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No. 87267-8

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KEMPER FREEMAN, JIM HORN, STEVE STIVALA, KEN COLLINS, MICHAEL DUNMIRE, SARAH RINDLAUB, AL DEATLEY, JIM COLES, BRYAN BOEHM, EMORY BUNDY, ROGER BELL, EASTSIDE TRANSPORTATION ASSOCIATION, a Washington nonprofit corporation, and MARK ANDERSON,

Appellants,

v.

STATE OF WASHINGTON, CHRISTINE O. GREGOIRE, Governor, PAULA HAMMOND, Secretary, Department of Transportation, CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY,

Respondents.

SOUND TRANSIT'S ANSWER TO *AMICUS* BRIEFS OF SAVE MI SOV AND HANEY TRUCK LINE, LLC

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ORIGINAL

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I. INTRODUCTION

Nearly four years ago, Appellants filed an original action in this Court alleging that WSDOT's decision to lease the center lanes of I-90 to Sound Transit violated the 18th Amendment,[1] even though the lease will be accompanied by a full and fair reimbursement of Motor Vehicle Funds invested in the I-90 bridge.[2] This Court dismissed the original action. Appellants refiled their case in Kittitas County Superior Court, asserting both an 18th Amendment violation and a challenge to WSDOT's statutory authority to lease the center lanes. The superior court dismissed all of Appellants' claims, which are now before this Court on direct review.

Amici, taking their lead from Appellants, have shifted away from the 18th Amendment challenge in favor of a challenge to WSDOT's statutory authority. *Amici's* arguments are deeply rooted in policy disagreements with the State, Sound Transit, and decisions by both the voters and the Legislature to place light rail in the center lanes of the I-90 bridge. But *amici's* arguments are untenable, as the Legislature, the voters, and local governments have made it clear that they support the East

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[1] Const. art. II, § 40 (amend. 18).

[2] As in prior briefing, WSDOT refers to the Washington State Department of Transportation, Sound Transit refers to the Central Puget Sound Regional Transit Agency, I-90 refers to Interstate 90, and the I-90 bridge refers to the span of I-90 joining Seattle, Mercer Island, and Bellevue.

Link project. The Legislature also has granted WSDOT more than ample authority to implement the project.

The *amicus* briefs of Haney Truck Line, LLC ("Haney Truck") and Save MI SOV do demonstrate, however, that this case has migrated from a constitutional challenge to a policy disagreement advanced by a small group who want the bridge designed and operated to suit their individual interests. *Amici* present virtually no argument on the 18th Amendment. And their statutory arguments are made in passing and tied almost exclusively to *amici's* own preferences for additional lanes of vehicle traffic rather than transit. *Amici's* preferences do not demonstrate that the trial court erred in dismissing Appellants' constitutional and statutory claims. And even if *amici's* policy positions legally were relevant, they are not based on the record in this case (and in fact are contradicted directly by the record).

In sum, *amici* add nothing new to the issues before this Court.[3] Sound Transit respectfully requests that the Court affirm the trial court.

[3] This is literally true in the sense that substantial sections of both *amicus* briefs are simply cut and pasted from *amicus* briefs submitted with the original action, in some cases not even going so far as to change the citations to the parties' briefing. *Compare, e.g.*, Haney Truck Br. *with* Br. of Nelson Trucking, *Freeman v. Gregoire*, Case No. 83349-4, 2010 WL 3426604 (Wash. 2010) (Appellate Brief).

II. ARGUMENT IN RESPONSE TO *AMICI*

Amici improperly equate this case with an administrative appeal under the Administrative Procedure Act ("APA"), or a challenge to administrative regulations in conflict with legislative enactments.[4] Any decision by WSDOT to sell, lease, or contract regarding the use of highway property is expressly excluded from APA review. RCW 34.05.010(3). Moreover, there is no challenge to a regulation in this case, nor is there an allegation that WSDOT's actions conflict with an independent statutory scheme. Under the circumstances in this case, if the "'administrative agency has acted honestly, with due deliberation, within the scope of and to carry out its statutory and constitutional functions, and been neither arbitrary, nor capricious, nor unreasonable, there is nothing left for the courts to review.'" *Cent. Puget Sound Reg'l Transit Auth. v. Miller*, 156 Wn.2d 403, 419, 128 P.3d 588 (2006) (quoting *Deaconess Hospital v. Wash. State Highway Comm'n,* 66 Wn.2d 378, 406, 403 P.2d 54 (1965)).

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[4] *See* Haney Truck Br. at 3 (citing *Rettkowski v. Dep't of Ecology*, 122 Wn.2d 219, 226, 858 P.2d 232 (1993) (in APA review, Court determined that cease and desist orders relating to groundwater withdrawals were *ultra vires*); *Noel v. Cole*, 98 Wn.2d 375, 655 P.2d 245 (1982) (holding that while "there is no question that [the Department of Natural Resources] has general authority to sell timber on land held in trust for educational purposes," its contract was invalid solely because it failed to comply with SEPA), *superseded by statute on other grounds as recognized in Dioxin/Organochlorine Ctr. v. Pollution Control Hearings Bd.*, 131 Wn.2d 345, 360, 932 P.2d 158 (1997)); *Gugin v. Sonico, Inc.*, 68 Wn. App. 826, 831, 846 P.2d 571 (1993) (holding that Human Rights Commission regulation that exceeded statutory authority was invalid)).

A. WSDOT Is Authorized to Allow Sound Transit's Use of the I-90 Center Lanes for Light Rail.

In reaching an agreement with Sound Transit that allows the use of the I-90 center lanes for light rail upon Sound Transit's reimbursement of the Motor Vehicle Fund, WSDOT has carried out its constitutional and statutory mandate lawfully and in good faith.

The Legislature may, consistent with the Constitution, grant WSDOT whatever authority it deems appropriate to manage, use, and dispose of highway property. "The essential principle to be kept in mind is that the legislature, within constitutional limitations, has absolute control over the highways of the state, both rural and urban." *State ex rel. York v. Bd. of Comm'rs of Walla Walla Cnty.*, 28 Wn.2d 891, 898, 184 P.2d 577 (1947); *see also Wash. State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 301, 174 P.3d 1142 (2007) ("Insofar as legislative power is not limited by the constitution it is unrestrained." (citation omitted)).

The Legislature created WSDOT to coordinate the State's transportation needs, RCW 47.01.011, and has enacted numerous statutes to assure that WSDOT can accomplish those goals. *Amici* urge this Court to read these <u>grants</u> of authority as <u>restrictions</u>, *see e.g.* Haney Truck Br. at 4, but this is inconsistent with our constitutional structure, *Moses Lake Sch. Dist. No. 161 v. Big Bend Cmty. Coll.*, 81 Wn.2d 551, 555, 503 P.2d

86 (1972) (holding that "the state constitution is a limitation upon the power of the legislature rather than a grant thereof.").

The Legislature also explicitly has granted the Secretary of Transportation the broad power to restrict the use of a portion of a state highway to rail mass transit in urban areas:

> Nothing in the law of this state prevents the secretary [of transportation], county legislative authority, or governing body of any city or town from... restricting the use of any portion of any state highway, county road, or city street, as the case may be, to its use by an urban public transportation system.[5]

RCW 47.48.010. WSDOT is a state highway authority carrying out the directives of the secretary. RCW 47.01.011. Sound Transit operates an urban public transportation system. RCW 81.112.030; RCW 47.04.082. Thus, under RCW 47.48.010, nothing "in the law of this state" prohibits WSDOT from restricting the use of I-90 to light rail trains that are part of Sound Transit's urban public transportation system.

Moreover, under this statute, a decision to close or limit the use of a road will be upheld so long as it is reasonable, even if there may be room for debate as to the wisdom of the decision or the manner in which it is implemented. As this Court said in interpreting an earlier version of RCW 47.48.010:

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[5] An urban transportation system includes "trains, electric trolley coaches, other public transit vehicles, or any combination thereof...." RCW 47.04.082.

> The statute places it within the power of the county commissioners to close the roads to classes of vehicles. The resolution applies to all freight trucks. It is impossible to say that this class of vehicles is arbitrarily selected without any justification. A reasonable basis exists for the classification, and, although it may not be made with mathematical nicety and may result in some inequality, the same may be said of any classification which comes to mind.

State v. Jones, 137 Wash. 556, 558, 243 P. 1 (1926).

In the same vein as RCW 47.48.010, RCW 47.52.090 allows a state highway authority and a municipal corporation "owning or operating an urban public transportation system" to enter into agreements "respecting the financing, planning, establishment, improvement, construction, maintenance, use, regulation, or vacation of limited access facilities in their respective jurisdictions to facilitate the purposes of this chapter." RCW 47.52.090. Agreements under this statute "may provide for the exclusive or nonexclusive use of a portion of the facility by streetcars, trains, or other vehicles forming a part of an urban public transportation system and for the erection, construction, and maintenance of structures and facilities of such a system including facilities for the receipt and discharge of passengers." *Id.*

The agreement between WSDOT and Sound Transit provides for trains to use the center lanes of the I-90 bridge (subject to the payment of

consideration to satisfy the 18th Amendment). CP 1968-2201. This falls directly within the purview of RCW 47.52.090.[6]

These specific statutes explicitly allow the Secretary of Transportation and WSDOT to restrict the center lanes to light rail use. The decision to do so is discretionary and must be upheld if there is any reasonable basis to do so. *See Jones*, 137 Wash. at 558; *Deaconess Hospital,* 66 Wn.2d at 406 (design of highway must be upheld unless arbitrary and capricious). Contrary to *amici* and Appellants' arguments, nothing suggests that the Legislature intended the administrative leasing statute, RCW 47.12.120, to take away the broad discretionary power granted to WSDOT and the Secretary in RCW 47.48.010 and RCW 47.52.090. Given the Legislature's recent statement supporting prompt conversion of the center lanes to light rail use by Sound Transit in the 2009 biennial budget, AF ¶ 30 & Ex. G at 43[7] (CP 114, 257), the Legislature could not have intended the leasing statute to make the

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[6] See also RCW 47.04.081 ("The department is empowered to join financially or otherwise with any public agency or any county, city, or town in the state of Washington or any other state, or with the federal government or any agency thereof, or with any or all thereof for the planning, development, and establishment of urban public transportation systems in conjunction with new or existing highway facilities."); RCW 47.04.083 ("The separate and uncoordinated development of public highways and urban public transportation systems is wasteful of this state's natural and financial resources. It is the public policy of this state to encourage wherever feasible the joint planning, construction and maintenance of public highways and urban public transportation systems serving common geographical areas as joint use facilities....").

[7] AF refers to the Agreed Statement of Facts from the initial original action, located in the record at CP 105-595.

agreement to implement light rail subject to court rejection solely because the agreement includes a lease.

In fact, the Legislature's intent to authorize, rather than prohibit, the use of the I-90 center lanes for rail transit has been evident for decades. Following execution of the original Memorandum Agreement[8] in 1976, the Legislature amended RCW 47.52.180. *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 745, 620 P.2d 82 (1980) (citing RCW 47.52.180). This amendment ratified the Memorandum Agreement as a binding modification to the decision of the Board of Review, which in the words of this Court approved "the design of the highway as a limited access facility with provision for mass transit." *Id.* at 748. The Memorandum Agreement expressly allowed WSDOT to determine the future use of the center lanes in consultation with other affected jurisdictions. AF ¶ 5, Ex. A at ¶ 1(e) (CP 107-08, 127-28). WSDOT did so through a process culminating in the 2004 Amendment[9] providing for "High Capacity Transit in the center roadway and HOV lanes in the outer roadways." AF ¶ 16, Ex. C (CP 110, 146).

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[8] As in Sound Transit's earlier briefing, "Memorandum Agreement" refers to the agreement described and attached at AF ¶ 5 & Ex. A (CP 107, 122-136).

[9] As in Sound Transit's earlier briefing, the "2004 Amendment" refers to the agreement described and attached at AF ¶ 16 & Ex. C (CP 110, 144-48).

In 2009, the Legislature further evidenced its intent, when it passed ESSB 5352 stating: "The legislature is committed to the timely completion of R8A which supports the construction of sound transit's east link." Laws of 2009, ch. 470, § 306(17) (CP 257). "East link" refers to the portion of the *Sound Transit 2 Regional Transit Plan* ("ST 2"), which extends light rail across I-90. AF ¶ 23 (CP 112). At the time it was adopted by voters in 2008, ST 2 included specific plans for light rail in the I-90 center lanes. *See* CP 2340, 2459, 2546.

In sum, construing the general leasing statute, RCW 47.12.120, as a substantive restriction prohibiting the agreement between WSDOT and Sound Transit, is contrary to specific legislative intent evidenced in numerous other statutes.[10] The leasing statute was not intended, and should not be interpreted, to allow the courts to substitute their judgment for the legislative and administrative policy judgments of the Legislature or WSDOT.

B. WSDOT Has Determined, in Good Faith, that the I-90 Center Lanes Should Be Dedicated to Light Rail.

Notwithstanding the above authority, *amici* contend that WSDOT is prohibited from leasing the I-90 center lanes for light rail unless the

[10] "The provisions of [Title 47 RCW] shall be construed in pari materia even though as a matter of prior legislative history they were not originally enacted in the same statute. The provisions of this title shall also be construed in pari materia with the provisions of Title 46 RCW, and with other laws relating to highways, roads, streets, bridges, ferries and vehicles. This section shall not operate retroactively." RCW 47.98.020.

lanes are "not presently needed." This phrase derives from RCW 47.12.120, which states that "[t]he department may rent or lease any lands, improvements, or air space above or below any lands that are held for highway purposes but are not presently needed." It authorizes the lease of "lands used or to be used for both limited access and conventional highways...." RCW 47.12.120(3). The statute further provides that "[t]he rental or lease . . . [m]ust be upon such terms and conditions as the department may determine." RCW 47.12.120(1).

This Court already stated in the original action that WSDOT's decision to lease the center lanes is inherently discretionary. *Freeman v. Gregoire*, 171 Wn.2d 316, 327-28, 256 P.3d 264 (2011) ("*Freeman* I") (noting that a budget appropriation does not mandate how WSDOT exercises a future "discretionary" decision to negotiate an agreement to permit light rail in the center lanes). This statement is consistent with prior cases concluding that the Legislature has vested discretion in various state departments (including WSDOT) to carry out their specified duties. *See, e.g., Household Fin. Corp. v. State,* 40 Wn.2d 451, 460, 244 P.2d 260 (1952) (Supervisor of Banking exercises discretion to determine whether business will promote pubic convenience). Since *Freeman* I, WSDOT has exercised its discretion and determined that after the replacement HOV lanes are completed, the I-90 center lanes are no longer presently needed

and may be leased for light rail use. CP 1970. As a result, even if WSDOT must rely solely on RCW 47.12.120 to lease the center lanes to Sound Transit, it has met the requirements of that statute.

Amici, however, read RCW 47.12.120 to require the continued use of any past or present highway facility for motor vehicles, so long as any objecting party or interest group can allege some impact to their preferred use of the highway system. Thus, Haney Truck contends that any potential impact on trucking precludes the use of the center lanes, while Save MI SOV asserts that any impact on Mercer Island residents wishing to drive solo in the center lanes has the same result.

Haney Truck contends that three cases (concerning a deed, zoning in Utah, and a 19th century Wisconsin statute) support this overbroad interpretation of when property is "needed" for highway purposes. *See* Haney Truck Br. at 5-8. The sole Washington case, *King Cnty. v. Hanson Inv. Co.*, 34 Wn.2d 112, 208 P.2d 113 (1949), says nothing about authority to determine the use of highway property. Rather, *Hanson* concerned the judicial construction of a deed that conveyed land to King County "for use of the public forever, as a public road and highway" and whether an irregularly shaped portion of that land could be used for the park. *Id.* at 116-18. The Court confined its inquiry to the specific language in the deed and whether the parties intended that the land be used for a park, *not*

whether King County could determine if the land was needed for a highway. *See id.* at 122. Contrary to Haney Truck's suggestion, *Hanson* is limited to the specific context of deed interpretation and has no bearing on how highway property may be used in other contexts.

Similarly, the out-of-state cases relied on by Haney Truck concern completely unrelated legal issues. In *Culbertson v. Bd. of Cnty. Comm'rs of Salt Lake Cnty.*, 2001 UT 108, 44 P.3d 642, 654 (2001), *overruled by Madsen v. JPMorgan Chase Bank, N.A.*, No. 20120241, 2012 WL 3639706 (Utah Aug. 24, 2012), a zoning case, the Utah Supreme Court considered only whether a county complied with its own ordinances in issuing a conditional use permit and in vacating certain public streets. *Culbertson* did not hold that the county lacked the authority to vacate streets, but instead concluded that the county had failed to comply with the applicable ordinances in doing so. *See id.* In *Maire v. Kruse*, 85 Wis. 302, 55 N.W. 389, 390 (1893), the Supreme Court of Wisconsin considered whether, under a specific Wisconsin statute, an individual could appropriate a highway that had fallen into disuse for his private use.

Overall, no case law or statute supports *amici's* position that WSDOT's authority to manage the highway system, close lanes, or reach agreements with transit authorities, is dependent on WSDOT's ability to disprove any potential traffic impact resulting from that decision. Were

that the case, every decision by WSDOT would be subject to a trial *de novo* in superior court and become a battle of traffic "experts." As this Court previously has held, such a scenario is not only unworkable but contrary to the requirement of separation of powers. *Household Fin. Corp.*, 40 Wn.2d at 456-57. The trial court correctly concluded that absent a showing of fraud, bad faith, or arbitrary and capricious decision-making, WSDOT's decision should be upheld. CP 3174 (citing *State ex rel. Agee v. Superior Court*, 58 Wn.2d 838, 839, 365 P.2d 16 (1961)).

C. *Amici's* Disagreement with WSDOT's Judgment Does Not Undermine the Basis of WSDOT's Decision.

Finally, although *amici's* arguments regarding traffic impacts are not legally relevant to the issue before the Court, the arguments themselves do not hold up. The record shows ample support for WSDOT's decision. Two replacement transit/HOV lanes will significantly reduce congestion on I-90 by adding lane capacity in both directions, in contrast to the current one-direction operation of the center roadway, which was designed to meet the now-outdated commute patterns of the 1970s. CP 1961, 2408-09, 2802. Because of access limitations, the two center lanes currently have the capacity of only one lane, carry only a small fraction of overall traffic volume, and do not favorably impact

freight traffic. CP 1961-62, 2803-05.[11] With light-rail in the center lanes, vehicle travel times will remain the same or improve, the capacity to move people across I-90 will increase from 10 to 30 percent with East Link compared to a configuration that retains the reversible center roadway, and freight traffic travel times will remain similar or improve. *See* CP 2204-05, 2801-05. *Amici's* objections to these findings are entirely unsupported, based on inadmissible materials or opinion papers outside the record, or cite only half of the information contained in the detailed reports and studies in the record on which WSDOT relied.

Haney Truck disagrees with WSDOT's decision because it claims there will be an adverse impact on trucking. This issue was considered at length in the environmental review process for East Link. Table 3-33 in the East Link EIS provides truck volumes on I-90 across Lake Washington with the East Link project. *See* CP 2328, 2804. The total truck volumes along I-90 would remain similar or increase with the East Link project compared to the No-Build option. This is illustrated in the following charts drawn from data in the East Link EIS:

[11] In 2008, the I-90 bridge carried 143,100 vehicles per day, and the two center lanes carried only 9,300 vehicles per day. In 2010, the I-90 bridge carried 139,800 vehicles per day, and the two center lanes carried 11,700 vehicles per day. CP 1962.

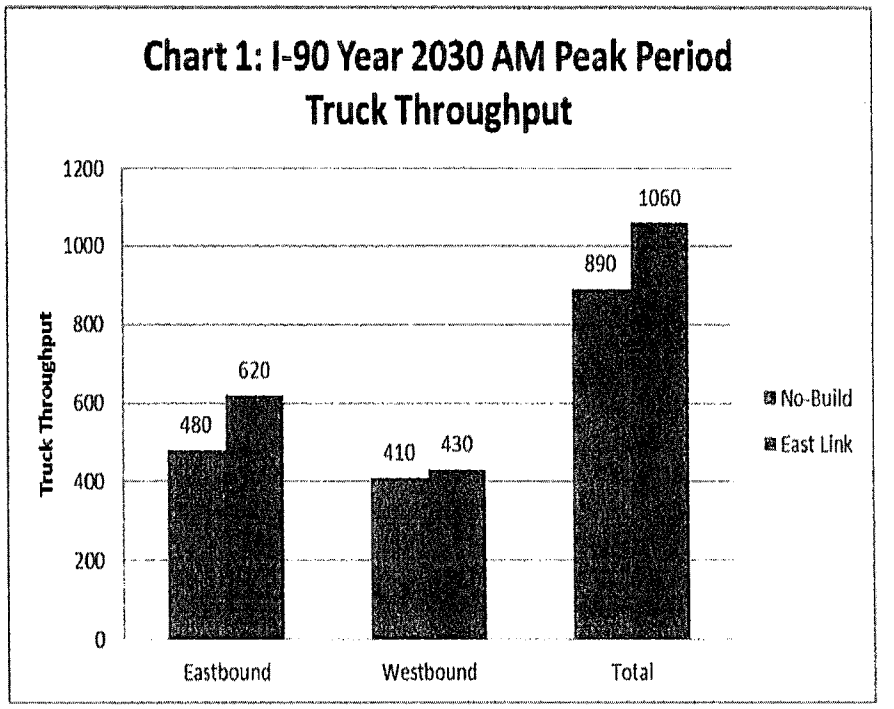
Chart 1: I-90 Year 2030 AM Peak Period
Truck Throughput
Truck Throughput
1200
1000
800
600
400
200
0
480
620
410
430
890
1060
Eastbound
Westbound
Total
No-Build
East Link

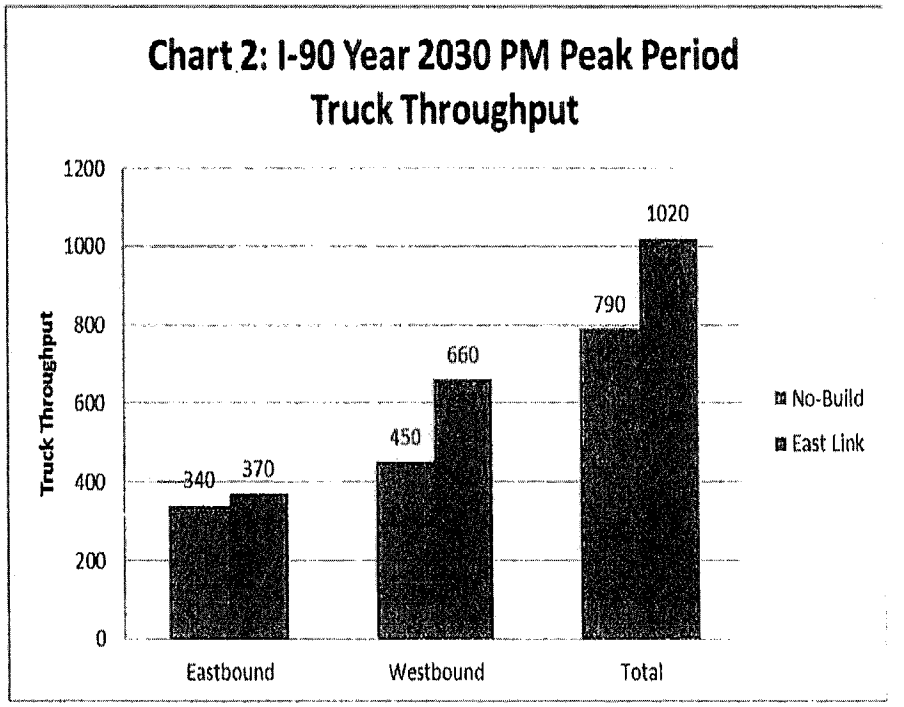
Chart 2: I-90 Year 2030 PM Peak Period
Truck Throughput
Truck Throughput
1200
1000
800
600
400
200
0
340
370
450
660
790
1020
Eastbound
Westbound
Total
No-Build
East Link

See CP 2328 (Table 3-33, containing all data displayed above).

Haney Truck suggests that truck drivers will see a 19% reduction during the afternoon commute. Haney Truck Br. at 11. This statement, however, selectively isolates one direction of traffic. As shown by the tables above, when considering both directions, the analysis in the East Link EIS estimates that the number of truck drivers crossing Lake Washington on I-90 during the afternoon peak is improved substantially with light rail as compared to the No-Build condition. The Record of Decision for the East Link EIS, therefore, concluded that "the average truck travel time in the afternoon peak period in 2030 would improve with an approximately 5-minute travel time savings. Average truck travel time in the morning peak period would be comparable with the no-build condition, with a potential 1-minute travel time savings." CP 1563.

Save MI SOV objects to WSDOT's decision because Mercer Island residents may no longer be entitled to drive alone in the I-90 HOV lanes. Of course, single-occupancy vehicle use of the center lanes for Mercer Island residents never was guaranteed in perpetuity. To the contrary, the Memorandum Agreement states that it is an initial use subject to ultimate conversion of the center lanes to transit use. CP 127-28. The City of Mercer Island signed the Memorandum Agreement and

the 2004 Amendment (which stated the High Capacity Transit in the I-90 center lanes was the ultimate configuration for I-90). CP 136, 147-48.

Like Appellants, Save MI SOV attempts to compare the construction of light rail with a hypothetical "alternative" where the R-8A project is completed without light rail in the center lanes, thereby creating a ten lane highway. Save MI SOV Br. at 14-16, 18. As discussed in prior briefing, however, absent the use of the center lanes for light rail, there is no funding to complete R-8A. CP 3131-32 (Sound Transit's funding contributions for the R-8A project are dependent on use of center lanes for light rail). Moreover, the Memorandum Agreement provided that I-90 would have "no more than eight motor vehicle lanes," with "two lanes designed for and permanently committed to transit use." CP 2346-47. A permanent ten-lane highway also is inconsistent with the Memorandum Agreement and 2004 Amendment, which were made legally binding by RCW 47.52.180.

Despite these facts, Save MI SOV relies on materials outside the record to argue that the preferred configuration of I-90 should be ten vehicle lanes and that the center roadway will be closed for a period of six years, during which time it will be needed for vehicle purposes. *See* Save MI SOV Br. at 4, 8-9, 14, 16, 18, and Apps. 1 and 2. Save MI SOV mischaracterizes excerpts from the 2004 I-90 Two-Transit and HOV

Operations Final Environmental Impact Statement ("I-90 EIS"), to argue that the center roadway is needed for vehicle use. *See id.* at 4, 8, 14, 16, and 18. But Save MI SOV ignores the fact that the trial court did consider undisputed evidence that the I-90 EIS "did not evaluate a condition with light rail in the center roadway" and, thus, "conclusions drawn from the I-90 EIS are not relevant to how I-90 traffic operations would operate with light rail in the center roadway." CP 2797-98.

The trial court also considered relevant excerpts from the I-90 EIS, which concluded that R-8A was "'an essential first step towards achieving a long-term transit vision for the Eastside; with the ultimate configuration of the I-90 corridor to include high capacity transit in the center roadway'" and that "'Alternative R-8A would be the most adaptable (in physical configuration) alternative in terms of compatibility for conversion of the I-90 center roadway to light rail use.'" CP 2798 (quoting I-90 EIS at S-1 (CP 2807) and 3.2-44 (CP 2809)); *see also* CP 3132 ("Under no scenario was there ever a plan or funding for I-90 to permanently operate as [a] ten-lane highway."). Moreover, the trial court considered evidence that R-8A would reduce congestion in the reverse peak direction by adding bi-directional HOV lanes to the outer roadway, not by retaining the center roadway for vehicle use. *See, e.g.*, CP 2798. The undisputed record demonstrates that each of the issues raised by Save MI SOV were

analyzed and addressed in the traffic analysis relied upon by WSDOT. *See, e.g.*, CP 2203-04, 2207-2338. Accordingly, Save MI SOV's claim that WSDOT failed to design the highway as Save MI SOV wanted, and its reliance on material outside of the record, or out of context, should be disregarded.

Save MI SOV also speculates that the Federal Highway Administration may close one onramp from Mercer Island to I-90 westbound for safety reasons. Save MI SOV Br. at 5-8. As stated in a letter from WSDOT and the Governor's Office contained in the appendices to the East Link EIS, the current plan is for this ramp to remain open and monitored.[12] As the letter also notes, "other issues apart from Mercer Island considerations are involved in HOV lane access for Mercer Island. An equitable outcome must also take into account the reasonable expectations of all the users of the corridor, including users of transit and other high occupancy vehicles who must be assured that the lane meets performance standards." *Id.* Even if the onramp in question were to close, nothing in the record supports counsel's argument that claimed impacts or delays will occur. Most importantly, no statute or constitutional provision guarantees that the operation of all aspects of a highway will remain

[12] Available at http://www.soundtransit.org/Documents/pdf/projects/eastlink/EIS_2011/19_AppH1_AppH_HistoryOfI-90AgreementsAndStudies.pdf, at 25.

exactly the same for all persons at all times. The fact that one onramp may close or be modified is not a constitutional or statutory violation.

III. CONCLUSION

For the reasons stated above, and in its prior briefing and the briefing of WSDOT, Sound Transit respectfully requests that this Court affirm the trial court.

RESPECTFULLY SUBMITTED this 7th day of February, 2013.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

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Attached for filing please find the following documents:

1. Answer to Amicus Briefs of Save MI SOV and Haney Truck Line LLC; and
2. Proof of Service

Please let me know if you have any difficulty receiving either of these documents.

Thank you.

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