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Don Anderson
Deputy Mayor

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Walter Neary
Council Member

Michael D. Brandstetter
Council Member

Mary Moss
Council Member

Jason Whalen
Council Member

Andrew E. Neiditz
City Manager

Heidi Ann Wachter
City Attorney

Alice M. Bush, MMC
City Clerk

March 29, 2010

Carole J. Washburn, Executive Secretary
Utilities & Transportation Commission
PO BOX 47250
1300 S Evergreen Park Drive SW
Olympia, WA 98504-7250

RE: Docket No. TR 081229

Enclosed for filing in this matter you will find the original and twelve copies of a Motion to Rescind Final Order Granting, With Conditions, a Petition to Modify; and Consolidate for Hearing, as well as the supporting Declaration of Andrew Neiditz.

Sincerely,

CHERYL A. THOMPSON
Administrative Assistant to
HEIDI ANN WACHTER
City Attorney

CC: Kevin Jeffers, WSDOT
L. Scott Lockwood, Assistant Attorney General
Fronda Woods, Assistant Attorney General, WUTC

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STATE OF WASHINGTON
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COMMERCIAL

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the matter of the Petitions of the Washington State Department of Transportation (WSDOT) to Modify a Highway-Rail Grade Crossing Located at Steilacoom Blvd SW in the City of Lakewood

Docket No. TR 081229

MOTION TO RESCIND FINAL ORDER GRANTING, WITH CONDITIONS, A PETITION TO MODIFY; AND CONSOLIDATE FOR HEARING

COMES NOW, City of Lakewood, by and through its attorney(s) of record, and moves the Washington State Utilities and Transportation Commission (WUTC or "Commission"), pursuant to Washington Administrative Code (WAC) section 480-07-875 to rescind its order in this case and consolidate the Petition to Modify with those currently pending as Dockets TR-100127, TR-100128 and TR-100129. This motion is based on WAC 480-07-320, RCW 81.53.020, the arguments set forth herein and the concurrently submitted Declaration of City of Lakewood City Manager Andrew Neiditz.

The Washington State Department of Transportation (WSDOT) Amtrak "Point Defiance Bypass" project involves seven highway-rail crossings in the City of Lakewood. All seven are part of a single project and thus involve related issues of law and fact. Separate consideration of a crossing may result in disparity between the modifications at these crossings. The law provides for, and the Commission has ruled in other cases, that where

MOTION TO RESCIND FINAL ORDER GRANTING, WITH CONDITIONS, A PETITION TO MODIFY; AND CONSOLIDATE FOR HEARING

ORIGINAL

CITY OF LAKEWOOD
Legal Department
6000 Main Street S.W.
Lakewood, Washington 98499
(253) 589-2489 FAX (253) 589-3774

1 separately filed matters “involve related principals of law and fact” consolidation is
2 appropriate.¹ Motions to consolidate or sever may be brought by either party or the
3 Commission on its own motion but discretion as to the decision to consolidate is with the
4 Commission.² With regard to the Amtrak “Point Defiance Bypass” crossings, the
5 Commission has consolidated three, which are currently pending as Dockets TR-100127, TR-
6 100128 and TR-100129. The four remaining crossings were processed to final order without
7 hearing based, in part, on a waiver filed by the City of Lakewood.

8
9 The Sound Transit “Sounder” project involves four highway-rail crossings in the City of
10 Lakewood. TR-081229, a highway-rail crossing at Steilacoom Blvd SW in the City of
11 Lakewood, is one of the four expected to facilitate “Sounder” rail service to the City of
12 Lakewood. It is also one of the seven identified for use in the Amtrak “Point Defiance
13 Bypass” project. This crossing will be used for both the “Sounder”, which the City favors,
14 and the Amtrak “Point Defiance Bypass” which the City opposes. The waiver on file from
15 the City of Lakewood was obtained by WSDOT concurrent with work on the “Sounder”
16 project and at a time when there was little, if any, activity on the Amtrak “Point Defiance
17 Bypass” project. At that time WSDOT sought waivers only for those crossings “Sounder”
18 required.

19
20 Years later the Amtrak “Point Defiance Bypass” project cannot blend waivers into the
21 “Sounder” project because the remaining crossings are not part of the “Sounder” route. The
22 City is opposed to the Amtrak “Point Defiance Bypass” and it is now clear that the four
23 waivers the City signed within the context of the “Sounder” project were to the benefit of the
24 then inactive Amtrak “Point Defiance Bypass” project. Hearings currently pending on the

25 ¹ See, generally, WAC 480-07-320.

26 ² Id.

1 southernmost three crossings (Consolidated Dockets TR-100127, TR-100128 and TR-
2 100129) will impact only the Amtrak "Point Defiance Bypass" project. The City believes
3 that the Amtrak "Point Defiance Bypass" project should be reviewed as a whole to ensure
4 consistency in the application of safety concerns. All seven crossings, those for which
5 waivers have been filed and those which are pending hearing, are subject to state law
6 requiring grade separation where practicable.³

7
8 DATED this ____ day of March, 2010.

9 CITY OF LAKEWOOD CITY ATTORNEY

10
11 By Heidi Ann Wachter
12 HEIDI ANN WACHTER
13 City Attorney, WSBA #18400
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26 _____
27 ³ RCW 81.53.020.

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**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the matter of the Petitions of the Washington
State Department of Transportation (WSDOT) to
Modify a Highway-Rail Grade Crossing Located
at Steilacoom Blvd SW in the City of Lakewood

Docket No. TR 081229

DECLARATION OF ANDREW NEIDITZ

I, Andrew Neiditz, declare under penalty of perjury under the laws of the State of
Washington:

1. That my name is Andrew Neiditz.
2. That I am the City Manager for the City of Lakewood, Washington.
3. That the City of Lakewood is an Optional Code City operating under the Council-
Manager form of government and that, as such, I am the functional equivalent of the
Chief Executive Officer of the City.
4. That among my duties are to facilitate enhancements to transportation for our citizens,
including the "Sounder" rail service anticipated to be establishing service to the citizens
of Lakewood within the next several years.
5. That "Sounder" service is much delayed from the original expectation and the City has
actively pursued ways to expedite the service.
6. That, in the course of pursuing "Sounder" service, waivers were signed to facilitate the
work necessary to bring "Sounder" service to Lakewood, although on their face, these

DECLARATION OF ANDREW NEIDITZ

PAGE 1 OF 2

CITY OF LAKEWOOD

Legal Department

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Lakewood, Washington 98499

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In the matter of the Petitions of the Washington
State Department of Transportation (WSDOT) to
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at Steilacoom Blvd SW in the City of Lakewood

Docket No. TR 081229

CERTIFICATION OF SERVICE

DECLARATION OF SERVICE

I, CHERYL A. THOMPSON, Administrative Assistant, certify under penalty of perjury
under the laws of the State of Washington, that on March 29, 2010, I served VIA ABC LEGAL
MESSENGERS, a true and correct copy of the foregoing documents entitled Motion To
Rescind Final Order Granting, With Conditions, A Petition To Modify; And Consolidate For
Hearing, and the Declaration of Andrew Neiditz on the following:

KEVIN JEFFERS
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
310 NORTH MAPLE PARK AVENUE SE
PO BOX 47407
OLYMPIA, WA 98504-7407

L. SCOTT LOCKWOOD
ASSISTANT ATTORNEY GENERAL
7141 CLEANWATER DRIVE SW

CERTIFICATION OF SERVICE

PAGE 1 OF 2

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Legal Department
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1 PO BOX 40113
2 OLYMPIA, WA 98504-0113

3 FRONDA WOODS
4 ASSISTANT ATTORNEY GENERAL
5 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
6 1300 S. EVERGREEN PARK DRIVE SW
7 PO BOX 47250
8 OLYMPIA, WA 98504-7250

9 DATED this 27th day of March, 2010

10 
11 CHERYL A. THOMPSON
12 Administrative Assistant
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28 CERTIFICATION OF SERVICE

PAGE 2 OF 2

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