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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY**

CITY OF LAKEWOOD,

Plaintiff,

Vs.

STATE OF WASHINGTON,
DEPARTMENT OF TRANSPORTION,

Defendant.

No. _____

**PETITION FOR JUDICIAL REVIEW,
PETITION FOR WRIT OF REVIEW
AND COMPLAINT FOR
DECLARATORY RELIEF**

The City of Lakewood pleads as follows:

I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction pursuant to chapter 43.21C RCW (State Environmental Policy Act), chapter 7.24 (Declaratory and Injunctive Relief), chapter 7.16 RCW (Statutory Writ of Certiorari); and the inherent power of the judiciary under Article IV, Section 6 of the Washington State Constitution.

1.2 Venue is proper in Pierce County pursuant to RCW 4.12.025.

II. IDENTIFICATION OF THE PARTIES

2.1 Petitioner is the City of Lakewood, a Washington municipal corporation. The City's mailing address is: 6000 Main Street, Lakewood, Washington 98499. It is represented by the undersigned counsel whose address is also the same. The City of Lakewood is an optional code city organized under Title 35A RCW. As such, it also possesses all powers of first class cities. See, RCW 35A.11.020, .050.



1 2.2 Respondent is the State of Washington Department of Transportation
2 (WSDOT). Its headquarters office is located at 310 Maple Park Ave., SE, Olympia, WA.

3 **III. AGENCY DECISION UNDER REVIEW**

4 3.1 The City of Lakewood seeks review and challenges the March 13, 2012
5 Determination of Nonsignificance and Adoption of Existing Environmental Documents
6 (DNS) by WSDOT which adopted a Finding of No Significant Impact (FONSI)
7 following an Environmental Assessment (EA) dated March 1, 2013 of the project
8 commonly known at the Point Defiance Bypass.

9 3.2 A true and correct copy of the DNS is attached hereto. A copy of the
10 FONSI and the EA are maintained by the WSDOT on-line at
11 http://www.wsdot.wa.gov/projects/rail/pnwrc_ptdefiance/.

12 **IV. BACKGROUND FACTS**

13 A. The City of Lakewood and the Tillicum Neighborhood.

14 4.1 Located on the southern side of the City of Lakewood, Tillicum has a rich
15 history and many unique landmarks. At one time, it was a vibrant vacation destination.
16 Tillicum also provided much-needed housing for soldiers and their families during World
17 Wars I and II. Unfortunately, the replacement of old Highway 99 with a limited access
18 freeway in the 1950s severed Tillicum from the rest of the community, leaving it isolated
19 and distinctly separate from other urban and suburban areas. Redevelopment
20 opportunities dwindled in part because of new environmental regulation introduced in the
21 1970s as well as an inability of county government to adequately address Tillicum's
22 urban problems. As a result, property values diminished and crime became a chronic
23 issue.

24 4.2 Together the Tillicum neighborhood and its adjoining neighborhood of
25 Woodbrook serve a population of 4,754. However, there are unique characteristics of this
26 population that make it different from other Lakewood neighborhoods. Forty eight
27 percent are non-English speaking, 78 percent of the total households are renter-occupied,
28 and 90.9 percent of elementary children and 67.4 percent of middle school children are
29 on free and reduced lunches.

1 4.3 Access to the City of Lakewood’s Tillicum neighborhood is limited. There
2 are only two vehicle-based ways in and out of Tillicum. Both are along Interstate 5. The
3 first is Exit 122 which grants access via Berkley Street. The other way into the
4 neighborhood is via Exit 123, the Thorne Lane Exit. American Lake is located directly to
5 the north/northwest of Tillicum. Presently, the Tacoma Country Club and Golf Course
6 precludes access from Tillicum to the rest of the City. In order to gain access to the
7 neighborhood all vehicles must cross the railroad tracks here.

8 4.4 The City of Lakewood incorporated in 1996. Since incorporation, the City
9 has continuously worked to improve the quality of life for all of its citizens, including
10 Tillicum residents. The City has been awarded grants and had received loans to finance a
11 portion of the cost of extending sewer services to Tillicum which in turn has encouraged
12 economic development and revitalization in the neighborhoods of American Lake
13 Gardens and Tillicum. The City has also dedicated significant law enforcement resources
14 and has successfully lowered crime rates in Tillicum. The City has made housing
15 investments and engaged in community partnerships through such groups as Habitat for
16 Humanity. Moreover, the City has invested considerable resources toward improving the
17 public works infrastructure in Tillicum through new and improved roadways, curbs,
18 gutters and sidewalks.

19 4.5 Beyond physical features, Tillicum enjoys a strong sense of community.
20 Long-time residents who live there remember Tillicum for what it was, they believe in its
21 future, and they are committed to positive change for the area.

22 4.6 As part of the City’s long-range planning process, in accordance with the
23 Growth Management Act, the City has adopted a Comprehensive Plan. In conformity
24 with the GMA and RCW 47.79.030, multiple sections of the Comprehensive Plan explore
25 and discuss railway traffic. The City’s Comprehensive Plan was originally approved by
26 the Lakewood City Council via Ordinance 237 in July 2000 and is reviewed periodically.

27 4.7 The Point Defiance Bypass Project threatens to destroy progress made in
28 this neighborhood. It is also at odds with the City of Lakewood Comprehensive Plan
29 together with other community vitalization plans developed by the City.

1 B. The Point Defiance Bypass Project

2 4.8 Located in the City of Lakewood are a series of railroad tracks owned by
3 Sound Transit and/or Burlington Northern-Santa Fe (BNSF). These tracks, whose
4 installation reach back to the late 1800's, currently consist of seven at-grade crossings
5 with City streets. Four of these crossings are currently in use for daily Sound Transit
6 Sounder trips between Lakewood and Seattle. Two of the remaining three at-grade
7 crossings are in Tillicum. Aside from daily Sounder trips, these rails are used no more
8 than twice a week, and often at night and at low speeds for freight.

9 4.9 WSDOT proposes to implement an infrastructure improvement project
10 which affects Lakewood. This project, commonly known as the Point Defiance Bypass
11 proposes to reroute Amtrak service from its current route along Point Defiance through
12 the rails in Lakewood.

13 4.10 To accomplish these improvements, components of this project include the
14 construction of new rails, ties and ballast on existing track in Lakewood.

15 4.11 When complete, the Point Defiance Rail Bypass project will bring a total
16 of twelve daily round trip passenger trains through Lakewood, with a maximum speed of
17 79 mph. These trains will not serve the City, only pass through.

18 C. The WSDOT Attempted to Implement the Project Without an
19 Environmental Assessment.

20 4.12 The DNS follows a process implemented pursuant to an earlier challenge
21 by the City. That challenge occurred in administrative proceedings before the
22 Washington Utilities and Transportation Commission in 2010. In several consolidated
23 proceedings, WSDOT sought to modify the railroad at-grade crossings at four Lakewood
24 intersections, one in DuPont and one on Joint Base Lewis-McChord.

25 4.13 In those proceedings, the Rail Engineering Manager of the WSDOT's
26 State Rail and Marine Office acknowledged in pre-filed written testimony that the project
27 was then-funded with nearly \$97 million in State funds and over \$3 million in federal
28 highway funds originally appropriated by the Washington State Legislature in 2003 with
29 additional funds appropriated in 2005 and 2007. Due to then-existing economic



1 conditions, and in the absence of the federal American Recovery and Reinvestment Act
2 of 2009 (ARRA) grant monies discussed below, the project’s spending plan would not
3 allow the second phase of construction to begin until July 2013 at the earliest and would
4 delay completion until 2019. However, in February 2010, the Federal Railway
5 Administration (FRA) announced that the State of Washington was to be awarded \$590
6 million in ARRA funds to increase the intercity passenger rail service between Seattle
7 and Portland. On information and belief, total ARRA funds awarded to the State of
8 Washington totaled approximately \$781 Million. The Point Defiance Bypass Project is
9 one of the projects required to meet the goals of the grant.

10 4.14 The manager further acknowledged that as part of evaluating this project
11 under the National Environmental Policy Act (NEPA), both WSDOT and the Federal
12 Highway Administration (FHWA) jointly determined that the Point Defiance Bypass
13 Project was categorically excluded from NEPA. Because of this categorical exclusion
14 under NEPA, neither an Environmental Assessment (EA) nor an Environmental Impact
15 Statement (EIS) was required.

16 4.15 Despite WSDOT’s publicly available statements that neither an EA nor an
17 EIS was available, in Fall 2010, FRA verbally notified WSDOT that with the granting of
18 FRA funds, FRA would require WSDOT to follow FRA’s National Environmental
19 Protection Act (NEPA) protocol. At the same time, FRA stated that, under FRA’s
20 Environmental Procedures implementing NEPA, the appropriate project-level
21 environmental documentation is an environmental assessment (EA) rather than a
22 categorical exclusion (CE).

23 4.16 As a result of the grant of FRA funds, these administrative proceedings
24 were dismissed without prejudice.

25 D. Only Upon Receipt of Federal Dollars Did WSDOT Undertake the EA

26 4.17 On or about March 1, 2013, WSDOT issued the Point Defiance Bypass
27 Project Environmental Assessment (EA). As the EA itself makes clear, the EA was
28 conducted, “[t]o support the obligation of grant funds for the [Pacific Northwest Rail
29 Corridor] improvement program, FRA and WSDOT issued a Tier-1 Programmatic EA

1 analyzing the potential impacts of the projects comprising the PNWRC Program.” (Id. at
2 p. vii).

3 4.18 The EA and resulting FONSI, however, miss the point and suggest that
4 this process has not been substantive, failing to address developmental standards, public
5 safety, and socioeconomic justice factors. The EA is also factually incorrect. Specific
6 statements in the FONSI makes clear that this was merely a bureaucratic exercise:

- 7 • “The Build Alternative would not cause a direct change in the
8 demographics, land use patters, neighborhoods or other related community
9 characteristics.”
- 10 • “Operation of the Project may increase residents’ feelings of isolation in a
11 few neighborhoods during train pass-bys, which would be very short in
12 duration. However, overall the Project would result in more intersections
13 with delay decreases than delay increases. Therefore, with the Project and
14 the proposed traffic improvements, community connectivity would
15 experience a minor benefit.”
- 16 • “The Project is not anticipated to affect property values.”

17 E. Current Status.

18 4.19 After issuance of the FONSI and before it completed the issuance of the
19 DNS, WSDOT has expressly – and publicly – represented as follows:

20 WSDOT’s project team will advance design work to reroute passenger
21 trains from the BNSF Railway main line near Point Defiance to an
22 existing, and less congested, rail line that travels through south Tacoma,
23 Lakewood and DuPont. WSDOT expects construction to begin in 2015
and open the new route to service in 2017.

24 Amtrak Cascades One Step Closer to Faster, More Frequent Service,
25 http://www.wsdot.wa.gov/News/2013/03/04_point_defiance_bypass_FONSI_issued.htm
26 (Last Visited: March 27, 2013).

27 4.20 Meanwhile other divisions within WSDOT are providing contradictory
28 information relating to some would-be mitigation, with a particular emphasis on grade
29 separation at the Thorne Lane Intersection. On August 3, 2004 the environmental Record

1 of Decision was issued by Federal Highway Administration making WSDOT the lead
2 agency on the Cross-base Highway (SR 704) project. The Record of Decision expressly
3 contemplates grade separation,

4 The existing Thorne Lane interchange would be relocated 300 feet
5 southwest and reconstructed to accommodate additional traffic, pass over
6 the Burlington Northern Santa Fe (BNSF) railroad tracks southwest of I-5,
7 and connect to a new SR 704 single-lane southbound connector road
8 southwest of the BNSF railroad tracks between Gravelly Lake Drive and
9 Thorne Lane (Gravelly-Thorne Connector).

10 Record Of Decision Federal Highway Administration State Route 704 (Cross-Base
11 Highway) Fhwa-Wa-Wa-Eis-98-3-F Pierce County, Washington, available on-line at
12 [http://www.wsdot.wa.gov/NR/rdonlyres/41C31B48-5019-4B93-984A-
13 FFC27DC55D93/0/Cross_Base_Rod_AUG_2.pdf](http://www.wsdot.wa.gov/NR/rdonlyres/41C31B48-5019-4B93-984A-FFC27DC55D93/0/Cross_Base_Rod_AUG_2.pdf) (Last Visited: March 26, 2013).

14 **V. CLAIMS FOR RELIEF**

15 5.1 First Cause of Action – Judicial Review Under SEPA. The actions
16 described herein constitute a violation of the State Environmental Policy Act, chapter
17 43.21C RCW, and the implementing regulations, chapter 197-11 WAC to which the City
18 is entitled to judicial review pursuant to RCW 43.21C.075. SEPA imposes upon each
19 public agency in the State of Washington the duty to fully consider environmental
20 impacts of certain decisions. WSDOT violated SEPA by issuing a DNS when which was
21 not based on sufficient or adequate information with respect to a number of impacts.
22 WSDOT further erred when it failed to require sufficient or adequate mitigation showing
23 compliance with certain requirements of SEPA. WSDOT additionally erred when it
24 concluded that the impacts associated with the project to the City of Lakewood and its
25 citizens will be adequately mitigated. No meaningful mitigation is proposed. Moreover,
26 WSDOT compounded these errors by providing a public statement post-EA which was at
27 odds with the EA, thereby engaging in arbitrary and capricious conduct. Petitioner asks
28 that this Court hold that WSDOT violated SEPA, its implementing regulations and policy
29 when issuing the DNS.

5.2 Second Cause of Action – Declaratory Relief. WSDOT does not account
for the power and authority conferred upon the City of Lakewood by operation of law.

1 None of the environmental documents meaningfully account for the City’s regulatory
2 authority under its Comprehensive Plan promulgated under the Growth Management Act
3 or other statutes. In fact, contrary to the mandates of both RCW 36.70A.103 and RCW
4 47.79.030, WSDOT reviewed the City of Lakewood’s Comprehensive Plan in a cursory
5 manner failing to account for rail-specific goals and policies and their relationships with
6 surrounding neighborhoods. WSDOT also fails to account for the City’s regulatory
7 authority under RCW 35.22.340. In view of the concerns outlined in the preceding
8 paragraphs, there exists a genuine dispute regarding a controversy, the judicial
9 determination of which will have the force and effect of a final judgment, for which the
10 City of Lakewood is entitled to relief under the Uniform Declaratory Judgments Act
11 (UDJA), chapter 7.24 RCW adjudicating its rights under state law vis-à-vis the WSDOT.

12 5.3 Third Cause of Action – Petition for Writ of Review. If the decisions are
13 not subject to review under either UDJA or SEPA, the City of Lakewood has no adequate
14 remedy at law to seek review of the decisions at issue and, pursuant to Civil Rule 8(e)(2),
15 the City pleads in the alternative that review is proper pursuant to a writ of review issued
16 under either chapter 7.16 RCW or Article IV, Section 6 of the Washington State
17 Constitution.

18 **PRAYER FOR RELIEF**

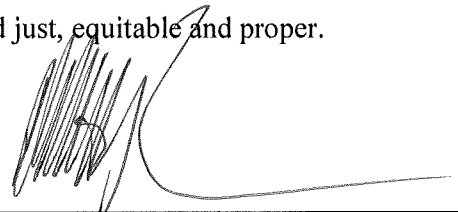
19 WHEREFORE, the City of Lakewood prays that this Court grant the following
20 relief:

- 21 A. An order declaring that WSDOT’s actions in issuing the FONSI and DNS
22 are “actions,” under SEPA and were made in violation of SEPA;
23 B. An order declaring the DNS and FONSI void;
24 C. Such injunctive relief whether styled at temporary, preliminary or
25 permanent as the Court deems appropriate;
26 D. For an award of costs and attorney fees as may be allowed by law; and
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E. For other such relief as deemed just, equitable and proper.

DATED: March 27, 2013.

By: 
Matthew S. Kaser, WSBA No. 32239
Acting City Attorney





**DETERMINATION OF NONSIGNIFICANCE
AND ADOPTION OF EXISTING
ENVIRONMENTAL DOCUMENTS**

March 13, 2013

Description of current proposal: The proposed project consists of railroad track and support facility improvements to facilitate rerouting Amtrak's intercity passenger rail to the Point Defiance Bypass route and relocating the existing Tacoma Amtrak Station. Specific actions include:

- Constructing new track adjacent to the existing main line from South 66th Street in Tacoma, to between Bridgeport Way Southwest and Clover Creek Drive Southwest in Lakewood;
- Reconstructing and rehabilitating the existing main line from just southwest of Bridgeport Way Southwest in Lakewood, to a location southeast of the Interstate 5/Mounts Road Southwest interchange at Nisqually Junction;
- Improving several grade crossings within the proposed project area, and;
- Relocating the existing Tacoma Amtrak Station from its current Puyallup Avenue location, to the Tacoma Dome Station at Freighthouse Square in Tacoma.

Proponent: Washington State Department of Transportation

Location of current proposal: The proposed project is located within the incorporated and unincorporated areas of Pierce County along an existing approximately 20-mile rail corridor between Tacoma and Nisqually that generally parallels and is west of the Interstate 5 (I-5) transportation corridor. The northern limit of the proposed project is TR Junction near the I-5 overcrossing of the Puyallup River and East Bay Street in Tacoma. The southern limit of the proposed project is at Nisqually Junction where Nisqually Road crosses the Nisqually River.

Title of documents being adopted and relied on: Point Defiance Bypass Project National Environmental Policy Act (NEPA) Environmental Assessment (EA); NEPA Finding of No Significant Impact (FONSI); SEPA Environmental Checklist.

Date adopted documents were prepared:

- NEPA Environmental Assessment: February 22, 2013
- NEPA Finding of No Significant Impact: March 1, 2013
- SEPA Environmental Checklist: March 13, 2013

Description of documents (or portion) being adopted: The Point Defiance Bypass Project NEPA Environmental Assessment and NEPA Finding of No Significant Impact are being adopted in their entirety. Staff also prepared a document using the SEPA checklist to show where each topic is addressed in the NEPA documents. Where the SEPA checklist contains questions not specifically addressed in the NEPA EA, additional information is provided. The SEPA checklist will circulate with this notice.

The documents are available electronically: At the project website www.wsdot.wa.gov/projects/rail/pnwrc_ptdefiance/

The Compact Disk (CD) containing the NEPA documents and their appendices is available at no cost by contacting the State Rail and Marine Office at (360) 705-7900.

Hard copies can be viewed at WSDOT's Headquarters Building, 310 Maple Park Avenue SE, Olympia, WA 98501, Monday through Friday between 8 am and 4:30 pm.

Public and Agency Review:

The scope of the environmental review was determined by FRA and WSDOT after considering input from the public and agencies. Chapter 5 of the EA summarizes the public outreach as well as local government and tribal consultation efforts conducted for the Project between spring 2010 and fall 2012. Coordination efforts included input from technical and executive advisory team meetings and direct agency interaction.

The EA was issued by FRA and WSDOT for public review on October 9, 2012 for a period of 30 calendar days (comment period closed on November 9, 2012). WSDOT mailed notices of public meetings to 27,000 residents within a quarter mile of the proposed project. WSDOT translated notices in four languages to reach non-English speakers. During the comment period, the public was invited to provide input through various methods, such as a written comment form, court reporter, e-mail, and mail. WSDOT and FRA explained that both agencies would review and respond to all comments received during the 30-day EA comment period. The joint agency response to the 62 comments received is contained in the environmental decision document issued by FRA (FONSI Appendix B).

WSDOT is relying on the NEPA documentation and concurs with the findings contained in the Federal Rail Administration's decision document. The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c).

As described in the EA and FRA's decision document, an EIS is not required because the construction and operation of the project will not significantly harm the environment. The adopted documents show that the project would improve travel time of the Amtrak Cascades service, decrease train delays, and allow more frequent and reliable intercity passenger rail along the corridor. The project would also improve the safety of at-grade crossings and nearby intersections, adding way-side horns, median barriers, sidewalks, pre-signals, and more advanced signal controllers. Upgrades to intersections and signaling would maintain or improve overall traffic flow at existing substandard intersections. Relocating the Tacoma Avenue Amtrak Station to Freighthouse Square would improve multimodal connections. WSDOT and FRA considered the project's effects on low-income and minority populations and determined that there is no disproportionately high or adverse effect, and that the project meets the provisions of Executive Order 12898 and Title VI of the Civil Rights Act.

WSDOT has identified and adopted these documents as being appropriate for this proposal after independent review. These documents meet WSDOT's environmental review needs for the current proposal and will accompany the proposal to the decision maker.

If the documents being adopted have been challenged (WAC 197-11-630), please describe: The documents have not been challenged.

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on the proposal for 14 days from the date on which this DNS is being issued. Comments can be sent to rail@wsdot.wa.gov or mailed to WSDOT Rail Office, P.O. Box 47407, Olympia, WA 98504-7407

Comments must be submitted by March 26, 2013.

Name of agency adopting documents: Washington State Department of Transportation

Responsible official: Megan White, PE

Position/title: Director, WSDOT Environmental Services

Phone: 360-705-7482

Address: 310 Maple Park Avenue SE Olympia, WA

Date: March 13, 2013

Signature: _____



Contact person, if other than responsible official: Carol Lee Roalkvam (360) 705-7126