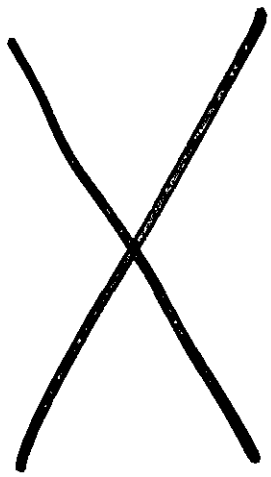

WUTC DOCKET TR-130499
EXHIBIT KH-1T
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit No. ___T (KH-1T)
Docket TR-130499
Witness: Kathy Hunter

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, **Petitioner,** **v.** **PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD,** **Respondents.**	**DOCKET TR-130499**

TESTIMONY OF

Kathy Hunter

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

October 1, 2013

TABLE OF CONTENTS

List of Exhibits

Exhibit No. KH-11	NFPA "Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments" (2010 ed.)
Exhibit No. KH-12	Federal Railroad Administration Accident Predictor Model Results

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Kathy Hunter. My business address is 1300 S. Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504.

Q. By whom are you employed and in what capacity?

A. I am employed by the Washington Utilities and Transportation Commission as the Deputy Assistant Director, Transportation Safety.

Q. How long have you been employed by the Commission?

A. I have worked for the Commission for 24 years.

Q. What is your work history at the Commission?

A. I began my career working in agency-wide administration and management. I did that for 12 years. In 2001, I was promoted to a manager position that included work in Transportation Safety. In 2006, I transferred to a management position that focused exclusively on Transportation Safety, including a workload of rail safety dockets. My workload included petitions for new crossings, crossing closures, and crossing modifications. In 2008, I was promoted to my current position of Deputy Assistant Director, Transportation Safety. Since that time, I have been responsible for supervision of the rail safety staff and for either directly working, or directing the work of, all rail safety dockets.

Q. How do your job duties relate to rail safety?

A. I have worked on rail safety matters since 2006. My work in railroad safety has involved a combination of field work, policy work, and supervision. I conduct field visits to existing and potential crossing locations, high pedestrian trespass areas, locations of potential quiet zones, and any other location that may affect the safety of the railroad or the general public. I review the conditions at the location and make recommendations to maintain or improve safety, generally by conducting a diagnostic review. My policy work includes policy development and analysis performed at the direction of the Director of Safety and Consumer Protection and the Assistant Director for Transportation Safety. It generally involves research and analysis, including writing white papers or memoranda, regarding rail safety issues such as conditions of crossings, crossing consolidations, and similar issues. I also conduct policy work in evaluating applications for grade crossing safety grant money. I directly supervise six railroad safety professionals. These positions include four Federal Railroad Administration (FRA) certified inspectors, a Program Specialist 5, and a Transportation Specialist 2.

Q. Do you have any special training in rail safety?

A. Yes. I attended several courses offered by the University of Wisconsin in Railroad Engineering and Highway Rail Grade Crossing Safety. I have also attended national conferences related to railroad safety, as well as a course on Interconnection of Highway Rail Grade Crossing Warning Signals and Highway Traffic Signals.

Annually, I attend the Association of State Rail Safety Managers' conference sponsored by the Federal Railroad Administration.

Q. How does your experience directly apply to this docket?

A. Since June 2006, I have been the lead investigator in over 330 rail crossing petitions and have participated in hundreds of diagnostic reviews.

II. SCOPE AND SUMMARY OF TESTIMONY

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to make a recommendation on the petition filed by the City of Kennewick in this docket.

Q. Would you please summarize your recommendation?

A. I recommend that the City's petition be granted.

III. DESCRIPTION OF THE PROPOSED CROSSING SITE

Q. What does the City of Kennewick propose to do?

A. According to the petition the City filed in this docket, the City proposes to construct a new grade crossing at the intersection of Center Parkway in the City of Kennewick and the port of Benton County tracks, known as the Port of Benton Rail Spur and also known as the Richland Spur. Tri-City and Olympia Railroad, BNSF Railway,

and Union Pacific Railroad all operate trains over the Port of Benton's tracks at this location.

Q. Are you familiar with the location of the proposed crossing, and with the physical characteristics of the crossing location and surrounding area?

A. Yes, I am. My Exhibit ___ (KH-2) is a Google Earth aerial picture of the location of the proposed crossing and the surrounding area. My Exhibit ___ (KH-3) is a diagram depicting the proposed crossing and the surrounding area. The City provided these documents as part of its testimony and exhibits prefiled on September 3, 2013.

Q. In looking at the picture in Exhibit ___ (KH-2), please tell us where the proposed crossing is located.

A. The proposed extension to Center Parkway is the solid blue line that crosses the two railroad tracks in the center of the picture. The two tracks would be included within a single at-grade highway-railroad crossing.

Q. What is the configuration of the proposed crossing?

A. Exhibit ___ (KH-3) shows the configuration of the proposed crossing.

IV. DIAGNOSTIC REVIEW OF THE PROPOSED CROSSING SITE

Q. Have you visited the location at issue in this docket?

A. Yes, on several occasions including December 11, 2012.

Q. What was the purpose of your December 11, 2012, visit to the location?

A. I participated in a diagnostic review of the proposed crossing with representatives of the cities of Richland and Kennewick and their consultants from JUB Engineers and David Evans and Associates.

Q. What, specifically, is a diagnostic review?

A. A diagnostic review involves a team of experienced and knowledgeable individuals from interested organizations meeting on-site at an existing or proposed crossing to evaluate its operational and physical characteristics and to determine whether measures can be taken to maintain or improve safety at the crossing. Generally, the team consists of the road authority, Commission staff, and the railroad though other organizations may also be involved. The team considers a number of factors, including the crossing configuration and physical characteristics, vehicle and train traffic patterns and operations at the crossing, the crossing approach zones, and traffic control devices such as pavement markings and signs or signals.

Q. Are you familiar with a publication called the "Railroad-Highway Grade Crossing Handbook?"

A. Yes, I use it often. It is a 327-page document published by the United States Department of Transportation, Federal Highway Administration. It is available on the internet at http://safety.fhwa.dot.gov/xings/com_roaduser/07010/.

Q. Does the Railroad-Highway Grade Crossing Handbook contain any recommendations about diagnostic reviews?

A. Yes. Section III.C, which begins at page 62, recommends the diagnostic review approach to examining conditions at crossings, including an assessment of existing and potential hazards. The Commission follows that recommendation. Exhibit No. ___ (KH-4) includes the pages from the Handbook that describe a diagnostic review.

Q. Do you have notes of the diagnostic review held on December 11, 2012?

A. Yes. Exhibit No. ___ (KH-5), "Meeting Record," is a copy of those notes.

Q. Who prepared the notes?

A. The notes were prepared by Kevin Jeffers, consultant for the City of Richland.

Q. Did you have an opportunity to review the notes and make comments?

A. I did.

Q. And is Exhibit No. ___ (KH-5) a fair and accurate representation of the diagnostic review that took place on December 11, 2012?

A. Yes.

Q. Who was present at that diagnostic review?

A. Participants included individuals representing the City of Richland—Pete Rogalsky, Jeff Peters, and Julie Nelson, all employed by the city, Susan Grabler and Kevin Jeffers of David Evans and Associates, and Spencer Montgomery of JUB Engineers, Inc. There were three employees of the City of Kennewick—John Deskins, Steve Plummer, and Bruce Beauchene. I represented the Utilities and Transportation Commission.

Q. Where there any other individuals invited to the diagnostic review that did not attend?

A. Yes. Representatives of the Tri-City railroad and the Port of Benton did not attend.

Q. Do you know if representatives from BNSF Railway and Union Pacific Railroad were invited to attend the diagnostic review?

A. I do not.

Q. Do you believe the notes accurately present the conditions at the location of the proposed crossing at the time of the diagnostic review?

A. Yes.

Q. Did you use the diagnostic review notes in analyzing the City's proposal in this docket?

A. Yes, I did.

V. PRACTICABILITY OF GRADE SEPARATION

Q. Did you review other materials in analyzing the proposal in this docket?

A. Yes, I did.

Q. What were those?

A. I reviewed the statute in Revised Code of Washington (RCW) 81.53.020. Exhibit No. ___ (KH-6) is a copy of this statute.

Q. How is RCW 81.53.020 relevant to this docket?

A. The statute requires that new highway-railroad crossings be grade-separated "when practicable." A grade-separated crossing is one where the roadway passes underneath the railroad tracks or is elevated above them. The purpose of a grade-separated crossing is to avoid an at-grade crossing. An at-grade crossing is one where the road crosses the tracks at ground level, resulting in an intersection between vehicles and trains.

Q. Does the City propose the crossing be grade-separated?

A. No, it does not. The City proposes an at-grade crossing.

Q. Have you reviewed the testimony that the City and its consultants filed in this docket on September 3, 2013?

A. Yes, I have.

Q. In its testimony filed on September 3, 2013, does the City or its consultants address whether a grade-separated crossing is practicable?

A. Yes, as follows:

1. Jeff Peters, Transportation and Development Manager, City of Richland, in his testimony (JP-1T) beginning at page 3, line 1, states that an at-grade crossing can be installed at an estimated cost of $250,000 but a grade-separated crossing would cost between $15 million and $200 million.

2. Rick Simon, Development Services Manager, City of Richland, in his testimony (RS-1T) beginning at page 6, line 18, explains that the City's Public Works Department and the City's consultants evaluated the possibility of constructing a grade-separated crossing. Mr. Simon states a grade-separated crossing is not feasible given the topography of the north and south sides of the rail line. Further, Mr. Simon states an at-grade crossing is acceptable because "there would be good visibility in both directions for traffic crossing the tracks …."

3. John Deskins, Traffic Engineer, City of Kennewick, in his testimony (JD-1T) at page 5, line 1, states his understanding that a grade-separated crossing is not feasible because of the grades of the roads.

4. Susan Grabler, consultant to the City from the firm of David Evans and Associates, Inc., in her testimony (SKG-1T) at page 6, line 11, explains why the topography of the land at the proposed crossing and the operations of the railroad make a grade-separated crossing impractical.

5. Kevin Jeffers, consultant to the City from the firm of David Evans and Associates, Inc., in his testimony (KMJ-1T) at page 9, line 6, provides a detailed explanation of why a grade-separated crossing is impractical given the topography of the land at the proposed crossing, the operations of the railroads, and the estimated costs.

Q. Did you review other materials regarding the practicality of a grade-separated crossing at this location?

A. Yes, I did. I reviewed the "Center Parkway Extension Grade Separation Evaluation" submitted as Exhibit 5 to the testimony of Kevin Jeffers, consultant to the City from the firm of David Evans and Associates, Inc. In this document, Mr. Jeffers provides extensive details on the existing conditions at the site of the proposed crossing, design criteria for the crossing, and an evaluation of each option for grade-separating the track and the roadway. In his testimony at page 10, line 3, Mr. Jeffers estimates the cost for each of the alternatives. Mr. Jeffers concludes that a grade-separated crossing is not practical.

Q. Did you review any other materials relevant to grade separation?

A. Yes. Pages 33 through 35 of "Railroad-Highway Grade Crossing Handbook," published by the U.S. Department of Transportation, describe other factors to consider when determining whether a grade-separated crossing is appropriate. Exhibit No. ___ (KH-7) is a copy of the relevant pages of this document. The full 327-page handbook can be found on the internet.

Q. What are those factors?

A. A grade-separated crossing may be appropriate if any of the following apply:

1. The highway is part of the designated Interstate Highway System.
2. The highway is otherwise designed to have full controlled access.
3. The posted highway speed is 70 miles per hour or higher.
4. The average daily vehicle traffic exceeds 100,000 in urban areas or 50,000 in rural areas.
5. The maximum authorized train speed is more than 110 miles per hour.
6. An average of 150 or more trains per day will travel the crossing.
7. An average of 300 million gross tons or more per year will travel the crossing.
8. An average of 75 or more passenger trains per day in urban areas or 30 or more in rural areas will travel the crossing.
9. Crossing exposure[1] exceeds 1 million in urban areas or 250,000 in rural areas.
10. Passenger train crossing exposure[2] exceeds 800,000 in urban areas and 200,000 in rural areas.
11. The expected accident frequency for active devices with gates as calculated by the USDOT Accident Prediction Formula including a 5-year accident history exceeds 0.5.
12. Vehicle delay exceeds 40 vehicle hours per day.

[1] The number of trains per day times the average daily traffic count.
[2] The number of passenger trains per day times the average daily traffic count.

Q. Do any of these factors exist for the proposed crossing at Center Parkway?

A. No.

Q. Do you agree with the opinion contained in the testimony of these five witnesses that a grade-separated crossing would be impracticable?

A. Yes. I offer no testimony about the cost of constructing a grade-separated crossing. However, I agree with the opinion expressed in various testimony that, because of the topography of the land and the operations of the railroad at this location, a grade-separated design would be impractical.

Q. Is there any part of the testimony of these five witnesses regarding the impracticality of a grade-separated crossing with which you do not agree?

A. Yes, there is. Rick Simon, Development Services Manager, City of Richland, in his testimony (RS-1T) beginning at page 7, line 4, states that an at-grade crossing is acceptable because "there would be good visibility in both directions for traffic crossing the tracks ...." I do not necessarily agree with this statement.

Q. Please explain.

A. The term "sight distance" refers to the visibility for drivers at a railroad track. Visibility is measured at the stop bar on the approach to the railroad tracks, looking left and right down the tracks. There are four quadrants from which sight distance is measured – one left facing the tracks, one right facing the tracks, one left on the other side facing the tracks, and one right on the other side facing the tracks.

Washington State Department of Transportation (WSDOT), in its design manual for railroad grade crossings, states that in this case, sight distance should be 198 feet. This is calculated using the following data:

1. Train speed of 25 miles per hour (the maximum legal operating speed at this location). WSDOT does not list a sight distance for 25 miles per hour. However, by comparing the sight distance for a train traveling 30 miles per hour versus 20 miles per hour, you can calculate that the minimum sight distance required is the average of 198 and 297 feet or 248 feet. This calculation assumes a vehicle speed of 30 miles per hour.
2. Vehicle speed of 30 miles per hour, as stated in the Traffic Study completed by J-U-B Engineers, Inc., a consultant for the City of Kennewick. See pre-filed testimony of Kevin M. Jeffers (KMJ-1T), Attachment 4.

Exhibit No. ___ (KH-8) is a copy of the two pages from the WSDOT design manual that address sight distance. The sight distance at the proposed crossing, as identified in the original petition submitted by the City of Kennewick in this case, is as follows:

1. 73 feet at the south approach looking right.
2. 192 feet at the south approach looking left.
3. More than 500 feet at the north approach looking right.
4. 154 feet at the north approach looking left.

Q. Do you believe this limited sight distance would hamper the safety of the traveling public at the crossing?

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A. No, I do not. In one quadrant, the sight distance of more than 500 feet exceeds the recommended sight distance of 248 feet. In the other quadrants the sight distances are below the requirements, however, the shortened sight distance will be offset by installation of active warning devices, shoulder mounted lights and gates. The signals will activate and the gates will come down when a train approaches and will lift when the train is clear of the crossing. Even the WSDOT design manual allows that optimal sight distance is not always available and recommends the reader "evaluate installation of active devices at any location where adequate sight distances cannot be provided." In the case of the proposed crossing, a vehicle driver will not need to see 248 feet down the tracks in all directions to determine if a train is approaching. The railroad signals and gates will tell the driver automatically by blocking the roadway to allow the train to pass.

VI. FACTORS IN A DECISION ABOUT A PROPOSED NEW CROSSING

Q. Did you review other materials in analyzing the proposal in this docket?

A. Yes, I did. I reviewed the documents "Guidance on Traffic Control Devices at Highway-Rail Grade Crossings" and "Railroad-Highway Grade Crossing Handbook", both published by the U.S. Department of Transportation (USDOT) in November 2002. Exhibit No. ___ (KH-9) is a copy of "Guidance on Traffic Control Devices at Highway-Rail Grade Crossings." Exhibit No. ___ (KH-10) is a copy of the applicable page (page 83) of the "Railroad-Highway Grade Crossing Handbook". The full copy of the 327-page handbook is available on the internet.

Q. How are those documents relevant to this docket?

A. On page 35 of the "Guidance on Traffic Control Devices at Highway-Rail Grade Crossings", USDOT speaks to constructing a new highway-rail crossing and when it may be appropriate to do so. USDOT speaks to the same subject on page 83 of the "Railroad-Highway Grade Crossing Handbook".

Q. What factors does USDOT recommend be considered when determining whether a new crossing should be constructed?

A. In both documents, USDOT lists public necessity, convenience, and safety as factors to be considered.

Q. Did you review any other materials relevant to this case?

A. Yes. I reviewed the documents filed and orders issued in Commission Docket TR-040664.

Q. Why are the documents filed and orders issued in Docket TR-040664 relevant to this case?

A. In Docket TR-040664, the City of Kennewick petitioned the Commission to construct an at-grade crossing at the same location as in this case. The administrative law judge (ALJ) denied the City's petition in Docket TR-040664 and did not allow construction of an at-grade crossing over Center Parkway. No party appealed the ALJ's order to the Commission.

Q. On what basis did the ALJ deny the City's petition in Docket TR-040664?

A. The ALJ denied the City's petition in Docket TR-040664 because the ALJ did not believe the City adequately addressed safety at the crossing and because the City did not show an acute need for the crossing. Specifically, in Order 06 in Docket TR-040664, the ALJ found:

1. At page 4, paragraph 10: "[T]he Commission will direct the opening of a grade crossing within its jurisdiction when the inherent and the site-specific dangers of the crossing are moderated to the extent possible with modern design and signals and when there is an acute public need which outweighs the resulting danger of the crossing."
2. At page 8, paragraph 20: "The magnitude of switching operations at the proposed crossing increases the hazard for train collisions with vehicles, pedestrians, or bicycles resulting in personal injury and/or property damage because of the frequent occurrence of train activity."
3. At page 8, paragraph 20: "... with this site involving four railroad tracks, the drivers of vehicles who ignore warning signs and drive too fast for the conditions may launch over the second track or "bottom out" depending [on] the speed and direction of the vehicle."
4. At page 8, paragraph 21: "In crossings involving multiple tracks ... motorists might mistakenly assume that stationary railcars are the reason for crossing gate activation and may attempt to circumvent the gates only to be hit by a train approaching on another track that was hidden from view by the stationary cars."

5. At page 9, paragraph 22: "The first prong of the legal test is for Kennewick to demonstrate that the inherent and site-specific dangers of the crossing are moderated to the extent possible by the installation of safety devices … Kennewick was unable to articulate exactly the type of safety devices it would install to the moderate the danger at the Center Parkway crossing site."

6. At page 10, paragraph 24: "The second prong of the legal test … is for Kennewick to demonstrate that there is an acute public need for the crossing that outweighs the danger."

7. At page 11, paragraph 26: "… Kennewick did not meet its burden of proof on the second prong of the legal standard."

VII. ACUTE PUBLIC NEED

Q. In its testimony prefiled on September 3, 2013, does the City or its consultants address whether there is an acute public need for the crossing?

A. Yes, as follows:

1. Richard Grant Baynes, Director of Fire and Emergency Services, City of Richland, in his testimony (RGB-1T) beginning at page 3, line 25, describes the increased emergency response time that the proposed crossing, if approved, would offer the Tapteal area in Richland. Mr. Baynes notes an increased response time from the Kennewick fire station of 48 seconds and an increased response time from the Richland fire station of 84 seconds. Additionally, Mr. Baynes describes the increased access for the north-south

corridors that the proposed crossing would offer. This would allow emergency responders to bypass the more congested Columbia Center Boulevard and Steptoe/Gage Street area.

2. Chris Skinner, Chief of Police, City of Richland, in his testimony (CS-1T) beginning at page 3, line 1, states that addition of the north/south access corridor that the proposed crossing would provide would increase response to emergency calls by allowing responders to bypass the more congested Columbia Center Boulevard and Steptoe/Gage areas. It would shorten the emergency responder routes by a quarter mile from Columbia Center Boulevard and one-and-a-half miles from Steptoe Street.

3. Rick Simon, Development Services Manager, City of Richland, in his testimony (RS-1T) beginning at page 5, line 4, states that the City's Comprehensive Plan calls for a response performance objective of five minutes or less 90% of the time. Mr. Simon does not talk about the specifics of the City's response time, nor how the proposed crossing would affect that response time. The remainder of Mr. Simon's testimony explains theoretical benefits of decreased congestion that the proposed crossing may provide.

4. Neil Hines, Fire Chief, City of Kennewick, in his testimony (NH-1T) beginning at page 3, line 13, states that emergency vehicle response time would be improved by the addition of the crossing because it would avoid a number of traffic control devices, heavy traffic at certain times, intersections and negotiable turns that are encountered using the current routes of Columbia Center Boulevard and Steptoe Street. Mr. Hines states, "A well-

connected transportation system is crucial to the Department's ability to deliver life-saving treatment and high levels of property protection … the connection between Gage and Tapteal via Center Parkway is a key component to the implementation of that well-designed system."

5. John Deskins, Traffic Engineer, City of Kennewick, in his testimony (JD-1T) beginning at page 4, line 22, states that the shorter, less congested path of traffic offered by the proposed crossing will improve emergency response times.

6. Kenneth M. Hohenberg, Chief of Police, City of Kennewick, in his testimony (KMH-1T) beginning at page 3, line 2, states that the proposed crossing would improve emergency response times.

Q. In its testimony prefiled on September 3, 2013, does the City or its consultants offer data about the improved emergency response times?

A. Yes. The testimony of Kevin M. Jeffers from David Evans and Associates (KMJ-1T) includes, as Exhibit 4, a traffic study completed by J-U-B Engineers dated March 2013. Page 6 of this study addressed improved emergency response times. The study stated that the current route from the Kennewick fire station to the Holiday Inn hotel immediately north and east of the proposed crossing site is 1.31 miles and takes 2:48 minutes. The route from the Richland fire station is 2.59 miles and takes 5:42 minutes. If the proposed crossing is built, the route from the Kennewick fire station would be .98 miles and take 2:00 minutes. The route from the Richland fire station would be 2.02 miles and would take 4:18 minutes.

Q. Do you find this argument for improved emergency response times persuasive?

A. Yes.

Q. Please explain.

A. Obviously, it is always good to improve emergency response times. In the case of a critical medical condition or injury, every second counts. However, I believe the improved response times here are not only intuitively justified, but objectively justified as well.

Q. How did you reach this conclusion?

A. The National Fire Protection Association (NFPA) is an international nonprofit organization established in 1896. Its mission is to reduce fire and other hazards by providing and advocating consensus codes and standards, research, training and education to organizations that specialize in emergency response. NFPA is responsible for 300 codes and standards designed to minimize the risk and effects of fire. As part of its standards, NFPA states in section 5.2.4.1.1 that "fire suppression resources shall be deployed to provide for the arrival of an engine company within a 240-second travel time to 90 percent of the incidents ...." Likewise, in section 5.3.3.3.2, NFPA standards state, "The fire department's EMS for providing a first responder with AED shall be deployed to provide for the arrival of a first responder with AED company within a 240-second travel time to 90 percent of the incidents ...." The applicable pages from the publication "Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and

Special Operations to the Public by Career Fire Departments" are contained in Exhibit No. ___ (KH-11). This means the NFPA sets the standard response time to emergency situations for fire departments and medics at 4 minutes 90 percent of the time. The traffic study by J-U-B Engineers, referenced in the prior question, shows current response time of 2:48 minutes for Kennewick and 5:42 minutes for Richland. Constructing the crossing would reduce response time to 2:00 minutes and 4:18 minutes, respectively. This brings the Richland response time much closer to the national standard of 4 minutes.

Q. Do you believe the current response times and the improved response times that could be gained by the proposed crossing present an acute public need for the crossing?

A. Yes.

VIII. CROSSING SAFETY

Q. What other factors did you consider in analyzing the proposal in this docket?

A. I considered safety in my analysis.

Q. In its testimony prefiled on September 3, 2013, does the City or its consultants address safety factors?

A. Yes, as follows:

1. Richard Grant Baynes, Director of Fire and Emergency Services, City of Richland, in his testimony (RGB-1T) beginning at page 5, line 10, states "The infrequency of the trains across this area suggests that the probability of incidents is far lower than an at-grade highway or high volume scenario."

2. Jeff Peters, Transportation and Development Manager, City of Richland, in his testimony (JP-1T) beginning at page 3, line 12, states that, "Safety devices include advanced signing, flashing lights, audible bell, physical crossing arms, and a non-traversable raised median."

3. Neil Hines, Fire Chief, City of Kennewick, in his testimony (NH-1T) beginning at page 4, line 1, states that, "The frequency with which the railroad spur is currently utilized is not as significant that it outweighs the substantial benefit to the citizens …."

4. Susan Grabler, consultant to the City from the firm of David Evans and Associates, Inc., in her testimony (SKG-1T) at page 4, line 7, describes the safety measures planned for this crossing. These include automatic constant warning devices, automatic gates, and medians on the approaches to the crossing. Ms. Grabler also discusses the low volume of traffic and trains, the low train speed and relatively short trains. Ms. Grabler concludes the proposed crossing "… will be designed and built to provide the public a safe at-grade crossing …."

5. Kevin Jeffers, consultant to the City from the firm of David Evans and Associates, Inc., in his testimony (KMJ-1T) beginning at page 3, line 6, provides first an overview and then a detailed explanation of the perceived

dangers at the crossing and the safety measures planned to eliminate, as much as possible, those dangers. Mr. Jeffers describes the roadway across the tracks as straight, with vertical curves that meet industry standards. Mr. Jeffers cites a low crossing exposure[3] and low accident frequency predictions, as well as fairly low train volumes, traffic volumes, train speed, and pedestrian and bicycle usage. Mr. Jeffers describes the safety measures as flashing lights and gates activated by constant warning devices and a traffic island that will act as a median separator. Mr. Jeffers concludes that the safety features at the proposed crossing will moderate any risks presented by the at-grade crossing.

Q. Do you agree with the opinion contained in the testimony of these five witnesses that the safety measures described for the proposed crossing moderate, to the extent possible, any danger that may exist at the crossing?

A. Yes. I believe the active warning devices consisting of advanced pavement markings and warning signs, gates and lights, and a traffic island that will act as a median separator, provide an adequate level of safety at the proposed crossing. In addition, the train and vehicle speeds and the volume of train and vehicle traffic at the site of the proposed crossing are fairly low, making the possibility of an accident less likely than crossings with higher speeds or increased traffic. The maximum legal operating speed of the trains is 25 miles per hour and the road speed is 30 miles per hour. Train traffic is predicted at an average of four trains per day and vehicle traffic at 7,000 vehicles per day.

[3] The number of trains per day times the average daily traffic count.

Q. Are any pedestrians or bicyclists expected to use the proposed crossing?

A. It is possible, although it appears pedestrian and bicycle use will be minimal. The proposed crossing configuration includes sidewalks and roadway shoulders on both sides of the roadway to accommodate pedestrians and bicycles. See the diagram in Exhibit ___ (KH-3). The yellow lines on each side of the proposed crossing represent pedestrian sidewalks and the blue lines on each side represent bicycle lanes.

Q. Will school buses be using the crossing?

A. No. According to the petition filed by the City of Kennewick, the crossing is not on a school bus route.

Q. How many sets of tracks will the crossing include?

A. At this point, staff assumes there are two sets of tracks. The City of Kennewick, in its testimony prefiled on September 3, 2013, concludes that the siding track will likely be removed. However, Tri-City and Olympia Railroad Company states it actively uses the siding track and will continue to do so in the future. The track belongs to the Port of Benton and it is the Port of Benton's decision whether the track remains. For the purposes of my testimony, I assumed the track would remain.

Q. In its testimony prefiled on September 3, 2013, does the City or its consultants address the likelihood of an accident at the proposed site?

A. Yes. Kevin M. Jeffers, in his testimony (KMJ-1T) at page 4, line 19, states that "the predicted accident frequency was below the Federal Highway Administrations (FHWA) requirement for grade separation." Additionally, beginning at page 7, line 9, states that the predicted number of accidents per year is 0.145, or one accident every 6.9 years.

Q. Did you consider the likelihood of an accident in doing your analysis?

A. Yes, I did.

Q. Do you agree with the testimony of Kevin M. Jeffers regarding the likelihood of an accident at the proposed crossing site?

A. I agree that the likelihood of an accident is low, but I believe it is even lower than Mr. Jeffers' testimony indicates.

Q. Please explain.

A. Mr. Jeffers based his conclusion on an accident prediction model for the proposed crossing that uses projected data to determine the likelihood of an accident. See the testimony of Mr. Jeffers (KMJ-1T) at page 7, line 9, and the referenced Attachment 6, page 2. When I looked at accident data, I used an actual crossing with similar characteristics to those at the proposed crossing. I chose USDOT Number 104547H as a proxy for the proposed crossing.

Q. How are the characteristics of this crossing similar to the proposed crossing?

A. Crossing USDOT Number 104547H includes one main and one siding track. Eight trains per day travel over the crossing at up to 45 miles per hour. The crossing is on a two-lane roadway with sidewalks. 4,000 vehicles per day travel over the crossing at a maximum speed limit of 25 miles per hour. The crossing is equipped with active warning devices, cantilever mounted lights and gates.

Q. How are these characteristics dissimilar to the proposed crossing?

A. The proposed crossing includes roadway median barriers on both approaches to the crossing. An average of three trains per day will travel the proposed crossing at a maximum legal operating speed of 25 miles per hour. At current volume, 5,200 vehicles per day will travel over the crossing at a maximum speed of 30 miles per hour. Vehicle traffic is projected to increase to 7,000 by the year 2033.

Q. Did you do anything to predict whether an accident is likely to occur at the crossing identified as USDOT Number 104547H?

A. Yes. I used the Federal Railroad Administration (FRA) accident predictor model (WBAPS) to determine whether an accident is likely to occur.

Q. What where the results?

A. The probability of an accident is .018701 percent for any one-year period. See Exhibit No. ___ (KH-12) for a copy of the results of WBAPS for the crossing.

Q. Do you believe the safety measures proposed at the crossing are sufficient to moderate, to the extent possible, any danger that may exist at the crossing?

A. Yes, I do.

Q. In the prior docket, TR-040664, the Commission denied the City's request to construct an at-grade crossing in this location. At that time, the Commission did not believe the City provided evidence of an acute public need. Do you believe the City has demonstrated an acute public need in this docket?

A. Yes.

Q. In docket TR-040664, the Commission did not believe the City was able to articulate the specific safety features it intended to install at the crossing. Do you believe the City has appropriately articulated the specific safety features it intends to install at the crossing to moderate the risk that any at-grade crossing presents to the public?

A. Yes.

Q. Are there any other differences between the request for an at-grade crossing in Docket TR-040664 and the current petition?

A. Yes, there are. In Docket TR-040664, there were four active tracks at the location of the proposed crossing. In the current petition, two of those tracks are removed. The only remaining tracks are the Port of Benton's main line track and one siding track.

In Docket TR-040664, all three railroads – Tri-City, BNSF, and UP – conducted switching operations at the proposed crossing site. In the current petition, both BNSF and UP have moved their switching operations to another location. Tri-City is the only railroad that does any switching at the proposed location.

In Docket TR-040664, the City of Kennewick was unable to articulate exactly the type of safety devices it would install to moderate the inherent dangers of an at-grade crossing. In the current petition, the City has described in detail the safety devices it intends to install at the proposed crossing site.

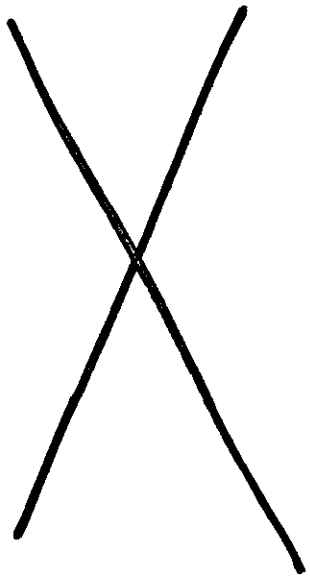
In Docket TR-040664, the City could not demonstrate an acute public need for the crossing. In the current position, the City demonstrates that need through increased emergency response times and access.

Q. Do you believe the differences in Docket TR-040664 and the current petition are sufficient that the Commission should grant the proposed at-grade crossing in the current petition?

A. Yes.

Q. Does this conclude your testimony?

A. Yes.



WUTC DOCKET TR-130499
EXHIBIT KH-2
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit No. ___ (KH-2)
Docket TR-130499
Witness: Kathy Hunter

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499

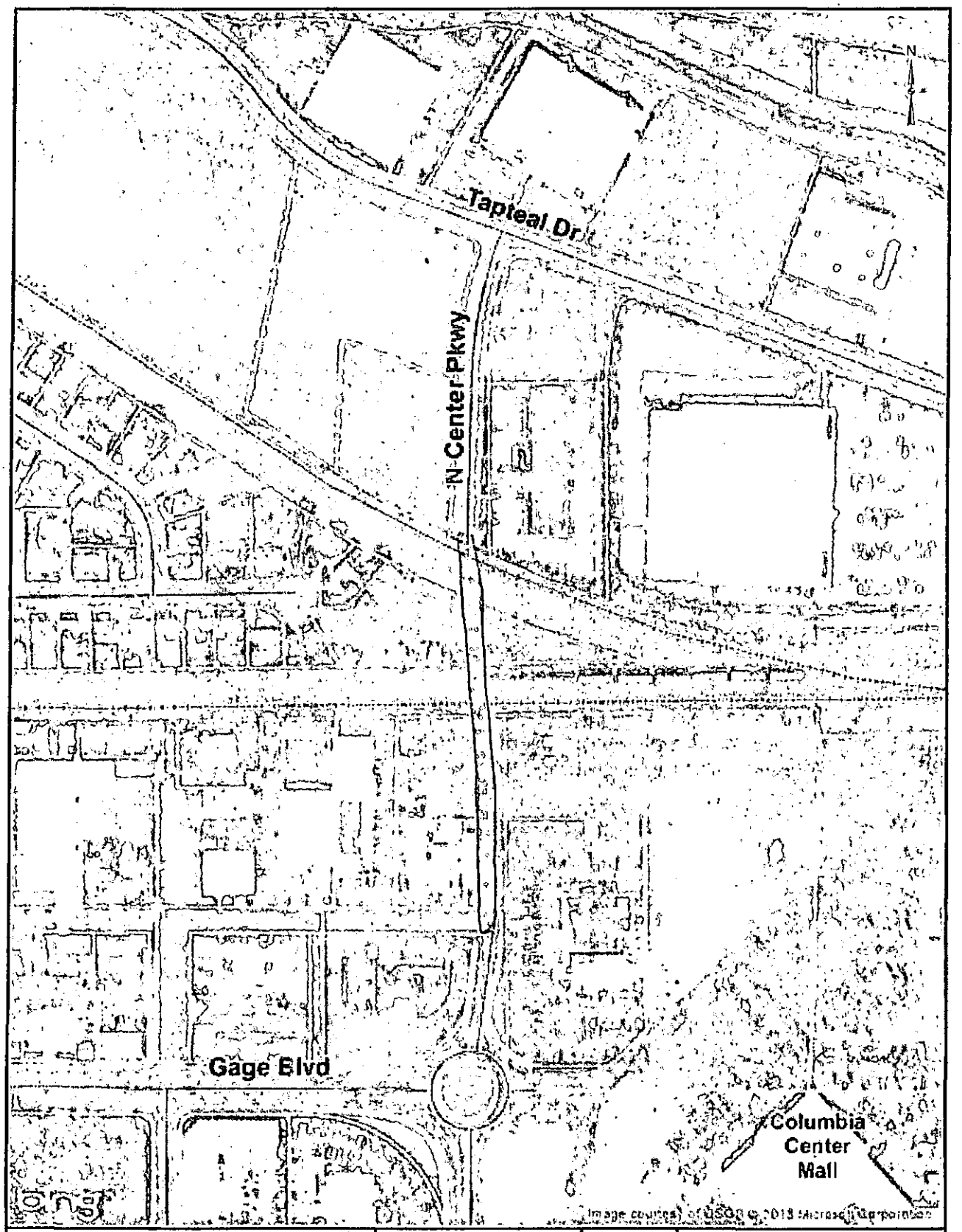
EXHIBIT TO TESTIMONY OF

Kathy Hunter

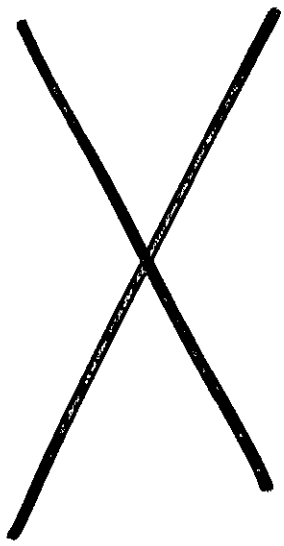
STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Aerial View of Proposed Center Parkway Crossing and Surroundings

October 1, 2013



JUB ENGINEERS, INC.	0 125 250 Feet 1 inch = 250 feet	Center Parkway Extension Projet Area	FIGURE 4	City of Richland Center Parkway Extension Traffic St



WUTC DOCKET TR-130499
EXHIBIT KH-3
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit No. ___ (KH-3)
Docket TR-130499
Witness: Kathy Hunter

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499

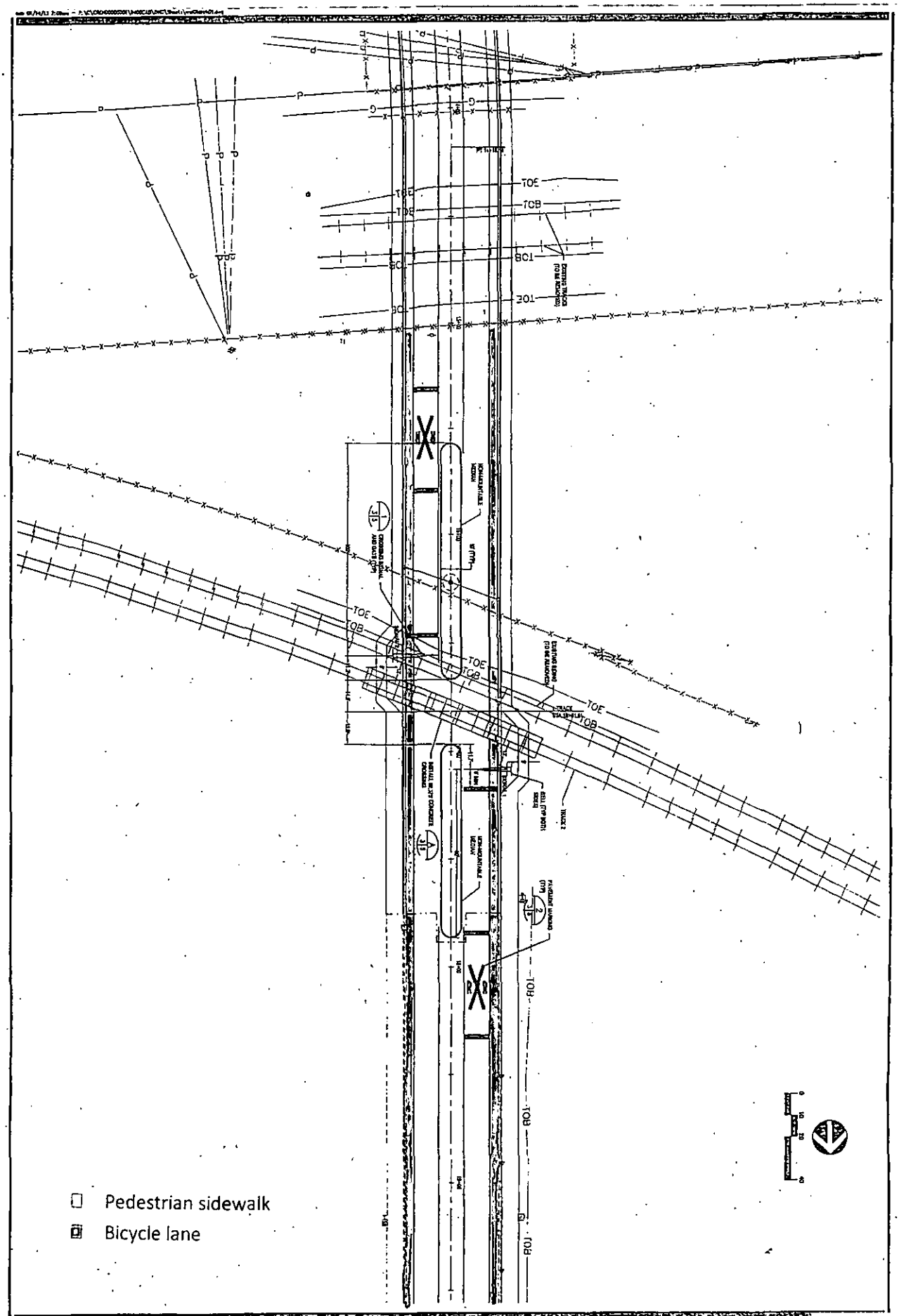
EXHIBIT TO TESTIMONY OF

Kathy Hunter

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Configuration of Proposed Center Parkway Crossing

October 1, 2013



PRELIMINARY
CONTENT SUBJECT TO CHANGE

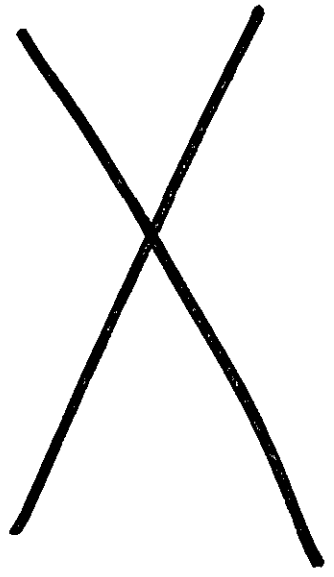
DAVID EVANS AND ASSOCIATES INC.
3700 Pacific Hwy. East, Suite 311
Tacoma, Washington 98424
Phone: 253.922.5790

AT-GRADE CROSSING PLAN
CENTER PARKWAY
AT-GRADE CROSSING
City of Richland
Richland, Washington

0-000002029

001446

SHEET NO. 3
SHEET 3 OF 6
DRAWING FILE: Preliminary
PROJECT NUMBER: CRCH00000001
SCALE: 1"=20'
DESIGNED: KMK
DRAWN: EDB
CHECKED: KMK
REVISIONS: APPR
DATE: 01-14-2013



WUTC DOCKET TR-130499
EXHIBIT KH-4
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit No. ___ (KH-4)
Docket TR-130499
Witness: Kathy Hunter

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499

EXHIBIT TO TESTIMONY OF

Kathy Hunter

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Section III.C, Railroad-Highway Grade Crossing Handbook (rev'd 2nd ed.)

October 1, 2013

Table 28. Factor Values for U.S. DOT Injury Accident Probability Formula

Injury Accident Probability Formula:

$$P(IA \mid A) = \frac{1 - P(FA \mid A)}{(1 + CI \times MS \times TK \times UR)}$$

where: P(FA|A) = Fatal accident probability, See Tables 25 and 27
CI = 4.280, formula constant
UR = 1.202, urban crossing
= 1.000, rural crossing, and

Maximum Timetable Train Speed	MS	Total Number Of Tracks	TK
1	1.000	0	1.000
5	0.687	1	1.125
10	0.584	2	1.265
15	0.531	3	1.423
20	0.497	5	1.800
25	0.472	6	2.025
30	0.452	7	2.278
40	0.423	8	2.562
50	0.401	9	2.882
60	0.385	10	3.241
70	0.371	15	5.836
80	0.360	20	10.507
90	0.350		
100	0.341		

Source: Railroad-Highway Grade Crossing Handbook, Second Edition. *Washington, DC: U.S. Department of Transportation, Federal Highway Administration, 1986.*

C. Engineering Study*

Federal requirements dictate that each state shall establish priorities for its crossing program based on:

- The potential reduction in collisions or collision severities.
- The project costs and available resources.
- The relative hazard of each crossing based on a hazard index formula.
- An on-site inspection of each candidate crossing.
- The potential danger to large numbers of people at crossings used on a regular basis by passenger trains or buses or by trains or motor vehicles carrying hazardous materials.
- Other criteria as deemed appropriate by each state.[57]

* Includes previously unpublished materials provided by Ray Lewis, West Virginia Department of Transportation, 2006.

57 "Railroad Crossing Corridor Improvements." Washington, DC: U.S. Department of Transportation (U.S. DOT), Federal Highway Administration (FHWA), Demonstration Projects Division, June 1986.

Engineering studies should be conducted of highway-rail crossings that have been selected from the priority list. The purpose of these studies is to:

- Review the crossing and its environment.
- Identify the nature of any problems.
- Recommend alternative improvements.

An engineering study consists of a review of site characteristics, the existing traffic control system, and highway and railroad operational characteristics. Based on a review of these conditions, an assessment of existing and potential hazards can be made. If safety deficiencies are identified, countermeasures can be recommended.

1. Diagnostic Team Study Method

The procedure recommended in earlier editions of this handbook, adopted in FHWA's *Highway Safety Engineering Study Procedural Guide*,[58] and adopted in concept by several states is the diagnostic team study approach. This term is used to describe a simple survey procedure utilizing experienced individuals from several sources. The procedure involves the diagnostic team's evaluation of the crossing as to its deficiencies and judgmental consensus as to the recommended improvements.

The primary factors to be considered when assigning people to the diagnostic team are that the team is interdisciplinary and representative of all groups having responsibility for the safe operation of crossings so that each of the vital factors relating to the operational and physical characteristics of the crossing may be properly identified. Individual team members are selected on the basis of their specific expertise and experience. The overall structure of the team is built upon three desired areas of responsibility:

- Local responsibility.
- Administrative responsibility.
- Advisory capability.

For the purpose of the diagnostic team, the operational and physical characteristics of crossings can be classified into three areas:

Traffic operations. This area includes both vehicular and train traffic operation. The responsibilities of highway traffic engineers and railroad operating personnel chosen for team membership include, among

58 *Highway Safety Engineering Studies Procedural Guide.* Washington, DC: U.S. DOT, FHWA, November 1991.

other criteria, specific knowledge of highway and railroad safety, types of vehicles and trains, and their volumes and speeds.

Traffic control devices. Highway maintenance engineers, signal control engineers, and railroad signal engineers provide the best source for expertise in this area. Responsibilities of these team members include knowledge of active traffic control systems, interconnection with adjacent signalized highway intersections, traffic control devices for vehicle operations in general and at crossings, and crossing signs and pavement markings.

Administration. It is necessary to realize that many of the problems relating to crossing safety involve the apportionment of administrative and financial responsibility. This should be reflected in the membership of the diagnostic team. The primary responsibility of these members is to advise the team of specific policy and administrative rules applicable to the modification of crossing traffic control devices.

To ensure appropriate representation on the diagnostic team, it is suggested that the team comprise at least a traffic engineer with safety experience and a railroad signal engineer. Following are other disciplines that might be represented on the diagnostic team:

- Railroad administrative official.
- Highway administrative official.
- Human factors engineer.
- Law enforcement officer.
- Regulatory agency official.
- Railroad operating official.

The diagnostic team should study all available data and inspect the crossing and its surroundings with the objective of determining the conditions that affect safety and traffic operations. In conducting the study, a questionnaire is recommended to provide a structured account of the crossing characteristics and their effect on safety. Some states are now using automated diagnostic review forms to facilitate the collection, storage, and analysis of crossing data. Example forms developed and used by various states are reproduced in Appendix G. Figure 6 shows a sample questionnaire, which can be altered to fit individual agency needs. The questionnaire shown in Figure 6 is divided into four sections:

- Distant approach and advance warning.
- Immediate highway approach.
- Crossing proper.
- Summary and analysis.

To conduct the diagnostic team field study, traffic cones are placed on the approaches, as shown in Figure 7.

Crossing approach zone. Cone A is placed at the point where the driver first obtains information that there is a crossing ahead. This distance is also the beginning of the approach zone. Usually, this information comes from the advance warning sign, the pavement markings, or the crossing itself. The distance from the crossing is based on the decision sight distance, which is the distance required for a driver to detect a crossing and to formulate actions needed to avoid colliding with trains.

Tables 29 and 30 provide a range of distances from point A to the crossing stop line, dependent upon design vehicle speeds. The maximum distances are applicable to crossings with a high level of complexity and will generally be applicable on urban roads and streets. These distances correspond to the decision sight distances for stops on rural roads and for stops on urban roads in the American Association of State Highway and Transportation Officials (AASHTO) "Green Book." In calculating sight distances, the height of the driver's eye is considered 1.080 meter (3.5 feet) above the roadway surface for passenger vehicles; the target height is considered 0.6 meter (2.0 feet) above the roadway surface.[59]

Table 29. Distances in Meters to Establish Study Positions for Diagnostic Team Evaluation

Design vehicle speed (kilometers per hour)	Distance from stop line* to cone A (meters)	Distance from stop line* to cone B (meters)
50	155	70
60	195	95
70	235	115
80	280	140
90	325	170
100	370	200
110	420	235
120	470	265

** Note: The distance from the stop line is assumed to be 4.5 meters from nearest rail, or 2.4 meters from the gate if one is present.*

Source: From A Policy on Geometric Design of Highway and Streets, 2004, *by the American Association of State Highway and Transportation Officials, Washington, DC. Used by permission.*

59 *A Policy on Geometric Design of Highways and Streets, 2004 Edition.* Washington, DC: American Association of State Highway and Transportation Officials, 2004.

Figure 6. Sample Questionnaire for Diagnostic Team Evaluation

LOCATIONAL DATA: Street Name: _____ City: _____

Railroad: _____ Crossing Number: _____

VEHICLE DATA: No. of Approach Lanes: _____ Approach Speed Limit: _____ AADT: _____

Approach Curvature: _____ Approach Gradient: _____

TRAIN DATA: No. of Tracks: _____ Train Speed Limit: _____ Trains Per Day: _____

Track Gradients: _____

SECTION I—Distance Approach and Advance Warning

1. Is advance warning of railroad crossing available?_____ If so, what devices are used? _____
2. Do advance warning devices alert drivers to the presence of the crossing and allow time to react to approaching train traffic?
3. Do approach grades, roadway curvature, or obstructions limit the view of advance warning devices? ___ If so, how?
4. Are advance warning devices readable under night, rainy, snowy, or foggy conditions? _____

SECTION II—Immediate Highway Approach

1. What maximum safe approach speed will existing sight distance support? _____
2. Is that speed equal to or above the speed limit on that part of the highway? _____
3. If not, what has been done, or reasonably could be done, to bring this to the driver's attention? _____
4. What restrictive obstructions to sight distance might be removed? _____
5. Do approach grades or roadway curvature restrict the driver's view of the crossing? _____
6. Are railroad crossing signals or other active warning devices operating properly and visible to adequately warn drivers of approaching trains? _____

SECTION III—Crossing Proper

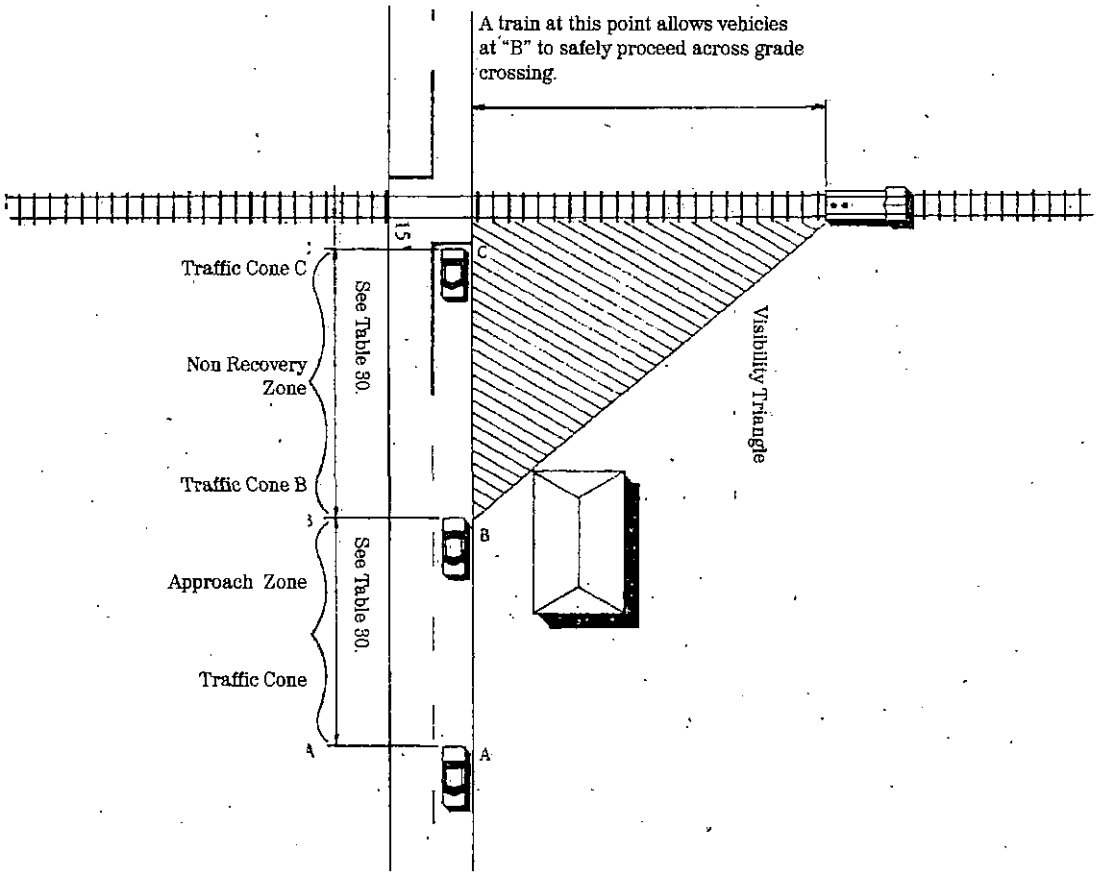
1. From a vehicle stopped at the crossing, is the sight distance down the track to an approaching train adequate for the driver to cross the tracks safely? _____
2. Are nearby intersection traffic signals or other control device affecting the crossing operation?
   If so, how? _____
3. Is the stopping area at the crossing adequately marked? _____
4. Do vehicles required by law to stop at all crossings present a hazard at the crossing? _____ Why? _____
5. Do conditions at the crossing contribute to, or are they conducive to, a vehicle stalling at or on the crossing?
6. Are nearby signs, crossing signals, etc. adequately protected to minimize hazards to approaching traffic? _____
7. Is the crossing surface satisfactory? _____ If not, how and why? _____
8. Is surface of highway approaches satisfactory? _____ If not, why?

SECTION IV—Summary and Analysis

1. List major attributes of the crossing which may contribute to safety. _____
2. List features which reduce crossing safety. _____
3. Possible methods for improving safety at the crossing: _____
4. Overall evaluation of crossing: _____
5. Other comments: _____

Source: Railroad-Highway Grade Crossing Handbook, Second Edition. *Washington, DC: U.S. Department of Transportation, Federal Highway Administration, 1986.*

Figure 7. Study Positions for Diagnostic Team



Source: Railroad-Highway Grade Crossing Handbook, Second Edition. *Washington, DC: U.S. Department of Transportation, Federal Highway Administration, 1986.*

Table 30. Distances in Feet to Establish Study Positions for Diagnostic Team Evaluation

Design vehicle speed (miles per hour)	Distance from stop line* to cone A (feet)	Distance from stop line* to cone B (feet)
30	490	220
40	690	330
50	910	465
55	1030	535
60	1150	610
70	1410	780

** Note: The distance from the stop line is assumed to be 15 feet from nearest rail, or 8 feet from the gate if one is present.*

Source: From A Policy on Geometric Design of Highway and Streets, 2004, *by the American Association of State Highway and Transportation Officials, Washington, DC. Used by permission.*

Safe stopping point. Cone B is placed at the point where the approaching driver must be able to see an approaching train so that a safe stop can be made if necessary. This point is located at the end of the approach zone and the end of the non-recovery zone. Distances to point B are based on the design vehicle speed and are also shown in Tables 29 and 30. These distances are stopping sight distances to the stop line and are in accordance with the upper end of the range of stopping sight distances in the AASHTO "Green Book."[60] In calculating these distances, a level approach is assumed. If this is not the case, an allowance must be made for the effects of positive or negative approach grades.

60 Ibid.

Stop line. Cone C is placed at the stop line, which is assumed to be 4.6 meters (15 feet) from the near rail of the crossing, or 8 feet from the gate if one is present.

The questions in Section I of the questionnaire (refer to Figure 6) are concerned with the following:

- Driver awareness of the crossing.
- Visibility of the crossing.
- Effectiveness of advance warning signs and signals.
- Geometric features of the highway.

When responding to questions in this section, the crossing should be observed from the beginning of the approach zone, at traffic cone A.

The questions in Section II (refer to Figure 6) are concerned with whether the driver has sufficient information to detect an approaching train and make correct decisions about crossing safely. Observations for responding to questions in this section should be made from cone B. Factors considered by these questions include the following:

- Driver awareness of approaching trains.
- Driver dependence on crossing signals.
- Obstruction of view of train's approach.
- Roadway geometrics diverting driver attention.
- Potential location of standing railroad cars.
- Possibility of removal of sight obstructions.
- Availability of information for stop or go decision by the driver.

The questions in Section III (refer to Figure 6) apply to observations adjacent to the crossing, at cone C. Of particular concern, especially when the driver must stop, is the ability to see down the tracks for approaching trains. Intersecting streets and driveways should also be observed to determine whether intersecting traffic could affect the operation of highway vehicles over the crossing. Questions in this section relate to the following:

- Sight distance down the tracks.
- Pavement markings.
- Conditions conducive to vehicles becoming stalled or stopped on the crossing.
- Operation of vehicles required by law to stop at the crossing.
- Signs and signals as fixed object hazards.
- Opportunity for evasive action by the driver.

Corner sight distance.[61] Available sight distances help determine the safe speed at which a vehicle can approach a crossing. The following three sight distances should be considered:

- Distance ahead to the crossing.
- Distance to and along the tracks on which a train might be approaching the crossing from either direction.
- Sight distance along the tracks in either direction from a vehicle stopped at the crossing.

These sight distances are illustrated in Figure 8.

In the first case, the distance ahead to the crossing, the driver must determine whether a train is occupying the crossing or whether there is an active traffic control device indicating the approach or presence of a train. In such an event, the vehicle must be stopped short of the crossing, and the available sight distance may be a determining factor limiting the speed of an approaching vehicle.

The relationship between vehicle speed and this sight distance is set forth in the following formula:

$$d_H = AV_v t + \frac{BV_v^2}{a} + D + d_e \qquad (5)$$

where:

d_H = sight distance measured along the highway from the nearest rail to the driver of a vehicle, which allows the vehicle to be safely stopped without encroachment of the crossing area, feet
A = constant = 1.47
B = constant = 1.075
V_v = velocity of the vehicle, miles per hour (mph)
t = perception-reaction time, seconds, assumed to be 2.5 seconds
a = driver deceleration, assumed to be 11.2 feet per second^2
D = distance from the stop line or front of vehicle to the near rail, assumed to be 15 feet
d_e = distance from the driver to the front of the vehicle, assumed to be 8 feet

61 Ibid.

This formula is also expressed in SI Metric terms, as follows:

$$d_H = AV_v t + \frac{BV_v^2}{a} + D + d_e \quad (6)$$

where:

- d_H = sight distance measured along the highway from the nearest rail to the driver of a vehicle, which allows the vehicle to be safely stopped without encroachment of the crossing area, feet
- A = constant = 0.278
- B = constant = 0.039
- V_v = velocity of the vehicle, kilometers per hour (km/hr.)
- t = perception-reaction time, seconds, assumed to be 2.5 seconds
- a = driver deceleration, assumed to be 3.4 meters per second^2
- D = distance from the stop line or front of vehicle to the near rail, assumed to be 4.5 meters
- d_e = distance from the driver to the front of the vehicle, assumed to be 2.4 meters

The minimum safe sight distances, d_H, along the highway for selected vehicle speeds are shown in the bottom line of Tables 31 and 32. As noted, these distances were calculated for certain assumed conditions and should be increased for less favorable conditions.

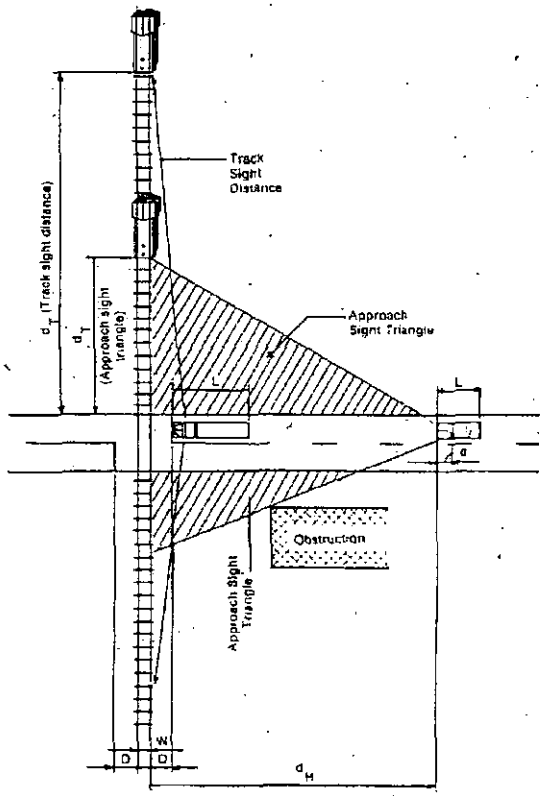
The second sight distance utilizes a so-called "sight triangle" in the quadrants on the vehicle approach side of the track. This triangle is formed by:

- The distance (d_H) of the vehicle driver from the track.
- The distance (d_t) of the train from the crossing.
- The unobstructed sight line from the driver to the front of the train.

This sight triangle is depicted in Figure 8. The relationships between vehicle speed, maximum timetable train speed, distance along the highway (d_H), and distance along the railroad are set forth in the following formula:

$$d_T = \frac{V_T}{V_v}(A)V_v t + \frac{BV_v^2}{a} + 2D + L + W \quad (7)$$

Figure 8. Crossing Sight Distances



Source: Railroad-Highway Grade Crossing Handbook, Second Edition. *Washington, DC: U.S. Department of Transportation, Federal Highway Administration, 1986.*

where:

- d_T = sight distance along the railroad tracks to permit the vehicle to cross and be clear of the crossing upon arrival of the train
- A = constant = 1.47
- B = constant = 1.075
- V_v = velocity of the vehicle, mph
- t = perception-reaction time, seconds, assumed to be 2.5 seconds
- a = driver deceleration, assumed to be 11.2 feet per second^2
- D = distance from the stop line or front of vehicle to the near rail, assumed to be 15 feet
- L = length of vehicle, assumed to be 65 feet
- W = distance between outer rails (for a single track, this value is 5 feet)

In SI Metric values, this formula becomes:

$$d_T = \frac{V_T}{V_v}(A)V_v t + \frac{BV_v^2}{a} + 2D + L + W \qquad (8)$$

where:

- d_T = sight distance along the railroad tracks to permit the vehicle to cross and be clear of the crossing upon arrival of the train
- A = constant = 0.278
- B = constant = 0.039
- V_v = velocity of the vehicle, km/hr.
- t = perception-reaction time, seconds, assumed to be 2.5 seconds
- a = driver deceleration, assumed to be 3.4 meters per second^2
- D = distance from the stop line or front of vehicle to the near rail, assumed to be 4.5 meters
- L = length of vehicle, assumed to be 20 meters
- W = distance between outer rails (for a single track, this value is 1.5 meters)

Distances d_h and d_T are shown in Tables 31 and 32 for several selected highway speeds and train speeds.

Clearing sight distance. In the case of a vehicle stopped at a crossing, the driver needs to see both ways along the track to determine whether a train is approaching and to estimate its speed. The driver needs to have a sight distance along the tracks that will permit sufficient time to accelerate and clear the crossing prior to the arrival of a train, even though the train might come into view as the vehicle is beginning its departure process.

Figure 9 illustrates the maneuver. These sight distances, for a range of train speeds, are given in the column for a vehicle speed of zero in Tables 31 and 32. These values are obtained from the following formula:

$$d_T = 1.47V_T\left(\frac{V_G}{a_1} + \frac{L + 2D + W - d}{V_G} + J\right) \qquad (9)$$

where:

- V_G = maximum speed of vehicle in selected starting gear, assumed to be 8.8 feet per second
- a_1 = acceleration of vehicle in starting gear, assumed to be 1.47 feet per second per second
- J = sum of the perception time and the time required to activate the clutch or an automatic shift, assumed to be 2 seconds
- d_a = distance the vehicle travels while accelerating to maximum speed in first gear, or

$$d_a = \frac{V_G^2}{2a_1} \text{ or } \frac{8.8^2}{(2)(1.47)} = 26.4 \text{ feet} \qquad (10)$$

d_T, V_T, L, D, and W are defined as above.

Expressing the formula again in SI Metric terms:

$$d_T = 0.28V_T\left(\frac{V_G}{a_1} + \frac{L + 2D + W - d_a}{V_G} + J\right) \qquad (11)$$

where:

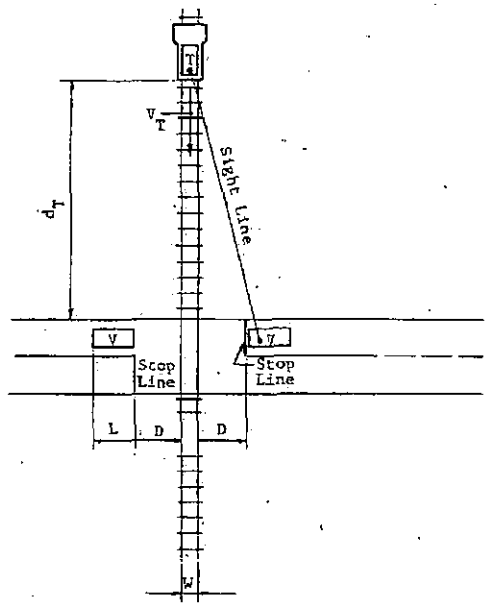
- V_G = maximum speed of vehicle in selected starting gear, assumed to be 2.7 meters per second
- a_1 = acceleration of vehicle in starting gear, assumed to be 0.45 meter per second per second
- J = sum of the perception time and the time required to activate the clutch or an automatic shift, assumed to be 2 seconds
- d_a = distance the vehicle travels while accelerating to maximum speed in first gear, or

$$d_a = \frac{V_G^2}{2a_1}$$

$$\frac{2.7^2}{(2)(0.45)} = 8.1 \text{ meters}$$

d_T, V_T, L, D, and W are defined as above.[62]

Figure 9. Sight Distance for a Vehicle Stopped at Crossing



Source: Railroad-Highway Grade Crossing Handbook, Second Edition. *Washington, DC: U.S. Department of Transportation, Federal Highway Administration, 1986.*

Table 31. Sight Distances for Combinations of Highway Vehicle and Train Speeds, Metric

Case B: Departure from stop	Case A: Moving vehicle													
	Vehicle speed (km/hr.)													
Train speed (km/hr.)	0	10	20	30	40	50	60	70	80	90	100	110	120	130
	Distance along railroad from crossing, d_T (feet)													
10	45	39	24	21	19	19	19	19	20	21	21	22	23	24
20	91	77	49	41	38	38	38	39	40	41	43	45	47	48
30	136	116	73	62	57	56	57	58	60	62	64	67	70	73
40	181	154	98	82	77	75	76	77	80	83	86	89	93	97
50	227	193	122	103	96	94	95	97	100	103	107	112	116	121
60	272	232	147	123	115	113	113	116	120	124	129	134	140	145
70	317	270	171	144	134	131	132	135	140	145	150	156	163	169
80	362	309	196	164	153	150	151	155	160	165	172	179	186	194
90	408	347	220	185	172	169	170	174	179	186	193	201	209	218
100	453	386	245	206	192	188	189	193	199	207	215	223	233	242
110	498	425	269	226	211	207	208	213	219	227	236	246	256	266
120	544	463	294	247	230	225	227	232	239	248	258	268	279	290
130	589	502	318	267	249	244	246	251	259	269	279	290	302	315
140	634	540	343	288	268	263	265	271	279	289	301	313	326	339
	Distance along highway from crossing, d_H (feet)													
		15	25	38	53	70	90	112	136	162	191	222	255	291

Source: From A Policy on Geometric Design of Highway and Streets, 2004, *by the American Association of State Highway and Transportation Officials, Washington, DC. Used by permission.*

Table 32. Sight Distances for Combinations of Highway Vehicle and Train Speeds, U.S. Customary

Case B: Departure from stop	Case A: Moving vehicle								
	Vehicle speed (mph)								
Train speed (mph)	0	10	20	30	40	50	60	70	80
	Distance along railroad from crossing, d_T (feet)								
10	240	146	106	99	100	105	111	118	126
20	480	293	212	198	200	209	222	236	252
30	721	439	318	297	300	314	333	355	378
40	961	585	424	396	401	419	444	473	504
50	1201	732	530	494	501	524	555	591	630
60	1441	878	636	593	601	628	666	709	756
70	1681	1024	742	692	701	733	777	828	882
80	1921	1171	848	791	801	833	888	946	1008
90	2162	1317	954	890	901	943	999	1064	1134
	Distance along highway from crossing, d_H (feet)								
		69	135	220	324	447	589	751	931

Source: From A Policy on Geometric Design of Highway and Streets, 2004, *by the American Association of State Highway and Transportation Officials, Washington, DC. Used by permission.*

Adjustments for longer vehicle lengths, slower acceleration capabilities, multiple tracks, skewed crossings, and other than flat highway grades are necessary. The formulas in this section may be used with proper adjustments to the appropriate dimensional values. It would be desirable that sight distances permit operation at the legal approach speed for highways. This is often impractical.

In Section IV of the questionnaire, the diagnostic team is given the opportunity to do the following:

- List major features that contribute to safety.
- List features that reduce crossing safety.
- Suggest methods for improving safety at the crossing.
- Give an overall evaluation of the crossing.
- Provide comments and suggestions relative to the questionnaire.

In addition to completing the questionnaire, team members should take photographs of the crossing from both the highway and the railroad approaches.

Current and projected vehicle and train operation data should be obtained from the team members. Information on the use of the crossing by buses, school buses, trucks transporting hazardous materials, and passenger trains should be provided. The evaluation of the crossing should include a thorough evaluation of collision frequency, collision types, and collision circumstances. Both train-vehicle collisions and vehicle-vehicle collisions should be examined.

Team members should drive each approach several times to become familiar with all conditions that exist at or near the crossing. All traffic control devices (signs, signals, markings, and train detection circuits) should be examined as part of this evaluation. If the crossing is equipped with signals, the railroad signal engineer should activate them so that their alignment and light intensity may be observed.

The *Manual on Uniform Traffic Control Devices* (MUTCD) should be a principal reference for this evaluation.[63] Also, *A User's Guide to Positive Guidance* provides information for conducting evaluations of traffic control devices.[64]

After the questionnaire has been completed, the team is reassembled for a short critique and discussion period. Each member should summarize his or her observations pertaining to safety and operations at the crossing. Possible improvements to the crossing may include the following:

- Closing of crossing—available alternate routes for highway traffic.
- Site improvements—removal of obstructions in the sight triangle, highway realignment, improved cross section, drainage, or illumination.
- Crossing surfaces—rehabilitation of the highway structure, the track structure, or both; installation of drainage and subgrade filter fabric; adjustments to highway approaches; and removal of retired tracks from the crossing.
- Traffic control devices—installation of passive or active control devices and improvement of train detection equipment.

The results and recommendations of the diagnostic team should be documented. Recommendations should be presented promptly to programming and implementation authorities.

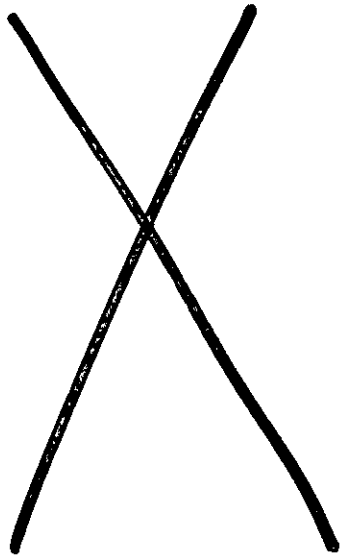
Both government and railroad resources are becoming more limited. The *Highway Safety Engineering Studies Procedural Guide* suggests crossing evaluation by an individual, in lieu of the diagnostic team.[65] The guide suggests that this individual be a traffic engineer with experience in highway-rail crossing and traffic safety. A background in signal control and safety program administration would also be advantageous.

2. Traffic Conflict Technique

Highway traffic collisions are a statistically rare event. Typically, an engineer or analyst must assemble several years of collision data to have a large enough sample to identify a pattern of collisions and suggest countermeasures. The traffic conflict technique was developed during the early 1970s by Research Laboratories, General Motors Corporation, to be a measure of traffic collision potential.

A traffic conflict occurs when a driver takes evasive action, brakes, or weaves to avoid a collision. The conflict is evidenced by a brake-light indication or a lane change by the offended driver. Procedures have

63 *Manual on Uniform Traffic Control Devices, 2003 Edition.* Washington, DC: FHWA, 2003.
64 *A User's Guide to Positive Guidance.* Washington, DC, U.S. DOT, FHWA, Office of Operations, June 1977.
65 *Highway Safety Engineering Studies Procedural Guide.* Washington, DC: U.S. DOT, FHWA, November 1991.



WUTC DOCKET TR-130499
EXHIBIT KH-5
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit No. ___ (KH-5)
Docket TR-130499
Witness: Kathy Hunter

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499

EXHIBIT TO TESTIMONY OF

Kathy Hunter

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Meeting Record Notes of Diagnostic Review, December 11, 2012

October 1, 2013

DAVID EVANS AND ASSOCIATES INC.

Meeting Record

Project:	City of Richland – Center Parkway At-Grade Crossing
DEA Project #:	CRCH0000-0001
Date:	December 11th, 2012
Time:	9:30 A.M. until 12:00 P.M.
Subject:	Center Parkway proposed at-grade highway-railroad Crossing Diagnostic Meeting
Attendees:	Pete Rogalsky, City of Richland; Jeff Peters; City of Richland; Julie Nelson, City of Richland; Kathy Hunter, Washington Utilities and Transportation Commission (UTC); John Deskins, City of Kennewick; Steve Plummer, City of Kennewick; Bruce Beauchene, City of Kennewick; Spencer Montgomery, JUB Engineers; Susan Grabler, David Evans and Associates; Kevin Jeffers, David Evans and Associates
Invited but not in attendance	Rhett Peterson, Tri-City and Olympia Railroad; Scott D. Keller, Port of Benton
Location:	Current end of street near 1970 Center Parkway, Richland, WA 99352
Copies to:	Invitees, project file

Introductions

City of Richland

Pete Rogalsky, Public Works Director
Jeff Peters, Transportation & Development Manager
Julie Nelson, Project Engineer

City of Kennewick

John Deskins, Traffic Engineer
Steve Plummer, Engineering Services Manager
Bruce Beauchene, City Engineer

Washington Utilities and Transportation Commission (UTC)

Kathy Hunter, Rail Manager

JUB Engineers

Spencer Montgomery, Transportation Planner

David Evans and Associates (DEA)

Susan Grabler, Grade Crossing/Quiet Zone Specialist
Kevin Jeffers, Project Manager

Items Discussed:

City of Richland (City) intends to petition the UTC to allow the opening of a new at-grade crossing at Center Parkway over the Port of Benton (Port) tracks operated by Tri-Cities and Olympia Railroad (TCRY). They are leading the project under an inter-local agreement with the City of Kennewick. The two cities will have joint ownership and maintenance responsibilities for the roadway infrastructure.

The proposed roadway would run north-south and connect the existing dead-end Center Parkway in Richland to the existing round-a-bout at North Center Parkway and West Gage Avenue in Kennewick.

The proposed roadway will cross the Port tracks just south of the current dead-ended Center Parkway. The north property line of the Port railroad is the boundary of the two cities, making the proposed at-grade crossing in the City of Kennewick.

While invited, the TCRY and Port did not have representatives in attendance. Thus, no one at the meeting entered the Port right-of-way.

There are currently two sets of tracks at the proposed highway-railroad crossing. The TCRY holds train operating rights on the northern-most set of tracks that extend to the Port of Benton, north of Richland. The Port of Benton owns the rail infrastructure and the underlying right-of-way. There are two tracks on the Ports right-of-way at the proposed Center Parkway highway-railroad crossing; based on aerial photos, the northerly track is the "main" line track; the south track is a siding track. The turnouts (aka switches) to the siding are about 500 feet to the east and about 1,600 feet to the west of the proposed crossing.

It is believed that the train speed on the main track is about 35 mph; the siding speed is believed to be no higher than 10 mph. The Federal Railroad Administration (FRA) crossing database for the Steptoe Road at-grade crossing (USDOT Number 310397T) about 1/3rd of a mile to the west suggests that six trains per day traverse the proposed crossing, but this data has not been updated since 2004. Further, the Port and the City both anticipate increases in industrial development on the rail line which could increase the number or length of trains using the branch line.

In the past, TCRY is believed to have used the siding to interchange cars with Union Pacific Railroad (UPRR). It is now understood that TCRY moves cars bound for UPRR further into Kennewick.

Both UPRR and BNSF Railway have trackage rights into the Port of Benton, based on a recent court case. The City has agreements with both the BNSF and UPRR to not oppose a petition for the proposed Center Parkway at-grade highway-railroad crossing. The UPRR agreement includes a clause that UPRR will no longer interchange cars at the proposed at-grade crossing location. The City also has an agreement with the Port of Benton that would grant an easement for the roadway once a Crossing Order is received through the UTC process.

About 200 feet south of Port tracks are two UPRR tracks. These tracks are no longer being used. The City of Kennewick has purchased the ROW for the roadway from Union Pacific. The City intends to remove the tracks from the roadway ROW as part of the project, so no at-grade crossing of these two tracks will be required.

DEA presented a three-page conceptual design of what the proposed at grade crossing might look like. This depicts only the "main line" Port track will be crossed and assumes the "siding track" will be relocated or removed from the crossing. It was discussed that elimination of the "siding" track would likely be a condition of approval of the petition. The crossing is conceptually designed to include active warning devises including bells, flashing lights, and gates. While the conceptual design depicts four lanes, the City advised that it will only have two travel lanes, a center turn lane and two bike lanes. Sidewalks on both sides of the proposed roadway are also included to be located behind the automatic warning devices per the MUTCD.

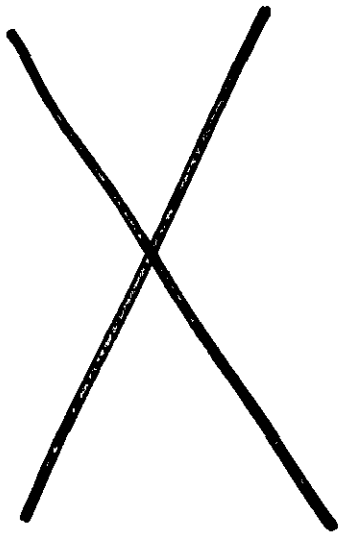
During the meeting, it was discussed that non-mountable medians would be included at the proposed Port crossing; the southern median would be at least 100 feet from the crossing arm protecting the

nearest track. The northern median would be 60 feet long to accommodate the existing hotel driveway in the northeast quadrant of the proposed crossing.

It was also discussed that a quiet zone for the crossing would likely be pursued if the crossing is approved by the UTC. This may result in the use of four-quadrant gates rather than the two-quadrant gates shown in the conceptual design; however, this will not be a part of the initial petition. The Quiet Zone process for the crossing was briefly discussed. The UTC's only role in such actions is to provide comments on the safety of the proposal; it is the FRA that makes the final decision on Quiet Zone applications.

Emergency services were discussed. The City has a fire station and EMT service at 710 Gage Boulevard, while the City of Kennewick has a fire station and EMT service at 7400 W Quinault Avenue. It appears that the Kennewick station is closer to the existing hotel just north of the proposed crossing. A map showing the emergency services covering this area should be provided to the UTC during the petition process.

The UTC petition process was discussed. The UTC will require the City to provide justification for why a grade separation is not feasible at this location. Technical infeasibility is a major consideration at this location due to grades approaching it from the north and the Holiday Inn Express main entrance that would be eliminated. Once the petition is submitted, the UTC will notify all stakeholders who have not waived the UTC hearing process. The stakeholders will have 20 calendar days to respond to the petition. If all stakeholders are not in support of the petition, UTC staff will recommend that the matter be set for hearing. The City should also provide the projected AADT for the Center Parkway crossing, which will be required in the UTC petition.



WUTC DOCKET TR-130499
EXHIBIT KH-6
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit No. ___ (KH-6)
Docket TR-130499
Witness: Kathy Hunter

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EXHIBIT TO TESTIMONY OF

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WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

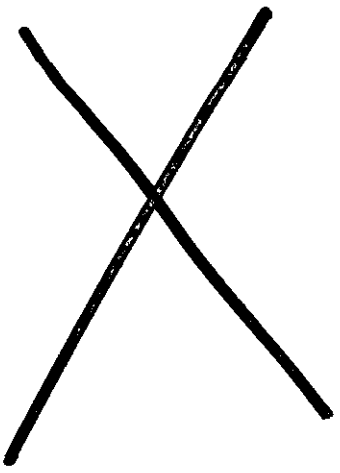
RCW 81.53.020 – Grade Separation Required Where Practicable

October 1, 2013

RCW 81.53.020
Grade separation required where practicable.

All railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under the same, when practicable, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the commission to do so. All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, when practicable, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so: PROVIDED, That this section shall not be construed to prohibit a railroad company from constructing tracks at grade across other tracks owned or operated by it within established yard limits. In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.

[1961 c 14 § 81.53.020. Prior: 1913 c 30 § 2; RRS § 10512. Formerly RCW 81.52.090.]



WUTC DOCKET TR-130499
EXHIBIT KH-7
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit No. ___ (KH-7)
Docket TR-130499
Witness: Kathy Hunter

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EXHIBIT TO TESTIMONY OF

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Excerpts (pp. 33-35) from USDOT "Railroad-Highway Grade Crossing Handbook"

October 1, 2013

A. An engineering study determines a nearby crossing otherwise required to be improved or grade separated already has acceptable alternate vehicular access, and pedestrian access can continue at the subject crossing, if existing;

B. On a life cycle cost basis, the cost of implementing the recommended improvement would exceed the cost of providing an acceptable alternate access;

C. If an engineering study determines any of the following apply:
   1) FRA Class 1,2 or 3 track with daily train movements:
      a. AADT less than 500 in urban areas, acceptable alternate access across the rail line exists within .4 km (1/4 mi) and the median trip length normally made over the subject crossing would not increase by more than .8 km (1/2 mi);
      b. AADT less than 50 in rural areas, acceptable alternate access across the rail line exists within .8 km (1/2 mi) and the median trip length normally made over the subject crossing would not increase by more than 2.4 km (1-1/2 mi).
   2) FRA Class 4 or 5 track with active rail traffic:
      a. AADT less than 1000 in urban areas, acceptable alternate access across the rail line exists within .4 km (1/4 mi) and the median trip length normally made over the subject crossing would not increase by more than 1.2 km (3/4 mi);
      b. AADT less than 100 in rural areas, acceptable alternate access across the rail line exists within 1.61 km (1 mi) and the median trip length normally made over the subject crossing would not increase by more than 4.8 km (3 mi).
   3) FRA Class 6 or higher track with active rail traffic, AADT less than 250 in rural areas, an acceptable alternate access across the rail line exists within 2.4 km (1-1/2 mi) and the median trip length normally made over the subject crossing would not increase by more than 6.4 km (4 mi); and

D. An engineering study determines the crossing should be closed to vehicular and pedestrian traffic when railroad operations will occupy or block the crossing for extended periods of time on a routine basis and it is determined that it is not physically or economically feasible to either construct a grade separation or shift the train operation to another location. Such locations would typically include:
   1) Rail yards;
   2) Passing tracks primarily used for holding trains while waiting to meet or be passed by other trains;
   3) Locations where train crews are routinely required to stop their trains because of cross-traffic on intersecting rail lines or to pick up or set out blocks of cars or switch local industries en route;
   4) Switching leads at the ends of classification yards;
   5) Where trains are required to "double" in or out of yards and terminals;
   6) In the proximity of stations where long distance passenger trains are required to make extended stops to transfer baggage, pick up or set out equipment or be serviced en route; and
   7) Locations where trains must stop or wait for crew changes.

6. *GRADE SEPARATION*

A. Highway-rail grade crossings should be considered for grade separation or otherwise eliminated across the railroad right-of-way whenever one or more of the following conditions exist:
   1) The highway is a part of the designated Interstate Highway System;
   2) The highway is otherwise designed to have full controlled access;

3) The posted highway speed equals or exceeds 113 km/h (70 mph);
4) AADT exceeds 100,000 in urban areas or 50,000 in rural areas;
5) Maximum authorized train speed exceeds177 km/h (110 mph);
6) An average of 150 or more trains per day or 300 Million Gross Tons (MGT) per year;
7) An average of 75 or more passenger trains per day in urban areas or 30 or more passenger trains per day in rural areas;
8) Crossing exposure (the product of the number of trains per day and AADT) exceeds 1,000,000 in urban areas or 250,000 in rural areas; or
9) Passenger train crossing exposure (the product of the number of passenger trains per day and AADT) exceeds 800,000 in urban areas or 200,000 in rural areas.
10) The expected accident frequency (EAF) for active devices with gates, as calculated by the USDOT Accident Prediction Formula including 5-year accident history, exceeds 0.5;
11) Vehicle delay exceeds 40 vehicle hours per day.[23]

B. Highway-rail grade crossings should be considered for grade separation across the railroad right-of-way whenever the cost of grade separation can be economically justified based on fully allocated life cycle costs and one or more of the following conditions exist:
1) The highway is a part of the designated National Highway System;
2) The highway is otherwise designed to have partial controlled access;
3) The posted highway speed exceeds 88 km/h (55 mph);
4) AADT exceeds 50,000 in urban areas or 25,000 in rural areas;
5) Maximum authorized train speed exceeds 161 km/h (100 mph);
6) An average of 75 or more trains per day or 150 MGT per year;
7) An average of 50 or more passenger trains per day in urban areas or 12 or more passenger trains per day in rural areas;
8) Crossing exposure (the product of the number of trains per day and AADT) exceeds 500,000 in urban areas or 125,000 in rural areas; or
9) Passenger train crossing exposure (the product of the number of passenger trains per day and AADT) exceeds 400,000 in urban areas or 100,000 in rural areas;
10) The expected accident frequency (EAF) for active devices with gates, as calculated by the USDOT Accident Prediction Formula including 5-year accident history, exceeds 0.2;
11) Vehicle delay exceeding 30 vehicle hours per day;[24]
12) An engineering study indicates that the absence of a grade separation structure would result in the highway facility performing at a level of service below its intended minimum design level 10% or more of the time.

C. Whenever a new grade separation is constructed, whether replacing an existing highway-rail grade crossing or otherwise, consideration should be given to the possibility of closing one or more adjacent grade crossings.

D. Utilize Table 7 for LRT grade separation:

TABLE 7

[23] San Gabriel Valley Grade Crossings Study, Final Report. Prepared for San Gabriel Valley Council of Governments. Korve Engineering. January 1997, bogden@korve.com

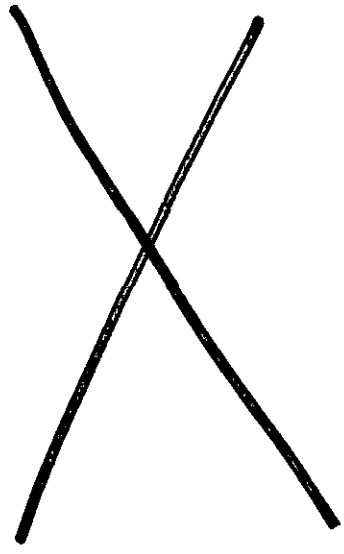
[24] Ibid.

Trains Per Hour	Peak Hour Volume (vehicles per lane)	Source: *Light Rail Transit Grade Separation Guidelines. An Informational Report.* Institute of Transportation Engineers. Technical Committee 6A-42. March 1992
40	900	
30	1000	
20	1100	
10	1180	
5	1200	

7. *NEW CROSSINGS*

A. Should only be permitted to cross existing railroad tracks at-grade when it can be demonstrated:
   1. For new public highways or streets where there is a clear and compelling public need (other than enhancing the value or development potential of the adjoining property);
   2. Grade separation cannot be economically justified, i.e. benefit to cost ratio on a *fully allocated* cost basis is less than 1.0 (generally, when the crossing exposure exceeds 50,000 in urban areas or exceeds 25,000 in rural areas); and
   3. There are no other viable alternatives.

B. If a crossing is permitted, the following conditions should apply:
   1. If it is a main track, the crossing will be equipped with active devices with gates;
   2. The plans and specifications should be subject to the approval of the highway agency having jurisdiction over the roadway (if other than a State agency), the State DOT or other State agency vested with the authority to approve new crossings, and the operating railroad;
   3. All costs associated with the construction of the new crossing should be borne by the party or parties requesting the new crossing, including providing financially for the ongoing maintenance of the crossing surface and traffic control devices where no crossing closures are included in the project;
   4. Whenever new public highway-rail crossings are permitted, they should fully comply with all applicable provisions of this proposed recommended practice; and
   5. Whenever a new highway-rail crossing is constructed, consideration should be given to closing one or more adjacent crossings.



WUTC DOCKET TR-130499
EXHIBIT KH-8
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit No. ___ (KH-8)
Docket TR-130499
Witness: Kathy Hunter

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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WSDOT Design Manual M 22-01-07 (July 2010), pp. 1350-3 and -4

October 1, 2013

1350.03 Plans

(1) Proposed Improvements

Include plans for proposed improvements to existing crossings and any new crossings in the Plans, Specifications, and Estimates (PS&E) package. In addition to basic roadway dimensions, signs, and markings, indicate the angle of crossing; number of tracks; location of signals and other railway facilities (such as electrical/communications lines and control boxes); and the limits of property ownership by the railroad company at the crossing location.

For any project proposing to alter the horizontal or vertical alignment at a grade crossing, including grade separations, show the alignment and profile for both the railroad and the roadway for a minimum of 500 feet on all legs of the crossing. Show all other important features that might affect the safety, operation, and design of the crossing, such as nearby crossroads, driveways/entrances, buildings, and highway structures on the plans.

(a) Sight Distance

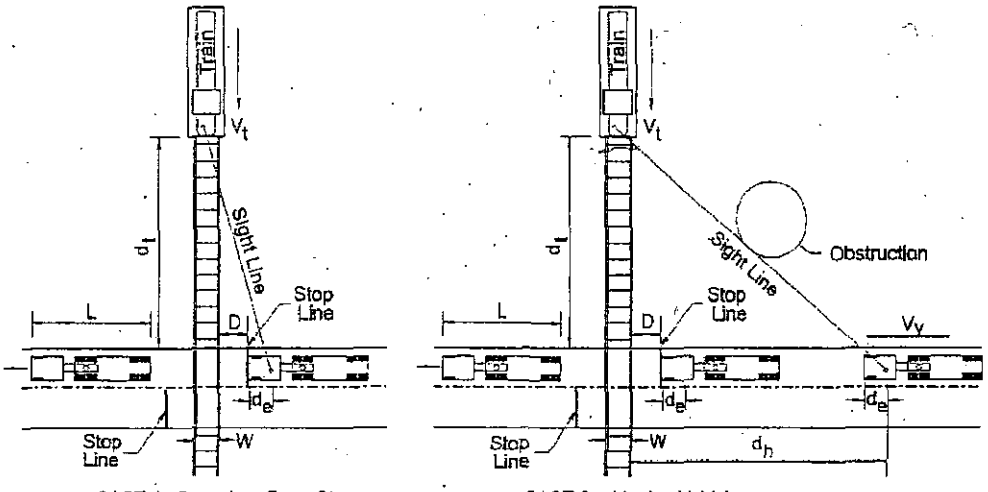
A railroad grade crossing is comparable to the intersection of two highways where a sight triangle is kept clear of obstructions or it is protected by a traffic control device. The desirable sight distance allows a driver to see an approaching train at a distance that allows the vehicle to stop well in advance of the crossing if signals, or gates and signals, are not present (see Exhibit 1350-1, Case 2). Sight distances of the order shown are desirable at any railroad grade crossing not controlled by railroad flashing light signals or gates (active warning devices). Attainment of optimal sight distances is often difficult and impracticable due to topography and terrain. Even in flat, open terrain, the growth of crops or other seasonal vegetation can create a permanent or seasonal sight distance obstruction. Furthermore, the properties upon which obstructions might exist are commonly owned by the railroad or others. Evaluate installation of active devices at any location where adequate sight distances cannot be provided. Include communication with the railroad and the WUTC in your evaluation.

The driver of a vehicle stopped at a crossing with signal lights but no gates needs to be able to see far enough down the tracks from the stop bar to be able to cross the tracks before a train, approaching at maximum allowable speed, reaches the crossing (see Exhibit 1350-1, Case 1).

(b) Highway Grade and Crossing Angle

Construct highway grades so that low-clearance vehicles do not hang up on tracks or damage them. (See Chapter 1220 for information on vertical alignment at railroad grade crossings.) Whenever possible, design the roadway to cross grade crossings at right angles. If bicycle traffic uses the crossing (this can be assumed for most roads), provide a shoulder through the grade crossing at least as wide as the approach shoulder width. If a skew is unavoidable, wider shoulders may be needed to permit bicycles to maneuver to cross the tracks at right angles. (See Chapter 1520 for information on bikeways crossing railroad tracks.) Consider installation of advance warning signs indicating the presence of a skewed crossing for crossings where engineering judgment suggests a benefit.

Include any engineering studies or sight distance measurements in the Design Documentation Package (DDP).



CASE 1: Departure From Stop

CASE 2: Moving Vehicle

d_t = Sight distance along railroad tracks (ft)
d_h = Sight distance along highway (ft)
d_e = Distance from driver to front of vehicle (8 ft)
D = Distance from stop line to nearest rail (15 ft)
W = Distance between outer rails (single track W=5 ft)
V_v = Velocity of vehicle (mph)
f = Coefficient of friction
V_t = Velocity of train (mph)
L = Length of vehicle (65 ft)

Notes:

- Adjust for skewed crossings.
- Assume flat highway grades adjacent to and at crossings.

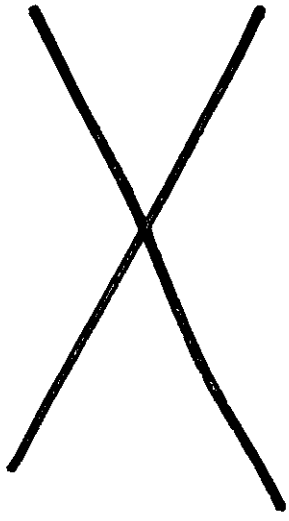
Train Speed (mph) V_t	Case 1: Departure From Stop	Case 2: Moving Vehicle						
		Vehicle Speed (mph) V_v						
		10	20	30	40	50	60	70
		f=0.40	0.40	0.35	0.32	0.30	0.29	0.28
	Distance Along Railroad From Crossing d_t (ft)							
10	240	146	106	99	100	105	111	118
20	480	293	212	198	200	209	222	236
30	721	439	318	297	300	314	333	355
40	961	585	424	396	401	419	444	473
50	1,201	732	530	494	501	524	555	591
60	1,441	878	636	593	601	628	666	706
70	1,681	1,024	742	692	701	733	777	828
80	1,921	1,171	848	791	801	833	888	946
90	2,162	1,317	954	890	901	943	999	1,064
	Distance Along Highway From Crossing dh (ft)							
		69	135	220	324	447	589	751

Design sight distance for a combination of highway and train vehicle speeds and a 65-ft truck crossing a single set of tracks at 90° (AASHTO).

Source: *A Policy on Geometric Design of Highway and Streets*, 2004, by the American Association of State Highway and Transportation Officials.

Sight Distance at Railroad Crossing

Exhibit 1350-1



WUTC DOCKET TR-130499
EXHIBIT KH-9
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit No. ___ (KH-9)
Docket TR-130499
Witness: Kathy Hunter

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WASHINGTON UTILITIES AND
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USDOT "Guidance on Traffic Control Devices at Highway-Rail Grade Crossings" (Nov. 2002)

October 1, 2013

GUIDANCE ON TRAFFIC CONTROL DEVICES AT HIGHWAY-RAIL GRADE CROSSINGS

U.S. DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

HIGHWAY/RAIL GRADE CROSSING TECHNICAL WORKING GROUP (TWG)

NOVEMBER 2002

U.S. Department of Transportation
Highway-Railroad Grade Crossing Technical Working Group

Guidance on Traffic Control at Highway-Rail Grade Crossings

EXECUTIVE SUMMARY

The Technical Working Group (TWG) established by the U.S. Department of Transportation, is led by representatives from the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), and the National Highway Traffic Safety Administration (NHTSA). The cooperation among the various representatives of the TWG represents a landmark effort to enhance communication between highway agencies, railroad companies and authorities, and governmental agencies involved with developing and implementing policies, rules and regulations.

The report is intended to provide guidance to assist engineers in selection of traffic control devices or other measures at highway-rail grade crossings. It is not to be interpreted as policy or standards. Any requirements that may be noted in this guidance are taken from the Manual on Uniform Traffic Control Devices (MUTCD) or other document identified by footnotes. These authorities should be followed. This guide merely tries to incorporate some of the requirements found in those documents. A number of measures are included which may not have been supported by quantitative research, but are being used by States and local agencies. These are included to inform practitioners of an array of tools used or being explored.

The goal is to provide a guidance document for users who understand general engineering and operational concepts of highway-rail grade crossings. The Guide serves as a reference to aid in decisions to install traffic control devices or otherwise improve such crossings. Additional references are provided as resource for further information.

The Guide discusses a number of existing laws, regulations and policies of the FHWA and FRA concerning highway-rail grade crossings and railroad operations, driver needs concerning various sight distance, and highway and rail system operational requirements and functional classification. There is an extensive description of passive and active traffic control devices, including supplemental devices used in conjunction with active controls. Traffic control devices in the 2000 edition of the MUTCD are listed, together with a few experimental devices. An appendix provides limited discussion on the complex topic of interconnection and preemption of traffic signals near highway-rail grade crossings. There is also discussion concerning closure, grade separation and consideration for installing new grade crossings. A glossary defines a few less familiar and technical terms. (Please note that the term grade crossings is synonymous with both the terms "highway-rail grade crossings" and "highway-rail intersections" in this document.)

A traffic control device selection procedure and extensive list of quantitative guidance are the specific products of this document. However, due to the unique characteristics of each individual crossing, these procedures and practices should not be considered as warrants or standards. Therefore, selection decisions must be made based on engineering studies.

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U.S. Department of Transportation
Highway-Railroad Grade Crossing Technical Working Group

Guidance on Traffic Control at Highway-Rail Grade Crossings

INTRODUCTION

The Technical Working Group (TWG) established by the U.S. Department of Transportation, is led by representatives from the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), and the National Highway Traffic Safety Administration (NHTSA). The cooperation among the various representatives of the TWG represents a landmark effort to enhance communication between highway agencies, railroad companies and authorities, and governmental agencies involved with developing and implementing policies, rules and regulations.

The report is intended to provide guidance to assist engineers in selection of traffic control devices or other measures at highway-rail grade crossings. It is not to be interpreted as policy or standards and is not mandatory. Any requirements that may be noted in the report are taken from the Manual on Uniform Traffic Control Devices (MUTCD)[1] or other document identified by footnotes. A number of measures are included which may not have been supported by quantitative research, but are being used by States and local agencies. These are included to inform practitioners of an array of tools used or being explored.

The goal is to provide a guidance document for users who understand general engineering and operational concepts of public highway-rail grade crossings. The document will serve as a reference to aid in decisions to install traffic control devices or otherwise improve such crossings, and also provide information on additional references.

The report includes discussion of a number of existing laws, regulations and policies of the FHWA and FRA concerning highway-rail grade crossings and railroad operations, driver needs concerning various sight distance, and highway and rail system operational requirements and functional classification. There is extensive description of passive and active traffic control devices, including supplemental devices used in conjunction with active controls. Traffic control devices in the 2000 edition of the MUTCD are listed, together with a few experimental devices. An appendix provides limited discussion on the complex topic of interconnection and preemption of traffic signals near highway-rail grade crossings. There is also discussion concerning closure, grade separation and consideration for installing new grade crossings. Finally, an extensive list of quantitative recommend guidance is provided. (Please note that the term grade crossings is synonymous with highway-rail grade crossings in this document.)

EXISTING LAWS, RULES, REGULATIONS AND POLICIES

Several documents provided by the Federal Highway Administration, the Federal Railroad Administration, and other organizations, provide some guidelines for selecting traffic control devices. For example, the MUTCD, published by the Federal Highway Administration, contains detailed guidance on the design and placement of traffic control devices. The MUTCD is a Federal standard under title 23, United States Code 109(d) and is incorporated by reference into the Code of Federal Regulations (CFR). If a particular device is selected for use, the MUTCD will indicate what the size, color, and placement of that device should be. Considered by the FHWA as a national standard, the MUTCD has the force of law.

1 MUTCD is available at the following URL: http://mutcd.fhwa.dot.gov

Another document frequently used to assist in determining the need for certain traffic control devices is the *Railroad-Highway Grade Crossing Handbook - Second Edition, (RHGCH)*[2], also published by the FHWA. The handbook draws on a number of different sources (including the MUTCD and the AASHTO *A Policy on Geometric Design of Highways and Streets*[3] [Greenbook]) to provide an overview of highway-rail grade crossing legal and jurisdictional considerations. Included is a brief discussion of grade crossing design issues involving the physical and geometric characteristics of the crossing, and risk assessment formulas. The *RHGCH* provides guidelines for the identification and selection of active control devices. Also included are discussions of issues surrounding shortline railroads, high-speed rail corridors, and special vehicles such as trucks carrying hazardous materials and trucks having low-ground clearance.

These source documents provide limited guidance, mostly in the form of lists of factors "to be considered" for installing either flashing-lights or flashing-lights and gates; however, they lack specific guidance on how to determine the most appropriate type of highway traffic control at a given highway-rail crossing. For example, the *RHGCH* cites "high speed trains" as a factor, but does not define the conditions under which a train is considered "high speed." In another instance, the presence of school buses or vehicles carrying hazardous materials is cited as a factor, but every public crossing has the potential to carry both of these types of traffic. "Past collision history" is also frequently cited as a rationale for upgrading passive grade crossings to active control, or adding gates to "flasher only" grade crossings, but no specific guidance is provided.

Several previous attempts have been made to quantify the relative emphasis these factors should have in evaluating the need to improve a crossing. The *RHGCH* contains several examples of formulae that have been developed to help determine the likelihood of a collision occurring at a particular crossing. Use of these formulae, however, is far from universal. Some States use either exposure factors or a minimum expected accident frequency (EAF) to determine whether a given crossing "qualifies" for public funding for improved traffic control devices. Illinois, for example, uses a modified New Hampshire formula to "qualify" crossings for improvement or upgrade whenever the EAF exceeds 0.02; Iowa gives "priority" to those crossings having a USDOT Accident Predictor Model EAF of 0.075 or higher. A number of States have established their own criteria for determining when or where active devices are deployed, but their rationale for establishing such criteria is not commonly known nor is there much consistency from State to State.

Current FHWA regulations specifically prohibit at-grade intersections on highways with full access control. The FRA's rail safety regulations require that crossings be separated or closed where trains operate at speeds above 125 mph (49 CFR 213.347(a)). Additionally, if train operation is projected at FRA track class 7 (111 – 125mph) an application must be made to the FRA for approval of the type of warning/barrier system. The regulation does not specify the type of system, but allows the petitioner to propose a suitable system for FRA review.

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2 Railroad-Highway Grade Crossing Handbook - Second Edition is available at the following URL: http://www.fhwa.dot.gov/tfhrc/safety/pubs/86215/intro.htm

3 A Policy on Geometric Design of Highways and Streets is available at the following URL: http://www.ite.org/bookstore/lp323b.html

In 1998, the FRA issued an Order of Particular Applicability for high-speed rail service on the Northeast Corridor. In the Order, the FRA set a maximum operating speed of 80 mph over any highway-rail crossing where only conventional warning systems are in place and a maximum operating speed of 95 mph where 4-quadrant gates and presence detection are provided and tied into the signal system. Grade crossings are prohibited on the Northeast Corridor if maximum operating speeds exceed 95 mph. Current statutory, regulatory and Federal policy requirements are summarized in Table 1.

TABLE 1
FEDERAL LAWS, RULES, REGULATION & POLICIES

	Active	Warning/Barrier W/FRA Approval	Grade Separate or Close
Controlled Access Highways	Not allowed	Not allowed	Required
High Speed Rail	> 79 MPH	111-125 MPH	> 125 MPH

Note: 1 mph = 1.61 km/h

HIGHWAY-RAIL GRADE CROSSING PERSPECTIVE

A highway-rail grade crossing differs from a highway/highway intersection in that the train always has the right of way. From this perspective, the process for deciding what type of highway traffic control device is to be installed, or to even allow that a highway-rail grade crossing should exist is essentially a two-step process: 1) What information does the vehicle driver need to be able to cross safely? and, 2) Is the resulting driver response to a traffic control device "compatible" with the intended system operating characteristics of the highway and railroad facility?

MOTOR VEHICLE DRIVER NEEDS ON THE APPROACH

The first step involves three essential elements required for "safe" passage through the crossing, which are the same elements a driver needs for crossing a highway-highway intersection:

ADVANCE NOTICE - STOPPING SIGHT DISTANCE

The first element pertains to "stopping" or "braking" sight distance, which is the ability to see a train and/or the traffic control device at the crossing ahead sufficiently in advance so that a driver can bring the vehicle to a safe, controlled stop at least 4.5 m (15 ft) short of the near rail, if necessary. This applies to either a passive or active controlled crossing. Stopping sight distance is measured along the roadway and is a function of the distance required for the "design" vehicle, traveling at the posted speed limit to safely stop[4]. Insufficient stopping sight distance is often due to poor roadway geometry and/or surrounding topography.

TRAFFIC CONTROL DEVICE COMPREHENSION

[4] *A Policy on Geometric Design of Highways and Streets*. American Association of State Highway Transportation Officials (AASHTO). 2001 Edition. P. 449, available at www.ite.org, or 202-289-0222 and www.aashto.org

The second element is a function of the type of traffic control device at the highway-rail crossing. There are typically three types of control devices, each requiring a distinct compliance response per the Uniform Vehicle Code5, various Model Traffic Ordinances and State regulations.

1. A crossbuck is a type of YIELD sign: the driver should be prepared to stop at least 4.5 m (15 ft) before the near rail if necessary, unless and until the driver can make a reasonable decision that there are no trains in hazardous proximity to the crossing, and it is safe to cross.

2. Operating flashing lights have the same function as a STOP sign: a vehicle is required to stop completely at least 4.5 m (15 ft) short of the near rail. Then, even though the flashing lights may still be operating, the driver is allowed to proceed after stopping (subject to State or local laws), when safe to do so.

3. Flashing lights with lowered gates are equivalent to a red vehicular traffic signal indication: a vehicle is required to stop short of the gate and remain stopped until the gates go up.

Motorist comprehension and compliance with each of these devices is mainly a function of education and enforcement. The traffic engineer should make full use of the various traffic control devices as prescribed in the MUTCD to convey a clear, concise and easily understood message to the driver, which should facilitate education and enforcement.

DECIDING TO PROCEED

The third element concerns the driver's decision to safely proceed through the grade crossing. It involves sight distance available both on the approach and at the crossing itself.

Approach (Corner) Sight Distance

On the approach to the crossing with no train activated traffic control devices (or STOP sign) present, in order to proceed at the posted speed limit, a driver would need to be able to see an approaching train, from either the left or right, in sufficient time to stop safely 4.5 m (15 ft) before the near rail. This would require an unobstructed field of vision along the approach sight triangle, the extent of which is dependent upon train and vehicle speed. These sight distances are available in the RHGCH. However, view obstructions often exist within the sight triangle, typically caused by structures, topography, crops or other vegetation (continually or seasonal), movable objects or weather (fog, snow, etc.). Where lesser sight distances exist, the motorist should reduce speed and be prepared to stop not less than 4.5 m (15 ft) before the near rail unless and until they are able to determine, based upon the available sight distance, that there is no train approaching and it is safe to proceed. Wherever possible, sight line deficiencies should be improved by removing structures or vegetation within the affected area, regrading an embankment, or realigning the highway approach.

Many conditions however cannot be corrected because the obstruction is on private property, or it is economically infeasible to correct the sight line deficiency. If available corner sight distance is less than what is required for the legal speed limit on the highway approach, supplemental traffic control devices such as enhanced advance warning signs, STOP or YIELD signs, or reduced speed limits (advisory or regulatory) should be evaluated. If it is desirable from traffic mobility criteria to allow vehicles to travel at the legal speed limit on the highway approach, active control devices should be considered.

5 Uniform Vehicle Code is available at the following URL: http://mutcd.fhwa.dot.gov/

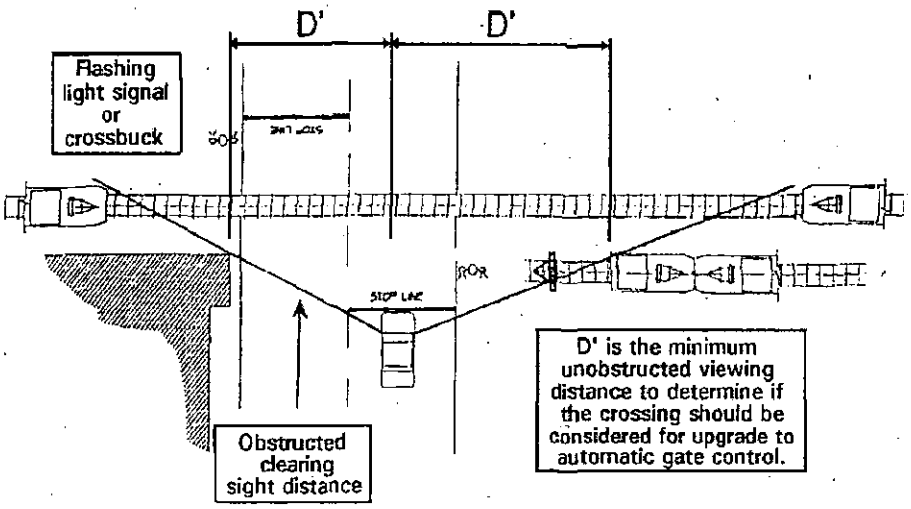

FIGURE 1

Clearing Sight Distance

At all crossings, except those with gates, a driver stopped 4.5 m (15 ft) short of the near rail must be able to see far enough down the track, in both directions, to determine if sufficient time exists for moving their vehicle safely across the tracks to a point 4.5 m (15 ft) past the far rail, prior to the arrival of a train. Required clearing sight distance along both directions of the track, from the stopped position of the vehicle, is dependent upon the maximum train speed and the acceleration characteristics of the "design" vehicle.

At multiple track highway-rail grade crossings of two or more in-service railroad tracks through the roadway, and where two or more trains can operate simultaneously over or in close proximity to the crossing, the presence of a train on one track can restrict or obscure a driver's view of a second train approaching on an adjacent track. Such crossings must be treated the same as any other crossing having insufficient clearing sight distance. Even where there is only one track through the crossing, but additional tracks (such as a siding) are located adjacent to, but terminate before reaching the crossing, the sight distance to the limit of where railroad cars or equipment could be stored should be evaluated. Figure 1 is a diagram designed to illustrate some unusual conditions that would merit special consideration at a single-track highway-rail grade crossing.

Figure 1

This figure shows an aerial view of a highway-rail grade crossing. A single-rail track stretches across the width of the figure. A locomotive is located on both the right and left-ends of the track. There is a second track on right side of the crossing with a locomotive on it. This track ends before the roadway. An automobile is stopped behind a "stop line" in the middle of the figure. On both sides of the intersection there is a symbol for a flashing light signal. In the lower left quadrant, a building is shown that restricts sight the sight of a locomotive approaching from the left. There is a 45-degree line between the automobile and the locomotive on the left end of the track that demonstrates the obstructed clearing sight distance caused by the building. Another 45-degree line stretches from the automobile to the locomotive on the right end of the track that demonstrates the obstructed clearing sight distance caused by the locomotive on the second track. There is a box between the automobile and locomotive that says, "D is the minimum unobstructed viewing distance to determine if the crossing should be considered for upgrade to automatic gate control."

Table 2, prepared by members of the TWG, relates the typical minimal clearing sight distances for various train speeds and vehicle types. (It should be noted the column for 65 foot double trucks generally corresponds to the distances listed in table 36 on page 133 of the *RHGCH*, under the column for vehicle speed of "0 MPH." Vehicle acceleration data has been interpreted from the *Traffic Engineering Handbook*.[6]) The person or agency evaluating the crossing should determine the specific design vehicle, pedestrian, bicyclist, or other non-motorized conveyance and compute clearing sight distance if it is not represented in the table. Also note the table values are for a level, 90-degree crossing of a single track. If other circumstances are encountered, the values must be re-computed.

TABLE 2
CLEARING SIGHT DISTANCE (in feet) *

Train Speed	Car	Single Unit-Truck	Bus	WB-50 Semi-Truck	65-ft Double Truck	Pedestrian **
10	105	185	200	225	240	180
20	205	365	400	450	485	355
25	255	455	500	560	605	440
30	310	550	600	675	725	530
40	410	730	795	895	965	705
50	515	910	995	1120	1205	880
60	615	1095	1195	1345	1445	1060
70	715	1275	1395	1570	1680	1235
80	820	1460	1590	1790	1925	1410
90	920	1640	1790	2015	2165	1585

* A single track, 90-degree, level crossing.

** walking 1.1 mps (3.5 fps) across 2 sets of tracks feet apart, with a two second reaction time to reach a decision point 3 m (10 ft) before the center of the first track, and clearing 3 m (10 ft) beyond the center line of the second track. Two tracks may be more common in commuter station areas where pedestrians are found. (See Figure 2).

Note: 1 meter = 0.3048 feet.

Figure 2: Pedestrian Sight Triangle

A highway-rail grade crossing is displayed depicting a pattern for the pedestrian sight triangle. The distance the pedestrian travels from one side of the crossing to the other is 42 feet. There are two tracks in the crossing. The distance is broken up into the following respective categories:

- 7 ft. Decision/Reaction Distance of 2 seconds @3.5 feet per second;
- 10 ft. Clearance Area just before a rail track;
- 15 ft. between two rail tracks;
- 10 ft. from last rail track to clearance area.

A locomotive is approaching from the south in the diagram. The pedestrian is on the immediate right of the crossing starting at the Decision/Reaction Distance category-space. The figure of the pedestrian is shown several times to represent the movement over the crossing. There is a "STOP HERE" label on both sides of the crossing immediately prior to the beginning of the clearance area. There is a dotted line reaching from the pedestrian's figure to the first track that demonstrates the sight distance to an approaching locomotive. The area inside the triangle is shaded. The sight triangle demonstrates that the pedestrian is 17 ft. from the center of the first track.

[6] *Traffic Engineering Handbook - Fourth Edition.* Institute of Transportation Engineers. Washington D.C.: 1990. available at www.ite.org, or 202-289-0222

If there is insufficient clearing sight distance, and the driver is unable to make a safe determination to proceed, the clearing sight distance needs to be improved to safe conditions, or flashing light signals with gates, or closure, or grade separation should be considered. (See Recommendation, "3.F.3".)

SYSTEMS OPERATING REQUIREMENTS AND OBJECTIVES

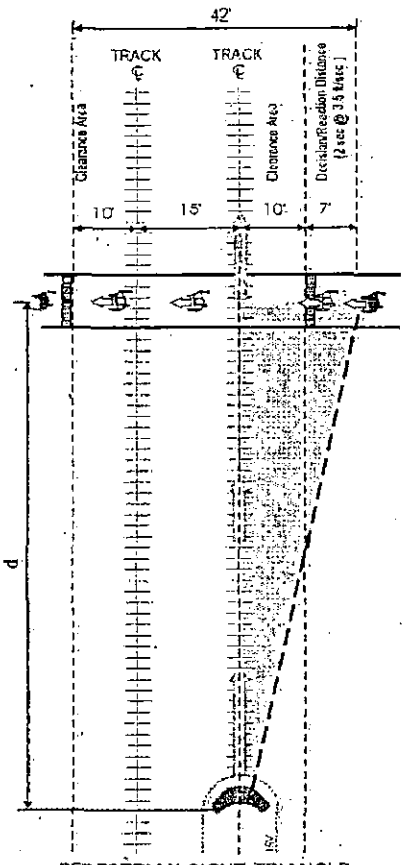

FIGURE 2

The second step involves a traffic control device selection process considering respective highway and rail system operational requirements. From a highway perspective, concerns for roadway capacity and drivers= expectations may mandate the type of traffic control present. There are circumstances when train interference can be so disruptive to highway operations that a highway-rail grade crossing is incompatible with system objectives. From the rail perspective, there can also be circumstances when the potential for highway traffic interference can be sufficiently disruptive, or potentially so catastrophic, that closure, grade separation, or activated control would be considered. It is within these contexts where operation and safety variables should be considered, such as:

a) Highway - AADT (Annual Average Daily Traffic), legal and/or operating speed;
b) Railroad - train frequency, speed and type (passenger, freight, other);
c) Highway - Functional classification and/or design level of service;
d) Railroad - FRA Class of Track and/or High Speed Rail corridors;
e) Proximity to other intersections;
f) Proximity to schools, industrial plants and commercial areas;
g) Proximity to rail yards, terminals, passing tracks and switching operations;
h) Available clearing and corner sight distance;
i) Prior accident history and predicted accident frequency;
j) Proximity and availability of alternate routes and/or crossings; and
k) Other geometric conditions.

Special consideration should also be given to situations where highway-rail crossings are sufficiently close to other highway intersections that traffic waiting to clear the adjacent highway intersection can queue on or across the tracks. Additionally, special consideration is required when there are two or more sets of tracks sufficiently close to each other that traffic stopped on one set could result in a queue of traffic across the other.

HIGHWAY SYSTEM OBJECTIVES

Roads and streets which are planned, designed, constructed, maintained and operated by public agencies serve two important but conflicting functions: land access and mobility. Overriding these interests should be a concern for safety.

An example of a facility constructed primarily for mobility is the Interstate highway. Access is only by interchanges, with ramps and acceleration/deceleration lanes. These allow vehicles to enter and leave the highway with minimal effect on the through traffic stream. Interstate highways do not have direct driveway access to adjacent properties, grade level intersections, transit stops, pedestrian and bicycle facilities or highway-rail grade crossings, all of which interfere with the free flow of traffic.

A local street is at the other end of the spectrum. It provides direct access to adjacent land, with driveways to parking facilities and provision of services such as on-street deliveries and trash pic

low-type design of local streets, including presence of parked vehicles, pedestrians and bicycles, makes travel at any significant speed undesirable.

Many roads and highways fall in the spectrum between Interstate highways and local roads, and fulfill their purpose with varying degrees of success. Mobility is affected by providing adequate access to adjacent development in an environment complicated by driveways and street intersections, and other modes of transportation such as transit, bicycles, pedestrians and railroads. The concept is illustrated in Figure 3.[7]

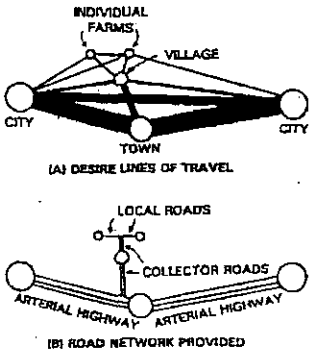

FIGURE 3

Figure 3:

A) Desired Lines of Travel

The figure depicts the desired lines of travel between several points and is depicted in the form of an irregular pentagon. A circle, representing "City", "Town", and "City", respectively is shown on each of the three southern points of the figure. On the left and right points of the irregular pentagon, there is a label that reads "City." The far-south point of the pentagon reads "Town." In the center of the pentagon there is a circle with an arrow pointing to it labeled "Village." Above "Village" are two smaller circles that are labeled "Individual Farms". Twelve lines connect the various circles of the pentagon indicating the desired lines of travel between the various points. There are thick black lines leading from each "City" to the "Town".

B) Road Network Provided

The figure shows the same pattern of circles as Figure A that are labeled the same as in A). There are five lines connecting the points indicating the roadway network. "Arterial Highway" is written for the segments connecting both "City" circles to the "Town". To the left of the "Town" is a vertical line labeled "Collector Roads" which runs to the "Village" circle and extends slightly beyond the village. Horizontally placed atop the "Collector Roads" is a small "local roads" line with the two "Individual Farms" circles on each endpoint. Each line represents travel between the various points.

A highway-rail grade crossing can impede highway traffic flow based on several factors. The most obvious is, of course, blockages by trains. The geometry of the crossing and approaches, and the condition of the surface can present additional impediments.

LEVELS OF SERVICE

The performance of a road or street is normally described in terms of "Level of Service.[8]" The Level of Service is a concept that describes the operational characteristics of the traffic stream and how they are perceived by drivers and passengers. Speed and travel time, freedom to maneuver, traffic interruptions, and comfort and convenience are factors that characterize levels of service. Traffic flow characteristics are described by letter designations; "A" the best, corresponding to a free flow condition, and "F" the worst, corresponding to a breakdown of flow or "stop and go" condition. Table 3 provides guidance for selecting Level of Service for particular locations.

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[7] *A Policy on Geometric Design of Highways and Streets.* American Association of State Highway Transportation Officials (AASHTO). 2001 Edition. pages 4 and 5, available at www.ite.org, or 202-289-0222 and www.aashto.org.

[8] *Highway Capacity Manual, Special Report 209, 3rd Edition.* Transportation Research Board. Washington, D.C.: 1994, available at www.ite.org or 202-289-0222 or www.trb.org.

TABLE 3
GUIDE FOR SELECTION OF DESIGN LEVELS OF SERVICE

	Type of Area and Appropriate Level of Service			
Highway Type	**Rural Level**	**Rural Rolling**	**Rural Mountainous**	**Urban and Suburban**
Freeway	B	B	C	C
Arterial	B	B	C	C
Collector	C	C	D	D
Local	D	D	D	D

Note: General operating conditions for levels of service:
A - free flow, with low volumes and high speeds.
B - *reasonably free flow, but speeds beginning to be restricted by traffic conditions.*
C - in a stable flow zone, but most drivers restricted in freedom to select their own speed.
D - approaching unstable flow, drivers have little freedom to maneuver.
E - unstable flow; may be short stoppages.
F - forced flow, congested stop-and-go operation.
(Source: A Policy on Geometric Design of Highways and Streets. AASHTO. 2001. Page 90)

The nominal level of service normally considered acceptable during the planning and design of a new or reconstructed roadway is "C" which is within the range of stable flow. The presence of a highway-rail grade crossing can drop the level of service below "C".

SAFE APPROACH SPEED

Passive crossings with a restricted sight distance require an engineering study to determine the safe approach speed based upon available stopping and/or corner sight distance. As a minimum, an advisory speed posting may be appropriate, or a reduced regulatory speed limit might be warranted (if it can be effectively enforced). (See Guidance Section of this Report, "3.F.2c.") Active devices improve highway capacity and level of service in the vicinity of a crossing, particularly where corner sight distances are restricted. When flashing lights are active however, a driver is required to stop and look for a train.

The effects of such delay increases as volume increase. Queues become longer and vehicle delay increases proportionally. These delays are observed by the driver as a reduction in the facility=s level of service. The type of control installed at highway-rail crossings needs to be evaluated in the context of the highway system classification and level of service.

RAILROAD SYSTEMS - FUNCTIONAL CLASSIFICATION

A commonly used means of classifying freight and "heavy rail" passenger rail routes is by their respective FRA designations for class of track. This Federal designation establishes the maximum authorized speed for freight and passenger trains, and places requirements on the track maintenance criteria, vehicle standards, and train control signal systems. In some respects, the FRA Class of Track may be viewed as a surrogate for rail traffic volume. In general, railroads are not likely to make the additional investment required to maintain tracks to a higher standard absent sufficient traffic volume to justify the added expense. Table 4 indicates maximum permissible train speeds for various classes of track.

TABLE 4

MAXIMUM TRAIN SPEEDS BY CLASS OF TRACK *

Class of Track	Freight	Passenger
Class 1	10 MPH	15 MPH
Class 2	25 MPH	30 MPH
Class 3	40 MPH	60 MPH
Class 4	60 MPH	80 MPH
Class 5	80 MPH	90 MPH
Class 6	110 MPH	110 MPH
Class 7	125 MPH	125 MPH
Class 8	160 MPH	160 MPH
Class 9	200 MPH	200 MPH

* If train operations exceed 177 km/h (110 mph) for a track segment that will include highway-rail grade crossings, FRA=s approval of a complete description of the proposed warning/barrier system to address the protection of highway traffic and high speed trains must be obtained in advance. All elements of the warning/barrier system must be functioning.
Source: 49 CFR 213
Note: 1 mph = 1.61 km/h.

Not unlike the system specification that all highway-rail crossings on full control access highways be grade separated, it is only logical that certain rail systems should have similar status. In 1994, the FRA defined a core railroad system of approximately 128,800 km (80,000 mi) known as the Principal Railroad Lines (PRLs). These lines have one or more of the following attributes: Amtrak service; defense essential; or, annual freight volume exceeding 20 million gross tons. This core network was described in the Department of Transportation's 1994 Action Plan to improve highway-rail grade crossing safety. The Action Plan set forth a long-term goal of eliminating (grade separating or realigning) intersections of PRLs and highway routes on the National Highway System (NHS - defined as "an interconnected system of principal arterial routes to serve major population centers, intermodal transportation facilities and other major travel destinations; meet national defense requirements; and serve interstate and interregional travel").

FUNCTION, GEOMETRIC DESIGN AND TRAFFIC CONTROL

Functional classification is important to both the highway agency and railroad operator. Even though geometric criteria can be determined without reference to the functional classification, the designer should consider the function that the highway is expected to serve. The functional classification of the highway defines the geometric criteria to be used in its planning, design and construction. Where the highway intersects a railroad, the crossing, whether grade separated or at-grade, should be designed consistently with the functional classification of the highway or street. These design considerations can also extend to traffic control.

Drivers form expectancies based on their training and experience; that is, situations which occur in similar environments and in similar ways are incorporated into the driver=s knowledge base, along with successful responses to the situations. Drivers on a US or state-numbered route, or on a facility having a higher functional classification, have higher expectancies for operating characteristics, level of service and traffic control than do those same drivers on local roads and streets. These higher classed roads and streets also tend to serve a more diverse cross-section of vehicles and lading, including transit buses, intercity buses and haz-mat carriers. For these reasons, functional classification of the road or street should be considered in the decision-making process concerning geometric design and traffic control devices.

TRAFFIC CONTROL DEVICES

GENERAL DISCUSSION

The purpose of traffic control at highway-rail grade crossings is to permit safe and efficient operation of rail and highway traffic over such crossings. Highway vehicles approaching a highway-rail grade crossing should be *prepared to yield and stop if necessary* if a train is at or approaching the crossing.

PASSIVE DEVICES

A passive highway-rail grade crossing is described as follows:

All highway-rail grade crossings having signs and pavement markings (if appropriate to the roadway surface) as traffic control devices *that are not activated by trains*.

The following tables describe a variety of devices that can be used at a passive controlled highway-rail grade crossing, or supplement active devices. Table 5A are devices currently referenced in the 2000 MUTCD edition. Table 5B lists devices that are not currently proposed in the MUTCD, and any jurisdiction wishing to use these devices to experiment must request permission from the FHWA.

TABLE 5A - CURRENT MUTCD DEVICES

MUTCD	Traffic Control Device	Application or Indication of Need
R15-1	CROSSBUCK sign	Required device
R15-2	"Multiple Tracks" sign	Standard device, with 2 or more tracks; optional with gate.
W10-1	Advance warning sign	Required device, with MUTCD exceptions
	RR Pavement Markings	All paved roads, with MUTCD exceptions
R1-1	STOP sign	As indicated in MUTCD reference 1993 memorandum.
W3-1, 1a	STOP AHEAD sign	Where STOP sign is present at crossing.
R1-2	YIELD sign	As indicated in MUTCD reference 1993 memorandum.
W3-2, 2a	YIELD AHEAD sign	Where YIELD sign is present at crossing.
R3-1, -2	Turn Restriction sign * (An "active" sign)	Use with interconnected, preempted traffic signals. Install on the nearby parallel highway to control turns toward the tracks.
R3-4	U-Turn Prohibition sign	Use in median of divided highways at highway-rail grade crossings to inhibit turning vehicles from using the track zone for illegal movement as necessary.
R4-1, W14-3	DO NOT PASS sign	Where passing near the tracks is observed.
R8-8	DO NOT STOP ON TRACKS sign	Where queuing occurs, or where storage space is limited between a nearby highway intersection and the tracks. May be supplemented with a flashing light activated by queuing traffic in the exit lane(s) from the crossing. (See discussion on Queue Cutters Signals.)
R8-9	TRACKS OUT OF SERVICE sign	Applicable when there is some physical disconnection along the railroad tracks to prevent train using those tracks.
R10-5	STOP HERE ON RED sign	Use with pre-signal and/or Stop Line pavement markings to discourage vehicle queues onto the track.
R10-11	NO TURN ON RED sign	Use with pre-signal and/or where storage space is limited between a nearby-interconnected traffic signal controlled intersection.
R15-3, W10-1	EXEMPT sign	School buses and those commercial vehicles that are usually required to stop at crossings are not required to do so where authorized by ordinance.
R15-4	Light Rail Transit Only Lane sign series	For multilane operations where roadway users might need additional guidance on lane use and/or restrictions.
R15-5, 5a	DO NOT PASS Light	Where vehicles are not allowed to pass LRT vehicles loading or unloading

	Rail Transit signs	passengers where no raised platform physically separates the lanes.
R15-6, 6a	No Vehicles on Tracks signs	Used where there are adjacent vehicle lanes separated from the LRT lane by a curb or pavement markings.
R15 -7, 7a	DIVIDED HIGHWAY sign	Use with appropriate geometric conditions.
R15-8	LOOK, Supplementary sign	➢ Multiple tracks ➢ Collision experience ➢ Pedestrian presence
W10-2, 3, 4	Advance Warning Signs Series	Based upon specific situations with a nearby parallel highway.
W10-5	LOW GROUND CLEARANCE CROSSING sign	As indicated by MUTCD guidelines, incident history or local knowledge.
W10-8, 8a	TRAINS MAY EXCEED 80 MPH (130 KM/H) sign	Where train speed is 80 mph (130 km/h) or faster
W10-9	NO TRAIN HORN sign	Shall be used only for crossings in FRA-authorized quiet zones.
W10-10	NO SIGNAL sign	May be used at passive controlled crossings.
W10-11, 11a	Storage Space signs	Where the parallel highway is close to crossing, particularly with limited storage space between the highway intersection and tracks.
W13-1	"Advisory Speed" plate	➢ May be used with any advance warning sign where appropriate, e.g. advance warning, *humped crossing*, rough crossing, super-elevated track or other condition where a speed lower than the posted speed limit is advised.
I-12	Light Rail Station sign	Used to direct road users to a light rail station or boarding location.
I-13, 13a	Emergency Notification sign	Post at all crossings to provide for emergency notification.
	Dynamic Envelope Delineation, pavement markings	Where there is queuing or limited storage space for highway vehicles at a nearby highway intersection..
	Signs on both sides of highway	➢ For extra emphasis ➢ Multi lane ➢ One-way roads ➢ Curved approaches
	Increased retroreflectivity on highway signs	➢ Nighttime train operations.
	Roadway delineators, post-mounted on shoulders	➢ Frequent inclement weather ➢ Crossing narrower than approach pavement ➢ Isolated crossings ➢ May be used as an alternative to illumination
	Flashing lights on signs and lighted signs	➢ Presence of competing stimuli, "visual clutter" ➢ Restricted sight distance to the crossing ➢ High speed highway traffic approach ➢ Isolated crossing ➢ Heavy volume or queued traffic in advance of the crossing
	Overhead signs	➢ Multi-lane approach ➢ High speed highway approach ➢ If a sign cannot be placed on the roadside ➢ May be used as an alternative to the double signs
	Crossing illumination:	➢ Nighttime train operations ➢ Crossings are blocked for long periods ➢ Train speeds are low ➢ Nighttime collision experience ➢ Curved approach (vertical and horizontal curves) ➢ Frequent occurrence of fog or smoke.

	Stop and flag	➢ Railroad option, but may be considered by traffic engineer. ➢ Combination of low train frequency, short trains, high-volume highway traffic, multilane highway
TABLE 5B - NOT CURRENTLY PROPOSED IN THE MUTCD - *EXPERIMENTAL DEVICES*		
	SECOND TRAIN and other supplemental signs	➢ *Multiple tracks* ➢ Collision experience ➢ Pedestrian presence
	Buckeye CROSSBUCK	Among a number of special signs under current research.

HIGHWAY-RAIL GRADE CROSSING (CROSSBUCK) SIGNS

The MUTCD states, "The Highway-Rail Grade Crossing (R15-1) sign, commonly identified as the Crossbuck Sign, shall be retroreflectorized white with the words RAILROAD CROSSING in black lettering. As a minimum, one Crossbuck sign shall be used on each highway approach to every highway-rail grade crossing, alone or in combination with other traffic control devices. If automatic gates are not present and if there are two or more tracks at the highway-rail grade crossing, the number of tracks shall be indicated on a supplemental Number of Tracks (R15-2) sign of inverted T shape mounted below the Crossbuck sign in the manner and at the height indicated in the MUTCD."

STOP and YIELD SIGNS

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Public Law 102-240; 105 Stat 1914; December 18, 1991) required that the FHWA revise the MUTCD to enable State or local governments to install STOP or YIELD signs at any passive highway-rail grade crossing where two or more trains operated daily. In response, the FHWA published a final rule in the Federal Register (57 FR 53029), which incorporated the new standards into the MUTCD. This final rule, published in March 1992, was effective immediately.

The FHWA and the FRA published a memorandum containing guidelines for when the use of STOP or YIELD signs is appropriate. According to the jointly-developed document, "it is recommended that the following considerations be met in every case where a STOP sign is installed: [9]"

1. Local and/or State police and judicial officials commit to a program of enforcement no less vigorous than would apply at a highway intersection equipped with STOP signs.
2. Installation of a STOP sign would not occasion a more dangerous situation (taking into consideration both the likelihood and severity of highway-rail collisions and other highway traffic risks) than would exist with a YIELD sign.

According to this memorandum, any of the following conditions indicate that the use of a STOP sign

[9] U.S. Department of Transportation; Federal Highway Administration; Federal Railroad Administration. 1993. Recommended Guidance for Stop and Yield Sign at Highway-rail Grade Crossings. Washington, DC. 3 p. [Attachment 2 to a July 8, 1993 memorandum from the Associate Administrator for Safety and Systems Applications, FHWA, and the Associate Administrator for Safety, FRA, to the FHWA Regional Administrators and the FRA Regional Directors of Railroad Safety.]

might reduce risk at a crossing:

1. Maximum train speeds equal, or exceed, 48 km/h (30 mph).
2. Highway traffic mix includes buses, hazardous materials carriers and/or large (trash or earth moving) equipment.
3. Train movements are 10 or more per day, five or more days per week.
4. The rail line is used by passenger trains.
5. The rail line is regularly used to transport a significant quantity of hazardous materials.
6. The highway crosses two or more tracks, particularly where both tracks are main tracks or one track is a passing siding that is frequently used.
7. The angle of approach to the crossing is skewed.
8. The line of sight from an approaching highway vehicle to an approaching train is restricted such that approaching traffic is required to substantially reduce speed.

The memorandum also states, however, that the above conditions should be weighed against the possible existence of the following factors:

1. The highway is other than secondary in character. Recommended maximum of 400 ADT in rural areas, and 1,500 ADT in urban areas.
2. The roadway is a steep ascending grade to or through the crossing, sight distance in both directions is unrestricted in relation to maximum closing speed, and heavy vehicles use the crossing.

A footnote in this joint document also states that "a crossing where there is insufficient time for any vehicle, proceeding from a complete stop, to safely traverse the crossing within the time allowed by maximum train speed, is an inherently unsafe crossing that should be closed."

ACTIVE DEVICES

An active highway-rail grade crossing is described as follows:

All highway-rail grade crossings equipped with warning and/or traffic control devices that gives warning of the approach or presence of a train.

Due to the variables which should be considered, an engineering and traffic investigation is required to determine the specific application of active devices at any given highway-rail grade crossing. Guidance is provided in the following sections for the application of the many active traffic control system devices available for grade crossing design, in addition to various median treatments that can supplement these devices. The following is a list of active devices that can be considered for use at a highway-rail grade crossing. The first four commonly found at many grade crossings are designated as "standard devices."

STANDARD ACTIVE DEVICES

Flashing-Light Signal

A standard flashing-light signal consists of two red lights in a horizontal line flashing alternately at approaching highway traffic. At a crossing with highway traffic approaching in both directions, flashing-lights are installed facing oncoming traffic in a back-to-back configuration in accordance with the MUTCD. The support used for the lights should also include a standard crossbuck sign and, where there is more that one track, an auxiliary "multiple tracks" R15-2 sign. Back lights may be eliminated with one-way highway traffic, based on engineering judgment. An audible control device may be included.

Cantilever Flashing-Light Signal

This device supplements the standard flashing-light signal. Cantilever flashing-lights consist of an additional one or two sets of lights mounted over the roadway on a cantilever arm and directed at approaching highway traffic. Cantilevered lights provide better visibility to approaching highway traffic, particularly on multi-lane approaches. This device is also useful on high-speed two-lane highways, where there is a high percentage of trucks, or where obstacles by the side of the highway could obstruct visibility of standard mast mounted flashing-lights. An example is where the terrain or topography of the approaching highway is such that the sight of a roadside mounted signal light could not be readily seen by an approaching driver due to vertical or horizontal curves.

Cantilever flashing-light signals may be mounted back-to-back and should also have an additional crossbuck added to the overhead structure, based on site conditions and engineering judgment.

Automatic Gate

The automatic gate provides supplemental visual display when used with both road side mounted flashing-lights and cantilever flashing-light signals. The device consists of a drive unit and a gate arm. The drive mechanism can be mounted on flashing-light posts or cantilever pole supports, or on a stand-alone support. The gate arm is fully reflectorized on both sides with 45 degree diagonal red and white stripes and has at least three lights; the tip light is continuously lit and the others alternately flash when the gate is activated and lowered. When lowered, the gate should extend across approaching highway traffic lanes. Special consideration should be given to clearances for movement of the counter weight arm portion of the gate drive unit in a median and adjacent to sidewalk locations with pedestrians, particularly with the requirements of the Americans with Disabilities Act (ADA) of 1990.

Additional Flashing-Light Signals

Additional approaches to active highway-rail grade crossings require additional flashing-light signals be directed at the approaching traffic. These lights can be mounted on existing flashing-light masts, extension arms, additional traffic signal masts, cantilever supports, in medians or other locations on the left side of the roadway.

SUPPLEMENTAL ACTIVE DEVICES

Active Advance Warning Signs with Flashers

A train activated advance warning sign (utilizing the W-10 sign) should be considered at locations where sight distance is restricted on the approach to a crossing, and the flashing-light signals cannot be seen until an approaching driver has passed the decision point (the distance to the track from which a safe stop can be made).[10] Two yellow lights can be placed on the sign to warn drivers in advance of a crossing

[10] *Manual on Uniform Traffic Control Devices For Streets and Highways* - 2000 Edition. FHWA. Sections 2C.26 and 4K.01. Official website is http://mutcd.fhwa.dot.gov or 202-289-0222

where the control devices are activated. The continuously flashing yellow "caution" lights can influence driver speed and/or provide warning for stopped vehicles ahead. An Advisory Speed Plate sign indicating the safe approach speed also should be posted with the sign.

If the advance flashers are connected to the railroad control circuitry, and only flash upon the approach of a train, they should be activated prior to the control devices at the crossing so that a driver would not pass a dark flasher and then encounter an activated flashing-light at the crossing. (Track circuits may need to be revised to handle this.) A few States use a supplementary message such as TRAIN WHEN FLASHING. In order to allow the traffic queue at the crossing time to dissipate safely, the advance flashers should continue to operate for a period of time after the active control devices at the crossing deactivate, as determined by an engineering study.

If such an advance device fails, the driver would not be alerted to the activated crossing controls. If there is concern for such failure, some agencies use a passive, RAILROAD SIGNAL AHEAD sign to provide a full time warning message. The location of this supplemental advance warning sign is dependant on vehicle speed and geometric conditions of the roadway.

Active Turn Restriction Signs

An active turn restriction sign (blank-out sign with internal illumination) displaying "No Right Turn" or "No Left Turn" (or appropriate international symbol) should be used in the following instances; on a parallel street within 15 m (50 ft) of the tracks where a turning vehicle from that parallel street could proceed around lowered gates; at a signalized highway intersection, where traffic signals at a nearby highway intersection are interconnected and preempted by the approach of the train, and all existing turn movements toward the grade crossing should be prohibited. These signs shall be visible only when the restriction is in effect.

MEDIAN SEPARATION

Despite the dangers of crossing in front of oncoming trains, drivers continue to risk lives and property by driving around crossing gates. At many crossings a driver is able to cross the center line pavement marking and drive around a gate with little difficulty. The numbers of crossing gate violations can be reduced by restricting driver access to the opposing lanes. Highway authorities have implemented various median separation devices, which have shown a significant reduction in the number of vehicle violations at crossing gates.

There are limitations common to the use of any form of traffic separation at highway-rail grade crossings. These include restricting access to intersecting streets, alleys and driveways within the limits of the median and possible adverse safety effects. The median should be designed to allow vehicles to make left turns or U-turns through the median where appropriate, based on engineering judgment and evaluation.

BARRIER WALLS SYSTEMS

Concrete barrier walls and guardrails generally prevent drivers from crossing into opposing lanes throughout the length of the installation. In this sense they are the most effective deterrent to crossing gate violations. But, the road must be wide enough to accept the width of the barrier and the appropriate end treatment.[11] Sight restrictions for vehicles with low driver eye heights and any special need for emergency

[11] *Roadside Design Guide*. American Association of State Highway and Transportation Officials (AASHTO). Washington D.C.; 1996, www.aashto.org, 202-624-5801

vehicles to make a U-turn maneuver should be considered (but not for the purpose of circumventing the traffic control devices at the crossing). Installation lengths can be more effective if they extend beyond a minimum length of 46 m (150 ft).

WIDE RAISED MEDIANS

Curbed medians generally range in width from 1.2 to more than 30 m (4 - 100 ft). While not presenting a true barrier, wide medians can be nearly as effective since a driver would have significant difficulty attempting to drive across to the opposing lanes. The impediment becomes more formidable as the width of the median increases. A wide median, if attractively landscaped, is often the most aesthetically pleasing separation method.

Drawbacks to implementing wide raised medians include availability of sufficient right-of-way, and maintenance of surface and/or landscape. Additions such as trees, flowers and other vegetation higher than .9 m (3 ft) above the roadway can restrict the drivers' view of approaching trains. Maintenance can be expensive depending on the treatment of the median. Limitation of access can cause property owner complaints, particularly for businesses. Non-mountable curbs can increase total crash rate and severity of accidents when struck by higher speed vehicles (>64 km/h [40 mph]).[12]

NON-MOUNTABLE CURB ISLANDS

Non-mountable curb islands are typically six to nine inches in height and at least .6m (2 ft) wide, and may have reboundable, reflectorized vertical markers. Drivers have significant difficulty attempting to violate these types of islands because the six to nine inch heights cannot be easily mounted and crossed.

There are some disadvantages to be considered. The road must be wide enough to accommodate a two foot median. The increased crash potential should be evaluated. AASHTO recommends special attention be given to high visibility if such a narrow device is used in higher speed (>64 km/h [40 mph]) environments.[13] Care should be taken to assure that an errant vehicle cannot bottom-out and protrude into the oncoming traffic lane. Sight restrictions for low driver eye heights should be considered if vertical markers are installed. Access requirements should be fully evaluated, particularly allowing emergency vehicles to cross opposing lanes (but not for the purpose of circumventing the traffic control devices at the crossing). Paint and reflective beads should be applied to the curb for night visibility.

MOUNTABLE RAISED CURB SYSTEMS

Mountable raised curb systems with reboundable vertical markers present drivers with a visual impediment to crossing to the opposing traffic lane. The curbs are no more than six inches in height, less

[12] Ibid.

[13] *A Policy on Geometric Design of Highways and Streets.* American Association of State Highway Transportation Officials (AASHTO). 2001 Edition., available at www.ite.org, or 202-289-0222 or www.aashto.org, 202-624-5801

than twelve inches in width, and built with a rounded design to create minimal deflection upon impact. When used together, the mountable raised median and vertical delineators discourage passage. These systems are designed to allow emergency vehicles to cross-opposing lanes (but not for the purpose of circumventing the traffic control devices at the crossing). Usually such a system can be placed on existing roads without the need to widen them.

Because mountable curbs are made to allow emergency vehicles to cross, and are designed to deflect errant vehicles, they also are the easiest of all the barriers and separators to violate. Large, formidable vertical markers will inhibit most drivers. Care should be taken to assure that the system maintains its stability on the roadway with design traffic conditions, and that retro-reflective devices or glass beads on the top and sides of the curb are maintained for night visibility. Curb colors should be consistent with location and direction of traffic adjacent to the device.

OTHER BARRIER DEVICES

FOUR-QUADRANT TRAFFIC GATE SYSTEMS

Four-quadrant gate systems consist of a series of automatic flashing-light signals and gates where the gates extend across both the approach and departure side of roadway lanes. Unlike two-quadrant gate systems, four-quadrant gates provide additional visual constraint and inhibit nearly all traffic movements over the crossing after the gates have been lowered. At this time, only a small number of four-quadrant gate systems have been installed in the U.S., and incorporate different types of designs to prevent vehicles from being trapped between the gates.

VEHICLE ARRESTING BARRIER SYSTEM - BARRIER GATE

A moveable barrier system is designed to prevent the intrusion of vehicles onto the railroad tracks at highway-rail grade crossings. The barrier devices should at least meet the evaluation criteria for a NCHRP Report 350 (Test Level 2) attenuator; [14] stopping an empty: 4500-pound pickup truck traveling at 70 km/h (43 mph). However, it could injure occupants of small vehicles during higher speed impacts, and may not be effective for heavy vehicles at lower speeds.

Two types of barrier devices have been tested and used in the U.S.; vehicle arresting barriers and safety barrier gates.

The vehicle arresting barrier (VAB) is raised and lowered by a tower lifting mechanism. The VAB in the down position consists of a flexible netting across the highway approaches that is attached to an energy absorption system. When the netting is struck, the energy absorption system dissipates the vehicle=s kinetic energy and allows it to come to a gradual stop. This device was tested at three locations in the high-speed rail corridor between Chicago, IL and St. Louis, MO.

The safety barrier gate is a movable gate designed to close a roadway temporarily at a highway-rail crossing. A housing contains electro-mechanical components that lower and raise the gate arm. The gate arm consists of three steel cables, the top and bottom of which are enclosed aluminum tubes. When the gate is in the down position the end of the gate fits into a locking assembly that is bolted to a concrete foundation. This device has been tested to safely stop a pickup truck traveling at 72 km/h

[14] National Cooperative Highway Research Program NCHRP Report 350. *Recommended Procedures for the Safety Performance Evaluation of Highway Features.* Transportation Research Board. National Research Council. Washington, DC: 1993, contact TRB at www.trb.org.

(45 mph) and has been installed in Madison, WI and Santa Clara County, CA.

A barrier gate could also be applied in those situations requiring a positive barrier e.g., in a down position, closing off road traffic and opening only on demand.

TRAIN DETECTION SYSTEMS

WARNING TIME AND SYSTEM CREDIBILITY

Reasonable and consistent warning times re-enforce system credibility. Unreasonable or inconsistent warning times may encourage undesirable driver behavior. Research has shown when warning times exceed 40-50 seconds, drivers will accept shorter clearance times at flashing lights, and a significant number will attempt to drive around gates.[15] Although mandated maximum warning times do not yet exist, efforts should be made to ensure traffic interruptions are reasonable and consistent without compromising the intended safety function of an active control device system's design. Excessive warning times are generally associated with a permanent reduction in the class of track and/or train speeds without a concomitant change in the track circuitry and without constant warning time equipment. When not using constant warning train detection systems, track approach circuits should be adjusted accordingly when train speeds are permanently reduced. Another frequent cause of excessive warning times at crossings without constant warning time equipment is variable speed trains, e.g., inter-city passenger trains or fast commuter trains interspersed with slower freight trains.

A major factor affecting system credibility is an unusual number of false activations at active crossings. Every effort should be made to minimize false activations through improvements in track circuitry, train detection equipment, and maintenance practices. A timely response to a system malfunction coupled with repairs made without undue delay can reduce credibility issues. Remote monitoring devices are an important tool.

Joint study and evaluation is needed between the highway agency and railroad to make a proper selection of the appropriate train detection system.

Train detection systems are designed to provide the minimum warning time for a crossing. In general, the MUTCD states that the system should provide for a minimum of 20 seconds warning time. When determining if the minimum 20 seconds warning time should be increased, the following factors should be considered:

- track clearance distances due to multiple tracks and/or angled crossings; (add one second for each 3 m [10 ft] of added crossing length in excess of 10.7 m [35 ft]);
- the crossing is located within close proximity of a highway intersection controlled by STOP signs where vehicles have a tendency of stopping on the crossing;
- the crossing is regularly used by long tractor-trailer vehicles;
- the crossing is regularly used by vehicles required to make mandatory stops before proceeding over the crossing (e.g. school buses and hazardous materials vehicles);
- the crossing's active traffic control devices are interconnected with other highway traffic signal systems;

[15] *Warning Time Requirements at Railroad-Highway Grade Crossings with Active Traffic Control.* Report No. FHWA SA-91-007, Federal Highway Administration. Washington, DC: February 1991, www.fhwa.dot.gov.

- provide at least 5 seconds between the time the approach lane gates to the crossing are fully lowered and when the train reaches the crossing, per 49 CFR Part 234;
- the crossing is regularly used by pedestrians and non-motorized components;
- where the crossing and approaches are not level and ;
- where additional warning time is needed to accommodate a four-quadrant gate system. .

INTERFERENCE / INTEGRITY OF ACTIVE TRAFFIC CONTROL DEVICE SYSTEMS

Interference with normal functioning of an active control device system diminishes the driver's perception of the integrity of the system. Interference can result from, but is not limited to, trains, locomotives or other railroad equipment standing within the system's approach circuit, and testing or performing work on the control device systems or on track and other railroad systems or structures. The integrity of the control device system may be adversely affected if proper measures are not taken to provide for safety of highway traffic when such work is underway. It is important that Railroad employees are familiar with Federal regulations and railroad procedures which detail measures to be taken prior to commencing activities, which might interfere with track circuitry.

TYPE OF DETECTION SYSTEM

DC, AC-DC or AFO Grade Crossing Island and Approach Circuits:

These basic train detection circuits use a battery or transmitter at one end of a section of track and a relay, receiver or diode at the other end. A train on the section of the affected track will shunt the circuit and de-energize the relay. This type of system will continue to operate until the train leaves the circuit.

Motion Sensitive Devices (MS)

A type of train detection (control) system for automatic traffic control devices that has the capability of detecting the presence and movement of a train within the approach circuit of a crossing. MS devices will activate the traffic control devices at the crossing for all trains located within the approach circuit that are moving toward the crossing, regardless of train speed. If a train stops within the approach circuit before reaching the crossing, the traffic control devices will deactivate until the train resumes motion toward the crossing, but will remain deactivated if the train retreats beyond the detection circuit.

Constant Warning Time (CWT) Systems

A constant warning time system has the capability of sensing a train as it approaches a crossing, measuring its speed and distance from the crossing, and activating the traffic control devices to provide the desired warning time. Traffic control systems equipped with CWT provide relatively uniform warning times where train speeds vary and trains do not accelerate or decelerate within the approach circuits once the devices have activated. Trains may perform low speed switching operations beyond 213 m (700 ft) from a crossing without causing the crossing devices to unnecessarily activate. This reduces or eliminates excess gate operation that in turn, causes unnecessary delays to highway traffic. Like motion sensitive systems, if a train stops within the approach circuit before reaching the crossing the traffic control devices will deactivate.

RAILROAD TRAIN DETECTION TIME AND APPROACH LENGTH CALCULATIONS

It should be noted that even when "constant warning devices" are used, the calculated arrival time of the train at the crossing is based on the instantaneous speed of the train as it enters the crossing circuit. Once the calculation is made, changes in train speed will change train arrival time at the crossing and correspondingly reduce (or increase) the elapsed warning time at the crossing.. This factor must be considered at a crossing interconnected to a nearby highway traffic signal utilizing either a simultaneous or advance preemption sequence.

Design information about railroad interconnection circuits and approach length calculations can be found in the American Railway Engineering and Maintenance-of-Way Association (AREMA) Signal Manual[16], Manual Part 3.1.10, *Recommended Functional/Operating Guidelines for Interconnection Between Highway Traffic Signals and Highway - Rail Grade Crossing Warning Systems*; and Manual Part 3.3.10, *Recommended Instructions for Determining Warning Time and Calculating Minimum Approach Distance for Highway-Rail Grade Crossing Warning Systems.*

PREEMPTION/INTERCONNECTION:

WHEN TO INTERCONNECT

The guidance in the MUTCD states: "When a highway-rail grade is equipped with a flashing-light signal system and is located within 60 m (200 ft) of an intersection or mid-block location controlled by a traffic control signal, the traffic control signal should be provided with preemption in accordance with Section 4D.13." Recent studies indicate that when designing for the installation of a new traffic control signal substantially beyond 60 m (200 ft) (possibly 152-305m [500-1000 ft]) of a highway-rail grade crossing, an estimate of the expected queue length should be performed. For estimation purposes, a 95% probability level should be used. If the resulting expected queue length is equal to or greater than the available storage distance, consideration should be given to interconnecting the traffic control signal with the active control system of the railroad crossing and providing a preemption sequence. Guidance on estimating queue length is available in the article, "Design Guidelines for Railroad Preemption at Signalized Intersections," *ITE Journal*, February 1997. Guidance on the design of preemption operation is available in *Preemption of Traffic Signals At or Near Railroad Grade Crossings with Active Warning Devices*, #RP-025A, Institute of Transportation Engineers, 1997 www.ite.org or 202-289-0222; and the *Implementation Report of the USDOT Grade Crossing Safety Task Force, June 1, 1997, U.S. Department of Transportation*, www.fhwa.dot.gov. The *Implementation Report* is an excellent source of definitions.

FACTORS TO CONSIDER

Joint Agency Coordination

Close coordination between the highway agency and the railroad company is required when interconnecting a traffic signal with active railroad traffic control devices. In order to properly design the highway-rail preemption system, both the railroad company and the highway agency should understand how each system operates. An engineering study should be conducted at each interconnected location to determine the minimum preemption warning time necessary to adequately clear traffic from the crossing in the event of an approaching train. Factors that need to be considered when calculating this time are equipment response and programmed delay times, minimum traffic signal green times, traffic signal vehicular and pedestrian clearances, queue clearance times and train/vehicle separation time.

Extended Advance Warning Times

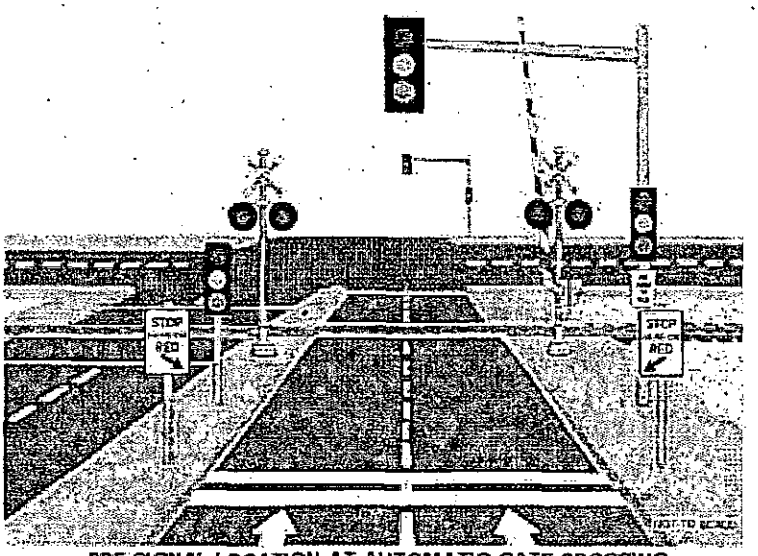
Whenever it becomes necessary at gated crossings to provide design advance warning times in excess of 45 seconds, whether for traffic signal preemption or other purposes, consideration should be given to including supplemental median treatments to discourage drivers from attempting to circumvent the gates.

Second Train Circuitry at Multiple Track Crossings

At multiple track crossings, "second train" circuitry can be considered as part of the control network.

16 American Railway Engineering and Maintenance-of-Way Association (AREMA) Signal Manual, Manual Part 3.1.10 is available at the following URL : http://www.arema.org/pubs/pubs.htm

This circuitry is intended to detect a second train approaching the crossing, but outside the normal warning time approach circuit. For instance, the normal approach circuit may provide 25 seconds warning but the second-train circuit may look an additional 10 seconds. If a train activates a train activates the traffic control devices AND a second train is detected within the 35-second circuit, the gates will be held down for the second train and the traffic signals remain preempted. (Also see Traffic Signal Controller Re-Service Considerations in the Preemption/Interconnection Appendix.)



PRE-SIGNAL LOCATION AT AUTOMATIC GATE CROSSING.
FIGURE 4

Diagonal Railroad Crossing Both Highway Approaches to the Intersection

Where the railroads run diagonally to the direction of the highway, it is probable that the railroad may cross two highway approaches to an interconnected intersection. When this situation occurs, it is normally necessary to clear out traffic on both roadways prior to the arrival of the train, requiring approximately twice the preemption time computed for one approach. It is also normally required to have both railroad active traffic control device systems designed to operate concurrently. This is needed to prevent the interconnected traffic signals and railroad active control devices from falling out of coordination with each other which otherwise can occur under certain types of train movements or when one of the two crossings experiences a false signal activation prior to an actual train movement. When the railroad control devices activate, traffic leaving the intersection and approaching either crossing may queue back into the intersection and block traffic if there is not adequate storage for those vehicles between the crossing and the intersection. Traffic turning at the intersection toward the other crossing may also be unable to proceed due to stopped traffic.

When this occurs, utilization of advance preemption together with a hybrid design may help alleviate this problem. The hybrid design could consist of delaying the activation of the railroad devices facing vehicles leaving the intersection and approaching both crossings to help vehicles clear out of the intersection during the preemption sequence.

Pre-Signals

Pre-signals control traffic approaching the highway-rail grade crossing toward the nearby highway intersection, and are operated as part of the highway intersection traffic signal system. Their displays are integrated into the railroad preemption program. A diagram of a pre-signal is shown as Figure 4.

Figure 4

This figure depicts the location of a pre-signal at an automatic gate crossing. In the foreground of the figure is the away-going side of a divided highway. The road crosses a railroad track and a little further, intersects another road. At the intersection of the two roads, there is a traffic-control signal. The crossing is equipped with lights and an automated crossarm. Prior to the railroad crossing is another traffic-control signal and a double white line where vehicles are to stop. The signal and lines are designed to prevent a line of vehicles forming at the highway-highway intersection that would back-

up onto the railroad tracks. On either side of the road at the double white line is a sign that reads "STOP HERE ON RED," with and arrow pointing to the double white line.

An engineering study should be made to evaluate the various elements involved in a pre-signal. These are summarized as follows.

Where the highway intersection is less than 15m (50 ft) from the highway-rail crossing (23m [75 ft] for a roadway regularly used by multi-unit vehicles), pre-signals should be considered. Where the clear storage distance is greater than 23 m (75 ft), pre-signals could be used, subject to an engineering study determining that the queue extends into the track area.

Without pre-signals at highway-rail grade crossings, drivers may focus on the downstream highway traffic signal indications rather than the flashing-light signals located at the grade crossing. This type of driver behavior is especially undesirable during the beginning of the preemption sequence when the downstream traffic signals are typically green (in order to clear queued vehicles off the tracks) and the flashing-light signals are activated.

Driver behavior at crossings equipped with pre-signals is modified because the driver stops at the railroad stop line even when a train is not approaching. By providing a consistent stopping location, with or without the presence of a train, the driver will not become confused as to a safe location to stop when a train is approaching.

Where geometric considerations in advance of the crossing complicate the installation of a pre-signal on a separate support in front of the railroad signal, the placement of railroad flashing-light signals and traffic signals on the same support should be considered to reduce visual clutter and to increase driver visibility of the pre-signals. A written agreement between the highway agency and railroad may be required.

The pre-signal phase sequencing should be progressively timed with an offset adequate to clear vehicles from the track area and downstream intersection. Vehicles that are required to make a mandatory stop (e.g., school buses, vehicles hauling hazardous materials, etc.) should be considered when determining the amount of time for the offset to ensure that they will not be forced to stop in the clear storage area.

For highway-rail grade crossings equipped with a pre-signal and clear storage distance less than 15 m (50 ft), (23 m [75 ft] for a roadway regularly used by multi-unit vehicles), a clear zone between the crossing and the downstream intersection may be diagonally striped to delineate the clear storage area.

The downstream traffic signal at the highway intersection controlling the same approach as the pre-signal should be equipped with programmable visibility indications or louvers. The downstream heads should only be visible from within the down stream intersection to the driver eye location of the first vehicle behind the pre-signal stop bar. Design of the visibility limited indications is quite complex and should consider a range of driver eye heights for the various vehicles expected on the roadway.

Long Distance between the Highway-Rail Crossing and the Highway Intersection

In cases where the crossing is located far from the highway intersection -- up to 305 m (1000 ft), the

necessary minimum preemption warning time may be very high and in turn may require very long approach circuits along the tracks in order to provide such a time. Long track circuits can become extremely complex and expensive to implement, especially if located in an area where there are several adjacent crossings with overlapping track circuits, switching spurs, railroad junctions or commuter rail stations which could affect train operating speeds within the detection circuit. In addition, excessive preemption times may have detrimental effects on traffic flows within the vicinity of the crossing and may cause other problems such as traffic backing up along a route parallel to the crossing and backing up through another adjacent interconnected intersection. These are just a few factors to consider with a long distance interconnection.

Queue Cutter Flashing-light Beacon

An alternative to interconnecting the two traffic control devices may be the use of an automated Queue Cutter Flashing-light Beacon upstream of the highway-rail grade crossing. They may be utilized in conjunction with DO NOT STOP ON TRACKS (R8-8) as stated in the MUTCD signs. Such beacons can be activated by an induction loop on the departure side of the highway-rail grade crossing that detects a growing queue between the crossing and the distant highway intersection. If the beacons are activated only when the traffic signals on that approach are not green, they can be more effective as opposed to flashing all the time.

These are some of the many factors that should be considered when interconnecting an active traffic control device at a highway-rail grade crossing to a nearby highway traffic signal. A separate Preemption/Interconnection appendix is included with this report to provide further explanation of this very complex subject. However, it is not the intent of this document to serve as a primer for this very complicated topic. It cannot be emphasized enough that design, construction, operation and maintenance of this type of system requires expert knowledge and full cooperation between highway and railroad authorities. Other special conditions are discussed in the following section.

Also See Appendix for additional information

OTHER SPECIAL CONDITIONS

POTENTIAL QUEUING ACROSS TRACKS

Where queuing across a highway-rail grade crossing is occasioned by a nearby highway intersection that is not equipped with a traffic signal, the traffic engineer has a number of options including:

1) Install a DO NOT STOP ON TRACKS sign;
2) Install an automated Queue Cutter Flashing-light Beacon (see prior discussion in "Factors to Consider"); and/or;
3) Install a traffic signal with railroad preemption at the highway/highway intersection.

Queues extending over the highway-rail grade crossing could be considered a possible need for the installation of a traffic signal at the nearby highway intersection. However, the third option needs to be considered very carefully considering the harmful effects of an otherwise unwarranted traffic signal.

TRAIN AND LIGHT RAIL TRANSIT (LRT) ACTIVATED HIGHWAY TRAFFIC SIGNALS

Urban city streets often pose a special case for the application of active grade crossing traffic control devices. Slow speed switching moves and mixed-use light rail transit (LRT) operations are often controlled by traffic signals. In such cases, traffic signal heads must be clearly visible to the train operator. Trains must stop short before entering these intersections. Train detection can be accomplished [illegible]

of island track circuits, key selector switches, inductive loops, train to way-side communications and other technologies.

Where LRT vehicles move within the street median or through the intersection of two or more city streets, and where train operating speeds and sight distances are consistent with safe stopping distances, the train may operate through these intersections controlled by traffic signal indications without stopping. In such cases, special transit signal aspects, which clearly indicate traffic signal controlled right-of-way, must govern train moves. Special transit indications may also provide information concerning track alignment to the transit operator. Automatic train stops and other train control devices may be used to enforce a train=s compliance with the signal indication. Where special train aspects are present and safe stopping distance is assured, transit vehicles may utilize train to way-side communications, inductive loops, cantenary detector switches or other forms of detection to activate the traffic signals. Great care should be exercised in the location of special train indicators to avoid confusion to drivers approaching the intersection. Programmed heads and special aspects are helpful in this regard.

(SECOND) TRAIN COMING ACTIVE WARNING SIGN

Train detection systems can also be used to activate a "2nd Train Coming" supplemental warning sign. This sign is used on a limited basis, normally near commuter stations where multiple tracks and high volumes of pedestrian traffic are present. The sign will activate when a train is located within the crossing's approach circuits and a 2nd train approaches the crossing. It is also being evaluated at multiple track highway-rail grade crossings as a supplement to automatic gates. (Since this sign is not currently in the MUTCD, any jurisdictions wishing to use symbols to convey any part of this message, must request permission to experiment from the FHWA.)

PEDESTRIAN AND BICYCLIST CONSIDERATIONS

Non-motorist-crossing safety should be considered at all highway-rail grade crossings, particularly at or near commuter stations and at non-motorist facilities, such as bicycle/walking trails, pedestrian only facilities, and pedestrian malls.[17]

Passive and active devices may be used to supplement highway related active control devices to improve non-motorist safety at highway-rail crossings. Passive devices include fencing, swing gates, pedestrian barriers, pavement markings and texturing, refuge areas and fixed message signs. Active devices include flashers, audible active control devices, automated pedestrian gates, pedestrian signals, variable message signs and blank out signs.

These devices should be considered at crossings with high pedestrian traffic volumes, high train speeds or frequency, extremely wide crossings, complex highway-rail grade crossing geometry with complex right-of-way assignment, school zones, inadequate sight distance, and/or multiple tracks. All pedestrian facilities should be designed to minimize pedestrian crossing time and devices should be designed to avoid trapping pedestrians between sets of tracks.

Guidelines for the use of active and passive devices for Non-motorist Signals and Crossings are found in section 10D of Part 10 of the MUTCD.

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[17] *Traffic Control Devices Handbook.* Institute of Transportation Engineers. Washington, D.C.: 2001. Section 13.2.12, Railroad and Light Rail Transit Grad Crossings, www.ite.org or 202-289-0222.

ALTERNATIVES TO MAINTAINING THE CROSSING

CROSSING CLOSURE

Eliminating redundant and unneeded crossings should be a high priority. Barring highway or railroad system requirements that require crossing elimination, the decision to close or consolidate crossings requires balancing public necessity, convenience and safety. The crossing closure decision should be based on economics; comparing the cost of retaining the crossing (maintenance, accidents, and cost to improve the crossing to an acceptable level if it would remain, etc.) against the cost (if any) of providing alternate access and any adverse travel costs incurred by users having to cross at some other location. Because this can be a local political and emotional issue, the economics of the situation cannot be ignored. This subject is addressed in a 1994 joint FRA/FHWA publication entitled *Highway-Railroad Grade Crossings: A Guide To Crossing Consolidation and Closure*, and a March 1995 AASHTO publication, *Highway-Rail Crossing Elimination and Consolidation.*[18]

Whenever a crossing is closed, it is important to consider whether the diversion of highway traffic may be sufficient to change the type or level of traffic control needed at other crossings. The surrounding street system should be examined to assess the effects of diverted traffic. Often, coupling a closure with the installation of improved or upgraded traffic control devices at one or more adjacent crossings can be an effective means of mitigating local political resistance to the closure.

GRADE SEPARATION

The decision to grade separate a highway-rail crossing is primarily a matter of economics. Investment in a grade separation structure is long-term and impacts many users. Such decisions should be based on long term, fully allocated *life cycle* costs, including both highway and railroad user costs, rather than on initial construction costs. Such analysis should consider the following:

- eliminating train/vehicle collisions (including the resultant property damage and medical costs, and liability);
- savings in highway-rail grade crossing surface and crossing signal installation and maintenance costs;
- driver delay cost savings;
- costs associated with providing increased highway storage capacity (to accommodate traffic backed up by a train);
- fuel and pollution mitigation cost savings (from idling queued vehicles);
- effects of any "spillover" congestion on the rest of the roadway system;
- the benefits of improved emergency access;
- the potential for closing one or more additional adjacent crossings; and
- possible train derailment costs.

A recently released report, entitled "Grade Separations-When Do We Separate,[19]" provides a stepwise procedure for evaluating the grade separation decision. The report also contains a rough screening method based on train and roadway vehicular volumes. However, as pointed out in the report, the screening

[18] *See footnotes 20 and 21.*

[19] G. Rex Nichelson, Jr. & George L. Reed. *Grade Separations - When Do We Separate.*. 1999 Highway-rail Grade Crossing Conference. Texas Transportation Institute. College Station Texas. 17-19 October 1999. www.tti.edu, or www.tamu.edu.

method should be used with caution and should be calibrated for values appropriate for the particular jurisdiction.

TRAFFIC SEPARATION STUDY APPROACH TO CROSSING CONSOLIDATION

Both the FRA [20] and the AASHTO [21] have provided guidelines for crossing consolidation. State DOTs, road authorities and local governments may choose to develop their own criteria for closures based on local conditions. Whatever the case, a specific criteria or approach should be used, so as to avoid arbitrarily selecting crossings for closure. An example is provided by the North Carolina DOT.[22]

To improve crossing safety and provide a comprehensive approach to crossing consolidation, the traffic separation study approach is a worthwhile option. As part of a comprehensive evaluation of traffic patterns and road usage for an entire municipality or region, traffic separation studies determine the need for improvements and/or elimination of public highway-rail grade crossings based on specific criteria. Traffic separation studies progress in three phases: preliminary planning, study and implementation.

Crossing information is collected at all public crossings in the municipality. Evaluation criteria include: collision history, current and projected vehicular and train traffic, crossing condition, school bus and emergency routes, types of traffic control devices, feasibility for improvements and economic impact of crossing closures. After discussions with the local road authority, railroad, State DOT, municipal staff and local officials these recommendations may be modified. Reaching a "consensus" is essential prior to scheduling presentations to governing bodies and citizens.

Recommendations may include: installation of flashing-lights and gates, enhanced devices such as four-quadrant gates and longer gate arms, installation of concrete or rubber crossings, median barrier installation, pavement markings, roadway approach modifications, crossing or roadway realignments, crossing closures and/or relocation of existing crossings to safer locations, connector roads, and feasibility studies to evaluate potential grade separation locations.

The most dynamic aspect of the public involvement process occurs at crossing safety workshops and public hearings. A goal of these forums is to exchange information and convey the community benefits of enhanced crossing safety, including the potential consequences to neighborhoods of train derailments containing hazardous materials resulting from crossing accidents. Equating rail crossings to highway interchanges, something the average citizen can relate to, greatly assist in reinforcing the need for eliminating low-volume and/or redundant crossings.

NEW CROSSINGS

Similar to crossing closure/consolidation, consideration of opening a new public highway-rail crossing should likewise consider public necessity, convenience, safety and economics. Generally, new grade crossings, particularly on main-line tracks, should not be permitted unless no other viable alternatives exist and, even in those instances, consideration should be given to closing one or more existing crossings. If a

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[20] *Highway-Railroad Grade Crossings, a Guide to Crossing Consolidation and Closure.* Federal Railroad Administration/Federal Highway Administration. July 1994, www.fhwa.dot.gov or www.fra.dot.gov.

[21] *Highway-Rail Crossing Elimination and Consolidation, A Public Safety Initiative*. National Conference of State Railway Officials. March 1995, www.fhwa.dot.gov or www.fra.dot.gov.

[22] *Consolidating Railroad Crossings: on Track for Safety in North Carolina.* Rail Division, Engineering & Safety Branch. North Carolina Department Of Transportation. 2000, North Carolina DOT, available at: http://www.dot.state.nc.us/.

new grade crossing is to provide access to any land development, the selection of traffic control devices to be installed at the proposed crossing should be based on the projected needs of the fully completed development.

Communities, developers and highway transportation planners need to be mindful that once a highway-rail grade crossing is established, drivers can develop a low tolerance for the crossing being blocked by a train for an extended period of time. If a new access is proposed to cross a railroad where railroad operation requires temporarily holding trains, only grade separation should be considered.

GUIDANCE

These treatments are provided for consideration at every public highway-rail grade crossing. Specific MUTCD Signs and treatments are included for easy reference.

1. ***MINIMUM DEVICES*** - all highway-rail grade crossings of railroads and public streets or highways should be equipped with approved passive devices. For street running railroads/transit systems, refer to MUTCD Parts 8 and 10.

2. ***MINIMUM WIDTHS*** - All highway-rail grade crossing surfaces should be a minimum of one foot beyond the edge of the roadway shoulder measured perpendicular to the roadway center line, and should provide for any existing pedestrian facilities.

3. ***PASSIVE*** - Minimum Traffic Control Applications:
   A. A circular Railroad Advance Warning (W10-1) sign shall be used on each roadway in advance of every highway-rail grade crossing except as described in the MUTCD;

   B. An emergency phone number should be posted at the crossing. This posting should include the USDOT highway-rail grade crossing identification number, highway or street name or number, railroad milepost and other pertinent information;

   C. Where the roadway approaches to the crossing are paved, pavement markings are to be installed as described in the MUTCD, subject to engineering evaluation;

   D. Where applicable, the TRACKS OUT OF SERVICE sign should be placed to notify drivers that track use has been discontinued;

   E. One reflectorized crossbuck sign shall be used on each roadway approach to a highway-rail grade crossing;
      1) If there are two or more tracks, the number of tracks shall be indicated on a supplemental sign (R15-2) of inverted T shape mounted below the crossbuck.
      2) Strips of retroreflective white material not less than two inches in width shall be used on the back of each blade of each crossbuck sign for the length of each blade, unless the crossbucks are mounted back-to-back.
      3) A strip of retroreflective white material, not less than two inches in width, shall be used on the full length of the front and back of each support from the crossbuck sign to near ground level or just above the top breakaway hole on the post.

   F. Supplemental Passive Traffic Control Applications (subject to engineering evaluation):

1) Inadequate Stopping Sight Distance:
   a) Improve the roadway geometry;
   b) Install appropriate warning signs (including consideration of active types);
   c) Reduce the posted roadway speed in advance of the crossing:
      i) Advisory signing as a minimum;
      ii) Regulatory posted limit if it can be effectively enforced;
   d) Close the crossing;
   e) Reconfigure/relocate the crossing;
   f) Grade separate the crossing.
2) Inadequate Approach (Corner) Sight Distance (Assuming Adequate Clearing Sight Distance):
   a) Remove the sight distance obstruction;
   b) Install appropriate warning signs;
   c) Reduce the posted roadway speed in advance of the crossing:
      i) Advisory signing as a minimum;
      ii) Regulatory posted limit if it can be effectively enforced;
   d) Install a YIELD (R1-2) sign, with advance warning sign (W3-2a) where warranted by the MUTCD (restricted visibility reduces safe approach speed to 16- 24 km/h [10-15 mph]);
   e) Install a STOP (R1-1) sign, with advance warning sign (W3-1a) where warranted by the MUTCD (restricted visibility requires drivers to stop at the crossing);
   f) Install active devices;
   g) Close the crossing;
   h) Reconfigure/relocate the crossing;
   i) Grade separate the crossing.
3) Deficient Clearing Sight Distances (For One or More Classes of Vehicles):
   a) Remove the sight distance obstruction;
   b) Permanently restrict use of the roadway by the class of vehicle not having sufficient clearing sight distance;
   c) Install active devices with gates;
   d) Close the crossing;
   e) Reconfigure/relocate the crossing;
   f) Grade separate the crossing; and
   g) Multiple railroad tracks and/or two or more highway approach lanes in the same direction should be evaluated with regard to possible sight obstruction from other trains (moving or standing on another track or siding) or highway vehicles.
4) Stopping and corner sight distance deficiencies may be treated immediately with warning or regulatory traffic control signs, such as a STOP sign, with appropriate advance warning signs. However, until such time as permanent corrective measures are implemented to correct deficient **clearing** sight distance, interim measures should be taken which may include:
   a) Temporarily close the crossing; and
   b) Temporarily restrict use of the roadway by the classes of vehicles.

4. *ACTIVE* - If active devices are selected, the following devices should be considered:

TABLE 6
GUIDELINES FOR ACTIVE DEVICES

Class of Track	Maximum Allowable Operating Speed	Maximum Allowable Operating Speed

	For *Freight* Trains - Minimum Active Devices		For *Passenger* Trains - Minimum Active Devices	
Excepted track	10 mph	Flashers	N/A	N/A
Class 1 track	10 mph	Flashers	15 mph	Gates *
Class 2 track	25 mph	Flashers	30 mph	Gates *
Class 3 track	40 mph	Gates	60 mph **	Gates **
Class 4 track	60 mph	Gates	80 mph	Gates
Class 5 track	80 mph	Gates plus Supplemental Safety Devices	90 mph	Gates plus Supplemental Safety Devices
Class 6 track	110 mph with conditions	Gates plus Supplemental Safety Devices	110 mph	Gates plus Supplemental Safety Devices
Class 7 track	125 mph with conditions	Full Barrier Protection	125 mph	Full Barrier Protection
Class 8 track	160 mph with conditions	Grade Separation	160 mph	Grade Separation
Class 9 track	200 mph with conditions	Grade Separation	200 mph	Grade Separation

* Refer to MUTCD 2000 Edition, Part 10, transit and LRT in medians of city streets.
** Except 35 mph (56 km/h) for transit and LRT. Note: 1 mph = 1.61 km/h

A. Active devices ***with automatic gates*** should be considered at highway-rail grade crossings whenever an engineering study by a diagnostic team determines one or more of the following conditions exist:
   1) All crossings on the National Highway System, "U.S." marked routes or principal arterials not otherwise grade separated;
   2) If inadequate clearing sight distance exists in one or more approach quadrants, AND it is determined ALL of the following apply:
      a) It is not physically or economically feasible to correct the sight distance deficiency;
      b) An acceptable alternate access does not exist; and
      c) On a life cycle cost basis, the cost of providing acceptable alternate access or grade separation would exceed the cost of installing active devices with gates;
   3) Regularly scheduled passenger trains operate in close proximity to industrial facilities, eg. stone quarries, log mills, cement plants, steel mills, oil refineries, chemical plants and land fills;
   4) In close proximity to schools, industrial plants or commercial areas where there is substantially higher than normal usage by school buses, heavy trucks or trucks carrying dangerous or hazardous materials;
   5) Based upon the number of passenger trains and/or the number and type of trucks, a diagnostic team determines a significantly higher then normal risk exists that a train-vehicle collision could result in death of or serious injury to rail passengers;
   6) Multiple main or running tracks through the crossing;
   7) The expected accident frequency (EAF) for active devices without gates, as calculated by the USDOT Accident Prediction Formula including 5-year accident history, exceeds 0.1;
   8) In close proximity to a highway intersection or other highway-rail crossings and the traffic control devices at the nearby intersection cause traffic to queue on or across the tracks. (In such instances, if a nearby intersection has traffic signal control, it should be interconnected to provide preempted operation, and consider traffic signal control, if none); or
   9) As otherwise recommended by an engineering study or diagnostic team.

B. Active devices, with automatic gates should be considered *as an option* at public highway-rail grade crossings whenever they can be economically justified based on fully allocated life cycle costs *and* one or more of the following conditions exist:
   1) Multiple tracks exist at or in the immediate crossing vicinity where the presence of a moving or standing train on one track effectively reduces the clearing sight distance below the minimum relative to a train approaching the crossing on an adjacent track (absent some other acceptable means of warning drivers to be alert for the possibility of a 2nd train); [See Figure 1.]
   2) An average of 20 or more trains per day;
   3) Posted highway speed exceeds 64 km/h (40mph) in urban areas, or exceeds 88 km/h (55 mph) in rural areas;
   4) Annual Average Daily Traffic (AADT) exceeds 2000 in urban areas, or 500 in rural areas;
   5) Multiple lanes of traffic in the same direction of travel (usually this will include cantilevered signals);
   6) The crossing exposure (the product of the number of trains per day and AADT) exceeds 5,000 in urban areas, or 4,000 in rural areas;
   7) The expected accident frequency (EAF) as calculated by the USDOT Accident Prediction formula, including 5-year accident history, exceeds 0.075;
   8) An engineering study indicates that the absence of active devices would result in the highway facility performing at a level of service below Level C;
   9) Any new project or installation of active devices to significantly replace or upgrade existing non-gated active devices. For purposes of this item, replacements or upgrades should be considered "significant" whenever the cost of the otherwise intended improvement (without gates) equals or exceeds one-half the cost of a comparable new installation, and should exclude maintenance replacement of individual system components and/or emergency replacement of damaged units; or
   10) As otherwise recommended by an engineering study or diagnostic team.

C. Warning/Barrier Gate Systems should be considered as supplemental safety devices at:
   1) Crossings with passenger trains;
   2) Crossings with high-speed trains;
   3) Crossings in quiet zones; or
   4) As otherwise recommended by an engineering study or diagnostic team.

D. Enhancements for Pedestrian Treatments
   1) Design to avoid stranding pedestrians between sets of tracks;
   2) Add audible devices, based on an engineering study;
   3) Consider swing gates carefully; the operation of the swing gate should be consistent with the requirements of Americans with Disability Act. The gate should be checked for pedestrian safety within the limits of its operation;
   4) Provide for crossing control at pedestrian crossings where a station is located within the proximity of a crossing or within crossing approach track circuit for the highway-rail crossing;
   5) Utilize a Train to Wayside Controller to reduce traffic delays in areas of stations; and
   6) Delay the activation of the gates, flashers and bells for a period of time at the highway-rail grade crossing in station areas, based on an engineering study.

5. ***CLOSURE*** - Highway-rail grade crossings should be considered for closure and vacated across the railroad right-of-way whenever one or more of the following apply:

A. An engineering study determines a nearby crossing otherwise required to be improved or grade separated already has acceptable alternate vehicular access, and pedestrian access can continue at the subject crossing, if existing;

B. On a life cycle cost basis, the cost of implementing the recommended improvement would exceed the cost of providing an acceptable alternate access;

C. If an engineering study determines any of the following apply:
   1) FRA Class 1,2 or 3 track with daily train movements:
      a. AADT less than 500 in urban areas, acceptable alternate access across the rail line exists within .4 km (1/4 mi) and the median trip length normally made over the subject crossing would not increase by more than .8 km (1/2 mi);
      b. AADT less than 50 in rural areas, acceptable alternate access across the rail line exists within .8 km (1/2 mi) and the median trip length normally made over the subject crossing would not increase by more than 2.4 km (1-1/2 mi).
   2) FRA Class 4 or 5 track with active rail traffic:
      a. AADT less than 1000 in urban areas, acceptable alternate access across the rail line exists within .4 km (1/4 mi) and the median trip length normally made over the subject crossing would not increase by more than 1.2 km (3/4 mi);
      b. AADT less than 100 in rural areas, acceptable alternate access across the rail line exists within 1.61 km (1 mi) and the median trip length normally made over the subject crossing would not increase by more than 4.8 km (3 mi).
   3) FRA Class 6 or higher track with active rail traffic, AADT less than 250 in rural areas, an acceptable alternate access across the rail line exists within 2.4 km (1-1/2 mi) and the median trip length normally made over the subject crossing would not increase by more than 6.4 km (4 mi); and

D. An engineering study determines the crossing should be closed to vehicular and pedestrian traffic when railroad operations will occupy or block the crossing for extended periods of time on a routine basis and it is determined that it is not physically or economically feasible to either construct a grade separation or shift the train operation to another location. Such locations would typically include:
   1) Rail yards;
   2) Passing tracks primarily used for holding trains while waiting to meet or be passed by other trains;
   3) Locations where train crews are routinely required to stop their trains because of cross-traffic on intersecting rail lines or to pick up or set out blocks of cars or switch local industries en route;
   4) Switching leads at the ends of classification yards;
   5) Where trains are required to "double" in or out of yards and terminals;
   6) In the proximity of stations where long distance passenger trains are required to make extended stops to transfer baggage, pick up or set out equipment or be serviced en route; and
   7) Locations where trains must stop or wait for crew changes.

6. ***GRADE SEPARATION***

A. Highway-rail grade crossings should be considered for grade separation or otherwise eliminated across the railroad right-of-way whenever one or more of the following conditions exist:
   1) The highway is a part of the designated Interstate Highway System;
   2) The highway is otherwise designed to have full controlled access;

3) The posted highway speed equals or exceeds 113 km/h (70 mph);
4) AADT exceeds 100,000 in urban areas or 50,000 in rural areas;
5) Maximum authorized train speed exceeds177 km/h (110 mph);
6) An average of 150 or more trains per day or 300 Million Gross Tons (MGT) per year;
7) An average of 75 or more passenger trains per day in urban areas or 30 or more passenger trains per day in rural areas;
8) Crossing exposure (the product of the number of trains per day and AADT) exceeds 1,000,000 in urban areas or 250,000 in rural areas; or
9) Passenger train crossing exposure (the product of the number of passenger trains per day and AADT) exceeds 800,000 in urban areas or 200,000 in rural areas.
10) The expected accident frequency (EAF) for active devices with gates, as calculated by the USDOT Accident Prediction Formula including 5-year accident history, exceeds 0.5;
11) Vehicle delay exceeds 40 vehicle hours per day.[23]

B. Highway-rail grade crossings should be considered for grade separation across the railroad right-of-way whenever the cost of grade separation can be economically justified based on fully allocated life cycle costs and one or more of the following conditions exist:
1) The highway is a part of the designated National Highway System;
2) The highway is otherwise designed to have partial controlled access;
3) The posted highway speed exceeds 88 km/h (55 mph);
4) AADT exceeds 50,000 in urban areas or 25,000 in rural areas;
5) Maximum authorized train speed exceeds 161 km/h (100 mph);
6) An average of 75 or more trains per day or 150 MGT per year;
7) An average of 50 or more passenger trains per day in urban areas or 12 or more passenger trains per day in rural areas;
8) Crossing exposure (the product of the number of trains per day and AADT) exceeds 500,000 in urban areas or 125,000 in rural areas; or
9) Passenger train crossing exposure (the product of the number of passenger trains per day and AADT) exceeds 400,000 in urban areas or 100,000 in rural areas;
10) The expected accident frequency (EAF) for active devices with gates, as calculated by the USDOT Accident Prediction Formula including 5-year accident history, exceeds 0.2;
11) Vehicle delay exceeding 30 vehicle hours per day;[24]
12) An engineering study indicates that the absence of a grade separation structure would result in the highway facility performing at a level of service below its intended minimum design level 10% or more of the time.

C. Whenever a new grade separation is constructed, whether replacing an existing highway-rail grade crossing or otherwise, consideration should be given to the possibility of closing one or more adjacent grade crossings.

D. Utilize Table 7 for LRT grade separation:

TABLE 7

[23] San Gabriel Valley Grade Crossings Study, Final Report. Prepared for San Gabriel Valley Council of Governments. Korve Engineering. January 1997, bogden@korve.com

[24] Ibid.

Trains Per Hour	Peak Hour Volume (vehicles per lane)	Source: *Light Rail Transit Grade Separation Guidelines. An Informational Report.* Institute of Transportation Engineers. Technical Committee 6A-42. March 1992
40	900	
30	1000	
20	1100	
10	1180	
5	1200	

7. *NEW CROSSINGS*

A. Should only be permitted to cross existing railroad tracks at-grade when it can be demonstrated:
   1. For new public highways or streets where there is a clear and compelling public need (other than enhancing the value or development potential of the adjoining property);
   2. Grade separation cannot be economically justified, i.e. benefit to cost ratio on a *fully allocated* cost basis is less than 1.0 (generally, when the crossing exposure exceeds 50,000 in urban areas or exceeds 25,000 in rural areas); and
   3. There are no other viable alternatives.

B. If a crossing is permitted, the following conditions should apply:
   1. If it is a main track, the crossing will be equipped with active devices with gates;
   2. The plans and specifications should be subject to the approval of the highway agency having jurisdiction over the roadway (if other than a State agency), the State DOT or other State agency vested with the authority to approve new crossings, and the operating railroad;
   3. All costs associated with the construction of the new crossing should be borne by the party or parties requesting the new crossing, including providing financially for the ongoing maintenance of the crossing surface and traffic control devices where no crossing closures are included in the project;
   4. Whenever new public highway-rail crossings are permitted, they should fully comply with all applicable provisions of this proposed recommended practice; and
   5. Whenever a new highway-rail crossing is constructed, consideration should be given to closing one or more adjacent crossings.

TRAFFIC CONTROL DEVICE SELECTION PROCEDURE

Step 1 - **Minimum Highway-Rail Grade Crossing Criteria:** (see report for full description)

A. Gather preliminary crossing data:
   1. Highway:
      a. Geometric (number of approach lanes, alignment, median);
      b. AADT;
      c. Speed (posted limit or operating);
      d. Functional classification;
      e. Desired level of service;
      f. Proximity of other intersections (note active device interconnection); and
      g. Availability and proximity of alternate routes and/or crossings.
   2. Railroad:
      a. Number of tracks (type: FRA classification, mainline, siding, spur);
      b. Number of trains (passenger, freight, other);
      c. Maximum train speed and variability;
      d. Proximity of rail yards, stations and terminals; and
      e. Crossing signal control circuitry.
   3. Traffic Control Device:
      a. Passive or active;
      b. Advance;
      c. At crossing; or
      d. Supplemental.
   4. Prior collision history

B. Based on one or more of the above, determine whether any of the recommended thresholds for closure, installing active devices (if passive), or separation have been met based on highway or rail system operational requirements;

C. Consider crossing closure or consolidation:
   1. If acceptable alternate route(s) is/are available; or
   2. If an adjacent crossing is improved, can this crossing be closed? or
   3. If this crossing is improved, can an adjacent crossing be closed?

D. For all crossings, evaluate stopping and clearing sight distances. If the conditions are inadequate for the existing control device, correct or compensate for the condition (see Step 3 below).

E. If a passive crossing, evaluate corner sight distance. If less than the required for the posted or legal approach speed, correct or compensate for the condition (see Step 3 below).

Step 2 - **Evaluate Highway Traffic Flow Characteristics:**

A. Consider the required motorist response to the existing (or proposed) type of traffic control device. At passive crossings, determine the degree to which traffic may need to slow or stop based on evaluation of available corner sight distances.

B. Determine whether the existing (or proposed) type of traffic control device and railroad operations will allow highway traffic to perform at an acceptable level of service for the functional classification of the highway.

Step 3 - **Possible Revision to the Highway-Rail Grade Crossing:**

A. If there is inadequate sight distance related to the type of control device, consider measures such as:
   1. Try to correct the sight distance limitation;
   2. If stopping sight distance is less than "ideal" for the posted or operating vehicle approach speed and cannot be corrected, determine the safe approach speed and consider either posting an advisory speed plate at the advance warning sign or reduce the regulatory speed limit on the approach;
   3. If corner sight distance is inadequate and cannot be corrected, determine the safe approach speed and consider posting an advisory speed plate at the advance warning sign, or reduce the regulatory speed limit on the approach, or install STOP or YIELD signs at the crossing;
   4. If clearing sight distance is inadequate, upgrade a passive or flashing-light only traffic control device to active with gates, or close (consolidate) the crossing, or grade separate;

B. If highway and/or train volumes and/or speeds will not allow the highway to perform at an acceptable level of service, consider traffic control device upgrade to active (possibly with additional devices such as gates and medians), or closure (consolidation) or separation;

C. If crossing closure or consolidation is being considered, determine the feasibility and cost of providing of an acceptable alternate route and compare this to the feasibility and cost of improving the existing crossing;

D. If grade separation is being considered:
   1. Economic analysis should consider fully allocated life-cycle costs;
   2. Consider highway classification and level of service;
   3. Consider the possibility of closing one or more adjacent grade crossings.

Step 4 - **Interim Measures And/or Documentation:**

A. If the above analysis indicates a change or improvement in the crossing or type of traffic control devices is indicated, determine what if any interim measures can or should be taken until such time as recommended improvement can be implemented;

B. If the above analysis indicates a change or improvement in the crossing or type of traffic control devices is indicated, but there are other compelling reasons or circumstances for not implementing them, document the reasons and circumstances for your decision;

C. If the above analysis indicates no change or improvement in the crossing or type of traffic control devices is indicated, document the fact that the crossing was evaluated and determined to be adequate.

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GLOSSARY

Acceptable Alternate Access - For purposes of this guidance document, a roadway of at least comparable design, construction and utility as the roadway being closed, giving appropriate consideration to the additional traffic that would be diverted over it.

Active Crossing - All highway-rail grade crossings equipped with warning and/or traffic control devices that are activated by train detection.

CFR - Code of Federal Regulations

Clearance Time - The difference between vehicle crossing time and train arrival time.

Diagnostic Team - A group of knowledgeable representatives of the parties of interest in a highway-rail grade crossing or group of crossings.

Doubling Trains - When individual tracks in rail-yards are insufficient to hold an entire inbound or outbound train, it is necessary to "double" a train. For outbound trains, where the CFR requires an initial terminal brake test of the entire train, this requires assembling the entire train on one outbound track, usually the mainline, from several yard tracks. For inbound trains, when yarding the entire train on more than one yard track, this means leaving part of the train on the main line by either pulling through, then breaking the train, or initially pushing part of the train into a yard track, while holding the excess rail cars on a main track or lead, which are subsequently "yarded" on another track or tracks.

Passive Crossing - All highway-rail grade crossings having signs and pavement markings as traffic control devices that are not activated by trains, that identify and direct attention toward the location of a highway-rail grade crossing, and advise motorists, bicyclists, and pedestrians to take appropriate action.

Separation Time - The component of maximum preemption time during which the minimum track clearance distance is clear of vehicular traffic prior to the arrival of the train.

Train to Wayside Controller - Equipment sometimes employed by light rail transit systems to verify the identity of a light rail vehicle and perform numerous communication and signal functions. This is particularly effective on railroads with both heavy (freight) and LRT operation. As related to a passenger station near a highway-rail grade crossing, if the light rail vehicle is approaching the station to stop, such equipment reduces gate downtime by delaying activation of the gates at the crossing until the light rail vehicle is to depart the station rather than activating the gates as the light rail vehicle first approaches the station. (A through train would cause the gates to activate at the normal time).

Urban and Rural – "Urban and rural areas have fundamentally different characteristics with regard to density and types of land-use, density of street highway networks, nature of travel patterns, and the way in which these elements are related. Consequently, urban and rural functional systems are classified separately. Urban areas are considered those places within boundaries set by the responsible State and local officials having a population of 5,000 or more. Rural areas are those areas outside the boundaries of urban areas." (Source AASHTO Green Book) In addition, urban areas are generally characterized by having higher density of access to adjacent land use, lower vehicle operating speeds and lower levels of service of traffic flow.

Warning Time - The amount of time provided between activation of a active traffic control device by a train and passage of the train to the crossing.

APPENDIX

PREEMPTION/INTERCONNECTION

The topic of highway traffic signal preemption and interconnection to active highway-rail grade crossings is very complex. It requires special traffic engineering evaluation, and close coordination between highway and railroad design and operation personnel. This appendix has been included to provide some guidance information on the subject, and provides detailed discussion on several elements. (Please refer to the main document for discussion on when to interconnect, agency coordination, accommodation of second train situations and references.)

PEDESTRIAN CLEARANCE PHASE

The MUTCD provides that the pedestrian clearance phase may be "abbreviated" during the railroad preemption of the traffic signals. Some agencies have elected to utilize the abbreviated interval, some eliminate entirely the pedestrian clearance phase during the preemption sequencing, while others provide full clearance intervals. Abbreviating the pedestrian "don't walk" phase may expedite the intended vehicular cycle, however, it may not expedite pedestrian or driver behavior. Drivers may yield to pedestrians and thereby prevent vehicles behind them from clearing off the tracks. To minimize this potential, full pedestrian clearance may be provided, but consequently, additional minimum preemption warning time will be required. The preemption interconnect may consist of simultaneous preemption (traffic signals are preempted simultaneously with the activation of the railroad control devices), or advance preemption (traffic signals are preempted prior to the activation of the railroad control devices), or possibly a special design which could consist of two separate closed loop normally energized circuits. The first, pedestrian clearance call should occur a predetermined length of time to be defined by a traffic engineering study and continue until the train has departed the crossing. The purpose of the first call is to safely clear the pedestrian. The second, vehicle clearance call, programmed with a higher priority in the traffic signal controller than the first call, should occur a predetermined length of time to be determined in a traffic engineering study, but not less than 20 seconds prior to the arrival of a train, and continue until the train departs the crossing. The purpose of the second call is to clear motor vehicle queues, which may extend into the limits of the crossing. While one preemption interconnect circuit can be used to initially clear-out the pedestrian traffic and then a time delay used for the second vehicular clearance, a system with two separate circuits provides a more uniform timing if the train speed varies once preemption occurred. This is especially important if the train accelerates after the pedestrian clearance is initiated. A timing circuit may not provide adequate warning time.

If the pedestrian clearance phase is abbreviated (or eliminated), additional signing alerting pedestrians of a shortened pedestrian cycle should be considered.

TRAFFIC SIGNAL CONTROLLER RE-SERVICE CONSIDERATIONS

Traffic signal controller re-service is the ability of the traffic signal controller to be able to accept and respond to a second demand for preemption immediately after a first demand for preemption has been released, even if the programmed preemption routine/sequence is not complete. In other words, if a traffic signal controller receives an initial preempt activation and shortly thereafter it is deactivated, most traffic signal controllers will continue to time out the preemption sequence; if a second demand for preemption is placed during this period, the traffic signal controller must return to the track clearance green. At any point in the preemption sequence, even during the track clear green interval, the controller must return to the start of a full track clearance green interval with a second preemption demand. Until recently, most traffic signal controllers were unable to recognize a second preempt until the entire preemption sequence of the first activation timed out. If the second demand occurred during the initial preemption sequence, th[illegible]

signal controllers continued the same sequence as if that was still the initial demand for preemption. The traffic signal controller re-service capability must be able to accept and respond to any number of demands for preemption.

The point in which preemption is released from the railroad active control devices to the traffic signals is critical to the proper operation of re-service. In order for the traffic signal controller to recognize a second demand, the first demand must be released, therefore the railroad active control devices must release the preempt activation just as the crossing gates begin to rise, not when they reach a fully vertical position. Otherwise, especially at locations with short storage areas between the crossing and the highway intersection, traffic may creep under the rising gates and with a second train, a second track clear green interval will not be provided if the gates never reach a fully vertical position.

PROGRAMMING SECURITY

Security of programmed parameters is critical to the proper operation of the highway-rail preemption system. As an absolute minimum, control equipment cabinets should be locked and secure to prevent tampering and controllers should be password protected. In addition to preventing malicious tampering of control devices, security should be considered to prevent accidental changes in timing parameters, especially in the traffic signal controller where a programming mistake can easily be made due to the large quantity of parameters even when just viewing the data. Some traffic signal controller manufacturers have designed systems where the critical railroad preemption parameters can not be changed without both proper software and physically making a hardwire change the traffic signal cabinet. Without proper data changes, the traffic signals will remain in a flashing red operation until the data is corrected. In addition, these systems prevent a different type of controller or even controller software from operating the traffic signals. It is important to preserve the integrity of the system once it is tested and proven to operate properly. Another method of preserving the proper timing parameters is remote monitoring of the traffic signal controller. Routine uploads of traffic signal timings can be compared to a database to check for unapproved changes in any timing parameters.

SUPERVISED INTERCONNECT CIRCUITRY

The interconnection circuit between the highway traffic signal control cabinet and the railroad signal cabinet should be designed as a system. Frequently, the interconnect cable circuit is designed so that the preemption relay can be falsely de-energized, thereby causing a preempt call, without the railroad signals being activated. The traffic signals will then cycle through their clearance phase and remain at "stop" until the false preempt call is terminated. If a train approaches the crossing during the false preemption, the railroad signals will activate, but the traffic signals will not provide track clearance phases because they are still receiving the first false call. Even worse, a short between the wires in this type of circuit will virtually disable preemption and will only be recognizable once the railroad active control devices are activated with an approaching train. To address this potential problem supervised preemption circuits may be used. In its simplest form, the supervised circuit is formed by having two control relays in the traffic control cabinet each of which is energized by the railroad crossing relay. One relay, the Preemption Relay, is energized only when the railroad active control devices are off. The second relay, the Supervision Relay, is energized only when the railroad active control devices are operating. When circuited in this manner, only one control relay is energized at a time. If both relays are simultaneously energized or de-energized, the supervision logic determines that there is a problem and can implement action. This action may include initiating a clearance cycle and upon completion of the clearout, the traffic signals can go into an all-way flashing red instead of stop. The all-way flashing red will allow traffic to advance off the tracks instead of being held by the red signal. An engineering study may determine that the all-way flashing red is undesirable due to high highway traffic volumes compared to rail traffic. In all cases remote-monitoring devices that send alarm messages to the railroad and highway authority should be install[illegible]

enforcement traffic control should be used until repairs can be performed. More information on supervised circuits can be found in an article, *Supervised Interconnection Circuits at Highway-Rail Grade Crossings,* by Mansel, Waight, and Sharkey, ITE Journal, March 1999, Institute of Transportation Engineers available at www.ite.org

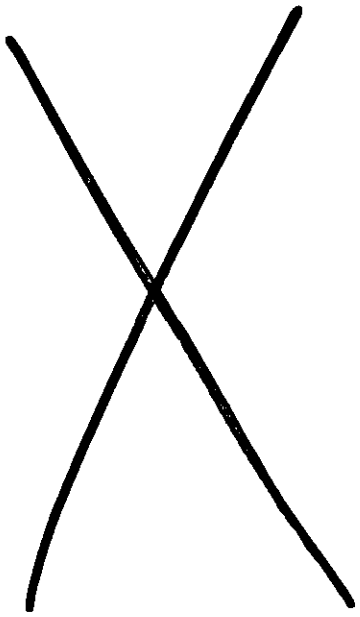
ADVANCE PREEMPTION AND USE OF TIMERS

When advance preemption is used the traffic signal preemption occurs prior to the active control devices being activated. This allows preemption to begin behind the scene and the active control time of the railroad signals is not necessarily increased. Railroads frequently use two detection times in their system. The first detection time is designed to initiate traffic signal preemption. The second detection time is used to activate the active control devices. If the train is decelerating as it approaches the crossing, the time difference between initiation of preemption and activation of the active control devices will increase. It is imperative that the time difference does not increase to the point where the traffic signal clear out cycle ends (i.e. traffic signal turns red) before the active control devices turn on. To prevent re-queuing traffic on the tracks, a "not-to-exceed" timer should be installed to force the activation of the active control devices prior to the appropriate time in the clear out cycle. If the train accelerates toward the crossing the second detection time will activate the active control devices prior to expiration of the timing cycle. Another issue when designing advance preemption circuitry is multiple consecutive train movements can cause the traffic signals to remain in preemption due to a second approaching train, but the railroad active control devices deactivate after the first train just clears the crossing. In this case, the traffic signals will not provide a second track clearance indication since the first call is still present, therefore the railroad circuitry should be designed to prevent this from occurring. Also, when the traffic signals experience a loss of power or a malfunction which causes an all way red flash, the advance preemption time becomes ineffective in helping clear vehicles from the crossing and effectively, vehicles will have less time to clear the crossing. An additional interconnection circuit should be utilized between the railroad and the traffic signal controls, so that the railroad active control devices would activate at the same time as the advance preempt circuit would normally activate the traffic signals in the event of all-way-red flash or loss of power to the traffic signals.

If railroad gates are used, another method of minimizing the potential of the clearout cycle from ending while traffic is on the tracks is to continue the clearout cycle until the gates are in the lowered position. This requires an additional circuit between the railroad cabinet and the highway traffic control cabinet and special logic in the traffic signal control cabinet. The above mentioned techniques for the supervised circuit may be employed.

STANDBY POWER SOURCES

Railroad active control devices are normally off when no train is approaching; therefore, railroads install backup power systems to provide power to the signals during commercial power failures. This is different from traffic signals that generally are dark if the commercial power is off. When traffic signals are dark, motorists in most jurisdictions are expected to know that traffic signals are ahead, stop their vehicle at the stop bar, and proceed through the intersection as if the dark signal was a stop sign. Since dark traffic signals cannot display a clear out aspect to a motorist, backup power systems should be considered at interconnected locations. When considering power back up systems for traffic signals, it should be considered on a system wide basis rather than just at individual interconnected locations since other adjacent signalized intersections may just as well also stall traffic. The fail-safe mode of operation in the event of a traffic signal malfunction is an all way red flash, in which case power back up systems will have no effect. The use of remote monitoring and law enforcement traffic control can be used to minimize the requirements and cost of the backup power system.



WUTC DOCKET TR-130499
EXHIBIT KH-10
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit No. ___ (KH-10)
Docket TR-130499
Witness: Kathy Hunter

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499

EXHIBIT TO TESTIMONY OF

Kathy Hunter

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

USDOT "Railroad-Highway Grade Crossing Handbook" (Nov. 2002), p. 83

October 1, 2013

should be notified of these intentions. The state highway agency might work out an agreement with the state regulatory commission that any information on railroad abandonments is automatically sent to the state highway agency. Additionally, the state highway agency should periodically call the state regulatory commission or STB to obtain the records on rail abandonments in the state. Railroad personnel responsible for crossing safety and operations should also seek the same information from their traffic and operating departments.

Once a rail line has been identified as abandoned or abandonment is planned, the crossings on that line should be identified. This can be determined from the state inventory of crossings or obtained from FRA, custodian of the U.S. DOT National Highway-Rail Crossing Inventory. A field inspection of these crossings should be made to determine if all crossings on that line, both public and private, are listed in the inventory and to verify the type of traffic control devices located at each crossing.

This field inspection provides an excellent opportunity to assess the safety and operations of each crossing on that line, as discussed in Chapter III. If the rail line is not abandoned, the necessary information has been gathered to improve each crossing by one of the alternatives described in following sections.

If rail service has been discontinued, pending resolution of the abandonment application and formal abandonment, immediate measures should be taken to inform the public. For example, "Exempt" signs, if authorized by state law or regulation, can be placed at the crossing to notify drivers of special vehicles that a stop at the crossing is not necessary. Gate arms should be removed, and flashing light signal heads should be hooded, turned, or removed. However, if these actions are taken, the traffic control devices must be restored to their original condition prior to operating any trains over the crossing. For any subsequent use of the crossing by rail traffic pending final abandonment, the railroad shall provide flagging, law enforcement, or other case-by-case manual control of the crossing. The railroad might flag the train over the crossing until such action can be taken.

If it appears that rail service has been permanently discontinued, and resolution of official abandonment appears certain, the track should be paved over and all traffic control devices removed. This action should be taken immediately following official abandonment if no possibility exists for resumption of rail service. This can be determined by examining the potential for industry or business to require rail service. For example, if the rail line was abandoned because the industry that required the service has moved and other plans for the land area have been made, it could be determined whether need for the rail service will continue. An agreement may be necessary between the public authority and the railroad to accomplish the physical removal of the tracks.

G. New Crossings

Similar to crossing closure/consolidation, opening a new public highway-rail crossing should likewise consider public necessity, convenience, safety, and economics. Generally, new grade crossings, particularly on mainline tracks, should not be permitted unless no other viable alternatives exist and, even in those instances, consideration should be given to closing one or more existing crossings. If a new grade crossing is to provide access to any land development, the selection of traffic control devices to be installed at the proposed crossing should be based on the projected needs of the fully completed development.

Communities, developers, and highway transportation planners need to be mindful that once a highway-rail grade crossing is established, drivers can develop a low tolerance for the crossing being blocked by a train for an extended period of time. If a new access is proposed to cross a railroad where railroad operation requires temporarily holding trains, only grade separation should be considered.[85]

H. Passive Traffic Control Devices

Passive traffic control devices provide static messages of warning, guidance, and, in some instances, mandatory action for the driver. Their purpose is to identify and direct attention to the location of a crossing to permit drivers and pedestrians to take appropriate action. Passive traffic control devices consist of regulatory signs, warning signs, guide signs, and supplemental pavement markings. They are basic devices and are incorporated into the design of active traffic control devices.

Signs and pavement markings are to be in conformance with MUTCD, which is revised periodically as the need arises. If there are differences between this handbook and the current edition of MUTCD concerning both active and passive traffic control devices, MUTCD should be

85 Ibid.

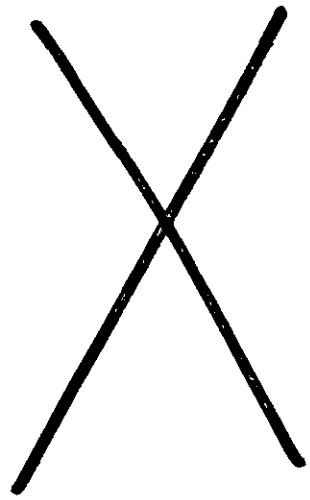


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Exhibit No. ___ (KH-11)
Docket TR-130499
Witness: Kathy Hunter

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CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499

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STAFF OF
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NFPA "Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments" (2010 ed.)

October 1, 2013

NFPA® 1710

Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments

2010 Edition

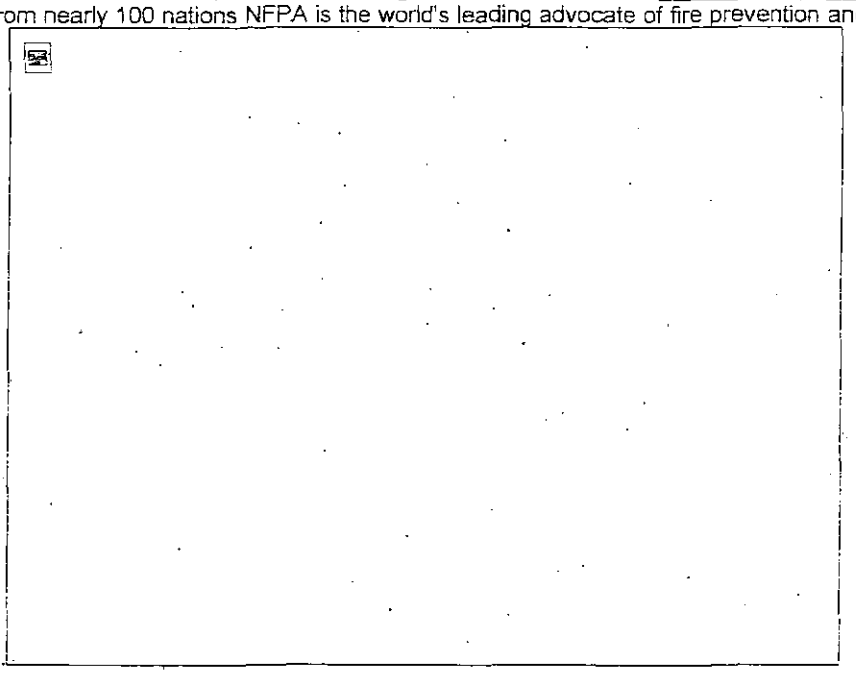
NFPA, 1 Batterymarch Park, Quincy, MA 02169-7471
An International Codes and Standards Organization

Exhibit No. ___ (KH-11)
Docket TR-130499
Page 2 of 5

National Fire Protection Association
The authority on fire, electrical, and building safety

Overview

The National Fire Protection Association (NFPA) is an international nonprofit organization established in 1896. The company's mission is to reduce the worldwide burden of fire and other hazards on the quality of life by providing and advocating consensus codes and standards, research, training, and education. With a membership that includes more than 70,000 individuals from nearly 100 nations NFPA is the world's leading advocate of fire prevention and an authoritative source on public safety.



President Jim Shannon provides an overview of NFPA.

Codes and Standards

NFPA is responsible for 300 codes and standards that are designed to minimize the risk and effects of fire by establishing criteria for building, processing, design, service, and installation in the United States, as well as many other countries. Its more than 200 technical code- and standard- development committees are comprised of over 6,000 volunteer seats. Volunteers vote on proposals and revisions in a process that is accredited by the American National Standards Institute (ANSI). National Fire Codes® Subscription Service All Access provides individual subscribers with online access to every NFPA code and standard, Handbooks and Annotated Editions. In addition, NFPA provides free online access to its codes and standards.

Some of the most widely used NFPA codes:

- NFPA 1, Fire Code: Provides requirements to establish a reasonable level of fire safety and property protection in new and existing buildings.
- NFPA 54, National Fuel Gas Code: The safety benchmark for fuel gas installations.
- NFPA 70®, National Electric Code®: The world's most widely used and accepted code for electrical installations.
- NFPA 101®, Life Safety Code®: Establishes minimum requirements for new and existing buildings to protect building occupants from fire, smoke, and toxic fumes.

Public education

NFPA devotes much of its efforts to protecting lives and property through education. The organization provides many resources for fire, electrical, and life-safety instructions. Our public education programs include:

- Fire Prevention Week in October, a national campaign for which NFPA has been the official sponsor since

- Remembering When®, a program developed to address the leading causes of injuries and death among older adults;
- Learn Not to Burn®, a program developed to address the leading causes of injuries and death among children;
- Activities associated with Sparky the Fire Dog®, the official mascot of NFPA.

Advocacy

NFPA oversees the operation of advocacy campaigns dedicated to increasing fire safety and awareness, including the Fire Sprinkler Initiative, Bringing Safety Home; the Coalition for Fire-Safe Cigarettes™; and the Alliance to Stop Consumer Fireworks.

Professional development

Stay current with the latest fire and life safety requirements, technologies, and practices with NFPA's expanded training offerings.

- Led by NFPA staff and other nationally recognized experts, our seminars provide insight into the meaning, intent, and proper application of fire and electrical safety codes.
- NFPA administers professional certification programs including Certified Fire Protection Specialist, Certified Fire Inspector, and Certified Fire Plans Examiner.
- Each June, the NFPA Conference & Expo fosters the exchange of ideas among Association members. New and revised NFPA codes and standards are also discussed and voted upon at these meetings.
- NFPA develops dozens of texts, guides, and other materials that target firefighter and other first responder safety and health.

Information resource

NFPA is the premier resource for fire data analysis, research, and analysis. This data helps guide educational outreach, support the work of NFPA Technical Committees, and frames the fire-loss picture for organizations, the media, and the general public.

- The Fire Analysis and Research division produces a wide range of annual reports and special studies on all aspects of the nation's fire problem.
- NFPA conducts investigations of fire incidents of technical interest to its constituents, including its Technical Committees and the broader fire community.
- The Fire Protection Research Foundation plans, manages, and communicates research in support of the development of NFPA's codes and standards and educational and public-awareness efforts.
- The Charles S. Morgan Library supports research and maintains the NFPA archives. It is one of the largest fire science libraries in the world.

Publications

- NFPA Journal®, our members-only bimonthly magazine, covers industry news.
- NFPA Journal® Buyers' Guide lists products and services from leading fire protection and fire service manufacturers and consultants.
- NFPA Journal® Latinoamericano is the #1 source of fire, security, and life safety information in Latin America.
- NFPA Journal Update, our members-only e-newsletter, covers breaking news and coming events.
- NFPA News provides status updates on the work of NFPA's technical committees and on other codes- and standards-releated activities.
- Fire Technology is a quarterly, peer-reviewed technical journal.
- See a full list of NFPA's publications.

NFPA members are invited to maximize their membership benefits by joining one or more of our 13 industry-specific Member Sections. Section membership is FREE and included with your NFPA membership.

International

NFPA's International Operations department works to develop and increase global awareness of NFPA, its mission and expertise by promoting worldwide use of NFPA's technical and educational information.

Online catalog

NFPA's online catalog provides a direct way for customers to purchase NFPA codes and standards, companion products, and public education materials.

NFPA (National Fire Protection Association)
Batterymarch Park, Quincy, MA 02169-7471 USA
Telephone: +1 617 770-3000 Fax: +1 617 770-0700

5.2.2.2.2 Each company shall be led by an officer who shall be considered a part of the company.

5.2.2.2.3* Supervisory chief officers shall be dispatched or notified to respond to all full alarm assignments.

5.2.2.2.4 The supervisory chief officer shall ensure that the incident management system is established as required in Section 6.2.

5.2.2.2.5* Supervisory chief officers shall have staff aides deployed to them for purposes of incident management and accountability at emergency incidents.

5.2.3 Operating Units. Fire company staffing requirements shall be based on minimum levels necessary for safe, effective, and efficient emergency operations.

5.2.3.1 Fire companies whose primary functions are to pump and deliver water and perform basic fire fighting at fires, including search and rescue, shall be known as engine companies.

5.2.3.1.1 These companies shall be staffed with a minimum of four on-duty personnel.

5.2.3.1.2 In jurisdictions with tactical hazards, high-hazard occupancies, high incident frequencies, geographical restrictions, or other pertinent factors as identified by the AHJ, these companies shall be staffed with a minimum of five or six on-duty members.

5.2.3.2 Fire companies whose primary functions are to perform the variety of services associated with truck work, such as forcible entry, ventilation, search and rescue, aerial operations for water delivery and rescue, utility control, illumination, overhaul, and salvage work, shall be known as ladder or truck companies.

5.2.3.2.1 These companies shall be staffed with a minimum of four on-duty personnel.

5.2.3.2.2 In jurisdictions with tactical hazards, high-hazard occupancies, high incident frequencies, geographical restrictions, or other pertinent factors as identified by the AHJ, these companies shall be staffed with a minimum of five or six on-duty personnel.

5.2.3.3 Other Types of Companies.

5.2.3.3.1 Other types of companies equipped with specialized apparatus and equipment shall be provided to assist engine and ladder companies where necessary to support the fire departments' SOPs.

5.2.3.3.2 These companies shall be staffed with the minimum number of on-duty personnel required to deal with the tactical hazards, high-hazard occupancies, high incident frequencies, geographical restrictions, or other pertinent factors as identified by the AHJ.

5.2.3.4 Fire Companies with Quint Apparatus.

5.2.3.4.1 A fire company that deploys with quint apparatus, designed to operate as either an engine company or a ladder company, shall be staffed as specified in 5.2.3.

5.2.3.4.2 If the company is expected to perform multiple roles simultaneously, additional staffing, above the levels specified in 5.2.3, shall be provided to ensure that those operations can be performed as required.

5.2.4 Deployment.

5.2.4.1 Initial Arriving Company.

5.2.4.1.1 The fire department's fire suppression resources shall be deployed to provide for the arrival of an engine company within a 240-second travel time to 90 percent of the incidents as established in Chapter 4.

5.2.4.1.2* Personnel assigned to the initial arriving company shall have the capability to implement an initial rapid intervention crew (IRIC).

5.2.4.2 Initial Full Alarm Assignment Capability.

5.2.4.2.1 The fire department shall have the capability to deploy an initial full alarm assignment within a 480-second travel time to 90 percent of the incidents as established in Chapter 4.

5.2.4.2.2* The initial full alarm assignment to a structure fire in a typical 2000 ft^2 (186 m^2), two-story single-family dwelling without basement and with no exposures shall provide for the following:

(1) Establishment of incident command outside of the hazard area for the overall coordination and direction of the initial full alarm assignment with a minimum of one individual dedicated to this task
(2) Establishment of an uninterrupted water supply of a minimum of 400 gpm (1520 L/min) for 30 minutes with supply line(s) maintained by an operator
(3) Establishment of an effective water flow application rate of 300 gpm (1140 L/min) from two handlines, each of which has a minimum flow rate of 100 gpm (380 L/min) with each handline operated by a minimum of two individuals to effectively and safely maintain the line
(4) Provision of one support person for each attack and backup line deployed to provide hydrant hookup and to assist in laying of hose lines, utility control, and forcible entry
(5) Provision of at least one victim search and rescue team with each such team consisting of a minimum of two individuals
(6) Provision of at least one team, consisting of a minimum of two individuals, to raise ground ladders and perform ventilation
(7) If an aerial device is used in operations, one person to function as an aerial operator and maintain primary control of the aerial device at all times
(8) Establishment of an IRIC consisting of a minimum of two properly equipped and trained individuals

5.2.4.2.3* Fire departments that respond to fires in high-, medium-, or low-hazard occupancies that present hazards greater than those found in the low-hazard occupancy described in 5.2.4.2.2 shall deploy additional resources on the initial alarm.

5.2.4.3 Additional Alarm Assignments.

5.2.4.3.1* The fire department shall have the capability to deploy additional alarm assignments that can provide for additional command staff, personnel, and additional services, including the application of water to the fire; engagement in search and rescue, forcible entry, ventilation, and preservation of property; safety and accountability for personnel; and provision of support activities for those situations that are beyond the capability of the initial full alarm assignment.

5.2.4.3.2 When an incident escalates beyond an initial full alarm assignment or when significant risk is present to the fire fighters due to the magnitude of the incident, the incident commander shall upgrade the IRIC to a full rapid intervention

crew(s) (RIC) that consists of an officer and at least three firefighters who are fully equipped and trained in RIC operations.

5.2.4.3.3 An incident safety officer shall be deployed to all incidents that escalate beyond an initial full alarm assignment or when significant risk is present to fire fighters.

5.2.4.3.4 The incident safety officer shall ensure that the safety and health system is established as required in Section 6.1.

5.3* **Emergency Medical Services (EMS).** The purpose of this section shall be to provide standards for the delivery of EMS by fire departments.

5.3.1 The fire department shall clearly document its role, responsibilities, functions, and objectives for the delivery of EMS.

5.3.1.1 EMS operations shall be organized to ensure that the fire department's emergency medical capability includes personnel, equipment, and resources to deploy the initial arriving company and additional alarm assignments.

5.3.1.2 The fire department shall be permitted to use established automatic aid or mutual aid agreements to comply with the requirements of Section 5.3.

5.3.2* System Components.

5.3.2.1 Treatment Levels.

5.3.2.1.1 The basic treatment levels within an EMS system, for the purposes of this standard, shall be categorized as first responder, basic life support (BLS), and advanced life support (ALS).

5.3.2.1.2 The specific patient treatment capabilities associated with each level shall be determined by the AHJ based on the requirements for approval and licensing of EMS providers within each state or province.

5.3.2.2 Training Levels.

5.3.2.2.1 The minimal level of training for all fire fighters that respond to emergency incidents shall be to the first responder/AED level.

5.3.2.2.2 The AHJ shall determine if further training is required.

5.3.3 EMS System Functions.

5.3.3.1 The AHJ shall determine which of the following components of an EMS system the fire department shall be responsible for providing:

(1) Initial response to provide medical treatment at the location of the emergency (first responder with AED capability or higher)
(2) BLS response
(3) ALS response
(4) Patient transport in an ambulance or alternative vehicle designed to provide for uninterrupted patient care at the ALS or BLS level while en route to a medical facility
(5) Assurance of response and medical care through a quality management program

5.3.3.2 Staffing.

5.3.3.2.1 On-duty EMS units shall be staffed with the minimum personnel necessary for emergency medical care relative to the level of EMS provided by the fire department.

5.3.3.2.2 EMS staffing requirements shall be based on the minimum levels needed to provide patient care and member safety.

5.3.3.2.2.1 Units that provide emergency medical care shall be staffed at a minimum with personnel trained to the first responder/AED level.

5.3.3.2.2.2 Units that provide BLS transport shall be staffed and trained at the level prescribed by the state or provincial agency responsible for providing EMS licensing.

5.3.3.2.2.3 Units that provide ALS transport shall be staffed and trained at the level prescribed by the state or provincial agency responsible for providing EMS licensing.

5.3.3.3 Service Delivery Deployment.

5.3.3.3.1 The fire department shall adopt service delivery objectives based on time standards for the deployment of each service component for which it is responsible.

5.3.3.3.2 The fire department's EMS for providing a first responder with AED shall be deployed to provide for the arrival of a first responder with AED company within a 240-second travel time to 90 percent of the incidents as established in Chapter 4.

5.3.3.3.3* When provided, the fire department's EMS for providing ALS shall be deployed to provide for the arrival of an ALS company within a 480-second travel time to 90 percent of the incidents provided a first responder with AED or BLS unit arrived in 240 seconds or less travel time as established in Chapter 4.

5.3.3.3.4 Personnel deployed to ALS emergency responses shall include a minimum of two members trained at the emergency medical technician–paramedic level and two members trained at the emergency medical technician–basic level arriving on scene within the established travel time.

5.3.4 Quality Management.

5.3.4.1 The fire department shall institute a quality management program to ensure that the service has met time objectives as required in 4.1.2 for all medical responses.

5.3.4.2 Fire Department Medical Personnel Review.

5.3.4.2.1 All first responder and BLS medical care provided by the fire department shall be reviewed by the fire department medical personnel.

5.3.4.2.2 This review process shall be documented.

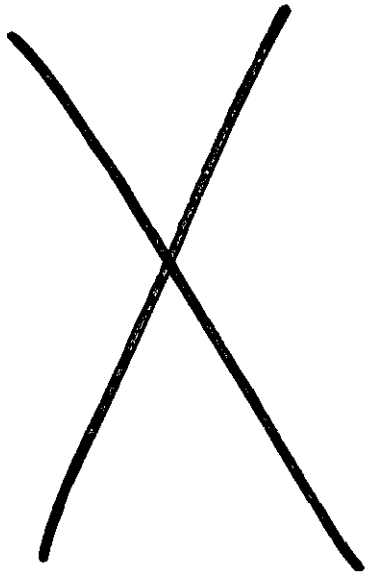
5.3.4.3 Medical Director Review.

5.3.4.3.1 All fire departments with ALS services shall have a named medical director with the responsibility to oversee and ensure quality medical care in accordance with state or provincial laws or regulations.

5.3.4.3.2 This review process shall be documented.

5.3.4.4 Fire departments providing ALS services shall provide a mechanism for immediate communications with EMS supervision and medical oversight.

5.4 **Special Operations Response.** Special operations shall be organized to ensure that the fire department's special operations capability includes personnel, equipment, and resources to deploy the initial arriving company and additional alarm assignments providing such services.



WUTC DOCKET TR-130499
EXHIBIT KH-12
ADMIT ☒ W/D ☐ REJECT ☐

Exhibit No. ___ (KH-12)
Docket TR-130499
Witness: Kathy Hunter

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CITY OF KENNEWICK, Petitioner, v. PORT OF BENTON, TRI-CITY & OLYMPIA RAILROAD COMPANY, BNSF RAILWAY COMPANY, AND UNION PACIFIC RAILROAD, Respondents.	DOCKET TR-130499

EXHIBIT TO TESTIMONY OF

Kathy Hunter

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Federal Railroad Administration Accident Predictor Model Results

October 1, 2013

Annual WBAPS 2013

WEB ACCIDENT PREDICTION SYSTEM

Accident Prediction Report for
Public at-Grade Highway-Rail Crossings

Including:

Disclaimer/Abbreviation Key
Accident Prediction List

Provided by:

Federal Railroad Administration
Office of Safety Analysis
Highway-Rail Crossing Safety & Trespass Prevention

Data Contained in this Report:
Crossing: 104547h'

Date Prepared: 9/30/2013

*PUBLIC HIGHWAY-RAIL CROSSINGS RANKED BY PREDICTED ACCIDENTS PER YEAR AS OF 12/31/2012**

*Num of Collisions: Most recent year is partial year (data is not for the complete calendar year) unless *Accidents per Year* is 'AS OF DECEMBER 31'.

RANK	PRED COLLS.	CROSSING	RR	STATE	COUNTY	CITY	ROAD	NUM OF COLLISIONS 12*	11	10	09	08	DATE CHG	W D	TOT TRN	TOT TRK	TTBL SPD	HWY PVD	HWY LNS	AADT
1	0.018701	104547H	BNSF	WA	BENTON	PROSSER	SIXTH ST	0	0	0	0	0		GT	8	2	45	YES	4	4,000
TTL:	**0.018701**							**0**	**0**	**0**	**0**	**0**								

U.S. Department
of Transportation
**Federal Railroad
Administration**

USING DATA PRODUCED BY WBAPS

(Web Accident Prediction System)

1200 New Jersey Avenue, SE
Third Floor West
Washington, DC 20590

WBAPS generates reports listing public highway-rail intersections for a State, County, City or railroad ranked by predicted collisions per year. These reports include brief lists of the Inventory record and the collisions over the last 10 years along with a list of contacts for further information. These data were produced by the Federal Railroad Administration's Web Accident Prediction System (WBAPS).

WBAPS is a computer model which provides the user an analytical tool, which combined with other site-specific information, can assist in determining where scarce highway-rail grade crossing resources can best be directed. This computer model does not rank crossings in terms of most to least dangerous. Use of WBAPS data in this manner is incorrect and misleading.

WBAPS provides the same reports as PCAPS, which is FRA's PC Accident Prediction System. PCAPS was originally developed as a tool to alert law enforcement and local officials of the important need to improve safety at public highway-rail intersections within their jurisdictions. It has since become an indispensable information resource which is helping the FRA, States, railroads, Operation Lifesaver and others, to raise the awareness of the potential dangers at public highway-rail intersections. The PCAPS/WBAPS output enables State and local highway and law enforcement agencies identify public highway-rail crossing locations which may require additional or specialized attention. It is also a tool which can be used by state highway authorities and railroads to nominate particular crossings which may require physical safety improvements or enhancements.

The WBAPS accident prediction formula is based upon two independent factors (variables) which includes (1) basic data about a crossing's physical and operating characteristics and (2) five years of accident history data at the crossing. These data are obtained from the FRA's inventory and accident/incident files which are subject to keypunch and submission errors. Although every attempt is made to find and correct errors, there is still a possibility that some errors still exist. Erroneous, inaccurate and non-current data will alter WBAPS accident prediction values. While approximately 100,000 inventory file changes and updates are voluntarily provided annually by States and railroads and processed by FRA into the National Inventory File, data records for specific crossings may not be completely current. Only the intended users (States and railroads) are really knowledgeable as to how current the inventory data is for a particular State, railroad, or location.

It is important to understand the type of information produced by WBAPS and the limitations on the application of the output data. WBAPS does not state that specific crossings are the most dangerous. Rather, the WBAPS data provides an indication that conditions are such that one crossing may possibly be more hazardous than another based on the specific data that is in the program. It is only one of many tools which can be used to assist individual States, railroads and local highway authorities in determining where and how to initially focus attention for improving safety at public highway-rail intersections. WBAPS is designed to nominate crossings for further evaluation based only upon the physical and operating characteristics of specific crossings as voluntarily reported and updated by States and railroads and five years of accident history data.

PCAPS and WBAPS software are not designed to single out specific crossings without considering the many other factors which may influence accident rates or probabilities. State highway planners may or may not use PCAPS/WBAPS accident prediction model. Some States utilize their own formula or model which may include other geographic and site-specific factors. At best, PCAPS and WBAPS software and data nominates crossings for further on-the-ground review by knowledgeable highway traffic engineers and specialists. The output information is not the end or final product and the WBAPS data should not be used for non-intended purposes.

It should also be noted that there are certain characteristics or factors which are not, nor can be, included in the WBAPS database. These include sight-distance, highway congestion, bus or hazardous material traffic, local topography, and passenger exposure (train or vehicle), etc. Be aware that PCAPS/WBAPS is only one model and that other accident prediction models which may be used by States may yield different, by just as valid, results for ranking crossings for safety improvements.

Finally, it should be noted that this database is not the sole indicator of the condition of a specific public highway-rail intersection. The WBAPS output must be considered as a supplement to the information needed to undertake specific actions aimed at enhancing highway-rail crossing safety at locations across the U.S. The authority and jurisdiction to appropriate resources towards the safety improvement or elimination of specific crossings lies with the individual States.

U.S. Department
of Transportation
Federal Railroad
Administration

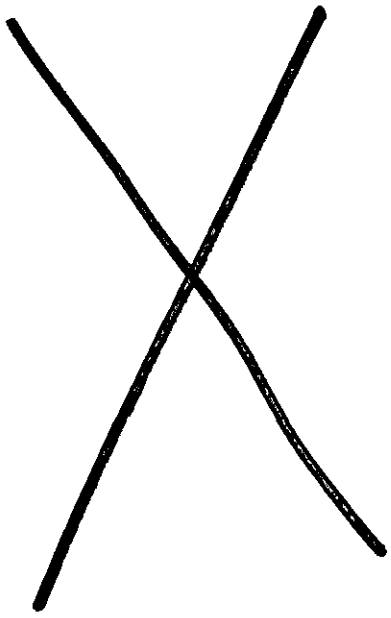
ABBREVIATION KEY

for use with WBAPS Reports

1200 New Jersey Avenue, SE
Third Floor West
Washington, DC 20590

The lists produced are only for public at-grade highway-rail intersections for the entity listed at the top of the page. The parameters shown are those used in the collision prediction calculation.

RANK:	Crossings are listed in order and ranked with the highest collision prediction value first.
PRED COLLS:	The accident prediction value is the probability that a collision between a train and a highway vehicle will occur at the crossing in a year.
CROSSING:	The unique sight specific identifying DOT/AAR Crossing Inventory Number.
RR:	The alphabetic abbreviation for the railroad name.
CITY:	The city in (or near) which the crossing is located.
ROAD:	The name of the road, street, or highway (if provided) where the crossing is located.
NUM OF COLLISIONS:	The number of accidents reported to FRA in each of the years indicated. Note: Most recent year is partial year (data is not for the complete calendar year) unless Accidents per Year is 'AS OF DECEMBER 31'.
DATE CHG:	The date of the latest change of the warning device category at the crossing which impacts the collision prediction calculation, e.g., a change from crossbucks to flashing lights, or flashing lights to gates. The accident prediction calculation utilizes three different formulas, on each for (1) passive devices, (2) flashing lights only, and (3) flashing lights with gates. When a date is shown, the collision history prior to the indicated year-month is not included in calculating the accident prediction value.
WD:	The type of warning device shown on the current Inventory record for the crossing where: FQ=Four Quad Gates; GT = All Other Gates; FL = Flashing lights; HS = Wigwags, Highway Signals, Bells, or Other Activated; SP = Special Protection (e.g., a flagman); SS = Stop Signs; XB = Crossbucks; OS = Other Signs or Signals; NO = No Signs or Signals.
TOT TRNS:	Number of total trains per day.
TOT TRKS:	Total number of railroad tracks between the warning devices at the crossing.
TTBL SPD:	The maximum timetable (allowable) speed for trains through the crossing.
HWY PVD:	Is the highway paved on both sides of the crossing?
HWY LNS:	The number of highway traffic lanes crossing the tracks at the crossing.
AADT:	The Average Annual Daily Traffic count for highway vehicles using the crossing.



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Utilities and Transportation Division
1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

December 11, 2013

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *City of Kennewick - Petition to Construct a Highway-Rail Grade Crossing, Center Parkway, Kennewick, WA*
Docket TR-130499

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and six copies of a Public Comment Exhibit, and Certificate of Service.

Sincerely,

STEVEN W. SMITH
Assistant Attorney General

SWS/emd
Enclosures
cc: Parties w/enc.

Public Comments by Case

Total Comments: 11
In Favor: 11
Opposed: 0

Filing Support	Commenter	Source	Comments
Yes			
	GRACE INVESTMENTS INC	E-mail	I am in favor of crossing at Center Parkway in Kennewick per your notice
	RED HEAD INVESTMENTS LLC, Robert Johnson	E-mail	I am in favor of crossing at Center Parkway in Kennewick per your notice.
	Benton-Franklin Council of Governments - Brian Malley	In person	Mr. Malley testified at the Nov 20 public comment hearing in Richland, and provided written comments. Written comments attached.
	Tri-City Development Council - Carl F. Adrian	Mail	Written comments attached.
	Ginger Wireman	E-mail	I fully support a grade-level crossing at Center Parkway.comments@utc.wa.gov It is ludicrous that this decision has taken so long. Businesses – particularly the hotel – have undoubtedly lost many thousands of dollars because the road does not go through. Why would a business traveler stay a second time at the Holiday Inn Express once he or she discovers the horrible access to amenities near the hotel? The railroad company has no legitimate reason to avoid fixing this problem. There are too few trains/day to justify the foot dragging. Properly finishing the connection will improve the property values all along Tapteal – which may finally allow them vacant parcels to be developed. The residents of Richland invested significant funds in the infrastructure on Tapteal -we need to get those commercial property taxes flowing into our city coffers.

			Even with more trains added in the future (e.g. Horn Rapids spur or new industry comes into Hanford and the rail line is extended) there will be no more inconvenience than that experienced at Edison which has many more cars/day. Ginger Wireman 2435 Michael Ave. Richland, WA 99352 Sent from Ginger's iPhone - Call 509-528-9377
	Kim Shugart, Tri Cities Visitor and Convention Bureau	In person	This person testified at the public comment hearing on Nov. 20, in Richland.
	Lori Mattson, Tri-City Regional Chamber of Commerce	Mail	Written comments attached.
	Skip Novakovich, Port of Kennewick Board of Commissioners	E-mail	Written comments attached.
	Gregory S. Markel, Washington Securities & Investment Corporation	Mail	Written comments attached.
	Preston Ramsey	E-mail	This person testified at the Nov. 20 public comment hearing in Kennewick, and provided written comments on Dec. 10. Written comments attached.

Benton-Franklin Council of Governments

1622 TERMINAL DRIVE
P.O. BOX 217
RICHLAND, WA 99352

November 20, 2013

Utilities and Transportation Commission Members:

My name is Brian Malley and I am the Executive Director for the Benton-Franklin Council of Governments (COG), which serves as the Metropolitan Planning Organization for the Tri-City metropolitan area. I am here tonight to encourage UTC approval of the Center Parkway grade crossing being considered.

Prior to my hire as Executive Director for our agency, I spent 14 years involved with Transportation Planning at the COG for our metropolitan area and the three-county region. The vast majority of that time was spent as the staff responsible for completing traffic modeling for the Tri-City area, as well as preparation and assistance with both short and long-term project plans. I am familiar with the area roadways and land uses, the intent of the project, as well as the funding agencies that have had funds committed...in some cases, for many years.

The Center Parkway connection between Gage Blvd and Tapteal Drive has been listed as a planned project since 1999 and has been a component of the Metropolitan Transportation Plan in 2001, 2006, and 2011. As a component of those plans, traffic modeling is completed that assumes the project will be built in future year congestion evaluations. This proposed connection would help ease traffic congestion upon other area roadways - Columbia Center Blvd, Gage Blvd, and Steptoe – all of which are forecast to experience congestion in both ten and twenty-year evaluations. Those familiar with the area may argue congestion is evident during some periods today.

In addition to easing congestion, this proposed link provides connectivity to two adjacent retail areas that are separated only by the tracks that divide them. The Tri-City area has, and continues to, grow at impressive rates. Planning and encouraging alternate modes, such as bike/ped/transit will be a crucial step toward alleviating future congestion. At this time, there simply is no option between these two retail areas that does not require the use of a car to negotiate the roadways to travel between. Additionally, a connection in this location may well contribute to the tax base, as Tapteal area businesses have suffered through marginal access for years, with no reasonable link to the adjacent retail areas to the south.

The Transportation Improvement Board selected this project for funding in 2007 through a highly competitive process. The project is fully supported by neighboring jurisdictions and would provide great benefit to the public in the area. I encourage the UTC to grant approval of the at-grade crossing and allow this project to proceed.

Thank you for your consideration,

B. Malley

Brian Malley
Executive Director/BFCG

TRIDEC
TRI-CITY DEVELOPMENT COUNCIL

7130 W. Grandridge Blvd., Ste. A
Kennewick, WA 99336-7725
www.TRIDEC.org

Phone: 509.735.1000
Fax: 509.735.6609
1-800-TRI-CITY

November 20, 2013

Honorable Judge Adam Torem
Washington State Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250

SUBJECT: CENTER PARKWAY

Dear Judge Torem:

I am writing to express my support for the Cities of Kennewick and Richland's petition for an at-grade railroad crossing on the planned Center Parkway. My organization, the Tri-City Development Council (TRIDEC), is the lead economic development organization for Benton and Franklin Counties. Our membership consists of 350 of the community's leading businesses and we have contractual relationships with the four cities, two counties and three port districts to provide economic development services for those entities.

I believe this at-grade railroad crossing on Center Parkway is a well-planned necessary component of our region's transportation system. The project will dramatically improve traffic movement between two important and growing commercial areas in Richland and Kennewick.

Mobility, safety, and efficiency for a variety of travel methods and populations are all engrained in our region's transportation system planning. Completion of Center Parkway between Tapteal Drive and Gage Boulevard is a long-standing element of a carefully developed transportation system plan. That planning has included careful consideration of the safety implications in the planned road and at-grade railroad crossing.

As president of the Tri-City Development Council I interact with our region's infrastructure planning on a regular basis and work to advance the region's prosperity by matching business and industry needs with our region's capacities. I wholeheartedly endorse and commend our region's transportation planners as laying a sound foundation for our region's present users and future growth.

I urge you to grant approval of the Cities' petition and enable another key element of our effective regional planning to be completed.

Sincerely,

Carl F. Adrian
President/CEO

Copy: Pete Rogalsky

TRI-CITY
REGIONAL CHAMBER OF COMMERCE
W·A·S·H·I·N·G·T·O·N

Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive, SW
P.O. Box 47250
Olympia, WA 98504-7250

November 21, 2013

Dear Commissioners,

On November 20, 2013, the Utilities & Transportation Commission (UTC) held a hearing for public comments on a request by the Cities of Kennewick and Richland to construct an at-grade railroad crossing at Center Parkway in Kennewick. The Tri-City Regional Chamber of Commerce strongly supports this request, as it would help address traffic and safety concerns in this rapidly growing area in the community. As the UTC considers this proposal, we urge your support for this request.

The project would connect Tapteal Drive in the City of Richland with Gage Boulevard in the City of Kennewick via a roundabout that exists at the intersection of Gage and Center Parkway. The at-grade crossing would cross four existing railroad tracks currently operated by Union Pacific Railroad and Tri-City & Olympic Railroad. The surrounding area has experienced considerable commercial development that is expected to continue in the future. As a result, the increased traffic has created circulation issues that have impacted both motorist safety and emergency response times in the area. This project is very important for the community to alleviate traffic congestion by providing an alternative to the high-traffic along the retail corridors of Columbia Center Boulevard and Steptoe Street, while improving access for emergency responders.

The Tri-City Regional Chamber of Commerce urges the UTC's support for this project to provide residents with a safe traffic environment as the region experiences continued growth. As this project moves forward, we also urge the UTC to ensure all local businesses and property owners are treated fairly throughout the eminent domain process.

The Tri-City Regional Chamber of Commerce is the leading business advocate for nearly 1,300 private, public and non-profit member firms in the Tri-Cities region. The fifth-largest chamber in Washington, the Tri-City Regional Chamber advocates for a strong business community and supports the interest of its members, which are located in Benton and Franklin Counties and beyond.

Sincerely,

Lori Mattson, IOM
President & CEO
Tri-City Regional Chamber of Commerce

7130 West Grandridge Blvd., Suite C • Kennewick, WA 99336
e-mail: info@tricityregionalchamber.com • tel (509) 736-0510 • fax (509) 783-1733 • www.tricityregionalchamber.com

PORT of KENNEWICK
COMMISSIONERS | DON BARNES | GENE WAGNER | SKIP NOVAKOVICH

December 6, 2013

By Electronic and US Mail

Washington Utilities and Transportation Commission
Attn., Adam Torem, Judge
P.O Box 47250
Olympia, WA 98504-7250

Re: Application of City of Kennewick and City of Richland – Center Parkway Project
WUTC Docket No. TR – 130499

Dear Judge Torem:

The Port of Kennewick ("Port") urges the approval of the Center Parkway extension to Tapteal Drive, as requested in the above-referenced application.

The Port, in existence since 1915 in Benton County, represents a 485-square-mile area including Kennewick, Richland (south of the Yakima River), West Richland, a small part of Benton City and some of the unincorporated areas of Benton County.

The Port owns and operates numerous public facilities, including Vista Field Airport, Clover Island Marina, and industrial sites at Finley, Oak Street, Plymouth, Spaulding, Twin Tracks, West Richland and Vista Field. The Commissioners maintain a Comprehensive Scheme of Development and Harbor Improvements (sometimes referred to as a "Comp Scheme"). See RCW 53.20.010; RCW 14.08.030; and, RCW 14.08.090(C). Through planning processes, the Port regularly evaluates Port properties for use and development for the economic benefit of the community.

Transportation infrastructure is critical to the success of regional planning and transportation management. This includes movement of freight and products (agricultural and otherwise) using trucks. The local network of train linkages would not function without the intermodal connections from a supporting system of roads. The Port actively participates in regional planning efforts. The Center Parkway project south from Tapteal Drive has been a key link to the region's transportation grid for over a decade, and necessary for ongoing community development. The Port joins the Tri-City Regional Chamber of Commerce and Tri-City Development Council (TRIDEC) in their support for this critical project.

350 CLOVER ISLAND DRIVE | SUITE 200 | KENNEWICK, WA 99336
509.586.1186 | FAX: 509.582.PORT (7678) | WWW.PORTOFKENNEWICK.ORG

In addition to the critical transportation needs, is the equally important public health and safety element that supports all property development in this community. Port facilities need prompt response from police and fire facilities. The Center Parkway project also assures the better linkage and critical response times of the police and fire resources in this interconnected community.

Thank you for the consideration of the Port's position. The Port asks the WUTC to approve the application for an at-grade crossing for the Center Parkway extension to Tapteal Drive.

Sincerely,

PORT OF KENNEWICK
BOARD OF COMMISSIONERS

Skip Novakovich
President, Board of Port Commissioners

Cc: City of Kennewick
City of Richland

WASHINGTON SECURITIES & INVESTMENT CORPORATION
8911 Grandridge Blvd., Suite C, Kennewick, WA 99336

December 9, 2013

Honorable Judge Adam Torem
Washington State Utilities and Transportation Commission
PO Box 47250
Olympia, Wa. 98504-7250

Subject: Center Parkway at grade railroad crossing; Kennewick/Richland, Washington

Dear Honorable Judge Torem:

I am writing to formally express my strong support for the need of the at-grade railroad crossing to connect Tapteal Drive (Richland) with Gage Blvd. (Kennewick).

My office has been located on Gage Blvd./Grandridge Blvd (Kennewick) for over thirty years and we have been fortunate enough to be in the path of progress as Gage, Center Parkway, Grandridge Blvd, Steptoe, Leslie, Keene, Tapteal and Columbia Center Blvd. have systematically expanded.

My office is a full service real estate office engaging in Real Estate development, appraisals, sales and my first love - Right of Way acquisition and appraisal. In the past three - four decades we have worked on 5,300 - 5,400 parcels; the majority of these at the municipal level and dealing with Federal Funding.

This particular project has been incubating for many years as the major arterials to its east and west have come to fruition; traffic has increased considerably as these adjacent arterials have opened access from West Richland, Richland, Pasco and west Kennewick. This badly needed north/south arterial from Tapteal Drive south to Gage Blvd. and beyond will help relieve the traffic congestion on Columbia Center Blvd., Keene and Steptoe and help create a less circuitous route for all, especially for emergency responders. Without any reservations I support and ask you to approve the petition to complete this overdue and necessary transportation improvement.

Thank you in advance for your time and consideration of this request.

Respectfully yours,

Gregory S Markel

Gregory S. Markel, CCIM
Broker/President
Washington Securities &
Investment Corporation

Real Estate Sales • Appraisals • Commercial Investment • Property Management • Investment Analysis

(509) 735-CALL **(509) 735-6964**
Telephone **Fax**

e-mail: wsic@urx.com

December 09, 2013

Preston K. Ramsey III
11915 E. Broadway, Suite 200
Spokane Valley, WA. 99206
509-979-7774
on behalf of FBA Land Holdings, owner of land located directly adjacent to the proposed crossing (labeled "Tap I" & "Tap II" on the attached map).

Dear Honorable Torem,

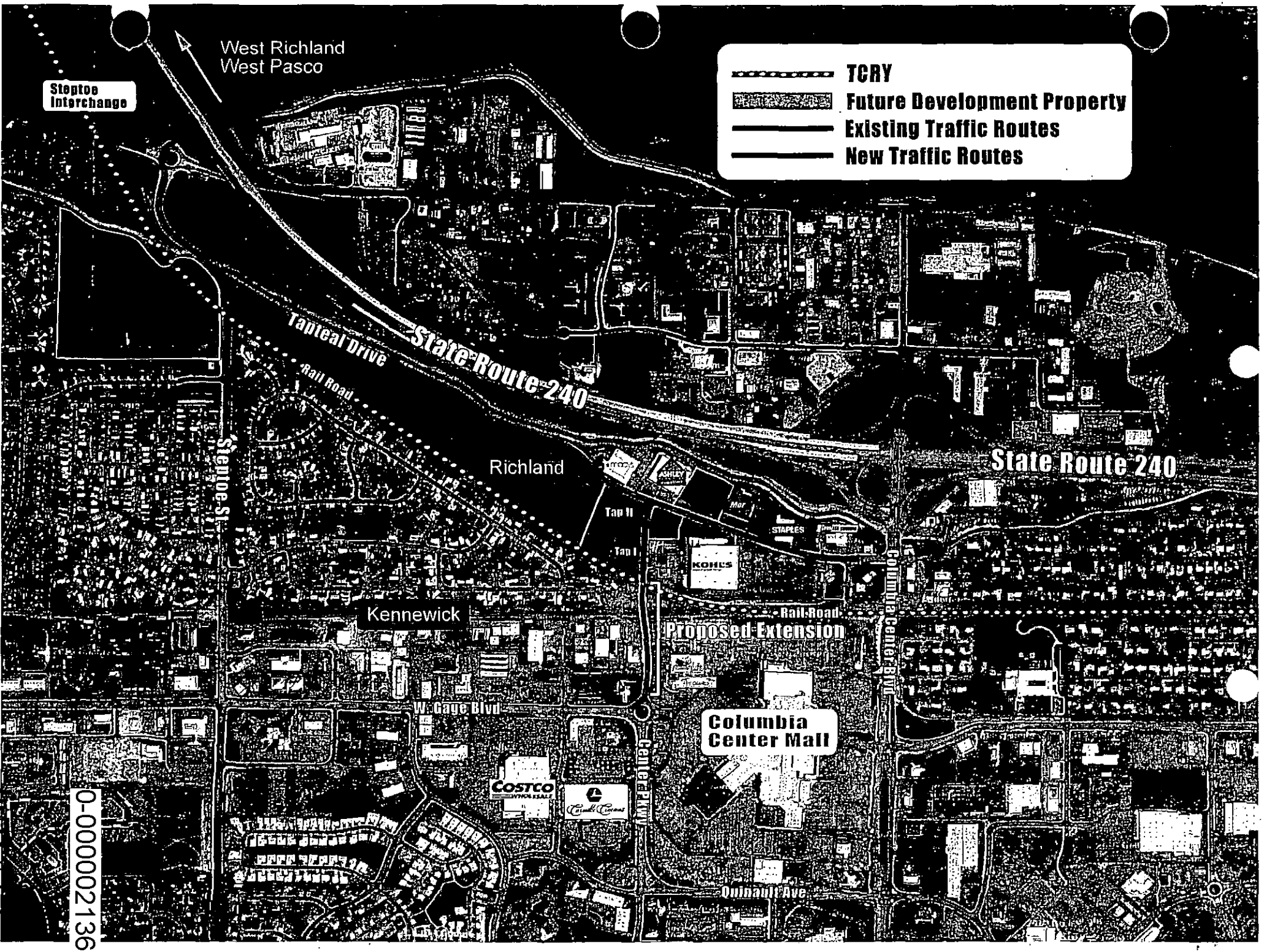
The proposed street extension of Center Parkway across railroad tracks currently leased by TCRY literally would create a new bridge between two highly interdependent communities in terms of transportation, economics, land use as well as the traffic patterns and habits of the approximate 25,000 people who live, work and otherwise travel through this area daily. As the attached map demonstrates, the existing railroad tracks act as a physical barrier at the shared jurisdictional boundary. Both the City of Kennewick and City of Richland very much support this new access for many reasons and at virtually all levels but its the urging of their respective Emergency Services and Police Departments that should speak volumes for the proposed crossings safety and need. No less importantly, the vast majority of the people these jurisdictions serve also support it. After all, who is better suited to determine the benefit of such a link? A handful of individuals with narrow business interests or the thousands of people who's lives are directly affected daily?

Our involvement with this property dates back to 2003 and even by that time there had been significant efforts by both Cities to connect via an extension of Center Parkway either over, under or across the tracks to Gage Blvd. The current roundabout at the intersection of Gage and Center Parkway was designed and constructed in anticipation of such a connection (also attached is a formal 2002 design showing the proposed at grade extension which is identical to the present plan aside from a slight road realignment). At that time, officials from both cities said they had been working to gain approval for the crossing going back to the mid-1980's and that both had sought and secured construction funding in anticipation of being able to cross the tracks. These efforts predate TCRY's 1999 incorporation and the 1998 beginning of its President, Randolph Peterson's, "involvement in railroading in the area" (accord to his written testimony) so it's difficult to imagine Mr. Peterson not being aware of the potential crossing when negotiating the lease with Port of Benton. It's also difficult to imagine how TCRY could be financially harmed by the proposed crossing — a position that was also supported by Mr. Peterson's own verbal testimony when he appeared in recent hearings.

There is unanimous community, government, business and trade group support for this proposed crossing. WUTC's own staff supports it both on the basis that "acute public need" is adequately demonstrated, but Kathy Hunter also said it stands up to the broader test of "general public benefit". There's little doubt that approving the crossing permit will improve convenience and safety for thousand of people for years to come, while denial only serves to avoid the small possibility of inconveniencing a few and far-removed individuals business habits for the time being. In short, the proposed crossing is just good municipal transportation planning.

Sincerely,

Preston Ramsey


West Richland
West Pasco
Steptoe Interchange
TCRY
Future Development Property
Existing Traffic Routes
New Traffic Routes
Tapteal Drive
Rail Road
State Route 240
Steptoe St.
Richland
Tap II
Tap I
KOHLS
STAPLES
State Route 240
Columbia Center Blvd
Kennewick
Rail Road
Proposed Extension
W. Gage Blvd
Columbia Center Mall
COSTCO
Center Pkwy
Quinault Ave

0-00002136

CITY OF KENNEWICK

CENTER PARKWAY EXTENSION

ALIGNMENT 1

PLAN AND PROFILE

FIGURE 5

PRELIMINARY

PLOT DATE: 05/23/02

ALIGNMENT 1 PLAN

SCALE IN FEET

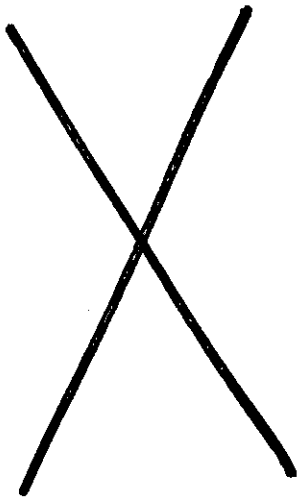
RICHLAND STREET CROSS SECTION

KENNEWICK STREET CROSS SECTION

ALIGNMENT 1 PROFILE

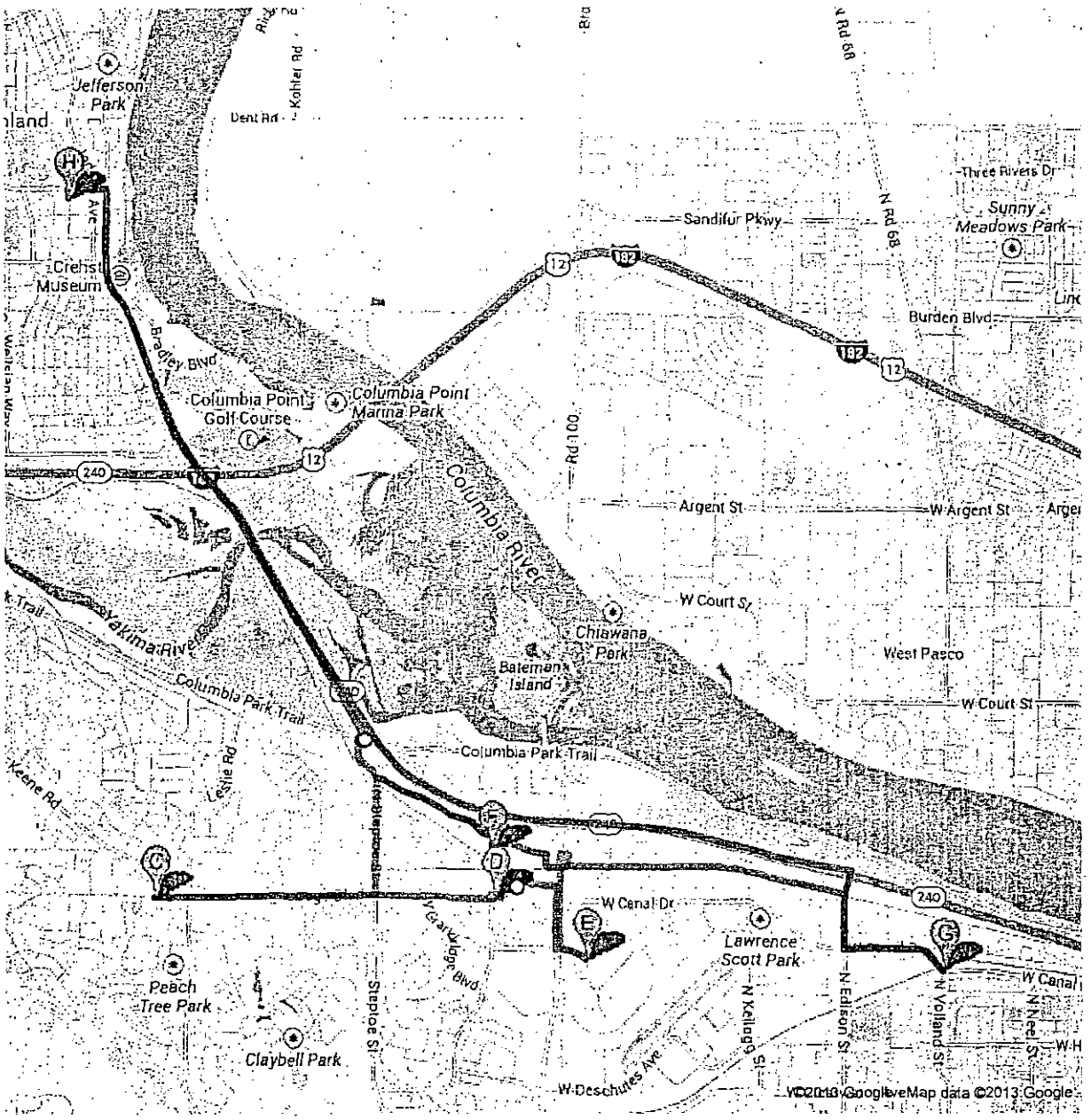
300' VC

150' VC



Google

Directions to Richland Public Library
955 Northgate Dr, Richland, WA 99352
21.4 mi – about **53 mins**
Start at Richland Library => Holiday Inn Express => Richland Fire Station => Gage/ Center Parkway Roundabout => Columbia Center Mall => Kennewick Fire Station => Holiday Inn Express => BNSF Accident Location => Return to Library



Richland Public Library
955 Northgate Dr, Richland, WA 99352

	1. Head **north** on **Northgate Dr** toward **Swift Blvd**	go 279 ft total 279 ft
	2. Turn right onto **Swift Blvd** About 1 min	go 0.2 mi total 0.3 mi
	3. Turn right onto **George Washington Way** About 4 mins	go 1.8 mi total 2.1 mi
240	4. Continue onto **WA-240 E** About 57 secs	go 1.0 mi total 3.0 mi
	5. Take the **Columbia Park Trail** exit	go 0.5 mi total 3.5 mi
	6. At the traffic circle, take the **5th** exit onto **N Steptoe St** About 1 min	go 0.4 mi total 3.9 mi
	7. Turn left onto **Tapteal Dr** About 2 mins	go 0.7 mi total 4.6 mi
	8. Take the 1st right onto **Center Pkwy** Destination will be on the left	go 449 ft total 4.6 mi
		Total: **4.6 mi** – about **11 mins**

Holiday Inn Express Hotel & Suites Richland — total 0.0 mi
1970 Center Pkwy, Richland, WA 99352

	9. Head **north** on **Center Pkwy** toward **Tapteal Dr**	go 449 ft total 449 ft
	10. Turn left onto **Tapteal Dr** About 2 mins	go 0.7 mi total 0.8 mi
	11. Turn left onto **N Steptoe St** About 2 mins	go 0.6 mi total 1.4 mi
	12. Turn right onto **W Gage Blvd** Destination will be on the right About 3 mins	go 1.2 mi total 2.6 mi
		Total: **2.6 mi** – about **6 mins**

Richland Fire Station 72 — total 0.0 mi
710 Gage Blvd, Richland, WA 99352

	13. Head **east** on **Gage Blvd** toward **Keene Rd** About 4 mins	go 1.7 mi total 1.7 mi
	14. Slight left onto **W Gage Blvd**	go 0.1 mi total 1.8 mi
	15. Enter the traffic circle	go 171 ft total 1.8 mi
		Total: **1.8 mi** – about **5 mins**

Columbia Center — total 0.0 mi
1321 N Columbia Center Blvd, Kennewick, WA 99336

	16. Head **north** toward **W Gage Blvd**	go 446 ft total 446 ft
	17. Exit the traffic circle	go 180 ft total 0.1 mi
	18. Turn left toward **W Willamette Ave**	go 82 ft total 0.1 mi
	19. Continue straight onto **W Willamette Ave** About 2 mins	go tot

	20. Turn right onto **N Columbia Center Blvd** About 2 mins	go 0.3 mi total 0.8 mi
	21. Turn left onto **W Quinault Ave** Destination will be on the left About 55 secs	go 0.2 mi total 1.0 mi
	Total: **1.0 mi** – about **5 mins**	
	Kennewick Fire Department Station 3 Kennewick, WA	total 0.0 mi
	22. Head **northwest** on **W Quinault Ave** toward **N Belfair St**	go 0.1 mi total 0.1 mi
	23. Take the 3rd right onto **N Columbia Center Blvd** About 2 mins	go 0.5 mi total 0.6 mi
	24. Turn right onto **W Arrowhead Ave**	go 171 ft total 0.7 mi
	25. Slight right onto **N Belfair Pl** About 56 secs	go 0.2 mi total 0.9 mi
	26. Turn left onto **Tapteal Dr** About 1 min	go 0.3 mi total 1.2 mi
	27. Turn left onto **Center Pkwy** Destination will be on the left	go 449 ft total 1.3 mi
	Total: **1.3 mi** – about **5 mins**	
	Holiday Inn Express Hotel & Suites Richland 1970 Center Pkwy, Richland, WA 99352	total 0.0 mi
	28. Head **north** on **Center Pkwy** toward **Tapteal Dr**	go 449 ft total 449 ft
	29. Turn right onto **Tapteal Dr** About 1 min	go 0.3 mi total 0.4 mi
	30. Turn right toward **W Yellowstone Ave**	go 0.2 mi total 0.6 mi
	31. Continue straight onto **W Yellowstone Ave** About 3 mins	go 1.5 mi total 2.1 mi
	32. Turn right onto **N Edison St** About 1 min	go 0.3 mi total 2.3 mi
	33. Take the 1st left onto **W Canal Dr** About 2 mins	go 0.6 mi total 2.9 mi
	34. Turn left onto **N Volland St** About 1 min	go 36 ft total 2.9 mi
	Total: **2.9 mi** – about **9 mins**	
	W Canal Dr & N Volland St, Kennewick, WA 99336	total 0.0 mi
	35. Head **northwest** on **W Canal Dr** toward **W Quinalt Ave** About 1 min	go 0.6 mi total 0.6 mi
	36. Turn right onto **N Edison St** About 1 min	go 0.4 mi total 1.0 mi
240	37. Turn left to merge onto **WA-240 W** toward **Richland** About 4 mins	go 3.8 mi total 4.8 mi
	38. Continue onto **George Washington Way** About 4 mins	go 2.1 mi total 6.9 mi
	39. Turn left onto **Swift Blvd** About 1 min	go 0.2 mi total 7.2 mi
	40. Take the 2nd left onto **Northgate Dr**	

Destination will be on the right — total 7.2 mi

Total: 7.2 mi – about 13 mins

Richland Public Library
955 Northgate Dr, Richland, WA 99352

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.

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STATE OF WASHINGTON
BENTON COUNTY SUPERIOR COURT

TRI-CITY RAILROAD COMPANY, LLC, a Washington corporation, Petitioner, v. STATE OF WASHINGTON, UTILITIES AND TRANSPORTATION COMMISSION, Respondent.	No. 14-2-01894-8

BRIEF OF RESPONDENT

ATTORNEY GENERAL OF WASHINGTON
Utilities and Transportation Division
1400 S Evergreen Park Drive SW
PO Box 40128 Olympia, WA
(360) 664-1183

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I. INTRODUCTION

Tri-City Railroad Company (TCRY) purports to seek judicial review under the Administrative Procedure Act (APA), chapter 34.05 RCW. But what it really wants is something the APA cannot provide—an opportunity to have the evidence reweighed in its favor. Under the APA, reviewing courts do not reweigh the evidence.[1] Rather, unless the challenger can show that the agency misunderstood or violated the law, or that it made a decision without substantial evidence, the reviewing court should affirm the agency's decision.[2] Because TCRY failed to make the required showing here, the Washington Utilities and Transportation Commission respectfully asks this Court to affirm the order below.

II. FACTS

In 2013, the cities of Kennewick and Richland jointly petitioned the three-member Washington Utilities and Transportation Commission to approve construction of a new ground-level (grade) highway-rail crossing.[3] The cities seek to connect Kennewick's Center Parkway with Tapteal Drive, located to the north in neighboring Richland. A new crossing is needed because the proposed connector road will intersect two sets of tracks running between the cities through the Port of Benton. The port owns the tracks and leases the affected segments to TCRY. The port is not a party to this matter.

TCRY is the lone entity that opposes the crossing. It alleges that installation of the crossing will "eliminate" one of the track segments it leases from the port.[4]

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[1] *Univ. of Wash. Med. Ctr. v. Dep't of Health*, 164 Wn.2d 95, 103, 187 P.3d 243 (2008).
[2] RCW 34.05.570(3); *Univ. of Wash. Med. Ctr.*, 164 Wn.2d at 103.
[3] Certified Appeals Board Record (AR) 4.
[4] Pet. for Judicial Review at 21.

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In February 2014, an administrative law judge (ALJ) entered an initial order denying the cities' petition.[5] The ALJ concluded that the cities "failed to demonstrate sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing."[6]

The cities jointly petitioned for administrative review by the Commission.[7] After reviewing the record, the commissioners unanimously reversed the ALJ's order and granted the cities' petition.[8] The commissioners concluded that the record contained broader evidence of public need than had been found by the ALJ.[9] This determination, coupled with a finding that the crossing posed a relatively low safety risk, tipped the balance in favor of the cities.[10]

TCRY unsuccessfully petitioned for reconsideration of the Commission's final order.[11] This petition for judicial review followed.

III. STANDARD OF REVIEW

When reviewing agency decisions under the APA, the court reviews the decision of the agency head—in this case, the three-member Utilities and Transportation Commission.[12] The court applies APA standards directly to the administrative record.[13]

As the party seeking review, TCRY has the burden to demonstrate error.[14] TCRY makes four claims here:

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[5] AR 355.
[6] AR.
[7] AR 385.
[8] AR 566.
[9] AR 579-80.
[10] AR 580-81; *see* AR 581 ("The record includes substantial competent evidence showing sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing.").
[11] AR 639.
[12] *Verizon Nw., Inc. v. Emp't Sec. Dep't*, 164 Wn.2d 909, 915, 194 P.3d 255 (2008).
[13] *Id.*
[14] RCW 34.05.570(1)(a) ("The burden of demonstrating the invalidity of agency action is on the party asserting invalidity . . . .").

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1. "RCW 34.05.570(3)(c) – Failure to Follow Prescribed Procedure"[15]
2. "RCW 34.05.570(3)(e) – Lack of Substantial Evidence"[16]
3. "RCW 34.05.570(3)(b) and (d) – Exceeding Statutory Authority"[17]
4. "RCW 34.05.570(3)(a) – Unconstitutional Taking"[18]

This Court should review the first, third, and fourth claims de novo, under the "error of law standard."[19] The court may substitute its view of the law for that of the agency.[20] At the same time, the court accords "substantial weight" to the agency's interpretation of statutes within its expertise and to the agency's interpretation of its own rules.[21] In this case, TCRY's first claim attacks the Commission's interpretation of its own procedural rules governing public comments and the right of cross examination. This Court should accord "substantial weight" to the Commission's interpretation of those rules.[22] TCRY's third and fourth claims are legally misguided and should be summarily rejected.

TCRY's second claim attacks the evidentiary basis for the Commission's final order. When a party asserts that substantial evidence does not support an agency's findings of fact, the challenge is not an invitation for the reviewing court to reweigh the evidence. Rather, the reviewing court merely determines whether there is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.[23] In all cases, relief is

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[15] Pet. for Judicial Review at 5.
[16] Pet. for Judicial Review at 6.
[17] *Id.*
[18] *Id.*
[19] *Verizon Nw.*, 164 Wn.2d at 915.
[20] *Id.*
[21] *Verizon Nw.*, 164 Wn.2d at 915; *see also Alpha Kappa Lambda Fraternity v. Wash. State Univ.*, 152 Wn. App. 401, 414, 216 P.3d 451 (2009) ("[T]he petitioner must show that (1) the agency did not correctly follow its own procedure, and (2) the irregularity substantially prejudiced the petitioner.").
[22] *Verizon Nw.*, 164 Wn.2d at 915.
[23] RCW 34.05.570(3)(e); *Hardee v. Dep't of Soc. & Health Servs.*, 172 Wn.2d 1, 7, 256 P.3d 339 (2011).

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available only if the party seeking review "has been substantially prejudiced by the action complained of."[24]

IV. ANALYSIS

A. The Washington Utilities and Transportation Commission has Statutory Authority to Approve New Railroad Crossings

Washington law requires the Commission to review petitions for approval of new highway-rail grade crossings.[25] To gain approval for a highway-rail grade crossing, the proponent must "file a written petition with the commission, setting forth the reasons why the crossing cannot be made either above or below grade."[26] The Commission first evaluates whether grade separation is "practicable."[27] If grade separation is not "practicable," and a grade configuration is required, the Commission then evaluates whether the public's need for the crossing outweighs the project's inherent risk.[28] In this case, the Commission properly weighed the competing interests and properly approved the crossing.

B. The Commission Engaged in a Lawful Procedure When it Considered Public Comments During its Deliberations

TCRY contends the Commission failed to follow a prescribed procedure when it considered five public comments during its deliberations. First, it argues that the Commission wrongly treated the comments as substantive, as opposed to illustrative, evidence. Second, it argues that the Commission wrongly considered the comments without providing an opportunity for cross examination. Both arguments fail.

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[24] RCW 34.05.570(1)(d).
[25] RCW 81.53.020.
[26] RCW 81.53.030.
[27] RCW 81.53.020.
[28] RCW 81.53.030; *see also* AR 569-70.

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1. The Commission Properly Treated Public Comments as "Illustrative Exhibits" Within the Meaning of WAC 480-07-498

TCRY first argues that the Commission wrongly treated certain public comments as substantive evidence, as opposed to "an illustrative exhibit that expresses public sentiment received concerning the pending matter" within the meaning of WAC 480-07-498. This claim fails because the Commission properly treated the comments as illustrative evidence.

The record shows that the Commission cited the comments not as substantive evidence but merely to emphasize facts *already established by unchallenged record evidence.*

In total, the Commission cited five public comments in its final order. The first comment, submitted by landowner Preston K. Ramsey III, stated that the crossing would "create a new bridge between two highly interdependent communities [Kennewick and Richland]."[29] The Commission cited this comment not for its substantive veracity but merely because it "*underscored*"[30] *existing* record evidence demonstrating the potential for economic development created by the project. In particular, the comment underscored findings in an engineering study ("JUB study") admitted during the evidentiary hearing in the proceedings below. The JUB study found that the crossing would "[p]rovide improved access to commercial areas and developable land" located just north of the tracks. It also found that the project would foster a "synergy" between neighboring commercial zones.[31]

The JUB study, not the comment, formed the substantive basis for the Commission's decision to factor economic development into its weighing of the evidence.

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[29] AR 576; *see also* AR 1542.
[30] AR 576 (emphasis added).
[31] AR 32.

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The second comment, submitted by land use planner Brian Malley, predicted that the crossing would ease congestion, link adjacent retail areas, and contribute to the tax base.[32] Again, the Commission cited this comment not for its factual content but merely because it "emphasize[d] *community expectations* with respect to the proposed Center Parkway extension . . . ."[33] As an evidentiary matter, the JUB study independently established that the crossing would "[p]rovide relief to congested arterial facilities"[34] and "[p]rovide improved access to commercial areas and developable land."[35]

The third comment, submitted by the Tri-City Development Council, stated that the proposed crossing was a "well-planned necessary component" of the regional transportation system and that it would "dramatically improve traffic movement . . . ."[36] The Commission again relied on this comment not to establish evidentiary facts—the JUB study already demonstrated that the crossing would increase connectivity and decrease congestion[37]—but merely because the comment "illustrate[d] the local importance of recognizing the *broader public policy environment.*"[38]

The fourth and fifth comments, submitted respectively by the Tri-City Chamber of Commerce and the Port of Kennewick,[39] likewise emphasized facts already established by the JUB study—namely, that the crossing would facilitate commercial development while

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[32] AR 577; *see also* AR 1536.
[33] AR 577 (emphasis added).
[34] AR 32.
[35] AR 32.
[36] AR 579; *see also* AR 1537.
[37] AR 24, 32.
[38] AR 578 (emphasis added).
[39] AR 579; *see also* AR 1538-39.

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reducing congestion and promoting safety through improved emergency response times.[40] The Commission again cited the comments not as substantive evidence but solely to illustrate the "bases" on which two interested parties supported the project.[41]

The record shows that the Commission properly treated the five public comments discussed above as "illustrative exhibits" within the meaning of WAC 480-07-498. TCRY has not established that the Commission failed to follow a prescribed procedure.

2. TCRY had no Right of Cross Examination

TCRY next complains it lacked an opportunity to "cross examine" the individuals and organizations that submitted public comments in this case. This claim fails because TCRY had no right of cross examination. Even if it did, it failed to preserve the issue for review.

TCRY relies on one of the Commission's procedural rules, WAC 480-07-490(5), to argue that it had a right of cross examination. That rule states in relevant part, "Documents a public witness presents that are exceptional in their detail or probative value may be separately received into evidence as proof of the matters asserted after an opportunity for cross-examination."[42] By the plain terms of this rule, the "opportunity for cross-examination" arises only when the Commission accepts documentary evidence as "proof of the matters asserted."[43]

As discussed above, the Commission relied on public comments not as "proof of the matters asserted" but merely to emphasize facts already established by unchallenged record evidence. TCRY's reliance on WAC 480-07-490(5) is misplaced.

---

[40] AR 23-24, 32.
[41] AR 579.
[42] WAC 480-07-490(5).
[43] *Id.*

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TCRY's citation to *Weyerhaeuser v. Pierce County*[44] is equally unpersuasive. In *Weyerhaeuser*, the court held that county employees who authored certain reports were "witnesses" for purposes of a local ordinance that granted interested parties a right of cross examination at certain public hearings.[45] The court made clear that its holding rested entirely on the language of the local ordinance, and that concerns regarding due process and appearance of fairness played no role in the outcome.[46] Because that ordinance has no application in this case, *Weyerhaeuser* does not support TCRY's argument.

3. Alternatively, TCRY Waived Its Right of Cross Examination

Even if TCRY had a right of cross examination, it waived any claim of error by failing to assert its right in a timely manner.

The Commission has a procedural rule providing that any evidence offered during an adjudicative proceeding "is subject to appropriate and *timely* objection."[47] The rule makes clear, "Parties that have objections *must* state them."[48] It warns in unambiguous terms, "Failure to object *constitutes a waiver of the right to object*."[49] Here, TCRY had multiple opportunities to demand cross examination. Yet it remained silent—until now.

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[44] *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994).

[45] *See Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 34, 873 P.2d 498 (1994) ("We conclude that under the circumstances of this case, PCC 2.36.090 requires that the Weyerhaeusers be permitted oral cross examination of the county staff who wrote the staff report and the EIS.").

[46] *Id.* at 31-32 ("Because we decide this issue on the basis that oral cross examination of the county staff is required under Pierce County Code 2.36.090, we do not address the due process and appearance of fairness doctrine arguments.").

[47] WAC 480-07-490(7) (emphasis added).

[48] WAC 480-07-490(7) (emphasis added).

[49] *Id.* (emphasis added).

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The record shows that the Commission's ALJ convened a public comment hearing on November 20, 2013.[50] Landowner Preston K. Ramsey III, land use planner Brian Malley, and Tri-Cities Visitors and Convention Bureau vice president Kim Shugart spoke in support of the crossing.[51] TCRY raised no objection and made no attempt to cross examine the speakers.

During the public comment hearing, the ALJ informed those present that the Commission would accept "written comments" until close of business on December 10, 2013.[52] TCRY again raised no objection. The Commission later received eleven written comments, all of which supported the crossing.[53] On December 11, 2013, the Commission placed all comments in the public docket.[54] TCRY again made no attempt to cross examine the comments or their authors. On December 20, 2013, TCRY filed a brief opposing the crossing.[55] It again raised no objection to the comments. On February 25, 2014, the administrative law judge entered an initial order rejecting the crossing petition.[56] The cities of Kennewick and Richland filed a joint petition for administrative review.[57] TCRY answered the petition and—again—failed to assert its supposed right of cross examination.[58]

On May 29, 2014, the Commission entered its final order reversing the ALJ and granting the cities' petition.[59] TCRY petitioned for reconsideration on June 9, 2014. For the first time, nearly six months after the Commission docketed the public comments, TCRY

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[50] Transcript (TR) 436.
[51] TR 440-42.
[52] TR 439.
[53] AR 1534.
[54] AR 1533.
[55] AR 293.
[56] AR 355.
[57] AR 485.
[58] AR 484.
[59] AR 566.

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mentioned the issue of cross examination. It vaguely claimed that it lacked occasion to cross examine "witnesses"[60] asserting "contrary evidence,"[61] and that the *cities* shielded evidence of public need from the "'engine of truth' of cross examination."[62]

But even these sweeping pronouncements cannot be considered a timely objection. Simply put, TCRY raised the issue far too late in the process. To grant the company's request on reconsideration, the Commission would have been obligated to reopen the evidentiary record. It could not have done so in this case. A Commission rule provides that parties must petition to reopen the record "*before* entry of the final order."[63] Under this rule, parties cannot request an opportunity for cross examination for the first time on reconsideration.

What happened below can be summarized as follows. TCRY stood by silently while the Commission accepted public comments. When the Commission ruled in favor of the cities, citing the comments as illustrative evidence, the company suddenly claimed a right of cross examination. By this point, cross examination was no longer an option.

Under these circumstances, the Commission's waiver rule applies and bars consideration of TCRY's argument.[64]

Waiver also applies under the APA. It is well established that "[j]udicial review of a final decision of an administrative agency is limited by the provisions of the APA."[65] Generally, the APA prohibits consideration of issues raised for the first time on review.[66] Our

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[60] AR 594.
[61] AR 594.
[62] AR 611.
[63] WAC 480-07-830(1) (emphasis added).
[64] WAC 480-07-490(7).
[65] *Lang v. Dep't of Health*, 138 Wn. App. 235, 250, 156 P.3d 919 (2007).
[66] RCW 34.05.554.

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Supreme Court has stated, "In order for an issue to be properly raised before an administrative agency, there must be more than simply a hint or a slight reference to the issue in the record."[67] Here, TCRY raised the issue of cross examination for the first time in its motion for reconsideration. It cited no authority. The record thus contains no more than a "hint or a slight reference to the issue."[68] Under these circumstances, the APA's waiver rule provides an additional reason to reject TCRY's claim of error.

4. TCRY Has Not Shown Substantial Prejudice

There remains yet another reason to reject TCRY's claim. To obtain relief under the APA, TCRY must show it has been "substantially prejudiced by the action complained of."[69] It failed to make that showing here. Its brief before this Court utterly fails to explain how the order below would have differed had the Commission provided an opportunity for cross examination. This omission leaves the impression that the alleged error is merely technical—that is, without any real consequence. The APA provides no remedy for errors that are merely technical. TCRY must show substantial prejudice.

In a final twist, TCRY claims it had a "due process right to confront evidence and cross-examine witnesses."[70] This assertion fails because the APA proscribes the amount of process that is "due." Under the APA, the presiding officer at an adjudicative hearing must allow cross examination only "[t]o the extent necessary for full disclosure of all relevant facts

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[67] *King Cnty. v. Boundary Review Bd. for King Cnty.*, 122 Wn.2d 648; 670, 860 P.2d 1024 (1993).
[68] *King Cnty.*, 122 Wn.2d at 670.
[69] RCW 34.05.570(2); *see also Alpha Kappa Lambda Fraternity v. Wash. State Univ.*, 152 Wn. App. 401, 414, 216 P.3d 451 (2009).
[70] Pet. for Judicial Review at 5.

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and issues."[71] TCRY identifies no relevant facts or issues that might have been disclosed through cross examination. It has not shown substantial prejudice.

C. The Commission's Ruling was Supported by Substantial Evidence

TCRY next argues that substantial evidence did not support the Commission's ruling, since "the only basis for the UTC's reversal of the Initial Order was public comments . . . ."[72] As already discussed, that premise is false. The Commission relied on the comments merely to emphasize facts already established by unchallenged record evidence—principally, the JUB study. The study provided substantial evidence supporting the Commission's ruling.

As TCRY acknowledges in its brief, substantial evidence need not be irrefutable. To the contrary, evidence is "substantial" so long as it is sufficient, when viewed in light of the whole record, to persuade a fair-minded person of the truth or correctness of the challenged agency ruling.[73] The reviewing court must not reweigh the evidence.[74]

In this case, the JUB study found that the proposed crossing would benefit the City of Kennewick and the surrounding region in four ways: (1) completion of a roadway grid system; (2) decreased congestion in nearby arterials; (3) improved public access to commercial areas and developable land; and (4) improved emergency response times.[75] The study provided substantial evidence supporting the Commission's conclusion that the public need for the crossing outweighed the project's inherent risks. Even if the study was not dispositive, viewed

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[71] RCW 34.05.449(2).
[72] Pet. for Judicial Review at 17.
[73] RCW 34.05.570(3)(e); *Hardee v. Dep't of Soc. & Health Servs.*, 172 Wn.2d 1, 7, 256 P.3d 339 (2011).
[74] *Univ. of Wash. Med. Ctr. v. Dep't of Health*, 164 Wn.2d 95, 103, 187 P.3d 243 (2008).
[75] AR 32.

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in light of the whole record (including the illustrative public comments) it was easily sufficient to persuade a fair-mined person that the Commission reached the correct decision.

D. The Commission Acted Within Its Statutory Authority and Properly Considered Factors other than Public Safety

TCRY argues, "In a petition under RCW 81.53.261, the only statutory criterion is 'public safety.'"[76] It concludes, "Since RCW 81.53.261 does not provide statutory authority for the [Commission] to consider criteria other than public safety, such as 'economic development interests,' 'deference to local government,' and 'the broader public policy environment,' the [Commission's] Final Order is *ultra vires*, and should be reversed."

These claims fail because TCRY cites RCW 81.53.261 first time before this Court and, in any event, because RCW 81.53.261 has absolutely *no applicability* to this case.

1. TCRY Waived Its Reliance on RCW 81.53.261

TCRY *never* cited RCW 81.53.261 below. It therefore waived its reliance on the statute and may not raise the issue for the first time before this Court.[77]

2. In Any Event, RCW 81.53.261 Does Not Apply

TCRY's novel assertion that the cities' petition arose "pursuant to RCW 81.53.261"[78] is, frankly, perplexing. By its terms, RCW 81.53.261 applies when an interested party seeks to install or modify crossing signals or other warning devices "at any crossing of a railroad at common grade . . . ."[79] The phrase "at any crossing . . . at common grade" plainly presupposes

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[76] Pet. for Judicial Review at 17.

[77] RCW 34.05.554; *King Cnty. v. Boundary Review Bd. for King Cnty.*, 122 Wn.2d 648, 670, 860 P.2d 1024 (1993).

[78] Pet. for Judicial Review at 18.

[79] RCW 81.53.261.

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an *existing* grade crossing. Here, the cities sought approval for a *new* grade crossing. They did not seek to install or modify warning devices at an existing grade crossing.

New grade crossings require approval under RCW 81.53.020 and .030. Under RCW 81.53.030, municipal authorities who "*desire* to extend a highway across a railroad at grade" must petition the Commission to allow the crossing.[80] The Commission then evaluates the petition in two steps. It first determines whether grade separation is "practicable."[81] If grade separation is not "practicable," and a grade configuration is necessary, the Commission proceeds to review the proposed crossing on the merits.[82] The Commission has consistently determined that review on the merits requires the fact finder to balance the public's need for the crossing against the hazards inherent in an at-grade configuration.[83] In this case, the Commission properly weighed the evidence and properly determined that the balance tipped in favor of the public's demonstrated need for the proposed crossing.[84]

It is important to emphasize here that TCRY assigns no error to Commission's use of a balancing test under RCW 81.53.020 and .030. Indeed, TCRY's brief contains no discussion whatsoever of RCW 81.53.020 and .030. TCRY therefore waived any argument that the Commission misapplied RCW 81.53.020 and .030.[85]

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[80] RCW 81.53.030 (emphasis added).
[81] RCW 81.53.020.
[82] RCW 81.53.030.
[83] AR 569-70; *see* AR 570 n.4.
[84] AR 581.
[85] *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.3d 549 (1992) (appellant must raise and argue claims of error in opening brief; issues raised and argued for the first time in a reply brief are too late to warrant consideration).

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TCRY's sole claim before this Court is that the Commission exceeded its authority under RCW 81.53.261. As a preliminary matter, this claim is untimely and is not properly before the Court. In any event, the claim fails because RCW 81.53.261 is totally inapplicable.

E. TCRY's Takings Claim Fails as a Matter of Law

TCRY lastly argues that the Commission's order should be reversed under RCW 34.05.570(3)(a), because it "effects" an unlawful taking under the state constitution.[86] This claim fails because the Commission took no property rights possessed by TCRY.

Our Supreme Court has made clear that governmental entities cannot be held liable for permitting decisions that do not constitute direct appropriations of land.[87] The Commission's order, akin to a local permitting decision, merely *authorizes* the proposed crossing. Because authorization is not the same as direct appropriation, TCRY cannot prove a taking.

TCRY's citation to RCW 81.53.180(2) only weakens its argument. Under RCW 81.53.180(2), the power of eminent domain will be exercised, if at all, by the parties that *petitioned* the Commission for approval of the crossing:

> In cases where it is necessary to take, damage, or injuriously affect private lands, property, or property rights to permit the opening of a new highway or highway crossing across a railroad, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired *by the municipality or county petitioning for such new crossing* by a condemnation proceeding *brought in the name of such municipality or county* as provided by law for the exercise of the power of eminent domain by such municipality or county.[88]

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[86] Pet. for Judicial Review at 17.

[87] *Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 928-31, 296 P.3d 860 (2013); *see also Phillips v. King Cnty.*, 136 Wn.2d 946, 957, 968 P.2d 871 (1998) ("The term 'inverse condemnation' is used to describe an action alleging a governmental 'taking,' brought to recover the value of property which has been *appropriated in fact*, but with no formal exercise of the power of eminent domain.") (emphasis added).

[88] RCW 81.53.180(2) (emphasis added).

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Whether the cities ultimately bring a condemnation action has no bearing on the propriety of the Commission's final order in *this* matter.

V. CONCLUSION

The Commission, relying on substantial evidence, properly determined that public need outweighed the safety risk created by the proposed crossing. TCRY hopes this Court will reweigh the evidence, but the APA does not authorize that form of relief. Because TCRY cannot establish that the Commission misunderstood or violated the law, or that it made a decision without substantial evidence, this Court should affirm the order below.

Respectfully submitted this 12th day of November, 2014.

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STATE OF WASHINGTON
BENTON COUNTY SUPERIOR COURT

TRI-CITY RAILROAD COMPANY, LLC, a Washington corporation, Petitioner, v. STATE OF WASHINGTON, UTILITIES AND TRANSPORTATION COMMISSION, Respondent.	NO. 14-2-01894-8 CERTIFICATE OF SERVICE

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Hearing Date: December 9, 2014
Hearing Time: 1:30 p.m.

SUPERIOR COURT OF WASHINGTON IN AND FOR BENTON COUNTY

TRI-CITY RAILROAD COMPANY, LLC, a Washington corporation,

Petitioner,

v.

STATE OF WASHINGTON, UTILITIES AND TRANSPORTATION COMMISSION,

Respondent.

No. 14-2-01894-8

CITIES OF RICHLAND AND KENNEWICK RESPONSE BRIEF ON APA APPEAL

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1. INTRODUCTION.

After years of local and regional planning, and extensive hearings and review by the State agency charged by the legislature to oversee rail crossings, the City of Kennewick's and the City of Richland's extension of Center Parkway was approved. Tri-City and Olympia Railroad ("TCRY") is a tenant on property owned by the Port of Benton. The Port of Benton, BNSF, Union Pacific Railroad, and other entities with an interest in the at-grade crossing do not oppose the Center Parkway extension. State, regional and local planning and transportation agencies, and public comment on record, all support the project. And it is uncontested that no other crossing than an at-grade crossing would work. The Washington Utilities and Transportation Commission ("UTC") properly approved the City of Richland and the City of Kennewick's petition for an at-grade crossing.

TCRY seeks to re-litigate issues that were properly considered by the UTC. The UTC committed no error of law, and all facts found by the UTC were supported by substantial evidence. The Center Parkway Crossing, a critical link in this region's transportation grid is properly authorized. This Court should affirm the UTC decision.

2. SUMMARY BACKGROUND.

2.1 The Center Parkway Project.

The Center Parkway Crossing ("Crossing") is an essential capital improvement identified in the City of Richland's Comprehensive Plan, the City of Kennewick's Comprehensive Plan, and the Regional Transportation Plan.[1] Center Parkway currently ends at a roundabout to the west of the Columbia Center Mall in Kennewick, as identified in the following image:[2]

[1] City of Richland Comprehensive Plan – Transportation Element at T 5-4 ("Center Parkway from Tapteal to Gage: Construct 3-lane road"). 784; City of Kennewick Comprehensive Plan – Infrastructure at pp. 58-59. 1176-77; Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan at H-3 ("Center Parkway Extension – Gage to Tapteal"). 827.
[2] Image available at 357.

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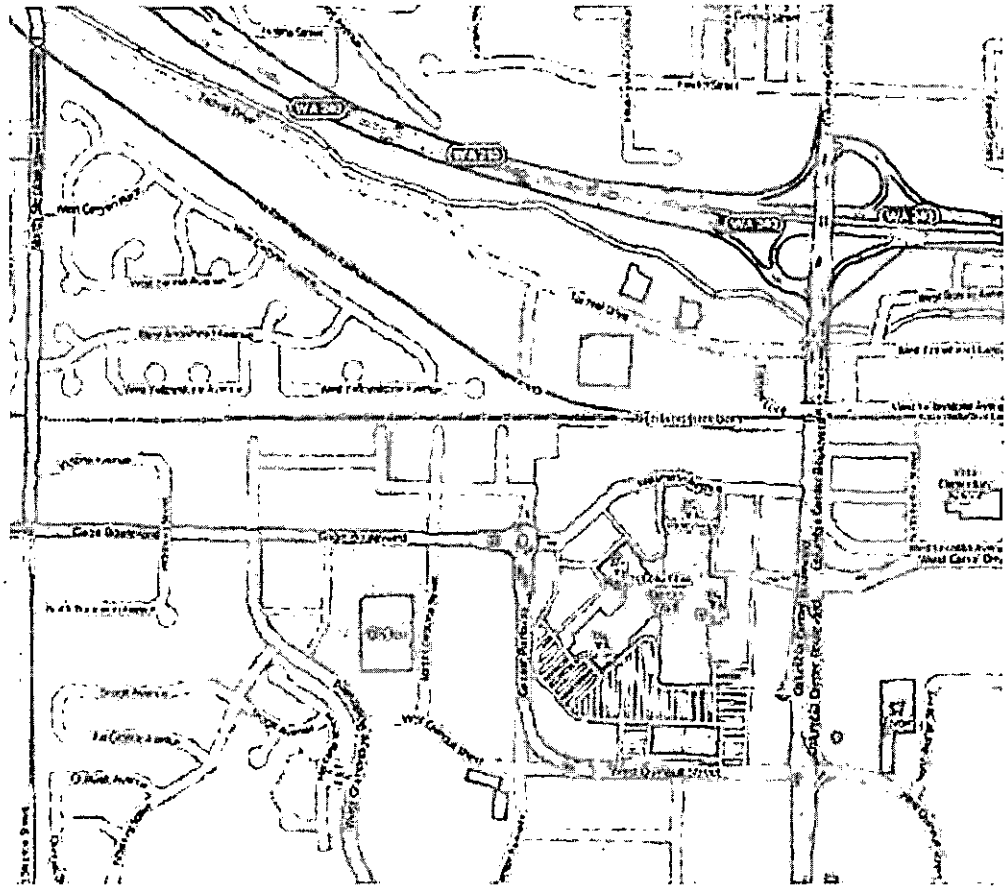

The Crossing will extend Center Parkway northward, across the Port of Benton tracks, and into the City of Richland, intersecting Tapteal Drive, thereby completing a grid network of regional significance.

In 2013, the City of Kennewick and the City of Richland (the "Cities") jointly petitioned the UTC to approve construction the Crossing. It is uncontested that the Crossing poses only speculative risk to public safety because the Crossing's safety features **exceed** typical engineering and safety standards for such an intersection.[3] Substantial evidence also proves that the Crossing is needed to (1) complete a grid network to provide safe and efficient movement of traffic; (2) provide relief to congested arterials; (3) encourage economic development;[4] and (4)

[3] TCRY does not contest UTC's calculation of risk for the proposed crossing at one incident per every 53.5 years. 1440 (p. 36:21).
[4] Order 03, ¶ 21 citing the JUB Study. 574-75, 1019.

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improve emergency response times.[5] Thus, the evidence proves that the Crossing provides transportation, economic development, and health and safety benefits to the residents of the Tri-Cities.

2.2 The Commission's Review and Approval.

Order 03, unanimously issued by the UTC's Commissioners, overturned the Administrative Law Judge's initial order, which improperly determined that the Crossing would provide no public benefit.[6] Order 03 presented the Commissioners with their first opportunity to review the record below. In Order 03, the Commissioners concluded that "the record includes substantial competent evidence showing sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing."[7] In support of this conclusion, Order 03 finds that the Crossing will encourage economic development,[8] and that the Crossing will assist emergency responders by providing an alternative route.[9] TCRY seeks judicial review of certain elements of Commission Order 03 under RCW 34.05.570(3) (a) through (e). TCRY has the burden of demonstrating the purported invalidity the Commission's action. RCW 34.05.070(1)(a).

3. STANDARD OF REVIEW.

3.1 The APA Standard of Review.

Claims under RCW 34.05.070 (a) - (d) are questions of law for constitutional, procedural, statutory, and jurisdictional issues. Generally, the court review questions of law de novo. *Quadrant v. State Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 233, 110 P.3d 1132 (2005).

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[5] JUB Study, 1011; Analysis supporting the JUB Study, 1307; the author of the JUB Study's pre-filed testimony, 1143-001149; the author of the JUB Study's testimony at the hearing, transcript 217:7-219:1; Chief Baynes' testimony that the Crossing will improve emergency response times by "approximately one minute." Transcript 107:15; *also see* the pre-filed testimony of all first responders in the area stating that the Crossing will address a public need by improving emergency response times: 737 (p.3:2-22); 861-62 (p. 3:12-14:3); 674-76 (p.3:24-5:4). Evidence proves that the Crossing will be open 99 percent of the day. Transcript 231:5-6; *also see* 1147 (p. 5:7).

[6] Initial Order issued by ALJ at ¶¶ 59, 67. 374, 376.

[7] Order 03, ¶ 38. 581.

[8] Order 03, ¶ 37. 581.

[9] Order 03, ¶ 36. 581. TCRY does not contest the emergency responder finding.

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Nevertheless, courts afford deference to an agency's legal interpretations where there is statutory ambiguity or where agency expertise is useful in the interpretative task. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 958 P.2d 1091 (1998). The courts may also give weight to an agency's interpretation in prior adjudicated cases. *Martini v. Emp. Sec. Dept.*, 98 Wn. App. 791, 795, 990 P.2d 981 (2000).

Claims under RCW 34.05.570(3)(e) are reviewed for substantial evidence. "Substantial evidence" means evidence sufficient to persuade a fair-minded, rational person of the truth of the declared premise. *See, e.g., Thurston County v. Cooper Pt. Ass'n*, 148 Wn.2d 1, 8, 57 P.3d 1156 (2002). The substantial evidence standard is deferential. Here, the Court is required to review the evidence in the light most favorable to the Cities, because the Cities prevailed in the highest forum that exercised fact-finding authority, the Commission. *Ongom v. State Dept. of Health,* 124 Wn. App. 935, 949, 104 P.3d 29 (2005). The courts may not substitute its view of facts for that of the agency if substantial evidence is found. *Callecod v. Washington State Patrol*, 84 Wn. App. 663, 929 P.2d 510 (1997), *review denied*, 132 Wn.2d 1004, 939 P.2d 215 (1997).

Judicial review is limited to the Commission's findings in Order 03.[10] RCW 34.05.464(4) gives the Commission all the power it would have had, had it presided over the hearing in the first instance. *PERC v. City of Vancouver*, 107 Wn. App. 694, 33 P.3d 74 (2001). Thus, when a court is reviewing an agency order, "it is the commissioner's findings that are relevant for review," not the ALJ's findings. *See e.g., Barker v. Empl. Sec. Dept.* 127 Wn. App. 1005, 112 P.3d 536 (2005).

[10] The Commission is not bound by the ALJ's fact-finding.

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3.2 Law Controlling At-Grade Crossing Petitions.

3.2.1 General.

State law prohibits certain at-grade railroad crossings unless the UTC first approves a petition for the crossing.[11] RCW 81.53.020 and .030 authorize approval of at-grade railroad crossings when a grade-separated crossing is not practicable. To determine whether a separated grade crossing is practicable, the UTC must consider a non-exclusive list of statutory factors, including: (1) amount and character of travel on the railroad and on the highway; (2) the grade and alignment of the railroad and the highway; (3) the cost of separating grades; (4) the topography of the county; and (5) all **other circumstances** naturally involved in such an inquiry. RCW 81.53.020. [12] The statute does not define the term, "other circumstances," thereby allowing the UTC to determine the "other circumstances," so long as such a determination is consistent with the governing statute.

Within this statutory framework, the UTC applies a balancing test when analyzing at-grade crossing petitions:

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[11] The Cities do not waive any jurisdictional argument regarding the Cities' exemption from this petition process. RCW 81.53.240 exempts first-class cities from the at-grade crossing petition process. The City of Richland is a first-class city, and the City of Kennewick is a code city. State law provides that code cities have the same authority as first-class cities. RCW 35A.11.020: "The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of the state, and not specifically denied to code cities by law." Nevertheless, the Cities believe judicial review and approval worthwhile.

[12] RCW 81.53.020 states: All railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under the same, when practicable, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the commission to do so. All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, **when practicable**, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so: PROVIDED, That this section shall not be construed to prohibit a railroad company from constructing tracks at grade across other tracks owned or operated by it within established yard limits. **In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.** (Emphasis supplied.)

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The Commission, in practice, addresses two principal questions when considering whether to authorize construction of an at-grade crossing, which, by its nature, poses risks for motorists and pedestrians not present at grade-separated crossings:

A. Whether a grade-separated crossing is practicable considering cost and engineering requirements and constraints.

B. Whether there is a demonstrated **public need** for the crossing that outweighs the hazards inherent in an at-grade configuration.[13]

3.2.2 TCRY does not contest key UTC findings and conclusions.

Here, TCRY does **not** contest Order 03's conclusion that a grade-separated crossing is not practicable ("No one contests on review the Initial Order's finding that it is physically and financially impractical to build a grade-separated crossing in this instance ...").[14] TCRY also does **not** contest the Commission's finding that the Cities' safety design mitigates the risk of the at-grade crossing.[15] TCRY does **not** contest that the Crossing's safety features include advanced signage, flashing lights, an audible bell, automatic gates, and a raised median strip, designed to prevent drivers from going around lowered gates.[16] TCRY also does **not** contest the UTC's calculation that the Crossing would result in 0.018707 collisions per year, or one accident every 53.5 years.[17] Under the Commission's interpretation of RCW 81.53.020 and .030, the Commission properly approved the Cities' petition because the demonstrated public need for the Crossing, as further demonstrated in this response, outweighs the Crossing's speculative risk.

4. AUTHORITY

4.1 RCW 81.53.261 is Inapplicable to the Cities' At-Grade Crossing Petition.

For the first time in this process, TCRY raises a novel argument that RCW 81.53.261 controls a petition for an at-grade crossing, not RCW 81.53.020 and .030. TCRY did not raise this before the Commission. New issues may not be raised on appeal. *Heidgerken v. Dept. of*

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[13] *Benton County*, Docket No. TR-100572, Order 06 at 13 (2011) (emphasis added).
[14] Order 03 ¶ 12. 570.
[15] Order 03, ¶¶ 13-14, 35. 570-71, 580.
[16] Order 03 ¶ 13. 570-71.
[17] Pre-filed testimony of Kathy Hunter, UTC Deputy Assistant Director, Transportation Safety. 1439-001441 (p. 25:7-27:3).

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Nat. Resources, 99 Wn. App. 380, 993 P.2d 934 (2000). Because no exception to this rule applies,[18] the Court must reject TCRY's argument.

The Court should also reject TCRY's new argument because RCW 81.53.261 is inapplicable to the Cities' petition for a **new** at-grade railway crossing. RCW 81.53.261 establishes a petition process for certain individuals to petition the UTC to install "signals or other warning devices" at crossings for public safety purposes:

> Whenever the secretary of transportation or the governing body of any city, town, or county, or any railroad company whose road is crossed by any highway, shall deem that the public safety **requires signals or other warning devices**, other than sawbuck signs, at any crossing of a railroad at common grade by any state, city, town, or county highway, road, street, alley, avenue, boulevard, parkway, or other public place actually open and in use or to be opened and used for travel by the public, he or she or it shall file with the utilities and transportation commission **a petition in writing, alleging that the public safety requires the installation of specified signals or other warning devices** at such crossing or specified changes in the method and manner of existing crossing warning devices.

RCW 81.53.261 (emphasis added). Nothing in RCW 81.53.261 establishes a petition process for the UTC to approve a **new** at-grade crossing.

Even a cursory review of Chapter 81.53 RCW demonstrates RCW 81.53.020 and .030 are the applicable statutes (if at all) for the Commission's review of the Cities' petition. The Cities' petition seeks to extend Center **Parkway** through an at-grade crossing over the Port of Benton tracks. RCW 81.53.020 and .030 establish the petition process for extending "highways" across railroad tracks. The term "highway" as used in chapter 81.53 RCW "includes all state and county roads, streets, alleys, avenues, boulevards, **parkways**, and other public places actually open and in use, or to be opened and used, for travel by the public."[19] Thus, RCW 81.53.020 and .030 provide the relevant statutory framework for the Commission's review of the Cities' petition to construct a new at-grade crossing. TCRY's late and grasping argument fails for numerous reasons.

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[18] *See e.g.*, RCW 34.05.554.
[19] RCW 81.53.010.

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4.2 Order 03 is Supported by Substantial Evidence.

The Commission explicitly determined that substantial evidence supports the order granting authority to the Cities' petition to construct the Crossing ("the record includes substantial competent evidence showing sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing.").[20] In support of this conclusion, Order 03 finds (1) that the Crossing is a long-planned and important component of the Cities' transportation system that will promote economic development,[21] and (2) that the Crossing will assist emergency responders by providing an alternative route for responding to incidents in the vicinity of Columbia Center Mall when trains are not blocking the intersection.[22] Order 03 also finds that the Commission should consider the planning and policy context of the proposed petition.[23] These findings and conclusions are proven and supported by substantial admitted evidence, which TCRY had an opportunity review before the hearing, critique with pre-filed testimony, critique with testimony at the hearing, cross-examine during the hearing, and brief after the hearing. TCRY fails to satisfy its burden when viewing the evidence in the light most favorable to the Cities. *Ongom v. State Dept. of Health,* 124 Wn. App. 935, 949, 104 P.3d 29, 36 (2005).

4.2.1 Economic development and the JUB Study.

Order 03 cites the JUB Study as evidence that the public need outweighs the Crossing's speculative risk.[24] Order 03 cites the JUB Study as identifying the Crossing's four primary "public need" objectives: (1) complete a grid network to provide safe and efficient movement of

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[20] Order 03, ¶ 38. 581.
[21] Order 03, ¶ 37. 581.
[22] Order 03, ¶ 36. 581. TCRY does not contest this finding.
[23] Order 03, ¶ 33. 580.
[24] TCRY does not contest UTC's calculation of risk for the proposed crossing at one incident every 53.5 years. 001440 (p. 26:21). The Crossing presents only a speculative risk, in part because the Cities' crossing design includes safety features **exceeding** typical engineering standards for such an intersection. Order 03 ¶ 14 ("even imprudent drivers will be effectively barred from crossing the tracks when the gates are closed next to the concrete barriers medians. These same measures reduce the risk to pedestrians and bicyclist traffic ...."). 571.

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traffic; (2) provide relief to congested arterial facilities; (3) provide improved access to commercial areas and developable land; and (4) improve emergency response times.[25] Then, the Commission explicitly stated that Order 03 is based upon the evidence provided in the JUB Study ("We determine that the Commission should consider public need for the proposed at-grade railroad crossing in the broader context of several purposes discussed in the JUB transportation study ...").[26]

By itself, the JUB Study provides substantial evidence that the Crossing will provide a public need, thereby satisfying RCW 34.05.570(3)(e). For example, the JUB Study provides the following evidence regarding the economic development benefits of the Crossing:

> There is also significant land yet to be developed in this general area of the region, including nearly 60 acres between the railroad and SR 240 which has desired visibility. Today this land has all utilities and collector roadway access on Tapteal Drive, however it is not as close to the rest of the commercial areas as it could be without Center Parkway, because of the barrier created by the railroad, so it lacks the synergy that commercial areas often seek.[27]

Thus, admitted evidence demonstrates that the Crossing will promote economic development by connecting Center Parkway, an arterial, to nearly 60 acres of developable land that has utilities and collector roadway access.

Before the hearing, TCRY's expert witness reviewed and opined on the JUB Study.[28] During the hearing, the ALJ accepted the JUB Study into evidence,[29] and TCRY cross-examined the author of the JUB Study.[30] Yet, TCRY chose **not** to cross-examine the author on economic development benefits of the Crossing. In addition, at the hearing, UTC Staff testified that "public need" includes "improved access to services and developable land ..."[31] The petition

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[25] Order 03, ¶ 21, citing the JUB Study. 574-75; 1019.
[26] Order 03, ¶ 20. 574.
[27] JUB Study, p. 6. 1011.
[28] Pre-filed testimony of Gary Norris, 1150-1168 (attention to 1152 at line 8).
[29] 1003.
[30] TCRY's cross-examination of Spencer Montgomery. Transcript, pp. 213-237.
[31] Transcript p. 280:8.

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itself identified the economic development benefits of the Crossing.[32] Cities' briefing consistently cited the public need for public benefit.[33] Previous UTC orders cited in the Cities' briefing identified that economic development serves a public need.[34] Yet, TCRY did **not** brief this issue before the Commission and did **not** contest the economic development evidence.

Reviewing the evidence in the light most favorable to the prevailing party, the JUB Study provides substantial evidence supporting Order 03's discussion and findings regarding economic development ¶¶ 22-24, 37. Substantial evidence also supports Order 03's ultimate conclusion that "the record includes substantial and competent evidence showing sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing."[35]

4.2.2 The Cities' policy and planning for the Crossing.

Order 03 also properly considered the policy and planning context of the Crossing.[36] Substantial evidence shows that the Crossing is one of the final steps in a series of planned transportation projects by providing a north-south connection in the existing grid system.[37] Undisputed evidence proves the Crossing has been identified as an essential capital improvement in (1) the City of Richland Comprehensive Plan,[38] (2) the City of Kennewick Comprehensive Plan,[39] and (3) the Regional Transportation Plan.[40] Recognizing the regional significance of this

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[32] 24 (attached to the petition).
[33] Cities' Post-Hearing Brief, 351 (including a section titled "Center Parkway Crossing Required to Provide Infrastructure to Support Community and Economic Development"); Cities' Petition for Administrative Review, 427 (including a section titled "Center Parkway Crossing Will Provide Infrastructure to Support Community and Economic Development); Cities' Response to TCRY's Petition for Rehearing, 630 (including a section titled "The record demonstrates that the Crossing will provide improved access to commercial areas and developable land").
[34] *See Benton County v. BNSF Railway Company*, Docket TR-100572, Order 06, Initial Order Granting Benton County's Petition for an At-Grade Railroad Crossing, Subject to Conditions ¶ 33-37 (February 15, 2011).
[35] Order 03, ¶ 38. 581.
[36] Order 03, ¶ 33. 580.
[37] JUB Report. 1010.
[38] City of Richland Comprehensive Plan – Transportation Element at T 5-4 ("Center Parkway from Tapteal to Gage: Construct 3-lane road"). 784.
[39] City of Kennewick Comprehensive Plan – Infrastructure at pp. 58-59. 1176-77.
[40] Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan at H-3 ("Center Parkway Extension – Gage to Tapteal"). 827.

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project, the Crossing has received funding from the State through the Washington State Community Economic Revitalization Board, the Surface Transportation Program Regional Competitive Fund, and the Transportation Improvement Board.[41] Pre-filed testimony and testimony at the hearing also identified the Crossing's planning policy and context.[42] TCRY does **not** contest this admitted evidence.

In addition to the evidence proving the Crossing's planning context, the record shows the legislative policy context supporting the UTC's approval of the Crossing. For example, the record shows that the City of Richland, as a first class city, is statutorily exempt from the at-grade crossing petition process,[43] and that the City of Kennewick is afforded all of the rights as a first class city.[44] The record demonstrated application of the state's Growth Management Act ("GMA") that requires state agencies, such as the UTC, to comply with local comprehensive plans of local governments under the GMA.[45] Substantial evidence proves that comprehensive planning identifies the Crossing as a necessary capital facility improvement, thereby raising the

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[41] 687 ("Whereas Kennewick has secured $2,016,000 in Rural Economic Vitality funding ... and $364,241 through the Surface Transportation Program Regional Competitive Fund.").

[42] *See e.g.*, the pre-filed testimony of Rick Simon, the City of Richland Development Services Manager (providing the foundation for the planning documents discussed herein). 747-755. Also see the examination and cross-examination of Rick Simon. Transcript at pp. 57-66.

[43] RCW 891.53.240 provides "Except to the extent necessary to permit participation by first-class cities in the grade crossing protective fund, when an election to participate is made as provided in RCW 81.53.261 through 81.53.291, **chapter 81.53 RCW is not operative within the limits of first-class cities, and does not apply to street railway lines operating on or across any street, alley, or other public place within the limits of any city**, ..."

[44] RCW 35A.11.020 ("The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of the state, and not specifically denied to code cities by law. ...")

[45] RCW 36.70A.103 ("State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this section except as otherwise provided in RCW 71.09.250(1) through (3), 71.09.342, and 72.09.333."). The Cities consistently briefed this law. *See e.g.,* Cities Post-Hearing Brief (including a section titled "The Growth Management Act Requires That State Agencies Comply with Local Comprehensive Plans"). 337.

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issue as to whether the UTC is now obligated to approve the Crossing under RCW 36.70A.103 because it is identified in a local government's comprehensive plan.[46]

Order 03 harmonized these provisions with the statutory requirement that cities subject to UTC jurisdiction must follow the petition process set forth in RCW 81.53.020. Order 03 concluded that comprehensive planning does not relieve the City of Kennewick from complying with RCW 81.53.020, but that the Commission will consider the Cities' planning as a part of the policy context in which it evaluates the petition.[47] Or, as described by the Commission, "Order 03 simply recognizes that the Commission should consider and give some weight to the Cities' transportation and urban development planning when evaluating the issue of public need."[48] This finding is well within the Commission's authority to consider "all other circumstances naturally involved" in the at-grade petition inquiry.[49] TCRY chose **not** to brief this issue, although it was repeatedly raised in the Cities' briefing before the UTC.

The Commission's approval of the Crossing does not turn on the purported weight afforded to the Cities' policy and planning context. Evidence proves, and the Commission's own Order expressly states, that the cumulative public need evidence outweighs the speculative risk of the Crossing:

> While we agree with the Initial Order that the public safety benefits demonstrated by the evidence are too slight on their own to support a determination of public need that outweighs the inherent risk, **when coupled with evidence of economic development benefits the balance shifts.**[50]

Thus, the Commission would have approved the Cities' petition without any deference to the Cities. Instead, the Commission's paragraph 33 in Order 03 (regarding weight afforded to the Cities' policy and planning context) is foundation for the conclusion that the GMA does not

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[46] City of Richland Comprehensive Plan – Transportation Element at T 5-4 ("Center Parkway from Tapteal to Gage: Construct 3-lane road"). 784. City of Kennewick Comprehensive Plan – Infrastructure at pp. 58-59. 1176-77. Benton-Franklin Council of Governments 2011-2032 Regional Transportation Plan at H-3 ("Center Parkway Extension – Gage to Tapteal"). 827.
[47] Order 03, ¶ 33. 580.
[48] Order 04, ¶ 12. 645.
[49] RCW 81.53.020.
[50] Order 04, ¶ 11. 644-45.

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preempt the Commission's authority and that code cities likely remain subject the UTC's petition process set forth in RCW 81.53.02. There is no basis here for overturning the UTC's Order 03.

4.2.3 UTC's Order 03 is based upon substantial evidence, and the substantial evidence is "underscored" by illustrative public comments, authorized by WAC 480-07-498.

WAC 480-07-498 expressly authorizes the Commission to treat public comment "as an **illustrative** exhibit that expresses public sentiment." Order 03 follows this procedure. Order 03 states that "There is additional public comment in the record of this proceeding from various community leaders that focuses on these points [*i.e.*, the broader public policy context] and **illustrates** the local importance of recognizing the broader public policy argument."[51] Order 03 also provides, "the potential for additional economic development in this area is **underscored** by a public comment filed in this proceeding." Although the public comment ended prior to the due date for post-hearing briefs, TCRY did **not** contest any written comments as is authorized by the Commission's procedural rules.

Now, TCRY recklessly alleges that "the entire basis for the UTC's reversal is five (5) written comments." TCRY made the same misleading argument in its petition for reconsideration to the Commission, and the Commission concluded that TCRY's argument was misleading and incorrect.[52] Once again, no fact in the record supports TCRY's argument, because Order 03 is supported by substantial evidence, which is "underscored" by "illustrative" public comments. The Court must reject TCRY's unsubstantiated allegations.

4.3 The UTC Petition is the First Step in the At-Grade Crossing Process.

Order 03 is the first step in the process to construct the approved Crossing. Property acquisition (if any), final engineering, further permitting and contracting must occur before the Cities construct the Crossing. Thus, Order 03, by itself, has no impact on TCRY's leasehold

[51] Order 03, ¶ 26. 578-79.
[52] Order 04, ¶ 10. 644.

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rights[53] in the Port of Benton tracks.[54] Today, TCRY trains may use the Port of Benton tracks as if Order 03 never occurred. TCRY has provided this court with no evidence demonstrating that any inverse condemnation has occurred.

Chapter 81.53 RCW establishes a procedure to address at-grade crossings and interests in private property. First, RCW 81.53.020 establishes that a petitioner may not extend a highway that crosses any railroad at grade "without authority **first** being obtained from the commission to do so." Then, a subsequent section requires petitioner to acquire the property rights through a condemnation proceeding when property rights are taken or damaged.[55] The statute is clear that the petition process occurs first, then any condemnation proceeding should occur when it is necessary to take or damage property rights with "work undertaken under this chapter." RCW 81.53.180.

The Cities may not undertake any work under Chapter 81.53 RCW until *after* the UTC's approval.[56] To require the condemnation of private property prior to Commission approval would also be a speculative use of limited taxpayer resources. What if the at-grade petition is subsequently denied? To the extent required by law, the Cities will obtain all necessary property rights *after* Commission approval, but *before* any taking or damage occurs. A separate

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[53] Railroad Lease between Port of Benton and TCRY. 162

[54] Order 03 provides only the authority to cross the existing tracks. TCRY provides no citation to the record where Order 03 demands the removal of the track that is currently used by TCRY to store its trains. *See e.g.,* 1381-1411.

[55] In relevant part, RCW 81.53.180 provides: "Whenever to carry out any **work undertaken under this chapter** it is necessary to take, damage, or injuriously affect any private lands, property, or property rights, the right so to take, damage, or injuriously affect the same may be acquired by condemnation as hereinafter provided: ... (2) In cases where it is necessary to take, damage, or injuriously affect private lands, property, or property rights to permit the opening of a new highway or highway crossing across a railroad, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired by the municipality or county petitioning for such new crossing by a condemnation proceeding brought in the name of such municipality or county as provided by law for the exercise of the power of eminent domain by such municipality or county. If the highway involved be a state highway, then the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by a condemnation proceeding prosecuted under the laws relative to the exercise of the power of eminent domain in aid of such state road."

[56] Again, assuming there is UTC jurisdiction. See footnote 11, *infra.*

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TCRY-initiated matter is currently pending in Benton County Superior Court to address this exact matter (Case No. 14-2-01910-3). In this proceeding, however, TCRY's condemnation argument places the cart in front of the horse. The City will address any claim of property interest in the pending TCRY case under Case No. 14-2-01910-3, or future proceedings. This APA appeal for review of the UTC's Order 03 is not the place for that issue.

5. CONCLUSION

The Commission properly issued Order 03. That Order is supported by controlling law and substantial evidence. Substantial admitted evidence before the Commission proves that the Crossing will provide numerous benefits, including economic development. Substantial admitted evidence also proves that the Commission properly considered the Cities' planning as a part of the policy context in which it evaluated the proposed Crossing. TCRY has failed to satisfy its burden is this administrative appeal. The Cities respectfully request that this court affirm the Commission's grant of authority for the Cities to construct the proposed Crossing.

DATED this 13th day of November, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of NOVEMBER, 2014, I caused to be served a true and correct copy of the foregoing, by the method indicated below and addressed to the following:

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IN THE SUPERIOR COURT, STATE OF WASHINGTON

IN AND FOR THE COUNTY OF BENTON

TRI-CITY RAILROAD COMPANY, LLC, a Washington corporation Petitioner, vs. STATE OF WASHINGTON, UTILITIES AND TRANSPORTATION COMMISSION Respondent.	No. 14-2-01894-8 **REPLY RE: PETITION FOR REVIEW OF ORDER OF WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION ALLOWING NEW AT-GRADE CROSSING**

COMES NOW the Tri-City Railroad Company, LLC ("TCRY"), by and through its attorneys Paine Hamblen LLP, and by way of reply to the briefing filed by the Washington State Utilities and Transportation Commission ("UTC"), the City of Richland, and the City of Kennewick (collectively "Cities"), submits the following memorandum:

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ISSUES PRESENTED AND SUMMARY OF ARGUMENT

1. Is RCW 81.53.240 Determinative of the UTC's Jurisdiction?

Yes. The Cities initiated the instant matter before the UTC. The Cities specifically contended that the UTC's jurisdiction was governed by RCW 81.53.240, and that the UTC only had jurisdiction over the Cities with their consent. (Record at 00335, 00395). The UTC agreed in part with the Cities, and in its Final Order both cited and claimed to give effect to RCW 81.53.240, noting that the statute controlled UTC's jurisdiction over the Cities. (Record at 00577-78). Yet, the UTC's Final Order ignored the directive of that statute, which requires the UTC to evaluate the petition under RCW 81.53.261 ~ .291, and instead created three new criteria to justify disregarding the UTC's own finding that the proposed new crossing is unwarranted from a public safety standpoint.

Having acted outside of its statutory authority and erroneously applied the law, the Final Order should be reversed. *See* RCW 34.05.570(3)(b) and (d).

2. Is the UTC Authorized by Statute to Consider "economic development interests", "deference to local government", and "the broader public policy environment"?

No. "[A]n administrative agency...has no more authority than is granted to it by the Legislature. Determining the extent of that authority is a question of law, which is a power ultimately vested in this court." *Local 2916, IAFF v. PERC*, 128 Wn.2d 375, 379, 907 P.2d 1204 (1995) (internal citations omitted).

RCW 81.53 *et seq.*, and in particular RCW 81.53.261 ~ .291, do not authorize the UTC to consider the three criteria it referenced in its Final Order, in order to justify approving

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a crossing it acknowledges is not warranted from a public safety standpoint. The findings and conclusions reached by the UTC concerning "economic development interests", "deference to local government", and "the broader public policy environment" should be reversed as being outside the UTC's statutory authority. *See* RCW 34.05.570(3)(b).

3. **Do RCW 81.53.030 ~ .050 Apply within Kennewick and Richland, in Light of RCW 81.53.240?**

No. As correctly argued by the Cities below, RCW 35A extends RCW 81.53.240 to code cities such as Kennewick. Therefore, pursuant to RCW 81.53.240, the UTC only has jurisdiction over crossings in Kennewick by virtue of Kennewick's election to petition the UTC pursuant to RCW 81.53.261 ~ .291. RCW 81.53.030, .040, and .050 do not apply within the Cities, as a matter of law. RCW 81.53.240. UTC's exclusive consideration of the matter under RCW 81.53.030 is in error. *See* RCW 34.05.570(3)(b) and (d).

4. **Did the UTC Fail to Follow its Evidentiary Procedures By Considering Public Comments as Evidence?**

Yes. As noted by the UTC in the Final Order, the parties (*i.e.* TCRY and the Cities) focused almost exclusively on the issue of public safety in all of their respective testimony and briefing. (Final Order, ¶ 16). The JUB traffic study, relied upon heavily by the UTC and the Cities, is authored by traffic engineers, and does not use the word "economic."

For the UTC to justify its holding under the three new criteria it described, it relied on written public comments, treating the contents as proof of the matter asserted. While there is a procedure to potentially admit public comments as substantive evidence, neither the UTC nor the Cities invoked that procedure. *See* WAC 480-07-490(5) and WAC 480-07-498. Pursuant

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to RCW 34.05.570(3)(c), the Final Order must be reversed, as the UTC 'failed to follow a prescribed procedure'.

5. Is the UTC Authorized to Consider Abandonment of Trackage and Elimination of Certain Railroad Operations?

No. The Cities' petition to the UTC was more than a petition for a crossing; the Cities sought the UTC's 'authorization' to eliminate an active track, and thereby eliminate TCRY's operations on that track. RCW 81.53 *et seq.* contains no mechanism for the UTC to eliminate either trackage or railroad operations, particularly where the railroad objects. Either the Final Order is void, insofar as the UTC lacks statutory authority to order the abandonment of track or the elimination of railroad operations, or the Final Order is a regulatory taking, for which just compensation must be paid. *See* RCW 34.05.570(3)(a) and (b).

ARGUMENT

A. RCW 81.53.240 is Determinative of the UTC's Jurisdiction.

As noted by the Cities in their briefing to the UTC, and by the UTC, in its Final Order, the UTC's statutory jurisdiction over the Cities is derived from RCW 81.53.240. Pursuant to that statute, the UTC must evaluate the Cities' petition under RCW 81.53.261 ~ .291. *Id.* The UTC, as an administrative agency, has no general jurisdiction, and was not permitted to disregard the jurisdictional statute cited to it by the Cities, and discussed in its Final Order.

"[U]nlike courts, which are granted the 'judicial power of the state' by the Washington Constitution, CONST. art. IV, § 1, agencies are limited to the powers the legislature has

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granted them." *Snohomish Cnty. Pub. Trans. Benefit Area v. Public Emp. Relations Comm'n, et al.*, 173 Wn. App. 504, 518, 294 P.3d 803 (2013) (internal citation omitted).

Administrative agencies are creatures of the Legislature, without inherent or common-law powers and, as such, may exercise only those powers conferred by statute. *Kaiser Aluminum & Chem. Corp. v. Dept. of Labor & Indus.*, 121 Wn.2d 776, 780, 854 P.2d 611 (1993); *Human Rights Comm'n v. Cheney Sch. Dist. 30*, 97 Wn.2d 118, 125, 641 P.2d 163 (1982).

The power of an administrative tribunal to fashion a remedy is strictly limited by statute. *See Human Rights Comm'n*, 97 Wn.2d at 125.

Whether it would be beneficial, useful, or reasonable for an agency to have certain powers is not the issue; it is the statutory authorization of that power which must be determined as a matter of law. *See, e.g., Washington Independent Telephone Ass'n v. Telecommunications Ratepayers Ass'n for Cost-Based & Equitable Rates*, 75 Wn. App. 356, 364, 880 P.2d 50 (1994).

Here, the Cities expressly invoked RCW 81.53.240, and noted that the UTC's jurisdiction over the Cities was only by their consent:

> The petitioners are arguably exempt from this petition process. RCW 81.53.240 exempts first-class cities from the at-grade petition process. The City of Richland is a first-class city, and the City of Kennewick is a code city. State law provides that code cities have the same authority as first-class cities. RCW 35A.11.020: "The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of the state, and not specifically denied to code cities by law." Nevertheless, the Petitioners believe UTC review and approval worthwhile.

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(Record at 000335; 000395).

The UTC disagreed in part. The UTC believed that it has inherent jurisdiction over Kennewick, as Kennewick is not a first class city, and RCW 81.53.240 was not directly applicable. The UTC explained in the Final Order:

> Indeed, it is worth considering that if the City of Richland was the petitioner for this project, instead of Kennewick, it would be exempt from the Commission's jurisdiction. RCW 81.53.240 exempts first-class cities from the at-grade petition process. The City of Richland is a first-class city...Staff argues that because RCW 81.53.240 is a limitation on Commission jurisdiction, not a grant of authority to first-class cities, RCW 35A.11.020 does not apply. We see no need to resolve this legal argument in this case. We consider the underlying purpose of the exemption as part of the policy context in which the Commission should evaluate the evidence...Kennewick is not exempt from our legal jurisdiction...

(Final Order ¶ 25; Record 000577-78).

RCW 81.53.240 provides, in pertinent part: "Except to the extent necessary to permit participation by first-class cities in the grade crossing protective fund, when an election to participate is made as provided in RCW 81.53.261 through 81.53.291, chapter 81.53 RCW is not operative within the limits of first-class cities[.]"

The Final Order considers the UTC's jurisdiction vis-à-vis RCW 81.53.240. Despite having cited the appropriate statute, UTC did not apply it, declined to "resolve this legal issue", and did not evaluate the petition under RCW 81.53.261 ~.291. On its face, the Final Order errs as a matter of law.

There is no statutory mechanism under RCW 81.53 *et seq.* to 'un-exempt' first class cities from RCW 81.53.240, and parties may not confer jurisdiction upon an administrative

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agency beyond that which has been granted by the legislature. The only means expressed within RCW 81.53 *et seq.* for first class cities to voluntarily place the establishment of at-grade crossings under the UTC's jurisdiction is pursuant to RCW 81.53.291.

Richland is a city of the first class; as contended by the Cities themselves, RCW 81.53.240 renders RCW 81.53 *et seq.* inapplicable to Richland, except where Richland voluntarily submits to UTC jurisdiction for a particular crossing, as it did here. *See* RCW 81.53.240, RCW 81.53.291. (*See also* Record at 000335; 000395; 000577-78). The only mechanism under the statute for UTC jurisdiction under such circumstances is the process set forth in RCW 81.53.261 ~ .291.

> RCW 81.53.261 through 81.53.291 shall be operative within the limits of all cities, towns and counties, except cities of the first class. Cities of the first class may elect as to each particular crossing whether RCW 81.53.261 through 81.53.291 shall apply. Such election shall be made by the filing by such city of a petition as provided for in RCW 81.53.261 with the utilities and transportation commission, or by a statement filed with the commission accepting jurisdiction, when such petition is filed by others.

RCW 81.53.291.

Therefore, RCW 81.53 *et seq.* is inapplicable within the city limits of Richland, except when Richland voluntarily conveys jurisdiction to the UTC pursuant to a petition or a waiver under RCW 81.53.261. *See* RCW 81.53.291. Richland moved to intervene in the instant matter, and specifically cited the correct statute, RCW 81.53.240 – which is why the UTC had jurisdiction over this proposed at-grade crossing as to Richland, but only under the statutory scheme set forth in RCW 81.53.261 ~ .291.

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Kennewick is a code city, meaning it has adopted the optional municipal code, Title 35A RCW. As a code city, Kennewick is treated, for statutory purposes, as having "all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law." RCW 35A.11.020. Provisions enacted prior to the establishment of the optional municipal code, such as RCW 81.53.240, are presumed to be applicable to code cities such as Kennewick, unless specifically exempted. *See* RCW 35A.11.020; RCW 35A.11.030; RCW 35A.11.050 ("The general grant of municipal power conferred by this chapter and this title on legislative bodies of non-charter code cities and charter code cities is intended to confer the greatest power of local self-government consistent with the Constitution of this state and shall be construed liberally in favor of such cities."); RCW 35A.21.160 (stating the same, for charter cities). (*See also* Record at 000335; 000395).

In this respect, TCRY agrees with the Cities. As argued by the Cities below, RCW 35A.11 extends RCW 81.53.240 to code cities such as Kennewick. (*See* Record at 000335; 000395). Therefore, pursuant to RCW 81.53.240, the UTC only has jurisdiction over crossings in Kennewick pursuant to RCW 81.53.261 ~ .291, by virtue of Kennewick's election to petition the UTC. (*Id.*). The UTC erred in holding otherwise and failing to apply the statute.

Alternatively, should it be contended that RCW 81.53.240 does not apply to Kennewick as a code city, that contention is also answered by RCW 81.53 *et seq.* RCW 81.53.291 provides, in pertinent part: "RCW 81.53.261 through 81.53.291 shall be operative within the limits of all cities, towns and counties, except cities of the first class."

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"The use of the word 'shall' is presumptively imperative and creates a mandatory duty unless a contrary legislative intent is shown." *Washburn v. City of Federal Way*, 178 Wn.2d 732, 756, 310 P.3d 1275 (2013) (internal citation and quotation omitted).

If the UTC and the Cities are now contending that RCW 81.53.240 and RCW 81.53.291 literally only apply to Richland as a first class city, but not to Kennewick as a code city, then the same legal result is reached -- RCW 81.53.261 ~ .291 control the UTC's evaluation of the Cities' petition, as the entirety of the proposed crossing is physically located within code city Kennewick.

Finally, it should be noted that RCW 81.53.261 ~ .291 apply to new crossings, as well as to existing crossings where an upgrade of safety equipment is sought. *See* RCW 81.53.271 ("...if the proposed installation is located at a new crossing requested by a city...").

The Cities assert: "For the first time in this process TCRY raises a novel argument that RCW 81.53.261 controls the Petition for an at-grade crossing, not RCW 81.53.020 and .030. TCRY did not raise this before the Commission. New issues may not be raised on appeal." (*Compare* Cities' Resp. Br., p. 6, *ll.* 20-22, *with* Record at 000335; 000395; 000577-78).

In the instant action, the Cities initiated the petition, and the petition is pled to the .261 and .271 standard. In petitioning, the Cities conferred jurisdiction to the UTC, by operation of law. *See* RCW 81.53.291. The Cities acknowledged the same in their own briefing on their Motion to Intervene in the underlying proceedings. ("The City of Richland, as a first class city, together with the City of Kennewick, as a code city, have the authority to perform any function granted to any other city classification under Title 35 RCW." Record at 000335);

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("RCW 81.53.240 exempts first class cities for the at-grade crossing petition process." Record at 000395).

It should be noted that in the Order Granting Petition to Reconstruct the Steptoe Street Highway Rail Grade Crossing and Modify Active Warning Devices, before the Washington State Utilities & Transportation Commission, Docket TR-090912, and analyzed by the UTC in the present case, the same statutes and jurisdictional arguments were discussed. (See Record at 001225-001228). The Commission explicitly noted: "The City of Richland is a first class city and modifications to railroad highway grade crossings are generally not subject to Commission review or approval (RCW 81.53.240). However, the city, under the provisions of RCW 81.53.291, has elected Commission review of the proposed modifications . . ." (*Id.*) The Commission cited the same in its Findings and Conclusions: "RCW 81.53.261 requires the Commission to grant approval prior to any changes to public railroad highway grade crossings within the State of Washington in non-first class cities. *See also* WAC 480-62-150." (*Id.*)

Similarly, the UTC now argues: "TCRY never cited RCW 81.53.261 below. It therefore waived its reliance on the statute and may not raise the issue for the first time before this Court." As with the Cities' argument, this misunderstands the issue. The proceedings below only existed because the Cities initiated them, and those proceedings were initiated under RCW 81.53.240 and .291. The UTC cited the statute and discussed its jurisdiction thereunder, then did not follow the statute.

UTC refers to *King County v. Boundary Review Board*, 122 Wn.2d 648, 860 P.2d 1024 (1993). *King County* concerned factual evidence, and the reference to documents in the

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trial court not brought to the agency's attention. *Id.* at 669. Here, the issue is the jurisdictional statutes raised by the Cities in their briefing, and the UTC in its Final Order. Moreover, unlike in *King County*, the legal error here is contained within the face of the Final Order itself, as it discussed the appropriate statute, RCW 81.53.240, then failed to follow that statute's directive, which governs at-grade crossings within cities.

The Cities knew from the time they commenced the petition they fall under the statutory purview of RCW 81.53.240, .261, and .291. The UTC addressed the same in its Final Order on this matter. Those statutes apply, and control.

B. 'Public Safety' Is The Criteria For Evaluation Of Proposed At-Grade Crossings; The UTC's Consideration Of "Economic Development Interests", "Deference To Local Government", And "The Broader Public Policy Environment" Are Not Authorized By Statute.

Under RCW 81.53.261 ~ .291, the UTC is to consider whether an at-grade crossing is warranted "from the standpoint of public safety". *See* RCW 81.53.271, RCW 81.53.261.

Here, the Cities are seeking to apply state and federal funds to the construction of the proposed crossing. (Record at 000019).

RCW 81.53.271 required the Cities' petition to set forth the following: "the location of the crossing or crossings, the type of signal or other warning device to be installed, the necessity from the standpoint of public safety for such installation, the approximate cost of installation and related work, and the approximate annual cost of maintenance."

The Cities' petition sets forth the foregoing, as required by RCW 81.53.261, and the administrative proceedings commenced on that basis. (Record at 00004 -00086).

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As noted by the UTC itself in its Final Order, the parties (*i.e.* TCRY and the Cities) focused almost exclusively on the issue of public safety in all of their respective testimony and briefing. (Final Order, ¶ 16). The reason for this focus was that the statutes require it, and the statutes do not provide for the UTC's consideration of "economic development interests", "deference to local government", and "the broader public policy environment". *Compare* RCW 81.53.271 *with* Final Order, ¶¶ 17, 22, 25, 28, 33, and 39; *see also* RCW 81.53.020, .030, .040 (phrases "economic development interests", "deference to local government", and "the broader public policy environment" do not appear).

As acknowledged by the UTC, "the benefits to public safety alleged by the Cities are too slight on their own to support the petition[.]" Final Order, ¶ 16. The ALJ also concluded that the cities "failed to demonstrate sufficient public need to outweigh the inherent risks presented by the proposed at-grade crossing." The ALJ's Order 02 explained:

> The Cities cited open meeting dockets that were all uncontested and did not benefit from a thoroughly developed evidentiary record. The only case with any persuasive value resulted in a net closure of crossings, trading two existing passively protected private at-grade crossings in the City of Marysville for one new public crossing with active warning devices (Docket TR-111147). None of the other approved new crossings were in urban areas where over 7,000 vehicles per day were expected to cross tracks currently traveled by five or more trains per day (in one case, the Commission approved a new crossing to divert approximately 400 commercial vehicles per day away from residential roadways and across a single set of tracks traveled by up to two trains per day (Docket TR-112127); in two other cases, the commission approved installing new industrial rail lines across very lightly traveled roadways in order to promote industrial growth (the road in Docket TR-100072 had only 150 vehicles per day and the road in Docket TR-121467 had less than 1600 vehicles per day); and in two other cases, the Commission approved new pedestrian-only crossings across lightly used

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tracks (Docket TR-100041 had one weekly freight train and Docket TR-110492 had no active railroading operations)).

(Record at 000355).

As noted *supra*, "an administrative agency ... has no more authority than is granted to it by the Legislature. Determining the extent of that authority is a question of law[.]" *Local 2916, IAFF v. PERC*, 128 Wn.2d 375, 379, 907 P.2d 1204 (1995).

The UTC's Final Order was arrived at by considering "economic development interests," "deference to local government," and "the broader public policy environment." These criteria are not among the statutory standard of "public safety" the UTC is authorized to consider when evaluating an at-grade crossing petition brought by an otherwise exempt city. Nor is the UTC authorized to consider those criteria under other portions of RCW 81.53 *et seq*. The UTC exceeded its express statutory authority in creating new criteria by which to evaluate the petition. The Court should reverse the UTC's final order, and re-instate the initial order, which properly found that the proposed at-grade crossing was detrimental to public safety.

C. RCW 81.53.030 ~ .050 are Inapplicable in Light of RCW 81.53.240.

The UTC argues that the "Commission properly weighed the evidence and properly determined that the balance tipped in favor of the public's demonstrated need for the proposed crossing," (UTC Resp. Br., p. 14, *ll.* 10-12 (citing the Commission's ruling)). The Cities argue that TCRY "does not contest Order 03's conclusion that a grade separated crossing is not practicable" (Cities' Resp. Br., p. 6, ll. 7-8). Both UTC and the Cities rely upon inapplicable

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statutes, RCW 81.53.030 ~ .050. These statutes generally concern petitions for crossings at country roads; at-grade crossings within all cities and towns other than those of the first class are specifically governed by RCW 81.53.261 ~ .291. *See* RCW 81.53.291. At-grade crossings within cities of the first class[1] are not governed by RCW 81.53 *et seq.* at all, except when those cities elect to have RCW 81.53.261 ~ .291 apply. *See* RCW 81.53.240.

As this proposed crossing is physically located within Kennewick city limits, RCW 81.53.261 ~.291 are applicable either by operation of law or by virtue of Kennewick conferring jurisdiction by filing its petition.

Under RCW 81.53.030 ~ .050, grade separation is to be achieved whenever possible. RCW 81.53.020. One of the primary considerations is whether the route of the road can be changed so as to avoid building an at-grade crossing, or whether a grade separation can be constructed at a nearby location. RCW 81.53.040. Here, a grade-separated crossing already exists a few blocks to the east of the proposed at-grade crossing, at Columbia Center Boulevard and West Yellowstone Avenue, implicating RCW 81.53.040. Indeed, at-grade crossings are deemed so inherently dangerous that a special procedure exists to close them to public road travel without a hearing. *See* RCW 81.53.060. Nonetheless, reference to these statutes does not support the UTC's final order, as they are inapplicable as a matter of law. RCW 81.53.240.

Moreover, the UTC based its Final Order expressly on three criteria: "economic development interests", "deference to local government", and "the broader public policy

[1] As well as within Kennewick, a code city, pursuant to RCW 81.53.240 and RCW 35A.11.020, as argued by the Cities to the UTC below. (Record at 000335; 000395).

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environment". Those phrases do not appear in RCW 81.53.020, .030, .040; those statutes do not provide authority for the UTC to consider "economic development interests", "deference to local government", and "the broader public policy environment". The UTC's holdings concerning the same remain in error, and should be reversed.

D. The UTC Failed to Follow its Evidentiary Procedures by Considering Public Comments as Evidence.

1. "Illustrative Evidence"

The UTC argues that the "Commission properly treated the comments as illustrative evidence . . . merely to emphasize facts already established by the unchallenged record evidence." (Brief of Respondent, Attorney General of Washington ("UTC Resp. Br."), p. 5, *ll.* 6-8) The UTC also argues that the Commission cited "the first comment, submitted by landowner Preston K. Ramsey III . . . merely because it 'underscored' existing record evidence demonstrating the potential for economic development created by the project." (*Ibid.*, at *ll.* 9-15) . "[TCRY] argues that the Commission wrongly treated the comments as substantive, as opposed to illustrative evidence." (UTC Resp. Br., p. 4, *ll.* 16-17)

'Illustrative evidence' is distinct from 'illustrative exhibits'. Illustrative evidence is potentially admissible; illustrative exhibits are not.

Illustrative evidence is "evidence furnished by producing the thing itself for inspection, rather than having witnesses describe it." *State v. Mitchell*, 56 Wn. App. 610, 614, 784 P.2d 568 (1990). Illustrative evidence is also known as "real" evidence -- playing the

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sound of a police siren for the jury, rather than having the witness describe the sound of the siren, is illustrative evidence. *Id.* at 613-14.

Illustrative exhibits, on the other hand, are by definition not evidence, and are merely an aid for "presentation of testimony and/or in final argument by counsel." *See Pers. Restraint of Woods*, 154 Wn.2d 400, 426-27, 114 P.3d 607 (2005).

TRCY does not contend that the Commission should have treated the public comments as *illustrative evidence* because the comments cannot, by law, be considered evidence at all. By rule, public comments merely have the status of illustrative exhibits until the procedure to substantiate, examine, and cross examine them is followed. WAC 480-07-490, WAC 480-07-498.

The public comments, treated as evidence by the UTC, are not, by definition "illustrative evidence", nor did the UTC treat them as "illustrative exhibits." Those public comments, by their own terms, do not "underscore" or "emphasize facts already established," including the JUB study.

The UTC discussed in great detail the specifics of, *inter alia*, the claimed plans of a person claiming to be a developer, who claims to own property near the proposed crossing, and who claims that he needs the crossing approved in order to develop his property. (Final Order, ¶ 23). The UTC assumed these comments were true for the matters asserted – by definition, it treated the comments as established substantive evidence. The UTC's treatment of public comments as substantive evidence violates the UTC's own adjudicative procedures, WAC 480-07-490(5) and WAC 480-07-498.

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2. The JUB study is a traffic engineer's report, does not use the word 'economic', and does not discuss the subject matter contained in the public comments accepted by the UTC as evidence.

The 14-page JUB study, by its terms, is a traffic engineering study. It is authored by traffic engineers, and does not purport to be an economic analysis, nor an investment prospectus. The JUB study referred to "improved access" for vehicle traffic in two places. First, the study identified possibilities of "Improved Access" to currently undeveloped land. (JUB Study, p. 6, ¶ 3 & 4) The study indicated roadway access might improve, and pointed to potential improvements to the flow of traffic. Second, the study summary stated: "nearly 60 developable acres of commercial land between the railroad and SR 240 which has desirable visibility will have improved access and will gain the synergy that commercial areas often seek." (*Ibid.*, p. 14)

The JUB study therefore indicates that local traffic and property access could benefit from the project, and invokes a corporate buzzword ("synergy"). The traffic study, by traffic engineers, focuses on safety and traffic / access considerations. The JUB study does not discuss the subject matter of the written public comments the UTC treated as substantive evidence, and the public comments are likewise not "illustrative evidence".

3. "Waive Cross Examination"

UTC and the Cities both argue that TCRY had no right of cross-examination. UTC argues: "TCRY had no right of cross examination. Even if it did, it failed to preserve the issue for review." (Resp. Br., p. 7, *ll.* 9-10). The Cities argue: "TCRY chose not to cross-

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examine the [JUB] author on economic development benefits of the Crossing." (Cities Response to Petition for Review ("Cities' Resp. Br."), p. 9, *ll.* 18-19)

The Cities' witnesses included Jeff Peters, Rick Simons, John Deskins, Chief Skinner, Chief Baynes, Neal Hines, Kenneth Hoagnberg, Kevin Jeffers, Susan Grabler, and Spencer Montgomery. (Hearing Appearances, pp. 242-244). The UTC's witnesses included: Kathy Hunter. (*Ibid.* at 245)

Neither Mr. Malley nor Mr. Ramsey, III were offered as witnesses. (*Ibid.* at 242-251). A party cannot, by definition, "waive" cross examination of a person never called as a witness.

In the Order overruling the ALJ, the Commission stated:

> We determine that the Commission should consider public need for the proposed at grade railroad crossing in the broader context of the several purposes discussed in the JUB Transportation Study, rather than with the narrower focus that the parties, and consequently the initial order, plays on public safety. It is particularly important to give weight to the economic development interests considering that the Center Parkway extension would conveniently connect existing, complimentary commercial developments in Richland and Kennewick, and would promote development of 60 acres of currently vacant commercial real estate along Tapteal Drive in Richland, as shown below in Figure 3. (Picture omitted). The potential for additional development in this area is underscored by a public comment filed in this proceeding by a landowner, Preston K. Ramsey, III, writing on behalf of FBA Land Holdings. FBA Land Holdings own two undeveloped parcels bordered on the north by Tapteal Drive and on the west by the proposed Center Parkway extension. . . . Similarly, another public comment filed by Brian Malley, Executive Directors of the Benton Franklin Council of Governments, the Metropolitan Planning Organization for the Tri-City metropolitan area, emphasizes community expectations with respect to the proposed Center Parkway extension . . .

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(Order 03, pp. 10-12)

The UTC's reliance on the comments made by Malley and Ramsey III as being true for the matters asserted violates WAC 480-07-490 and -498. In order for the UTC to treat a document as evidence, it must be specifically designated as evidence. WAC 480-07-490(1). Public comment may only be treated as evidence after it is both designated as evidence and the maker is subject to cross examination. WAC 480-07-490(1), (5).

By definition, a party cannot 'fail to object' to documents never designated as evidence, nor offered into evidence. Here, neither the UTC nor the Cities sought to designate the five public comments as evidence.

The UTC now argues that TCRY should have predicted UTC's decision based upon the public comments, and petitioned to re-open the public record prior to entry of the final order. TCRY had no notice that UTC would treat public comment as substantive evidence, even though it had not been designated as such. UTC did not reveal it would do such until it actually entered the final order. TCRY was under no duty to predict that UTC would not follow the law, nor was it under a duty to predict UTC would disregard its own procedures, without notice.

In somewhat confusing hyperbole, the UTC argues: "What happened below can be summarized as follows. TCRY stood by silently while the Commission accepted public comments . . . [then] suddenly claimed a right of cross examination." (UTC Resp. Br., p. 10, ll. 10-13) Not exactly. The Commission accepted public comment, some after the deadline for comment had passed, and used those comments as substantive evidence to support its

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findings and conclusions, without following the UTC's own WAC procedures for bringing public comments into evidence. The opportunity to cross-examine never arose. The same could not subsequently be waived. The UTC's own WAC provisions are clear that the burden was on the Cities and the UTC to properly bring written public comments into evidence, and the record is clear that they did not.

The UTC has no statutory authority to consider "economic development interests", "deference to local government", and "the broader public policy environment". *Compare* RCW 81.53.271 with Final Order, ¶¶ 17, 22, 25, 28, 33, and 39. Indeed, those three terms do not appear in RCW 81.53 *et seq.* Nonetheless, the UTC lacked competent substantive evidence to support its findings on these extra-statutory factors, and its failure to follow its own evidentiary procedures and admit non-evidence hearsay submitted by the public without opportunity for examination is an independent basis to reverse the final order, and re-instate the interim order denying the petition for the crossing.

5. The UTC is not Authorized to Consider Abandonment of Trackage and Elimination of Certain Railroad Operations.

The Cities' petition to the UTC was more than a petition for a crossing; the Cities sought the UTC's 'authorization' to eliminate an active track, and thereby eliminate TCRY's operations on that track.

In this context, the UTC's statutory purview is to evaluate crossings of highways and railroads, or of railroads with other railroads. *See* RCW 81.53 *et seq.* However, RCW 81.53 *et*

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seq. contains no mechanism for the UTC to eliminate either trackage or railroad operations, particularly where the railroad objects. (*See* Record at 000303-000305).[2]

Either the Final Order is void, insofar as the UTC lacks statutory authority to order the abandonment of track or the elimination of railroad operations, or the Final Order is a regulatory inverse condemnation taking, for which just compensation must be paid. The property right at issue was "appropriated in fact" when the UTC made its *ultra vires* ruling below. *See, e.g., Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 928-31, 296 P.3d 860 (2013); *Manufactured Housing Communities v. State*, 142 Wn.2d 347, 355-56, 13 P.3d 183 (2000).

[2] Generally, the Surface Transportation Board has exclusive jurisdiction to authorize a railroad's abandonment or discontinuance of operations over any part of a rail line. *See, e.g., Howard v. Surface Transportation Board*, 389 F.2d 259 (1st Cir. 2004). "Similarly, to the extent remedies are provided under laws that have the effect of regulating [i.e., managing or governing] rail transportation, they too are expressly preempted." *Elam v. Kansas City So. Ry. Co.*, 635 F.3d 796 (5th Cir. 2011) (internal citation and marks omitted).

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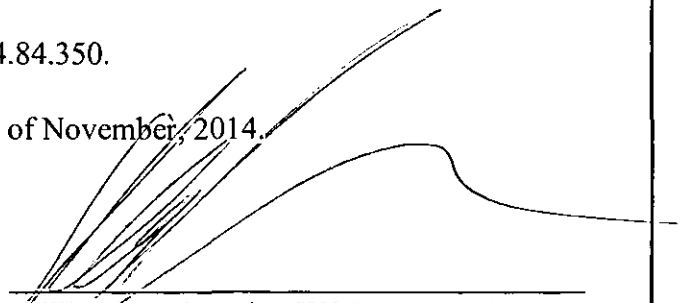
CONCLUSION

For the foregoing reasons, TCRY requests that the Court grant its petition, and reverse the Final Order of the UTC. Moreover, TCRY requests fees and expenses, including reasonable attorney fees, pursuant to RCW 4.84.350.

Respectfully submitted this 28th day of November, 2014.



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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2014, I caused to be served the foregoing **REPLY RE: PETITION FOR REVIEW OF ORDER OF WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION ALLOWING NEW AT-GRADE CROSSING,** by the method indicated below and addressed to the following:

Julian Hua Beattie Michael A. Fassio Attorney General of Washington Utilities and Transportation Division 1400 South Evergreen Park Drive SW P.O. Box 40128 Olympia, Washington 98504-0128	___ X ___ ___ X	DELIVERED U.S. MAIL OVERNIGHT MAIL FACSIMILE E-MAIL
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Heather Kintzley City of Richland 975 George Washington Way Richland, Washington 99352	___ X ___ ___ X	DELIVERED U.S. MAIL OVERNIGHT MAIL FACSIMILE E-MAIL
Lisa Beaton City of Kennewick 210 West Sixth Avenue Kennewick, Washington 99336	___ X ___ ___ X	DELIVERED U.S. MAIL OVERNIGHT MAIL FACSIMILE E-MAIL

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Hearing Date: December 9, 2014
Hearing Time: 1:30 p.m.

SUPERIOR COURT OF WASHINGTON IN AND FOR BENTON COUNTY

TRI-CITY RAILROAD COMPANY, LLC, a Washington corporation,

Petitioner,

v.

STATE OF WASHINGTON, UTILITIES AND TRANSPORTATION COMMISSION,

Respondent.

No. 14-2-01894-8

ORDER AFFIRMING THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION'S ORDERS IN DOCKET TR-130499

THIS MATTER came for hearing before this Court on Tri-City and Olympia Railroad's petition for review of the Washington Utility and Transportation (WUTC) in Docket TR-130499, under the Administrative Procedures Act (Chapter 34.05 RCW). The Court has considered the administrative record and files contained therein, including:

1. The WUTC's Order 03 and 04 in Docket TR-130499, granting the City of Kennewick and the City of Richland authority to construct an at-grade crossing at the proposed extension of the Center Parkway;

2. The record of the WUTC's administrative proceedings, including hearing transcript, exhibits and testimony, briefing and orders; and

3. The briefing before this Court.

In addition to these documents, this Court heard argument of counsel for the parties. The Court is fully advised. Based upon the foregoing, the Court concludes:

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1. The WUTC Orders 03 and 04 are supported by substantial evidence. ~~Tri-City and Olympia Railroad was afforded full opportunity to contest and rebut the evidence, and to present its own evidence, before and during the WUTC, and brief all issues before the WUTC.~~ BAS

2. As found by the WUTC, the public need for the Center Parkway Crossing outweighs any speculative risk. And, the WUTC committed no error of law in its approval of the Center Parkway Crossing.

3. This Court rejects Tri-City and Olympia's argument regarding RCW 81.53.261. New issues cannot be raised on appeal. However, that statute has no application in any event to a proposal for a new crossing.

4. The WUTC decision does not implicate property rights and this APA appeal is not the forum for consideration of such issues. See in this regard the pending action in Benton County Cause No. 14-2-01910-3.

IT IS HEREBY ORDERED, as follows:

1. The Washington State Utilities and Transportation Commission's Orders (03 and 04) in Docket TR-130499 are **AFFIRMED**.

2. Costs are awarded to Respondents consistent with Chapter 34.05 RCW and Court Rule.

DATED this 9th day of December, 2014.

Judge

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PRESENTED BY:

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