BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, Petitioner, v. CENTRAL PUGET SOUND REGIONAL TRANSPORTATION AUTHORITY (SOUND TRANSIT); CITY OF LAKEWOOD; and TACOMA RAIL, Respondents.	DOCKETS TR-081229, TR-081230, TR-081231, and TR-081232 *(Consolidated)* WSDOT'S ANSWER IN OPPOSITION TO THE CITY OF LAKEWOOD'S MOTION TO RECONSIDER ORDER DENYING MOTIONS TO RESCIND FINAL ORDERS

1 The Washington State Department of Transportation (hereafter "WSDOT") responds to the Washington Utilities and Transportation Commission's (hereafter "WUTC" or "Commission") Notice of Opportunity to File Answers to Motion for Reconsideration issued April 26, 2010, and respectfully requests that the Commission deny the City of Lakewood's ("City") Motion to Reconsider Order Denying Motions to Rescind Final Orders.

2 The City argues two grounds in support of reconsideration: (1) the "Systems Approach" endorsed by the Federal Highway Administration ("FHWA") requires the WUTC to consider the proposed safety modifications for all seven city crossings together; and (2) the petitions filed in TR-081229, TR-081230, TR-081231, and

ATTORNEY GENERAL OF WASHINGTON
Transportation & Public Construction Division
7141 Cleanwater Drive SW
PO BOX 40113
Olympia, WA 98504-0113
(360) 753-6126 Facsimile: (360) 586-6847

TR-081232 were misleading and failed to provide adequate notice. Neither ground is supported by facts nor the authorities cited.

A. The FHWA recommendation regarding a "Systems Approach" was used to design the project as a whole, including the proposed crossing safety modifications.

3 The systems approach advocated by the FHWA considers a railroad highway grade crossing to be part of, or a component of, a larger transportation system, with the objective to improve both safety and operations of the system. For example, to improve operating efficiency and safety over a specified segment of a rail line, all crossings would be considered in the evaluation. Modifications of train speeds may require the installation of active traffic control devices.[1]

4 While consolidation of a number of related crossing modification proposals for consideration together is perhaps one way to help ensure they are coordinated in a systems approach, it is certainly not the only way. Even a cursory review of the department's development process demonstrates that WSDOT did in fact take a systems approach in its design of the Point Defiance Bypass Project, both as part of its Long-Range Plan for the Amtrak *Cascades*,[2] as well as in the coordinated design of the proposed warning signals and devices described in the TR-081229, TR-081230, TR-081231, and TR-081232 petitions. The systems approach is clearly demonstrated by the proposed modifications which include upgrade to the railroad warning devices to

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[1] Railroad-Highway Grade Crossing Handbook – Revised Second Edition August 2007, Chapter III, Section D. *See* relevant pages attached to this Answer as Attachment 1.

[2] http://www.wsdot.wa.gov/NR/rdonlyres/AE671CC5-6633-4BF2-9041-FB328ADB1F31/0/LongRangePlanforAmtrakCascades.pdf

ATTORNEY GENERAL OF WASHINGTON
Transportation & Public Construction Division
7141 Cleanwater Drive SW
PO BOX 40113
Olympia, WA 98504-0113
(360) 753-6126 Facsimile: (360) 586-6847

modern constant warning time units; interconnection between grade crossings control equipment; and roadway signal equipment with new circuitry to allow additional advanced pre-emption time, as well as modifications to the roadway configurations and approaches. One can easily see that the proposed modifications take into consideration both train and motor vehicle traffic throughout the affected corridor. The City's concern that separate consideration of any single crossing could result in a disparity between crossings that are all part of the same urban area is simply not supported by the facts in this case.

5 Nor is it required by law. RCW 81.53.060, RCW 81.53.261, RCW 81.53.271, and WAC 480-62-150 anticipate filing a separate petition for each crossing where modifications are proposed. Neither State law nor the FHWA Railroad-Highway Grade Crossing Handbook compel multiple crossings be consolidated into a single petition for approval. The City's systems approach argument fails to demonstrate error, and should not be grounds to reconsider the Commission's Order denying rescission of these final orders.

B. The petitions provided notice adequate to disclose the nature of proposed safety modifications and the City was not misled.

6 As the City notes, adequacy of notice is settled law. Notice is adequate if it discloses the nature of a proposed administrative action and if there is no showing that anyone was actually misled by the notice.[3]

[3] *Nisqually Delta Ass'n v. City of DuPont*, 103 Wn.2d 720, 696 P.2d 1222 (1985).

ATTORNEY GENERAL OF WASHINGTON
Transportation & Public Construction Division
7141 Cleanwater Drive SW
PO BOX 40113
Olympia, WA 98504-0113
(360) 753-6126 Facsimile: (360) 586-6847

7 The petitions in these cases unambiguously state that the administrative action sought is the Commission's approval of the proposed crossing modifications described in detail in the petitions.

8 The City is incorrect in its assertion that the pre-hearing testimony of Kevin Jeffers[4] regarding feasibility of grade separation at those different crossings is "contradictory," "at odds with," or differs in any material way from the explanations provided in the those petitions. The City argues that listing the various construction challenges that impact the feasibility of grade separation[5] at the crossings is somehow inconsistent with Mr. Jeffers' subsequent testimony. The perceived inconsistency apparently relates to the fact that, in his testimony, Mr. Jeffers expressly states what is only implicit in the petitions: in order for a construction project to be feasible, there must be available funds to cover the costs.

9 The City's perceived contradiction simply ignores the reality that if one were to assume unlimited funds, no grade separation would ever be impossible, and separating every crossing would be feasible.[6] The main reason that barriers, such as proximity to businesses or wetlands, right of way acquisition, or the other construction challenges listed in the petitions impact feasibility is because they can render a project too costly to

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[4] *See* Written Direct Testimony of Kevin Jeffers, P.E., filed April 16, 2010, in WUTC Dockets TR-100127, TR-100128, TR-100129, and TR-100131 *(Consolidated).*

[5] These challenges include proximity to businesses, wetlands, a golf course, Interstate 5, alteration of highway and/or rail grades, acquisition of right of way, and roadway reconfiguration.

[6] And, since the City further argues that a petitioner must always establish that grade separation is not feasible before the Commission can approve an upgrade to an existing crossing, then no at- grade crossing could ever be upgraded so long as grade separation could be achieved at some cost.

ATTORNEY GENERAL OF WASHINGTON
Transportation & Public Construction Division
7141 Cleanwater Drive SW
PO BOX 40113
Olympia, WA 98504-0113
(360) 753-6126 Facsimile: (360) 586-6847

construct within available funds. Thus, the reasons set forth in the various petitions outlining why grade separation is not feasible are entirely consistent with Mr. Jeffers' subsequent testimony regarding grade separation, in part, because it would cost hundreds of millions of dollars in excess of available funding.

10 More to the point, however, these petitions contain nothing that could have misled a reasonable person to believe that the modifications proposed for any of the crossings in these cases would include grade separation. Each petition plainly states that WSDOT considered grade separation not feasible. As WSDOT pointed out in its Response in Opposition to City of Lakewood's Motion to Rescind Final Order, each of these petitions relate to existing grade crossings. Contrary to the City's assumption, the burden imposed on a party who petitions for a new crossing pursuant to RCW 81.53.020—to show that grade separation is not practicable—simply does not apply to the modification of an existing grade crossing.

11 Neither RCW 81.53.060 nor RCW 81.53.261 requires a petitioner seeking to improve safety devices at an existing grade crossing to show that grade separation is not feasible—and for good reason. If the Legislature had imposed the same burden that applies to the creation of a new grade crossing on every party who merely wishes to upgrade safety devices at existing grade crossings, such a burden would have a chilling effect on any entity otherwise willing to petition to construct public safety improvements. The cost of a grade separation feasibility study alone, that the City's argument assumes is part of the petitioner's burden in these cases, would frequently exceed the cost of the proposed modifications. Few parties would be willing to file a modification petition if to

ATTORNEY GENERAL OF WASHINGTON
Transportation & Public Construction Division
7141 Cleanwater Drive SW
PO BOX 40113
Olympia, WA 98504-0113
(360) 753-6126 Facsimile: (360) 586-6847

do so could result in an order to construct a grade separation at the cost of hundreds of millions of dollars rather than to construct the modifications to the existing crossing for which funds actually exist.

CONCLUSION

12 The Commission's Order Consolidating Dockets and Denying Motions to Rescind Final Orders entered on April 15, 2010, notes that it does "not lightly disturb orders previously entered where no party or person can demonstrate patent error or prejudicial violation of process." The City fails to demonstrate error or violation of process. WSDOT used a systems approach to design the proposed modifications. It was not WSDOT's burden to establish that grade separation is not feasible. Nevertheless, WSDOT's testimony on the feasibility of grade separation is entirely consistent, and the City has made no showing that it was misled as to the nature of the action sought in the petitions filed in TR-081229, TR-081230, TR-081231, and TR-081232. Each petition provided very clear and detailed notice of the precise modifications proposed for each crossing, and which the Commission ultimately ordered.

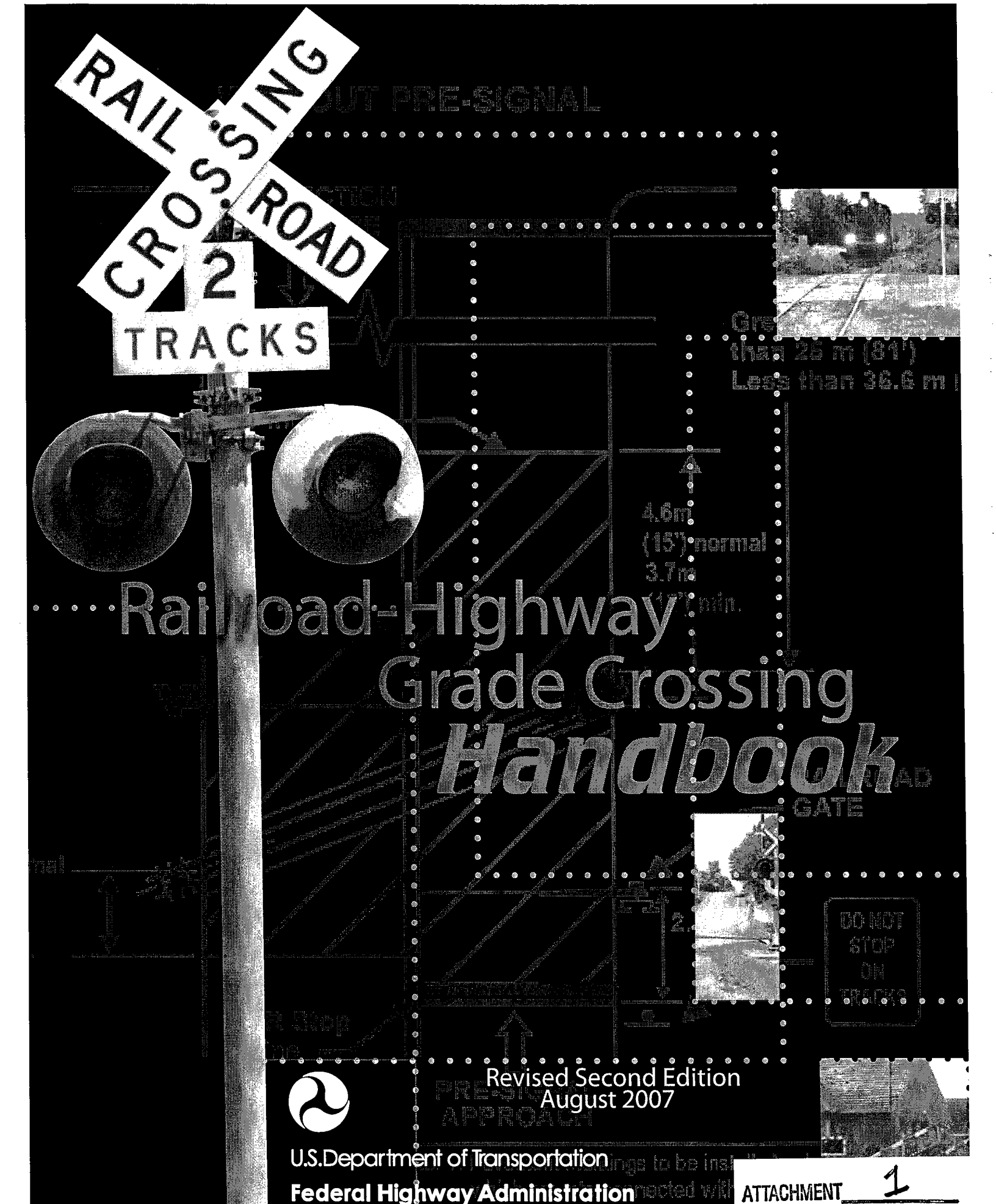
13 WSDOT respectfully requests the Commission deny the City's request for reconsideration.

DATED this 30 day of April, 2010.

ROBERT M. MCKENNA
Attorney General

L. SCOTT LOCKWOOD, WSBA No. 19248
Assistant Attorney General
Attorneys for Defendant

ATTORNEY GENERAL OF WASHINGTON
Transportation & Public Construction Division
7141 Cleanwater Drive SW
PO BOX 40113
Olympia, WA 98504-0113
(360) 753-6126 Facsimile: (360) 586-6847



Railroad-Highway Grade Crossing Handbook

Revised Second Edition
August 2007

U.S. Department of Transportation
Federal Highway Administration

ATTACHMENT 1

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The enforcement study must be carried out so that traffic operations and driver behavior are not affected. If an actual law enforcement officer or police car appears on the scene, the study should be interrupted or terminated. The measurements obtained may be used as a basis for later enforcement campaigns and may also be used to justify improvements in traffic control devices, such as the installation of constant warning time devices to improve the credibility of crossing signals.

Various types of specialized photographic equipment are available for conducting enforcement studies or for actual photographic enforcement of traffic laws. Photographic enforcement has been used successfully at grade crossings and along at least one light-rail transit corridor.[70]

D. Systems Approach

The procedures for evaluating highway-rail grade crossings are generally based upon the physical and operational characteristics of individual crossings. A typical crossing safety program consists of a number of individual crossing projects. Funding for crossing safety is approved on the basis of the requirements of these individual projects. Therefore, crossing evaluation, programming, and construction follow traditional highway project implementation procedures.

The concept of using the systems approach to highway-rail grade crossing improvements was enhanced when crossings off the federal-aid system were made eligible for federally funded programs. Because all public crossings are now eligible for improvement with federal funds, the systems approach provides a comprehensive method for addressing safety and operations at crossings.

The systems approach considers the highway-rail grade crossing a part or a component of a larger transportation system. For this purpose, the transportation system is defined as a land surface system consisting of both highway and railroad facilities. The intersection of these two transportation modes affects both safety and operations of the entire system. The objective of the systems approach for crossings is to improve both safety and operations of the total system or segments of the system.

The systems approach may be applied to a segment of the rail component of the system. For example, to improve operating efficiency and safety over a specified segment of a rail line, all crossings would be considered in the evaluation. Thus, the systems approach is often called the corridor approach.

The systems approach may be applied to an urban area, city, or community. In this case, all public crossings within the jurisdiction of a public agency are evaluated and programmed for improvements. The desired outcome is a combination of engineering improvements and closures such that both safety and operations are highly improved.

Assume that a segment of rail line is to be upgraded for unit train operations or high-speed passenger service. This type of change in rail operations would provide an ideal opportunity for the application of the systems approach. The rail line may be upgraded by track and signal improvements for train operations that might cause a need for adjustments in train detection circuits of active traffic control devices. Also, modifications of train operations and speeds may require the installation of active traffic control devices at selected crossings.

A systems approach developed for crossings in a specified community or political subdivision allows for a comprehensive analysis of highway traffic operations. Thus, unnecessary crossings can be closed, and improvements can be made at other crossings. This approach enhances the acceptability of crossing closures by local officials and citizens.

Initially, all crossings in the system, both public and private, should be identified and classified by jurisdictional responsibility (for example, city, county, and state for public crossings; parties to the agreement for private crossings). Information should be gathered on highway traffic patterns, train operations, emergency access needs, land uses, and growth trends. Inventory records for the crossings should be updated to reflect current operational and physical characteristics. A diagnostic team consisting of representatives from all public agencies having jurisdiction over the identified crossings and the railroads operating over the crossings should make an on-site assessment of each crossing as described in the previous section. The diagnostic team's recommendations should consider, among other things, crossing closure, installation of active traffic control devices, upgrading existing active devices, elimination by grade separation, surface improvements, and improvements in train detection circuits. In addition, modification of train operations near and at each

70 *Photographic Enforcement of Traffic Laws.* Washington, DC: National Cooperative Highway Research Program Synthesis of Practice 219, 1995.

crossing, removal of sight obstructions, rerouting of special vehicles and emergency vehicles, and railroad relocation should be considered.

Federal, state, and local crossing funding programs should be reviewed to identify the eligibility of each crossing improvement for public funding. Other funding sources include railroads, urban renewal funds, land development funds, and other public or private funding sources.

There are several advantages of the systems approach. A group of crossings may be improved more efficiently through the procurement of materials and equipment in quantity, thus reducing product procurement and transportation costs. Usually, only one agreement between the state, local jurisdiction, and railroad is necessary for all of the improvements. Train detection circuits may be designed as a part of the total railroad signal system rather than custom designed for each individual crossing. Electronic components, relay houses, and signal transmission equipment may be more efficiently utilized. Labor costs may be significantly reduced. Travel time of construction crews may be reduced when projects are in close proximity to each other.

Railroads benefit from the application of the systems approach in several ways. Train speeds may be increased due to safety improvements at crossings. Maintenance costs may be reduced if a sufficient number of crossings are closed. Other improvements may enhance the efficiency of rail operations.

Safety improvements are an obvious benefit to the public. Other benefits include reduced vehicular delays and better access for emergency vehicles.

One impediment to the systems approach is that most federal and state crossing safety improvement programs provide funding for safety improvements only. Also, safety improvement projects may be limited to crossings that rank high on a priority schedule. Another impediment is the involvement of multiple jurisdictions.

FHWA has endorsed the systems approach and its resultant identification of low-cost improvements to crossing safety and operations. FHWA sponsored a demonstration project that utilized the systems approach to improve crossings along a rail corridor in Illinois. To eliminate the need for project agreements with each local agency, the Illinois Commerce Commission issued a single order covering the work to be performed at nine locations. This accelerated the project and reduced labor-intensive work. FHWA and the Illinois Department of Transportation agreed that minimal plan submittals would be required of local agencies, and local agencies agreed to perform the necessary work at mutually agreed-upon lump sum prices under the supervision of Illinois Department of Transportation district representatives.

Improvements made as part of the demonstration project in Illinois included the following:

- Removal of vegetation.
- Pavement widening.
- Reconstruction of approaches.
- Installation of 12-inch lenses in crossing signals.
- Relocation of train loading areas.
- Closure of crossings.
- Removal of switch track.
- Installation of traffic control signs pertinent to crossing geometries.

The Florida Department of Transportation and other states have adopted policies incorporating the systems approach as part of their crossing safety improvement programs. The Florida Department of Transportation selects track segments on the basis of the following conditions:

- Abnormally high percentage of crossings with passive traffic control devices only.
- Freight trains carrying hazardous material in an environment that presents an unacceptable risk of a catastrophic event.
- Passenger train routes.
- Plans for increased rail traffic, especially commuter trains.

The North Carolina Department of Transportation (NCDOT) has used the systems approach often in recent years. Examples of these projects are the Sealed Corridor Program and traffic separation studies.

In the Sealed Corridor Program, NCDOT installed devices such as four-quadrant gates, longer gate arms, median separators, and new signs and pavement markings at every public crossing along the entire railway line between Charlotte and Greensboro, North Carolina. The program is planned to eventually cover the entire corridor between Charlotte and Raleigh, North Carolina. The entire corridor contains 172 public and 43 private railroad crossings.

In traffic separation studies, the NCDOT Rail Division works with communities to study how best to separate railroad and highway traffic. Engineers develop a

comprehensive traffic separation study to determine which public crossings need improvements and which need to be closed. During the study phase, the engineering consultant collects traffic data for the public rail crossings in the study area. The consultants also take into account the economic impact of the potential closings.

A draft of the consultants' recommendations is submitted to the Rail Division and the public for review and comment. The recommendations are prioritized to include near-term, mid-term, and long-term improvements. Public hearings are scheduled in each community to give residents a chance to voice opinions about the proposed recommendations. The forums also allow NCDOT to discuss the benefits of enhanced crossing safety.

In the implementation phase, NCDOT officials identify funding for the proposed enhancements (typically, 90 percent is federal funds with a 10-percent local match). The freight railroads sometimes provide additional resources.

Additional information on these and other NCDOT programs can be found on the NCDOT Safety Initiatives Website.[71]

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71 North Carolina Department of Transportation Safety Initiatives Website (www.bytrain.org/Safety/default.html).