

No. 833494

SUPREME COURT OF THE STATE OF WASHINGTON

KEMPER FREEMAN, JIM HORN,
STEVE STIVALA, KEN
COLLINS, MICHAEL DUNMIRE,
SARAH RINLAUB, AL
DEATLEY, JIM COLES, BRIAN
BOEHM, and EASTSIDE
TRANSPORTATION
ASSOCIATION, a Washington
nonprofit corporation,

Petitioners,

vs.

CHRISTINE O. GREGOIRE, a
state officer in her capacity as
Governor of the State of
Washington, and PAULA J.
HAMMOND, a state officer in her
capacity as Secretary of the
Washington State Department of
Transportation,

Respondents.

**SOUND TRANSIT'S
ANSWER TO PETITION
AGAINST STATE
OFFICER**

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INTRODUCTION AND SUMMARY OF ANSWER

A portion of Interstate 90 between Seattle and Bellevue ("I-90 Corridor") has been dedicated to transit use for decades. In 1976, Washington state and local governments entered into an agreement that ended protracted litigation over the construction and use of the I-90 Corridor. This Memorandum of Agreement ("MOA") provided in part that: "The I-90 facility shall be designed and constructed so that

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conversion of all or part of the transit roadway to fixed guideway is possible.” Appendix A at 5. Two years later, to obtain federal funding for the bridge, the State agreed to the U.S. Department of Transportation’s requirement that “public transportation shall permanently have first priority in the use of the center lanes.” Appendix B at 6.

In 2004, the original I-90 MOA was amended, and Sound Transit was added as a party. The 2004 Amendment reaffirmed that the I-90 center lanes would be transferred for high-capacity transit use, specifically defined as “a transit system operating in dedicated right-of-way such as light rail, monorail or a substantially equivalent system.” Appendix C at 2. The 2004 Amendment also resolved that “Alternative R-8A,” as defined in environmental review documents, was the “ultimate configuration” for the I-90 Corridor. *Id.* at 3. This alternative provided that the three outer lanes in each direction of the I-90 Corridor would be converted to four lanes, with one lane in each direction dedicated to buses or high occupancy vehicle traffic. In other words, two substitute lanes of travel will be created in lieu of the two center lanes.

In November of 2008, voters within the Sound Transit district approved a ballot measure authorizing *Sound Transit 2*. *Sound Transit 2*, *inter alia*, provides for building 36 additional miles of light rail including an East Link light-rail route.

East Link will expand the light-rail system to the Eastside with stations serving Mercer Island, south Bellevue, downtown Bellevue, Bellevue, Red, and Redmond's Overlake area. The final East Link route will be selected in 2010. East Link construction is scheduled to start in 2013 or 2014, with a goal to open light-rail service to Bellevue in 2020.

Anticipating this timeline, on April 25, 2009, the Legislature passed Engrossed Substitute Senate Bill 5352 ("ESSB 5352"), which was generally entitled: "An Act Relating to transportation funding and appropriations...." An appropriation within ESSB 5352 for the Joint Transportation Commission contains, among others, the following conditions and limitations:

\$300,000 of the motor vehicle account--state appropriation is for an independent analysis of methodologies to value the reversible lanes on Interstate 90 to be used for high capacity transit pursuant to [*Sound Transit 2*] approved by voters in November 2008. The independent analysis shall be conducted by sound transit and the department of transportation, using consultant resources deemed appropriate by the secretary of the department, the chief executive officer of sound transit, and the cochairs of the joint transportation committee. It shall be conducted in consultation with the federal transit and federal highway administrations and account for applicable federal laws, regulations, and practices. It shall also account for the 1976 Interstate 90 memorandum of agreement and subsequent 2004 amendment and the 1978 federal secretary of transportation's environmental decision on Interstate 90. The department and sound transit must provide periodic reports to the joint transportation committee, the sound

transit board of directors, and the governor, and report final recommendations by November 1, 2009.

Appendix D at 3-4 (Laws of 2009, ch. 470, § 204(3)).

A further appropriation in the same bill for Washington State Department of Transportation's ("WSDOT's") improvements contains, among others, the following condition and limitation:

The legislature is committed to the timely completion of [Alternative] R8A which supports the construction of sound transit's east link. Following the completion of the independent analysis of the methodologies to value the reversible lanes on Interstate 90 which may be used for high capacity transit as directed in section 204 of this act, the department shall complete the process of negotiations with sound transit. Such agreement shall be completed no later than December 1, 2009.

Appendix D at 5 (Laws of 2009, ch. 470, § 306(17)).

The "independent analysis of methodologies" described in section 204 is already complete, and Sound Transit and WSDOT currently are involved in the "process of negotiations" described in section 306. Sound Transit is committed to following the directive of the Legislature and completing those negotiations by December 1, 2009.

The Petition now before this Court presents a very narrow legal issue: assuming that restricted state highway funds were used in part to construct I-90, would article II, section 40 of the Washington Constitution prohibit the Legislature from establishing a process to value the two center

lanes of I-90, so as to determine what compensation, if any, must be reimbursed to the State for their eventual conversion to light rail (a use for which the I-90 bridge originally was designed and to which the State agreed in order to obtain federal funding). This narrow legal question can and should be answered by this Court, to allow for the continuation and completion of negotiations between WSDOT and Sound Transit as intended by the Legislature. This Court can and should easily conclude that it is within the State's constitutional authority to establish the process embodied in ESSB 5352.

In sum, Sound Transit respectfully requests that the Court accept and decide the narrow question presented by the Petition, and hold that the portions of ESSB 5352 pertaining to the valuation of the I-90 Corridor are facially valid under the Washington Constitution.

ANSWER TO PETITION

The numbered paragraphs in this section each respond to the numbered paragraphs set out in the Petition.

I PARTIES AND JURISDICTION

1.1 Sound Transit lacks sufficient information to either admit or deny the allegations in this paragraph of the Petition, which shall have the effect of a denial.

1.2 Sound Transit lacks sufficient information to either admit or deny the allegations in this paragraph of the Petition, which shall have the effect of a denial.

1.3 Sound Transit lacks sufficient information to either admit or deny the allegations in this paragraph of the Petition, which shall have the effect of a denial.

1.4 Sound Transit lacks sufficient information to either admit or deny the allegations in this paragraph of the Petition, which shall have the effect of a denial.

1.5 Sound Transit lacks sufficient information to either admit or deny the allegations in this paragraph of the Petition, which shall have the effect of a denial.

1.6 Sound Transit lacks sufficient information to either admit or deny the allegations in this paragraph of the Petition, which shall have the effect of a denial.

1.7 Sound Transit lacks sufficient information to either admit or deny the allegations in this paragraph of the Petition, which shall have the effect of a denial.

1.8 Sound Transit lacks sufficient information to either admit or deny the allegations in this paragraph of the Petition, which shall have the effect of a denial.

1.9 Sound Transit lacks sufficient information to either admit or deny the allegations in this paragraph of the Petition, which shall have the effect of a denial.

1.10 Sound Transit lacks sufficient information to either admit or deny the allegations in this paragraph of the Petition, which shall have the effect of a denial.

1.11 Sound Transit admits that Christine O. Gregoire is the Governor of the State of Washington.

1.12 Sound Transit admits that Paula J. Hammond is the Secretary of the Washington State Department of Transportation.

1.13 This paragraph contains solely a legal conclusion, to which a factual response is not required. Nonetheless, Sound Transit admits that article IV, section 4 of the Washington Constitution and Title 16 of the Rules of Appellate Procedure allow this Court to consider original writ actions under specified circumstances and within the Court's discretion.

II FACTS

2.1 Sound Transit admits that Interstate 90 is a component of the United States' system of interstate highways.

2.2 Sound Transit admits that, upon information and belief, both federal and Washington State funds were utilized to construct and maintain Interstate 90. Sound Transit lacks sufficient information to either

admit or deny the remaining factual allegations in this paragraph of the Petition, which shall have the effect of a denial. The remainder of this paragraph contains legal conclusions, to which a factual response is not required.

2.3 Sound Transit admits that Interstate 90 is referenced in RCW 47.17.140. Sound Transit lacks sufficient information to either admit or deny the remaining factual allegations in this paragraph of the Petition, which shall have the effect of a denial. The remainder of this paragraph also contains legal conclusions, to which a factual response is not required.

2.4 Sound Transit lacks sufficient information to either admit or deny the factual allegations in this paragraph of the Petition, which shall have the effect of a denial. The remainder of this paragraph also contains legal conclusions, to which a factual response is not required.

2.5 Sound Transit admits the factual allegations in this paragraph of the Petition, with the exception that one of the bridges is improperly titled.

2.6 Sound Transit admits that the I-90 Corridor moves people and freight between Seattle, Mercer Island, and the Eastside. Sound Transit also admits that I-90 is currently the only direct highway connection between Mercer Island and Seattle or the Eastside. Sound

Transit lacks sufficient information to either admit or deny the remaining allegations in this paragraph of the Petition, which shall have the effect of a denial.

2.7 Sound Transit admits the factual allegations in this paragraph of the Petition. To the extent this paragraph also contains legal conclusions (such as what constitutes a "special exception"), no factual response is required.

2.8 Sound Transit admits that both Sound Transit and King County Metro operate bus service, including service that runs across Interstate 90.

2.9 Sound Transit admits that Interstate 90 is a corridor for the movement of freight, and is one of the routes by which local, interstate, and regional freight connects with local ports. Sound Transit lacks sufficient information to either admit or deny the remaining allegations in this paragraph of the Petition, which shall have the effect of a denial. Moreover, Sound Transit anticipates that the East Link project would have an overall beneficial effect on trucks traveling on I-90, and that truck travel times during peak hours would improve overall and the ability for trucks to cross Lake Washington on I-90 would be maintained.

2.10 Sound Transit admits that in 1993, the legislative authorities of King, Pierce, and Snohomish Counties formed a regional

transit authority (“RTA”), Sound Transit, to finance, build, and operate high-capacity transit improvements. In November of 1996, Sound Transit district voters approved state-authorized sales taxes and a motor-vehicle excise tax to fund the *Sound Move* transit plan. *Sound Move* encompasses more than 70 region-wide integrated transportation projects, which include HOV highway access lanes and overpasses, light-rail, commuter-rail, and express-bus services. This year, Sound Transit opened one of the key components of *Sound Move*, its Central Link light-rail service, spanning 14 miles between Seattle and Tukwila, with service anticipated to begin to Sea-Tac Airport in December.

2.11 Sound Transit admits the factual allegations in this paragraph of the Petition.

2.12 Sound Transit admits that the Federal Highway Administration issued a Record of Decision in or around September 2004, which adopted the proposed R8A Alternative. Sound Transit denies that the R8A Alternative did not contemplate the use of transit in the center lanes.

2.13 Sound Transit admits that, in 2006, its Board identified light rail as a preferred mode of transportation for the East corridor. A ballot proposition including light rail, roads, and other components, was

placed before local voters in 2007 but was not accepted in the form proposed.

2.14 Sound Transit admits that, in November of 2008, voters within the Sound Transit district approved a ballot measure authorizing the implementation of *Sound Transit 2*. The *Sound Transit 2* plan adds regional express-bus and commuter-rail service while building 36 additional miles of light rail to form a 55-mile regional system. Among the projects approved by voters in *Sound Transit 2* is East Link, which will expand light rail from downtown Seattle to the Eastside with stations serving Mercer Island, south Bellevue, downtown Bellevue, Bel-Red, and Redmond's Overlake area. Environmental review is also underway for a future extension to downtown Redmond.

2.15 Sound Transit admits that a Draft Environmental Impact Statement ("Draft EIS") for East Link, as approved by local voters, was published on December 12, 2008, by Sound Transit, WSDOT, and the Federal Transit Administration ("FTA").¹ As described in Sound Transit Board Motion M2009-41,² the Sound Transit Board identified a preferred

¹ The Draft EIS is available online at <http://www.soundtransit.org/Projects-and-Plans/Projects-By-Service/Link-Light-Rail/East-Link-Project/East-Link-DEIS.xml>. All the comments received on the Draft EIS, and responses to those comments, will be included in the Final EIS, which is anticipated to be published in 2010.

² Sound Transit Board Motion M2009-41 is available online at <http://www.soundtransit.org/About-Us/Board-of-Directors/Motions/2009-Motions.xml>.

route for East Link. The preferred route was identified based on review of the Draft EIS as well as the comments of interested citizens, agencies, tribes, and other organizations, and review of additional information.

There is one route alternative for Segment A of East Link, which connects Seattle and downtown Bellevue, and that route would include use of the center reversible lanes of Interstate 90 across Lake Washington and Mercer Island.

2.16 Sound Transit admits that the current route alternative for Segment A of East Link (between Seattle and Bellevue) includes use for light-rail purposes of the existing two center lanes of the I-90 Corridor. Vehicle traffic would not be permitted in those specific lanes occupied by light rail. The remainder of this paragraph contains legal conclusions as to the requirement of a sale or lease, to which a factual response is not required.

2.17 Sound Transit admits that Alternative R8A would provide for modification of existing lanes to add one lane in each direction. In some cases this includes changes to the footprint of the road. Sound Transit denies that implementation of Alternative R8A, including transit in the existing center lanes, would reduce the overall number of vehicle lanes on Interstate 90. Sound Transit further responds that Alternative R8A would increase overall person-moving capacity.

2.18 This paragraph of the Petition purports to refer to a position taken by WSDOT, but provides no source of the alleged position or statement. Sound Transit, therefore, lacks sufficient information to either admit or deny the allegations in this paragraph of the Petition, which shall have the effect of a denial. Moreover, Sound Transit believes that the implementation of Alternative R8A, including transit in the existing center lanes, has the capacity to increase person “throughput” (the number of persons crossing at a given point), without materially reducing vehicle “throughput” (the number of vehicles crossing at a given point), across Lake Washington during peak commute hours. In other words, this option could increase the number of persons crossing the I-90 bridge during peak commute hours without a material drop in the number of vehicles crossing during the same time period.

2.19 Sound Transit admits that this paragraph of the Petition contains an accurate quotation of the language of article II, section 40 of the Washington Constitution.

2.20 This paragraph contains solely legal conclusions, to which a factual response is not required. Nonetheless, Sound Transit admits that RCW 46.68.070 creates a Motor Vehicle Fund for the use of the State, and through state agencies, for the use of counties, cities, and towns for specified purposes, including proper road, street, and highway purposes.

2.21 This paragraph contains solely legal conclusions, to which a factual response is not required. Nonetheless, Sound Transit admits that this Court has issued opinions pertaining to the Motor Vehicle Fund and article II, section 40 of the Washington Constitution. Sound Transit denies that the opinions cited by Petitioners govern the issues presented in this case, *inter alia*, because they concern direct expenditures from the Motor Vehicle Fund. They do not address whether the State may allow an asset that was partially funded by the Motor Vehicle Fund to be used for the transit purpose for which the asset was designed and to which the State agreed as a condition of obtaining the federal grant funding required to construct the asset.

2.22 This paragraph contains solely legal conclusions, to which a factual response is not required. Nonetheless, Sound Transit admits that this Court issued an opinion in *State ex rel. O'Connell v. Slavin*, 75 Wn.2d 554, 452 P.2d 943 (1969), the interpretation of which is an issue of law. Sound Transit denies that *O'Connell* stands for or supports the proposition that an asset partially funded with funds collected for highway purposes may never be used, sold, leased, or transferred for transit or other purposes. Sound Transit further denies the allegation that any transit-related expenditure is *per se* not a highway purpose. For example, it is "a highway purpose to use motor vehicle funds . . . to pay the full

proportionate highway, street or road share of the costs of design, right-of-way acquisition, construction and maintenance of any highway, street or road to be used jointly with an urban public transportation system.” RCW 47.04.083; *see also* AGLO 1975 No. 35 (interpreting RCW 47.04.083 and opining that the Motor Vehicle Fund could be used to pay for transportation planning functions).

2.23 This paragraph contains solely legal conclusions, to which a factual response is not required. Nonetheless, Sound Transit admits that the Washington State Attorney General’s Office has issued opinions pertaining to the Motor Vehicle Fund and article II, section 40 of the Washington Constitution. Sound Transit denies that those opinions stand for or support the proposition that an asset partially funded with funds collected for highway purposes may never be used, sold, leased, or transferred for transit or other purposes: Thus, for example, AGLO 1975 No. 62 supports the proposition that the State may transfer or use such assets for either highway purposes or non-highway purposes, although when the transfer is for non-highway purposes, some form of consideration is contemplated.

2.24 Sound Transit lacks sufficient information to either admit or deny the allegations in this paragraph of the Petition (namely, that funds from the Motor Vehicle Fund were used in part to fund construction of

Interstate 90), which shall have the effect of a denial. Upon information and belief, the federal funding contribution for Interstate 90 was substantial and far greater than any state contribution. Sound Transit lacks information regarding whether the Washington State contribution was derived from the Motor Vehicle Fund.

2.25 Sound Transit admits that, on April 25, 2009, the Legislature passed Engrossed Substitute Senate Bill 5352, which was generally entitled: "An Act Relating to transportation funding and appropriations...." Sound Transit further admits that two sections of ESSB 5352 relate to the valuation of the center reversible lanes of Interstate 90, but denies that paragraph 2.25 accurately quotes or summarizes those two sections of ESSB 5352, the interpretation of which, if required, is an issue of law. Those two sections are quoted in full at pages 3-4, *supra*, and incorporated herein.

2.26 Sound Transit admits that ESSB 5352, Section 204(3), reads as quoted in full at page 3 of this Answer, *supra*, and that the interpretation of that section, if required, is an issue of law.

2.27 Sound Transit admits that ESSB 5352, Section 306(17), reads as quoted in full at page 4 of this Answer, *supra*, and that the interpretation of that section, if required, is an issue of law.

III. WRIT STANDARD

3.1 This paragraph contains solely a legal conclusion, to which a factual response is not required. Nonetheless, Sound Transit denies that the Petitioners meet the standard for issuance of a writ on any ground alleged, and further denies that any of the proposed actions by Secretary Hammond or Governor Gregoire would be unconstitutional.

3.2 This paragraph contains solely a legal conclusion, to which a factual response is not required. Nonetheless, Sound Transit denies that Petitioners lack an appropriate remedy at law.

3.3 This paragraph contains solely a legal conclusion, to which a factual response is not required. Nonetheless, Sound Transit denies that by virtue of following the terms of existing agreements and the directives of the Legislature that Governor Gregoire or Secretary Hammond would in any way violate article II, section 40 of the Washington Constitution. If, as Petitioners contend, the sole issue presented to this Court is whether, on its face, ESSB 5352 sets out a lawful process to value or facilitate the contemplated use of the center lanes of Interstate 90, then this Court should retain this case and decide on the merits that such legislation is lawful and constitutional on its face, in advance of the December 1, 2009, date specified by the Legislature. In the event that Petitioners actually seek as-applied relief with respect to whatever final agreement is to be

reached regarding the value or use of the center lanes, such a claim is not yet ripe, and falls outside this Court's original jurisdiction.

IV. RELIEF REQUESTED

4.1 This paragraph of the Petition sets out Petitioners' request that the Court issue a writ of prohibition against Governor Gregoire. Sound Transit denies that Petitioners are entitled to such relief.

4.2 This paragraph of the Petition sets out Petitioners' request that the Court issue a writ of prohibition against Secretary Hammond. Sound Transit denies that Petitioners are entitled to such relief.

4.3 This paragraph of the Petition sets out Petitioners' request for attorney's fees and costs. Sound Transit denies that Petitioners are entitled to such relief.

4.4 This paragraph of the Petition sets out Petitioners' request for unspecified further relief. Sound Transit denies that Petitioners are entitled to any further relief.

AFFIRMATIVE DEFENSES

By way of further defense, and without concession as to which party bears the burden of proof, Sound Transit asserts the following:

1. This Court lacks jurisdiction to hear some or all of Petitioners' claims.

2. Petitioners have failed to state a claim upon which relief can be granted.

3. Some or all of Petitioners' claims are nonjusticiable, including but not limited to on grounds of ripeness, mootness, or lack of standing.

4. Some or all of Petitioners' claims request an improper advisory opinion.

5. Some or all of Petitioners' claims are barred by separation of powers.

6. Some or all of Petitioners' claims present a political question.

SOUND TRANSIT'S REQUEST FOR RELIEF

Sound Transit respectfully requests the following relief:

1. That this Court retain the Petition so as to decide the narrow legal question presented by the Petitioners;

2. That this Court rule on the merits that the Petitioners are not entitled to any relief, and that their Petition should be dismissed with prejudice;

3. That each party bear its own fees or expenses in this matter;
and

4. That this Court afford such further relief as is just and equitable.

RESPECTFULLY SUBMITTED this 20th day of August, 2009.

CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY

By  FOR:
Desmond L. Brown, WSBA #16232

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By  FOR:
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APPENDIX A

MEMORANDUM AGREEMENT

City of Seattle
City of Mercer Island
City of Bellevue
King County
Metrol
Washington State Highway Commission

December, 1976

MEMORANDUM AGREEMENT

WHEREAS, the cities of Seattle, Mercer Island and Bellevue; the Municipality of Metropolitan Seattle (hereinafter "Metro"); and King County by and through their respective councils and the Washington State Highway Commission (hereinafter "the Commission") desire to resolve the disputes which have surrounded the plans to construct an improved Interstate 90 (I-90) facility between Interstate 405 (I-405) and Interstate 5 (I-5); and

WHEREAS, there is a desire to create an environment of cooperation in which agreement is reached among all parties concerned relative to the design of the I-90 facility and related transportation projects; and

WHEREAS, the decisions of the Ninth Circuit Court of Appeals of the United States District Court for the Western District of Washington have required that all alternatives to the proposed highway be studied; and

WHEREAS, all parties hereto state that they have reviewed the proposed highway development and all currently available alternatives to it, including the option of withdrawal and substitution; and

WHEREAS, the I-90 facility from I-405 to I-5, when constructed, must contain all of the social and environmental amenities included in the Commission's previously adopted plans and modifications thereof contained in the Findings and Order of the Board of Review in order to be acceptable to all jurisdictions; and

WHEREAS, the parties believe that construction of the agreed upon I-90 facility will be of definite advantage to all four local jurisdictions because it will provide an excellent transit way between Seattle, Mercer Island and Bellevue; it will eliminate the dangerous three-one reversible lane operation presently employed in that corridor; it will provide improved truck access from the east to Seattle's south industrial/commercial area and port; it will provide improved capacity in the off-peak direction; it will probably provide an improved facility sooner than other approaches; it will provide access to and from I-90 and I-5 south of downtown Seattle eliminating traffic presently going through Beacon Hill residential areas; it will provide many jobs for our citizens during the period of construction; and it will repair the corridor and help knit together the communities now split by U.S. 10 west of the Mount Baker ridge and across Mercer Island; and

WHEREAS, the parties have concluded that withdrawal and substitution is not a desirable option because it would double the local matching monies required and because Mercer Island and Seattle find unacceptable a major highway/transit I-90 facility without extensive environmental amenities which amenities might not be funded under the withdrawal and substitution alternative; and

WHEREAS, it is in the best interest of the citizens of the Puget Sound area and the State of Washington that this segment of I-90 be completed in an expeditious manner; and

WHEREAS, all jurisdictions believe that sufficient public hearings have been held on the project and that no further hearings should be held unless legally required; and

WHEREAS, the parties desire to identify and establish a reasonable assurance of construction of certain priority public transportation facilities which are contained in the 1990 Transportation System Plan for the Central Puget Sound Region and which serve to ensure that I-90 functions as an integral part of the region's transportation system; and

WHEREAS, the parties desire to ensure that these future improvements are consistent with the goals and policies for regional development presently under consideration by the Puget Sound Council of Governments (hereinafter "PSCOG") and the subsequent subregional land use element of the Regional Development Plan for the Central Puget Sound Region;

NOW THEREFORE, in consideration of the mutual and reciprocal benefits accruing to each of the parties hereto, it is hereby agreed as follows:

1. The Cities of Seattle, Mercer Island and Bellevue; King County; Metro and the Commission support the construction of a facility which will accommodate no more than eight motor vehicle lanes which are arranged in the following general manner:

- (a) Three general-purpose motor-vehicle lanes in each direction shall be constructed between the South Bellevue Interchange and I-5. In addition, there will be provision for necessary weaving lanes and possible local access across the East Channel, to be determined in accordance with paragraph 1(e) below.

- (b) The facility shall also contain provision for two lanes designed for and permanently committed to transit use. The eastern and western termini for these lanes shall be designed to facilitate uninterrupted transit and carpool access to downtown Seattle and to downtown Bellevue in accordance with paragraph 3 hereinbelow. The design shall be such as to accommodate the operation of the two transit lanes in either a reversible or in a two-way directional mode.
- (c) The facility shall be designed in a manner which, as much as practicable, minimizes the width of the roadway and the taking of land.
- (d) To the extent practical, the facility shall provide priority by-pass access for local transit to the general purpose motor-vehicle lanes.
- (e) The parties agree that the transit lanes shall operate initially in a two-way directional mode, at no less than 45 mph average speed, with the first priority to transit, the second to carpools, and the third to Mercer Island traffic. In the direction of minor flow, the transit lane shall be restricted to busses. The parties further agree that the initial operation of the East Channel bridge shall consist of only three general purpose auto.

lanes in each direction in addition to the transit lanes. In addition, there will be an acceleration lane from the South Bellevue Interchange which will terminate prior to the exit ramp at the East Mercer Interchange. The subsequent mode of operation of the facility shall be based upon existing needs as determined by the Commission in consultation with the affected jurisdictions, pursuant to paragraph 14 of this agreement. That determination will consider efficient transit flow, equitable access for Mercer Island and Bellevue traffic, and traffic-related impacts on Seattle.

2. The I-90 facility shall be designed and constructed so that conversion of all or part of the transit roadway to fixed guideway is possible.
3. The parties recognize that the planning, design and construction of efficient access at the eastern terminus and western terminus of this facility will enhance the operation of I-90 as a regional transportation facility. Therefore, the Commission, jointly with Seattle, Mercer Island, Bellevue, King County, and Metro, as their respective interests and responsibilities may dictate, shall immediately upon execution of this agreement undertake the development of the necessary plans and designs for, and shall further proceed, with

the required public hearings and the preparation of the necessary environmental impact statements in order to obtain maximum eligibility for Federal Interstate funding for the construction of the following projects:

- (a) Transit access from I-90 to downtown Seattle;
- (b) Transit access from I-90 to I-405 and to the Bellevue central business district;
- (c) Transit and general-purpose access from I-90 to the King County Stadium area; and
- (d) Transit and general-purpose access from I-90 to arterials serving the north Duwamish industrial/commercial area and the Seattle waterfront;
- (e) Transit access from I-90 transit lanes to I-5;

For any of the above projects or portions thereof which are not eligible for Federal Interstate funding, the Cities, the County and Metro with full support of the Commission, shall seek any available funding for such projects and shall make reasonable effort to complete the construction thereof prior to the completion of I-90.

4. The parties further agree, except as otherwise provided in this agreement, that the modified design of the facility will preserve and incorporate all of the provisions for community amenities and for reducing adverse environmental impacts as contained in limited access plans adopted by the State Highway Commission for

- (a) the segment of I-90 from the West Shore of Mercer Island to the East Channel Bridge and for

(b) the segment from I-5 to the West Shore of Mercer Island (modified by the Findings and Order of the Board of Review dated March 26, 1973, and the Stipulation to Resolve Certain Issues incorporated therein, including but not limited to the provisions for a full lid tying affected Seattle neighborhoods together. The lid shall be constructed to permit park and/or two-story residential or business construction (not industrial uses) to take place on top of the highway between the Mt. Baker tunnel and 23rd Avenue South. Additional loads may be acceptable following specific agreement between the Commission and the City of Seattle. The Commission agrees to fund the landscaping of the lid and the maintenance thereof except as may be agreed to by other parties.

5. The parties agree that the design of the entire facility shall include the following additional features:

- (a) a transit station permitting transfer of transit passengers at Empire Way South or 23rd Avenue South as more particularly set forth in the Findings and Order of the Board of Review.
- (b) a direct Highway connection for Rainier Valley to and from the east.
- (c) the Commission's plan for preserving access between Seattle communities over adjacent local city streets shall include improvements of South Norman Street between 20th Avenue South and 23rd Avenue South to provide access to the Judkins neighborhood,

this being done in lieu of the development of South Judkins Street as provided in the Commission's adopted plan as modified by the Findings and Order of the Board of Review.

(d) a continuous park/pedestrian link between Judkins Park and the lid over I-90 west of the Mt. Baker Ridge Tunnel.

6. The Commission agrees to participate jointly with the City of Seattle in an I-90 corridor area planning study for the purpose of designing alternative means of redeveloping areas adjacent to the I-90 project in Seattle. The extent of such study shall be defined and agreed to by Seattle and the Commission, and to the extent that the study relates to the effects of the I-90 facility in the corridor, it shall be funded by the Commission.

7. At the option of the local jurisdictions to be exercised within a reasonable time, the Commission shall transfer to the appropriate jurisdiction fee title of all state-purchased lands acquired for the I-90 project but which are outside the finally determined right-of-way lines of I-90 to the fullest extent and at the lowest cost legally possible.

8. The parties hereto agree that they will proceed under established legal processes, including regional transportation planning procedures of PSCOG and consistent with the approved Regional Development Plan of PSCOG, to determine those projects which are of highest priority in the Transportation System Plan and the Transportation

Improvement Program as the Plan and Program apply to the King County subregion. The parties hereby agree that projects (a) through (g) listed below are of highest priority and shall so indicate in the process of establishing the King County Subregional Transportation Improvement Program, the Regional 1990 Transportation System Plan, and Metro's Comprehensive Public Transportation Plan. The Commission and Metro shall work with the local jurisdictions in undertaking location and design studies for these projects at the earliest possible date commensurate with state, regional, metropolitan and local planning and priority programming practices. Projects to be considered through these processes shall include, but not be limited to, the following regional components of PSCOG 1990 Transportation Plan:

- (a) Transit/carpool lanes and/or Surveillance Control and Driver Information Systems (SC&DI) on I-5 from I-405 at Tukwila to the King County Snohomish County line;
- (b) The park-and-ride lots and flyer stops contained in the approved 1980 Plan as may be modified by Metro;
- (c) Provision for a busway or exclusive transit/carpool lane(s) as a part of the SR 99 and SR 509 corridor including a crossing of the First Avenue South Bridge, consistent with Metro's transition planning for this corridor;

- (d) Provision for a busway or exclusive transit/carpool lane(s) and/or SC&DI as a part of SR 520 from I-5 to I-405;
 - (e) Redesign, in a manner acceptable to the City of Seattle, of the lanes where SR 520 meets I-5 and at the Mercer Street egress from I-5 in order to improve transit flow and reduce the congestion on I-5 between Mercer Street and Roanoke Street;
 - (f) Provision for a busway or exclusive transit/carpool lane(s) and/or SC&DI as a part of I-405 from Bothell to Renton
 - (g) Provision for exclusive transit lane(s) on I-405 through Bellevue which shall also include provision for a freeway flyer stop and a park-and-ride facility on I-405 between Main Street and N.E. 8th in Bellevue and provision for I-405 access improvements to the Bellevue central business district as determined by the Joint State Legislative/Highway Commission and City of Bellevue I-405 Access Study.
9. The parties agree that the I-90 facility should be operated in such a manner as to encourage growth and development in the presently urbanized areas of King County rather than in undeveloped areas. Therefore, the Commission shall conduct a study in coordination with the parties to this agreement to determine the feasibility and means of metering and controlling local access to I-90 east of Bellevue during peak hours.

10. Seattle, Bellevue, Mercer Island, King County and Metro agree that dedicated public transit rights-of-way through downtown Seattle and through downtown Bellevue are compatible with the public transportation plans of this area and are desirable to be implemented in conjunction with the completion of the I-90 facility.
11. Immediately upon the issuance of the environmental impact statement, another review team comprised of representatives chosen by each of the parties to this agreement shall be established to further monitor and advise the Commission on the development of the design and the implementation of the entire I-90 facility and the I-90 transit access provisions listed in paragraph 3 above. In addition, review teams including elected officials and citizens from Seattle, Bellevue, Mercer Island and King County may be established to further monitor and advise the Commission upon the implementation and design of the I-90 facility.
12. Upon execution of this agreement, the Commission becomes responsible for the design and construction of the facilities described in this agreement that can be funded with federal interstate funds as well as any other facilities referred to in this agreement for which the Commission, by law, has the sole responsibility; and the several parties to this agreement become responsible for the design and construction of the remaining facilities referred to in this agreement; provided that all such undertakings are subject to available funding and legal and procedural requirements. Seattle,

Bellevue, Mercer Island, King County and the Commission agree to process any permits required for construction of the agreed upon facilities in a timely and expeditious manner, as provided by law.

13. It is expressly understood that agreement to the above by the Commission is tentative pending review of (1) the final environmental impact statement to be filed in connection with the project and (2) the hearing record being prepared in connection with the corridor-design hearing held in January and February 1976. It is also understood that the parties have reached this agreement under the assumption and on the condition that the funding for the project, in accordance with the modified design of said project as referred to in paragraphs 1, 2 and 4 and those eligible portions under paragraph 3 which will qualify for Federal Aid Interstate monies, is approved prior to the initiation of construction and shall be funded from federal and state funds, except as agreed to by the affected jurisdiction(s).
14. This agreement represents substantial accommodations by the parties of positions held heretofore. Such accommodations were made in order to achieve a unanimous agreement upon which to proceed with the design and construction of I-90 and related projects. This agreement, therefore, sets forth the express intent of the existing governing bodies that the parties to this agreement understand that their respective governing bodies are limited in the degree to which they can bind their successors with respect to the exercise of govern-

mental powers vested in those governing bodies by law. Accordingly, the Commission will take no action which would result in a major change in either the operation or the capacity of the I-90 facility without prior consultation with and involvement of the other parties to this agreement, with the intent that concurrence of the parties be a prerequisite to Commission action to the greatest extent possible under law.

Dated this 21st day of December, 1976

COUNTY OF KING

CITY OF SEATTLE

BY: [Signature]

BY: [Signature]

MUNICIPALITY OF METROPOLITAN

CITY OF MERCER ISLAND

SEATTLE

BY: [Signature]

BY: [Signature]

WASHINGTON STATE HIGHWAY

CITY OF BELLEVUE

COMMISSION

BY: [Signature]

BY: [Signature]

APPENDIX B



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

Decision on I-90, Seattle, Washington

This document sets forth my decision to approve construction of I-90 as proposed by the Washington State Department of Transportation. My approval is subject to certain conditions, discussed below.

The I-90 proposal is for construction of a 6.9-mile freeway from I-5 in Seattle to the already completed I-90 near I-405 in Bellevue. The State proposes to build a unique interstate facility which includes both highway and transit elements, funded with 90% federal funds. The plan consists of six general traffic lanes -- 3 eastbound, 3 westbound -- and a two-lane center roadway reserved for transit vehicles, carpools, and Mercer Island general traffic. The plan includes environmental amenities such as covered roadway sections, landscaping and bicycle/pedestrian trails. The proposed highway will replace the existing four-lane U.S. 10/SR 90, which has serious safety and capacity deficiencies.

It is my responsibility as the Secretary of Transportation to help maintain and improve the Nation's transportation system. In reaching socially responsible decisions on controversial highway projects, it is essential that the considerations be broadened to include the transportation, economic, and social and environmental costs and benefits. We must also consider the effects of highway projects on urban development and energy conservation goals in the context of this Administration's policies. Also, we must carefully weigh the cost effectiveness of the alternatives to determine whether the increased benefits of certain alternatives are commensurate with their costs. Because many of the important social and environmental factors do not lend themselves to quantification in terms of dollars, this assessment of the costs and benefits of various highway alternatives ultimately requires a judgement on my part. Therefore, in coming to my decision on this project, I have considered a number of factors, including primarily:

- The compatibility of this project with the long range development goals of the region.
- The effect of this project on the vitality of community life in the Seattle area both from an environmental and an economic perspective.
- The effect of this alternative on the long range transportation needs of the city, the region and the State.
- The contribution of this project to national goals and objectives of safe, efficient and balanced transportation systems.

The State's proposal for I-90 incorporates many features (including covered and depressed roadway sections and landscaping) designed to minimize environmental impacts of the proposed project and eliminate some of the environmental impacts of the existing highway. Because the 2TCP-2-2 alternative would continue use of the existing highway, the significant noise, visual and community severance impacts of the existing highway would remain.

The proposed project will displace 800 persons and 69 businesses, in addition to 438 persons already displaced. Significant construction impacts of the proposed project include noise, dust and traffic disruption. Both the proposed plan and the 2-2-2 alternative would impact a number of park and historic properties protected by section 4(f) of the DOT Act. However, the proposed project creates a 180-acre greenbelt which will compensate for the small amount of parkland used. An MOA has been signed with the Advisory Council on Historic Preservation concerning protection of the four historic sites eligible for the National Register.

A number of persons have expressed a concern that the proposed project does not include complete planning for transit access from I-90 to points in downtown Bellevue and downtown Seattle. Under the current plan, center roadway traffic will feed into general traffic lanes at both ends, or exit at Dearborn Street in Seattle. The I-90 MOA commits the parties to further planning and construction of transit access connections.

Seattle Metro, in cooperation with Washington State DOT, is currently conducting an I-90 Transit Access Study. I have examined preliminary reports on the Transit Access Study, and have concluded that problems of transit access to and from I-90 can be resolved by any of the alternatives under consideration.

ANALYSIS

In making my decision, I have before me the EIS, including the submission pursuant to section 4(f), and other elements of the administrative record. I have considered the report by Metro on transit access alternatives and the Report to Mayor Royer on Interstate 90. I have received written views from interested citizens and organizations, expressing both support for and opposition to the proposal. I have considered both the adverse and beneficial impacts of the alternatives and the measures which will be taken to minimize the adverse impacts.

One of the policy priorities in this Administration is to develop more effective urban transportation systems which are responsive to the President's Urban Policy. Under this Urban Policy, Federal agencies have a responsibility to encourage actions which will promote the revitalization of our Nation's urban areas. The Department

of Transportation will discharge this responsibility by encouraging and promoting the development of transportation systems that embrace various modes of transportation in a manner that will serve the states and local communities efficiently and effectively, and is consistent with community planning, development objectives, overall social, economic, environmental, and energy conservation goals and objectives. I believe that the proposed I-90 can contribute to many of these national goals and priorities. The following are key factors in my decision to approve the proposal:

Transportation Considerations. I have given great weight to the fact that the proposal provides special facilities for transit and carpools, as well as substantially increased highway capacity. This is consistent with the Department's policy to encourage intermodal solutions to metropolitan transportation needs.

I find the proposed I-90 to be consistent with the regional transportation plan, and believe it will best serve transportation needs in the I-90 corridor. The proposed project will provide a significant increase in the people-carrying capacity of the SR 90 corridor. The priority transit facilities will result in a substantial increase in transit patronage in the I-90 corridor, and will increase total cross-lake transit patronage. I have concluded that lesser scale alternative designs are not acceptable because they would not provide the transportation service necessary to correct both the safety and capacity deficiencies of the existing highway.

Because the local and regional governments are still developing transit circulation plans for downtown Seattle and downtown Bellevue, the project does not include complete planning for priority transit access from I-90 to points in the downtown areas. My approval includes a condition relating to provision of transit access to assure that such transit access is provided in conjunction with the I-90 project.

Intergovernmental Support. Local, regional, and State agency support for the proposal, as evidenced by the December 1976 MOA, has been critical to my decision. At the same time, I have considered the views of certain individuals and groups that favor other solutions to the transportation problems in the I-90 corridor.

Safety. The existing highway has serious safety deficiencies, including narrow shoulders and lanes, sharp curves, and no median barrier. The Lake Washington Bridge drawspan "bulge" is extremely hazardous because of the sharp curves and limited sight distance. These conditions, together with the peak hour reversible lane

system, have given this section of SR 90 one of the highest accident and fatality rates of any comparable facility in the State. The project will reduce the annual number of accidents on SR 90. Because congestion will be reduced on other highways as a result of the project, total accidents in the region as a whole will also be reduced.

I consider the safety problems of such a serious nature that I have added a condition to assure that the Lake Washington Bridge drawspan "bulge" is corrected as soon as possible.

Environmental Considerations. The proposed I-90 project, with the proposed environmental amenities, will enhance the environmental quality of the corridor by eliminating the severe adverse impacts of the existing highway, minimizing the long term impacts of the new highway, and creating 180 acres of greenbelt. The proposal to cover sections of the highway, which will unite currently severed urban areas in Seattle and on Mercer Island and create open space, is consistent with the Department's goal of making transportation decisions that improve the social and physical environment whenever possible, and thereby contribute to the health of the urban community.

Alternative designs which do not include these environmental amenities are not acceptable because they would continue the existing adverse impacts on the community. I have further concluded that alternative locations are not acceptable because they would cause greater disruption to the adjoining communities.

I have also concluded that under the provisions of section 4(f) of the DOT Act, there is no prudent and feasible alternative to the use of the parks and historic sites required for the project, and that all possible planning to minimize harm to the affected areas has taken place.

Cost. Project opponents believe that the project is too costly and that a less costly alternative should be constructed. I have carefully weighed the tradeoffs between the transportation, social, economic and environmental costs and benefits. Although the alternative I have chosen exceeds the cost of the other alternatives under consideration, I believe that when the environmental and social benefits are taken into consideration, the proposed project is most appropriate.

CONDITIONS

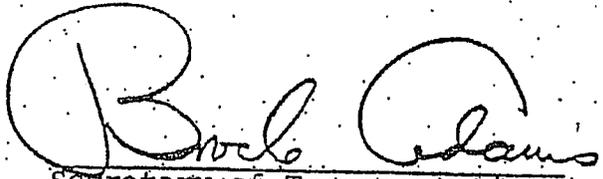
My approval of the I-90 proposal is in part based upon and subject to agreement by the Washington State DOT that it will implement certain conditions which I believe are necessary.

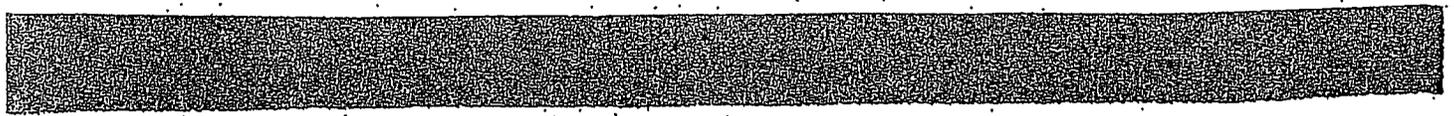
1. The acute safety problem presented by the "bulge" section of the existing Lake Washington Bridge must be corrected as soon as possible. Therefore, removal of the "bulge" section and associated work including construction of the East Channel Bridge shall be the first order of work.
2. FHWA approval of the plans, specifications, and estimates for portions of the I-90 project located east of the East Channel Bridge and its temporary connection to the existing highway, and west of 23rd Avenue, will be withheld until development and necessary approvals of design and financing agreements for priority transit access into downtown Seattle and downtown Bellevue (as enumerated in paragraph 3 of the MOA).
3. As provided in the MOA, public transportation shall permanently have first priority in the use of the center lanes. The Washington State DOT will assure that general Mercer Island traffic use of the center lanes is controlled to the extent necessary to maintain bus and carpool speeds of 45 mph or greater.

The Washington State DOT will comply with all applicable Federal Aid Highway Requirements and accordingly will take steps to implement an effective affirmative action program which will create opportunities for skilled training and jobs for substantial numbers of minorities, as well as opportunities for the participation of minority owned enterprises.

Cognizant of my legal responsibility and the urban policy of this Administration, I have rendered my best judgement.

September 20, 1978
Date


Secretary of Transportation



APPENDIX C

**AMENDMENT To The I-90
MEMORANDUM AGREEMENT**

AUGUST, 2004

**Central Puget Sound Regional Transit Authority
City of Bellevue
City of Mercer Island
City of Seattle
King County
Washington State Transportation Commission**

August 2004
Amendment to 1976 Memorandum Agreement

WHEREAS, the Cities of Seattle, Mercer Island, and Bellevue; King County; by and through their respective governing bodies and the Washington State Transportation Commission (hereinafter "the Commission") desire to amend the existing Memorandum Agreement (the Agreement) signed by all parties in 1976 to reflect current and future conditions and demands along the Interstate 90 (I-90) corridor between Bellevue and Seattle crossing Lake Washington via Mercer Island (the "I-90 Corridor"), including increased travel growth, changes in travel patterns, and a reduction in transit reliability; and

WHEREAS, there is a desire among the parties and Sound Transit to add Sound Transit as the Regional Transit Authority with responsibility for High Capacity Transit as a signatory to this 2004 Amendment, but not to the underlying 1976 Agreement, given its role in the region generally and the I-90 Corridor specifically; and

WHEREAS, all parties recognize the I-90 facility as a key interstate corridor connecting the East and West Coasts, Eastern and Western Washington, and recognize its importance as a critical link between major urban centers in King County, and the only means of mobility to and from Mercer Island; and

WHEREAS, all parties acknowledge I-90 as a critical transportation link vital to the economy of the region and the state by providing for the movement of people and goods within the region; and

WHEREAS, all parties agree that the current configuration and operation of I-90 between Bellevue, Mercer Island, and Seattle does not address today's demands and expected growth in the region; and a new configuration that helps move more people and goods is imperative to manage congestion on what is the busiest east-west corridor in the region; and

WHEREAS, all parties recognize the importance of the environment and thereby seek to preserve and enhance its quality; and

WHEREAS, all parties agree that the ultimate configuration for I-90 between Bellevue, Mercer Island, and Seattle should be defined as High Capacity Transit in the center roadway and HOV lanes in the outer roadways; and further agree that High Capacity Transit for this purpose is defined as a transit system operating in dedicated right-of-way such as light rail, monorail, or a substantially equivalent system; and

WHEREAS, all parties agree to work cooperatively to secure funding at local, regional, state, and federal levels to fully fund both parts of the ultimate configuration of the "I-90 Corridor" (HOV lanes on the outer roadway and High Capacity Transit in the center roadway); and

WHEREAS, all parties have studied many alternatives as participants on the Steering Committee for Sound Transit and the Washington State Department of Transportation's (WSDOT) I-90 Two-Way Transit and HOV Operations Project (Project), and all parties agree that building HOV lanes on the outer roadways as identified as Alternative R-8A as set forth in the April 25, 2003 Draft Environmental Impact Statement (DEIS) prepared for the project, is an essential first step toward achieving the ultimate configuration; and

WHEREAS, all parties acknowledge that the ultimate configuration is consistent with the region's transportation action plan, Destination 2030, which focuses on integrated multi-modal transportation systems; describing facilities that weave parts of the region together by crossing county or city boundaries or access major regional activity centers as critical to the region's transportation system; and specifically calls for safety, maintenance, and capacity investments on I-90 between I-5 and I-405; and high capacity transit in the "I-90 Corridor" between Seattle and Bellevue; and

WHEREAS, all parties agree that I-90 is an integral piece of the regional bike network, providing the only bicycle-pedestrian path across Lake Washington; that the preferred alternative maintains a ten foot bicycle lane as part of providing optimal multi-modal travel in the I-90 corridor for cyclists and pedestrians; and

WHEREAS, the Cities of Bellevue, Mercer Island, and Seattle; King County; Sound Transit, and the Washington State Transportation Commission, as participants of the I-90 Steering Committee, having conducted a thorough evaluation of the performance and benefits of the alternatives, agree that Alternative R-8A has been shown to improve regional mobility by providing reliable and safe two-way transit and high occupancy vehicle operations on I-90 between Bellevue, Mercer Island, and Seattle, and mobility for Mercer Island, while minimizing impacts to the environment, to other users, and to other transportation modes; and is an essential first step toward implementing High Capacity Transit in the I-90 corridor;

NOW THEREFORE BE IT RESOLVED, the parties to this 2004 Amendment agree to the following principles regarding future development of the I-90 Corridor between Seattle and Bellevue:

1. Alternative R-8A with High Capacity Transit deployed in the center lanes is the ultimate configuration for I-90 in this segment;
2. Construction of R-8A should occur as soon as possible as a first step to the ultimate configuration;
3. Upon completion of R-8A, move as quickly as possible to construct High Capacity Transit in the center lanes;
4. Commit to the earliest possible conversion of center roadway to two-way High Capacity Transit operation based on outcome of studies and funding approvals.
5. Minimize construction impacts to the existing bicycle/pedestrian path, and maintain safe access to the path during construction;

6. Maintain the existing width of the bicycle/pedestrian path and to install screen treatments to create a safe barrier between the path users and vehicular traffic; and
7. To the extent of any loss of mobility to and from Mercer Island based on the outcome of studies, additional transit facilities and services such as additional bus service, parking available for Mercer Island residents, and other measures shall be identified and satisfactorily addressed by the Commission, in consultation with the affected jurisdictions pursuant to paragraph 14 of the Agreement, prior to the time the center roadway converts to High Capacity Transit.

King County

By: [Signature]

Its: King County Executive

City of Bellevue

By: [Signature]

Its: Mayor

City of Mercer Island

By: [Signature]

Its: Mayor

Washington State

Transportation Commission

By: [Signature]

Its: Chairman

City of Seattle

By: [Signature]

Its: Mayor

Central Puget Sound

Regional Transit Authority

By: [Signature]

Its: Chief Executive Officer

APPENDIX D

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5352

61st Legislature
2009 Regular Session

Passed by the Senate April 25, 2009
YEAS 41 NAYS 8

President of the Senate

Passed by the House April 25, 2009
YEAS 77 NAYS 19

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 5352 as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 5352

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Transportation (originally sponsored by Senators Haugen and Marr; by request of Governor Gregoire)

READ FIRST TIME 03/31/09.

1 AN ACT Relating to transportation funding and appropriations;
2 amending RCW 46.68.170, 47.29.170, 46.16.685, 47.01.380, 47.01.390,
3 47.60.395, 88.16.090, 47.12.244, 46.16.725, 46.68.060, 46.68.220,
4 46.61.527, 46.63.170, 47.12.080, 43.19.642, 43.19.534, and 47.68.090;
5 creating new sections; making appropriations and authorizing
6 expenditures for capital improvements; and declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 2009-11 FISCAL BIENNIUM

9 NEW SECTION. Sec. 1. (1) The transportation budget of the state
10 is hereby adopted and, subject to the provisions set forth, the several
11 amounts specified, or as much thereof as may be necessary to accomplish
12 the purposes designated, are hereby appropriated from the several
13 accounts and funds named to the designated state agencies and offices
14 for employee compensation and other expenses, for capital projects, and
15 for other specified purposes, including the payment of any final
16 judgments arising out of such activities, for the period ending June
17 30, 2011.

1 The appropriation in this section is subject to the following
2 conditions and limitations:

3 (1) \$236,000 of the motor vehicle account--state appropriation is
4 a reappropriation from the 2007-09 fiscal biennium for a comprehensive
5 analysis of mid-term and long-term transportation funding mechanisms
6 and methods. Elements of the study will include existing data and
7 trends, policy objectives, performance and evaluation criteria,
8 incremental transition strategies, and possibly, scaled testing.
9 Baseline data and methods assessment must be concluded by December 31,
10 2009. Performance criteria must be developed by June 30, 2010, and
11 recommended planning level alternative funding strategies must be
12 completed by December 31, 2010.

13 (2) \$200,000 of the motor vehicle account--state appropriation is
14 for the joint transportation committee to convene an independent expert
15 review panel to review the assumptions for toll operations costs used
16 by the department to model financial plans for tolled facilities. The
17 joint transportation committee shall work with staff from the senate
18 and the house of representatives transportation committees to identify
19 the scope of the review and to assure that the work performed meets the
20 needs of the house of representatives and the senate. The joint
21 transportation committee shall provide a report to the house of
22 representatives and senate transportation committees by September 1,
23 2009.

24 (3) \$300,000 of the motor vehicle account--state appropriation is
25 for an independent analysis of methodologies to value the reversible
26 lanes on Interstate 90 to be used for high capacity transit pursuant to
27 sound transit proposition 1 approved by voters in November 2008. The
28 independent analysis shall be conducted by sound transit and the
29 department of transportation, using consultant resources deemed
30 appropriate by the secretary of the department, the chief executive
31 officer of sound transit, and the cochairs of the joint transportation
32 committee. It shall be conducted in consultation with the federal
33 transit and federal highway administrations and account for applicable
34 federal laws, regulations, and practices. It shall also account for
35 the 1976 Interstate 90 memorandum of agreement and subsequent 2004
36 amendment and the 1978 federal secretary of transportation's
37 environmental decision on Interstate 90. The department and sound

1 transit must provide periodic reports to the joint transportation
2 committee, the sound transit board of directors, and the governor, and
3 report final recommendations by November 1, 2009.

4 NEW SECTION. Sec. 205. FOR THE TRANSPORTATION COMMISSION

5	Motor Vehicle Account--State Appropriation	\$2,237,000
6	Multimodal Transportation Account--State Appropriation	\$112,000
7	TOTAL APPROPRIATION	\$2,349,000

8 The appropriations in this section are subject to the following
9 conditions and limitations:

10 (1) Pursuant to RCW 43.135.055, during the 2009-11 fiscal biennium,
11 the transportation commission shall periodically review and, if
12 necessary, modify the schedule of fares for the Washington state ferry
13 system. The transportation commission may increase ferry fares,
14 except no fare schedule modifications may be made prior to September 1,
15 2009. For purposes of this subsection, "modify" includes increases or
16 decreases to the schedule. The commission may only approve ferry fare
17 rate changes that have the same proportionate change for passengers as
18 for vehicles.

19 (2) Pursuant to RCW 43.135.055, during the 2009-11 fiscal biennium,
20 the transportation commission shall periodically review and, if
21 necessary, modify a schedule of toll charges applicable to the state
22 route number 167 high occupancy toll lane pilot project, as required
23 under RCW 47.56.403. For purposes of this subsection, "modify"
24 includes increases or decreases to the schedule.

25 (3) Pursuant to RCW 43.135.055, during the 2009-11 fiscal biennium,
26 the transportation commission shall periodically review and, if
27 necessary, modify the schedule of toll charges applicable to the Tacoma
28 Narrows bridge, taking into consideration the recommendations of the
29 citizen advisory committee created under RCW 47.46.091. For purposes
30 of this subsection, "modify" includes increases or decreases to the
31 schedule.

32 (4) The commission may name state ferry vessels consistent with its
33 authority to name state transportation facilities under RCW 47.01.420.
34 When naming or renaming state ferry vessels, the commission shall
35 investigate selling the naming rights and shall make recommendations to
36 the legislature regarding this option.

1 projects on state route number 2 between Monroe and Gold Bar, which may
2 include median rumble strips, traffic cameras, and electronic message
3 signs.

4 (15) Expenditures for the state route number 99 Alaskan Way viaduct
5 replacement project must be made in conformance with Engrossed
6 Substitute Senate Bill No. 5768.

7 (16) The department shall conduct a public outreach process to
8 identify and respond to community concerns regarding the Belfair
9 bypass. The process must include representatives from Mason county,
10 the legislature, area businesses, and community members. The
11 department shall use this process to consider and develop design
12 alternatives that alter the project's scope so that the community's
13 needs are met within the project budget. The department shall provide
14 a report on the process and outcomes to the legislature by June 30,
15 2010.

16 (17) The legislature is committed to the timely completion of R8A
17 which supports the construction of sound transit's east link.
18 Following the completion of the independent analysis of the
19 methodologies to value the reversible lanes on Interstate 90 which may
20 be used for high capacity transit as directed in section 204 of this
21 act, the department shall complete the process of negotiations with
22 sound transit. Such agreement shall be completed no later than
23 December 1, 2009.

24 (18) \$250,000 of the motor vehicle account--state appropriation is
25 provided solely for the design and construction of a right turn lane to
26 improve visibility and traffic flow on state route number 195 and
27 Cheney-Spokane Road.

28 (19) \$846,700 of the motor vehicle account--federal appropriation
29 and \$17,280 of the motor vehicle account--state appropriation are
30 provided solely for the Westview school noise wall..

31 (20) \$1,360 of the motor vehicle account--state appropriation and
32 \$35,786 of the motor vehicle account--federal appropriation are
33 provided solely for interchange design and planning work on US 12 at A
34 Street and Tank Farm Road.

35 (21) \$20,011,125 of the transportation partnership account--state
36 appropriation, \$2,550 of the motor vehicle account--state
37 appropriation, \$30,003,473 of the motor vehicle account--private/local
38 appropriation, and \$1,482,066 of the motor vehicle account--federal

OFFICE RECEPTIONIST, CLERK

To: Taylor, Dawn
Subject: RE: Kemper Freeman v. Gregoire: Cause No. 833494: Sound Transit's Answer to Petition Against State Officer

Rec. 8-20-09

From: Taylor, Dawn [mailto:dawn.taylor@klgates.com]
Sent: Thursday, August 20, 2009 3:45 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Kemper Freeman v. Gregoire: Cause No. 833494: Sound Transit's Answer to Petition Against State Officer

Attached for email filing is Sound Transit's Answer to Petition Against State Officer and a Certificate of Service regarding same.

Courtesy copies (2) will follow via U.S. Mail.

Please contact us should you have any questions or concerns.

Thank you.

<<Certificate of Service - Answer to Petition.pdf>> <<Sound Transit's Answer to Petition Against State Officer.pdf>>

Dawn M. Taylor
Assistant to Paul J. Lawrence,
Matthew J. Segal
and Kari L. Vander Stoep
K&L Gates LLP
Phone: 206-370-5734
Fax: 206-623-7022
Email: Dawn.taylor@klgates.com
www.klgates.com

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No. 833494

SUPREME COURT OF THE STATE OF WASHINGTON

KEMPER FREEMAN, JIM HORN,
STEVE STIVALA, KEN
COLLINS, MICHAEL DUNMIRE,
SARAH RINLAUB, AL
DEATLEY, JIM COLES, BRIAN
BOEHM, and EASTSIDE
TRANSPORTATION
ASSOCIATION, a Washington
nonprofit corporation,

Petitioners,

vs.

CHRISTINE O. GREGOIRE, a
state officer in her capacity as
Governor of the State of
Washington, and PAULA J.
HAMMOND, a state officer in her
capacity as Secretary of the
Washington State Department of
Transportation,

Respondents.

CERTIFICATE OF
SERVICE

CLERK

BY RONALD R. CARPENTER

2009 AUG 20 P 3:49

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

I hereby certify under penalty of perjury of the laws of the State of
Washington that on this 20th day of August, 20092009, I caused true and
correct copies of Sound Transit's Answer to Petition against State Officer
to be delivered via the agreed upon methods below to the following:

Phillip Talmadge
Talmadge/Fitzpatrick
18010 Southcenter Pkwy
Tukwila, WA 98188-4630
phil@tal-fitzlaw.com
Attorney for Petitioners

Served via email and U.S. Mail

George Kargianis
Law Offices of George Karginis
701 5th Avenue, Suite 4760
Seattle, WA 98104-7035
george@kargianislaw.com
Attorney for Petitioner

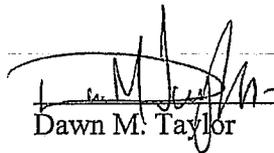
Served via email and U.S. Mail

ORIGINAL

Bryce Brown
Attorney at Law
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Olympia, WA 95804.0113
BryceB@atg.wa.gov

Attorney for Respondents

Served via email and U.S. Mail



Dawn M. Taylor

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