



Douglas G. Richardson
Mayor

Don Anderson
Deputy Mayor

Claudia B. Thomas
Council Member

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 081230

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
Frona Woods, Assistant Attorney General, WUTC

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U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

Docket No. TR 081230

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

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

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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-081230, a highway-rail crossing at 108th Street SW in the City of Lakewood,
11 is one of the four expected to facilitate “Sounder” rail service to the City of Lakewood. It is
12 also one of the seven identified for use in the Amtrak “Point Defiance Bypass” project. This
13 crossing will be used for both the “Sounder”, which the City favors, and the Amtrak “Point
14 Defiance Bypass” which the City opposes. The waiver on file from the City of Lakewood
15 was obtained by WSDOT concurrent with work on the “Sounder” project and at a time when
16 there was little, if any, activity on the Amtrak “Point Defiance Bypass” project. At that time
17 WSDOT sought waivers only for those crossings “Sounder” required.
18

19 Years later the Amtrak “Point Defiance Bypass” project cannot blend waivers into the
20 “Sounder” project because the remaining crossings are not part of the “Sounder” route. The
21 City is opposed to the Amtrak “Point Defiance Bypass” and it is now clear that the four
22 waivers the City signed within the context of the “Sounder” project were to the benefit of the
23 then inactive Amtrak “Point Defiance Bypass” project. Hearings currently pending on the
24 southernmost three crossings (Consolidated Dockets TR-100127, TR-100128 and TR-
25

26 ¹ See, generally, WAC 480-07-320.

27 ² Id.

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

6
7 DATED this 29th day of March, 2010.

8 CITY OF LAKEWOOD CITY ATTORNEY

9
10 By Heidi Ann Wachter
11 HEIDI ANN WACHTER
12 City Attorney, WSBA #18400
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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 081230

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

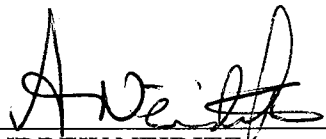
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waivers relate to the Washington State Department of Transportation (WSDOT) "Point Defiance Bypass" project, a project the City of Lakewood opposes.

7. That the "Point Defiance Bypass" project involves adding approximately sixteen new train trips at 79 miles an hour across some of Lakewood's busiest arterials which currently are not active rails.

8. That it is the position of the City of Lakewood that the "Sounder" and Amtrak "Point Defiance Bypass" projects are dramatically different; the "Sounder" enhances the City by providing commuter rail service to our citizens while the Amtrak "Point Defiance Bypass" brings a dramatic increase in train traffic and the related dangers while providing no service to Lakewood citizens since the Amtrak project is designed for high speed service between larger cities.

DATED this 25th day of March, 2010.



ANDREW NEIDITZ
City Manager
City of Lakewood

DECLARATION OF ANDREW NEIDITZ

PAGE 2 OF 2

CITY OF LAKEWOOD
Legal Department
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TRANSPORTATION COMMISSION**

Docket No. TR 081230

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

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

CITY OF LAKEWOOD

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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 29th day of March, 2010

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11 CHERYL A. THOMPSON
12 Administrative Assistant
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PAGE 2 OF 2

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