

No. 94406-7

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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CENTRAL PUGET SOUND REGIONAL TRANSIT  
AUTHORITY, a regional transit authority, dba SOUND TRANSIT,

Respondent,

and

CITY OF SEATTLE, SEATTLE CITY LIGHT,  
a Washington municipal corporation,

Appellant,

and

SAFEWAY INC., a Delaware corporation, et al.,

Respondents.

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BRIEF OF APPELLANT THE CITY OF SEATTLE

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Russell S. King, WSBA #27815  
Engel E. Lee, WSBA #24448  
Seattle City Attorney's Office  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7097  
(206) 682-8200

Philip A. Talmadge, WSBA #6973  
Sidney Tribe, WSBA #33160  
Talmadge/Fitzpatrick/Tribe  
2775 Harbor Avenue SW  
Third Floor, Suite C  
Seattle, WA 98126  
(206) 574-6661

Attorneys for Appellant City of Seattle

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities .....	iv-v
A. INTRODUCTION .....	1
B. ASSIGNMENTS OF ERROR .....	2
(1) <u>Assignments of Error</u> .....	2
(2) <u>Issues Pertaining to Assignments of Error</u> .....	3
C. STATEMENT OF THE CASE.....	3
(1) <u>Sound Transit Seeks to Condemn Seattle’s Electrical Transmission Easement, Within Which It Operates an Electrical Transmission Line</u> .....	4
(2) <u>The Transmission Line and Easement Are Important Parts of Seattle’s Transmission Line System</u> .....	5
(3) <u>Sound Transit Seeks to Extinguish All of Seattle’s Easement Rights Over the Transmission Line Easement on the Subject Property</u> .....	6
(4) <u>Much of Seattle’s Property that Sound Transit Is Condemning Will Be Used for a Bellevue Road-Widening Project and not Sound Transit’s Light Rail Project</u> .....	8
(5) <u>Procedural History</u> .....	8
D. SUMMARY OF ARGUMENT .....	10
E. ARGUMENT .....	11
(1) <u>Applicable Principles of Constitutional and Statutory Interpretation</u> .....	12

(2)	<u>Background of Eminent Domain in Washington</u> .....	13
(3)	<u>Sound Transit Lacks the Authority to Condemn Seattle’s Property Under RCW 81.112.080 Because the Statute Does Not Expressly Grant Sound Transit Authority to Condemn Public Property</u> .....	17
(a)	<u>Supreme Court Precedent Construing Almost Identical Language Controls; The Lack of Express or Necessarily Implied Authority to Condemn Public Land Ends the Inquiry</u> .....	18
(b)	<u>Sound Transit’s Eminent Domain Statute Grants It Narrow Condemnation Authority</u> .....	20
(c)	<u>Comparing the Statute at Issue to Similar Statutes and Reviewing Its Legislative History Affirms that Seattle’s Position Is Correct</u> .....	22
(4)	<u>Sound Transit’s Condemnation of Seattle’s Property for Bellevue’s Road Project Is Not “Necessary” to the Construction of Light Rail</u> .....	25
(5)	<u>Sound Transit’s Condemnation of Seattle’s Property for Bellevue’s Road Project Is Not “Incidental” to its Condemnation for the Construction of Light Rail</u> .....	27
(6)	<u>The Prior Public Use Doctrine Prohibits Sound Transit’s Condemnation Because It Would Interfere With or Destroy Seattle’s Public Use of the Property</u> .....	28
(a)	<u>The Prior Public Use Doctrine Applies</u> .....	28
(b)	<u>Sound Transit’s Condemnation Would Render the Transmission Line Easement Unusable for Its Intended Purpose, Destroying the Prior Public Use</u> .....	31

(7) Home Rule Charter Cities Have a Constitutional Status; Protecting Their Property Rights Is an Important Public Policy .....32

F. CONCLUSION.....34

Appendix

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Table of Cases</u>	
<u>Washington Cases</u>	
<i>Brady v. City of Tacoma</i> , 145 Wash. 351, 259 P. 1089 (1927) .....	29
<i>Bussell v. Gill</i> , 58 Wash. 468, 108 P. 1080 (1910) .....	33
<i>Carstens v. Pub. Util. Dist. No. 1 of Lincoln Cty.</i> , 8 Wn.2d 136, 111 P.2d 583 (1941) .....	28
<i>Cent. Puget Sound Reg'l Transit Auth. v. Miller</i> , 156 Wn.2d 403, 128 P.3d 588 (2006) .....	18
<i>Cent. Puget Sound Reg'l Transit Auth. v. Sternoff L.P.</i> , 196 Wn. App. 1050, *2 (2016), <i>review denied</i> , 187 Wn.2d 1016, 388 P.3d 490 (2017) .....	8
<i>Cerillo v. Esparza</i> , 158 Wn.2d 194, 142 P.3d 155 (2006) .....	13
<i>City of Seattle v. Fuller</i> , 177 Wn.2d 263, 300 P.3d 340 (2013) .....	13, 27
<i>City of Tacoma v. Welcker</i> , 65 Wn.2d 677, 399 P.2d 330 (1965) .....	12, 13, 25
<i>Cockle v. Dep't of Labor &amp; Indus.</i> , 142 Wn.2d 801, 16 P.3d 583 (2001) .....	12
<i>Dep't of Ecology v. Campbell &amp; Gwinn, L.L.C.</i> , 146 Wn.2d 1, 43 P.3d 4 (2002) .....	12
<i>Dot Foods, Inc. v. Wash. Dep't of Revenue</i> , 166 Wn.2d 912, 215 P.3d 185 (2009) .....	12
<i>Filo Foods, LLC v. City of SeaTac</i> , 183 Wn.2d 770, 357 P.3d 1040 (2015) .....	33
<i>HTK Mgmt., L.L.C. v. Seattle Popular Monorail Auth.</i> , 155 Wn.2d 612, 121 P.3d 1166 (2005) .....	21, 27
<i>In re City of Seattle</i> , 96 Wn.2d 616, 638 P.2d 549 (1981) .....	14
<i>King Cty. v. City of Seattle</i> , 68 Wn.2d 688, 414 P.2d 1016 (1966) .....	<i>passim</i>
<i>Miller v. City of Tacoma</i> , 61 Wn.2d 374, 378 P.2d 464 (1963) .....	12
<i>Palmer v. Jensen</i> , 132 Wash. 2d 193, 198, 937 P.2d 597 (1997) .....	11
<i>Port of Seattle v. Wash. Utils. &amp; Transp. Comm'n</i> , 92 Wn.2d 789, 597 P.2d 383 (1979) .....	33
<i>Pub. Util. Dist. No. 1 of Chelan Cty. v. Washington Water Power Co.</i> , 43 Wn.2d 639, 262 P.2d 976 (1953) .....	29
<i>Pub. Util. Dist. No. 1 of Okanogan Cty. v. State</i> , 182 Wn.2d 519, 342 P.3d 308 (2015) .....	15, 28, 30

<i>Pub. Util. Dist. No. 2 of Grant Cty. v. N. Am. Foreign Trade Zone Indus., LLC</i> , 159 Wn.2d 555, 151 P.3d 176 (2007).....	17
<i>Restaurant Development, Inc. v. Cananwill, Inc.</i> , 150 Wn.2d 674, 80 P.3d 598 (2003).....	13
<i>Seattle &amp; Montana Ry. Co. v. State</i> , 7 Wash. 150, 34 Pac. 551 (1893).....	15, 16
<i>Singleton v. Naegeli Reporting Corp.</i> , 142 Wash. App. 598, 175 P.3d 594 (2008).....	11
<i>State v. Azpitarte</i> , 140 Wn.2d 138, 995 P.2d 31 (2000).....	11
<i>State v. J.C. Corey</i> , 59 Wn.2d 98, 366 P.2d 185 (1961).....	14
<i>State v. Larson</i> , 184 Wn.2d 843, 365 P.3d 740 (2015).....	23, 24
<i>State v. McGee</i> , 122 Wn.2d 783, 864 P.2d 912 (1993).....	13
<i>State ex rel. Attorney General v. Superior Court of Chelan Cty.</i> , 36 Wash. 381, 78 P. 1011 (1904).....	14, 15, 17
<i>State ex rel. Convention and Trade Ctr. v. Evans</i> , 136 Wn.2d 811, 966 P.2d 1252 (1998).....	27
<i>State ex rel. Lange v. Superior Court</i> , 61 Wn.2d 153, 377 P.2d 425 (1963).....	25
<i>State ex rel. Nw. Elec. Co. v. Superior Court In &amp; For Clark Cty.</i> , 28 Wn.2d 476, 183 P.2d 802 (1947).....	29
<i>State ex rel. Swan v. Jones</i> , 47 Wn.2d 718, 289 P.2d 982 (1955).....	33
<i>State ex rel. Washington Water Power Co. v. Superior Court</i> , 8 Wn.2d 122, 111 P.2d 577 (1941).....	29
<i>Washington State Dep't of Revenue v. Fed. Deposit Ins. Corp.</i> , 190 Wn. App. 150, 359 P.3d 913 (2015).....	26

Statutes

RCW 8.08.010 .....	16, 19
RCW 8.12.030 .....	21
RCW 35.22.280 .....	21
RCW 47.52.050 .....	23
RCW 53.34.170 .....	23
RCW 54.16.050 .....	23
RCW 81.104.015(2).....	26
RCW 81.112.080 .....	<i>passim</i>
RCW 81.112.080(2).....	18, 25

Constitutions

Wash. Const. art. I, § 10.....33  
Wash. Const. art. I, § 16.....13, 14

Other Authorities

Gen. St. §§ 1569, 1570.....16  
Laws of 1992, ch. 101.....25

## A. INTRODUCTION

The power of eminent domain – the forcible taking of property – is a sovereign state power. A local municipal entity may only take property that the Legislature has expressly granted it authority to take. When condemnation power is wielded against other public entities, Washington courts are mindful that the property at stake is owned collectively by citizens. Such a taking is only permissible if the power to take public property is expressly stated or necessarily implied in the entity’s condemnation statute. Even then, property already dedicated to public use may not be taken if the condemnation is incompatible with the existing public use.

The Central Puget Sound Regional Transit Authority (“Sound Transit”) claims that it has the authority to condemn two electrical transmission line easements that are owned by The City of Seattle (“Seattle”) and located in the City of Bellevue (“Bellevue”). Seattle’s electrical transmission easements are a significant part of a larger electrical transmission corridor.

Sound Transit’s eminent domain authorization statute grants Sound Transit limited condemnation authority, and it does not confer express authority upon Sound Transit to condemn public property. With respect to the property at issue, Sound Transit is also exceeding its limited

condemnation authority by taking the property primarily to give to Bellevue for that city's separate road-widening project, not primarily for its own use in building light rail.

The transmission line easements, and the transmission line corridor of which it is a part, are currently being put to a recognized public use: the transmission of electricity from Seattle-owned generation facilities to The City of Seattle. Sound Transit's taking of the transmission line easements is barred because it is incompatible with Seattle's continued public use of the easements, and would effectively destroy the easements by rendering them unusable for its intended purpose.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred in entering its March 28, 2016 order and judgment adjudicating public use and necessity regarding City of Seattle property interests.
2. The trial court erred in making finding of fact number 3.
3. The trial court erred in making finding of fact number 4.
4. The trial court erred in making finding of fact number 6.
5. The trial court erred in making finding of fact number 7.
6. The trial court erred in entering conclusion of law 5.
7. The trial court erred in entering conclusion of law 8.
8. The trial court erred in entering conclusion of law 9.

9. The trial court erred in entering conclusion of law 10.
10. The trial court erred when it denied Seattle's motion for reconsideration.

(2) Issues Pertaining to Assignments of Error

1. Did the trial court err in finding public use and necessity as to Sound Transit's taking of Seattle's property where Sound Transit does not have the statutory authority to condemn public property or the specific property involved in this condemnation action? (Assignments of Error Numbers 1-9)

2. Did the trial court err in finding public use and necessity where Sound Transit's intended use of the property it seeks to condemn is incompatible with the existing public use of Seattle's transmission line easements, and would destroy such easements by rendering them unusable for its intended purpose? (Assignments of Error Numbers 1-9)

3. Did the trial court err in finding public use and necessity where Sound Transit's proposed condemnation is intended for the benefit of Bellevue's street-widening of 124<sup>th</sup> Avenue NE? (Assignments of Error Numbers 1-9)

4. Did the trial court err when it denied Seattle's motion for reconsideration where Sound Transit failed to submit any evidence that its condemnation was compatible with Seattle's existing public use of the Transmission Line Easements (Assignment of Error Number 10)

5. Did the trial court err when it denied Seattle's motion for reconsideration where Sound Transit's argument that the Prior Public Use doctrine does not apply when the public property is held in its proprietary capacity (Assignment of Error Number 10)

C. STATEMENT OF THE CASE

(1) Sound Transit Seeks to Condemn Seattle's Electrical Transmission Easement, Within Which It Operates an Electrical Transmission Line

Sound Transit seeks to condemn portions of two electrical transmission line easements owned by Seattle that is located within Bellevue's corporate limits. CP 2. Seattle opposes Sound Transit's effort to do so because the easements, and the transmission line operating within them, are part of an important electrical transmission line corridor running 100 miles and connecting Seattle City Light's Skagit River hydroelectric dams to a substation in Maple Valley. CP 199. The corridor is also an integral part of a larger, regional electrical transmission line system that runs from Canada to California. *Id.*

The two parcels of real property at issue are located adjacent to 124th Ave. NE in Bellevue, Washington (the "Subject Property"). Sound Transit concedes that the purported purpose of the condemnation effort is to accommodate the widening of 124th Ave. NE and to acquire space for a light rail crossing (the "Project"). CP 351. Almost all of the property that Sound Transit is condemning is being condemned for the Bellevue project. This is confirmed by the petition in eminent domain which describes a 605 square feet "Sound Transit Fee Acquisition Area" and a separate 11,312 square feet "City of Bellevue Fee Acquisition Area." CP 31-34 (Exhibits B-1 and B-2 of Exhibit 1 to the Petition).

Since at least 1927, Seattle has had easements over portions of the Subject Property for the construction, operation, and maintenance of an electrical transmission line (the “Transmission Line Easements”). CP 284, 291-93. The Transmission Line Easements are recorded with the King County Recorder’s office, and cover an area running between 75 and 85 feet west from the center line of 124th Ave. NE along the full length of the Subject Property’s frontage on that road. *Id.* As reflected in the maps attached to the petition, the eastern 30 feet of the Transmission Line Easements is currently occupied by the right of way for 124<sup>th</sup> Avenue. CP 33-34.

Seattle owns and operates a dual circuit 230 kV Transmission Line within the Transmission Line Easements. *Id.* The Transmission Line runs along the west edge of 124th Avenue, within the portion of the easements outside of the right of way for 124<sup>th</sup> Avenue, and is supported by a series of lattice towers and monopole structures. *Id.*

(2) The Transmission Line and Easements Are Important Parts of Seattle’s Transmission Line System

The Transmission Line Easements are part of a series of similar easements and fee parcels that form a contiguous corridor running for 100 miles from Seattle’s hydroelectric generating facilities located on the Skagit River down through Bellevue to Seattle’s Maple Valley electrical

substation (“Transmission Line Corridor”). CP 285. In the vicinity of the Subject Property, the Transmission Line Corridor runs on both sides of 124<sup>th</sup> Avenue NE, which runs in a roughly north/south orientation. *Id.* The existing transmission line runs on the west side of 124<sup>th</sup> Avenue NE. *Id.* The existing electrical transmission line and the Transmission Line Corridor are integral parts of a larger, regional electrical transmission line system that stretches from Canada to California. *Id.*

(3) Sound Transit Seeks to Extinguish All of Seattle’s Easement Rights Over the Transmission Line Easements on the Subject Property

As reflected in Exhibit 1 to the proposed order submitted by Sound Transit with its motion, the property interests that Sound Transit seeks to condemn includes a strip of property running north-south along the Subject Property’s approximately 500-foot frontage along 124th Ave. NE that it seeks to take in fee simple (the “Fee Simple Tract”). As reflected in Exhibits 2-6 to the PUN order, Sound Transit is also seeking to condemn a series of temporary construction and access easements across the Subject Property (the “Miscellaneous Easements”). CP 429-73. Some of the Miscellaneous Easements purport to grant Sound Transit exclusive use and possession of the easement areas. Because it runs down the full approximately 500-foot length of the Subject Property’s frontage of 124th Ave. NE, and because it is between 15 and 30 feet wide, the Fee Simple

Tract Sound Transit seeks to condemn would consume a substantial portion of the Transmission Line Easements on the Subject Property. CP 285-86. For their part, the Miscellaneous Easements that Sound Transit seeks to condemn would both conflict with and bisect the Transmission Line Easements over the Subject Property. *Id.*

The condemnation of the Fee Simple Tract and the Miscellaneous Easements would be fundamentally incompatible with Seattle's continued operation of the existing 230 kV transmission line located on the west side of 124th Avenue. *Id.* The loss of the Fee Simple Tract that runs approximately 500 feet down the center of the Transmission Line Easements (along the western edge of 124th Avenue) would make it impossible for Seattle to operate the Transmission Line currently located within the easements. *Id.* In particular, the loss of the aerial easement rights over the Subject Property would make it impossible for Seattle to locate or operate the current Transmission Line over the property because it would reduce the space available to locate such a line from 45 feet to less than 15 feet, which would leave insufficient room to locate a high voltage transmission line (in particular when mandatory clearances are taken into account). *Id.* In sum, the net effect of the condemnation would be to destroy the current Transmission Line, render the Transmission Line

Easements unusable for their intended purpose, and sever the larger Transmission Line Corridor. *Id.*

(4) Much of Seattle's Property that Sound Transit Is Condemning Will Be Used for a Bellevue Road-Widening Project and not Sound Transit's Light Rail Project

Sound Transit is constructing a retained-cut, perpendicular light rail line crossing underneath 124<sup>th</sup> Avenue NE. CP 1-126, 282. Sound Transit admits it is condemning Seattle's property for a separate road widening project being undertaken by Bellevue to widen 124<sup>th</sup> Avenue NE to add one or more travel lanes.<sup>1</sup> CP 351. The widening of 124<sup>th</sup> Avenue NE in the vicinity of the Subject Property is part of a larger project to widen that road between Northrup Way to NE 14<sup>th</sup> Street in connection with the redevelopment of Bellevue. *Cent. Puget Sound Reg'l Transit Auth. v. Sternoff L.P.*, 196 Wn. App. 1050, \*2 (2016), *review denied*, 187 Wn.2d 1016, 388 P.3d 490 (2017) (unpublished, cited under GR 14.1(a)). Sound Transit reached a negotiated agreement with Bellevue to facilitate Bellevue's road-widening goals. *Id.*

(5) Procedural History

Sound Transit did not name Seattle as a respondent to its original condemnation action, because it stated it was attempting to negotiate a

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<sup>1</sup> In the vicinity of the Subject Property, 124<sup>th</sup> Avenue NE is currently a two-lane road. CP 351.

resolution between the two entities. CP 214.<sup>2</sup> Seattle moved to intervene, and the motion was granted. CP 192, 210-11.

Sound Transit sought an order declaring that condemnation of Seattle's property was for public use and necessity. CP 213. Seattle opposed the motion, and in its opposition submitted evidence showing that Sound Transit's condemnation was incompatible with Seattle's existing public use. CP 281-86. Sound Transit did not submit any evidence showing that the condemnation was compatible with the existing public use, and, instead, argued that the prior public use doctrine did not apply because Seattle purportedly held the Transmission Line Easements in its proprietary capacity. CP 349-53.

The trial court, the Honorable Barbara Linde, entered an order of public use and necessity supported by findings and conclusions. CP 422. Seattle filed a motion for reconsideration and sought reconsideration of the trial court's order on CR 59(a)(7) grounds because the uncontroverted evidence showed that the condemnation was incompatible with the exiting public use and, to the extent that the trial court had accepted Sound Transit's argument that the Prior Public Use doctrine did not apply, on CR

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<sup>2</sup> Sound Transit obtained an order and judgment adjudicating public use and necessity as to other property before Seattle intervened. CP 157.

59(a)(7) grounds because the order was contrary to law. CP 474-86.<sup>3</sup>

The trial court denied Seattle's motion for reconsideration. CP 492.

Seattle appealed the order on public use and necessity and the order denying the motion for reconsideration. CP 494.

#### D. SUMMARY OF ARGUMENT

Before the trial court could properly consider whether Sound Transit had shown public use and necessity, it was obliged to determine whether Sound Transit had the authority to condemn the property in question. Sound Transit did not have that authority.

Eminent domain authority is strictly construed. The Legislature has not expressly conferred authority upon Sound Transit, a special purpose unit of government, to condemn any public property, let alone property owned by a general purpose unit of government like The City of Seattle.

Further, RCW 81.112.080 confers restrictive authority on Sound Transit. Although Sound Transit is required to use the same condemnation *procedures* as first-class cities, it is only allowed to condemn property "necessary" to its specific purpose: high-capacity transit. Thus, if the property at issue is not "necessary" for building the

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<sup>3</sup> The relief requested section of Seattle's motion for reconsideration erroneously cites to "CR 59(2)(7)" as authority for vacation of the order on the grounds that it is contrary to law. The balance of the motion contains that correct citation to CR 59(a)(7) for that authority.

light rail system, Sound Transit has no authority to condemn it.

Further, even if Sound Transit has authority to condemn Seattle's property, it may not exercise that authority here because Sound Transit's condemnation would destroy an existing prior public use – Seattle's use of the easements as part of its Electrical Transmission Corridor connecting the City to its Skagit River hydroelectric-generating dams. Sound Transit's taking would extinguish all of Seattle's easement rights over a substantial portion of the easements and render the easements effectively useless. Such a result bars a finding of public use and necessity.

Finally, given the uncontroverted evidence regarding the incompatibility of the condemnation and Seattle's continued public use of the Transmission Line Easements and Sound Transit's erroneous argument that the Prior Public Use doctrine did not apply because the City purportedly held the Transmission Line Easements in its proprietary capacity, the trial court abused its discretion by denying Seattle's motion for reconsideration.

#### E. ARGUMENT<sup>4</sup>

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<sup>4</sup> As it turns on the correct interpretation of a statute, the standard of review of the trial court's order on public use and necessity is *de novo*. *State v. Azpitarte*, 140 Wn.2d 138, 140–41, 995 P.2d 31 (2000). The standard of review of the trial court's denial of Seattle's motion for reconsideration is abuse of discretion. *Palmer v. Jensen*, 132 Wash. 2d 193, 198, 937 P.2d 597, 599 (1997); *Singleton v. Naegeli Reporting Corp.*, 142 Wash. App. 598, 612, 175 P.3d 594, 601 (2008).

(1) Applicable Principles of Constitutional and Statutory Interpretation

The power of eminent domain resides in our state Constitution. The eminent domain provision is a restriction on power, not a grant. *Miller v. City of Tacoma*, 61 Wn.2d 374, 378 P.2d 464 (1963). A municipal corporation does not have the inherent power of eminent domain. It may exercise such power only when it is expressly so authorized by the state legislature. *City of Tacoma v. Welcker*, 65 Wn.2d 677, 683, 399 P.2d 330 (1965).

In analyzing statutory provisions, this Court employs well-developed construction principles and tools. The primary goal of statutory interpretation is to carry out legislative intent. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001). In Washington, this analysis begins by looking at the words of the statute. "If a statute is plain and unambiguous, its meaning must be primarily derived from the language itself." *Id.* Courts look to the statute as a whole, giving effect to all of its language. *Dot Foods, Inc. v. Wash. Dep't of Revenue*, 166 Wn.2d 912, 919, 215 P.3d 185 (2009). Courts must look to what the Legislature said in the statute and related statutes to determine if the Legislature's intent is plain. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If the language of the statute is plain,

that ends the courts' role. *Cerillo v. Esparza*, 158 Wn.2d 194, 205-06, 142 P.3d 155 (2006). If, however, the language of the statute is ambiguous, courts must then construe the statutory language. A statute is ambiguous if it is subject to two or more reasonable interpretations. *State v. McGee*, 122 Wn.2d 783, 864 P.2d 912 (1993).

In construing an ambiguous statute, a court may consider its legislative history and the circumstances surrounding its enactment to arrive at the Legislature's intent. *Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003); *City of Seattle v. Fuller*, 177 Wn.2d 263, 269-70, 300 P.3d 340 (2013).

(2) Background of Eminent Domain in Washington

Both the federal and state constitutions place limitations on a government's power to take private property by eminent domain. However, the Washington Constitution provides greater limitations than its federal counterpart in that it provides that "[n]o private property shall be taken or damaged for public or private use without just compensation having been first made ..." Wash. Const. art. I, § 16.

Because eminent domain is an attribute of state sovereignty, when the Legislature delegates such power to one of its political subdivisions that power is *narrowly construed*. *Welcker*, 65 Wn.2d at 683. Our Supreme Court has long held that the power of local governments to

condemn is narrow. “A municipal corporation’s power to condemn is delegated to it by the legislature and must be conferred in express terms or necessarily implied. Statutes which delegate the State’s sovereign power of eminent domain to its political subdivisions are to be strictly construed.” *In re City of Seattle*, 96 Wn.2d 616, 629, 638 P.2d 549 (1981); *State ex rel. Attorney General v. Superior Court of Chelan Cty.*, 36 Wash. 381, 385, 78 P. 1011 (1904). Such an interpretation is consistent with the general principle that article I, § 16 of the Washington Constitution relating to eminent domain is meant to protect property rights. *State v. J.C. Corey*, 59 Wn.2d 98, 100, 366 P.2d 185 (1961).

When publicly-owned property is being condemned, the authority to condemn such property must be conveyed in express or necessarily implied terms. *King Cty. v. City of Seattle*, 68 Wn.2d 688, 690, 414 P.2d 1016 (1966) (“such power must be given in express terms or by necessary implication; that the power of eminent domain is one of the attributes of sovereignty; and that lands belonging to a State cannot be taken under a general grant of power made by the legislature”). This is true regardless of whether publicly-owned property is currently in public use. *Id.* at 692 (In the absence of “express or necessarily implied legislative authorization” King County was not authorized to condemn property owned by Seattle “regardless of the use to which that property [was] being

put”); *Pub. Util. Dist. No. 1 of Okanogan Cty. v. State*, 182 Wn.2d 519, 538, 342 P.3d 308 (2015).

In fact, when one political entity attempts to condemn property held by another such entity, the rule of strict construction of condemnation statutes applies “with even more force” than in cases involving condemnation of private property. *Superior Court of Chelan Cty.*, 36 Wash. at 385.

If, after strictly construing a condemnation statute, the condemning entity lacks authority to condemn the property at issue, the petition for eminent domain must be dismissed. *King Cty.*, 68 Wn.2d at 694. The question of public use and necessity is irrelevant, because the entity is without power to condemn the lands at issue. *Superior Court of Chelan Cty.*, 36 Wash. at 386.

Broadly-worded condemnation powers, without specificity as to the property of other sovereigns, are interpreted to authorize condemnation only of private property. *Seattle & Montana Ry. Co. v. State*, 7 Wash. 150, 34 Pac. 551 (1893). In *Montana Ry.*, the Supreme Court rejected the view that a railroad had the authority to condemn state-owned tide lands, even though the condemnation statute gave railroads the sweeping power to “appropriate so much of said land, real estate, or premises as may be necessary” for building their lines, including across or along any

waterway. *Montana Ry.*, 7 Wash. at 551.<sup>5</sup> The *Montana Ry.* court stated that the authority to condemn state-owned property must be expressly granted. *Id.* at 550. It held that the railroads' eminent domain authority "must be construed, as are all such acts, as have regard only to the taking of private property, unless there is express or clearly implied authority to extend them further." *Id.* It rejected with derision the implication of the railroads' argument, i.e., that a condemnation statute granting railroads power to condemn "any" land would permit that railroad to "take the entire 10 acres upon which the state capitol stands for a depot and shops." *Id.* at 552.

In *King Cty.*, the County as condemning entity filed an eminent domain petition to condemn property owned by Seattle but located in King County. *King Cty.*, 68 Wn.2d at 689. The statute granting counties condemnation powers was broadly worded, and stated that "[e]very county is hereby authorized and empowered to condemn land and property within the county for public use." RCW 8.08.010. The statute was silent as to whether counties had authority to condemn public property, or property owned by a city. The Court affirmed the dismissal of the County's petition, stating that the broadly worded statute provided *no express or*

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<sup>5</sup> The statute at issue in that case, Gen. St. §§ 1569, 1570; Code Proc. tit. 18, c. 5, is appended hereto. Appendix at 15. Sound Transit's claim of unlimited, open-ended authority to condemn public property for its light rail line here is based on similar language.

*necessarily implied authority* for counties to acquire properties owned by a state or subdivision, regardless of how the property was being used. *King Cty.*, 68 Wn.2d at 691-92.

Stated another way, it is the Legislature that must establish priorities of use of public lands as between its political subdivisions demanding their use.<sup>6</sup>

(3) Sound Transit Lacks the Authority to Condemn Seattle's Property Under RCW 81.112.080 Because the Statute Does Not Expressly Grant Sound Transit Authority to Condemn Public Property

Before reaching the question of any public use and necessity analysis, the trial court was first obligated to determine whether Sound Transit had the authority to exercise the power of eminent domain over Seattle's property.<sup>7</sup> The trial court here erred in concluding that Sound Transit had such authority under RCW 81.112.080.

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<sup>6</sup> Thus, it is not for Sound Transit to say that its light rail system is more important than Seattle's electrical transmission corridor. That is a decision for the Legislature.

<sup>7</sup> *Superior Court of Chelan Cty.*, 36 Wash. at 386 ("In view of the fact that this corporation has not the power, in any event, to condemn the lands sought, it becomes unnecessary to discuss the question as to whether the use sought to be made of the lands is a private or public one."). Sound Transit had the burden of proof to show that its condemnation is authorized by statute. See *Pub. Util. Dist. No. 2 of Grant Cty. v. N. Am. Foreign Trade Zone Indus., LLC*, 159 Wn.2d 555, 566, 151 P.3d 176, 181 (2007) ("*Foreign Trade Zone*") ("[a]lthough a state entity bears the burden of proving public use and necessity in the judicial condemnation process, the challenger bears the burden of proof that the notice of a public hearing to authorize condemnation was defective."); *King Cty.*, 68 Wn.2d at 693 (finding that a condemnation proceeding could not proceed where the condemning entity failed to put forward sufficient evidence to show that the condemnation was authorized by statute).

The scope of condemnation authority delegated through RCW 81.112.080 has never been judicially construed in an appellate opinion.<sup>8</sup> The statute provides, in relevant part, that Sound Transit may “acquire by...condemnation...all lands, rights of way, property, equipment, and accessories necessary for such high-capacity transit systems.” RCW 81.112.080(2).

(a) Supreme Court Precedent Construing Almost Identical Language Controls; The Lack of Express or Necessarily Implied Authority to Condemn Public Land Ends the Inquiry

The trial court concluded that the language of RCW 81.112.080 granted Sound Transit the authority to condemn public as well as private property, but such an interpretation of similarly broad language was rejected by our Supreme Court in *King Cty.* There, King County sought to condemn property owned by Seattle.<sup>9</sup> *King Cty.*, 68 Wn.2d at 690. The statutory grant of authority to King County at issue was incredibly broad, much more broad than Sound Transit’s limited authority here:

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<sup>8</sup> In *Central Puget Sound Regional Transit Auth. v. Miller*, 156 Wn.2d 403, 128 P.3d 588 (2006), the Supreme Court addressed Sound Transit’s condemnation procedures. The Court did not specifically address the scope of Sound Transit’s condemnation power under RCW 81.112.080. The dissent there, however, reaffirmed that eminent domain authority for municipal corporations emanates from express legislative delegation and such authority is strictly construed. *Id.* at 428 (J. Johnson, J. dissenting).

<sup>9</sup> This is not to suggest that Sound Transit has the same condemnation authority afforded King County, Seattle, or any other first-class city.

Every county is hereby authorized and empowered to condemn land and property within the county for public use; whenever the board of county commissioners deems it necessary for county purposes to acquire such land, real estate, premises or other property...

RCW 8.08.010. King County argued that this broad language constituted a grant of authority to acquire “all property,” both publicly and privately held.<sup>10</sup> *Id.* at 690.

Our Supreme Court disagreed with King County’s claim that a general grant of condemnation powers over property purportedly “necessary for county purposes” constituted authority to condemn the property of another municipal corporation. *Id.* at 692. The Court explained that in order for one municipal corporation to have the authority to condemn the property of another, the Legislature must grant it express or necessarily implied powers to condemn the property of the State or any of its subdivisions. *Id.* Because the statute at issue was only a general grant of condemnation authority, the Supreme Court affirmed summary judgment dismissal of King County’s condemnation action against Seattle. *Id.* at 694.

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<sup>10</sup> Notably, the property at issue in *King Cty.* was *not*, as here, devoted to a public use. *King Cty.*, 68 Wn.2d at 692. Thus, one would assume that King County’s argument for condemnation in that case was stronger than the argument here, where Seattle’s property *does* have a public use. However, the Supreme Court still denied King County’s petition on the grounds that it lacked express statutory authority to condemn *any* property owned by Seattle. *King Cty.*, 68 Wn.2d at 692.

Under RCW 81.112.080, Sound Transit may generally condemn “lands, rights of way, and properties” necessary for high capacity transportation systems. RCW 81.112.080 *nowhere* grants Sound Transit the express or necessarily implied authority to condemn public property. *See* Appendix at 2-3. The statute does not grant Sound Transit specific authority to condemn any property of another political subdivision, let alone city-owned property being put to an existing public use. Thus, according to long-standing Supreme Court precedent, the statute grants Sound Transit authority to condemn private property only.

Just as when King County attempted to condemn Seattle’s property without express authorization, here the trial court should have denied Sound Transit’s motion for public use and necessity as lacking statutory authority, and dismissed its Petition.

(b) Sound Transit’s Eminent Domain Statute Grants It Narrow Condemnation Authority

While Sound Transit’s authorizing statute provides that Sound Transit may take property in the “manner” of a first-class city, this refers to the *procedural* mechanism for bringing an eminent domain action, and it does not grant Sound Transit the same condemnation authority as a

city.<sup>11</sup> As a result, Sound Transit does not have the authority to generally condemn property for any public purpose, as a first class city does.<sup>12</sup> Instead, Sound Transit may only take property “necessary” for its purpose of building high-capacity transit. RCW 81.112.080.<sup>13</sup>

The Legislature even denied Sound Transit the power to condemn the *transportation* property of other governments, despite the fact that transportation is within Sound Transit’s declared legislative purpose:

Public transportation facilities and properties 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*. Such agencies are hereby authorized to convey

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<sup>11</sup> The Legislature presumably included this provision because it was necessary for the statute’s validity. To be valid a statute conveying the power to condemn “must confer not only the power to condemn but must ‘prescribe the method by which it is to be done’.” *HTK Mgmt., L.L.C. v. Seattle Popular Monorail Auth.*, 155 Wn.2d 612, 622, 121 P.3d 1166 (2005). Thus the Legislature afforded Sound Transit the same procedural condemnation *mechanism* as a first class city, but not the same authority.

However, even if the scope of Sound Transit’s eminent domain power *were* equivalent to that of a first class city, Sound Transit would still have no authority to condemn the property of a first-class city like Seattle. *King Cty.*, 68 Wn.2d at 692. RCW 8.12.030 states as to cities generally that have authority to condemn certain property of the State, counties, and school districts. Nowhere does that statute afford cities the right to condemn property of other cities. *See* Appendix at 1. Thus, under the same rule applied in *King Cty.*, condemnation authority would be denied. Similarly, RCW 35.22.280 is silent on the power of first class cities to condemn the property of any other governmental units. *Id.*

<sup>12</sup> Under RCW 8.12.030, cities like Seattle have the authority to condemn property for a long laundry list of purposes, plus “any other public use.”

<sup>13</sup> The argument that this particular property is not “necessary” to Sound Transit’s project – and thus Sound Transit lacks authority to condemn it – is addressed *infra* section (4).

or lease such facilities to an authority or to contract for their joint use on such terms as may be fixed by agreement between the agency and the authority.

RCW 81.112.080 (emphasis added).

Because the Legislature refused to give Sound Transit power to condemn transportation property from other political subdivisions, it is illogical to suggest the Legislature granted Sound Transit such power over *other* types of public property. If the Legislature found Sound Transit's light rail purpose to be so paramount that it allowed Sound Transit to condemn all public property dedicated to other public purposes, then surely it would have found that purpose important enough to allow condemnation of other *transportation*-related property. The more logical conclusion is that Legislature intended to deny Sound Transit condemnation power over all public property, and allow Sound Transit to acquire transportation property only by permission.

(c) Comparing the Statute at Issue to Similar Statutes and Reviewing Its Legislative History Affirms that Seattle's Position Is Correct

Seattle's position is only bolstered by comparing Sound Transit's eminent domain statute to other statutes that *do* expressly authorize the condemnation of public property. As our Supreme Court has recently noted, when trying to understand the meaning of a statute it is useful to compare the language of that statute to the language of other statutes

addressing similar subjects. *State v. Larson*, 184 Wn.2d 843, 851, 365 P.3d 740, 744 (2015). The *Larson* court was comparing the language of various statutes involving crimes committed with tools to ascertain scope of the statute at issue. *Id.* It concluded that because the language of the statute at issue was different from the language in similar statutes, the Legislature meant to distinguish that crime from crimes that otherwise seemed similar. *Id.* at 853. It then concluded, based on this statutory comparison, that the language of the statute before it was narrow in scope. *Id.* at 854.

The Legislature has enacted many condemnation statutes granting express authority to condemn public property. The statute granting highway departments authority to condemn property provides for condemnation of “private *or public* property...”. RCW 47.52.050 (emphasis added). The statute granting condemnation authority to port districts provides for condemnation of “any *public* and private property...”. RCW 53.34.170 (emphasis added). The statute granting condemnation authority to public utility districts provides for condemnation of “any *public* and private property...”. RCW 54.16.050.

The Legislature knows how to enact condemnation statutes containing express authority to condemn public property. It knows that this Court will strictly construe condemnation statutes, and that simply

saying “property” or “all property” will not suffice to grant authority to condemn public property. Thus, given the difference in the language of RCW 81.112.080 and the numerous statutes that expressly grant the power the condemn “public property,” this Court should conclude that, by enacted RCW 81.112.080 as written, the Legislature did not intend to grant Sound Transit the authority to condemn Seattle’s property. *Larson*, 184 Wn.2d at 854.

Legislative history also supports Seattle’s strict reading here, as opposed to Sound Transit’s request for a liberal reading. The Legislature was aware when it drafted Sound Transit’s condemnation authority that this Court would strictly construe it, as it does with all other condemnation statutes. Sound Transit was created by the Legislature in 1992. The original authorization bill was House Bill 2610. It contained condemnation authority in section 109 that closely resembles RCW 81.112.080. However, it is critical to note that the legislation originally contained the following “liberal construction” section *which was later deleted in the Senate*:

NEW SECTION. Sec. 108. LIBERAL CONSTRUCTION. The rule of strict construction shall have no application to this chapter, but the same shall be liberally construed in all respects in order to carry out the purposes and objects for which this chapter is intended.

This “liberal construction” proposal was defeated in Senate Bill Report ESSB 2610, and was not part of the final legislation. Laws of 1992, ch. 101.

Simply put, Section 108 of HB 2610 would have overturned the rule of strict construction as to Sound Transit’s condemnation power. The Legislature refused to overturn that touchstone to construction of local government condemnation statutes.

Strictly construed, RCW 81.112.080 *nowhere* grants Sound Transit the power to take public property, let alone the property of a first class city like Seattle. Accordingly, this Court can only conclude that Sound Transit lacks the authority to condemn the property at issue here.

(4) Sound Transit’s Condemnation of Seattle’s Property for Bellevue’s Road Project Is Not “Necessary” to the Construction of Light Rail

The Legislature not only deprived Sound Transit of express authority to condemn Seattle’s property, it also limited Sound Transit to condemnation authority to property “necessary for such high capacity transportation systems” it seeks to build. RCW 81.112.080(2). In connection with eminent domain statutes, this Court has held that “necessary” means “reasonable necessity, under the circumstances of the particular case.” *Welcker*, 65 Wn.2d at 683; *see also*, *State ex rel. Lange v. Superior Court*, 61 Wn.2d 153, 156, 377 P.2d 425 (1963) (necessity

means reasonable necessity under the circumstances). “High capacity transportation systems” are systems “of public transportation services within an urbanized region operating principally on exclusive rights of way, and the supporting services and facilities necessary to implement such a system...” RCW 81.104.015(2).<sup>14</sup>

Based on the explicit wording of RCW 81.112.080, Sound Transit has no statutory authority to condemn Seattle’s Transmission Line Easement to widen Bellevue’s general purpose roadway because that property is not necessary for Sound Transit’s light rail system. *Id.* Further, the board resolution upon which Sound Transit relies on for its authority to condemn the specific property in this case does not authorize Sound Transit to acquire property for the purpose of widening 124<sup>th</sup> Avenue or to support Bellevue’s development goals. To the contrary, per the Resolution, which is Exhibit 1 to the Petition, Sound Transit is authorized to condemn property “for the purpose of constructing, owning, and operating a permanent location of the East Link Extension and light rail guideway.” CP 9. The trial court should have recognized these facts, granted Sound Transit’s summary judgment motion, and denied Sound

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<sup>14</sup> RCW 81.104.015(2) is a related statute to RCW 81.112.080, and thus it is appropriate to consider its definition of this specialized term. *See Washington State Dep’t of Revenue v. Fed. Deposit Ins. Corp.*, 190 Wn. App. 150, 162, 359 P.3d 913 (2015).

Transit's motion for public use and necessity on the grounds that it was exceeding its condemnation authority by trying to condemn property that was not necessary for its light rail system.

(5) Sound Transit's Condemnation of Seattle's Property for Bellevue's Road Project Is Not "Incidental" to its Condemnation for the Construction of Light Rail

In some cases, a condemning authority may be permitted to take a small amount of property "incidental" to the property taken for public use, as long as the principal use is consistent with the eminent domain authority. *Compare In re City of Seattle*, 96 Wn.2d at 616 (prohibiting condemnation for Seattle's Westlake Project where principal purpose of condemnation was for retail activities and public purposes were incidental) *with State ex rel. Convention and Trade Ctr. v. Evans*, 136 Wn.2d 811, 966 P.2d 1252 (1998) (allowing condemnation and later sale of part of condemned property for Seattle's downtown convention center where parcel sold was incidental to overall condemned property); *HTK Mgmt., L.L.C.*, 155 Wn.2d at 612 (same re: property incidental to monorail station).

Here, Sound Transit is not condemning an "incidental" amount of property for Bellevue's road widening project in conjunction with its condemnation of property for its light rail system. To the contrary, *most* of the property Sound Transit is condemning is for Bellevue's project. CP

34. According to the maps submitted by Sound Transit with the Petition, most of the property Sound Transit is condemning will be conveyed to Bellevue for its road widening project and will never be used for Sound Transit's perpendicular rail crossing of 124<sup>th</sup> Avenue. *Id.*

(6) The Prior Public Use Doctrine Prohibits Sound Transit's Condemnation Because It Would Interfere With or Destroy Seattle's Public Use of the Property

Even if Sound Transit has the authority to condemn public property, it is barred from doing so under the prior public use doctrine if its "proposed use will either destroy the existing use or interfere with it to such an extent as is tantamount to destruction." *Pub. Util. Dist. No. 1 of Okanogan Cty.*, 182 Wn.2d at 538-39. The trial court here erred in failing to apply the prior public use doctrine and implicitly determining that it did not preclude the taking and/or destruction of Seattle's use.

(a) The Prior Public Use Doctrine Applies

Washington law provides that the generation and distribution of electricity, and the acquisition of property for those purposes, are public uses. In *Carstens v. Pub. Util. Dist. No. 1 of Lincoln Cty.*, 8 Wash. 2d 136, 143, 111 P.2d 583 (1941), the Washington State Supreme Court held:

The generation and distribution of electric power has long been recognized as a public use by this court.

Further, the Supreme Court has held:

The very nature of the business of furnishing electric energy determines that the use to which the condemned property is to be put is a public one. Under our present way of living, electricity is essentially necessary in order to enable our citizens to carry on their every day activities and pursue their accustomed manner of living.

*State ex rel. Washington Water Power Co. v. Superior Court*, 8 Wn.2d 122, 132–33, 111 P.2d 577, 582 (1941).

These cases are consistent with the long line of cases that have held that the acquisition of property for the purposes generating and distributing electricity is a public use. *State ex rel. Nw. Elec. Co. v. Superior Court In & For Clark Cty.*, 28 Wn.2d 476, 483, 183 P.2d 802 (1947) (“We have uniformly held that the acquisition of properties by a public utility district, for the purpose of furnishing electricity to the public, is a public use.”); *Brady v. City of Tacoma*, 145 Wash. 351, 356, 259 P. 1089, 1091 (1927) (“Under modern conditions the city's plant is just as much a necessity to the community as is a railroad, and the production and distribution of electricity is a public use”); *Pub. Util. Dist. No. 1 of Chelan Cty. v. Washington Water Power Co.*, 43 Wn.2d 639, 643, 262 P.2d 976, 979 (1953) (“The appropriation of water and facilities for the generation of electrical power, to be sold to the public generally by an entity entitled by statute so to do, is a public use.”).

Sound Transit argued below that because Seattle owns this property for the use of electrical transmission, Seattle holds it in a “proprietary capacity” and therefore the prior public use analysis does not apply. CP 351.

Sound Transit was wrong on two scores. First, all property dedicated to a public use, regardless of the capacity in which it is held, is subject to prior public use analysis. *PUD No. 1*, 182 Wn.2d at 542. Second, in the condemnation context, “proprietary capacity” means land that is *not* dedicated to any public use, either presently or in the future. *Id.*

Here, Seattle acquired the Transmission Line Easement for the purposes of constructing, operating, and maintaining an electrical transmission system, and it has retained that easement as part of its larger Transmission Line Corridor connecting the City to its electrical generating facilities in the Skagit Valley for almost 100 years. CP 284-91. The recorded easement Seattle holds *specifically dedicates* the easement to the public use of electrical transmission. CP 291.

Thus, the property at issue is subject to the prior public use doctrine, and can only be condemned if Sound Transit has express authorization from the Legislature to do so. *PUD No. 1*, 182 Wn.2d at 538-39.

(b) Sound Transit's Condemnation Would Render the Transmission Line Easement Unusable for Its Intended Purpose, Destroying the Prior Public Use

If it were allowed to stand, Sound Transit's condemnation would render the Electrical Transmission Line Easement unusable for its intended purpose as the portion of the easement that remains on the Subject Property would not be large enough for the City to locate a transmission line tower on the property, and the loss of aerial easement rights on the northern boundary of the property would prevent the City from being able to run any lines from the Subject Property to the property to the north. CP 285-86.

As a result of Sound Transit's condemnation, the Transmission Line Easement would be split in two. The westernmost portion of the easement that is now occupied by the right-of-way for 124<sup>th</sup> Avenue NE would be separated from an irregular remnant of easement area that would remain on the Subject Property. *Id.*

In the vicinity of the Property, the Transmission Line Easement is approximately 150 feet wide. *Id.* This is a typical width for a transmission line easement that is designed to accommodate two high voltage transmission lines. This width is necessary to accommodate the clearances around the lines and the towers that are required for such systems, and to ensure that there is sufficient room for access to the towers

and lines for operational and repair purposes. *Id.* Sound Transit's condemnation of the Transmission Line Easement would leave insufficient space in the remaining portion of the easement on the Subject Property for the City to locate a standard lattice transmission line tower or a monopole tower. *Id.*

Sound Transit's condemnation would result in the extinguishment of all of Seattle's rights in the Electrical Transmission Line Easement over portions of the Subject Property. This includes extinguishing Seattle's aerial easement rights in an area running the full width of the easement along the northern boundary of the property. Sound Transit's extinguishment of Seattle's rights over the area would make it impossible for Seattle to operate an electrical transmission line over the Subject Property.

Sound Transit's condemnation would narrow the remaining portion of the Transmission Line Easement on the southern boundary of the Subject Property such that it would not be wide enough to house a 230 kV transmission line. *Id.* By severing the easement in this way, Sound Transit's condemnation would not only destroy the Transmission Line Easement over the Subject Property but, it would also effectively destroy the utility of the 100+ mile transmission line corridor. *Id.*

- (7) Home Rule Charter Cities Have a Constitutional Status; Protecting their Property Rights Is an Important Public Policy

Washington courts are wise to demand strict construction of condemnation statutes, particularly when the public property at issue is owned by a home rule charter general purpose unit of government like Seattle. General purpose local governments like cities and counties have a special constitutional status in Washington. Wash. Const. art. I, § 10. Seattle is a home rule charter city; a general purpose unit of government with broad responsibilities under its charter. *State ex rel. Swan v. Jones*, 47 Wn.2d 718, 728, 289 P.2d 982 (1955). The charters of home rule governments confer upon them “complete local self-government in municipal affairs.” *Bussell v. Gill*, 58 Wash. 468, 473, 108 P. 1080 (1910). Decisions of a home rule local government like Seattle are ultimately the product of a directly elected Council and Mayor.

Sound Transit, on the other hand, is a special purpose unit of local government with limited powers. *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 788, 357 P.3d 1040 (2015). It does not have a directly elected leadership; it is governed largely by unelected administrators. Special purpose districts are limited in their powers “to those necessarily or fairly implied in or incident to the powers expressly granted, and also those essential to the declared objects and purposes of the corporation.” *Port of Seattle v. Wash. Utils. & Transp. Comm'n*, 92 Wn.2d 789, 794–95, 597 P.2d 383 (1979). Sound Transit’s power is focused solely on high-

capacity transit. Its power is just as limited as that conferred on other special purpose units of government in Washington that address the operation of ports, schools, or public utilities. *Id.*

Ultimately, as these entities are all political subdivisions of the State, it is for *the Legislature*, not the court like the trial court here, to prescribe the relative importance of the governmental unit and the function it performs. The Legislature did not expressly determine *anywhere* that the decisions of Sound Transit, a special purpose government, should trump the decisions of a home rule charter city or that a transit system was more important than a city's electrical utility.

#### F. CONCLUSION

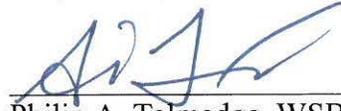
The trial court erred in concluding that Sound Transit, a special purpose government, had the authority to condemn the property of Seattle, a general purpose government, in the absence of express legislative authority to do so.

Moreover, under the prior public use doctrine, Sound Transit's condemnation will interfere with or destroy Seattle's use of public property.

The trial court's order and judgment on public use and necessity and the order denying Seattle's motion for reconsideration should be reversed and vacated. Costs on appeal should be awarded to Seattle.

DATED this 14<sup>th</sup> day of August, 2017.

Respectfully submitted,



Philip A. Talmadge, WSBA #6973  
Sidney Tribe, WSBA #33160  
Talmadge/Fitzpatrick/Tribe  
2775 Harbor Avenue SW  
Third Floor, Suite C  
Seattle, WA 98126  
(206) 574-6661

Russell S. King, WSBA #27815  
Engel E. Lee, WSBA #24448  
Seattle City Attorney's Office  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7097  
(206) 682-8200

Attorneys for Appellant  
City of Seattle

# APPENDIX

RCW 8.12.030:

Every city and town and each unclassified city and town within the state of Washington, is hereby authorized and empowered to condemn land and property, including state, county and school lands and property for streets, avenues, alleys, highways, bridges, approaches, culverts, drains, ditches, public squares, public markets, city and town halls, jails, and other public buildings, and for the opening and widening, widening and extending, altering and straightening of any street, avenue, alley, or highway, and to damage any land or other property for any such purpose or for the purpose of making changes in the grade of any street, avenue, alley, or highway, or for the construction of slopes or retaining walls for cuts and fills upon real property abutting on any street, avenue, alley, or highway now ordered to be, or such as shall hereafter be ordered to be opened, extended, altered, straightened or graded, or for the purpose of draining swamps, marshes, tidelands, tide flats or ponds, or filling the same, within the limits of such city, and to condemn land or property, or to damage the same, either within or without the limits of such city for public parks, drives and boulevards, hospitals, pesthouses, drains and sewers, garbage crematories and destructors and dumping grounds for the destruction, deposit or burial of dead animals, manure, dung, rubbish, and other offal, and for aqueducts, reservoirs, pumping stations and other structures for conveying into and through such city a supply of freshwater, and for the purpose of protecting such supply of freshwater from pollution, and to condemn land and other property and damage the same for such and for any other public use after just compensation having been first made or paid into court for the owner in the manner prescribed by this chapter.

RCW 35.22.280:

Any city of the first class shall have power:

....

(3) To control the finances and property of the corporation, and to acquire, by purchase or otherwise, such lands and other property as may be necessary for any part of the corporate uses provided for by its charter, and to dispose of any such property as the interests of the corporation may, from time to time, require;

....

(6) To purchase or appropriate private property within or without its corporate limits, for its corporate uses, upon making just compensation to the owners thereof, and to institute and maintain such proceedings as may be authorized by the general laws of the state for the appropriation of private property for public use;

RCW 81.112.080:

An authority shall have the following powers in addition to the general powers granted by this chapter:

...

(2) 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 within authority boundaries including surface, underground, or overhead railways, tramways, busways, buses, bus sets, entrained and linked buses, ferries, or other means of local transportation except taxis, and including escalators, moving sidewalks, personal rapid transit systems or other people-moving systems, passenger terminal and parking facilities and properties, and such other facilities and properties as may be necessary for passenger, vehicular, and vessel access to and from such people-moving systems, terminal and parking facilities and properties, together with all lands, rights-of-way, property, equipment, and accessories necessary for such high capacity transportation systems. When developing specifications for high capacity transportation system operating equipment, an authority shall take into account efforts to establish or sustain a domestic manufacturing capacity for such equipment. The right of eminent domain shall be exercised by an authority in the same manner and by the same procedure as or may be provided by law for cities of the first class, except insofar as such laws may be inconsistent with the provisions of this chapter. Public transportation facilities and properties 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. Such agencies are hereby authorized to convey or lease such facilities to an authority or to contract for their joint

use on such terms as may be fixed by agreement between the agency and the authority.

The facilities and properties of an authority whose vehicles will operate primarily within the rights-of-way of public streets, roads, or highways, may be acquired, developed, and operated without the corridor and design hearings that are required by RCW 35.58.273 for mass transit facilities operating on a separate right-of-way;

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The Honorable Kenneth Schubert

SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

CENTRAL PUGET SOUND REGIONAL  
TRANSIT AUTHORITY, a regional transit  
authority, dba SOUND TRANSIT,  
  
Petitioner,  
  
vs.  
  
ANN SEENA JACOBSEN, who also appears of  
record as ANN SEENA VERACRUZ,  
individually and as trustee for THE ANN  
SEENA JACOBSEN LIVING TRUST DATED  
APRIL 4, 2002, et al.,  
  
Respondents.

No. 16-2-06769-7 SEA  
  
REVISED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, ORDER AND  
JUDGMENT ADJUDICATING PUBLIC  
USE AND NECESSITY RE CITY OF  
SEATTLE PROPERTY INTERESTS  
  
Tax Parcel No. 282505-9204

THIS MATTER came on regularly for hearing before the undersigned judge, upon the motion of Petitioner Central Puget Sound Regional Transit Authority ("Petitioner"). The Respondents in this action have been identified in Petitioner's Petition in Eminent Domain on file in this condemnation action (the "Petition"), and it appears that said Respondents have all received due and proper notice of this hearing.

Said Respondents or their attorneys have either: (1) appeared but not objected to entry of these Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating Public Use and Necessity, (2) have not appeared, or (3) having appeared and objected to entry, their objections were considered and overruled. The Court, having jurisdiction over each and all of the Respondents and the subject matter of this action, having considered the following:

REVISED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, ORDER AND  
JUDGMENT ADJUDICATING PUBLIC  
USE AND NECESSITY -- 1  
4825-7827-4624.1

MILLER NASH GRAHAM & DUNN LLP  
Pier 70 ~ 2801 Alaskan Way ~ Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599

1           Petitioner's Motion for Order and Judgment Adjudicating Public Use and Necessity Re  
2 City of Seattle Property Interests, filed November 18, 2016;

3           The Declaration of Tom Wilson filed in support of Sound Transit's Amended Motion for  
4 Order and Judgment Adjudicating Public Use and Necessity, and the exhibits thereto, filed April  
5 19, 2016;

6           The Declarations of Connor O'Brien, Ken Barnes, Paul Ferrier, Mike Bulzomi, and  
7 Marina Arakelyan filed in support of Petitioner's Motion, and the exhibits thereto, filed  
8 November 18, 2016;

9           The City of Seattle's Response to Petitioner's Motion for Order and Judgment  
10 Adjudicating Public Use and Necessity Re City of Seattle Property Interests filed December 5,  
11 2016;

12           The Declarations of Bob Risch and John Bresnahan in support of The City of Seattle's  
13 Response to Petitioner's Motion, and the exhibits thereto, filed December 5, 2016;

14           Petitioner's Reply in Support of Motion for Order and Judgment Adjudicating Public Use  
15 and Necessity Re City of Seattle Property Interests, filed December 12, 2016;

16           The Declarations of Larry Smith, Paul Ferrier, and Jessica Skelton filed in support of  
17 Petitioner's Reply, and the exhibits thereto, filed December 12, 2016;

18           The City of Seattle' Motion for Summary Judgment filed November 18, 2016;

19           The Declarations of John Bresnahan and Russell King filed in support of The City of  
20 Seattle's Motion for Summary Judgment, and the exhibits thereto, filed November 18, 2016;

21           Petitioner's Opposition to the City of Seattle's Motion for Summary Judgment, filed  
22 December 5, 2016;

23           The Declaration of Jeffrey Beaver filed in support of Petitioner's Opposition to the City  
24 of Seattle's Motion for Summary Judgment, and the exhibits thereto, filed December 5, 2016;

25           The City of Seattle's Reply, if any; and

26

1 The files and records herein, and being fully advised, has determined that the relief  
2 sought by Petitioner is proper.

3 NOW, THEREFORE, this Court makes the following FINDINGS OF FACT:

4 1. Petitioner is a duly organized and acting regional transit authority, existing under  
5 and by virtue of the laws of the State of Washington. RCW 81.112.080. Petitioner is authorized  
6 by statute to construct and operate a high-capacity transportation system within authority  
7 boundaries. RCW 81.112.010.

8 2. Respondent holds interests in the land, property and property rights, which are the  
9 subject of this condemnation action commenced pursuant to Chapter 81.112 RCW. Specifically,  
10 Respondent City of Seattle (the "City") holds easements for the construction, operation and  
11 maintenance of an electrical transmission system on the Parcel.

12 3. On or about September 26, 2013, by Petitioner's Resolution No. R2013-21  
13 ("Resolution"), Petitioner's Board of Directors (the "Board") authorized the condemnation,  
14 taking, damaging, and appropriation of certain lands, properties and property rights in order to  
15 permanently locate, construct, operate and maintain the East Link Extension and its related  
16 facilities (the "Project"). A copy of the Resolution is attached as Exhibit 1 to the Petition which  
17 Exhibit is incorporated here by this reference. Included within these lands, properties and  
18 property rights is land, property and property rights situated in Bellevue, King County,  
19 Washington, in which Respondents hold an interest.

20 4. Before taking final action to adopt the Resolution, which authorizes  
21 condemnation of the subject property, Petitioner mailed and published the required notices  
22 pursuant to RCW 8.25.290 with the date, time and location of the Board meeting at which  
23 Petitioner intended to take final action and authorize the acquisition of the subject property  
24 through condemnation, which notice also generally described the property.

25  
26

1           5.     The land, property and property rights which Petitioner seeks to and is authorized  
2 to condemn, and in which Respondents hold interests, is identified as King County Tax Parcel  
3 No. 282505-9204 (the "Parcel").

4           6.     Specifically, with this condemnation, Petitioner seeks to appropriate the following  
5 property interests:

6           6.1     A permanent taking of a portion of the Parcel in fee simple absolute, as  
7 legally described and depicted in, and in substantially the form of, **Exhibit**  
8 **1** hereto;

9           6.2     A permanent taking of a portion of the Parcel for a permanent Wall  
10 Footing and Maintenance Easement – ST, as legally described and  
11 depicted in, and in substantially the form of, **Exhibit 2** hereto;

12          6.3     A permanent taking of a portion of the Parcel for a permanent Wall  
13 Footing and Maintenance Easement – COB, as legally described and  
14 depicted in, and in substantially the form of, **Exhibit 3** hereto;

15          6.4     A permanent taking of a portion of the Parcel for a permanent Tieback /  
16 Soil Nail Easement, as legally described and depicted in, and in  
17 substantially the form of, **Exhibit 4** hereto;

18          6.5     A permanent taking of a portion of the Parcel for a permanent Drainage  
19 Easement, as legally described and depicted in, and in substantially the  
20 form of, **Exhibit 5** hereto;

21          6.6     A temporary taking of a portion of the Parcel for a temporary Access  
22 Easement – COB, as depicted in, and in substantially the form of, **Exhibit**  
23 **6** hereto;

24          6.7     A temporary taking of a portion of the Parcel for a temporary  
25 Environmental Monitoring Easement, as legally described and depicted in,  
26 and in substantially the form of, **Exhibit 7** hereto;

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6.8 A temporary taking of a portion of the Parcel for a Temporary Construction Easement – ST, as depicted in, and in substantially the form of, **Exhibit 8** hereto; and

6.9 A temporary taking of a portion of the Parcel for a Temporary Construction Easement – COB, as depicted in, and in substantially the form of, **Exhibit 9** hereto.

Exhibits 1-9 are incorporated here by this reference and the real property and real property interests described in Exhibits 1-9 are hereinafter collectively referred to as the “Condemned Property.”

7. The Condemned Property is necessary to and will be used for public purpose – locating, constructing, operating and maintaining the Project.

8. Petitioner has determined that the construction of the Project will serve a public purpose, is necessary for the public interest, and that the Condemned Property is necessary for this purpose. The Respondents have been served with notice and a copy of the Petition.

9. The City of Seattle holds easements on the parcel for the construction, operation and maintenance of an electrical transmission system.

10. Petitioner seeks to condemn the real property and real property interests described and/or depicted in Exhibits 1-9, including the easements held by the City of Seattle for the construction, operation and maintenance of an electrical transmission system on the Condemned Property. The Court previously entered Amended Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating Public Use and Necessity as to all Respondents subject to the City of Seattle's existing real property interests.

11. There was no fraud, actual or constructive, no abuse of power, bad faith, or arbitrary and capricious conduct by Petitioner.

1           12.    The City of Seattle is not currently using the easements it holds on the Parcel;  
2 there are no electrical transmission facilities or installations on the Parcel, nor are there present,  
3 definite, or articulated plans to use the easement in the foreseeable future.

4           13.    Petitioner's proposed use of the Condemned Property will not destroy the City of  
5 Seattle's ability to use its remaining interests in the Parcel for an electrical transmission system;  
6 accordingly, even if the City of Seattle is deemed to be engaged in a present public use of its  
7 easements, that use is consistent with Petitioner's proposed use.

8           14.    Petitioner's immediate need to construct, operate, and maintain a high capacity  
9 transportation system is superior to the City of Seattle's need to preserve the entirety of its  
10 easements on the Parcel to build an unplanned, undefined, future, electric transmission system.

11           UPON CONSIDERATION thereof, the Court hereby makes the following  
12 CONCLUSIONS OF LAW:

13           1.    The Court has jurisdiction over the parties and the subject matter of this action.

14           2.    Petitioner is a regional transit authority, existing under and by virtue of the laws  
15 of the State of Washington.

16           3.    Petitioner is authorized by statute to condemn for public use, which includes  
17 locating, constructing, operating and maintaining the Project. Condemnation of lands,  
18 properties, and property rights to locate, construct, operate, and maintain the Project is within the  
19 statutory authority of Petitioner.

20           4.    Petitioner is authorized by statute to condemn public land, including public land  
21 already in public use, for Petitioner's Project.

22           5.    Construction, operation and maintenance of an electric transmission system is a  
23 proprietary function, not a governmental function, and the City therefore holds the subject  
24 property in its proprietary capacity.

25           6.    Sound Transit's condemnation authority extends to the property and property  
26 interests held by the City of Seattle for use in connection with its electric transmission system,

1 whether or not the City of Seattle is deemed to be engaged in a present public use of those  
2 property interests, and whether or not Petitioner's use is deemed to be consistent with the City of  
3 Seattle's use. Petitioner may acquire such property by condemnation, without the consent of the  
4 City of Seattle.

5 7. Petitioner is authorized to bring and maintain this condemnation action.

6 8. Petitioner may exercise its authority to condemn the easements burdening the  
7 Parcel, which the City of Seattle holds for the purposes of an electric transmission system.

8 9. Petitioner, having mailed and published notice with the date, time and location of  
9 the Board meeting at which Petitioner intended to take final action and authorize the acquisition  
10 of the Condemned Property through condemnation, which notice generally described the  
11 Condemned Property, made a diligent attempt to provide sufficient notice and this Court does  
12 hereby deem the notice given by Petitioner, as described in the Declaration of Mike Bulzomi  
13 attached as Exhibit A to the Declaration of Connor M. O'Brien filed herewith, to be sufficient to  
14 satisfy the requirements of RCW 8.25.290.

15 10. The taking and damaging of lands, properties and property rights in order to  
16 locate, construct, operate and maintain the Project is for a public use.

17 11. The public interest requires the proposed use.

18 12. Appropriation of the Condemned Property is necessary for the proposed use.

19 13. Petitioner is entitled to the issuance of an order finding public use and necessity  
20 for the taking of the Condemned Property for public purposes.

#### 21 ORDER AND JUDGMENT

22 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that  
23 there is public use and necessity for taking of the Condemned Property (legally described and/or  
24 depicted in Exhibits 1-9 to this Order) for public purposes, including the City of Seattle's  
25 existing real property interests in the Condemned Property described and/or depicted therein.

26

REVISED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, ORDER AND  
JUDGMENT ADJUDICATING PUBLIC  
USE AND NECESSITY -- 7  
4825-7827-4624.1

MILLER NASH GRAHAM & DUNN LLP  
Pier 70 ~ 2801 Alaskan Way ~ Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599

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DONE IN OPEN COURT this \_\_\_\_ day of January, 2017.

THE HONORABLE KENNETH SCHUBERT

**Presented by:**

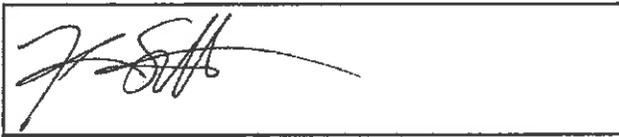
MILLER NASH GRAHAM & DUNN LLP

By /s/ Jeffrey A. Beaver  
Jeffrey A. Beaver, WSBA# 16091  
Attorneys for Petitioner Sound Transit

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 16-2-06769-7  
Case Title: CENTRAL PUGET SOUND REGIONAL TRANSIT  
AUTHORITY VS JACOBSEN ET AL  
Document Title: ORDER REVISED FINDINGS AND CONCLUSIONS

Signed by: Ken Schubert  
Date: 1/19/2017 3:26:48 PM



Judge/Commissioner: Ken Schubert

This document is signed in accordance with the provisions in GR 30.

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Certificate effective date: 7/29/2013 12:37:57 PM

Certificate expiry date: 7/29/2018 12:37:57 PM

Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,  
O=KCDJA, CN="Ken  
Schubert:rumaiXr44hGoUkM4YYhwmw=="



# EXHIBIT "C-1"

NW 1/4 SE 1/4 SEC 28, T 25 N, R 5 E, W.M.

124TH AVENUE

N00°42'17"E

EX WATER

PIPELINE ESMTS

REC. NO 6662152

20' x 20' ESMT

TO QWEST

REC NO.

20080514001083

COB

FEE TAKE

N00°42'17"E

300.04'

L50

L51

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PROPOSED

COB ROW

NOTE 1

N06°25'18"W (R)

TEMP COB

ACCESS

ESMT

EX ELECTRIC

TRANSMISSION ESMT

TO COS

REC NO. 241252

COB TCE

EX PSE AREA FOR 10'

EASEMENT AS

CONSTRUCTED

REC. NO 20100917000159

EX ELECTR.

TRANSMISSION ESMT

TO COB

REC. NO 6478024

N01°09'09"W (R)

L62

L6

AFTER FEE TAKE,

ST TO CONVEY

TCE TO COB

WITHIN THE FEE

TAKE WEST OF

1 ac. 20784 SF.

COB

WB 935+00

ST

FEE TAKE

ST & COB

TCE

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THE  
GENERAL STATUTES AND CODES

OF THE  
STATE OF WASHINGTON.

ARRANGED AND ANNOTATED BY

WILLIAM LAIR HILL,  
CODE COMMISSIONER OF THE STATE OF WASHINGTON.

VOL. I.  
GENERAL STATUTES.

SAN FRANCISCO:  
BANCROFT-WHITNEY COMPANY,  
LAW PUBLISHERS AND LAW BOOKSELLERS.  
1891.

CHAPTER V.

PROVISIONS SPECIALLY APPLICABLE TO RAILWAY AND OTHER ROAD COMPANIES, AND CANAL COMPANIES.

- § 1569. Entry upon lands for purposes of surveys, etc.
- § 1570. Extent of right to appropriate lands for corporate uses.
- § 1571. Power to cross, intersect, join, and unite railways.
- § 1572. Power and duty of railroad companies along watercourses, roads, etc.
- § 1573. Change of grade or location of road or canal.
- § 1574. Appropriation of public roads, streets, alleys, etc., when.
- § 1575. Appropriation must be made with reference to what locality.
- § 1576. May collect tolls on highway when.
- § 1577. Of clearing and setting road — Width of road, track, etc.
- § 1578. Streams to be bridged or ferries maintained.
- § 1579. Notice of completion of highway to be given.
- § 1580. Collection of tolls — Location of gates.
- § 1581. Tolls, failure to pay, and collection of illegal — Liability.
- § 1582. Notice to be given of completion of bridge.
- § 1583. Bridge toll, failure to pay, and collection of illegal — Liability.
- § 1584. To keep accounts and file with auditor.
- § 1585. Toll road or bridge may become free when.
- § 1586. County may purchase road or bridge.
- § 1587. Corporations conveying water authorized to appropriate lands.

*Entry upon lands for purpose of surveys, etc.*

§ 1569. A corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal, or bridge shall have a right to enter upon any land, real estate, or premises, between the termini thereof, for the purpose of examining, locating, and surveying the line of such road or canal, or the site of such bridge, doing no unnecessary damage thereby. [February 1, 1888, § 1. In effect immediately.]

*Extent of right to appropriate lands for corporate uses.*

§ 1570. Such corporation may appropriate so much of said land, real estate, or premises as may be necessary for the line of such road or canal, or the site of such bridge, not exceeding two hundred feet in width, besides a sufficient quantity thereof for toll-houses, work-shops, materials for construction, a right of way over adjacent lands or premises, to enable such corporation to construct and prepare its road, canal, or bridge, and to make proper drains; and in the case of a railroad, to appropriate sufficient quantity of such lands, real estate, or premises, in addition to that before specified in this section, for the necessary side-tracks, depots, and water stations, and the right to conduct water thereto by aqueduct; compensation therefor to be made to the owner thereof, irrespective of any increased value thereof by reason of the proposed improvement by such corporation, in the manner provided by law; and provided further, that if such corporation locate the bed of

such railroad or canal upon any portion of the track now occupied by any established territorial or county road, said corporation shall be responsible to the county commissioners of said county or counties in which said territorial or county road so appropriated is located, for all expenses incurred by said county or counties, in relocating and opening the portion of said road so appropriated. [February 1, 1888, § 2. In effect immediately.]

As to the mode of proceeding to appropriate land, see Chapter VI. of Title IX. of the Code of Procedure.

*Power to cross, intersect, join, and unite railways.*

§ 1571. Every corporation formed under this chapter for the construction of a railroad shall have the power to cross, intersect, join, and unite its railway with any other railway before constructed at any point in its route, and upon the grounds of such other railway company, with the necessary turn-outs, sidings, switches, and other conveniences in furtherance of the objects of its connections, and every corporation whose railway is or shall be hereafter intersected by any new railway shall unite with the corporation owning such new railway in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the taking of lands and other property which shall be necessary for the construction of its road. [February 1, 1888, § 3. In effect immediately.]

"This chapter" is chapter 187 of the Code Chapter V. of Title XVIII of General Stat. of 1881, the provisions of which, as modified aforesaid. This section was enacted as an added by subsequent legislation, are embodied in section to said chapter.

*Power and duty of railroad corporation along watercourses, roads, etc.*

§ 1572. Every corporation formed under the laws of this state for the construction of railroads shall possess the power to construct its railway across, along, or upon any river, stream of water, watercourse, plank road, turnpike, or canal, which the route of such railway shall intersect or touch; but such corporation shall restore the river, stream, watercourse, plank road, or turnpike thus intersected or touched to its former state as near as may be, and pay any damages caused by such construction; provided, that the construction of any railway by such corporation along, across, or upon any of the navigable rivers or waters of this state shall be in such manner as to not interfere with, impede, or obstruct the navigation thereof. [February 1, 1888, § 2. In effect immediately.]

*Change of grade or location of road or canal.*

§ 1573. [2457.] Any corporation may change the grade or location of its road or canal, not departing from the general route specified in

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DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the *Brief of Appellant The City of Seattle* in Supreme Court Cause No. 94406-7 to the following:

Russell S. King  
Engel Lee  
Seattle City Attorney's Office  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7097

Jeffrey A. Beaver  
Connor M. O'Brien  
Miller Nash Graham & Dunn  
2801 Alaskan Way, Suite 300  
Seattle, WA 98121-1128

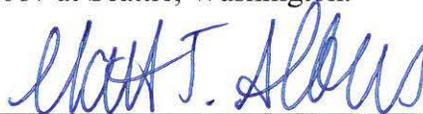
Jenifer Merkel  
King County Prosecuting Attorney  
Civil Division  
516 Third Avenue, Room W400  
Seattle, WA 98104

P. Stephen DiJulio  
Adrian Urquhart Winder  
Foster Pepper, PLLC  
1111 Third Avenue, Suite 300  
Seattle, WA 98101

Original e-filed with:  
Washington Supreme Court  
Clerk's Office  
415 12th Avenue SW  
Olympia, WA 98504

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

DATED: August 14, 2017 at Seattle, Washington.



---

Matt J. Albers, Paralegal  
Talmadge/Fitzpatrick/Tribe

**TALMADGE/FITZPATRICK/TRIBE**

**August 14, 2017 - 1:56 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 94406-7  
**Appellate Court Case Title:** Central Puget Sound Regional Transit Authority v. Safeway Inc., et al.  
**Superior Court Case Number:** 16-2-09223-3

**The following documents have been uploaded:**

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Briefs - Appellants  
*The Original File Name was Brief of Appellant The City of Seattle.pdf*

**A copy of the uploaded files will be sent to:**

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- jenifer.merkel@kingcounty.gov
- litdocket@foster.com
- maggie.flickinger@kingcounty.gov
- matt@tal-fitzlaw.com
- nichole.barnes@millernash.com
- phil@tal-fitzlaw.com
- russell.king@seattle.gov
- steve.dijulio@foster.com
- susan.vanmeter@millernash.com

**Comments:**

Brief of Appellant The City of Seattle

---

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com

**Filing on Behalf of:** Sidney Charlotte Tribe - Email: sidney@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

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