

FILED
SUPREME COURT
STATE OF WASHINGTON
2/23/2018 2:43 PM
BY SUSAN L. CARLSON
CLERK

No. 94255-2

SUPREME COURT OF THE STATE OF WASHINGTON

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY, a regional transit authority, dba SOUND TRANSIT,
Petitioner Below; Respondent on Appeal,

v.

CITY OF SEATTLE, SEATTLE CITY LIGHT,
a Washington municipal corporation,
Respondent Below; Appellant,

and

Additional Respondents Below.

SOUND TRANSIT'S RESPONSE TO BRIEF OF *AMICUS CURIAE*
PUBLIC UTILITY DISTRICTS

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I. INTRODUCTION

The consolidated cases on direct review to this Court concern Sound Transit's authority to condemn portions of Seattle City Light's electrical transmission easements located in Bellevue at the intersection of 124th Ave NE and the future East Link light rail line.¹ City Light contends that as a public entity that uses its property interests along the chosen light rail alignment for a public purpose, it has the right to block Sound Transit's East Link Extension project. Five trial court judges have disagreed and entered Findings of Fact, Conclusions of Law, Order and Judgments Adjudicating Public Use and Necessity (the "PU&N Judgments"). Each of the PU&N Judgments holds that Sound Transit has statutory authority to condemn public property, finds that the property at issue is necessary for the East Link project, and rules that the prior public use doctrine does not bar the condemnation.

Public Utility District No. 1 of Snohomish County and Public Utility District No. 1 of Chelan County ("PUDs") have filed a joint Brief of *Amicus Curiae* in support of City Light's arguments on statutory

¹ "Sound Transit" refers to Central Puget Sound Regional Transit Authority, Petitioner below, Respondent on appeal; "City Light" refers to the City of Seattle's publicly-owned electric power utility, Respondent below, Appellant here; and "Bellevue" refers to the City of Bellevue, the local jurisdiction where the East Link light rail project will be built and the properties at issue are located.

authority and prior public use (“PUD Brief”). Sound Transit submits this response to refute key legal and factual inaccuracies in the PUD Brief.

II. RESPONSE TO PUDS’ STATEMENT OF THE CASE

The PUDs state as “fact” that Sound Transit’s proposed use of City Light’s easement areas would “be fundamentally incompatible with” City Light’s present and future transmission lines, and further assert that if Sound Transit’s use were indeed compatible, Sound Transit should be willing to acquire the interests it seeks “subject to” City Light’s interests. PUD Brief at 2, 14.

Sound Transit engaged in lengthy discussions with City Light regarding its transmission line easements on the parcels at issue, hoping that the two public entities could reach a negotiated resolution without the need for litigation. *Jacobsen* CP 568 ¶¶ 11-12, 906 ¶ 3; *Sternoff* CP 988 ¶ 3; *Safeway* CP 355 ¶ 3; *Spring District II* CP 355 ¶ 3.² In fact, at

² Citations to the record will be identified by case name, followed by the Clerk’s Papers pages (“CP”) or Verbatim Report of Proceedings pages (“VRP”). “*Jacobsen*” refers to *Sound Transit v. Ann Senna Jacobsen, et al.*, King County No. 16-2-06769-7 SEA. “*Sternoff*” refers to *Sound Transit v. Sternoff L.P., et al.*, King County No. 16-2-0880-7 SEA. “*Safeway*” refers to *Sound Transit v. Safeway, Inc., et al.*, King County No. 16-2-09223-3 SEA. “*Spring District I*” refers to *Sound Transit v. WR-SRI 120th North, LLC, et al.*, King County No. 17-2-00988-1 SEA. “*Spring District II*” refers to *Sound Transit v. WR-SRI 120th North LLC, et al.*, King County No. 17-2-12144-4 SEA. This Court granted direct review and consolidated the first four cases. The fifth case (*Spring District II*) concerns the same parcel as *Spring District I*. Sound Transit condemned separately to obtain maximum flexibility for its project schedule because the property owner had granted Sound Transit a pre-condemnation Administrative Possession and Use Agreement for the *Spring District II* property, but not for the *Spring District I* property, where the light rail station will be located and unique valuation issues were anticipated. *Spring District II* CP 508-09 ¶ 6. The PU&N hearing in *Spring*

City Light's request, Sound Transit dismissed City Light from one of the cases and did not initially name City Light in the next two it filed, thereby petitioning to take the interests it needed "subject to" City Light's interests while the parties continued to attempt to resolve their respective future interests in the parcels by agreement. *Jacobsen* CP 238; *Sternoff* CP 683 ¶ 6, 685 ¶ 9, 686-87; *Safeway* CP 260 ¶ 6, 262. City Light later intervened in those cases, forcing Sound Transit to use its eminent domain power to acquire the right to construct the project and operate within the City Light easement areas. *Jacobsen* CP 399-401, 568 ¶ 13; *Sternoff* CP 807-08; *Safeway* CP 210-12.

Throughout the condemnation process, Sound Transit has tried to work with City Light to craft a description of the taking consistent with City Light's ability to use the easement corridor for its intended purpose. *See Jacobsen* CP 906 ¶ 3; *Spring District II* CP 833 ¶¶ 4-5. Sound Transit filed declarations and stipulated on the record that its project will not impact City Light's existing facilities, and it will reserve aerial easement rights to City Light on both sides of 124th Ave NE. *Jacobsen* CP 906 ¶ 3, VRP 90-93, 98, 109 (stipulation on the record that Sound Transit will reserve aerial rights to City Light, which Court states is a

District II was delayed for discovery at City Light's request, and appellate briefing was completed on February 16, 2018. Sound Transit joined City Light's request for direct review and consolidation, which remains pending.

binding CR 2A agreement); *Sternoff* CP 988 ¶ 3; *Safeway* CP 355 ¶ 3; *Spring District II* CP 355 ¶ 3, 717-18, VRP 55-58, 62-65 (Court accepts Sound Transit's representation on the record that it will reserve aerial rights to City Light and will not sever transmission lines). City Light, however, has so far declined to participate with Sound Transit to describe the takings and reservations in terms that take both parties' needs into account. *Spring District II* CP 833 ¶¶ 4-5.

While getting City Light to engage in cooperative efforts to identify and describe the future rights and interests that will allow both Sound Transit and City Light to jointly use some of the same physical areas of the parcels for their respective public uses has been a challenge, there is substantial evidence that the uses themselves are compatible.³ In fact, dating as far back as 2012, City Light did not raise any concerns about the compatibility of the East Link project with its easement use. *Jacobsen* CP 466-70; *Sternoff* CP 996-1000; *Safeway* 363-67; *Spring District II* CP 641-45. And even in its declarations, City Light speaks

³ The trial court in *Jacobsen* made express findings on prior public use, compatibility, and superiority, including that Sound Transit's "proposed use ... will not destroy [City Light's] ability to use its remaining interests in the Parcel for an electrical transmission system; accordingly, even if [City Light] is deemed to be engaged in a present public use of its easements, that use is consistent with [Sound Transit's] proposed use." *Jacobsen* CP 1492 ¶ 14. In the other cases, the trial courts found public use and necessity and concluded that Sound Transit's condemnation authority extended to City Light's easement interests. *Sternoff* CP 1235-36; *Safeway* CP 425; *Spring District I* CP 1910-11; *Spring District II* CP 917-19. The substantial evidence that the uses are compatible supports the conclusion that Sound Transit's authority to condemn extends to City Light's easement interests.

only of “potential” interference or complains about the “extinguishment” of easement rights that Sound Transit has repeatedly expressed its intent to preserve for City Light. *Jacobsen* CP 392-98, 474-77; *Sternoff* CP 670-72; *Safeway* CP 198-208; *Spring District I* CP 1071-75; *Spring District II* CP 355 ¶ 3, 542 ¶¶ 8-9; *Spring District II* VRP 62-65. Indeed, City Light admits that it can accommodate roads and sidewalks within its easement areas, and that a solution compatible with City Light’s current and future use of the easement areas along both sides of 124th Ave NE is possible. *Safeway* CP 281-83; *Spring District I* CP 1060; *Spring District II* CP 542. City Light further admits that Sound Transit does not need aerial rights in the easement areas. *Jacobsen* VRP 69-70. And in the most recent oral argument, City Light’s counsel stated that if Sound Transit only needs ground rights, he is “fairly confident we could reach an agreement.” *Spring District II* VRP 65.

III. ARGUMENT

A. SOUND TRANSIT’S ENABLING STATUTE GRANTS IT AUTHORITY TO CONDEMN PUBLIC PROPERTY

RCW 81.112.080(2) grants Sound Transit broad condemnation authority to support high capacity transportation facilities such as light rail lines. It allows Sound Transit to “acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of high capacity

transportation facilities and properties ... together with all lands, rights of way, property, equipment, and accessories necessary for such high capacity transportation systems.”

1. “All ... property” includes publicly owned property.

The PUDs assert that in *King County v. City of Seattle*, 68 Wn.2d 688, 690, 414 P.2d 1016 (1966), “this Court rejected an argument from King County that is the same one being advanced here, that authorization to acquire ‘all property’ means property both publicly and privately held.” PUD Brief at 6. The PUDs are misinformed. Unlike the statute at issue here, the King County statute⁴ does not use the word “all” or grant authority to take “all ... property.” RCW 8.08.010.

This Court has never ruled that a statute like RCW 81.112.080, which actually and literally grants the power to condemn “all” necessary property is limited to private property. On the contrary, in *Newell v. Loeb*, 77 Wash. 182, 200, 137 P. 811 (1913), this Court held that a statute authorizing condemnation of “all” necessary and needed property conferred the power “to acquire, either by purchase or condemnation as the commission may see fit, all necessary and needed rights of way,”

⁴ The county statute at issue in *King County* provides: “[e]very county is hereby authorized and empowered to condemn land and property within the county for public use.” RCW 8.08.010.

even those already devoted to public use. *Id.* at 199-200.⁵ Thus, under *Newell*, the word “all” encompasses both public and private property.

2. The exception proves the rule.

The remainder of the statute assumes and confirms that the power to condemn publicly owned property exists. RCW 81.112.080 contains an explicit exception to Sound Transit’s condemnation power for a particular type of public property; certain public property and facilities already used for public transportation may be acquired only by consent.

The statute (RCW 81.112.080) reads, in relevant part:

Public transportation facilities and properties⁶ which are owned by any city, county, county transportation authority, public transportation benefit area, or metropolitan municipal corporation may be acquired or used by an authority only with the consent of the agency owning such facilities.

The only interpretation that gives meaning to this statutory exception is that Sound Transit is authorized to condemn public property so long as it

⁵ Although *Newell* examined an issue of public use, not authority to condemn public property, the analyses are the same, and *Newell* applies equally here. See *Public Util. Dist. No. 1 of Okanogan County v. State*, 182 Wn.2d 519, 540 ¶ 33, 342 P.3d 308 (2015) (“the analysis for determining a municipal corporation’s authority to condemn state land held by the state in its governmental capacity is similar to that for determining a corporation’s authority to condemn property already serving a public use”).

⁶ RCW 81.104.015(1) clarifies what the legislature means by the phrase “public transportation facilities and properties.” That statute defines the term “high capacity transportation system” (which will principally operate on exclusive rights of way) by contrasting it with “traditional public transportation systems operating principally in general purpose roadways.” And the definition of “transit agency” in RCW 81.104.015(3) corresponds to the enumeration in RCW 81.112.080 of the public entities from which Sound Transit must obtain consent before acquiring or using their public transportation facilities and properties.

is not already in use by a city, county, or transit agency for public transportation. And this makes sense because it implements the legislative directive that regional transit “services must be carefully integrated and coordinated with public transportation services currently provided.” RCW 81.112.010. Thus, when a city, county, or transit agency’s property is already used for public transportation, that property may be acquired or used by a regional transit authority only with the agency’s consent. RCW 81.112.080.

The PUDs contend the exception is merely “a legislative acknowledgement of the prior public purpose doctrine, and demonstrates an intent not to allow condemnation of publicly owned property already in public use.” PUD Brief at 8-9. This assertion is unsupported and unsound. It ignores the actual language of the exception, which applies (1) only to property owned by specific public entities (cities, counties, and transit agencies) and (2) only to the extent that property is already used for a specific purpose (public transportation). If Sound Transit could not condemn any publicly owned property, there would be no need for an exemption that applies only to certain public entities. And if Sound Transit could not condemn any property already in public use, there would be no need for an exemption that applies only to a particular public use.

The PUDs point to RCW 54.16.020, which is similar in structure to RCW 81.112.080 in that it grants authority to condemn “all ... property,” but exempts one particular type of public property (a “public utility”) owned by a certain type of public entity (“a city or town”). In *Bayha v. Public Utility District No. 1, 2* Wn.2d 85, 95-99, 97 P.2d 614 (1939), the question was whether the proviso that “no public utility owned by a city or town shall be condemned hereunder, and none shall be purchased without submission of the question to the voters of the utility district” required a vote to purchase a public utility that was not owned by a city or town. This Court examined the statutory language and structure to construe both the grant and the proviso. *Id.*

As to the grant, the Court called it a “general grant of power ... to construct, condemn and purchase, ... etc,” and held that it vested the PUD commissioners “with almost unlimited powers relative to the construction, purchase, etc., of utilities.” *Id.* at 95, 98. The Court noted that “there is no provision anywhere in the act, other than in the proviso, which limits the power of the commissioners to purchase, condemn, etc.” *Id.* at 96. As to the proviso, the Court adopted the rule that a proviso modifying a general enacting clause “is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms.” *Id.* at 97 (quoting rule announced in an Arkansas case).

Accordingly, the Court held that, like the exemption from condemnation for a “public utility owned by a city or town,” the voting requirement also applied only to purchasing a public utility owned by a city or town, and not to other public utilities. Thus, analogizing Sound Transit’s eminent domain statute to the PUD statute supports neither an interpretation that narrows the general grant of authority to condemn “all” property, nor an interpretation that expands the condemnation exception beyond the particular publicly owned public transportation facilities the statute expressly exempts.

B. THE PRIOR PUBLIC USE DOCTRINE PERMITS THE CONDEMNATIONS

The prior public use doctrine is implicated when a condemnor seeks to condemn land that is already devoted to a public use. *See Public Util. Dist. No. 1 of Okanogan County v. State*, 182 Wn.2d 519, 538-40 ¶ 31, 342 P.3d 308 (2015) (“*Okanogan County*”). Under the prior public use doctrine, the condemnor always has the power to condemn such land for a new use compatible with the prior public use. *Id.* Public uses are compatible when the proposed public use will not destroy the existing use or interfere with it to such an extent as is tantamount to destruction. *Id.* at 538-40 ¶ 31.

To condemn property previously devoted to a public use for a new use that is incompatible with the existing use requires that the

condemnor have the power to do so either by express statutory language or by necessary implication. *Id.* at 539 ¶ 31. Once express or implied statutory authority to condemn a competing public use is established, the court engages in a balancing test to determine which of the competing public uses is superior and should prevail. *Id.* at 543 ¶ 39.

Application of these principles supports the trial courts' determinations that the prior public use doctrine does not prohibit condemnation in these cases. *See State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004) (rulings may be affirmed on any ground supported by the record). Contrary to the PUDs' argument, substantial evidence in the record shows that Sound Transit's use of the easement areas will be compatible with both City Light's existing use west of 124th Ave NE and its potential future use east of 124th Ave NE.

1. Sound Transit has stipulated that its project will not destroy City Light's current or future use.

The PUD's prior public use argument hinges on disregarding Sound Transit's written concessions and stipulations on the record. Longstanding Washington law allows condemning agencies to adjust the precise interests to be acquired in eminent domain before just compensation is determined or early possession and use is obtained, so long as the condemnor presents the final taking description in time for the condemnee to adequately prepare for the just compensation trial. *E.g., In*

re Municipality of Metro. Seattle v. Kenmore Properties, Inc., 67 Wn.2d 923, 928, 410 P.2d 790 (1966); *accord*, *State v. Basin Dev. & Sales Co.*, 53 Wn.2d 201, 332 P.2d 245 (1958); *State v. Ward*, 41 Wn.2d 794, 252 P.2d 279 (1953); *Olympia Light & Power Co. v. Harris*, 58 Wash. 410, 108 P. 940 (1910).

This Court recently reaffirmed this principle in *Central Puget Sound Reg'l Transit Auth. v. Airport Inv. Co.*, 186 Wn.2d 336, 376 P.3d 372 (2016). In that case, Sound Transit revised the scope of its take on the first day of the just compensation trial (long after the public use and necessity determination). *Id.* at 341 ¶¶ 8-9. The Court rejected a proposed statutory interpretation that would have interfered with the condemnor's ability to adjust the scope of the taking "based on a changed understanding of its construction needs." *Id.* at 347 ¶ 26.

The condemnor's stipulation may be unilateral; there is no requirement that the property owner agree to a more limited taking. *State v. Basin*, 53 Wn.2d at 205; *accord*, *State v. Ward*, 41 Wn.2d at 797 ("it is the exclusive prerogative of the state to determine the details of its plan"). So long as the "waiver or stipulation [is] definite and certain in its terms, [and] will fully protect the rights of all persons concerned," it is effective to avoid damages and limit the condemnation award accordingly. *Id.*

These rules are well established. In *Olympia Light & Power Co. v. Harris*, the condemnor, which was taking land bordering a lake for use as a floodwater storage basin, offered the property owners continued lake access over the condemned land. 58 Wash. at 411. The trial court rejected the offer, as well as an offer relating to the proposed safety and security of the dike to be constructed. *Id.* at 412. This Court reversed, holding that the unilateral restrictions and limitations undertaken by the condemnor must be presented to the jury so damages can be determined accordingly. *Id.* The Court stated (*id.*):

Appellant [the condemnor] could undoubtedly have the damage estimated with reference to any particular method it sought to adopt in the taking and use of respondents' lands. And if in any sense the use sought to be appropriated was a restricted or limited use, and one which would still reserve to the landowner any use to which such lands were put or adapted, then such restriction or limitation should have been made a part of the record and embodied in the decree; and if appellant held itself to any specified or particular method of constructing the dikes, such method should also be embodied in the decree, and such limitations given their due weight by the jury in determining the damages to be awarded.

Thus, the condemnor is bound by its stipulation to limit the taking. *Id.*

Here, Sound Transit has consistently and repeatedly represented, in writing and in open court, that it will reserve to City Light the aerial rights it needs to operate both its current electrical transmission line west of 124th Ave NE and a future line on the properties east of 124th Ave NE. *Jacobsen* CP 906 ¶ 3, VRP 90-93, 109; *Sternoff* CP 988 ¶ 3; *Safeway* CP

355 ¶ 3; *Spring District II* CP 355 ¶ 3, 718, 833 ¶¶ 3-5, VRP 55-58, 64-65.⁷ And City Light has acknowledged that if it retains aerial rights, its electrical transmission line system—both present and future—can coexist with the East Link project. *E.g.*, *Safeway* CP 285-86 ¶ 3 (focusing on loss of aerial easement rights); *Spring District I* CP 1072-73 ¶ 4 (*ibid*); *Spring District II* CP 542 ¶¶ 8-9 (focusing on loss of easement rights, not actual use, and acknowledging that City Light can accommodate roads and sidewalks within its easement areas); *Spring District II* VRP 62-64 (if Sound Transit were only seeking surface rights, City Light “could reach an agreement that would accommodate” light rail).

Sound Transit’s stipulations in writing and in open court that its project will not destroy City Light’s easement use are effective, and establish that the uses are compatible. The PUDs’ suggestion that if the uses are compatible, Sound Transit “should be able to take rights in the properties subject to City Light’s easement” is a false equivalence. Like City Light, Sound Transit needs the legal right to construct and operate its project on the parcels, including parcel areas within City Light’s easement areas. The need to define and allocate the agencies’ respective rights and interests in the parcels so that each can operate and maintain their

⁷ Both trial courts that entertained oral argument recognized Sound Transit’s open-court stipulation would be enforceable. *Jacobsen* VRP 91 (referring to CR 2A); *Spring District II* VRP 64-65 (“Well, it’s on the record now.”)

important public uses on the same parcel areas does not mean those uses are incompatible.

2. Substantial evidence supports compatibility both west and east of 124th Ave NE.

So long as the proposed use does not absolutely destroy or critically interfere with the existing use to a point tantamount to destruction, the two uses are compatible as a matter of law. *Okanogan County* 182 Wn.2d at 538-40 ¶ 31. Here, Sound Transit’s public use (high capacity transportation system) does not destroy or interfere with City Light’s present or future transmission lines. As City Light rightly pointed out in its briefing to the trial courts, it is “inconceivable” that Sound Transit’s project will interfere with City Light’s existing electrical transmission wires which hang some 48+ feet above Sound Transit’s retained-cut light rail line. *Sternoff* CP 903; *Safeway* CP 273-74; *Spring District I* CP 1050; *Spring District II* CP 558. Thus, City Light concedes that Sound Transit’s project does not require severing City Light’s existing electrical transmission lines west of 124th Ave NE or preclude the installation of new lines east of the right-of-way. *Id.*

City Light’s declarations opposing the PU&N Judgments are carefully worded to finesse this, stating only that Sound Transit’s improvements would make it “potentially” impossible for City Light to locate towers “to support a future transmission line and/or interfere with

access to towers supporting [the] existing transmission line.” See *Jacobsen* CP 392-98, 474-78; *Sternoff* CP 670-72; *Safeway* CP 198-208.

Indeed, even if Sound Transit’s project called for the destruction of City Light’s current transmission line configuration, which it does not, City Light would be free to design an alternative configuration consistent with its remainder easement. City Light claimed that for properties west of 124th Ave NE, there would not be room in the remaining easements to run a 230 kV transmission system. *Safeway* CP 284-87; *Spring District I* 1071-75. But there is no evidence that City Light’s ability to use the remainder easement for ANY electrical transmission system will be destroyed. The compatibility test outlined by the courts asks whether the proposed use will destroy the existing use or interfere with it to such an extent as is tantamount to destruction. *Okanogan County*, 182 Wn.2d at 538-39 ¶ 31. If not, the use is compatible. *Id.*⁸

As to the properties east of 124th Ave NE, there is no existing system to reconfigure. *Jacobsen* CP 464 ¶ 6; *Sternoff* CP 914-15 ¶ 2. And there is no evidence that Sound Transit’s project would preclude construction of ANY type of electrical transmission line system. On the contrary, Sound Transit’s expert testified that at least two different

⁸ If proven, concrete and nonspeculative costs associated with reconfiguration could be a factor in determining City Light’s just compensation.

transmission line systems east of 124th Ave NE will remain feasible notwithstanding the East Link project. *Jacobsen* CP 921-23 ¶¶ 3-7, 978-79 ¶¶ 5-7; *Sternoff* CP 1058-61 ¶¶ 5-7. And City Light's expert did not disagree, but responded with City Light's reasons why it deemed those types of facilities inferior. *Jacobsen* CP 867-68 ¶¶ 5-6.

The PUDs' argument that the prior public use doctrine bars the condemnations at issue fails to recognize the established legal standard for compatibility. At the conclusion of Sound Transit's project, City Light will still be able to operate its existing transmission system, and will continue to own a substantial electrical utility easement both on the west side and on the east side of 124th Ave NE that it may utilize according to its stated purpose. The two uses are thus legally compatible, and the prior public use doctrine does not bar the condemnations.

3. As to the *Jacobsen* and *Sternoff* properties, Sound Transit may condemn City Light's easements because they are not currently in use.

The mere possibility of an incompatible future use does not prohibit condemnation under the prior public use doctrine. To invoke the doctrine's compatibility requirement, the prospective public use must be concrete and non-speculative: "[r]easonable expectation of future needs and a bona fide intention of using it for such purposes within a reasonable

time are required to protect property from condemnation.” *State ex rel. Polson Logging Co. v. Superior Court for Grays Harbor County*, 11 Wn.2d 545, 567-568, 119 P.2d 694 (1941). Indeed, the PUDs quote 17 Washington Practice, Real Estate § 9.18: “For instance, if a railroad that presently owns the land is holding it in reserve and does not have on it any facilities the public uses, the land is not devoted to public use.” That example shows that the portion of City Light's easement east of 124th Ave NE is not in public use.

City Light's electrical transmission lines run along the west side of 124th Ave NE. *Jacobsen* CP 467 ¶ 5; *Sternoff* CP 997 ¶ 5. City Light has no facilities on its easement areas at the *Jacobsen* and *Sternoff* properties (the parcels east of 124th Ave NE). *Jacobsen* CP 464 ¶ 6, 467 ¶ 5; *Sternoff* CP 914-15 ¶ 2, 997 ¶ 5. And City Light has no concrete plans to construct electrical transmission lines on those properties. *Jacobsen* CP 468 ¶ 7; *Sternoff* CP 998 ¶ 7. Because the *Jacobsen* and *Sternoff* easements are not in use, the prior public use doctrine does not bar those condemnations.

IV. CONCLUSION

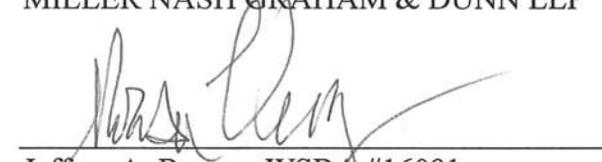
For the reasons stated above, the trial courts committed no error in concluding that Sound Transit has the statutory authority to condemn City Light's easement interests and there is public use and necessity for

the condemnations. The PUDs' arguments to the contrary are legally and factually inaccurate.

Confirming Sound Transit's authority to condemn publicly owned property does not pose a threat to other public services. Sound Transit has a long track record of working with other public agencies for the benefit of the public as a whole, and the record here substantiates Sound Transit's attempts to do so in these cases as well. Likewise, the condemnations at issue do not pose a threat to the provision of safe, reliable electricity by City Light, the PUDs, or other public agencies. On the contrary, substantial evidence, including Sound Transit's legally binding stipulations, shows that Sound Transit's use of the parcels will be compatible with City Light's current electrical transmission facilities and potential future installations in the easement areas. Sound Transit requests that this Court affirm the trial courts' PU&N Judgments.

DATED this 2 day of February, 2018.

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DECLARATION OF SERVICE

I hereby certify that on this 23rd day of February 2018, I electronically filed Sound Transit's Response to Brief of *Amicus Curiae* Public Utility Districts in the Supreme Court of the State of Washington cause #94255-2, and served on counsel listed below as indicated.

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DATED this 23rd day of February, 2018.

/s/Nichole Barnes
Nichole Barnes, Legal Assistant

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February 23, 2018 - 2:43 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94255-2
Appellate Court Case Title: Central Puget Sound Regional Transit Authority et al v. WR-SRI 120TH NORTH LLC, et al
Superior Court Case Number: 17-2-00988-1

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