



Douglas G. Richardson
Mayor

Don Anderson
Deputy Mayor

Claudia B. Thomas
Council Member

Pad Finnigan
Council Member

Helen McGovern
Council Member

Walter Neary
Council Member

Ron Cronk
Council Member

Andrew E. Neiditz
City Manager

Heidi Ann Wachter
City Attorney

Alice M. Bush, MMC
General Services Director
City Clerk

March 9, 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-100127, TR-100128, and TR -100129 (*Consolidated*)
Clover Creek Drive SW, Berkeley Street SW and North Thorne Lane
SW Crossings

Enclosed for filing in this matter you will find the original and twelve copies of
"Answer of City of Lakewood" with Declaration of Service.

Sincerely,

REBECCA HENDRICKS
Paralegal to
HEIDI ANN WACHTER
City Attorney

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

2010 MAR -9 PM 4:46
UTILITY TRANSPORTATION
COMMUNICATIONS
SECTION

STATE OF WASHINGTON
UTILITY AND TRANSPORTATION
DIVISION

2010 MAR -9 PM 4:46

RECEIVED
GENERAL MANAGER

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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 Clover Creek Drive SW, Berkeley Street SW,
and North Thorne Lane SW

Docket No. TR-100127, TR-100128, and TR -
100129 (*Consolidated*)

ANSWER OF CITY OF LAKEWOOD

COMES NOW, City of Lakewood ("Respondent"), by and through its attorney(s) of record, and
Answers as follows:

I.

1.1 Respondent admits the content of section 1 of Petitioner's (WSDOT) Petition.

1.2 Respondent admits the content of section 2 of Petitioner's (WSDOT) Petition.

1.3 Respondent denies or is without sufficient information to admit or deny, and therefore
denies, the content of section 3 of Petitioner's (WSDOT) Petition.

1.4 Respondent denies or is without sufficient information to admit or deny, and therefore
denies, the content of section 4 of Petitioner's (WSDOT) Petition.

1.5 Respondent admits the content of section 5 of Petitioner's (WSDOT) Petition.

1 1.6 Respondent denies or is without sufficient information to admit or deny, and therefore
2 denies, the content of section 6 of Petitioner's (WSDOT) Petition.

3 1.7 Respondent denies or is without sufficient information to admit or deny, and therefore
4 denies, the content of section 6 of Petitioner's (WSDOT) Petition.

5 1.8 Respondent denies or is without sufficient information to admit or deny, and therefore
6 denies, the content of section 8 of Petitioner's (WSDOT) Petition.

7 1.9 Respondent denies or is without sufficient information to admit or deny, and therefore
8 denies, the content of section 9 of Petitioner's (WSDOT) Petition.

9 1.10 Respondent denies or is without sufficient information to admit or deny, and therefore
10 denies, the content of section 10 of Petitioner's (WSDOT) Petition.

11 1.11 Respondent denies or is without sufficient information to admit or deny, and therefore
12 denies, the content of section 11 of Petitioner's (WSDOT) Petition.

13 1.12 Respondent denies or is without sufficient information to admit or deny, and therefore
14 denies, the content of section 12 of Petitioner's (WSDOT) Petition.

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17 II.

18 WHEREFORE, having fully answered the Petitioner's Petition the Respondent does assert
19 the following DEFENSES:

20 2.1 The three crossings at issue here, along with four other crossings in the City of
21 Lakewood, involve waivers that do not adequately describe the full impact of the
22 anticipated increase in rail activity. In the case of those other four crossings (100th
23 Street; Bridgeport Way; 108th Street; Steilacoom Boulevard) staff signed waivers due
24 to this lack of information. Those waivers should be rendered null and void, and all
25 seven considered together so that the true impact of the Pt. Defiance Bypass project can
26 be considered.
27

1 2.2 The proposed modification of the crossings requires compliance with National
2 Environmental Policy Act ("NEPA"), and that the proposal modification of the
3 crossings is not in compliance with NEPA; the documented categorical exemption is in
4 error.

5
6 2.3 The proposed modification of the highway-rail grade crossing is inadequate to preserve
7 or protect the public safety.

8 2.4 State law favors over or under crossings and the record to date is insufficient to support
9 the departure from state law requested by Petitioner.

10 2.5 Respondent reserves any and all other defenses that are and/or may be provided by law
11 and/or equity, as may be subsequently raised.
12

13 III.

14 WHEREFORE, having fully answered the Petitioner's Petition the Respondent does assert
15 the following COUNTERCLAIMS:

16 3.1 Respondent reserves any and all counterclaims that are and/or may be provided by law
17 and/or equity.
18


19 IV.

20 WHEREFORE, having fully answered the Petitioner's Petition and having interposed
21 affirmative defenses, Respondent City of Lakewood prays for relief as follows:

- 22 1. That the Petitioner's Petition be dismissed, and that the Petitioner is granted nothing
23 thereby;
- 24 2. For any other relief that may be provided by law as may be subsequently requested; and
- 25 3. For such other relief as the Washington Utilities and Transportation Commission deems
26 just and equitable.
27

1 DATED this 9th day of March, 2010.

2 CITY OF LAKEWOOD CITY ATTORNEY

3
4 By 
5 Heidi Ann Wachter
6 City Attorney
7 WSBA #18400
8 6000 Main Street SW
9 Lakewood, WA 98499
10 Phone: 253-589-2489
11 Fax: 253-589-3774

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2 **DECLARATION OF SERVICE**

3 I, REBECCA HENDRICKS, certify under penalty of perjury under the laws of the State of
4 Washington, that on March 9, 2010, I served VIA FIRST CLASS US MAIL, postage prepaid, a
5 true and correct copy of the foregoing document entitled ANSWER OF CITY OF
6 LAKEWOOD on the following:
7

8
9 KEVIN JEFFERS
10 WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
11 310 NORTH MAPLE PARK AVENUE SE
12 PO BOX 47407
13 OLYMPIA, WA 98504-7407

14 L. SCOTT LOCKWOOD
15 ASSISTANT ATTORNEY GENERAL
16 7141 CLEANWATER DRIVE SW
17 PO BOX 40113
18 OLYMPIA, WA 98504-0113

19 FRONDA WOODS
20 ASSISTANT ATTORNEY GENERAL
21 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
22 1300 S. EVERGREEN PARK DRIVE SW
23 PO BOX 47250
24 OLYMPIA, WA 98504-7250

25
26 DATED this 9th day of March, 2010

27
28 
REBECCA HENDRICKS, Paralegal