

No. 94530-6

SUPREME COURT
OF THE STATE OF WASHINGTON

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

Respondent,

v.

STERNOFF L.P., a Washington limited partnership, et al.,

Appellants.

BRIEF OF APPELLANT THE CITY OF SEATTLE

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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 an electrical transmission line easement that is owned by The City of Seattle (“Seattle”) and located in the City of Bellevue (“Bellevue”) on which Seattle operates an electrical transmission line. Seattle’s electrical transmission easement and its transmission line are significant parts of a larger electrical transmission corridor and system.

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. The

transmission line easement, 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 easement is barred because it is incompatible with Seattle's continued public use of the easement, and would effectively destroy the easement by rendering it unusable for its intended purpose.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred in entering its April 19, 2017 order and judgment adjudicating public use and necessity regarding City of Seattle property interests.
2. The trial court erred in making finding of fact 6.
3. The trial court erred in making finding of fact 7.
4. The trial court erred in entering conclusion of law 5.
5. The trial court erred in entering conclusion of law 8.
6. The trial court erred in entering conclusion of law 9.
7. The trial court erred in entering conclusion of law 10.

(2) Issues Pertaining to Assignments of Error

1. Did the trial court err in concluding that Sound Transit had statutory authority to take Seattle's property where its condemnation statute does not expressly grant the power to condemn public property? (Assignments of Error 1-7)

2. 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 124th Avenue NE? (Assignments of Error 1-7)

3. 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 easement and would destroy the easement? (Assignments of Error 1-7)

4. Did the trial court err in refusing to apply the prior public use doctrine to prohibit the condemnation? (Assignments of Error 1-7)

C. STATEMENT OF THE CASE

(1) Sound Transit Is Seeking to Condemn Portions of a Seattle-owned Electrical Transmission Line Easement

By its petition in eminent domain (the "Petition") filed in this action, Sound Transit seeks to condemn, for the purpose of building a light rail line, portions of an electrical transmission line easement ("Transmission Line Easement") owned by Seattle that is located within Bellevue's corporate limits. CP 914. The Transmission Line Easement is one of two parallel easements currently used for or reserved for operating a high-voltage transmission line ("Transmission Line"). CP 915. The Transmission Line Easement and Transmission Line 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 ("Transmission Line Corridor"). *Id.* The

corridor is also an integral part of a larger, regional electrical transmission line system that runs from Canada to California. *Id.*

The parcel of real property that is the subject of this action, is on the east side of 124th Avenue NE in the City of Bellevue (the “Sternoff Property”). *Id.*¹ The portion of the easement running parallel to 124th Avenue NE that Sound Transit is seeking to condemn for Bellevue is labeled on the maps accompanying the petition as “COB (City of Bellevue) Fee Take.” *Id.* It also denoted as “proposed fee take by City of Bellevue.” The legal description for that area is entitled “City of Bellevue Fee Take Area Acquired by Grantee.” *Id.*² In addition to the condemnation of the “COB Fee Take” Sound Transit is also seeking to condemn property for its light rail line. On the maps, that property is labeled as “ST Fee Take.” Based on the measurements on the maps attached to the petition, of the approximately 545 linear feet that Sound Transit is seeking to condemn along the length of 124th Avenue (all of which is within Seattle’s Transmission Line Easements), less than 13.5

¹ This case is but one part of Sound Transit’s efforts to condemn multiple properties. Trial courts have entered orders of public use and necessity not only in the present case, but in *Central Puget Sound Reg’l Transit Auth. v. Ann Seena Jacobson, et al.* (Cause No. 16-2-06769-7 SEA), *Central Puget Sound Reg’l Transit Auth. v. Safeway, Inc.* (Cause No. 17-2-09223-3 SEA), and *Central Puget Sound Reg’l Transit Auth. v. WR-SRI 120th North, et al.* (Cause No. 17-2-00988-1 SEA).

² The Transmission Line Easement is labeled as “Ex Elec Transmission COS [CITY OF SEATTLE]” on the maps. CP 33-90.

feet is being condemned for its light rail line – the balance is for Bellevue’s road widening project.

Thus, the petition makes clear that Sound Transit does not intend to use the vast majority of Seattle’s condemned property for building light rail. CP 37. Instead, Sound Transit intends to condemn Seattle’s property to give to Bellevue so that it can widen and develop its general purpose roadway. *Id.*

The reason that Sound Transit plans to condemn Seattle’s property for Bellevue’s road project, rather than solely for light rail, is that Bellevue negotiated that transaction with Sound Transit and without Seattle’s participation. CP 311, 495-516. Bellevue has a capital improvement project (“CIP”) in which it plans to widen and improve 124th Avenue. *Id.* As reflected in the 2015 Cost Sharing Agreement between Sound Transit and Bellevue, the light rail construction and the road-widening are separate projects the two agencies are “coordinating.” CP 313, 495-516.

Although there is currently no transmission line within the Transmission Line Easements on the east side of 124th Avenue NE, there is one located on the west side of the street. CP 915. The growing demand for high-voltage electrical transmission line capacity in the region, and the scarcity of available corridors to locate such lines means that it is

very likely the easement will be used to build a transmission line in the near future. *Id.*

(2) Sound Transit Seeks to Extinguish All of Seattle's Rights Over Portions of the Transmission Line Easement on the Property

The prayer for relief section of the Petition asks the trial court to convey title to all of the property being condemned to Sound Transit “free and clear of any right, title and interests of all Respondents,” which would extinguish all of Seattle’s easement rights over the areas being condemned. CP 5.

The Transmission Line Easements run in a north-south direction along the full length of the western boundary of the property being condemned. CP 915, 1241. The loss of the COB Fee Take tract that runs approximately 535 feet down the center of the Transmission Line Easements would split the easements in two and make it impossible for Seattle to locate a transmission line within the easements. CP 916. There would be insufficient room to locate the necessary towers or to locate the transmission line wires themselves given mandatory clearances that must be maintained. *Id.* On the southern boundary of the Sternoff property, the condemnation of the property for the COB Fee Take and the property that will actually be used for Sound Transit’s light rail line, the ST Fee Take, will completely isolate the remaining portion of the Transmission Line

Easements from the property to south. *Id.* The extinguishing of Seattle's easement rights in this way and to this extent would render the Transmission Line Easements unusable for their intended purpose (the construction, operation, and maintenance of an electrical transmission line) and sever the Transmission Line Corridor. *Id.*

(3) Procedural History

This condemnation action is one of five actions that Sound Transit has filed in order to condemn property for its perpendicular light rail crossing of 124th Avenue in Bellevue. Each of the PUN orders issues is currently on appeal.³

In this action, Seattle submitted evidence that Sound Transit's condemnation and the resulting extinguishment of Seattle's easement rights in the Transmission Line Easements was incompatible with the use of the Transmission Line Easements and would sever and render useless the important Transmission Line Corridor. CP 1072-73. Nonetheless, the trial court, the Honorable Sue Parisien, did not address this evidence and simply entered an order of public use and necessity containing its findings

³ Seattle appealed the first order to the Court of Appeals, (COA Cause Number 76252-4-I) and has also sought direct review by this Court of the public use and necessity orders in King County Cause No. 17-2-00988-1 SEA (Supreme Court Cause No. 94255-2), and King County Cause No. 16-2-09223-3 SEA (Supreme Court Cause No. 94406-7). In the fifth action, filed under King County Cause No., 17-2-12144-4 SEA, Sound Transit's motion for public use and necessity is pending before the trial court.

and conclusions. CP 1232-37. Seattle appealed that decision directly to this Court. CP 1337-38.

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 Seattle.

Not only does Sound Transit lack statutory authority to condemn public property in general, it lacks authority to condemn *any* property that is not necessary to its purpose of building high-capacity transit. Condemning Seattle's property for use in Bellevue's separate road-widening project is completely outside the statutory authority of Sound Transit, a light-rail construction agency.

Finally, 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 Transmission Line Easements to operate and maintain a transmission

line, which is 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 easement thereby rendering the Transmission Line Easement useless, and severing the Transmission Line Corridor. Such a result bars a finding of public use and necessity.

E. ARGUMENT⁴

(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

⁴ As this action turns on the correct interpretation of a statute, the standard of review is *de novo*. *State v. Azpitarte*, 140 Wn.2d 138, 140-41, 995 P.2d 31 (2000).

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). In deriving the plain meaning of the words used in a statute, courts must look to all that the Legislature has said in the statute and related statutes on the subject. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If, using this analysis, 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 Dev., 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 551.⁵ 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.”

⁵ The statute at issue in that case, Gen. St. §§ 1569, 1570; Code Proc. tit. 18, c. 5, is appended hereto. Appendix at 4. Sound Transit’s claim of unlimited, open-ended authority to condemn public property for its light rail line here is based on similar language.

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 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.⁶

(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

⁶ 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.

Before reaching the question of public use and necessity, 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.⁷ The trial court here erred in concluding that Sound Transit had such authority under RCW 81.112.080.

The scope of condemnation authority delegated through RCW 81.112.080 has never been judicially construed in an appellate opinion.⁸ 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).

⁷ *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) ("[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).

⁸ In *Central Puget Sound Reg'l 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).

(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.⁹ *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:

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.¹⁰ *Id.* at 690.

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

¹⁰ 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.

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.

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 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.¹¹ As a result, Sound Transit does not have the authority to generally condemn property for any public purpose, as a first class city does.¹²

¹¹ 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.*

¹² 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."

Instead, Sound Transit may only take property “necessary” for its purpose of building high-capacity transit. RCW 81.112.080.¹³

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 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 public property. The more

¹³ 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).

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 to condemn “public property,” this Court should conclude that, by enacting 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 black-letter principle for construing local government condemnation statutes.

Strictly construed, RCW 81.112.080 does not expressly grant Sound Transit the power to take *any* 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).¹⁴

The road widening and other improvements to 124th Avenue are a separate CIP of Bellevue, not part of the construction of Sound Transit’s light rail system. CP 496, 805. The parties’ cost-sharing agreement

¹⁴ 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).

purported to grant Sound Transit authority to condemn property for Bellevue's project. CP 497. 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 124th Avenue or to support Bellevue's development project.¹⁵ CP 313. On the contrary, per the authorizing resolution that authorizing real property acquisition, 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 10.

One agency cannot convey condemnation authority to another by contract. The trial court should have recognized these facts and denied Sound 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.

Sound Transit may respond that 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

¹⁵ 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 10.

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. On the contrary, *most if not all* of the property Sound Transit is condemning is for Bellevue’s project. CP 37. According to the maps submitted by Sound Transit with the Petition, the vast majority of Seattle’s property Sound Transit is condemning will be conveyed to Bellevue (“COB Fee Take”) for its road widening project and will never be used for Sound Transit’s perpendicular light rail crossing of 124th Avenue. *Id.*

Based on the explicit wording of RCW 81.112.080, Sound Transit has no statutory authority to condemn Seattle’s Transmission Line Easement in order to give it to Bellevue for road-widening. It is not “necessary” to the construction of light rail.

(5) The Prior Public Use Doctrine Prohibits Sound Transit's Condemnation Because It Would 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 implicitly finding that Seattle's electrical transmission corridor would not be disrupted by Sound Transit's taking. CP 1232-37.¹⁶

(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 Wn.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

¹⁶ The finding is implicit because, astonishingly, the trial court made no findings regarding Seattle's well-developed factual record demonstrating that the taking here will sever the corridor.

enable our citizens to carry on their every day activities and pursue their accustomed manner of living.

State ex rel. Wash. 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. Wash. 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.”).

Here, Seattle acquired the Transmission Line Easement for the purposes of constructing, operating, and maintaining an electrical transmission system on and over the Sternoff Property, 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 the past 90 years.

(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 extinguish Seattle's rights in the Transmission Line Easement, make it impossible for Seattle to continue to operate the Transmission Line, and sever the Transmission Corridor. CP 915-16.

The Petition makes clear that Sound Transit's condemnation would result in the extinguishment of all of Seattle's rights in the Transmission Line Easement over the Fee Simple Area and the Permanent Easement Areas on the Sternoff Property. In the prayer for relief section, Sound Transit asks that all the property being condemned be conveyed to Sound Transit "free and clear of any right, title and interests of all Respondents," which would effectively extinguish all of Seattle's easement rights over the property being condemned. CP 5.

Sound Transit's extinguishment of Seattle's rights over the Fee Simple Area would make it impossible for Seattle to continue to operate the Transmission Line over the Sternoff Property because there would be insufficient room left in the remaining portions of the Transmission Line

Easement to accommodate a high voltage transmission line. CP 915-16. The loss of easement rights over the Permanent Easement Areas, which run the full width of the easement, would deprive Seattle of the legal right to operate or maintain a transmission line over the Sternoff Property, and would effectively sever the Transmission Line Corridor. *Id.*

(c) Sound Transit Submitted No Evidence that Its Condemnation Was Compatible With Seattle's Prior Public Use And, Instead, Relied Solely on an Erroneous Legal Argument

Sound Transit made no *evidentiary* response to the trial court on the issue of prior public use. CP 982-83. It did not explain how, on a factual basis, the taking of all of Seattle's easement rights over the areas in question was compatible with Seattle's operation of a Transmission Line or use of the Transmission Line Easement for its intended purpose. *Id.*

Rather than provide evidence, Sound Transit relied on *State v. Superior Court of Jefferson Cty.*, 91 Wash. 454, 459 (1916), to erroneously argue that a party that has the authority to condemn public property always has the power to condemn property held in a proprietary capacity and, thus, the prior public use doctrine does not apply to this case. Even assuming the Seattle-owned property being condemned in this case is proprietary, which Seattle does not concede, Sound Transit's argument was incorrect.

State v. Superior Court of Jefferson Cty. does not stand for the proposition that Sound Transit has asserted, *i.e.* that an entity that has the power to condemn public property always has the authority to condemn public property held in a proprietary capacity, nor has any reported Washington case cited it for that proposition. Moreover, as recently as 2015, this Court confirmed that the prior public use doctrine applies when publicly-owned, proprietary property is being condemned. Specifically, in *Pub. Util. Dist. No. 1 of Okanogan Cty.*, 182 Wn.2d at 542, the Court approvingly analyzed its prior decision in *City of Tacoma v. State*, and recognized that the property in that case, a fish hatchery, was proprietary and that “[b]ecause the fish hatchery was clearly a present public use, [the Supreme Court] then engaged in a prior public use analysis.” *Id.* In fact, the Court went even further and observed that the prior public use doctrine applies to all property in public use – even if the property is not publicly-owned. *Id.* at 540 (“The prior public use doctrine balances competing public uses and *applies regardless of whether the property is state owned.*”) (emphasis added). Accordingly, as Seattle’s use of the Transmission Line Easement to distribute electric power is a public use,¹⁷ the prior public use doctrine applies to Sound Transit’s condemnation

¹⁷ See *Carstens*, 8 Wn.2d at 143 (“The generation and distribution of electric power has long been recognized as a public use by this court.”).

regardless whether the property is held by Seattle in its proprietary capacity.

Sound Transit's assertion that the prior public use doctrine does not apply to cases where publicly-owned proprietary property is being condemned is contrary to binding Supreme Court authority. To the extent that assertion was a basis for the trial court's rejection of Seattle's argument on the prior public use doctrine and its decision to grant Sound Transit's motion on public use and necessity, the order should be reversed.

(6) 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.

The trial court's implicit acceptance of Sound Transit's assertion, CP 983, that its transit system is more important than Seattle's operation of an electrical utility and an electrical transmission system ignores the constitutional dimension of Seattle as a home rule charter city as well as misunderstanding of the fundamental differences between a general purpose unit of local government and the narrower, parochial focus of a special purpose unit of government.

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 existing public use of the property being condemned.

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

DATED this 2^d day of August, 2017.

Respectfully submitted,



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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;

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.
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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.
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- § 1578. Streams to be bridged or ferries maintained.
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- § 1583. Bridge toll, failure to pay, and collection of illegal — Liability.
- § 1584. To keep accounts and file with auditors.
- § 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 of 1881, the provisions of which, as modified by subsequent legislation, are embodied in Chapter V. of Title XVIII. of General Statutes. This section was enacted as an added 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, § 3. *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

the articles of incorporation to public travel, or or unsubstantial grounds causes, and for the same right to enter sary lands and mat of such road or can

Appropriation of pu
§ 1574. [2458.] location of any roa public road, street, of county commiss alley, or public gr porate limits of a the corporation e conditions upon w occupied by such co agree thereon, suc may be necessary said road.

As to mode of proce property, see Chapter V Code of Procedure. No court known as "t existed in the territory

Appropriation mus
§ 1575. [2459.] appropriate any I section, if the sai porated or not, su ticular road, stree the local authorit thereof shall desi to make such de such corporation thereto.

May collect tolls o
§ 1576. [2460] taken by a priva ties mentioned i ume of General S and charge and consent to by su appropriated wit

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. 94530-6 to the following:

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Clerk's Office
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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 2, 2017 at Seattle, Washington.



Matt J. Albers, Paralegal
Talmadge/Fitzpatrick/Tribe

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Brief of Appellant The City of Seattle

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