

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

No. 82192-5

2008 OCT 24 P 2:46

BY RONALD R. CARPENTER

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

---

CLERK *RJC*

ALBERT HEGLUND, et ux, et al.,

*Appellant,*

vs.

CITY OF SEATTLE,

*Respondent,*

---

**ANSWER TO STATEMENTS OF GROUNDS FOR DIRECT  
REVIEW BY BOTH HEGLUND AND WEST MARINE**

---

THOMAS A. CARR  
Seattle City Attorney

William G. McGillin, WSBA #6018  
Assistant City Attorney  
Attorneys for Respondent  
City of Seattle

Seattle City Attorney's Office  
600 – 4<sup>th</sup> Avenue, 4<sup>th</sup> Floor  
P.O. Box 94769  
Seattle, Washington 98124-4769  
(206) 684-8200

ORIGINAL

**TABLE OF CONTENTS**

|  | <u>Page(s)</u> |
|--|----------------|
| PREAMBLE .....   | 1              |
| I. NATURE OF CASE AND DECISION .....   | 1              |
| II. COUNTERSTATEMENT OF ISSUES .....   | 1              |
| A. Is direct review available where there is no statute authorizing it and where the case does not otherwise meet the criteria of RAP 4.2(a)? .....  | 1              |
| B. When a city’s legislative body lawfully adopts an ordinance finding public necessity and authorizing condemnation of real property for the construction of roadway improvements, which is a public use enumerated in the statute authorizing cities to condemn, and the property owner fails to introduce any legally competent evidence at trial that the use will not be public and that there is fraud or constructive fraud, should the appeal be dismissed with prejudice as frivolous and appropriate terms awarded?..... | 1              |
| III. REASONS WHY DIRECT REVIEW NOT AUTHORIZED.....   | 2              |
| 1. That the matter be subject to review as designated in Title 2 of the Rules of Appellate Procedure (RAP); and.....   | 2              |
| 2. That it is a case specifically identified in RAP 4.2 (a)(1)- (a)(6).....  | 2              |
| IV. THIS CASE SHOULD BE DISMISSED WITH PREJUDICE .....   | 3              |
| V. CONCLUSION.....   | 7              |
| EXHIBITS .....   | 9              |

## TABLE OF AUTHORITIES

Page(s)

### CASES

|   |         |
|---|---------|
| <i>City of Blaine v. Feldstein</i> ,<br>129 Wn. App. 73, 117 P3d 1169 (2005).....                                       | 5       |
| <i>City of Tacoma v. Welcker</i> ,<br>65 Wn.2d 677, 399 P.2d 330 (1965).....  | 4, 5, 6 |
| <i>Mercer Island School District No. 400 v. Scalzo, Inc.</i> ,<br>54 Wn.2d 539, 342 P.2d 225 (1959).....                | 6       |
| <i>Petition of Port of Grays Harbor</i> ,<br>30 Wn. App. 885, 638 P.2d 633 (1982).....                                  | 7       |
| <i>State v Brannan</i> ,<br>85 Wn.2d 64, 530 P.2d 322 (1975).....   | 4       |
| <i>State ex rel Washington State Convention and Trade Center v. Evans</i> ,<br>136 Wn.2d 811, 966 P.2d 1252 (1998)..... | 5       |
| <i>State ex. Rel. Sternoff v. Superior Court</i> ,<br>52 Wn.2d 289, 235 P.2d 305 (1958).....                            | 7       |
| <i>Town of Medical Lake v. Brown</i> ,<br>63 Wn.2d 41, 385 P.2d 387 (1963).....   | 5       |
| <i>Town of Steilacoom v Thompson</i> ,<br>69 Wn.2d 705, 419 P.2d 989 (1966).....  | 6       |

### STATUTES

|                    |         |
|--------------------|---------|
| RCW 8.12.030 ..... | 2, 3, 4 |
|--------------------|---------|

**COURT RULES**

RAP 2.2(a)(4)..... 2

RAP 4.2..... 2

RAP 4.2(a) ..... 1, 2

RAP 4.2 (a)(1)- (a)(6) ..... 2

RAP 4.2(a) 1- 4..... 2

Title 2 of the Rules of Appellate Procedure (RAP) ..... 2

**ORDINANCES**

City of Seattle Ordinance 122505 ..... 1

City of Seattle Ordinance 122696..... 5

## PREAMBLE

This Answer is the City's response to Statement of Grounds for Direct Review by both Heglunds and West Marine, each of whom filed a separate statement.

### I. NATURE OF CASE AND DECISION

The City is condemning property for the widening of an existing roadway (Mercer Street), authorized in City of Seattle Ordinance 122505, adopted by a 7-0 vote, in October 2007.<sup>1</sup> *See* exhibit 1.

The City filed this condemnation action in August 2008. On September 22, 2008, after briefing and oral argument, trial court Judge John Erlick<sup>2</sup> found that the purpose for which the City is acquiring the property is a public use and necessary and entered an order to that effect. *See* exhibit 2.

Appellants appealed, contending that public use is in question because private money will fund a portion of the project.

### II. COUNTERSTATEMENT OF ISSUES

- A. **Is direct review available where there is no statute authorizing it and where the case does not otherwise meet the criteria of RAP 4.2(a)?**
- B. **When a city's legislative body lawfully adopts an ordinance finding public necessity and authorizing**

---

<sup>1</sup> City of Seattle Ordinance 122505

<sup>2</sup> Findings and Order dated September 22, 2008

**condemnation of real property for the construction of roadway improvements, which is a public use enumerated in the statute authorizing cities to condemn,<sup>3</sup> and the property owner fails to introduce any legally competent evidence at trial that the use will not be public and that there is fraud or constructive fraud, should the appeal be dismissed with prejudice as frivolous and appropriate terms awarded?**

### **III. REASONS WHY DIRECT REVIEW NOT AUTHORIZED**

In order for a matter to be appealable directly to the Supreme Court, it must satisfy two criteria:

- 1. That the matter be subject to review as designated in Title 2 of the Rules of Appellate Procedure (RAP)<sup>4</sup>; and**
- 2. That it is a case specifically identified in RAP 4.2 (a)(1)- (a)(6)**

Appeal of an order finding of public use and necessity is a matter which is appealable.<sup>5</sup> So the inquiry turns to whether the case is of the type specified in RAP 4.2.

Of the categories that might apply (RAP 4.2(a) 1- 4), this case does not meet the criteria. Direct review is not authorized by statute. There is no question that the law authorizing condemnation is constitutional. There are

---

<sup>3</sup> RCW 8.12.030

<sup>4</sup> RAP 4.2(a)

<sup>5</sup> RAP 2.2(a)(4)

no conflicting decisions regarding public use and necessity. There is no fundamental or urgent issue of broad public import.

#### **IV. THIS CASE SHOULD BE DISMISSED WITH PREJUDICE**

The City is condemning this property as part of a roadway project known as the Mercer Corridor Project, in which Mercer Street will be widened by some 70 feet and converted from a one-way street to a two way street. Other improvements to be made include the narrowing of Valley Street from its current six-lanes, to two lanes, the relocation and undergrounding of utilities and other associated public purposes.<sup>6</sup> See exhibit 3.

In a condemnation case, there are three inquiries made by the trial court at the time of the hearing on public use and necessity:

- whether the use is a public use,
- whether the public interest requires it, and
- whether the property appropriated was necessary for the project

A road project is a public use.<sup>7</sup> The City's legislative determination of public interest and necessity is "is conclusive in the absence of proof of actual fraud or such arbitrary and capricious conduct as would constitute

---

<sup>6</sup> Declaration of Angela Brady, PE, ("Brady 9-19-08 Dec") dated September 19, 2008, page 2, lines 1-9

<sup>7</sup> RCW 8.12.030

constructive fraud.”<sup>8</sup>

In ” *State v Brannan*, 85 Wn.2d 64, 68, 530 P.2d 322 (1975), the court discussed why there is such deference to the legislative determination of public use:

Seldom has this court found that a condemning authority has abused its trust in making a declaration of public necessity. This should not be surprising, for it is not to be presumed that such abuses often occur.

The Appellants suggested at the trial court, and here as well that this is not a real project. This is a \$200,000,000.00 project.<sup>9</sup> See exhibit 3. The City has spent more than \$12,000,000.00 on the project to date, and has \$18,000,000.00 budgeted and appropriated in the present 2008 budget for continuing environmental, design and property acquisition.<sup>10</sup> See exhibit 3.

The Appellants had the burden of proof at the trial court to show that the use was not a public use or that there was actual or constructive fraud on the part of the City. To show constructive fraud, the appellant had to show willful unreasoning action by the Seattle City Council

---

<sup>8</sup> *City of Tacoma v. Welcker*, 65 Wn.2d 677, 399 P.2d 330 (1965).

<sup>9</sup> Brady 9-19-08 Dec, page 2, lines 1-2

<sup>10</sup> Brady 9-19-08 Dec, page 2, line 20 through page 3, line 2

amounting to constructive fraud.<sup>11</sup>

At the trial court, as in their statements of grounds for review, the Appellants relied on the presence of private funding in the project as described in City Ordinance 122696.<sup>12</sup> See exhibit 4.

Ordinance 122696 is a budget reappropriation measure that shifted funds among the City's capital projects and increased funding for the Mercer project. While the measure discusses some budget gaps that remain to be filled and the anticipated \$36.6M of private funding, it specifically authorizes the supplemental appropriation to be used for the project including property acquisition.

Appellants claimed at the trial court and here on appeal that private funding is proof of a private use. In *State ex rel Washington State Convention and Trade Center v. Evans*, 136 Wn.2d 811, 819, 966 P.2d 1252 (1998), this Court affirmed the long standing rule in Washington, that mere presence of a private funding source in a project was not sufficient to challenge public use.

Appellants fail to cite any cases to support their argument that private contribution to a project's expenses defeats the exercise of eminent domain. On the contrary, in *Town of*

---

<sup>11</sup> *City of Blaine v. Feldstein*, 129 Wn. App. 73, 117 P3d 1169 (2005); *Town of Medical Lake v. Brown*, 63 Wn.2d 41, 45, 385 P.2d 387 (1963); *City of Tacoma v. Welcker*.

<sup>12</sup> City of Seattle Ordinance 122696

*Steilacoom v Thompson*, 69 Wn.2d 705, 419 P.2d 989 (1966) this court affirmed a finding of public use and necessity where a private developer advanced funds for condemnation awards and financed a public sewer extending to his property. Private funding of a public project alone is not sufficient to defeat the State's exercise of the power of eminent domain.

If the presence of 100% private funding was not competent proof of a private use in *Town of Steilacoom v. Thompson*, supra, the presence of an 18% private funding in the present project should matter even less.<sup>13</sup>

A legislative body's determination is conclusive in the absence of proof of actual fraud or such arbitrary and capricious conduct as would constitute constructive fraud.<sup>14</sup>

At the trial court, Appellants also argued that because the project was not fully funded, the motion for finding of public use and necessity was premature.<sup>15</sup> See Exhibit 5 and 6.

In *Mercer Island School District No. 400 v. Scalzo, Inc.*, 54 Wn.2d 539, 342 P.2d 225 (1959), the Court held that evidence of the School District's ability to pay the condemnation award should it elect to proceed

---

<sup>13</sup> The total project is approximately \$200M. The private funding sources total \$36.6M.

<sup>14</sup> *City of Tacoma v. Welcker*, 65 Wn.2d 677, 399 P.2d 330 (1965)

<sup>15</sup> Heglund's Opposition to City's Motion for Order Establishing Public Use and Necessity ("Heglund Memo"), page 1, line 22 through page 2, line 6, page 3, line 21.. West Marine's Opposition to Motion on Public Use and Necessity ("West Memo") page 1, lines 20, through page 2, line 3.

with remaining phases of the condemnation was not material on a hearing for an order of public use and necessity.

The lack of final plans, permits or the like are not sufficient to defeat the legislative determination of necessity.<sup>16</sup> The absence of a specific plan for, or immediate need for, a projected use does not make the use speculative nor does it demonstrate lack of public necessity. Necessity does not mean immediate absolute or indispensable need.<sup>17</sup>

## V. CONCLUSION

Where an appellant from a public use and necessity finding, having failed to introduce any competent evidence at the trial court to show that the use was not public and that there was fraud or constructive fraud; arbitrary and capricious behavior, the clear conclusion must be that the appeal is solely for the purpose of delay.

/

/

/

---

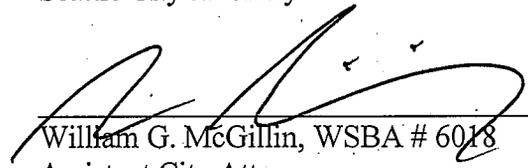
<sup>16</sup> *State ex. Rel. Sternoff v. Superior Court*, 52 Wn.2d 289, 235 P.2d 305 (1958).

<sup>17</sup> *Petition of Port of Grays Harbor* 30 Wn. App. 885, 638 P.2d 633 (1982).

DATED this 23 day of October, 2008.

THOMAS A. CARR  
Seattle City Attorney

By:



William G. McGillin, WSBA # 6018  
Assistant City Attorney  
Attorneys for Respondent  
City of Seattle

## EXHIBITS

- Exhibit 1: Ordinance 122505
- Exhibit 2: Findings and Order of Public Necessity and Use and Setting Discovery Deadlines
- Exhibit 3: Declaration of Angela S. Brady, P.E., PMP, in Support of City of Seattle's Application for Determination of Public Use and Necessity
- Exhibit 4: Ordinance 122686
- Exhibit 5: Heglunds' Memorandum in Opposition to City's Motion for Order Establishing Public Use and Necessity
- Exhibit 6: West Marine's Opposition to Motion on Public Use and Necessity
- Exhibit 7: RAP: Rule 2.1 and Rule 4.2

**DECLARATION OF SERVICE**

I, Teresa Eidem, hereby certify and declare under the penalty of perjury under the laws of the State of Washington, that on the 24th day of October, 2008, I caused copies of the foregoing document:

**ANSWER TO STATEMENTS OF GROUNDS FOR DIRECT REVIEW BY BOTH HEGLUND AND WEST MARINE**

to be served upon the following counsel of record via ABC Legal

Messenger Services:

John P. Braislin  
James D. Nelson  
Sean B. Malcolm  
Betts Patterson & Mines  
701 Pike Street, Ste 1400  
Seattle, WA 98101-3927

Catherine C. Clark  
John Bagley  
The Law Office of Catherine C Clark PLLC  
701 5th Ave Ste 4785  
Seattle, WA 98104-7097

Peggy Pahl  
Daniel Satterberg  
King County Prosecuting Attorney  
W400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

Executed at Seattle, Washington, this 24th day of October, 2008.

---

Teresa Eidem

**EXHIBIT** 1

ORDINANCE 122505

1  
2 AN ORDINANCE relating to the Mercer Corridor Project; authorizing the Director of  
3 Transportation to acquire all of the property rights necessary for reconstructing the  
4 existing Mercer Street/Valley Street couplet with a widened two-way Mercer Street and a  
5 reduction of lanes on Valley Street between Interstate 5 (I-5) and Dexter Avenue; and  
6 authorizing acquisition of real property rights within the area bounded by Aloha Street on  
7 the north and Republican Street on the south through negotiation and use of eminent  
8 domain (condemnation); and authorizing payment of all other costs associated with the  
9 acquisition.

10 WHEREAS, the South Lake Union Neighborhood Plan, developed in 1999, envisions a  
11 community characterized by a pervasive friendly ambience, variety of open spaces, and  
12 an aesthetically pleasing, safe neighborhood embracing dynamic opportunities for people  
13 to work, live and recreate with the greatest ease of mobility for all travel modes; and

14 WHEREAS, the Seattle City Council adopted Resolution 30610 in 2003 setting forth priorities to  
15 support redevelopment of the South Lake Union area including making transportation  
16 improvements to reconnect the South Lake Union street grid and promoting connections  
17 with downtown and the Seattle Center, and promoting pedestrian-oriented improvements;  
18 and

19 WHEREAS, in Resolution 30610, the Seattle City Council affirmed its commitment to support  
20 the redevelopment of the South Lake Union area as the region's most competitive location  
21 for biotech and high-tech research and manufacturing; and

22 WHEREAS, the Seattle City Council adopted Resolution 30714 in 2004, recommending a two-  
23 way Mercer Boulevard and narrowed Valley Street be developed, subject to a Full NEPA  
24 Environmental Assessment; and

25 WHEREAS, replacing the existing Mercer Street/Valley Street couplet with a widened two-way  
26 Mercer Street would provide more direct access to and from I-5, and Mercer Street would  
27 be widened approximately sixty (60) feet primarily to the north, and Valley Street would  
28 be reduced to a two-lane street with turn lanes, parking and bicycle lanes in each  
direction; and

WHEREAS, pedestrian and bicycle circulation would be improved by widening sidewalks and  
removing barriers caused by the existing couplet, providing additional crossings of  
Mercer and Valley Streets; and

WHEREAS, Council and Executive have worked together to agree upon performance  
improvements for a two-way Mercer Street and narrowed Valley Street; NOW,  
THEREFORE,

1  
2 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

3       Section 1. Public convenience and necessity require that real property interests generally  
4 shown on Attachments A and B of this Ordinance, situated in the City of Seattle, County of  
5 King, State of Washington, together with all rights, privileges and other property pertaining  
6 thereto, be acquired for transportation and related purposes through negotiations and use of  
7 eminent domain (condemnation) if necessary, in connection with reconstructing the existing  
8 Mercer Street/Valley Street couplet with a widened two-way Mercer Street and a narrowed two  
9 lane Valley Street located at the south end of Lake Union bordered by Aloha Street on the north  
10 and Republican Street on the south, Dexter Avenue on the west side, and I-5 on the east.  
11

12  
13       Section 2. The Director of Transportation or her designee is authorized, on behalf of the  
14 City of Seattle, to determine which portions and interests of those properties shown on  
15 Attachments A and B are necessary to this project and to negotiate and enter into written  
16 agreements for and acquire, after payment of just compensation, such real property interests as  
17 are necessary for the project and to accept and record deeds and other written instruments on  
18 behalf of the City of Seattle by attaching to the instrument the Director's written acceptance  
19 thereof, and recording the same. The property or real property interests acquired shall be  
20 accepted for transportation and general municipal purposes and placed under the jurisdiction of  
21 the Seattle Department of Transportation. The cost of the acquisitions including purchase price  
22 and transaction costs, together with relocation benefits to the extent required by law, shall be paid  
23  
24  
25  
26  
27  
28



1 from the funds appropriated, or to be appropriated, for such purposes in connection with the  
2 project.

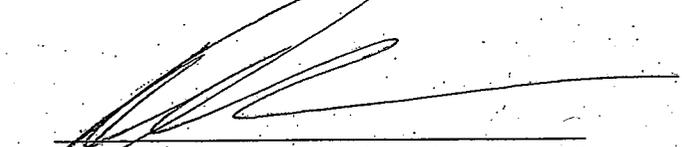
3 Section 3. The City Attorney is authorized to commence and prosecute proceedings in  
4 the manner provided by law to condemn, take, damage, and appropriate in fee simple the lands  
5 and other property interests determined by the Director of Transportation or her designee to be  
6 necessary to the project, provided said lands, rights, and privileges, and other property are to be  
7 appropriated and taken only after just compensation has been made or paid into court for the  
8 owners thereof, in the manner provided by law; and to stipulate for the purpose of minimizing  
9 damages.  
10

11  
12 Section 4. Any act consistent with the authority and prior to the effective date of the  
13 ordinance, including, without limitation, acceptance of a grant of possession and use, is hereby  
14 approved and accepted.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

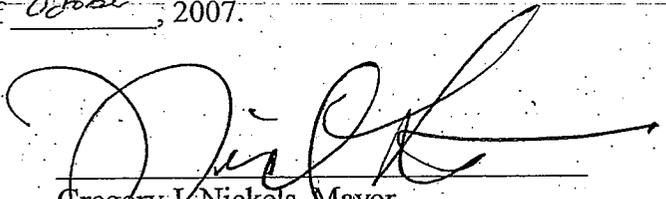


1 Section 5. This ordinance shall take effect and be in force thirty (30) days from and after  
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

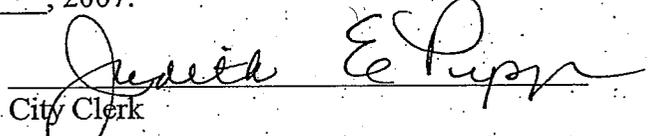
4 Passed by the City Council the 24<sup>th</sup> day of September, 2007, and signed by me in open  
5 session in authentication of its passage this 24<sup>th</sup> day of September, 2007.

6  
7  
8   
9 President pro tem of the City Council

10 Approved by me this 3 day of October, 2007.

11  
12   
13 Gregory J. Nickels, Mayor  
14 *Attk. Create, Azby. Mayor*

15 Filed by me this 4 day of October, 2007.

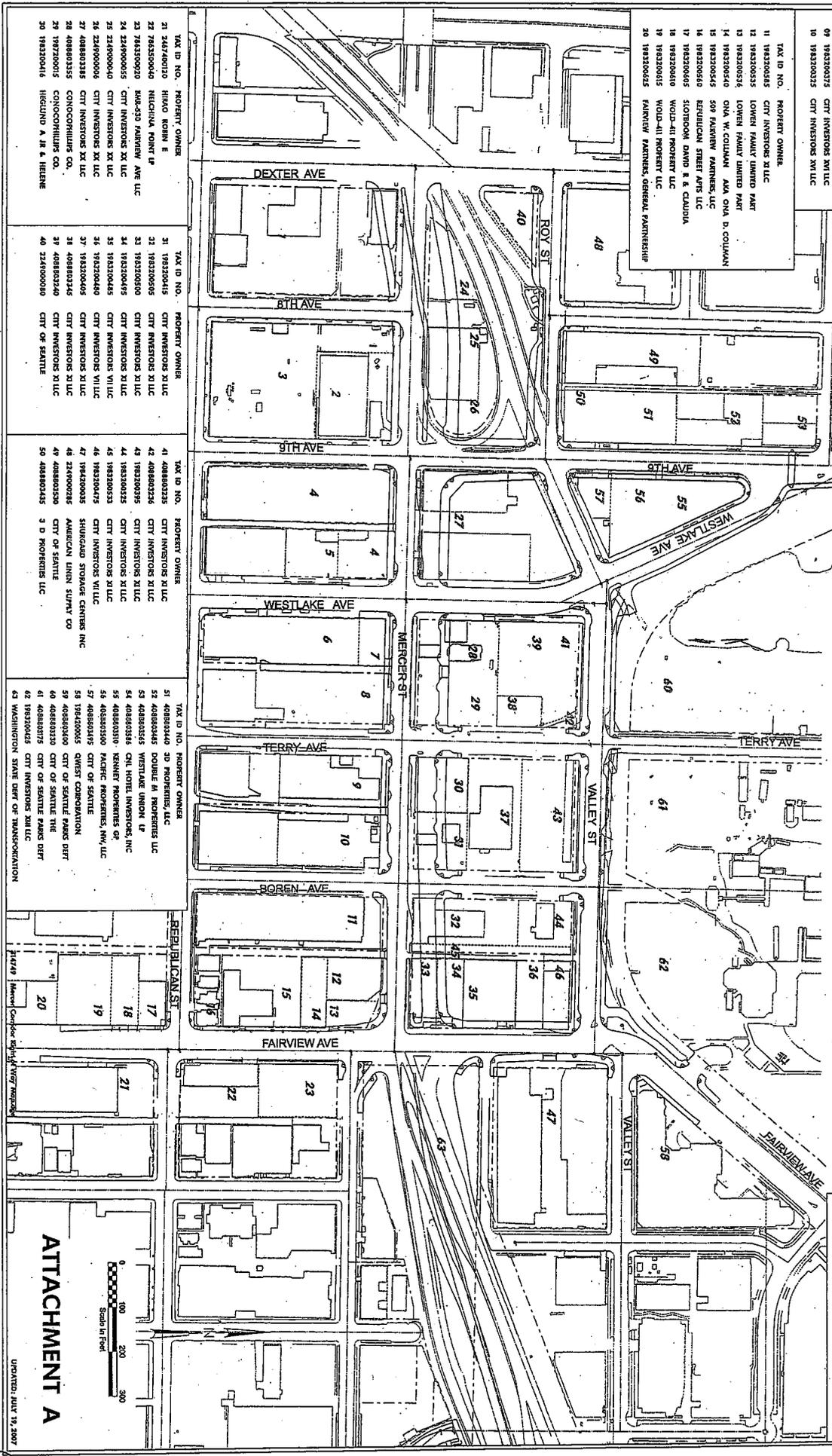
16   
17 City Clerk

18 (Seal)

- 19 Attachment A – Mercer Corridor Project: Preliminary Right-of-Way / Properties Affected  
20 Description Map  
21 Attachment B – Contact List for Properties Affected (Preliminary)  
22  
23  
24  
25  
26  
27  
28



# MERCER CORRIDOR PROJECT PRELIMINARY (60% DESIGN) RIGHT OF WAY/PROPERTIES AFFECTED



| TAX ID NO.                                 | PROPERTY OWNER                         |
|--|--|
| 01 198230410                               | CITY INVESTORS XI LLC                  |
| 02 198230410                               | CITY INVESTORS XI LLC                  |
| 03 198230415                               | CITY INVESTORS XI LLC                  |
| 04 198230005                               | CITY INVESTORS XI LLC                  |
| 05 198230005                               | CITY INVESTORS XI LLC                  |
| 06 198230010                               | CITY INVESTORS XI LLC                  |
| 07 198230015                               | CITY INVESTORS XI LLC                  |
| 08 198230020                               | CITY INVESTORS XI LLC                  |
| 09 198230025                               | CITY INVESTORS XI LLC                  |
| 10 198230030                               | CITY INVESTORS XI LLC                  |
| 11 198230035                               | PROPERT OWNER                          |
| 12 198230035                               | LOVEN FAMILY LIMITED PART              |
| 13 198230035                               | LOVEN FAMILY LIMITED PART              |
| 14 198230040                               | ONA W. COLUMAN                         |
| 15 198230045                               | 509 FAIRVIEW PARTNERS, LLC             |
| 16 198230050                               | REUBEN STREET ARTS LLC                 |
| 17 198230055                               | SLOBODAN DAVIC & CLAUDIA               |
| 18 198230060                               | WORLD-411 PROPERTY LLC                 |
| 19 198230065                               | WORLD-411 PROPERTY LLC                 |
| 20 198230065                               | FAIRVIEW PARTNERS, GENERAL PARTNERSHIP |
| 21 242700010                               | PROPERT OWNER                          |
| 22 198230040                               | NICHOLA POINT LP                       |
| 23 198230045                               | 509 FAIRVIEW AVE LLC                   |
| 24 224900045                               | CITY INVESTORS XI LLC                  |
| 25 224900045                               | CITY INVESTORS XI LLC                  |
| 26 224900045                               | CITY INVESTORS XI LLC                  |
| 27 408820015                               | CITY INVESTORS XI LLC                  |
| 28 408820015                               | CONOCOPHILLIPS CO.                     |
| 29 198230015                               | CONOCOPHILLIPS CO.                     |
| 30 198230015                               | HESLUND A M & HELENE                   |
| 31 198230015                               | CITY INVESTORS XI LLC                  |
| 32 198230015                               | CITY INVESTORS XI LLC                  |
| 33 198230015                               | CITY INVESTORS XI LLC                  |
| 34 198230015                               | CITY INVESTORS XI LLC                  |
| 35 198230015                               | CITY INVESTORS XI LLC                  |
| 36 198230015                               | CITY INVESTORS XI LLC                  |
| 37 198230015                               | CITY INVESTORS XI LLC                  |
| 38 408820015                               | CITY INVESTORS XI LLC                  |
| 39 408820015                               | CITY OF SEATTLE                        |
| 40 224900045                               | CITY OF SEATTLE                        |
| 41 408820015                               | CITY INVESTORS XI LLC                  |
| 42 408820015                               | CITY INVESTORS XI LLC                  |
| 43 198230015                               | CITY INVESTORS XI LLC                  |
| 44 198230015                               | CITY INVESTORS XI LLC                  |
| 45 198230015                               | CITY INVESTORS XI LLC                  |
| 46 198230015                               | CITY INVESTORS XI LLC                  |
| 47 198230015                               | CITY INVESTORS XI LLC                  |
| 48 408820015                               | AMERICAN LINEN SUPPLY CO               |
| 49 408820015                               | CITY OF SEATTLE                        |
| 50 408820015                               | 3 D PROPERTIES LLC                     |
| 51 408820015                               | 3 D PROPERTIES, LLC                    |
| 52 408820015                               | DOUGLAS M PROPERTIES LLC               |
| 53 408820015                               | WESTLAK UNION LP                       |
| 54 408820015                               | CITY HOTEL INVESTORS INC               |
| 55 408820015                               | SENIOR PROPERTIES OR                   |
| 56 408820015                               | PACIFIC PROPERTIES, INC                |
| 57 408820015                               | CITY OF SEATTLE                        |
| 58 198230015                               | QUEST CORPORATION                      |
| 59 408820015                               | QUEST CORPORATION                      |
| 60 408820015                               | CITY OF SEATTLE THE                    |
| 61 408820015                               | CITY OF SEATTLE PARKS DEPT             |
| 62 198230015                               | CITY INVESTORS XI LLC                  |
| 63 WASHINGTON STATE DEPT OF TRANSPORTATION |  |

**LEGEND:**  
 - MERCER CORRIDOR PROJECT 60% DESIGN LAYOUT  
 - 1-53 PROPERTIES AFFECTED

**NOTE:** THE NUMBERED LOTS ON THIS MAP WILL BE AFFECTED BY THE MERCER CORRIDOR PROJECT. THE CITY OF SEATTLE IS CURRENTLY REVIEWING THE CITY'S ACQUISITION OF SOME PROPERTY INTEREST FROM THE PROPERTY OWNERS, INCLUDING FROM THE CITY OF SEATTLE. THE CITY OF SEATTLE IS CURRENTLY REVIEWING THE CITY'S ACQUISITION OF SOME PROPERTY INTEREST FROM THE PROPERTY OWNERS, INCLUDING FROM THE CITY OF SEATTLE.

**ATTACHMENT A**

0 100 200 300  
 Feet  
 Scale in Feet

UPDATED: JULY 18, 2007



MERCER CORRIDOR PROJECT  
CONTACT LIST FOR PROPERTIES AFFECTED (PRELIMINARY 60% DESIGN)

| Project Parcel No. | Tax ID No. | Property Owner               | Occupant                      | Property Owner's (OR Tax Payer's) Address                         | Property Address (Per King County Tax Records) | Abbreviated Legal Description (Per King County Tax Records)   |
|--------------------|------------|------------------------------|-------------------------------|---|--|---|
| 1                  | 1988201410 | CITY INVESTORS XII LLC       | US Bank                       | 505 5th Ave So #900, Seattle, WA 98104                            | 530 Dexter Ave N 98109                         |   |
| 2                  | 1988201480 | CITY INVESTORS XIII LLC      | UW Phase 1                    | c/o McKinstry /Essenion P O Box 24567, Seattle WA 98121           | 815 Mercer St 98109                            |   |
| 3                  | 1988201485 | CITY INVESTORS XII LLC       | UW Phase 2                    | 505 5th Ave So #900, Seattle, WA 98104                            |  | DENNYS DT HOME ADD PCL B SEATTLE BLA #3003169 REC #20051103900001 SD BLA BEING LOTS 1 THRU 14 BLOCK 84  |
| 4                  | 1983200065 | CITY INVESTORS XX LLC        | Jaguar/Land Rover Parking     | 505 5th Ave So #900, Seattle, WA 98104                            | 535 Westlake Ave N 98109                       |   |
| 5                  | 1983200075 | CITY INVESTORS XX LLC        | Pacific Used Cars             | 505 5th Ave So #900, Seattle, WA 98104                            | 536 Westlake Ave N 98109                       |   |
| 6                  | 1983200180 | CITY INVESTORS IX LLC        | Outdoor and More              | 505 5th Ave So #900, Seattle, WA 98104                            | 520 Westlake Ave N 98109                       |   |
| 7                  | 1983200196 | CITY INVESTORS IX LLC        | Clements and Rice Office Bldg | 505 5th Ave So #900, Seattle, WA 98104                            | 536 Westlake Ave N 98109                       |   |
| 8                  | 1983200150 | LAKE UNION I LLC             | Parking/Intrurban Exchange    | 108th AVE NE # 400 north Bellevue, WA 98004                       |  | DENNYS DT 1ST ADD LOTS 1 THRU 4 BLK 94 LESS POR FOR MERCER ST & FOR TERRAY AVE N  |
| 9                  | 1983200375 | CITY INVESTORS XVII LLC      | Far Fetched Warehouse         | 505 5th Ave So #900, Seattle, WA 98104                            | 1001 Mercer St 98109                           |   |
| 10                 | 1983200325 | CITY INVESTORS XVI LLC       | Thriftbook LLC                | 505 5th Ave So #900, Seattle, WA 98104                            | 1021 Mercer St 98109                           |   |
| 11                 | 1983200585 | CITY INVESTORS XI LLC        | Cloud 9 Mattresses and More   | 505 5th Ave So #900, Seattle, WA 98104                            | 526 Boren Ave N 98109                          |   |
| 12                 | 1983200535 | LOWEN FAMILY LIMITED PART    | Far Fetched Store             | 601 W Mercer Pl #502, Seattle, WA 98119                           | 1119 Mercer St 98109                           |   |
| 13                 | 1983200536 | LOWEN FAMILY LIMITED PART    | Far Fetched Parking           | 601 W Mercer Pl #502, Seattle, WA 98119                           | 529 Fairview Ave N 98109                       |   |
| 14                 | 1983200540 | ONA W. COLLMAN               | Far Fetched                   | 2905 SW 1st Ave, Portland, OR 97201                               | 527 Fairview Ave N 98109                       |   |
| 15                 | 1983200545 | 509 FAIRVIEW PARTNERS LLC    | Color Service Inc.            | 8232 41st Ave NE, Seattle, WA 98115                               | 509 Fairview Ave N 98109                       |   |
| 16                 | 1983200560 | REPUBLICAN STREET APTS LLC   | Republican St Apts.           | 433 Fairview Ave North, Seattle, WA 98109                         | 1114 Republican St 98109                       |   |
| 17                 | 1983200665 | SILTOBOM DAVID R & CLAUDIA M | Orlech Camera Supply          | 411 Fairview Ave North, Seattle, WA 98109                         | 433 Fairview Ave N 98109                       |   |
| 18                 | 1983200610 | WOLD-411 PROPERTY LLC        | Warehouse                     | 411 Fairview Ave North, Seattle, WA 98109                         | 423 Fairview Ave N 98109                       |   |
| 19                 | 1983200615 | WOLD-411 PROPERTY LLC        | Henry R. Wold Bldg            | 411 Fairview Ave North, Seattle, WA 98109                         | 413 Fairview Ave N 98109                       |   |
| 20                 | 1983200625 | FAIRVIEW PARTNERS            | Scanner Graphics              | 76 So Washington St # M-102, Seattle, WA 98104                    | 405 Fairview Ave N 98109                       |   |
| 21                 | 2467400120 | HIRAO ROBIN                  | NW Wholesale Florists         | 15707 NE 134th St, Redmond, WA 98052                              | 400 Fairview Ave N 98109                       |   |
| 22                 | 7863500040 | NELCHINA POINT LP            | Youth Resource Center         | 500 L ST Suite #100, Anchorage, AK 99501                          | 500 Fairview Ave N 98109                       |   |
| 23                 | 7863500020 | BMR-530 FAIRVIEW AVE LLC     | Vacant                        | c/o PARADIGM TAX GROUP 3645 Ruffin Rd Ste 310, San Diego CA 92123 | 530 Fairview Ave N 98109                       |   |
| 24                 | 2249000055 | CITY INVESTORS XX LLC        | Vacant                        | 505 5th Ave So #900, Seattle, WA 98104                            | 714 W Mercer St 98109                          |   |
| 25                 | 2249000040 | CITY INVESTORS XX LLC        | Vacant                        | 505 5th Ave So #900, Seattle, WA 98104                            | 800 Mercer St 98109                            |   |
| 26                 | 2249000066 | CITY INVESTORS XX LLC        | Vacant                        | 505 5th Ave So #900, Seattle, WA 98104                            | 816 Mercer St 98109                            |   |
| 27                 | 4088800385 | CITY INVESTORS XX LLC        | McKay Dealership              | 505 5th Ave So #900, Seattle, WA 98104                            | 609 Westlake Ave N 98109                       |   |
| 28                 | 4088800355 | CONOCOPHILLIPS COMPANY       | Union 76 Station              | Attn: Marketing P.O. Box 1539, Paso Robles CA 93447               | 600 Westlake Ave N 98109                       |   |
| 29                 | 1987200015 | CONOCOPHILLIPS COMPANY       | Vacant                        | Attn: Marketing P.O. Box 1539, Paso Robles CA 93447               |  | DENNYS DT 6TH ADD POR 5 & 6 & ALL 4 BLK A & POR 4 & 5 BLK 77 LAKE UNION SH LDS BEG AT PT 59 FT W OF SE COR OF LOT 6 BLK A TH E 59 FT TO SE COR LT 6 TH N 179.98 FT TH W 114 FT TH S 126 FT TH SELY 60 FT TO PT 30 FT N OF BEG TH S 30 FT TO BEG LESS ST |
| 30                 | 1983200416 | HEGLUND ALBERT JR & HELENE   | West Marine                   | DBA: A H Properties 1219 NW Elford Dr, Seattle, WA 98177          | 1000 Mercer St 98109                           |   |
| 31                 | 1983200415 | CITY INVESTORS XI LLC        | Shell Station                 | 505 5th Ave So #900, Seattle, WA 98104                            | 607 Boren Ave N 98109                          |   |
| 32                 | 1983200505 | CITY INVESTORS XI LLC        | Taco Del Mar HQ               | 505 5th Ave So #900, Seattle, WA 98104                            | 1104 Mercer St 98109                           |   |
| 33                 | 1983200500 | CITY INVESTORS XI LLC        | Lincoln Towing                | 505 5th Ave So #900, Seattle, WA 98104                            | 604 Fairview Ave N 98109                       |   |
| 34                 | 1983200495 | CITY INVESTORS XI LLC        | Lincoln Towing                | 505 5th Ave So #900, Seattle, WA 98104                            | 604 Fairview Ave N 98109                       |   |
| 35                 | 1983200485 | CITY INVESTORS VII LLC       | Vacant                        | 505 5th Ave So #900, Seattle, WA 98104                            | 613 Fairview Ave N 98109                       |   |
| 36                 | 1983200480 | CITY INVESTORS VII LLC       | Vacant                        | 505 5th Ave So #900, Seattle, WA 98104                            | 615 Boren Ave N 98109                          | DENNYS 1ST ADD LOT 2 BLK 106 LESS ST  |
| 37                 | 1983200405 | CITY INVESTORS XI LLC        | Autosense                     | 505 5th Ave So #900, Seattle, WA 98104                            | 615 Boren Ave N 98109                          |   |
| 38                 | 4088800345 | CITY INVESTORS XI LLC        | Vacant                        | 505 5th Ave So #900, Seattle, WA 98104                            | 670 Terry Ave N 98109                          |   |

ATTACHMENT B



MERCER CORRIDOR PROJECT  
CONTACT LIST FOR PROPERTIES AFFECTED (PRELIMINARY 60% DESIGN)

| Project Parcel No. | Tax ID No. | Property Owner                | Occupant                      | Property Owner's (OR Tax Payer's) Address                       | Property Address (Per King County Tax Records) | Abbreviated Legal Description (Per King County Tax Records)  |
|--------------------|------------|-------------------------------|-------------------------------|---|--|--|
| 39                 | 4088803240 | CITY INVESTORS XI LLC         | Vacant                        | 505 5th Ave So #900, Seattle, WA 98104                          | 665 Valley St 98109                            |  |
| 40                 | 2249000080 | CITY OF SEATTLE THE           | Parking Lot                   | Key Tower 700 5th Ave #3900 P.O. Box 34995 Seattle, WA 98124    | 702 Roy St 98109                               |  |
| 41                 | 4088803235 | CITY INVESTORS XI LLC         | Vacant                        | 505 5th Ave So #900, Seattle, WA 98104                          |  | LAKE UNION SHORE LAND ADD LOT 1 BLK 77 LESS NP RY RW & LEES ST   |
| 42                 | 4088803236 | CITY INVESTORS XI LLC         | RR ROW                        | 505 5th Ave So #900, Seattle, WA 98104                          | 615 Terry Ave N 98109                          |  |
| 43                 | 1983200395 | CITY INVESTORS XI LLC         | Parking Lot                   | 505 5th Ave So #900, Seattle, WA 98104                          | 625 Boren Ave N 98109                          |  |
| 44                 | 1983200525 | CITY INVESTORS XI LLC         | Service Repair                | 505 5th Ave So #900, Seattle, WA 98104                          | 630 Boren Ave N 98109                          |  |
| 45                 | 1983200533 | CITY INVESTORS XI LLC         | RR ROW                        | 505 5th Ave So #900, Seattle, WA 98104                          | 1144 Mercer St 98109                           |  |
| 46                 | 1983200475 | CITY INVESTORS VII LLC        | Sport Boat NW                 | 505 5th Ave So #900, Seattle, WA 98104                          | 1123 Terry Ave N 98109                         |  |
| 47                 | 1984200035 | SHURGARD STORAGE CENTERS INC. | Shurgard                      | DEPT PT WA 08185 P.O. Box 25025, Glendale, CA 91201             | 700 Fairview Ave N 98109                       |  |
| 48                 | 2249000285 | AMERICAN LINEN SUPPLY CO      | Auto Hound                    | 1326 5th Ave #714 Seattle, WA 98104                             | 700 Dexter Ave N 98109                         |  |
| 49                 | 4088803530 | THE CITY OF SEATTLE           | Seattle D&R Dept. Maintenance | Acft Payable P.O. Box 34023 Seattle, WA 98124                   | 800 Alpha St 98109                             |  |
| 50                 | 4088803435 | 3 D PROPERTIES LLC            | Buca D'Beppo                  | 721 9th Ave North Seattle, WA 98109                             | 701 9th Ave N 98109                            |  |
| 51                 | 4088803440 | 3 D PROPERTIES LLC            | Ducati                        | 721 9th Ave North Seattle, WA 98109                             | 701 9th Ave N 98109                            |  |
| 52                 | 4088803485 | DOUBLE M PROPERTIES LLC       | Maeco Auto Paint              | c/o MACD 739 9th Ave North, Seattle, WA 98109                   | 739 9th Ave N 98109                            |  |
| 53                 | 4088803555 | WESTLAKE UNION LP             | KPG                           | 733 9th Ave North, Seattle, WA 98109                            | 733 9th Ave N 98109                            |  |
| 54                 | 4088803586 | CNL HOTEL INVESTORS INC       | Marriott Residence Inn        | 14185 Dallas PKWY Ste 1100 Dallas, TX 75254                     | 925 Westlake Ave N 98109                       |  |
| 55                 | 4088803510 | KENNEY PROPERTIES GP          | Lillian's Billiard Club       | 721 9th Ave North Seattle, WA 98109                             | 731 Westlake Ave N 98109                       |  |
| 56                 | 4088803500 | PACIFIC PROPERTIES NW, LLC    | Outback/Bonfish/rap Plastic   | 721 9th Ave North Seattle, WA 98109                             | 707 Westlake Ave N 98109                       |  |
| 57                 | 4088803495 | THE CITY OF SEATTLE           | Tin Cup/Parking               | Key Tower 700 5th Ave #3900 P.O. Box 34996 Seattle, WA 98124    | 900 Roy St 98109                               |  |
| 58                 | 1984200065 | QWEST CORPORATION             | Marriott Residence Inn        | 814 E Main St Richmond, VA 23219                                | 800 Fairview Ave N 98109                       |  |
| 59                 | 4088803600 | CITY OF SEATTLE PARKS DEPT    | SLU Park                      | Property Management 800 Maynard Ave S-3rd Flr Seattle, WA 98134 | 900 Westlake Ave N 98109                       |  |
| 60                 | 4088803230 | CITY OF SEATTLE THE           | SLU Park                      | Property Management 800 Maynard Ave S-3rd Flr Seattle, WA 98134 |  | LAKE UNION SHORE LANDS ADD BLK 75  |
| 61                 | 4088803175 | CITY OF SEATTLE PARKS DEPT    | SLU Park                      | Property Management 800 Maynard Ave S-3rd Flr Seattle, WA 98134 | 1000 Valley St 98109                           |  |
| 62                 | 1983200425 | CITY INVESTORS XIII LLC       | Daniels                       | 505 5th Ave So #900, Seattle, WA 98104                          |  | DENNYS DT 1ST ADD PAR B LESS LOTS 10-11 BLK 105 DT DENNYS 1ST ADD & LOTS 1-2-3 & POR 4 BLK 73 LAKE UNION SHORE LANDS & POR VAC ALLEY ADJ IN SEA SP #76-34 REC #703040667 SD SP DAF ALL BLK 105 DT DENNYS 1ST ADD TGMW BLK 73 LAKE UNION SHORE LANDS & VAC ALLEY ADJ LESS ST AKA PAR B SEA LLA #8502464 REC #8511120965 |
| 63                 |            | SECRETARY WASHINGTON STATE    |                               | P.O. BOX 47316 Olympia, WA 98504-7316                           |  | SR 5 SEATTLE FREEWAY OLIVE WAY TO GALER ST SHEETS 4, 5 & 6   |

Note: All of the parcels on this Contact List will be affected by the Mercer Corridor Project. All will involve the City's acquisition of some property interest from the property owner, ranging from temporary construction easements to the permanent taking of property.



STATE OF WASHINGTON  
COUNTY OF KING  
CITY OF SEATTLE

} SS

I, JUDITH E. PIPPIN, CITY CLERK OF THE CITY OF SEATTLE, DO HEREBY  
CERTIFY THAT THE WITHIN AND FOREGOING IS A TRUE AND CORRECT  
COPY OF *Ordinance* 122505  
AS THE SAME APPEARS ON FILE AND OF RECORD IN THIS DEPARTMENT.

IN WITNESS WHEREOF, I HAVE HEREBY SET MY HAND AND AFFIXED  
THE SEAL TO THE CITY OF SEATTLE, THIS 15<sup>th</sup> day of August 2008

JUDITH E. PIPPIN  
CITY CLERK

BY   
DEPUTY CLERK

**EXHIBIT** 2

**FILED**

KING COUNTY, WASHINGTON

The Honorable John P. Erlick

SEP 22 2009

SUPERIOR COURT CLERK  
BY JUAN C. BUENAFE  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

CITY OF SEATTLE, a municipal corporation, )

Plaintiff, )

vs. )

ALBERT HEGLUND, JR., and HELENE )  
HEGLUND, husband and wife; WEST )  
MARINE FINANCE COMPANY, INC.; )  
WEST MARINE, INC.; WEST MARINE )  
PRODUCTS, INC.; A. HEGLUND JR. DBA A )  
H PROPERTIES; and KING COUNTY, a )  
subdivision of the state of Washington, )

Respondents. )

No. 08-2-27604-0 SEA

FINDINGS AND ORDER OF PUBLIC  
NECESSITY AND USE AND SETTING  
DISCOVERY DEADLINES.

The City of Seattle applied to this court for determination of public use and necessity and determination of its compliance with notice requirements prescribed by law, in regard to the land sought to be acquired by the City in this domain action and Respondents Heglund and West Marine having filed opposition pleadings and having made opposing arguments and Respondent King County having not responded. Based upon the pleadings, recitals contained in City of Seattle Ordinance 122505 and 122686, and the City's litigation guarantee, the Court makes the following findings:

FINDINGS AND ORDER OF PUBLIC NECESSITY AND USE AND  
SETTING DISCOVERY DEADLINES - 1

Thomas A. Carr  
Seattle City Attorney  
600 Fourth Avenue, 4th Floor  
P.O. Box 94769  
Seattle, WA 98124-4769  
(206) 684-8200

ORIGINAL

EXHIBIT 2



1 adopted in a lawful manner; and

2 2. That a trial shall be had to determine the just compensation to be paid by the City for  
3 the rights acquired herein; and

4 3. The parties shall follow the case schedule issued by the Clerk of the Superior Court  
5 of King County Washington, except that the same is modified as follows:  
*as by the IC Judge, Judge*

6 *Jim Rogers, or as stipulated to by the parties*  
a. All written discovery shall be completed at least 90 days prior to the date of trial.

7 b. All deposition testimony except expert witnesses and appraisers shall be taken at  
8 least 75 days prior to the trial date.

9 c. The parties shall exchange equivalent appraisal information as set forth in RCW  
10 8.25.120 and disclose expert witnesses including appraisers at least 60 days prior to trial.

11 d. The parties shall engage in alternative dispute resolution by mediation, not later than  
12 50 days prior to the trial date.

13 e. In the event that mediation does not succeed, the deposition of expert witness,  
14 including appraisers that the parties intend to call as witnesses at trial, will occur at least 40 days  
15 before the trial date.

16 DATED this 22nd day of January, 2008.

17 *John P. Erlick*  
18 JUDGE JOHN P. ERLICK

19 PRESENTED BY:

20 THOMAS A. CARR  
21 Seattle City Attorney

22 By: *William G. McGillin*

23 William G. McGillin, WSBA #6018  
Sr. Assistant City Attorney  
Attorneys for Petitioner The City of Seattle

FINDINGS AND ORDER OF PUBLIC NECESSITY AND USE AND  
SETTING DISCOVERY DEADLINES - 3

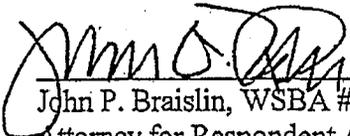
ORIGINAL

Thomas A. Carr  
Seattle City Attorney  
600 Fourth Avenue, 4th Floor  
P.O. Box 94769  
Seattle, WA 98124-4769  
(206) 684-8200

1 ~~APPROVED FOR ENTRY~~

NOTICE OF PRESENTATION WAIVED

2 ALBERT HEGLUND, JR., AND HELENE  
3 HEGLUND AND A. HEGLUND JR. DBA A H PROPERTIES

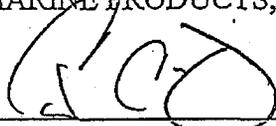
4 By: 

5 John P. Braislin, WSBA #396  
6 Attorney for Respondent Albert Heglund, Jr., and Helene  
Heglund and A. Heglund JR. DBA A H Properties

7  
8 ~~APPROVED FOR ENTRY,~~

NOTICE OF PRESENTATION WAIVED:

9 WEST MARINE FINANCE COMPANY, INC.  
10 WEST MARINE, INC.  
11 WEST MARINE PRODUCTS, INC.

12 By: 

13 Catherine C. Clark, WSBA #21231  
14 Attorney for Respondent, West Marine Entities

15 APPROVED FOR ENTRY,  
16 NOTICE OF PRESENTATION WAIVED:

17 DANIEL T. SATTERBERG  
King County Prosecuting Attorney

18 By: \_\_\_\_\_

19 Margaret Pahl, WSBA # 19019  
20 Senior Deputy Prosecuting Attorney  
21 Attorneys for King County  
22  
23

FINDINGS AND ORDER OF PUBLIC NECESSITY AND USE AND  
SETTING DISCOVERY DEADLINES - 4

ORIGINAL

Thomas A. Carr  
Seattle City Attorney  
600 Fourth Avenue, 4th Floor  
P.O. Box 94769  
Seattle, WA 98124-4769  
(206) 684-8200



The Honorable John P. Erlick  
Monday, 2:00 p.m. on September 22, 2008  
Moving Party City's Reply Declaration

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

CITY OF SEATTLE, a municipal corporation,

Plaintiff,

vs.

ALBERT HEGLUND, JR., and HELENE  
HEGLUND, husband and wife; WEST  
MARINE FINANCE COMPANY, INC.;  
WEST MARINE, INC.; WEST MARINE  
PRODUCTS, INC.; A. HEGLUND JR. DBA A  
H PROPERTIES; and KING COUNTY, a  
subdivision of the state of Washington,

Respondents.

No. 08-2-27604-0 SEA

DECLARATION OF  
ANGELA S. BRADY, P.E., PMP,  
IN SUPPORT OF CITY OF SEATTLE'S  
APPLICATION FOR DETERMINATION  
OF PUBLIC USE AND NECESSITY

I, Angela S. Brady, declare under penalty of perjury under the laws of the State of  
Washington as follows:

1. I am an employee and Project Manager for the City of Seattle Department of  
Transportation. I am the Project Manager for the Mercer Corridor Improvement Project, and  
make this declaration upon personal knowledge.

2. I am a licensed Professional Engineer (PE) in the State of Washington and am certified as  
a Project Management Professional (PMP) with the Project Management Institute.

DECLARATION OF ANGELA S. BRADY, P.E., PMP, IN SUPPORT OF  
CITY OF SEATTLE'S APPLICATION FOR DETERMINATION OF  
PUBLIC USE AND NECESSITY

Thomas A. Carr  
Seattle City Attorney  
600 Fourth Avenue, 4th Floor  
P.O. Box 94769  
Seattle, WA 98124-4769  
(206) 684-8200

COPY

1 3. The Mercer Corridor Improvement Project is a multi-year phased project with a total  
2 estimated cost of \$200,000, 000, which will:

- 3 • widen Mercer Street between Fairview Avenue and Dexter Avenue by approximately 70  
4 feet
- 5 • change Mercer Street from a one-way street eastbound to a two way street
- 6 • shift freeway off-ramp traffic from Valley Street onto westbound Mercer Street to create  
7 better pedestrian, bicycle and park access on Valley Street
- 8 • work in conjunction with future projects designed to reconnect the street grid between  
9 the South Lake Union area and lower Queen Anne Hill and Seattle Center.

10 4. The project is a City of Seattle roadway project. The assets constructed will be  
11 constructed in a project owned entirely by the City of Seattle and the assets created or improved  
12 by the project will be owned by the City. All of the land to be acquired by this project will be  
13 owned by the City. There will be no private ownership of any asset acquired by the City in this  
14 project.

15 5. The acquisition of property for this project is authorized in the City's Ordinance 122505  
16 which became effective November 4, 2007.

17 6. In Ordinance 122686 [Exhibit 1 to this Declaration], the City's project was granted  
18 continued approval to: "continue design, environmental review and begin property acquisitions  
19 for right-of-way needs".

20 7. The City's 2008 CIP Budget contains approximately \$18 million for the completion of  
21 the environmental and design work, and to begin property acquisition. The City has already  
22 spent approximately \$12 million in planning, environmental review, design, right-of-way  
23 acquisition work including appraisal and appraisal review completion for all needed parcels,

DECLARATION OF ANGELA S. BRADY, P.E., PMP, IN SUPPORT OF  
CITY OF SEATTLE'S APPLICATION FOR DETERMINATION OF  
PUBLIC USE AND NECESSITY

Thomas A. Carr  
Seattle City Attorney  
600 Fourth Avenue, 4th Floor  
P.O. Box 94769  
Seattle, WA 98124-4769  
(206) 684-8200

1 relocation of businesses, and other work necessary to identify right-of-way needs and to develop  
2 funding needs for the project.

3 8. The project design is currently 90% complete. As part of this project, WSDOT will  
4 extend the present limits of its "limited access roadway" in the areas adjacent to the  
5 Fairview/Mercer intersection at the on and off-ramps to I-5. WSDOT has reviewed our Limited  
6 Access proposal and is in concurrence. The City expects to receive formal sign-off from both  
7 WSDOT and FHWA shortly.

8 9. The City has retained right-of-way agents and relocation specialists. The City has made  
9 several property acquisition offers and has already begun relocating tenants from the properties  
10 affected by this project in full accordance with state and federal law.

11 10. The City has already received and spent state and federal money to support the  
12 environmental work for the project, and the City believes that the project construction qualifies  
13 for and will receive monies from both state and federal highway fund sources. The project  
14 design has been paid for primarily by local funds. As with any project of this type, some of the  
15 improvements may be paid for by private property owners located adjacent to the roadway. The  
16 City estimates a private participation funding contribution of approximately \$36.25 million.  
17 The remaining funding for construction of the project will come in the 2009 budget and in  
18 supplemental appropriations thereafter. As indicated above, this project is phased.

19 11. The project for which the property owned by Heglund is condemned will require that the  
20 City obtain fee ownership of 8521 square feet (more or less) of the subject property and a  
21 temporary construction easement (TCE) on the remaining 6224 square feet (more or less), all as  
22 shown on the figure attached to the Declaration of William G. McGillin as Exhibit F.

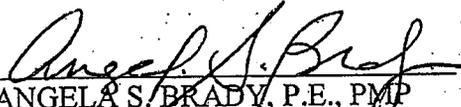
23 12. The phasing of funding through several budget cycles is not unusual.

DECLARATION OF ANGELA S. BRADY, P.E., PMP, IN SUPPORT OF  
CITY OF SEATTLE'S APPLICATION FOR DETERMINATION OF  
PUBLIC USE AND NECESSITY

Thomas A. Carr  
Seattle City Attorney  
600 Fourth Avenue, 4th Floor  
P.O. Box 94769  
Seattle, WA 98124-4769  
(206) 684-8200

1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing is true and correct.

3 Signed at Seattle, King County, Washington this 19 day of September, 2008.

4  
5   
6 ANGELA S. BRADY, P.E., PMP

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
DECLARATION OF ANGELA S. BRADY, P.E., PMP, IN SUPPORT OF  
CITY OF SEATTLE'S APPLICATION FOR DETERMINATION OF  
PUBLIC USE AND NECESSITY

Thomas A. Carr  
Seattle City Attorney  
600 Fourth Avenue, 4th Floor  
P.O. Box 94769  
Seattle, WA 98124-4769  
(206) 684-8200

**EXHIBIT** 4

ORDINANCE 122686

1 AN ORDINANCE relating to financing certain capital activities of Seattle Department of  
2 Transportation; increasing appropriations to the Department of Transportation in the 2008  
3 Budget; and amending the 2008-2013 Capital Improvement Program; all by a three-  
4 fourths vote of the City Council.

5 WHEREAS, Ordinance 122232 authorized a vote on a property tax levy for transportation  
6 improvements that was approved by the voters in November 2006, Ordinance 122191  
7 imposed an employee hours tax for transportation purposes, Ordinance 122192 imposed a  
8 commercial parking tax for transportation purposes, and Resolution 30915 collectively  
9 referred to these referenced funding sources and the transportation improvements for  
10 which the collected revenues will be used as the "Bridging the Gap" (BTG) transportation  
11 funding package; and

12 WHEREAS, the Mayor has proposed and the City Council has approved a 2008 Budget and  
13 2008-2013 Capital Improvement Program that includes the S Lander St. Grade Separation  
14 project; and

15 WHEREAS, the Mayor has proposed and the City Council has approved a 2008 Budget and  
16 2008-2013 Capital Improvement Program that includes the Spokane St. Viaduct project;  
17 and

18 WHEREAS, the Mayor has proposed and the City Council has approved a 2008 Budget and  
19 2008-2013 Capital Improvement Program that includes the Mercer Corridor Project; and

20 WHEREAS, due to the failure of Proposition 1, the roads and transit proposal, on the November  
21 2007 ballot, the 2008 Budget and 2008-2013 Capital Improvement Program do not  
22 include Regional Transportation Investment District (RTID) revenue, RTID-backed  
23 bonds, BTG revenue, or BTG-backed bonds for the S Lander St. Grade Separation  
24 project, the Spokane St. Viaduct project, and the Mercer Corridor Project; and

25 WHEREAS, it is in the City's best interest to fund and continue implementation of the Spokane  
26 St. Viaduct at this time, prior to initiation of the Alaskan Way Viaduct (AWV)  
27 replacement project because this project will help lessen the negative impact of the AWV  
28 replacement project during construction; and

WHEREAS, the City Council intends to give limited funding and approval to continue  
implementation of the Mercer Corridor Project at this time until demonstrated progress is  
made towards securing state, federal, and private funding; and



WHEREAS, the City Council agrees with the Executive proposal to not move forward with the S Lander St. Grade Separation project at this time; and

1 WHEREAS, the Department of Transportation has developed a revised finance plan for the  
2 Spokane St. Viaduct and the Mercer Corridor Project that does not include RTID revenue  
or RTID-backed bonds; and

3 WHEREAS, the revised finance plan for the Spokane St. Viaduct leaves a funding gap of \$40  
4 million in currently unsecured funding anticipated from state and federal sources; and

5 WHEREAS, the revised finance plan for the Mercer Corridor Project leaves a funding gap of \$88  
6 million in currently unsecured funding anticipated from private participation and state and  
7 federal sources; and

8 WHEREAS, it is the City's intention to work with WSDOT to create a 2-way Mercer Corridor  
9 from Dexter west to Elliott and 15th, and the Council supports that intention as our  
preference as we move forward with this additional project on the Mercer Corridor; and

10 WHEREAS, the City Council intends to consider future appropriation authority for the Mercer  
11 Corridor Project in the context of whether substantial progress is made toward closing  
this funding gap, NOW, THEREFORE,

12  
13 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

14 Section 1. In order to pay for necessary capital costs and expenses incurred, or to be  
15 incurred, but for which insufficient appropriations were made, the appropriations for the  
16 following in the 2008 Budget are increased from the fund shown, as follows:  
17

| <i>Fund</i>                                 | <i>Department</i>                       | <i>Budget Control Level</i> | <i>Amount</i> |
|---|---|-----------------------------|---------------|
| Transportation<br>Operating Fund<br>(10310) | Seattle Department of<br>Transportation | Major Projects (19002)      | \$25,664,000  |
| Transportation<br>Operating Fund<br>(10310) | Seattle Department of<br>Transportation | General Expense (18002)     | \$1,537,000   |



1 Section 2. The 2008-2013 Adopted Capital Improvement Program is hereby amended as  
2 shown in Exhibit A with respect to those projects or programs included in Exhibit A.

3 Section 3. In accordance with RCW 35.32A.060, the foregoing appropriations are made  
4 to meet actual necessary expenditures of the City for which insufficient appropriations have been  
5 made due to causes which could not reasonably have been foreseen at the time of the making of  
6 the 2008 Budget.

7 Section 4. Future appropriation authority related to the Mercer Corridor Project will not  
8 be granted until the City Council has had the opportunity to evaluate the Executive's progress  
9 toward closing the existing funding gap. To inform this evaluation, the Executive will provide  
10 the following information to the City Council:

11 1. A fully revised financing plan for both the Spokane St. Viaduct Project and  
12 Mercer Corridor Project that includes:

- 13 (a) Revised schedule for anticipated revenues and expenditures; and  
14 (b) Updated project cost estimates based on 100% design and further value  
15 engineering analysis; and  
16 (c) Documentation of anticipated revenues and supporting information from  
17 specific sources of funding that the Executive has characterized as "private  
18 participation" in their April 2008 financing plan for the Mercer Corridor  
19 Project. These sources should total the equivalent of \$36.2 million in  
20 funding for the project or reductions or off-sets in project costs. This  
21 documentation should verify the actual level of private participation  
22 funding realized through real estate acquisition for right of way needs; and  
23  
24  
25  
26  
27  
28



(d) Documentation of secured revenues or supporting information

1 demonstrating substantial progress toward securing funding in the amounts  
2 shown in the Executive's April 2008 financing plan for the Spokane St.  
3 Viaduct Project and Mercer Corridor Project from the following sources:

4 (i) State or regional funding from the Washington State Department of  
5 Transportation, King County Department of Transportation, Freight  
6 Mobility Strategic Investment Board and Transportation Improvement  
7 Board for both projects; and  
8

9 (ii) Federal funding from the Puget Sound Regional Council's distribution  
10 of the region's Surface Transportation / Congestion Management &  
11 Air Quality (STP/CMAQ) funds, annual earmark appropriations, Safe,  
12 Accountable, Flexible, Efficient Transportation Equity Act: A Legacy  
13 for Users (SAFETEA-LU) Reauthorization earmarks, and other federal  
14 grant sources.  
15

16 (iii) A revised assessment of potential sources for grant and partner agency  
17 funding and an updated schedule for anticipated revenues from the  
18 sources of funding noted in (i) and (ii) above; and  
19

20 (e) An assessment of potential need for interim financing in the event external  
21 revenues are not secured according to the project schedule; and  
22

23 (f) A contingency plan that identifies proposed alternative funding sources in  
24 the event that either project fails to secure all anticipated revenues.  
25  
26  
27  
28



2. Documentation of completed environmental review, including but not limited to the National Environmental Policy Act (NEPA) Environmental Assessment (EA), technical reports & memoranda, and Finding of No Significant Impacts (FONSI).

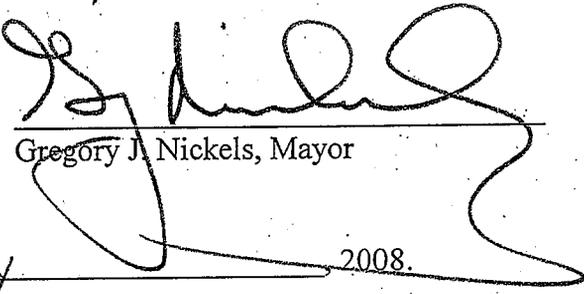
Section 5. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by a three-fourths vote of all the members of the City Council the 12<sup>th</sup> day of MAY, 2008, and signed by me in open session in authentication of its passage this

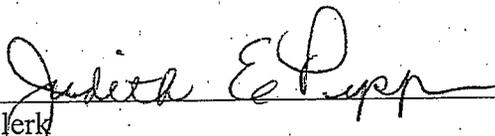
12<sup>th</sup> day of MAY, 2008.

  
\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this 20<sup>th</sup> day of May, 2008.

  
\_\_\_\_\_  
Gregory J. Nickels, Mayor

Filed by me this 20<sup>th</sup> day of May, 2008.

  
\_\_\_\_\_  
City Clerk

(Seal)

Exhibit A: 2008-2013 Capital Improvement Program Amendments



# Transportation

## Mercer Corridor Project

BCL/Program Name: Major Projects  
 Project Type: New Facility  
 Project ID: TC365500

BCL/Program Code: 19002  
 Start Date: 1st Quarter 1999  
 End Date: ((4th Quarter 2010))  
2nd Quarter 2012

Location: Mercer St/Fairview Ave N/Dexter Ave N

Neighborhood Plan: South Lake Union

Neighborhood District: Lake Union

Neighborhood Plan Matrix: Multiple

Urban Village: In more than one Urban Village

This project, part of the Bridging the Gap funding package, implements a comprehensive package of transportation improvements in the Mercer Corridor in South Lake Union. Improvements include, but are not limited to, a widened two-way Mercer St., improved pedestrian safety and access to Lake Union Park, and enhanced neighborhood circulation for all modes. The project aims to use existing street capacity more efficiently and enhance all modes of travel, including pedestrian mobility. Council has granted limited approval of the project through 2008 appropriation authority to complete design, environment review and begin property acquisition for right-of-way needs. Appropriations beyond 2008 for this project are subject to Council approval and depend on the Executive's response to Section 4 of Council Bill 116161.

|   | LTD               | 2007             | 2008          | 2009          | 2010          | 2011          | 2012          | 2013         | Total               |
|---|-------------------|------------------|---------------|---------------|---------------|---------------|---------------|--------------|---------------------|
| <b>Revenue Sources</b>                        |                   |                  |               |               |               |               |               |              |                     |
| 2002B LTGO Bond                               | 400               | 0                | 0             | 0             | 0             | 0             | 0             | 0            | 400                 |
| 2003 LTGO Bond                                | 600               | 0                | 0             | 0             | 0             | 0             | 0             | 0            | 600                 |
| 2005 LTGO Bond                                | 1,912             | 0                | 0             | 0             | 0             | 0             | 0             | 0            | 1,912               |
| 2006 LTGO Bond                                | 891               | 1,609            | 0             | 0             | 0             | 0             | 0             | 0            | 2,500               |
| 2008 Multipurpose LTGO Bond Fund              | 0                 | 3,241            | 0             | 0             | 0             | 0             | 0             | 0            | 3,241               |
| Real Estate Excise Tax II                     | 361               | 0                | 0             | 0             | 0             | 0             | 0             | 0            | 361                 |
| South Lake Union Property Sale Proceeds       | 50                | 0                | 0             | 0             | 0             | 0             | 0             | 0            | 50                  |
| Transportation Bond Funds                     | 4,560             | 0                | 0             | 0             | 0             | 0             | 0             | 0            | 4,560               |
| ((Federal Grant Funds                         | <del>1,866</del>  | <del>0</del>     | <del>0</del>  | <del>0</del>  | <del>0</del>  | <del>0</del>  | <del>0</del>  | <del>0</del> | <del>1,866</del> )  |
| General Subfund Revenues                      | 164               | 12               | 18            | 0             | 0             | 0             | 0             | 0            | 194                 |
| State Gas Taxes - Arterial City Street Fund   | 576               | 208              | 0             | 0             | 0             | 0             | 0             | 0            | 784                 |
| State Gas Taxes - City Street Fund            | 200               | 0                | 0             | 0             | 0             | 0             | 0             | 0            | 200                 |
| Transportation Funding Package - Parking Tax  | 0                 | 2,912            | 0             | 0             | 0             | 0             | 0             | 0            | 2,912               |
| <u>Federal Grant Funds</u>                    | <u>1,866</u>      | <u>0</u>         | <u>0</u>      | <u>5,000</u>  | <u>5,000</u>  | <u>6,000</u>  | <u>2,500</u>  | <u>0</u>     | <u>20,366</u>       |
| <u>Private Partnerships</u>                   | <u>0</u>          | <u>0</u>         | <u>1,450</u>  | <u>12,800</u> | <u>6,000</u>  | <u>6,000</u>  | <u>10,000</u> | <u>0</u>     | <u>36,250</u>       |
| <u>State Grant Funds</u>                      | <u>0</u>          | <u>0</u>         | <u>0</u>      | <u>2,500</u>  | <u>2,500</u>  | <u>2,500</u>  | <u>700</u>    | <u>0</u>     | <u>8,200</u>        |
| <u>WSDOT</u>                                  | <u>0</u>          | <u>0</u>         | <u>0</u>      | <u>12,500</u> | <u>12,500</u> | <u>0</u>      | <u>0</u>      | <u>0</u>     | <u>25,000</u>       |
| <u>City Light Fund Revenues</u>               | <u>0</u>          | <u>0</u>         | <u>0</u>      | <u>5,000</u>  | <u>5,000</u>  | <u>10,000</u> | <u>0</u>      | <u>0</u>     | <u>20,000</u>       |
| <u>Drainage and Wastewater Rates</u>          | <u>0</u>          | <u>0</u>         | <u>0</u>      | <u>2,000</u>  | <u>2,000</u>  | <u>2,000</u>  | <u>0</u>      | <u>0</u>     | <u>6,000</u>        |
| <u>Transportation Funding Package - Bonds</u> | <u>0</u>          | <u>0</u>         | <u>0</u>      | <u>38,933</u> | <u>6,100</u>  | <u>6,000</u>  | <u>0</u>      | <u>0</u>     | <u>51,033</u>       |
| <u>2007 LTGO Bond Fund</u>                    | <u>0</u>          | <u>0</u>         | <u>12,583</u> | <u>3,717</u>  | <u>0</u>      | <u>0</u>      | <u>0</u>      | <u>0</u>     | <u>16,300</u>       |
| ((Project Total:                              | <del>11,580</del> | <del>7,982</del> | <del>18</del> | <del>0</del>  | <del>0</del>  | <del>0</del>  | <del>0</del>  | <del>0</del> | <del>19,580</del> ) |
| <b>Project Total:</b>                         | <b>11,580</b>     | <b>7,982</b>     | <b>14,051</b> | <b>82,450</b> | <b>39,100</b> | <b>32,500</b> | <b>13,200</b> | <b>0</b>     | <b>200,863</b>      |

*\*This detail is for information only. Funds are appropriated in the budget at the Budget Control Level. Amounts in thousands of dollars.*

### 2008-2013 Adopted Capital Improvement Program

# Transportation

**Fund Appropriations/Allocations**

|  |                      |                     |                      |                      |                      |                      |                      |                 |                       |
|--|----------------------|---------------------|----------------------|----------------------|----------------------|----------------------|----------------------|-----------------|-----------------------|
| Cumulative Reserve Subfund - Real Estate Excise Tax II Subaccount          | 361                  | 0                   | 0                    | 0                    | 0                    | 0                    | 0                    | 0               | 361                   |
| Cumulative Reserve Subfund - South Lake Union Property Proceeds Subaccount | 50                   | 0                   | 0                    | 0                    | 0                    | 0                    | 0                    | 0               | 50                    |
| <del>((Transportation Operating Fund</del>                                 | <del>11,169</del>    | <del>7,982</del>    | <del>18</del>        | <del>0</del>         | <del>0</del>         | <del>0</del>         | <del>0</del>         | <del>0</del>    | <del>19,169))</del>   |
| Transportation Operating Fund  | 11,169               | 7,982               | 14,051               | 82,450               | 39,100               | 32,500               | 13,200               | 0               | 200,452               |
| <del>((Appropriations Total*</del>   | <del>11,580</del>    | <del>7,982</del>    | <del>18</del>        | <del>0</del>         | <del>0</del>         | <del>0</del>         | <del>0</del>         | <del>0</del>    | <del>19,580))</del>   |
| <b><u>Appropriations Total*</u></b>  | <b><u>11,580</u></b> | <b><u>7,982</u></b> | <b><u>14,051</u></b> | <b><u>82,450</u></b> | <b><u>39,100</u></b> | <b><u>32,500</u></b> | <b><u>13,200</u></b> | <b><u>0</u></b> | <b><u>200,863</u></b> |
| <b><u>Spending Plan</u></b>  | <b><u>11,580</u></b> | <b><u>4,483</u></b> | <b><u>17,550</u></b> | <b><u>82,450</u></b> | <b><u>39,100</u></b> | <b><u>32,500</u></b> | <b><u>13,200</u></b> | <b><u>0</u></b> | <b><u>200,863</u></b> |
| O & M Costs (Savings)  |                      |                     | 0                    | 0                    | 0                    | 0                    | 0                    | 0               | 0                     |

*\*This detail is for information only. Funds are appropriated in the budget at the Budget Control Level. Amounts in thousands of dollars.*

**2008-2013 Adopted Capital Improvement Program**

# Transportation

## Spokane St. Viaduct

BCL/Program Name: Major Projects  
 Project Type: Improved Facility  
 Project ID: TC364800

BCL/Program Code: 19002  
 Start Date: 2nd Quarter 1994  
 End Date: ((4th Quarter 2010))  
2nd Quarter 2011

Location: S Spokane St/6th Ave S/E Marginal Wy S  
 Neighborhood Plan: Morgan Junction (MOCA)  
 Neighborhood District: In more than one District

Neighborhood Plan Matrix: Multiple  
 Urban Village: Duwamish

This project, part of the Bridging the Gap funding package, builds a new structure that will be parallel and connected to the existing one, and will widen the existing viaduct by about 41 feet. The project also includes construction of new ramps at First Avenue South and an eastbound Fourth Ave. off-ramp. ((Phase 1 activities include, but are not limited to widening from east of First Avenue South west to the terminus at the Harbor Island off-ramps and construction of the new ramps at First Avenue S. Phase 2 activities include, but are not limited to widening the structure from First Avenue South to the I-5 interchange, the eastern terminus of the project. Phase 3 activities include construction of the Fourth Ave. off-ramp.)) This ((multi-phased)) project improves the safety of the Spokane Street Viaduct through the addition of shoulders, a wider median, and a westbound "weave-lane."

|   | LTD                  | 2007                 | 2008                 | 2009                 | 2010                 | 2011                 | 2012            | 2013            | Total                 |
|---|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|-----------------|-----------------|-----------------------|
| <b>Revenue Sources</b>                        |                      |                      |                      |                      |                      |                      |                 |                 |                       |
| 2008 Multipurpose LTGO Bond Fund              | 0                    | 4,742                | 0                    | 0                    | 0                    | 0                    | 0               | 0               | 4,742                 |
| Real Estate Excise Tax II                     | 1,362                | 102                  | 0                    | 0                    | 0                    | 0                    | 0               | 0               | 1,464                 |
| City Light Fund Revenues                      | 52                   | 315                  | 100                  | 0                    | 0                    | 0                    | 0               | 0               | 467                   |
| Drainage and Wastewater Rates                 | 45                   | 531                  | 0                    | 0                    | 0                    | 0                    | 0               | 0               | 576                   |
| <del>((Federal Grant Funds</del>              | <del>10,780</del>    | <del>4,110</del>     | <del>9,840</del>     | <del>5,300</del>     | <del>0</del>         | <del>0</del>         | <del>0</del>    | <del>0</del>    | <del>30,030))</del>   |
| General Subfund Revenues                      | 3,890                | 0                    | 9                    | 0                    | 0                    | 0                    | 0               | 0               | 3,899                 |
| Port of Seattle Funds                         | 0                    | 1,200                | 0                    | 500                  | 1,700                | 0                    | 0               | 0               | 3,400                 |
| Private Funding/Donations                     | 0                    | 0                    | 0                    | 0                    | 2,250                | 0                    | 0               | 0               | 2,250                 |
| Public Works Trust Fund Proceeds              | 456                  | 0                    | 0                    | 0                    | 0                    | 0                    | 0               | 0               | 456                   |
| State Gas Taxes - Arterial City Street Fund   | 401                  | 199                  | 0                    | 0                    | 0                    | 0                    | 0               | 0               | 600                   |
| <del>((State Grant Funds</del>                | <del>750</del>       | <del>625</del>       | <del>9,875</del>     | <del>14,500</del>    | <del>0</del>         | <del>0</del>         | <del>0</del>    | <del>0</del>    | <del>25,750))</del>   |
| <u>Federal Grant Funds</u>                    | <u>10,780</u>        | <u>4,110</u>         | <u>7,913</u>         | <u>10,300</u>        | <u>1,927</u>         | <u>0</u>             | <u>0</u>        | <u>0</u>        | <u>35,030</u>         |
| <u>State Grant Funds</u>                      | <u>750</u>           | <u>625</u>           | <u>0</u>             | <u>375</u>           | <u>13,600</u>        | <u>10,400</u>        | <u>0</u>        | <u>0</u>        | <u>25,750</u>         |
| <u>King County Metro</u>                      | <u>0</u>             | <u>0</u>             | <u>0</u>             | <u>5,000</u>         | <u>2,500</u>         | <u>2,500</u>         | <u>0</u>        | <u>0</u>        | <u>10,000</u>         |
| <u>WSDOT</u>                                  | <u>0</u>             | <u>0</u>             | <u>23,433</u>        | <u>6,567</u>         | <u>10,000</u>        | <u>10,000</u>        | <u>0</u>        | <u>0</u>        | <u>50,000</u>         |
| <u>Transportation Funding Package - Bonds</u> | <u>0</u>             | <u>0</u>             | <u>0</u>             | <u>12,042</u>        | <u>32,808</u>        | <u>0</u>             | <u>0</u>        | <u>0</u>        | <u>44,850</u>         |
| <del>((Project Total:</del>                   | <del>17,736</del>    | <del>11,824</del>    | <del>19,824</del>    | <del>20,300</del>    | <del>3,950</del>     | <del>0</del>         | <del>0</del>    | <del>0</del>    | <del>73,634))</del>   |
| <b><u>Project Total:</u></b>                  | <b><u>17,736</u></b> | <b><u>11,824</u></b> | <b><u>31,455</u></b> | <b><u>34,784</u></b> | <b><u>64,785</u></b> | <b><u>22,900</u></b> | <b><u>0</u></b> | <b><u>0</u></b> | <b><u>183,484</u></b> |

\*This detail is for information only. Funds are appropriated in the budget at the Budget Control Level. Amounts in thousands of dollars.

### 2008-2013 Adopted Capital Improvement Program

# Transportation

|   |                   |                   |                   |                   |                  |               |              |              |                     |
|---|-------------------|-------------------|-------------------|-------------------|------------------|---------------|--------------|--------------|---------------------|
| <b>Fund Appropriations/Allocations</b>                            |                   |                   |                   |                   |                  |               |              |              |                     |
| Cumulative Reserve Subfund - Real Estate Excise Tax II Subaccount | 1,362             | 102               | 0                 | 0                 | 0                | 0             | 0            | 0            | 1,464               |
| <del>((Transportation Operating Fund</del>                        | <del>16,374</del> | <del>11,722</del> | <del>19,824</del> | <del>20,300</del> | <del>3,950</del> | <del>0</del>  | <del>0</del> | <del>0</del> | <del>72,170))</del> |
| <u>Transportation Operating Fund</u>                              | <u>16,374</u>     | <u>11,722</u>     | <u>31,455</u>     | <u>34,784</u>     | <u>64,785</u>    | <u>22,900</u> | <u>0</u>     | <u>0</u>     | <u>182,020</u>      |
| <del>((Appropriations Total*</del>                                | <del>17,736</del> | <del>11,824</del> | <del>19,824</del> | <del>20,300</del> | <del>3,950</del> | <del>0</del>  | <del>0</del> | <del>0</del> | <del>73,634))</del> |
| <u>Appropriations Total*</u>                                      | <u>17,736</u>     | <u>11,824</u>     | <u>31,455</u>     | <u>34,784</u>     | <u>64,785</u>    | <u>22,900</u> | <u>0</u>     | <u>0</u>     | <u>184,484</u>      |
| O & M Costs (Savings)   |                   |                   |                   | 0                 | 0                | 0             | 0            | 0            | 0                   |
| <del>((Spending Plan</del>  | <del>5,678</del>  | <del>24,770</del> | <del>21,500</del> | <del>3,950</del>  | <del>0</del>     | <del>0</del>  | <del>0</del> | <del>0</del> | <del>55,898))</del> |
| <u>Spending Plan</u>  | <u>2,970</u>      | <u>40,309</u>     | <u>34,784</u>     | <u>64,785</u>     | <u>22,900</u>    | <u>0</u>      | <u>0</u>     | <u>0</u>     | <u>165,784</u>      |

*\*This detail is for information only. Funds are appropriated in the budget at the Budget Control Level. Amounts in thousands of dollars.*

## 2008-2013 Adopted Capital Improvement Program

# Transportation

## S Lander St. Grade Separation

**BCL/Program Name:** Mobility-Capital  
**Project Type:** New Facility  
**Project ID:** TC366150

**BCL/Program Code:** 19003  
**Start Date:** 1st Quarter 2001  
**End Date:** ((4th Quarter 2011))  
To Be Determined

**Location:** S Lander St/1st Ave S/4th Ave S  
**Neighborhood Plan:** Duwamish  
**Neighborhood District:** Greater Duwamish

**Neighborhood Plan Matrix:** TP-2  
**Urban Village:** Not in an Urban Village

This project develops a grade separation of the S Lander St. roadway and the Burlington Northern mainline railroad tracks between First Ave. S and Fourth Ave. S. Previously, City staff evaluated traffic conditions and identified an initial design concept. During the preliminary engineering phase of the project, a consultant conducted a Type, Size and Location study to develop more detailed plans and cost estimates. The project design recommenced in November of 2006, and in January of 2007, survey, geotechnical and scoping of the design work began. The project was put on hold in March 2008 until further funding becomes available.

|   | LTD               | 2007                | 2008            | 2009             | 2010            | 2011            | 2012            | 2013            | Total               |
|---|-------------------|---------------------|-----------------|------------------|-----------------|-----------------|-----------------|-----------------|---------------------|
| <b>Revenue Sources</b>                      |                   |                     |                 |                  |                 |                 |                 |                 |                     |
| 2008 Multipurpose LTGO Bond Fund            | 0                 | 9,533               | 0               | 0                | 0               | 0               | 0               | 0               | 9,533               |
| Federal Grant Funds                         | 100               | 0                   | 0               | 0                | 0               | 0               | 0               | 0               | 100                 |
| Port of Seattle Funds                       | 0                 | 0                   | 0((3,115))      | 0                | 0               | 0               | 0               | 0               | 0((3,115))          |
| Private Funding/Donations                   | 0                 | 0                   | 0((1,335))      | 0                | 0               | 0               | 0               | 0               | 0((1,335))          |
| State Gas Taxes - Arterial City Street Fund | 14                | 46                  | 0               | 0                | 0               | 0               | 0               | 0               | 60                  |
| State Gas Taxes - City Street Fund          | 125               | 0                   | 0               | 0                | 0               | 0               | 0               | 0               | 125                 |
| Vehicle Licensing Fees                      | 35                | 0                   | 0               | 0                | 0               | 0               | 0               | 0               | 35                  |
| <del>((Project Total:</del>                 | <del>274</del>    | <del>9,579</del>    | <del>0</del>    | <del>4,450</del> | <del>0</del>    | <del>0</del>    | <del>0</del>    | <del>0</del>    | <del>14,303))</del> |
| <b><u>Project Total:</u></b>                | <b><u>274</u></b> | <b><u>9,579</u></b> | <b><u>0</u></b> | <b><u>0</u></b>  | <b><u>0</u></b> | <b><u>0</u></b> | <b><u>0</u></b> | <b><u>0</u></b> | <b><u>9,853</u></b> |
| <b>Fund Appropriations/Allocations</b>      |                   |                     |                 |                  |                 |                 |                 |                 |                     |
| <del>((Transportation Operating Fund</del>  | <del>274</del>    | <del>9,579</del>    | <del>0</del>    | <del>4,450</del> | <del>0</del>    | <del>0</del>    | <del>0</del>    | <del>0</del>    | <del>14,303))</del> |
| <u>Transportation Operating Fund</u>        | <u>274</u>        | <u>9,579</u>        | <u>0</u>        | <u>0</u>         | <u>0</u>        | <u>0</u>        | <u>0</u>        | <u>0</u>        | <u>9,853</u>        |
| <del>((Appropriations Total*</del>          | <del>274</del>    | <del>9,579</del>    | <del>0</del>    | <del>4,450</del> | <del>0</del>    | <del>0</del>    | <del>0</del>    | <del>0</del>    | <del>14,303))</del> |
| <b><u>Appropriations Total*</u></b>         | <b><u>274</u></b> | <b><u>9,579</u></b> | <b><u>0</u></b> | <b><u>0</u></b>  | <b><u>0</u></b> | <b><u>0</u></b> | <b><u>0</u></b> | <b><u>0</u></b> | <b><u>9,853</u></b> |
| <b>O &amp; M Costs (Savings)</b>            |                   |                     | 0               | 0                | 0               | 0               | 0               | 0               | 0                   |

*\*This detail is for information only. Funds are appropriated in the budget at the Budget Control Level. Amounts in thousands of dollars.*

### 2008-2013 Adopted Capital Improvement Program

**FISCAL NOTE FOR CAPITAL PROJECTS ONLY**

| <b>Department:</b> | <b>Contact Person/Phone:</b> | <b>DOF Analyst/Phone:</b> |
|--------------------|------------------------------|---------------------------|
| Legislative        | Michael Fong, 615-1675       | Stephen Barham, 733-9084  |

**Legislation Title:** AN ORDINANCE relating to financing certain capital activities of Seattle Department of Transportation; increasing appropriations to the Department of Transportation in the 2008 Budget; and amending the 2008-2013 Capital Improvement Program; all by a three-fourths vote of the City Council.

**Summary and background of the Legislation:**

The Bridging the Gap (BTG) transportation funding package included funding for three major transportation projects, the Spokane St. Viaduct, Mercer Corridor Project, and S Lander St. Grade Separation. In developing the BTG package, SDOT anticipated leveraging a large portion of the funding for completing these projects from the Regional Transportation Investment District (RTID) that went before the voters last November.

Passage of Proposition 1 would have provided \$323 million to the city for the Spokane Street Viaduct, Mercer Corridor and Lander Street Grade Separation projects. Due to the failure of Proposition 1 on the November 2007 ballot, \$50.4 million in SDOT revenue and appropriation authority from BTG and RTID-supported bond proceeds was not included in the 2008 Adopted Budget for the Spokane St. Viaduct, Mercer Corridor Project, and S Lander St. Grade Separation projects as described in Council Greensheet 107-1-A-2.

A revised finance and spending plan for these three projects has been developed that reprograms the BTG revenue stream, resulting in revised budgets for the Mercer Corridor Project and the Spokane St. Viaduct. The S Lander St. project will be stopped until additional funding becomes available. This revised long-term use of BTG tax revenue in no way affects any other BTG commitment. This legislation increases 2008 appropriations for the Mercer Corridor Project by \$14,033,000 and the Spokane St. Viaduct project by \$11,631,000 for a net increase from the Adopted Budget Major Projects Budget Control Level (BCL) of \$25,664,000. Any unused appropriations for the S Lander St. Grade Separation Project will be abandoned through the 2008 year-end legislation.

This legislation also amends the 2008-2013 Capital Improvement Program (CIP) for all three projects as delineated in Exhibit A to the accompanying Ordinance. This legislation will enable the Spokane St. Viaduct project to be completed prior to initiation of the Alaskan Way Viaduct (AWV) replacement project in 2012. Council has granted limited approval of the Mercer Corridor project through 2008 appropriation authority in this legislation to complete design.

environmental review and begin property acquisition for right-of-way needs. Appropriations beyond 2008 for the Mercer Corridor project are subject to Council approval and depend on the Executive's response to Section 4 of Council Bill 116161.

The legislation reflects significant additional contributions already made or expected to be made by the state and other entities to the Spokane and Mercer projects. The legislation also recognizes the economic benefits that the Mercer Street project will provide for private developers in South Lake Union, and calls for the private sector to contribute \$36 million to the Mercer Street project.

| Project Name:           | Project I.D. | Project Location:                                  | Start Date: | End Date |
|-------------------------|--------------|--|-------------|----------|
| Spokane St. Viaduct     | TC364800     | S Spokane St/6 <sup>th</sup> Ave S/E Marginal Wy S | 2Q 1994     | 2Q 2011  |
| Mercer Corridor Project | TC365500     | Mercer St/Fairview Ave N/Dexter Ave N              | 1Q 1999     | 2Q 2012  |

- Please check any of the following that apply:

       **This legislation creates, funds, or anticipates a new CIP Project.** (Please note whether the current CIP is being amended through this ordinance, or provide the Ordinance or Council Bill number of the separate legislation that has amended/is amending the CIP.)

       **This legislation does not have any financial implications.** (Stop here and delete the remainder of this document prior to saving and printing.)

  X   **This legislation has financial implications.** (Please complete all relevant sections that follow.)

*Appropriations: This table should reflect appropriations that are a direct result of this legislation. In the event that the projects associated with this ordinance had, or will have, appropriations in other legislation, please provide details in the Notes section below. If this legislation does not directly change an appropriation, but results in budget authority being moved within a Budget Control Level, or to another Budget Control Level (up to 10%), please explain in the Notes section below.*

| Fund Name and Number                  | Department                           | Budget Control Level*   | 2008 Appropriation | 2009 Anticipated Appropriation |
|---------------------------------------|--------------------------------------|-------------------------|--------------------|--------------------------------|
| Transportation Operating Fund (10310) | Seattle Department of Transportation | Major Projects (19002)  | 25,664,000         | 96,934,000                     |
| Transportation Operating Fund (10310) | Seattle Department of Transportation | General Expense (18002) | 1,537,000          | TBD                            |

|              |  |  |                   |                   |
|--------------|--|--|-------------------|-------------------|
| <b>TOTAL</b> |  |  | <b>27,201,000</b> | <b>96,934,000</b> |
|--------------|--|--|-------------------|-------------------|

*\*See budget book to obtain the appropriate Budget Control Level for your department.*

**Notes:**

The appropriations listed in the table above are allocated as follows and as further described in Exhibit A to the accompanying Ordinance.

| SDOT Budget Control Level | Project                           | 2008 Allocation   | 2009 Anticipated Allocation |
|---------------------------|-----------------------------------|-------------------|-----------------------------|
| Major Projects/19002      | Spokane St. Viaduct (TC364800)    | 11,631,000        | 14,484,000                  |
| Major Projects/19002      | Mercer Corridor Project (TC36550) | 14,033,000        | 82,450,000                  |
| <b>TOTAL</b>              |                                   | <b>25,664,000</b> | <b>96,934,000</b>           |

**Spending Plan and Future Appropriations for Capital Projects:** Please list the timing of anticipated appropriation authority requests and expected spending plan. In addition, please identify your cost estimate methodology including inflation assumptions, the projected costs of meeting applicable LEED standards, and the percent for art and design as appropriate.

| Spending Plan and Budget   | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | Total |
|----------------------------|------|------|------|------|------|------|-------|
| Spending Plan              |      |      |      |      |      |      |       |
| Current Year Appropriation |      |      |      |      |      |      |       |
| Future Appropriations      |      |      |      |      |      |      |       |

**Notes:**

See Exhibit A for amended spending plans.

**Funding source:** Identify funding sources including revenue generated from the project and the expected level of funding from each source.

| Funding Source (Fund Name and Number, if applicable) | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | Total |
|--|------|------|------|------|------|------|-------|
|  |      |      |      |      |      |      |       |
| <b>TOTAL</b>   |      |      |      |      |      |      |       |

**Notes:**

See Exhibit A for amended funding sources.

**Bond Financing Required:** *If the project or program requires financing, please list type of financing, amount, interest rate, term and annual debt service or payment amount. Please include issuance costs of 3% in listed amount.*

| Type         | Amount | Assumed Interest Rate | Term     | Timing | Expected Annual Debt Service/Payment |
|--------------|--------|-----------------------|----------|--------|--------------------------------------|
| LTGO         |        | 5.0%                  | 20 Years | 2008   |                                      |
| <b>TOTAL</b> |        |                       |          |        |                                      |

To support some of the appropriations, separate legislation amends the 2008 bond sale ordinance and redirects 2007 Limited Tax General Obligation bond funds that were issued for the Zoo garage. This project has been terminated so the 2007 bonds funds will be appropriated for these transportation projects and repaid over time from BTG revenue sources.

**Uses and Sources for Operation and Maintenance Costs for the Project:** *Estimate cost of one-time startup, operating and maintaining the project over a six year period and identify each fund source available. Estimate the annual savings of implementing the LEED Silver standard. Identify key assumptions such as staffing required, assumed utility usage and rates and other potential drivers of the facility's cost.*

| O&M               | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | Total |
|-------------------|------|------|------|------|------|------|-------|
| Uses              |      |      |      |      |      |      |       |
| Start Up          |      |      |      |      |      |      |       |
| On-going          |      |      |      |      |      |      |       |
| Sources (itemize) |      |      |      |      |      |      |       |

Notes:

**Periodic Major Maintenance costs for the project:** *Estimate capital cost of performing periodic maintenance over life of facility. Please identify major work items, frequency.*

| Major Maintenance Item | Frequency | Cost | Likely Funding Source |
|------------------------|-----------|------|-----------------------|
|                        |           |      |                       |
| <b>TOTAL</b>           |           |      |                       |

**Funding sources for replacement of project:** *Identify possible and/or recommended method of financing the project replacement costs.*

**Total Regular Positions Created, Modified, Or Abrogated Through This Legislation,**

**Including FTE Impact:** *This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

| Position Title and Department* | Position # for Existing Positions | Fund Name & # | PT/FT | 2008 Positions | 2008 FTE | 2009 Positions ** | 2009 FTE ** |
|--------------------------------|-----------------------------------|---------------|-------|----------------|----------|-------------------|-------------|
|                                |                                   |               |       |                |          |                   |             |
|                                |                                   |               |       |                |          |                   |             |
|                                |                                   |               |       |                |          |                   |             |
| <b>TOTAL</b>                   |                                   |               |       |                |          |                   |             |

\* List each position separately

\*\* 2009 positions and FTE are total 2009 position changes resulting from this legislation, not incremental changes. Therefore, under 2009, please be sure to include any continuing positions from 2008.

**Notes:** *No positions will be created or modified as a result of this legislation.*

- **Do positions sunset in the future?** *(If yes, identify sunset date):*
- **What is the financial cost of not implementing the legislation:** *(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented):*

It is in the City's best interest to fund and continue implementation of the Spokane St. Viaduct project at this time, prior to initiation of the AWV replacement project in 2012 because these capital improvement projects will help lessen the negative impact of the AWV replacement project during construction. Effective alternate routes are essential to the economic well-being of the region. The City Council believes it is in the City's best interest to grant limited funding and approval to continue implementation of the Mercer Corridor Project at this time.

If this legislation is not implemented, the cost of implementing these projects will increase rapidly. Delaying construction of these projects will increase the impacts to the Center City and the Puget Sound region of Alaskan Way Viaduct construction and potentially create cumulative construction impacts. In turn these impacts could make it difficult for people and goods to move to and through Seattle, threatening our local economy.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives** *(Include any potential alternatives to the proposed legislation, including using an existing facility to fulfill the uses envisioned by the proposed project, adding components to or subtracting components from the total proposed project, contracting with an outside organization to provide the services the proposed project would fill, or other alternatives):*

None.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future?)*

No.

- **Other Issues** *(including long-term implications of the legislation):*

**Please list attachments to the fiscal note below:**

t



# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

March 11, 2008

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed council bill that provides funding for several critical transportation projects. This bill proposes a financial plan for the Spokane Street and Mercer Corridor projects in response to failure of the Roads and Transit ballot (Proposition 1) last November.

Passage of Proposition 1 would have provided \$323 million to the City for the Spokane Street Viaduct, Mercer Corridor and Lander Street Grade Separation projects. The City's goal was to complete all three projects before commencement of the Alaskan Way Viaduct construction project in 2012. All three projects would keep people, goods, and transit moving to and through the Center City during replacement of the central portion of the Viaduct.

As a result of the loss of expected Proposition 1 revenue, the city has evaluated the comparative importance of these and other large capital projects balanced with the availability of funds. The Spokane Street Viaduct and Mercer Corridor projects were given the highest priority rankings because they will provide the best connections between SR-99 and alternative north-south routes during the time when the central waterfront portion of the Viaduct will be closed. Although the Lander Street Grade Separation project would offer important benefits at the south end of the Viaduct, the Spokane Street Viaduct was given a higher ranking given the connections it provides between West Seattle, the Port, and I-5. As such, this bill recommends placing the Lander Street Grade Separation project on hold until additional funding can be identified.

The proposed council bill fully funds both the Spokane Street Viaduct and Mercer Corridor projects in three primary ways. First, it takes advantage of the long-term revenue streams provided by the Bridging the Gap (BTG) parking and employee hours taxes. Separate legislation proposes to issue bonds supported by these revenues. Importantly, this long-term use of BTG tax revenue in no way affects any other BTG commitments. Second, the bill reflects significant additional contributions already made or expected to be made by the state and other entities to these projects. Finally, the bill recognizes the positive impacts that the Mercer Corridor Project will have on the neighborhood and local property owners in South Lake Union, and anticipates that the private sector will contribute over \$36 million to the Mercer Corridor project.

The passage of this council bill will allow construction of the Spokane Street Viaduct by summer 2008, and on the Mercer project by early 2009. This bill adjusts total estimated project costs due to increases in construction and property acquisition costs for both projects, which are inflationary factors affecting all capital projects in Seattle at present. However, moving to construction as quickly as possible will allow the City to avoid additional cost increases and keep Seattle moving throughout the Viaduct replacement project. Thank you for your consideration of this legislation. Should you have questions, please contact Dorinda Costa at 615-0765.

Sincerely,

GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7<sup>th</sup> Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: [mayors.office@seattle.gov](mailto:mayors.office@seattle.gov)

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.



STATE OF WASHINGTON  
COUNTY OF KING  
CITY OF SEATTLE

} ss

I, JUDITH E. PIPPAL, CITY CLERK OF THE CITY OF SEATTLE DO HEREBY  
CERTIFY THAT THE UNDELETED AND UNREDACTED COPY OF  
COPY OF Ordinance 122686

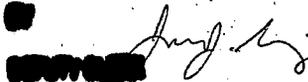
and its attachments

AS THE SAME APPEARS ON FILE AND OF RECORD IN THE OFFICE OF THE CITY CLERK

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND SEAL  
THE SEAL TO THE CITY OF SEATTLE, WASH

18<sup>th</sup> day of September 2008

JUDITH E. PIPPAL  
CITY CLERK

  
CITY CLERK

**EXHIBIT 5**

Honorable John Erlick

2008 SEP 18 11:10:57

SEATTLE CITY ATTORNEY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

CITY OF SEATTLE, a municipal corporation,

Plaintiff,

vs.

ALBERT HEGLUND, JR. and HELENE HEGLUND, husband and wife; WEST MARINE FINANCE COMPANY, INC.; WEST MARINE, INC.; WEST MARINE PRODUCTS, INC.; A. HEGLUND, JR. d/b/a A H PROPERTIES; and KING COUNTY, a subdivision of the state of Washington,

Respondents.

NO. 08-2-27604-0 SEA

HEGLUNDS' MEMORANDUM IN OPPOSITION TO CITY'S MOTION FOR ORDER ESTABLISHING PUBLIC USE AND NECESSITY

Respondents Albert Heglund, Jr., Helene Heglund, and A. Heglund, Jr. d/b/a A H Properties ("Heglunds") respectfully oppose the City of Seattle's ("City") motion for an order establishing public use and necessity in this eminent domain action. The City concedes that substantial private funds (\$36.2 million) are necessary for the completion of its controversial Mercer corridor project. But the City has not identified either the City's intended private use or the source of the private funds. Private participation in public projects is permitted so long as the project is fundamentally public in nature and the private use is merely incidental. The

HEGLUNDS' MEMORANDUM IN OPPOSITION TO CITY'S MOTION ON PUBLIC USE AND NECESSITY

375831/091808 1028/70550001

- 1 -

Betts  
Patterson  
Mines  
One Convention Place  
Suite 1400  
701 Pike Street  
Seattle, Washington 98101-3927  
(206) 292-9988

**EXHIBIT** 5

1 constitutional safeguard is that this Court must weigh public participation against private  
2 participation to ensure that a project is fundamentally public in nature and the private use is  
3 merely incidental.

4 The Court cannot weigh public participation against private participation in this case  
5 and determine that the City's intended private use is merely incidental because the City has not  
6 identified either the City's intended private use or the source of the private funds.

7 **FACTS**

8 The property ("Property") is located at 1000 Mercer Street in Seattle, Washington near  
9 both Lake Union and Interstate 5. (See Declaration of William G. McGillin ¶ 3 and Ex. F.)  
10 The Heglunds own the Property. (Id.) West Marine is the Heglunds' tenant. (Id.)

11 On September 24, 2007, the Seattle City Council passed an ordinance authorizing the  
12 use of eminent domain to acquire the Property (among others) for the Mercer Corridor Project  
13 ("2007 Ordinance"). (Id. ¶ 6 and Ex. B.) Relative to financing for the acquisition and related  
14 expenses, the 2007 Ordinance stated that funding would come from "funds appropriated, or to  
15 be appropriated, for such purposes in connection with the project." (Id. Ex. B at 3.)

16 On May 12, 2008, the City Council passed an ordinance relating to certain capital  
17 activities of the City's Department of Transportation ("2008 Ordinance"). (Affidavit of John  
18 Bagley ¶ 3 and Ex. 1.) The 2008 Ordinance appropriates 20 million dollars for the acquisition  
19 of the Property (among others and some additional monies for design work). (Id.)

20 The 2008 Ordinance recites as follows:

21 WHEREAS, the revised finance plan for the Mercer  
22 Corridor Project leaves a funding gap of \$88 million in currently  
23 unsecured funding anticipated from private participation and state  
24 and federal sources . . . .

25 WHEREAS, the City Council intends to consider future  
appropriation authority for the Mercer Corridor Project in the  
**HEGLUNDS' MEMORANDUM IN  
OPPOSITION TO CITY'S MOTION ON  
PUBLIC USE AND NECESSITY**

1 context of whether substantial progress is made toward closing  
2 this funding gap . . . .

3 (Id.)

4 The 2008 Ordinance imposed requirements for the Mayor's office to satisfy before  
5 additional appropriations would be made for the Mercer corridor project:

6 Section 4. Future appropriation authority related to the  
7 Mercer Corridor Project will not be granted until the City Council  
8 has had the opportunity to evaluate the Executive's progress  
9 toward closing the existing funding gap. To inform this  
10 evaluation, the Executive will provide the following information  
11 to the City Council:

12 1. A fully revised financing plan for both the Spokane St.  
13 Viaduct Project and Mercer Corridor Project that includes:

14 . . . .  
15 (c) Documentation of anticipated revenues and supporting  
16 information from specific sources of funding that the Executive  
17 has characterized as "private participation" in their April 2008  
18 financing plan for the Mercer Corridor Project. These sources  
19 should total the equivalent of \$36.2 million in funding for the  
20 project or reductions or off-sets in private participation funding  
21 realized through real estate acquisition for right of way  
22 needs . . . .

23 (Id. (emphasis added).)

24 The City filed its Petition for Eminent Domain on August 14, 2008. (Petition dated  
25 August 14, 2008.) The City filed the instant Motion for Determination of Public Use and  
Necessity at the same time. (Motion dated August 14, 2008.) The 2008 Ordinance establishes  
that \$36.2 million of private funds are necessary for the completion of the City's controversial  
Mercer corridor project. But neither the Petition nor the Motion identifies (or even mentions)  
the City's intended private use or the source of the private funds. (Id.)

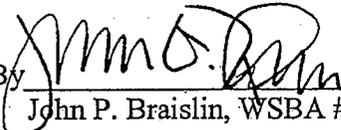


1 long as the private use is not itself the impetus for the condemnation". Convention Center, 136  
2 Wn.2d at 821-822. Only incidental private use is permitted. Westlake II, 104 Wn.2d at 817.

3 The 2008 Ordinance establishes that \$36.2 million of private funds are necessary for the  
4 completion of the City's controversial Mercer corridor project. But neither the Petition nor the  
5 Motion identifies (or even mentions) the City's intended private use or the source of the private  
6 funds. The Court cannot weigh public participation against private participation and determine  
7 that the City's intended private use is merely incidental because the City has not identified  
8 either the City's intended private use or the source of the private funds. As a result, the City's  
9 Motion must be denied.

10 DATED this 18th day of September, 2008.

11 BETTS, PATTERSON & MINES, P.S.

12  
13 By   
14 John P. Braislin, WSBA #00396  
15 James D. Nelson, WSBA #11134  
16 Attorneys for Respondents Albert Heglund, Jr., Helene  
17 Heglund, and A. Heglund, Jr. d/b/a A H Properties  
18  
19  
20  
21  
22  
23  
24  
25

HEGLUNDS' MEMORANDUM IN  
OPPOSITION TO CITY'S MOTION ON  
PUBLIC USE AND NECESSITY

375831/091808 1028/70550001

- 5 -

Betts  
Patterson  
Mines  
One Convention Place  
Suite 1400  
701 Pike Street  
Seattle, Washington 98101-3927  
(206) 292-9988

**EXHIBIT** 12

2008 SEP 18 11:14  
SEATTLE CITY ATTORNEY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

THE CITY OF SEATTLE, a municipal  
corporation,

Plaintiff,

vs.

ALBERT HEGLUND, JR., AND HELENE  
HEGLUND, husband and wife; WEST  
MARINE FINANCE COMPANY, INC.;  
WEST MARINE PRODUCTS, INC.; A  
HEGLUND JR. DBA A H PROPERTIES;  
and KING COUNTY, a subdivision of the  
state of Washington,

Respondents

No. 08-2-27604-0 SEA

**WEST MARINE'S OPPOSITION TO  
MOTION ON PUBLIC USE AND  
NECESSITY**

**I. INTRODUCTION**

West Marine opposes the City of Seattle's ("City") Motion on Public Use and Necessity and asks the Court to deny the motion and dismiss this action. The City has stated that private funds are necessary for the completion of the Mercer Corridor Project but has not yet identified the particulars of such private participation. In Washington, while private participation is permitted, to an extent, in public projects, a balancing test between that private participation

**West Marine's Response on Motion for Public  
Use & Necessity - 1**

P:\Clients\West Marine\ pleadings\FUN Response final rev.doc

LAW OFFICE OF  
CATHERINE C. CLARK PLLC  
701 5th Avenue, Suite 4785, Seattle, WA 98104  
Phone: (206) 838-2528 Facsimile: (206) 374-3003

**EXHIBIT** 6

1 and public participation must occur for the project to pass Constitutional muster. Here, as the  
2 private participation has not been specifically identified or finally determined, an analysis of its  
3 propriety cannot be conducted. It follows then, that this action to determine public use and  
4 necessity is premature. Accordingly, the City's motion should be denied and the action  
5 dismissed until the City finalizes the particulars of the private participation at which point,  
6 presumably, a Constitutional scrutiny can be employed.<sup>1</sup>

## 7 II. FACTS

8 The property involved in this matter is commonly known as 1000 Mercer Street  
9 ("Property") and is owned by Albert and Helene Heglund ("Heglund"). West Marine Products,  
10 Inc. ("West Marine") is the tenant on the property with a leasehold interest until 2019. See  
11 Declaration of Jim Abel, Ex. A.

12 West Marine is a retail company selling products to the boating community. Its present  
13 location at the Property is a block or so from the south shore of Lake Union, a hub for Seattle's  
14 boating community. In fiscal year 2007, West Marine conducted approximately 58,000 retail  
15 transactions and nearly 10,000 transactions from its wholesale department from the South Lake  
16 Union Store. Abel Decl. Obviously, West Marine is a popular and needed service for the  
17 boating community located on Lake Union and throughout Seattle.  
18  
19  
20

21  
22 <sup>1</sup> West Marine seeks leave of this Court to file an over length brief. The present motion has been brought under  
23 LR 7 which limits responses to 12 pages. However, CR 1 and LR 1 also state that the rules are to be construed to  
24 secure the just, speed, and inexpensive determination of every action. In this regard, this response is 9 pages, 5  
25 pages under the summary judgment limit of 24 pages and addresses several complicated constitutional issues.  
Every effort has been made to streamline this brief

1 The Property is located in the South Lake Union Neighborhood of Seattle ("SLU"). See  
2 Affidavit of John Bagley ("Bagley Aff.") Ex. 5. The City's Comprehensive Plan ("Comp.  
3 Plan") sets out the following transportation policy for SLU:

4 SLU-P25 Encourage improvements to Mercer and Valley Streets that  
5 support development of South Lake Union Park, improve  
6 neighborhood circulation for all modes, and move people and  
7 freight efficiently through this corridor.

8 Bagley Aff. Ex. 5. In 1998, the City adopted the South Lake Union Neighborhood Plan  
9 ("Neighborhood Plan"). Bagley Aff. Ex. 8. The Neighborhood Plan recommends  
10 improvements to the Mercer Corridor that do not include a two-way Mercer Street. Bagley Aff.  
11 Ex. 7, pg. 27.

12 Mercer Street is a one-way eastbound street. Valley Street, one block immediately to  
13 the north of Mercer Street, is a one-way westbound street. Mercer and Valley work in tandem  
14 with one another to provide access to and from Interstate 5. This combination of surface streets  
15 in Seattle has long be recognized as a traffic problem, hence its popular name, the "Mercer  
16 Mess."

17 In July 2004, the City received a transportation study of SLU ("Transportation Study").  
18 Bagley Aff. Ex. 4. The conclusion of the Transportation Study was to implement a Two-Way  
19 Mercer/Narrow Valley plan that extended a two-way Mercer all the way to Fifth Avenue South.  
20 Bagley Aff. Ex. 4, Ch. 8.

21 In November 2006, the City received a Mercer Corridor Improvements Project  
22 Transportation Discipline Report ("Traffic Study"), (Bagley Aff. Ex. 3) which reviewed a  
23 similar Two-Way Mercer/Narrow Valley plan as recommended by the 2004 Transportation  
24

25 **West Marine's Response on Motion for Public  
Use & Necessity - 3**

P:\Clients\West Marine\Pleadings\PLUN Response final rev.doc

LAW OFFICE OF  
CATHERINE C. CLARK PLLC  
701 5<sup>th</sup> Avenue, Suite 4785, Seattle, WA, 98104  
Phone: (206) 838-2528 Facsimile: (206) 374-3003

1 Plan.<sup>2</sup> The Traffic Study concluded that traffic congestion along Mercer would not improve  
2 with the implementation of the Two-Way Mercer/Narrow Valley plan. Bagley Aff. Ex. 3 p. 6-  
3 1.

4 On September 24, 2007, the Seattle City Council passed an ordinance ("2007  
5 Ordinance") authorizing the use of eminent domain to acquire the Property (and other parcels)  
6 for the Mercer Corridor Project. Bagley Aff. Ex. 2. The 2007 Ordinance stated that funding  
7 would come from "funds appropriated, or to be appropriated, for such purposes in connection  
8 with the project." Bagley Aff. Ex. 2.

9 On May 12, 2008, the City Council passed an ordinance relating to certain capital  
10 activities of the City's Department of Transportation ("2008 Ordinance"). Bagley Aff. Ex. 1.  
11 The 2008 Ordinance increased appropriations for the Mercer Corridor Project, which allowed  
12 the City to begin acquisition of the Property and continue with project design work. The 2008  
13 Ordinance also recited:  
14

15 WHEREAS, the revised finance plan for the Mercer Corridor Project leaves a  
16 funding gap of \$88 million in currently unsecured funding anticipated from  
17 private participation and state and federal sources; ...

18 Bagley Aff. Ex. 1. The Ordinance also recited:

19 WHEREAS, the City Council intends to consider future appropriation authority  
20 for the Mercer Corridor Project in the context of whether substantial progress is  
21 made toward closing this funding gap; ...  
22  
23

24 <sup>2</sup> The 2006 Traffic Study only considered a two-way Mercer Street to Dexter Avenue, not to Fifth Avenue South  
25 as was recommended in the 2004 Transportation Study. Bagley Aff. Ex. 3, p. 2-1 to 2-11.

1 Bagley Aff. Ex. 1. The Council then imposed a list of requirements for the Mayor's office to  
2 satisfy before additional appropriations would be made for the Mercer Corridor Project. Bagley  
3 Aff. Ex. 1. The following requirements are relevant to this motion:

4 **Section 4. Future appropriation authority related to the Mercer Corridor**  
5 **Project will not be granted until** the City Council has had the opportunity to  
6 evaluate the Executive's progress toward closing the existing funding gap. To  
7 inform this evaluation, the Executive will provide the following information to  
8 the City Council:

- 9 1. A fully revised financing plan for both the Spokane St. Viaduct Project  
10 and Mercer Corridor Project that includes:
  - 11 (c) Documentation of anticipated revenues and supporting  
12 information from **specific sources of funding that the Executive**  
13 **has characterized as "private participation"** in their April  
14 2008 financing plan for the Mercer Corridor Project. These  
15 sources should total the equivalent of \$36.2 million in funding for  
16 the project or reductions or off-sets in private participation  
17 funding realized through real estate acquisition for right of way  
18 needs; ...
  - 19 (f) A contingency plan that identifies proposed alternative funding  
20 sources in the event that either project fails to secure all  
21 anticipated revenues.

22 (Emphasis added.) Bagley Aff. Ex. 1. Despite this obvious funding gap and the unknown or  
23 undisclosed private participation in the Mercer Corridor Project, the City initiated this action  
24 on August 15, 2008. Because a key predicate to lawful action has not been met, the City's  
25 motion should be denied and this matter dismissed.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**III. ISSUES PRESENTED**

Whether a constitutional analysis of public use and necessity can be employed where there is an admitted private participation in a public project but the particulars of such private participation have not been identified or finalized by the condemning authority?

Whether the Petition in this matter satisfies the requirements of the statutes relating to eminent domain, RCW Chapter 8?

**IV. AUTHORITIES & ARGUMENT**

**A. CONSTITUTIONAL PROVISIONS & ADDITIONAL STANDARDS**

Section 1 of Article 16 of the Washington Constitution governs the powers of eminent domain in the State and provides in relevant part:

... No private property shall be taken or damaged for public or private use without just compensation having been first made, ... Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public. ....

CONST. Art. 1, §16. When a property is subject to the powers of condemnation, Washington Courts apply a three-part test in evaluating whether the action is proper:

For a proposed condemnation to be lawful, the State must prove that (1) the use is public; (2) the public interest requires it; and (3) the property appropriated is necessary for that purpose.

*State ex rel Convention Center v. Evans*, 136 Wn.2d 811, 818, 966 P.2d 1252 (1998) (“*Convention Center*”); *In re: City of Seattle*, 104 Wn.2d 621, 623, 707 P.2d 1348 (1985) (“*Westlake II*”); *In re City of Seattle*, 96 Wn.2d 616, 625, 638 P.2d 549 (1981) (“*Westlake I*”).

1 The words "public use" are neither abstractly nor historically capable of  
2 complete definition. 'Public use' and 'necessary' cannot be separated with  
scalpellic precision, for the first is sufficiently broad to include an element of the  
latter.

3 *King County v. Theilman*, 59 Wn.2d 586, 595, 369 P.2d (1962). When applying this test, the  
4 project at issue, including ALL property involved in the project is properly considered. *In re:*  
5 *City of Lynnwood*, 118 Wn. App. 674, 681, 77 P.32d 378 (2003).

6 A trial court should not put on blinders, as it were, to the project as a whole in  
7 adjudicating public use and necessity for the condemnation of various  
8 component parts of the project. It is not at all unusual for public bodies to  
9 acquire some of the properties needed for a particular project by condemnation  
10 and others by purchase. It is only by considering the project as a whole that a  
court can properly adjudicate whether a component parcel is being condemned  
for a truly public use. Accordingly, the trial court erred in its determination that  
it lacked subject matter jurisdiction to consider Video Only's arguments.

11 *Lynnwood*, at 682. The proper focus here is the South Lake Union Neighborhood Plan  
12 of which the Mercer Mess is a part.

13 **B. AS THE PRIVATE PARTICIPATION HAS NOT BEEN FINALLY**  
14 **DETERMINED, THE QUESTION OF PUBLIC USE CANNOT BE**  
15 **ANSWERED**

16 The determination of what is a public use as against a private use is a judicial question,  
17 i.e., a question of law. CONST. Art. 1, §16; *Des Moines v. Hemenway*, 73 Wn.2d 130, 138-9,  
18 437 P.2d 171 (1968).

19 ... the *public use* implies a possession, occupation, and enjoyment of the land by  
20 the public at large, or by public agencies; and a due protection of the rights of  
21 private property will preclude the government from seizing it in the hands of the  
22 owner, and turning it over to another on vague grounds of public benefit to  
spring from the more profitable use to which the latter may devote it.

23 ... we are of the opinion that the use under consideration must be either a use by  
24 the public, or by some agency which is quasi-public, and **not simply a use**

1           **which may incidentally or indirectly promote the public interest or general**  
2           **prosperity of the state.**

3           (Emphasis added.) *Healy Lumber Co. v. Morris*, 33 Wash. 490, 508-09, 74 P. 681 (1903);  
4           *accord Westlake I*, 96 Wn.2d at 627 (“A beneficial use is not necessarily a public use.”). While  
5           the use of eminent domain for roadway purposes is generally a public use, that is not always the  
6           case. *King County v. Theilman*, 59 Wn.2d 586, 595, 369 P.2d (1962) (use of eminent domain  
7           for roadway to access to subdivision deemed improper). Rather, when any private participation  
8           is involved in any public project, that private participation must be weighed against the public  
9           participation. *E.g. Westlake II* at 624 (“If a private use is combined with a public use in such a  
10          way that the two cannot be separated, the right of eminent domain cannot be invoked.”) “Some  
11          private use of condemned land is permissible as long as the private use is not itself the impetus  
12          for the condemnation”. *Evans*, 136 Wn.2d at 821-822. Further, private funding of a public  
13          project is also permitted. *Lynnwood*, 118 Wn. App. at 684-688.

14  
15           In contrast to the present case, in *Westlake I*, *Westlake II*, *Evans*, and *Lynnwood*, the  
16          specifics of the private participation in the public project were known. The Mercer Corridor  
17          Project cannot go forward without private participation as acknowledged by the 2008  
18          Ordinance. At present, the Mercer Corridor Project is 88 million short of funds to construct it  
19          and at least 36 million of that 88 million dollar shortfall is to come from unnamed private  
20          sources. Without a specific statement just exactly how much money is coming from the  
21          unnamed private sources, and what those unnamed private sources will receive for their  
22          contributions, the balancing test cannot be employed. Until the balancing test can be applied to  
23          this matter, *i.e.* until the private participation in the Mercer Corridor Project is finally  
24          

25          **West Marine’s Response on Motion for Public**  
            **Use & Necessity - 8**

P:\Clients\West Marine\Pleadings\PJN Response final rev.doc

LAW OFFICE OF  
CATHERINE C. CLARK PLLC  
701 5<sup>th</sup> Avenue, Suite 4785, Seattle, WA 98104  
Phone: (206) 838-2528 Facsimile: (206) 374-3003

determined and analyzed,<sup>3</sup> the question of public use is not "ripe." *E.g. City Communications, Inc. v. City of Detroit*, 888 F.2d 1081, 1089 (6<sup>th</sup> Cir. 1989) ("Ripeness becomes an issue when a case is anchored in future events that may not occur as anticipated, or at all.").

C. **THE PUBLIC INTEREST DOES NOT REQUIRE A PROJECT WHICH DOES NOT SOLVE THE MERCER MESS**

"It must also be conceded that public interest is not identical with public use. There are many enterprises which are in a sense of public interest, which are not devoted to public use."

*State ex rel. Weyerhaeuser Timber Co. v. Superior Court*, 71 Wash. 84, 127 P. 591, 593 (1912).;

A determination that an acquisition is for a "public use" is not precisely the same thing as determining it is a "public necessity," even though the two terms do overlap to some extent. The "question [as to] whether the contemplated use be really public shall be a judicial question." Although the legislature may declare that a particular use of property is a "public use," that determination is not dispositive.

(Citations omitted.) *HTK Management*, 155 Wn.2d at 629.

<sup>3</sup> In inverse condemnation matters, a final determination is required. The same should be true for direct condemnation matters. For example, *Orion Corp. v. State*, 109 Wn.2d 621, 673-674, 747 P.2d 1062 (1987) states: "The United States Supreme Court has consistently held that a regulatory takings claim is not ripe until the governmental entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue. *MacDonald, Sommer & Frates v. Yolo Co.*, 477 U.S. 340, ---, 106 S.Ct. 2561, 2565-66, 91 L.Ed.2d 285, 294-95 (1986), *Williamson Cy. Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 186, 105 S.Ct. 3108, 3116, 87 L.Ed.2d 126 (1985). Generally, to state a regulatory takings claim a property owner must first establish that the regulation has in substance "taken" property that is, that the regulation "goes too far". *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158, 160, 67 L.Ed. 322 (1922); *Hamilton Bank*, 473 U.S. at 186, 105 S.Ct. at 3116. Determining whether a regulation has gone "too far" depends, in significant part, upon an analysis of the economic impact of the challenged regulation and the extent to which it interferes with reasonable investment-backed profit expectations. *Hamilton Bank*, at 190-91, 105 S.Ct. at 3119. It is impossible to accurately evaluate these factors "until the administrative agency has arrived at a final, definitive position regarding how it will apply the regulations at issue to the particular land in question." *Hamilton Bank*, at 191, 105 S.Ct. at 3119."

1 The term "public use" is not specifically defined by the eminent domain statutes  
2 contained in RCW Title 8. Referring to a dictionary<sup>4</sup>, the term "public" is defined as "of or  
3 relating to the people in general" and the term "interest" is defined as "participation in  
4 advantage and responsibility". MERRIAM-WEBSTER ONLINE, www.m-w.com. Thus, the term  
5 "public interest" means something relating to the people in which there is an advantage to them  
6 or responsibility by them.

7 Here, while this is a transportation project as a part of the larger SLU Neighborhood  
8 Plan, the public interest has not been established as there is a complete failure of proof by the  
9 City that the public would benefit from the Mercer Corridor Project. Rather, the the Traffic  
10 Study concludes that traffic congestion would not be alleviated but would remain the same  
11 under general conditions, but morning-peak travel hours would be worse. Bagley Aff. Ex. 3, p.  
12 6-1.  
13

14 Washington courts agree that the public interest must either solve an existing problem  
15 or provide some kind of benefit to the public. In *State v. Bank of California*, 5 Wn. App. 861,  
16 491 P.2d 697 (1971), the Court of Appeals was asked to decide whether a greenbelt area for  
17 which the State had initiated condemnation proceedings was actually a public use. The court  
18 concluded that it was not as there was no evidence that the greenbelt was for the benefit of  
19 passing motorists, there was no evidence that it was to be used as a noise buffer, or a sun shield  
20  
21

22  
23 <sup>4</sup> When a term is not defined by an applicable statute, then reference to a dictionary for its meaning is proper.  
24 *E.g. Hastings v. Grooters*, 144 Wn. App. 121, 127, 182 P.3d 447 (2008) ("When interpreting a term that is not  
25 defined in the statute, courts may refer to a dictionary meaning and consider the subject matter and the context in  
which the words are used.").

1 or wind break all acknowledged public uses. Rather, the court concluded that there was  
2 substantial evidence that the greenbelt was for the benefit of 4 to 5 property owners by  
3 screening them from a highway and a power line. *Id.* at 866-867.

4 The same is true in this case, as acknowledged by Mayor Nickels in an interview on the  
5 City of Seattle's television program "*Ask the Mayor*," broadcast on the Seattle Channel on May  
6 14, 2008:

7 Question: How much will you ask of South Lake Union Property Owners, for  
8 instance.

9 Mayor Nickels: We've I think within the \$192 million budget, I think we've  
10 targeted about \$36 million coming from the property owners  
11 who will benefit directly by it. And, as fair amount from  
12 outside sources, as well. Not all the rest is coming from the city  
13 Bridging the Gap money.

14 (Emphasis added.) Bagley Aff. Ex. 6. If the Mercer Corridor Project is for the benefit of  
15 surrounding property owners, then they must be identified as must be the benefit they are to  
16 receive and the contribution they make. Further, if the Mercer Corridor Project is only for the  
17 benefit of surrounding property owners, how can it be in the public interest? It cannot be  
18 shown under the provisions of *Bank of California, supra*.

19 Additionally, a public project must solve a problem. In *State v. Culley*, 11 Wn. App.  
20 695, 524 P.2d 437 (1974), a challenge was made to public use and necessity against an action  
21 by the Yakima Valley College which sought to acquire additional lands. There, the evidence  
22 presented revealed:

23 On the question of whether the public interests require the use, it is clear that the present  
24 24-acre site of the community college is inadequate for its enrollment, according to  
25 comparative studies of other systems. Even after this acquisition, the campus will have

1 less acreage than the college should have based upon its enrollment. Further, space  
2 shortages in the existing facilities require the use of off-campus facilities. If the  
community college system is to provide effective education, it is in the public interest to  
provide adequate facilities.

3 *Id.* at 701. There is no similar evidence here. First, as stated above, the private participation in  
4 the Mercer Corridor Project is unknown—thus the question of whether or not the Mercer  
5 Corridor Project exists for the benefit of a private party cannot be answered. Given this, and  
6 the *Bank of California, supra*, until the private participation in the Mercer Corridor Project is  
7 determined, it is impossible to determine if the public interest is served by it.  
8

9 Second, the City's own documents prove that the Project will not solve the problem  
10 presently posed—traffic congestion will not be eased. While *Culley* is famously cited for the  
11 proposition that land may be acquired for future projects, it also requires that the land acquired  
12 must solve an identified problem. Here, there is no dispute that the proposed project simply  
13 does not fix the problem, a fact that was publically acknowledged by Jan Drago, City Council  
14 Member and Chair of the City's Transportation Committee. Bagley Aff., Ex. 8. Further, given  
15 this admission and the unknown private participation in the Mercer Corridor Project, the public  
16 interest is not presently satisfied.  
17

18 **D. THE RECORD IS NOT SUFFICIENTLY DEVELOPED TO**  
19 **DETERMINE NECESSITY**

20 *Evans* also set forth the standard for determining whether or not the condemned  
21 property is necessary for the public use.

22 ... a determination of necessity by a legislative body is conclusive in the absence  
23 of proof of actual fraud or such arbitrary and capricious conduct as would  
24 constitute constructive fraud. ... Fraud or constructive fraud would occur if the  
public use was merely a pretext to effectuate a private use on the condemned  
25

1 lands. This court has not previously enumerated factors to consider when  
2 determining whether a public use is truly necessary, but some relevant  
3 considerations are the dollar contribution of the private party, the percentage of  
4 public versus private use and whether the private use is occurring in an  
5 architectural surplus of usable space.

6 *Evans*, 136 Wn.2d at 823.

7 In *King County v. Thielman*, 59 Wn.2d 586, 369 P.2d 503 (1962), the Washington  
8 Supreme Court was asked to decide whether King County's use of the power of eminent  
9 domain for a road was proper. There, King County sought to condemn the Thielman's property  
10 for a public road which was intended to provide access to property owned by the Highland  
11 Development Company. In concluding that the project failed under a necessity analysis, the  
12 Court stated:

13 We find the facts of the instant case bizarre, if not unique. From the record, it is  
14 apparent that the Highland Development Company could not have condemned  
15 relator's property as a private way of necessity; the company had highway  
16 frontage and two feasible ways of approach. Though we do not think the  
17 county's participation in taking relator's property by eminent domain is a cloak  
18 to cover private objectives, the effect of this action is to allow a private party to  
19 do indirectly that which the law forbids him to do directly. The ultimate effect is  
20 to allow a neighboring land developer to take private property for a private use.  
21 This action is the county's in name only. **It had no funds budgeted either to  
22 acquire relator's land or to build the road across it.**

23 (Emphasis added.) *Id.* at 595-596. Additionally, the Washington Supreme Court recently  
24 stated that as a part of the necessity analysis, "courts will consider the costs of the project as a  
25 relevant factor". *HTK Management*, 155 Wn.2d at 635-36. Here, and again, there is an \$88  
million shortfall for the Mercer Corridor Project, \$36 million of which is to come from  
unidentified private parties. Given this profound funding deficient and the unidentified private  
participation, it is again impossible to determine whether the City's actions are arbitrary and

capricious or whether they constitute actual or constructive fraud. As shown by *Theilman*,  
1 whether a project (even a transportation project) passes the necessity analysis is not a foregone  
2 conclusion.

3  
4 **E. THE PETITION FILED BY THE CITY FAILS TO MEET THE  
APPLICABLE STATUTORY STANDARDS**

5 The Court should dismiss these proceedings because the City's Petition is defective on  
6 several counts for failing to comply with RCW 8.12 et seq.

7  
8 **1. The City Ignores its Obligation to Pay West Marine Just  
Compensation**

9 The City's Petition is defective because it does not pray for just compensation to be  
10 awarded to West Marine for the taking of its leasehold interest. The Lease provides:

11  
12 **Effect of Eminent Domain Proceedings.** Eminent domain proceedings resulting in a  
13 condemnation of a part of the premises leased herein that leave the rest usable by Lessee  
14 for purposes of business for which the premises are leased will not terminate this Lease,  
15 unless Lessor at its option terminates it by giving written notice of termination to the  
16 Lessee. In the event Lessor fails to exercise such option, the effect of such  
17 condemnation will be to terminate this Lease as to the portion of the premises  
18 condemned, and leave it in effect as to the remainder of the premises. Lessee's rental  
19 for the remainder of the Lease shall in such case be reduced by the amount that the  
20 usefulness of the premises to them for such business purposes is reduced. All  
compensation awarded in the eminent domain proceeding as a result of such  
condemnation shall be Lessor's except such portion of any award which is allocated or  
allocable to Lessee as compensation for Lessee's damages as a result of such  
condemnation, including without limitation the value of Lessee's leasehold interest, and  
any business termination or curtailment suffered Lessee's as a result of such  
condemnation.

21 Abel Decl. Ex. C. In short, the Lease does not terminate upon the filing of a eminent domain  
22 action which results in (1) a full taking of the property or (2) a total demolition of the building  
23 which West Marine occupies. Rather, the Lease only describes an agreement regarding a  
24

1 situation in which the building remains partially usable. That is not the case in the present  
2 matter. Thus, as the Lease does not terminate in this matter, West Marine has a separable  
3 compensable property interest. *Spokane Sch. Dist. 81 v. Parzybok*, 96 Wn.2d 95, 103-04, 633  
4 P.2d 1324 (1981); *State v. Lake Lawrence Public Lands Prot. Assoc.*, 92 Wn.2d 656, 601 P.2d  
5 494 (1979); *State ex. rel Long*, 80 Wash. 417, 141 P. 906 (1914); *Olson Land Co. v. Alki Park*  
6 *Co.*, 63 Wash. 521, 115 P. 1083 (1911); *North Coast R. Co. v. Gentry*, 58 Wash. 82, 84, 107 P.  
7 1060 (1910) (“A lessee of property sought to be condemned is entitled to compensation for the  
8 loss of, or injury to, his leasehold estate ...”); *North Coast Ry. V. Hess*, 56 Wash. 335, 105 P.  
9 853 (1909); 2 *Nichols on Eminent Domain* § 5.02[6][a]; 56 AM. JUR. PROOF OF FACTS 3d 419,  
10 *Eminent Domain, Lessee’s Recovery of Compensation for Taking of Leasehold Interest*, § 9.

11 Unless a lessee agrees otherwise, he or she is entitled to just compensation when  
12 the State takes all or part of the leased land for public use.

13 *State v. Trask*, 91 Wn. App. 253, 277, 957 P.2d 781 (1998).

14 West Marine has not received any offer from the City for the value of its Lease. Abel  
15 Decl. p. 2. Further, the City’s petition does not recognize West Marine’s leasehold interest as a  
16 separate compensable interest entitled to just compensation and thus violates RCW 8.12.050  
17 and RCW 8.12.120 which requires that just compensation be paid to “any person claiming an  
18 interest” who has been admitted as a party defendant. *Port of Grays Harbor v. Bankruptcy*  
19 *Estate of Roderick Timber Co.*, 73 Wn. App. 334, 337, 869 P.2d 417 (1994). As West Marine’s  
20 interest is not properly identified in the petition, this matter should be dismissed.  
21  
22  
23  
24  
25

2. **The 2007 Ordinance Does Not Properly Identify the Method of Payment**

The Petition should be dismissed because the City's ordinance authorizing condemnation is defective under RCW 8,12.040.

When the corporate authorities of any such city shall desire to condemn land or other property, or damage the same, for any purpose authorized by this chapter, such city shall provide therefor by ordinance, and unless such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, compensation therefor shall be made from any general funds of such city applicable thereto. If such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, the proceedings for the making of such special assessment shall be as hereinafter prescribed, in this chapter....

This requires a city to specify the source of funds for the improvement project, specifically whether private funds are to be used for the improvements. If not, all funds for the improvements sought by the City must be made from the city's general funds.

Under this statute, the 2007 Ordinance is defective for at least two reasons. First, it does not specify the method of payment for the improvements sought by the City, it only addresses method of payment for the acquisition for the condemned property:

The cost of the acquisitions including purchase price and transaction costs, together with relocation benefits to the extent required by law, shall be paid from the funds appropriated, or to be appropriated, for such purposes in connection with the project.

Declaration of William G. McGillin, Exhibit B, page 2-3. The 2007 Ordinance is therefore defective because it is completely silent on the source of funds for the Mercer Corridor Project.

1 and the improvements sought by the project, which is "reconstructing the existing Mercer  
2 Street/Valley Street couplet."<sup>5</sup>

3 The 2007 Ordinance also fails to identify the private sources of funds. RCW 8.12.040  
4 states that unless the source of payment is identified, project funds must come from the City's  
5 general fund *only*. The 2008 Ordinance similarly fails this standard.

6 **3. The Petition Does Not Contain a Certified Copy of the Applicable  
7 Ordinances**

8 The City's ordinance authorizing condemnation is the 2007 Ordinance. The funding for  
9 the acquisition of the Property is addressed by the 2008 Ordinance and is thus a necessary part  
10 of this action.. However, the City's Petition did not contain a certified copy of either ordinance  
11 as required by RCW 8.12.060 and is thus defective. The requirement of a certified copy with  
12 the petition "is a statutory requisite to proceeding with condemnation hearing." *City of Tacoma*  
13 *v. Welcker*, 65 Wn.2d 677, 687, 399 P.2d 330 (1965). At this point, the City's Petition is fatally  
14 defective and should be dismissed.  
15

16 **F. THE CITY'S CONDEMNATION ACTION FAILS TO COMPLY WITH  
17 THE STANDARDS SET FORTH IN THE UNIFORM RELOCATION  
18 ASSISTANCE AND REAL PROPERTY ACQUISITION ACT**

19 The City's action should be dismissed because the condemnation procedures followed  
20 by the City do not comply with federal law standards for acquiring property. The Mercer  
21 Corridor Project has already been identified as a project that will be dependent on federal  
22

23 <sup>5</sup> The condemnation of land and the improvement sought by a project are not one in the same under that statute. In  
24 certain cases, a property acquisition in itself can constitute the "improvement" for the purposes of RCW 8.12.040.  
25 For example, in *City of Tacoma v. Welcker*, 65 Wn.2d 677, 399 P.2d 330 (1965), the city sought to acquire land as

1 government funds. Bagley Aff. Ex 1. As a federally assisted program, the Mercer Corridor  
2 Project is a project that will be subject to the Uniform Relocation Assistance and Real Property  
3 Acquisition Act. 42 U.S.C. 4601 et seq. ("the Act").

4 With a federally assisted condemnation project, the condemning authority should make  
5 every reasonable effort to acquire property by negotiation, rather than resorting to the courts in  
6 the first instance. 42 U.S.C. § 4651.<sup>6</sup> The City has failed to make any attempt to acquire West  
7 Marine's leasehold interest, and there is no evidence that the City has even attempted to  
8 appraise the West Marine leasehold interest as is directed by 42 U.S.C. § 4651.

9 Before federal funds can be committed to the Mercer Corridor Project, the head of the  
10 federal agency approving the project must receive satisfactory assurances from the City that in  
11 acquiring property, the City followed to the greatest extent practicable the policies of the Act.  
12 42 U.S.C. § 4655. As clearly stated in the Act, these policies include appraising the interests to  
13 be taken and attempted negotiation prior to litigation. The City has produced no evidence that  
14 it has appraised or even considered the value of the West Marine leasehold interest. And it is  
15 uncontested that the City never made an offer to West Marine prior to commencement of this  
16 action. Abel Decl.  
17  
18  
19  
20

21 a buffer area for the city's watershed area. *Id.* at 680. In this case, however, the improvement is not the property  
22 acquisition, it is the construction related to the entire Mercer Corridor Project. *See* 2007 Ordinance.

23 <sup>6</sup> The City is unquestionably the "displacing agency" under the statute, defined as "any ... State, Stage agency or  
24 person carrying out a program or project with Federal financial assistance which causes a person to be ... displaced  
25 ..." 42 U.S.C. § 4601 (11).

V. PROPOSED ORDER

1 A proposed form of Findings of Fact, Conclusions of Law and Order is attached hereto  
2 as Exhibit A.

3  
4 VI. CONCLUSION

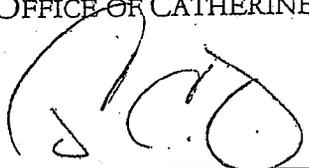
5 It is the duty of courts to uphold the rights of private property owners against the  
6 inroads of public bodies who seek to acquire it for private purposes which they  
honestly believe to be essential for the public good.

7 *Hogue v. Port of Seattle*, 54 Wn.2d 799, 838, 341 P.2d 171 (1959).

8 The City has not performed the necessary groundwork prior to initiating these  
9 condemnation proceedings. The motion should be denied and this matter dismissed until the  
10 City complies with state and federal law, identifies all funding for the project at which point it  
11 can reinstate its action and a constitutional analysis can be conducted.

12 Dated this 18<sup>th</sup> day of September, 2008.

13  
14 LAW OFFICE OF CATHERINE C. CLARK PLLC

15  
16 By: 

17 Catherine C. Clark, WSBA 21231

18 John Bagley, WSBA 31552

19 Attorneys for Respondent West Marine, Inc.

**EXHIBIT** 7

RULE 2.1  
METHODS FOR SEEKING REVIEW OF TRIAL COURT  
DECISION--GENERALLY

(a) Two Methods for Seeking Review of Superior Court Decisions. The only methods for seeking review of decisions of the superior court by the Court of Appeals and by the Supreme Court are the two methods provided by these rules. The two methods are:

(1) Review as a matter of right, called "appeal"; and

(2) Review by permission of the reviewing court, called "discretionary review." Both "appeal" and "discretionary review" are called "review." The term "decision" refers to rulings, orders, and judgments of the trial court, or the appellate court, as the context indicates.

(b) Writ Procedure Superseded. The procedure for seeking review of trial court decisions established by these rules supersedes the review procedure formerly available by extraordinary writs of review, certiorari, mandamus, prohibition, and other writs formerly considered necessary and proper to the complete exercise of appellate and revisory jurisdiction of the Supreme Court and the Court of Appeals. Original writs in the appellate court are not superseded and are governed by Title 16.

(c) Method for Seeking Direct Review of Final Decision of Administrative Agency. The procedure for seeking direct review by the Court of Appeals of a final order in an administrative adjudicative proceeding is defined by RCW 34.05.518 and RCW 34.05.522.

(d) Method for Seeking Review of Decisions of Courts of Limited Jurisdiction. The only method for seeking direct review by the Supreme Court of a decision of a court of limited jurisdiction, without first obtaining a Superior Court decision under the RALJ, is by notice of appeal as provided for in Rule 4.3

References

Rule 16.2, Original Action Against State Officer; Rules 16.3-16.15, Personal Restraint Petition; Const. art. 4, section 4.

RULE 4.2  
DIRECT REVIEW OF SUPERIOR COURT DECISION  
BY SUPREME COURT

(a) Type of Cases Reviewed Directly. A party may seek review in the Supreme Court of a decision of a superior court which is subject to review as provided in Title 2 only in the following types of cases:

(1) Authorized by Statute. A case in which a statute authorizes direct review in the Supreme Court.

(2) Law Unconstitutional. A case in which the trial court has held invalid a statute, ordinance, tax, impost, assessment, or toll, upon the ground that it is repugnant to the United States Constitution, the Washington State Constitution, a statute of the United States, or a treaty.

(3) Conflicting Decisions. A case involving an issue in which there is a conflict among decisions of the Court of Appeals or an inconsistency in decisions of the Supreme Court.

(4) Public Issues. A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.

(5) Action Against State Officer. An action against a state officer in the nature of quo warranto, prohibition, injunction, or mandamus.

(6) Death Penalty. A case in which the death penalty has been decreed.

(b) Service and Filing of Statement of Grounds for Direct Review. A party seeking direct review of a superior court decision in the Supreme Court must within 15 days after filing the notice of appeal or notice for discretionary review, serve on all other parties and file in the Supreme Court a statement of grounds for direct review in the form provided in section (c).

(c) Form of Statement of Grounds for Direct Review. The statement should be captioned "Statement of Grounds for Direct Review," contain the title of the case as provided in rule 3.4, and contain under appropriate headings and in the order here indicated:

(1) Nature of the Case and Decision. A short statement of the substance of the case below and the basis for the superior court decision;

(2) Issues Presented for Review. A statement of each issue the party intends to present for review; and

(3) Grounds for Direct Review. The grounds upon which the party contends direct review should be granted.

The statement of grounds for direct review should not exceed 15 pages, exclusive of appendices and the title sheet.

(d) Answer to Statement of Grounds for Direct Review. A respondent may file an answer to the statement of grounds for direct review. In an appeal, the answer should be filed within 14 days after service of the statement on respondent. In a discretionary review, the answer should be filed with any response to the motion for discretionary review. The answer should not exceed 15 pages, exclusive of appendices and the title sheet.

(e) Effect of Denial of Direct Review.

(1) Appealable Decision. If the Supreme Court denies direct review

of a superior court decision appealable as a matter of right, the case will be transferred without prejudice and without costs to the Court of Appeals for determination.

(2) Discretionary Review. A motion for discretionary review in the Supreme Court of a superior court decision may be granted, denied, or transferred to the Court of Appeals for determination. If the Supreme Court denies a motion for discretionary review of a superior court decision, the moving party may not file the same motion in the Court of Appeals.

References Form 4, Statement of Grounds for Direct Review.

---