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Issued in Washington, DC on December 23, 2010.

**Robert C. Lauby,**

*Deputy Associate Administrator for  
Regulatory and Legislative Operations.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### City of Vancouver, Washington

[Waiver Petition Docket Number FRA–2010–0170]

The City of Vancouver, WA (City), seeks a permanent waiver of compliance from a certain provision of 49 CFR part 222, Use of Locomotive Horns at Highway-Rail Grade Crossings. The City intends to establish a New Quiet Zone under the provisions of 49 CFR 222.39. Specifically, the City is seeking a waiver from the provisions of 49 CFR 222.25(b)(1), which discusses the treatment of private highway-rail grade crossings located in New Quiet Zones that allow access to the public or to active industrial or commercial sites, so that a private crossing that provides

access to three homes (one of which includes an office for the provision of professional counseling services) does not have to be treated in accordance with the recommendations of a diagnostic team.

Title 49 CFR 222.25(b)(1) reads as follows: "Private highway-rail grade crossings that are located in New Quiet Zones or New Partial Quiet Zones and allow access to the public, or which provide access to active industrial or commercial sites must be evaluated by a diagnostic team and equipped or treated in accordance with the recommendations of such diagnostic team."

The City is in the process of establishing a New Quiet Zone along the BNSF Railway's (BNSF) Northwest Division, Fallbridge Subdivision, which would extend from approximately Milepost (MP) 17.82 to MP 19.63. The New Quiet Zone will consist of three public at-grade crossings: SE 139th Avenue (DOT #090090W), SE 147th Avenue (DOT #090092K) and SE 164th Avenue (DOT #090093S). (**Note:** The City's waiver petition erroneously provides the number as DOT #090094Y, which is a private highway-rail grade crossing that is not included in the proposed quiet zone). The New Quiet Zone also will include in the waiver a private highway-rail grade crossing, referred to as SE 144th Avenue (DOT #090091D) due to its close proximity to SE 144th Avenue, even though the crossing in question is not a public highway-rail grade crossing. This private highway-rail grade crossing is located between the SE 139th Avenue and SE 147th Avenue public highway-rail grade crossings. The City believes that FRA did not have complete and accurate information regarding the nature and use of this private crossing and therefore was not able to evaluate all pertinent factors and information when it determined that the private crossing allowed access to the public.

The City seeks a waiver of FRA's determination that the private crossing at SE 144th Avenue allows access to the public due to a resident's possession of a Home Occupation Permit under Vancouver Municipal Code Chapter 20.860. If FRA does not change its determination, the City seeks a waiver from complying with the provisions of 49 CFR 222.25(b)(1) so that the private crossing does not have to be treated in accordance with the recommendation of the diagnostic team.

The City provides several reasons why the private crossing at SE 144th Avenue does not meet the intent of 49 CFR 222.25(b)(1) and should be treated as a private crossing without public

access. First, it states that the crossing does not allow access to the general public as the crossing has signs stating: "PRIVATE RR CROSSING. NO TRESPASSING. RIGHT TO PASS BY PERMISSION SUBJECT TO CONTROL OF OWNER THE BNSF RY CO." Only homeowners or invitees of the homeowners are given permission to cross. "Invitees" would be either invited guests or invited counseling patients. Access allowed under the Home Occupation Permit is solely for the provision of professional counseling services by appointment at the invitation of the home owner providing those services at their residence. In addition, that permit limits the maximum number of vehicle trips (customer, employee, and delivery vehicles) to an aggregate total of not more than six per day.

Secondly, the City notes that a counseling patient's visit is arranged by appointment so that there would be no random arrival of patients. Members of the general public, without an invitation and without an appointment, are not allowed. The counseling patient is passing with the expressed permission of the owner. They are not uninvited random members of the public. From a safety standpoint, there is no material difference between clients invited to the counselor's residence and social guests invited to any residence. The use of this private crossing is minimal and highly restrictive. It is completely different than having a park on the other side of the crossing, a beach open to the general public, or a bait shop or similar open commercial establishment where uninvited members of the general public would have a reason to visit and traverse the crossing. The City believes these are examples of the types of situations that were intended to be covered under 49 CFR 222.25(b)(1), not the situation that exists at the SE 144th Avenue private crossing.

Thirdly, the City states that the volume of traffic on this private crossing is not significant by FRA highway-rail grade crossing standards. The volume of traffic has been measured on the private roadway and is less than the number of trips normally expected to be generated by the three homes that it services. It was measured at 20 vehicles per day and the Institute for Transportation Engineers Trip Generation Handbook estimates three homes should produce 30 vehicle trips per day. The number of invited counseling patients and related traffic is also limited under the Home Occupation Permit, referenced above, to no more than 6 trips per day total.

The City convened two diagnostic team meetings in order to evaluate the

SE 144th Avenue private crossing and to identify a low cost safety improvement for the crossing. BNSF only supported a full supplemental safety measure (SSM) consisting of a four-quadrant gate improvement. This would result in significant civil improvements and associated costs (estimated to be more than \$500,000) and environmental impacts to a nearby wetland. At the second diagnostic team meeting, input from additional parties was sought out, and included representatives from the Washington State Department of Transportation Rail Office, Amtrak, and the Washington Utility and Transportation Commission. The diagnostic team, again, was not able to reach consensus, so an SSM of a four-quadrant gate system was recommended by BNSF as the default SSM. The use of wayside horns was discussed but was unacceptable to the residents in the area.

The City states that it works closely with BNSF on a variety of projects and believes it has a good working relationship with the railroad. The City contacted BNSF immediately regarding the proposed waiver. The City requested BNSF's input on this waiver; however, BNSF has indicated in a letter dated October 29, 2010, that it will not support the City's petition. The City does not believe a joint petition, in this particular case, significantly contributes to public safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings, since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2010-0170) and may be submitted by any of the following methods:

- **Web site:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- **Hand Delivery:** 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

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Issued in Washington, DC on December 23, 2010.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

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#### Grand Canyon Railway, Inc.

[Waiver Petition Docket Number FRA-2010-0143]

The Grand Canyon Railway, Inc. (GRCX) seeks a waiver of compliance with the *Steam Locomotive Inspection and Maintenance Standards*, 49 CFR 230.16 and 230.17, as they pertain to the requirement for annual inspection and 1,472 service day inspection for steam locomotive number 4960. Locomotive number 4960 inspections are due to expire on June 30, 2011, and GRCX request the locomotive be allowed to continue in service until September 30,

2011, an additional 92 days. If granted, the locomotive would accrue an additional 10 service days and would receive all required inspections after the September 30, 2011, date.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2010-0143) and may be submitted by any of the following methods:

- **Web site:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- **Hand Delivery:** 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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