

No. 94255-2

WASHINGTON STATE SUPREME COURT

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

Respondent

and

WR-SRI 120TH NORTH LLC,
a Delaware limited liability company, et al.,

Appellants,

APPENDIX TO
BRIEF OF RESPONDENT SOUND TRANSIT

Marisa Velling
Esteria Gordon
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SOUND TRANSIT

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The Honorable Kenneth Schubert
Noting Date: December 16, 2016, at 9:30 am
Moving Party: Petitioner Sound Transit

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

CENTRAL PUGET SOUND REGIONAL) No. 16-2-06769-7 SEA
TRANSIT AUTHORITY, a regional transit)
authority, dba SOUND TRANSIT,)
Petitioner,)
DECLARATION OF LARRY J. SMITH IN
SUPPORT OF PETITIONER'S REPLY IN
SUPPORT OF MOTION FOR ORDER AND
JUDGMENT ADJUDICATING PUBLIC
USE AND NECESSITY – CITY OF
SEATTLE)
vs.)
ANN SEENA JACOBSEN, who also appears of)
record as ANN SEENA VERACRUZ,)
individually and as trustee for THE ANN) Tax Parcel No. 282505-9204
SEENA JACOBSEN LIVING TRUST DATED)
APRIL 4, 2002, et al.,)
Respondents.)

I, Larry J. Smith, declare as follows:

1. I am currently Senior Legal Counsel for Sound Transit, the Petitioner in this case.

I have responsibility for this case and am competent to testify to the matters set forth in this declaration. In my current position at Sound Transit, I am responsible for overseeing all Sound Transit's litigation relating to eminent domain.

2. My job responsibilities as Senior Legal Counsel for Sound Transit require me to be present and engaged in Sound Transit's representation. I am deeply familiar with each case

DECLARATION OF LARRY J. SMITH IN
SUPPORT OF PETITIONER'S REPLY IN
SUPPORT OF MOTION FOR ORDER
AND JUDGMENT ADJUDICATING
PUBLIC USE AND NECESSITY – CITY
OF SEATTLE -- 1
4842-0774-7645.1

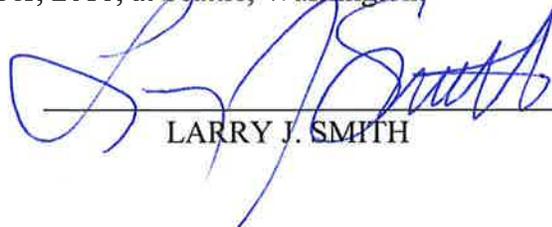
MILLER NASH GRAHAM & DUNN LLP
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(206) 624-8300/Fax: (206) 340-9599

1 Sound Transit brings to condemnation, including this case, and I have personal knowledge of
2 Sound Transit's real estate and project plans as they relate to this matter.

3 3. It has always been Sound Transit's intention to preserve the City of Seattle's (the
4 "City") aerial easement rights for power lines and wires over the Jacobsen property through the
5 conveyance of such rights back to the City. We have made this fact known to the City on
6 multiple occasions since this process began in March, 2016. In fact, Sound Transit has invited
7 the City to propose language that would facilitate the preservation of its aerial easement interests
8 over the Jacobsen property. Sound Transit does not intend to prevent the City from using its
9 aerial easement interests over and across the Jacobsen property and will continue to work with
10 the City to facilitate such use.
11

12 I declare under penalty of perjury under the laws of the State of Washington that the
13 foregoing is true and correct:

14 EXECUTED this 8th day of December, 2016, at Seattle, Washington,

15
16 
17 LARRY J. SMITH

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26 DECLARATION OF LARRY J. SMITH IN
SUPPORT OF PETITIONER'S REPLY IN
SUPPORT OF MOTION FOR ORDER
AND JUDGMENT ADJUDICATING
PUBLIC USE AND NECESSITY -- CITY
OF SEATTLE -- 2

4842-0774-7645.1

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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.

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;

1 6.8 A temporary taking of a portion of the Parcel for a Temporary
2 Construction Easement – ST, as depicted in, and in substantially the form
3 of, **Exhibit 8** hereto; and

4 6.9 A temporary taking of a portion of the Parcel for a Temporary
5 Construction Easement – COB, as depicted in, and in substantially the
6 form of, **Exhibit 9** hereto.

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

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

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

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

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

23 11. There was no fraud, actual or constructive, no abuse of power, bad faith, or
24 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

1 DONE IN OPEN COURT this _____ day of January, 2017.

2
3
4 THE HONORABLE KENNETH SCHUBERT

5
6 **Presented by:**

7 MILLER NASH GRAHAM & DUNN LLP

8
9 By /s/ Jeffrey A. Beaver
10 Jeffrey A. Beaver, WSBA# 16091
11 Attorneys for Petitioner Sound Transit
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REVISÉD FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER AND
JUDGMENT ADJUDICATING PUBLIC
USE AND NECESSITY -- 8

4825-7827-4624.1

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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

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Judge/Commissioner: Ken Schubert

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

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O=KCDJA, CN="Ken
Schubert:rumaiXr44hGoUkM4YYhwmw=="

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority, dba SOUND TRANSIT,	)	No. 16-2-06769-7 SEA
)	
Petitioner,	)	ORDER DENYING CITY OF SEATTLE'S MOTION FOR SUMMARY JUDGMENT
)	
vs.	)	Tax Parcel No. 282505-9204
)	
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.)	

THIS MATTER came regularly before the Court on Intervenor-Respondent City of Seattle's Motion for Summary Judgment (the "Motion"). The Court has reviewed the pleadings filed in support of and in opposition to the Motion and the files and records herein and is otherwise fully advised in the premises.

Accordingly, it is hereby **ORDERED** that:
Intervenor-Respondent City of Seattle's Motion for Summary Judgment is **DENIED**.
DONE IN OPEN COURT this 20th day of December, 2016.

JUDGE KEN SCHUBERT

Presented by:

MILLER NASH GRAHAM & DUNN LLP

By /s/ Jeffrey A. Beaver
Jeffrey A. Beaver, WSBA# 16091
Connor M. O'Brien, WSBA# 40484
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 DENYING SEATTLE'S MSJ

Signed by: Ken Schubert
Date: 12/20/2016 10:22:14 AM

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

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

CENTRAL PUGET SOUND REGIONAL)	
TRANSIT AUTHORITY, a regional transit	)	No. 16-2-06769-7 SEA
authority, dba SOUND TRANSIT,	)	NOTICE OF APPEAL TO COURT OF
	)	APPEALS, DIVISION I
Petitioner,)	
	)	Clerk's Action Required
vs.)	
	)	Tax Parcel No. 282505-9204
ANN SEENA JACOBSON, who also appears of))	
record as ANN SEENA VERACRUZ, et. al.,)	
)	
Respondents.)	
)	

Respondent, The City of Seattle, respectfully seeks review by the Washington State Court of Appeals, Division I, of the Petitioner's Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating Public Use and Necessity Re City of Seattle Property Interests, entered on December 20, 2016.

A copy of the decision is attached to this notice.

///
///
///
///

DATED December 21, 2016.

PETER S. HOLMES
Seattle City Attorney

By: /s/Russell S. King
Russell S. King WSBA #27815
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*Attorneys for Respondent/Intervenor
The City of Seattle*

No. 94065-7

SUPREME COURT
OF THE STATE OF WASHINGTON

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,

Petitioner,

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; ASSURITY LIFE INSURANCE COMPANY,
a Nebraska company f/k/a WOODMEN ACCIDENT AND LIFE
COMPANY; SAFEWAY INC., a Delaware corporation;
CENTURYLINK, INC., a Louisiana corporation;
PUGET SOUND ENERGY, INC., a Washington corporation;
CITY OF BELLEVUE, a Washington municipal corporation;
KING COUNTY, a Washington municipal corporation; and
ALL UNKNOWN OWNERS and UNKNOWN TENANTS,

Respondents.

THE CITY OF SEATTLE'S
MOTION FOR DISCRETIONARY REVIEW

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Attorneys for Petitioner City of Seattle

A. IDENTITY OF MOVING PARTY

The City of Seattle (“Seattle”) asks for the review of the decision designated in Part B.

B. DECISION

The trial court denied Seattle’s motion for summary judgment, in which Seattle requested a ruling as a matter of law that the Central Puget Sound Regional Transit Authority (“Sound Transit”), a special purpose governmental entity, could not exercise its power of eminent domain to take the property of Seattle, a general purpose local government. The order denying summary judgment was entered on December 20, 2016.

C. ISSUE PRESENTED FOR REVIEW

Where a regional transit authority like Sound Transit, a special purpose unit of local government, is given the power of eminent domain by statute, does RCW 81.112.080(2) authorize it to condemn the property of a general purpose home rule chartered local municipal corporation like Seattle where that statute is silent on conferring such power upon the regional transit authority?

D. STATEMENT OF THE CASE

(1) Factual Background

Sound Transit seeks to condemn portions of an electrical transmission line easement owned by Seattle located within the corporate limits of the City of Bellevue. Seattle opposes Sound Transit’s effort to do so because that easement is part of a vital electrical transmission line

corridor running 100 miles and connecting Seattle City Light's Skagit River hydroelectric dams to a substation in Maple Valley. The corridor is also an integral part of a larger, regional electrical transmission line system that runs from Canada to California.

By its Petition in Eminent Domain (the "Petition") filed in this action, Sound Transit is seeking to condemn portions of a parcel of real property adjacent to 124th Avenue in the City of Bellevue bearing the tax parcel number of 282505-9204 (the "Jacobsen Property"). App. at 7. Seattle has an easement over portions of the Jacobsen Property for the "construction, operation, and maintenance of an electrical transmission system" (the "Transmission Line Easement"). App. at 33-34, 38. Seattle acquired the Transmission Line Easement in 1927, and, per the terms of the easement, Seattle has the right to run electrical transmission lines over the Jacobsen Property, and to construct a transmission line tower and related facilities on the property. *Id.* The Transmission Line Easement does not contain any limitations on the voltage of the transmission line Seattle can run over the property, or on the size, type, or location of the transmission line tower that it can construct on the property. *Id.*

The Transmission Line Easement is 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 to Seattle's Maple Valley electrical substation ("Transmission Line Corridor"). App. at 34. In the vicinity of the Jacobsen Property, 124th Avenue runs in a roughly north/south orientation, and the Transmission Line Corridor runs on both sides of the road. *Id.* Seattle currently operates a 230-kilovolt transmission line within the Transmission Line Corridor that runs parallel to 124th Avenue. *Id.* Near the Jacobsen Property, the existing transmission line is on the west side of 124th Avenue. *Id.* The existing electrical transmission line and the Transmission Line Corridor are integral parts of a larger, regional electrical transmission line system that runs from Canada to California. *Id.*

For various operational and safety reasons, electrical transmission lines are typically constructed in uniform configurations running in straight lines and, where applicable, in parallel to existing lines. App. at 34. On the Jacobsen Property, the Transmission Line Easement covers an area running 85 feet to the east of the center line of 124th Ave. NE along the full length of the property's frontage on that road. *Id.* The western 30' of the Transmission Line Easement on the Jacobsen Property is currently occupied by the right of way for 124th Avenue pursuant to a 1970 consent agreement between Seattle and the City of Bellevue. App. at 40.

As reflected in Exhibit 2 to the Petition, App. at 14, the property interests that Sound Transit is seeking to condemn include a strip of property running along the length of 124th Avenue NE that Sound Transit seeks to take in fee simple absolute (the “Fee Simple Tract”).¹ (Page 16 of the Appendix to this motion contains an enlargement of a portion of a map filed with the Petition that shows the areas along 124th Avenue that Sound Transit is seeking to condemn.) The Fee Simple Tract is the cross-hatched area labeled “COB Fee Take.” As reflected in Exhibits 3-10 to the Petition, App. at 42-113, Sound Transit is also seeking to condemn a series of permanent and temporary wall, water line, drainage, and construction easements across the Jacobsen Property (the “Miscellaneous Easements”). As reflected in the map that was submitted as part of Exhibit 2 to the Petition, the Fee Simple Tract that Sound Transit seeks to condemn is entirely within the Transmission Line Easement. App. at 14. The Miscellaneous Easements that Sound Transit seeks to condemn overlap the Transmission Line Easement in its entirety. *Id.*

Sound Transit is constructing a perpendicular light rail line crossing of 124th Avenue. App. at 14. In the vicinity of the Jacobsen Property, 124th Avenue is currently a two-lane road, and a portion of the

¹ While the referenced map was submitted as part of Exhibit 2 to the Petition, it also bears the heading “EXHIBIT ‘C.’”

property being condemned on the Jacobsen Property will be used by the City of Bellevue to permanently widen 124th Avenue to add one or more travel lanes. App. at 2, 18-19, 21-22, 24. The widening of 124th Avenue in the vicinity of the Jacobsen Property is part of a larger project to widen that road from Northrup Way to NE 14th Street. App. at 18-19, 21-22, 24.

Thus, Sound Transit proposed to take Seattle's property for its own purposes – construction of its light rail line – but also to take a sufficient portion of Seattle's easement to allow Bellevue to widen 124th Avenue. Sound Transit's proposed taking of property for Bellevue's street modification does not directly implicate its light rail line, the focus of its statutory authority in RCW 81.112.080(2).

(2) Procedural Background

Sound Transit originally named Seattle as a party when it filed this action in the King County Superior Court but, after Seattle filed a response to Sound Transit's motion to adjudicate public use and necessity, Sound Transit voluntarily dismissed Seattle. Following Seattle's voluntary dismissal, Sound Transit then obtained an order and judgment adjudicating public use and necessity for its more limited proposed condemnation on April 29, 2016. That order provides that Sound Transit is taking the property being condemned "subject to the City of Seattle's existing real property interests" and that "the entry of [the] order and judgment had no

effect on the City of Seattle’s existing real property interests in the condemned property.”

Given its persistent concern that its property rights were not being adequately protected, Seattle intervened in the condemnation proceedings in June 2016. At some point thereafter, Sound Transit changed its previous decision to avoid affecting Seattle’s property interest by its condemnation effort and took the position that it intended to condemn Seattle’s property interests. Despite taking that position, Sound Transit never filed anything with the trial court describing the precise nature of the scope of its proposed condemnation of Seattle property.

Ultimately, Seattle filed a motion for summary judgment as to Sound Transit’s authority to take its property at issue here. Sound Transit sought an order declaring that its now broader proposed condemnation was for public use and necessity. The trial court, the Honorable Kenneth Schubert, entered an order of public use and necessity supported by findings and conclusions. Seattle appealed that decision to the Court of Appeals. The trial court also denied Seattle’s motion for summary judgment. Seattle seeks direct discretionary review of that decision.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED²

² This Court is fully familiar with the RAP 2.3(b) criteria. Seattle seeks review of a denial of summary judgment. It was entitled to judgment here as a matter of law.

(1) The Trial Court Obviously or Probably Erred in Failing to Apply Long-Standing Precedent Requiring Strict Construction of Statutes Granting Condemnation Authority

This is a straightforward issue of statutory interpretation resolved below on summary judgment, and reviewed de novo by this Court. Our Supreme Court has clearly articulated the principles governing the interpretation of a statute.³

The trial court ruled here that Sound Transit, special purpose entity, could exercise the power of eminent domain over property committed to a public use by a first class city. This ruling was obvious or probable error, because (1) Sound Transit's limited statutory authority does not grant it power to condemn Seattle's property currently in public use and (2) Sound Transit's limited statutory authority does not grant it the power to condemn Seattle's property to give to Bellevue so that Bellevue may widen its road.

CR 56(c).

³ 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).

(a) The Statute Granting Sound Transit Condemnation Authority Must Be Strictly Construed and Does Not Grant Sound Transit the Power to Condemn Seattle's Property

The power of eminent domain is an inherent attribute of the State's sovereignty. *Pub. Util. Dist. No. 2 of Grant Cty. v. N. Am. Foreign Trade Zone Indus., LLC*, 159 Wn.2d 555, 565, 151 P.3d 176 (2007). It is limited by the constitution and must be exercised under lawful procedures. *Id.* Statutes that delegate the State's sovereign power of eminent domain to its political subdivisions, like a municipal corporation or a special purpose district, are to be strictly construed. When publicly-owned property is involved, 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, 1018 (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. *King County*, 68 Wn.2d 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 entity, the rule of strict construction of condemnation statutes applies “with even more force” than in cases involving condemnation of private property. *State v. Superior Court of Chelan Cty.*, 36 Wash. 381, 385, 78 P. 1011 (1904), *superseded by statute on other grounds*, *City of Seattle v. State*, 54 Wn.2d 139, 145, 338 P.2d 126 (1959).

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 County*, 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. *Chelan Cty.*, 36 Wash. at 386.

Broadly-worded condemnation powers, without specificity as to the property of other sovereigns, are insufficient to grant authority to condemn such property. In *King County*, the County as condemning entity filed an eminent domain petition to condemn property owned by Seattle but located in King County. *King County*, 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. This 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 County*, 68 Wn.2d at 691-92.

King County controls here, and the trial court committed obvious or probable error in failing to apply this Court’s long-standing authority to the statutory language in question and dismissing Sound Transit’s petition. The statute upon which Sound Transit is relying does not grant it the express or necessarily implied authority to condemn Seattle’s property at issue. It provides in relevant part:

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

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. ...

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.

The statute does not grant Sound Transit specific authority to condemn the property of other political subdivisions. Sound Transit may generally condemn “lands, rights of way, and properties” necessary for high capacity transportation systems. This language is the same general broad authority that in *King County*, was fatal to a county’s claimed right to condemn property of a city.

Furthermore, by requiring Sound Transit to seek *permission* to acquire “public transportation facilities and properties” from other political subdivisions the Legislature impliedly *denied* Sound Transit condemnation power over other types of property. If Sound Transit already had general condemnation authority over all of the property of

other political subdivisions, such authority would directly conflict with the requirement to seek permission to acquire certain categories of property.

The trial court's interpretation of Sound Transit's statutory authority here is obvious or probable error.

(b) Sound Transit Does Not Have Authority to Condemn Seattle's Property So That Bellevue May Widen Its Road

The trial court's ruling regarding Sound Transit's authority is obviously erroneous on a second ground. The trial court concluded that Sound Transit had authority to condemn Seattle's property to allow Bellevue to widen a road.

Sound Transit may not condemn Seattle's property for the purpose of allowing Bellevue to widen its road. In addition to being limited to private property, Sound Transit's condemnation authority is limited to property "necessary for such high capacity transportation systems" as the entity seeks to build. RCW 81.112.080(2). This Court has concluded that "necessary" means "INDISPENSABLE" or "[a]bsolutely required" or "[n]eeded to bring about a certain effect or result." *Thurston Cty. v. Cooper Point Ass'n*, 148 Wn.2d 1, 12, 57 P.3d 1156 (2002) (approving of strict interpretation of the term and quoting Webster's II New College

Dictionary 731 (1999)).⁴ “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).⁵

Widening 124th Avenue is not “necessary” for construction of the light rail project. Sound Transit has no statutory authority to condemn Seattle’s property to widen another municipality’s general purpose roadway, likely as part of a political deal between Sound Transit and Bellevue as to light rail in that community. The trial court obviously erred in concluding otherwise.

Because the trial court’s decision is obvious error, or at the very least probable error, the first elements of RAP 2.3(b)(1) and (2) are both met here.

(2) The Trial Court’s Decision Impacts Future Trial Court Proceedings

⁴ Although this Court has permitted a more relaxed definition of “necessary” when applying eminent domain statutes to private property, *City of Tacoma v. Welcker*, 65 Wn.2d 677, 684, 399 P.2d 330, 335 (1965), such relaxation would be inappropriate in this context given this Court’s admonition to apply strict construction “with even more force” when the land sought to be condemned is already publicly held. *Chelan Cty.*, 36 Wash. at 385.

⁵ 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).

(a) The Error Renders Further Proceedings Useless, Including Both the Trial and Seattle's Current Direct Appeal from the Finding of Public Use and Necessity

The second element of RAP 2.3(b)(1) is that the obvious error renders further proceedings useless.

The quintessential error rendering further proceedings useless is one where the correct decision will end the proceedings entirely. *See, e.g., Bennett v. Dalton*, 120 Wn. App. 74, 77, 84 P.3d 265 (2004) (trial court erroneously concluded statute of limitations was tolled; Court of Appeals granted discretionary review and reversed, resulting in summary judgment being granted).

This second element is met here because the trial court's error renders useless both the scheduled trial on just compensation *and* the current direct appeal of the trial court's ruling on public use and necessity. Further proceedings are useless because Sound Transit's petition should have been dismissed on the ground it lacked statutory authority to condemn the property that is the subject of the petition. *King County*, 68 Wn.2d at 691-92. This Court can reverse and put the entire proceeding to an end.

(b) The Error Alters the Status Quo Because Sound Transit Will Continue Condemning Other Property During the Years It Will Take to Conduct a Trial and Appeal as of Right

Even if this Court agrees only that the trial court committed probable error, review is still warranted under RAP 2.3(b)(2). The trial court's order substantially limits Seattle's freedom to act in future condemnation actions that Sound Transit will undoubtedly seek, given its new, erroneously granted authority. This is borne out by the fact that, on January 17, 2017, Sound Transit filed a new action to condemn property on the east side of 124th Avenue to take additional portions of Seattle's Transmission Line Corridor. In that case, Seattle is currently litigating the question of whether the trial court's erroneous decision here carries preclusive effect. If it does, Seattle's ability to protect its property rights will be greatly diminished. Given the size and scope of the ongoing light rail project and the length of time a trial and subsequent appeal as of right, Seattle should be permitted to have review of this issue now.

Subsection (b)(2) has been interpreted as applying only to decisions that have immediate effect outside the courtroom, and not to orders that merely alter the status of the litigation itself or limit a party's freedom to act in the conduct of the litigation. *State v. Howland*, 180 Wn. App. 196, 207, 321 P.3d 303 (2014), *review denied*, 182 Wn.2d 1008

(2015); Geoffrey Crooks, *Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure*, 61 Wash. L. Rev. 1541, 1545–46 (1986); Judge Stephen J. Dwyer, Leonard J. Feldman, Hunter Ferguson, *The Confusing Standards for Discretionary Review in Washington and a Proposed Framework for Clarity*, 38 Seattle U. L. Rev. 91, 92 (2014).

When a governmental entity faces an erroneous trial court order that will be applied to prohibit that entity from defending itself in other litigation, the Court of Appeals has concluded that the second element of RAP 2.3(b)(2) is met. *Ravsten v. Dep't of Labor & Indus.*, 72 Wn. App. 124, 129, 865 P.2d 1 (1993), *review denied*, 123 Wn.2d 1030 (1994). In *Ravsten*, there was a dispute over the percentage share of attorney fees and costs to be paid by the Department of Labor and Industries to an industrial insurance claimant. *Ravsten*, 72 Wn. App. at 129. The claimant asserted that in certain circumstances, the Department could be ordered to pay more than 100% of the attorney fees incurred. *Id.* The superior court ordered remand to the Board of Industrial Insurance Appeals for the taking of new evidence on the matter. However, the Court of Appeals granted discretionary review on the legal issue of whether the Department could ever be ordered to pay more than 100% of the attorney fees and costs actually incurred. *Id.* The Court noted that review was warranted because

until the issue was resolved, the superior court's order "substantially limit[ed] the Department's freedom to act and to determine its proportionate share of attorney fees and costs in other third party recovery cases until the issue [was] decided." *Id.*⁶

The order at issue is having immediate effects outside the courtroom, in other litigation brought by Sound Transit. Sound Transit's light rail development continues, and Sound Transit is seeking to condemn more of Seattle's property in that effort. In response to Seattle's legal arguments regarding its condemnation authority, Sound Transit is arguing that the order constitutes collateral estoppel. Seattle will be constrained by the trial court's ruling until that ruling is reversed. This Court should grant review and resolve the matter to return to Seattle its sovereign power, which has been eviscerated by the trial court's error.

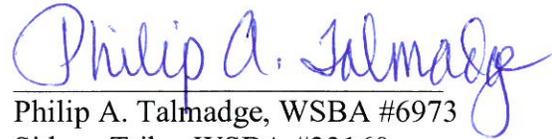
F. CONCLUSION

This Court should grant discretionary review. RAP 2.3(b)(1)-(2).

⁶ Apart from this more traditional analysis, the trial court's decision has profound implications beyond this case. Absent immediate review by this Court of Sound Transit's statutory condemnation authority, it will be emboldened to take the property of other local governments, both special and general purpose, without any check on its conduct, to facilitate its expansive light rail plans. This Court can properly take judicial notice of the fact that Proposition 3 was enacted by the voters infusing Sound Transit with \$54 billion to advance its expansion plans. <http://www.king5.com/news/politics/massive-puget-sound-transit-expansion-poised-to-pass/350239164>.

DATED this 2d day of February, 2017.

Respectfully submitted,



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E FILED
MAR 31 2017

WASHINGTON STATE
SUPREME COURT

bph

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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

Petitioner,

v.

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

Respondent,

v.

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; ASSURITY LIFE INSURANCE
COMPANY, a Nebraska company f/k/a
WOODMEN ACCIDENT AND LIFE
COMPANY; SAFEWAY INC., a Delaware
corporation; CENTURLINK, INC., a Louisiana
corporation; PUGET SOUND ENERGY, INC., a
Washington corporation; CITY OF BELLEVUE,
a Washington municipal corporation; KING
COUNTY, a Washington municipal corporation;
and ALL UNKNOWN OWNERS and
UNKNOWN TENANTS, Respondents.,

Respondent.

NO. 94065 - 7

RULING DENYING DIRECT
DISCRETIONARY REVIEW

The city of Seattle seeks direct discretionary review of a superior court
order denying the city's motion for summary judgment in an action by the Central

751/6

Puget Sound Regional Transit Authority (Sound Transit) to condemn a parcel of land within the boundaries of the city of Bellevue for Sound Transit's east link light rail line. The property sought to be condemned is part of a city of Seattle easement that Seattle City Light uses to transmit electricity through power lines from its Skagit River hydroelectric generating facilities. For reasons discussed below, the motion for direct discretionary review is denied.

In 2008 voters approved Sound Transit's plan to extend its light rail system to eastward suburbs of the city of Seattle, including the city of Bellevue. In 2011 Sound Transit adopted a resolution selecting the route the line would take and the location of its stations. At one point the line crosses 124th Avenue Northeast in Bellevue. That same year Sound Transit and the city of Bellevue entered into a memorandum of understanding and transit way agreement recognizing that the track for the light rail line would run in a retained cut under 124th Avenue. The city of Bellevue had longstanding plans to widen the street, and the memorandum of understanding showed a to-be-constructed bridge elevating the roadway above the light rail line. In 2015 Sound Transit and the city of Bellevue entered into an amended memorandum agreeing that the retained cut under 124th Avenue required constructing a new bridge to span the cut. Under the agreements, Sound Transit was to condemn the property necessary for the construction of the bridge and the widening of 124th Avenue at that point, and the city was to construct the bridge and would own and control it.

Meanwhile, Sound Transit passed a resolution authorizing condemnation proceedings to acquire all property necessary for the east link. The 124th Avenue bridge construction and widening project requires the use of a portion of the city of Seattle's electrical transmission easement, which runs along both sides of 124th. In March 2016 Sound Transit filed a petition in eminent domain seeking to acquire the

property at issue in this case, and in November 2016 it filed a motion for an order and judgment adjudicating public use and necessity. The city opposed the motion and also moved for summary judgment, arguing as to both matters that Sound Transit lacked statutory authority to condemn public property and lacked authority in particular to condemn the land it sought because it was not necessary for the light rail project.

The superior court issued separate orders on December 20, 2016, one denying the city's motion for summary judgment and one entering findings of fact and conclusions of law and a judgment of public use and necessity. In its findings and conclusions, the court determined that Sound Transit had authority to condemn public property generally and to condemn property within the city's transmission line easement in particular, and that the property sought was necessary for the project. The city quickly filed a notice of appeal to Division One of the Court of Appeals challenging the judgment of public use and necessity. Subsequently, on January 19, 2017, the superior court entered a revised judgment of public use and necessity.¹ On that same date, the city filed a motion in this court for direct discretionary review of the order denying the city's motion for summary judgment. That motion is now before me for determination.

In seeking discretionary review of the superior court's order denying summary judgment, the city relies on two of the criteria for review: (1) that the superior court committed obvious error that renders further proceedings useless, and (2) that the court committed probable error that substantially alters the status quo or substantially limits the freedom of a party to act. RAP 2.3(b)(1) and 2.3(b)(2). Although the parties devote the bulk of their arguments to whether the superior court obviously or probably erred, I need not address that issue because the city does not

¹ The revised judgment altered a conclusion of law originally stating that construction, operation, and maintenance of electrical transmission systems is not a public use, having it read instead that an electrical transmission system is a proprietary, not a governmental, function of the city.

show that the cited criteria are otherwise satisfied. First, further proceedings plainly are not rendered “useless” by the superior court’s denial of summary judgment, since the court at the same time issued its judgment of public use and necessity, and that judgment is currently on appeal, where the same challenges to Sound Transit’s authority will be addressed and presumably resolved.² I am aware, as the city urges, that discretionary review of an order denying summary judgment may be appropriate where correcting the claimed error would prevent useless litigation. *See, e.g., Douchette v. Bethel Sch. Dist.* 403, 117 Wn.2d 805, 808, 818 P.2d 1362 (1991); *Hartley v. State*, 103 Wn.2d 768, 774, 398 P.2d 77 (1985). But here the claimed error, the correction of which would put an end to further proceedings, is already before the Court of Appeals on direct appeal, as indicated. While it is true that if this court grants review it could bring these proceedings effectively to an end if it reverses the superior court, the same can be said of the appeal. Whether that appeal remains in the Court of Appeals or is transferred to this court (which the city says it will seek to do when the appellate briefing is complete), this matter can ultimately be resolved by that appeal. The appeal was filed first and is already proceeding on an accelerated basis with a more complete record. The city suggests that this court would resolve the matter more quickly, but there is no certainty it would do so. Under the circumstances, I am not persuaded that this court should open a second avenue of review of the same legal issues in the same eminent domain proceeding.³

² In its response to Sound Transit’s petition for a judgment of public use and necessity, the city listed as an issue whether the petition should be denied “where Sound Transit does not have the statutory authority to condemn public property or the specific property involved in this condemnation action.” In its judgment of public use and necessity, the superior court concluded as a matter of law that Sound Transit “is authorized by statute to condemn public land, including public land already in public use, for [Sound Transit]’s Project,” and that its authority “extends to the property and property interests held by the City of Seattle for use in connection with its electrical transmission system.” Further, the court determined the property was necessary to the light rail project. The city argues these same issues in this motion for discretionary review.

³ I note that the city has filed an appeal directly in this court in another eminent domain proceeding in which it challenges Sound Transit’s condemnation authority. *Cent.*

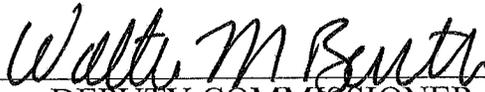
Nor does the superior court's order alter the status quo or substantially limit the freedom of a party to act. This criterion is not satisfied where "a trial court's action merely alters the status of the litigation itself or limits the freedom of a party to act in the conduct of the lawsuit." *State v. Howland*, 180 Wn. App. 196, 207, 321 P.3d 303 (2014), *review denied*, 182 Wn.2d 1008 (2015); *see* Geoffrey Crooks, *Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure*, 61 Wash. L. Rev. 1541, 1546 (1986). The city urges that the superior court's order limits its ability to protect its property interests in future condemnation actions brought by Sound Transit, and that the order may be given preclusive effect in such actions. But the challenged order does not alone, or even primarily, have that effect. The primary effect on the city's rights in relation to the issues it raises flows from the judgment of public use and necessity, which is now on appeal. The city is therefore in the same position with respect to protecting its interests regardless of whether this court grants direct discretionary review.

Judicial policy generally disfavors discretionary review of interlocutory orders to avoid piecemeal review. *See Hartley*, 103 Wn.2d at 773; *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 380, 46 P.3d 789 (2002). To permit fragmentary review would delay the administration of justice to the detriment of litigants and impose an unnecessary burden on appellate courts. *Crosthwaite v. Crosthwaite*, 56 Wn.2d 838, 844, 358 P.2d 978 (1960). Interlocutory review is therefore available only in those rare instances where the claimed error is obvious or probable with defined effects on the usefulness of further court proceedings or on the status quo or the parties' freedom to act. *See Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 462, 232 P.3d 591 (2010). Here,

Puget Sound Reg'l Transit Auth. v. WR-SRI 120th North LLC, No. 94255-2. But that appeal is in its very preliminary stages, and it will be some time before the court decides whether to retain it.

direct appeal is available, and has been invoked on an accelerated basis, to review the claimed errors underlying the superior court's approval of Sound Transit's condemnation of the city's property interest. The city does not show that a parallel discretionary review proceeding addressing the same issues is justified. My conclusion that discretionary review is not warranted under RAP 2.3(b) makes it unnecessary to decide whether direct review would be appropriate under RAP 4.2.⁴

The motion for direct discretionary review is denied.


DEPUTY COMMISSIONER

March 31, 2017

⁴ Since it is not necessary to decide whether direct review would be appropriate, I necessarily offer no view on that point, and this ruling is without prejudice to any motion a party may file to transfer the pending appeal to this court.

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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January 10, 2017

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Page 1 of 2

Page 2 of 2
Case No. 76252-4-I, Seattle v. Sound Transit
January 10, 2017

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CASE #: 76252-4-I
Central Puget Sound Regional Transit Authority, Respondent v. City of Seattle, Petitioner

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on January 6, 2017, regarding respondent's motion for accelerated disposition:

"The February/March term has been set. The motion to accelerate is granted in part. This case will be set on the next available calendar after the Brief of Respondent has been filed."

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

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The Honorable Sue Parisien

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

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

Petitioner,

vs.

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

Respondents.

) No. 16-2-08800-7 SEA

) ~~PROPOSED~~ FINDINGS OF FACT,
) CONCLUSIONS OF LAW, ORDER AND
) JUDGMENT ADJUDICATING PUBLIC
) USE AND NECESSITY AS TO THE CITY
) OF SEATTLE

) Tax Parcel No. 282505-9003

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 appeared but not objected to entry of these Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating Public Use and Necessity, have not appeared, or 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 motion, declarations in support,

as the City of Seattle has done ;

FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER AND JUDGMENT
ADJUDICATING PUBLIC USE AND
NECESSITY AS TO THE CITY OF
SEATTLE -- 1
4848-8456-0704.2

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1 opposition, if any, and the files and records herein, and being fully advised, has determined that
2 the relief 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. The City of Seattle has an interest in the land, property and property rights, which
9 are the subject of this condemnation action commenced pursuant to Chapter 81.112 RCW.

10 3. On or about September 26, 2013, by Petitioner's Resolution No. R2013-21
11 ("Resolution"), Petitioner's Board of Directors (the "Board") authorized the condemnation,
12 taking, damaging, and appropriation of certain lands, properties and property rights in order to
13 permanently locate, construct, operate and maintain the East Link Extension and its related
14 facilities (the "Project"). A copy of the Resolution is attached as Exhibit 1 to the Petition which
15 Exhibit is incorporated here by this reference. Included within these lands, properties and
16 property rights is land, property and property rights situated in Bellevue, King County,
17 Washington, in which the City of Seattle hold interests. The land, property and property rights
18 which Petitioner seeks to and is authorized to condemn, and in which the City of Seattle holds
19 interests, is identified as King County Tax Parcel No. 282505-9003 (the "Parcel").

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 5. With this condemnation, Petitioner seeks to appropriate the following:

26
FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER AND JUDGMENT
ADJUDICATING PUBLIC USE AND
NECESSITY AS TO THE CITY OF
SEATTLE -- 2
4848-8456-0704.2

MILLER NASH GRAHAM & DUNN LLP
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Seattle, Washington 98121-1128
(206) 624-8300 / Fax: (206) 340-9599

- 1 6.1 A permanent taking of a portion of the Parcel in fee simple absolute – ST
2 Fee Take, as legally described and depicted in, and in substantially the
3 form of, **Exhibit 1** hereto;
- 4 6.2 A permanent taking of a portion of the Parcel in fee simple absolute –
5 COB Fee Take, as legally described and depicted in, and in substantially
6 the form of, **Exhibit 2** hereto;
- 7 6.3 A permanent taking of a portion of the Parcel for a permanent Wall
8 Footing and Maintenance Easement – ST, as legally described and
9 depicted in, and in substantially the form of, **Exhibit 3** hereto;
- 10 6.4 A permanent taking of a portion of the Parcel for a permanent Wall
11 Easement – COB, as legally described and depicted in, and in substantially
12 the form of, **Exhibit 4** hereto;
- 13 6.5 A permanent taking of a portion of the Parcel for a permanent Water Line
14 Easement, as legally described and depicted in, and in substantially the
15 form of, **Exhibit 5** hereto;
- 16 6.6 A permanent taking of a portion of the Parcel for a permanent Drainage
17 Easement, as legally described and depicted in, and in substantially the
18 form of, **Exhibit 6** hereto;
- 19 6.7 A permanent taking of a portion of the Parcel for a permanent Access
20 Easement, as legally described and depicted in, and in substantially the
21 form of, **Exhibit 7** hereto;
- 22 6.8 A temporary taking of a portion of the Parcel for a temporary
23 Environmental Monitoring Easement, as legally described and depicted in,
24 and in substantially the form of, **Exhibit 8** hereto;

1 6.9 A temporary taking of a portion of the Parcel for a Temporary
2 Construction Easement – ST, as depicted in, and in substantially the form
3 of, **Exhibit 9** hereto; and

4 6.10 A temporary taking of a portion of the Parcel for a Temporary
5 Construction Easement – COB, as depicted in, and in substantially the
6 form of, **Exhibit 10** hereto.

7 Exhibits 1-10 are incorporated here by this reference and the real property and real
8 property interests described in Exhibits 1-10 are hereinafter collectively referred to as the
9 “Condemned Property.”

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

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

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

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

23 UPON CONSIDERATION thereof, the Court hereby makes the following
24 CONCLUSIONS OF LAW:

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

26 FINDINGS OF FACT, CONCLUSIONS
 OF LAW, ORDER AND JUDGMENT
 ADJUDICATING PUBLIC USE AND
 NECESSITY AS TO THE CITY OF
 SEATTLE -- 4
 4848-8456-0704.2

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

1 depicted in Exhibits 1-10 to this Order) for public purposes, including the City of Seattle's
2 existing real property interests in the Condemned Property.

3 DONE IN OPEN COURT this 19th day of April, 2017.

4
5 

6 HONORABLE SUE PARISIEN

7 **Presented by:**

8 MILLER NASH GRAHAM & DUNN LLP

9 By /s/ Connor M. O'Brien
10 Jeffrey A. Beaver, WSBA# 16091
11 Connor M. O'Brien, WSBA# 40484
12 Attorneys for Petitioner Sound Transit

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26 FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER AND JUDGMENT
ADJUDICATING PUBLIC USE AND
NECESSITY AS TO THE CITY OF
SEATTLE -- 6
4848-8456-0704.2

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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

Petitioner,

v.

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

Respondents.

No. 16-2-08800-7 SEA

NOTICE OF APPEAL TO
SUPREME COURT OF THE
STATE OF WASHINGTON

Tax Parcel No. 282505-9003

Respondent City of Seattle seeks review by the Supreme Court of the Findings of Fact,
Conclusions of Law, Order and Judgment Adjudicating Public Use and Necessity as to the City of
Seattle, entered on April 19, 2017. A copy of the order is attached hereto.

DATED this 16th day of May, 2017.



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5 (206) 682-8200

6 Attorneys for Respondent
7 City of Seattle

8 Attorneys for Petitioner Sound Transit

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10 Connor O'Brien, WSBA #45355
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13 Seattle, WA 98121-1128
14 (206) 624-8300

15 Attorneys for Respondent King County

16 Jenifer Merkel, WSBA #34472
17 King County Prosecuting Attorney
18 Civil Division
19 516 Third Avenue, Room W400
20 Seattle, WA 98104
21 (206) 477-1120

22 Attorneys for Respondent Sternoff L.P.

23 John Houlihan, Jr., WSBA #30285
24 Donya Burns, WSBA #43455
25 Andrew Zabel, WSBA #41064
26 Houlihan Law, P.C.
27 100 N. 35th Street
28 Seattle, WA 98103
29 (206) 547-5052

30 Attorneys for Respondent JP Morgan Chase Bank

31 Susan Alterman, WSBA #30623
32 Mathew Lauritsen, WSBA #47302
33 Kell, Alterman & Runstein, L.L.P.
34 520 SW Yamhill, Suite 600
35 Portland, OR 97204
36 (503) 222-3531

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the *Notice of Appeal to Supreme Court of the State of Washington* in King County Superior Court Cause No. 16-2-08800-7 SEA to the following via the method indicated:

<p><u>Attorneys for Petitioner Sound Transit:</u> Jeffrey A. Beaver Connor M. O'Brien Miller Nash Graham & Dunn 2801 Alaskan Way, Suite 300 Seattle, WA 98121-1128</p>	<p>SERVED VIA: <input type="checkbox"/> E-Service <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Express Mail <input type="checkbox"/> E-mail <input checked="" type="checkbox"/> U.S. Mail</p>
<p><u>Attorneys for Respondent King County:</u> Jenifer Merkel King County Prosecuting Attorney Civil Division 516 Third Avenue, Room W400 Seattle, WA 98104</p>	<p>SERVED VIA: <input checked="" type="checkbox"/> E-Service <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Express Mail <input type="checkbox"/> E-mail <input type="checkbox"/> U.S. Mail</p>
<p><u>Co-Counsel for Respondent City of Seattle:</u> Russell S. King Seattle City Attorney's Office 701 Fifth Avenue, Suite 2050 Seattle, WA 98104-7097</p>	<p>SERVED VIA: <input checked="" type="checkbox"/> E-Service <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Express Mail <input type="checkbox"/> E-mail <input type="checkbox"/> U.S. Mail</p>
<p><u>Attorneys for Respondent JP Morgan Chase Bank:</u> Susan Alterman Mathew Lauritsen Kell, Alterman & Runstein, L.L.P. 520 SW Yamhill, Suite 600 Portland, OR 97204</p>	<p>SERVED VIA: <input type="checkbox"/> E-Service <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Express Mail <input type="checkbox"/> E-mail <input checked="" type="checkbox"/> U.S. Mail</p>
<p><u>Attorneys for Respondent Sternoff L.P.:</u> John Houlihan, Jr. Donya Burns Andrew Zabel Houlihan Law, P.C. 100 N. 35th Street Seattle, WA 98103</p>	<p>SERVED VIA: <input checked="" type="checkbox"/> E-Service <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Express Mail <input type="checkbox"/> E-mail <input type="checkbox"/> U.S. Mail</p>

Original e-filed with:
King County Superior Court
Clerk's Office
516 3rd Avenue
Seattle, WA 98104

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: May 18, 2017 at Seattle, Washington.



John Paul Parikh, Legal Assistant
Talmadge/Fitzpatrick/Tribe

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The Honorable Barbara Linde

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

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

Petitioner,

vs.

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

Respondents.

No. 16-2-09223-3 SEA

~~PROPOSED~~ FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER AND
JUDGMENT ADJUDICATING PUBLIC
USE AND NECESSITY AS TO THE CITY
OF SEATTLE

Tax Parcel Nos. 109910-0100 and 109910-0101

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 appeared but not objected to entry of these Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating Public Use and Necessity, have not appeared, or 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 motion, declarations in support,

as in the case of Respondent City of Seattle

BL

FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER AND JUDGMENT
ADJUDICATING PUBLIC USE AND
NECESSITY AS TO THE CITY OF
SEATTLE -- 1

4831-6240-5696.1

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

1 opposition, if any, and the files and records herein, and being fully advised, has determined that
2 the relief 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. The City of Seattle has an interest in the land, property and property rights, which
9 are the subject of this condemnation action commenced pursuant to Chapter 81.112 RCW.

10 3. On or about September 26, 2013, by Petitioner's Resolution No. R2013-21
11 ("Resolution"), the Sound Transit Board of Directors (the "Board") authorized the
12 condemnation, taking, damaging, and appropriation of certain lands, properties and property
13 rights in order to permanently locate, construct, operate and maintain the East Link Extension
14 and its related facilities (the "Project"). A copy of the Resolution is attached as Exhibit 1 to the
15 Petition which Exhibit is incorporated here by this reference. Included within these lands,
16 properties and property rights is land, property and property rights situated in Bellevue, King
17 County, Washington, in which the City of Seattle holds an interest. The land, property and
18 property rights which Petitioner seeks to and is authorized to condemn, and in which
19 Respondents hold an interest, is identified as King County Tax Parcel Nos. 109910-0100
20 (hereinafter "Parcel 1 EL283") and 109910-0101 (hereinafter "Parcel 2 EL281" and together
21 with Parcel 1 EL283, the "Parcels").

22 4. Before taking final action to adopt the Resolution, which authorizes
23 condemnation of the subject property, Petitioner mailed and published the required notices
24 pursuant to RCW 8.25.290 with the date, time and location of the Board meeting at which
25
26

FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER AND JUDGMENT
ADJUDICATING PUBLIC USE AND
NECESSITY AS TO THE CITY OF
SEATTLE -- 2
4831-6240-5696.1

MILLER NASH GRAHAM & DUNN LLP
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Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

1 Petitioner intended to take final action and authorize the acquisition of the subject property
2 through condemnation, which notice also generally described the property.

3 5. With this condemnation, Petitioner seeks to appropriate the following:

4 6.1 A permanent taking of a portion of Parcel 1 EL283 in fee simple absolute,
5 as legally described and depicted in, and in substantially the form of,
6 **Exhibit 1** hereto;

7 6.2 A permanent taking of a portion of Parcel 1 EL283 for a permanent
8 Tieback / Soil Nail Easement, as legally described and depicted in, and in
9 substantially the form of, **Exhibit 2** hereto;

10 6.3 A temporary taking of a portion of Parcel 1 EL283 for a temporary Access
11 Easement, as depicted in, and in substantially the form of, **Exhibit 3**
12 hereto;

13 6.4 A temporary taking of a portion of Parcel 2 EL281 for a Temporary
14 Construction Easement, as depicted in, and in substantially the form of,
15 **Exhibit 4** hereto;

16 6.5 A temporary taking of a portion of Parcel 1 EL283 for a Temporary
17 Construction Easement – ST, as depicted in, and in substantially the form
18 of, **Exhibit 5** hereto; and

19 6.6 A temporary taking of a portion of Parcel 1 EL283 for a Temporary
20 Construction Easement – COB, as depicted in, and in substantially the
21 form of, **Exhibit 6** hereto.

22 Exhibits 1-6 are incorporated here by this reference and the real property and real
23 property interests described in Exhibits 1-6 are hereinafter collectively referred to as the
24 “Condemned Property.”

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

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

6 8. Petitioner seeks to condemn the real property and real property interests described
7 and/or depicted in Exhibits 1-6, including the easements held by the City of Seattle for the
8 construction, operation and maintenance of an electrical transmission system on the Condemned
9 Property. The Court previously entered Findings of Fact, Conclusions of Law, Order and
10 Judgment Adjudicating Public Use and Necessity as to all Respondents subject to the City of
11 Seattle's existing real property interests.

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

14 UPON CONSIDERATION thereof, the Court hereby makes the following
15 CONCLUSIONS OF LAW:

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

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

19 3. Petitioner is authorized by statute to condemn for public use, which includes
20 locating, constructing, operating and maintaining the Project. The East Link Extension is a
21 public use.

22 4. Condemnation of lands, properties, and property rights to located, construct,
23 operate and maintain the Project is within the statutory authority of Petitioner.

24 5. Petitioner's authority to condemn includes the authority to condemn the City of
25 Seattle's easements burdening the Parcel.

26
FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER AND JUDGMENT
ADJUDICATING PUBLIC USE AND
NECESSITY AS TO THE CITY OF
SEATTLE -- 4

4831-6240-5696.1

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

8 7. The taking and damaging of lands, properties and property rights in order to
9 locate, construct, operate and maintain the East Link Extension, and to comply with relevant
10 Development Conditions, is for a public use.

11 8. The public interest requires the proposed use.

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

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

11. Respondent City of Seattle is not
entitled to continue this hearing
or delay this determination for
purposes of discovery. BL

15 **ORDER AND JUDGMENT**

16 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
17 there is public use and necessity for taking of the Condemned Property (legally described and/or
18 depicted in Exhibits 1-6 to this Order) for public purposes, including the City of Seattle's existing
19 real property interests in the Condemned Property.

20 DONE IN OPEN COURT this 27 day of March, 2017.

21 Barbara Lunde
22 THE HONORABLE JOHANNA BENDER
Barbara Lunde

23 **Presented by:**
24 MILLER NASH GRAHAM & DUNN LLP
By /s/ Connor M. O'Brien
Jeffrey A. Beaver, WSBA# 16091
25 Connor M. O'Brien, WSBA# 40484
Attorneys for Petitioner Sound Transit

26 FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER AND JUDGMENT
ADJUDICATING PUBLIC USE AND
NECESSITY AS TO THE CITY OF
SEATTLE -- 5
4831-6240-5696.1

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Seattle, Washington 98121-1128
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2017 APR - 6 PM 4: 16

KING COUNTY
SUPERIOR COURT

The Honorable Barbara Linde
Noting Date: April 14, 2017
(Without Oral Argument)

Moving Party: Respondent City of Seattle

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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

Petitioner,

v.

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

Respondents.

No. 16-2-09223-3 SEA

~~PROPOSED~~ *BL*

~~ORDER GRANTING THE CITY OF
SEATTLE'S MOTION FOR
RECONSIDERATION AND VACATING
ORDER AND JUDGMENT
ADJUDICATING PUBLIC USE AND
NECESSITY AS TO THE CITY OF
SEATTLE~~
DENYING

Tax Parcel Nos. 109910-0100 and
109910-0101

This matter comes before the Court on City of Seattle's Motion for Reconsideration. The Court has reviewed and considered the following:

1. City of Seattle's Motion for Reconsideration;
2. The pleadings and documents on file with the Court; and
3. _____

Having considered the above and ~~finding that good cause exists to grant Respondent City of~~ *BL*

~~Seattle's motion~~, the Court hereby ORDERS as follows:

BL DENYING
ORDER ~~GRANTING~~ THE CITY OF SEATTLE'S
MOTION FOR RECONSIDERATION AND
VACATING ORDER AND JUDGMENT
ADJUDICATING PUBLIC USE AND NECESSITY
AS TO THE CITY OF SEATTLE - 1

Peter S. Holmes
Seattle City Attorney
701 5th Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

DENIED (B)

1. The City of Seattle's Motion for Reconsideration is ~~GRANTED~~; and

2. This Court's March 27, 2017 Order and Judgment Adjudicating Public Use and
Necessity as to The City of Seattle ~~is VACATED~~. *remains unchanged.* (A)

DATED this 14 day of April, 2017.

Barbara Linde
The Honorable Barbara Linde

Presented by:

PETER S. HOLMES
Seattle City Attorney

By: _____
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Engel Lee, WSBA# 24448
Assistant City Attorney
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E-Mail: Engel.Lee@seattle.gov

Seattle City Attorney's Office
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Attorneys for Respondent The City of Seattle

(B) DENYING
ORDER ~~GRANTING~~ THE CITY OF SEATTLE'S
MOTION FOR RECONSIDERATION AND
VACATING ORDER AND JUDGMENT
ADJUDICATING PUBLIC USE AND NECESSITY
AS TO THE CITY OF SEATTLE - 2

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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

Petitioner,

v.

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

Respondents.

No. 16-2-09223-3 SEA

Tax Parcel Nos. 109910-0100 and 109910-0101

NOTICE OF APPEAL TO
SUPREME COURT OF THE
STATE OF WASHINGTON

Respondent City of Seattle seeks review by the Supreme Court of the Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating Public Use and Necessity as to the City of Seattle, entered on March 27, 2017, and the Order Denying the City of Seattle's Motion for Reconsideration and Vacating Order and Judgment Adjudicating Public Use and Necessity As to the City of Seattle, entered on April 14, 2017. Copies of the orders are attached here.

DATED this 19th day of April, 2017.

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5 Attorneys for Respondent
City of Seattle

6 Attorneys for Petitioner Sound Transit

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14 Attorneys for Respondent King County

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King County Prosecuting Attorney
16 Civil Division
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17 Seattle, WA 98104
(206) 477-1120

No. 94406-7

SUPREME COURT
OF THE STATE OF WASHINGTON

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

Respondent,

v.

SAFEWAY INC., a Delaware corporation, et al,

Petitioners.

THE CITY OF SEATTLE'S
STATEMENT OF GROUNDS
FOR DIRECT REVIEW

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Attorneys for Petitioner City of Seattle

A. INTRODUCTION

The City of Seattle (“Seattle”) and the Central Puget Sound Regional Transit Authority (“Sound Transit”) are in an ongoing dispute over Sound Transit’s statutory authority to condemn Seattle’s electrical transmission corridor easement. Sound Transit wants to condemn significant portions of the easement in order to build light rail and to allow Bellevue to widen a road. However, the condemnation will destroy the current public use of the property and sever a major electrical corridor spanning 100 miles of western Washington. Seattle has already appealed three trial court orders in several condemnation actions concluding Sound Transit does have the authority to do this.

Seattle has now appealed the fourth order related to this issue, and seeks direct review. The trial court has determined that Sound Transit, a special purpose governmental entity, could exercise its power of eminent domain. The condemnation will destroy the public use of the property for electrical transmission, severing the corridor. In making its decision, trial court entered an order of public use and necessity, from which Seattle has filed a notice of appeal to this Court.¹ The court’s decision involves an

¹ Seattle has appealed one public use and necessity decision as of right (RAP 2.2(a)(4)), to the Court of Appeals in Cause No. 76252-4-I and has sought direct review of two others in Supreme Court Cause Nos. 94065-7 and 94255-2. A significant issue in those cases is the trial court’s decision that Sound Transit had the statutory authority to condemn the same Seattle right of way at issue here. Upon the completion of the briefing

issue of first impression on the interpretation of the scope of RCW 81.112.080(2).

Direct review is appropriate in this case under RAP 4.2(a)(4) because the case involves a matter of significant public importance, addressing the power of subordinate units of government in Washington to take the property of general purpose governments. This Court's review is necessary to vindicate the powers of general purpose governments. If the trial court's decision is permitted to stand, it will have widespread and adverse effects on every city and county government in Washington. Their property, both inside and outside the municipal corporate limits, will be placed at risk of being taken by subordinate units of government, without express direction by the Legislature that such subordinate units of government are authorized to do so.

B. ISSUES PRESENTED FOR REVIEW

1. Where a regional transit authority like Sound Transit, a special purpose unit of local government, is given the power of eminent domain by statute, does RCW 81.112.080(2) authorize it to condemn the property of a general purpose home rule chartered local municipal corporation like Seattle where that statute is silent on conferring such power upon the regional transit authority?
2. Does RCW 81.112.080(2) authorize Sound Transit to condemn Seattle's property for the purposes of Bellevue's road widening project?

in that case, Seattle will move to transfer the Court of Appeals case to this Court pursuant to RAP 4.4.

Statement of Grounds
for Direct Review - 2

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3. Does the prior public use doctrine prohibit Sound Transit from condemning Seattle's property when that action will destroy its prior existing public use for electrical transmission?

C. NATURE OF CASE AND DECISION

The property at issue is the fourth parcel of Seattle property that Sound Transit has sought to condemn in recent months. The property contains portions of an electrical transmission line easement owned by Seattle that is located within the corporate limits of the city of Bellevue. There is currently a 230 kV electrical transmission line on the property (within the transmission line easement) that will be compromised by the condemnation of the property. Due to the extinguishment of its easement rights over the property that will result from the condemnation, Seattle will have no legal right to operate the transmission line over the property.

That easement is part of a vital electrical transmission line corridor running 100 miles and connecting Seattle City Light's Skagit River hydroelectric dams to a substation in Maple Valley. The corridor is also an integral part of a larger, regional electrical transmission line system that runs from Canada to California.

In addition to seeking to condemn property for its light rail line, Sound Transit is also seeking to condemn portions of Seattle's easement in order to give the property to Bellevue to widen a road. The vast majority

of the property being condemned is for the road project and will never be used by Sound Transit for its light rail line.² Seattle's existing 230 kV transmission line is located within the 45-foot wide portion of its transmission line easements on the west side of the 124th Avenue right of way in Bellevue. Appendix at 3, 7. At the southern end of the take area, Sound Transit is condemning, taking in fee simple, and extinguishing all of Seattle's easement rights over 30.51 feet of the 45-foot wide easement. *Id.* at 3. As a result, there will be insufficient space within the remaining portion of the easement for Seattle to locate any high voltage transmission line because of the mandatory clearances that must be maintained around such lines. *Id.* at 3-4. The condemnation will render the easement unusable for its intended purpose of housing a high voltage transmission line. *Id.*

Because Sound Transit's condemnation will destroy the use of the property for electrical transmission, Seattle intervened in this matter. Sound Transit sought an order declaring that its proposed condemnation was for public use and necessity. The trial court, the Honorable Barbara Linde, entered an order of public use and necessity supported by findings

² Per Exhibit 1 to the trial court's order, the "Sound Transit Fee Acquisition Area" for the perpendicular rail crossing of 124th Avenue is approximately 605 square feet, and the "City of Bellevue Fee Acquisition Area" for the street widening, which runs down the full 800+ linear feet of the property's frontage on 124th Avenue, is 11,312 square feet.

and conclusions. For the reasons stated below, Seattle has appealed that decision directly to this Court.

D. REASONS WHY DIRECT REVIEW SHOULD BE GRANTED

This case involves an issue of first impression on whether Sound Transit's specific eminent domain authority in RCW 81.112.080(2) can be exercised against the property of a general purpose local government like a city or county. As this is a matter capable of repetition in future cases, this is precisely the type of issue on which this Court grants direct review of under RAP 4.2(a). Direct review by this Court is appropriate to establish the appropriate public policy as to the authority of local governments to exercise the power of eminent domain.

Direct review is also warranted because it is the most efficient and rapid way to resolve Seattle's multiple challenges surrounding this important issue. There are now four matters on appeal involving this issue that can be resolved by this Court in a single opinion. Sound Transit has demonstrated that it will continue condemning and destroying the easement until this Court issues a ruling clarifying Sound Transit's condemnation authority. The multiple matters now on appeal should be accepted by this Court, consolidated, and resolved efficiently.

(1) Direct Review Is Warranted Because This Case Involves Fundamental Questions of Governmental Authority and Vital Public Interest that This Court Will Ultimately Resolve; Time Is of the Essence

Several key contextual principles documenting the public significance of the present controversy warrant direct review by this Court. First, 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. As such, the charters of such home rule governments confer upon them “complete local self-government in municipal affairs.” *Bussell v. Gill*, 58 Wash. 468, 473, 108 Pac. 1080 (1910). Decisions of a home rule local government like Seattle are ultimately the product of a directly elected Council and Mayor. By contrast, Sound Transit is a special purpose unit of local government that does not have a directly elected leadership and is governed largely by unelected administrators; it does not enjoy the same constitutional status for its decision making. Moreover, Seattle is a general purpose unit of Washington local government with broad responsibilities under its charter. By contrast, Sound Transit’s power is focused only on transportation. In this sense, it is no different than the numerous special purpose units of government in Washington that address the operation of ports, schools, or public utilities.

Sound Transit essentially contends, and the trial court agreed, that despite the absence of express authority in RCW 81.112.080 authorizing Sound Transit to condemn the property of other political subdivisions of the State, its transportation plans took precedence over the public decisions of home rule chartered local governments like Seattle, and the use of property to implement such decisions. Again, no statute prioritizes Sound Transit's public actions over those of Seattle, other cities, King County, or all other special purpose districts.

Second, the power of eminent domain is an attribute of the State's sovereignty. Wash. Const. art. I, § 16; *Public. Util. Dist. No. 2 of Grant Cty. v. N. American Foreign Trade Zone Industries LLC*, 159 Wn.2d 555, 565, 151 P.3d 176 (2007). The State may delegate that authority to local governments, but when it does, statutes delegating the authority must be *strictly construed. Id.*

Third, with regard to efforts by one government to condemn the property of another, this Court has long vigilantly acted to ensure the Legislature actually conferred such authority on the condemning government. *State v. Superior Court of Chelan Cty.*, 36 Wash. 381, 385, 78 Pac. 1011, 1012 (1904) ("Since the rule prevails that condemnation statutes must be strictly construed as far as they relate to the taking of private property, it follows with even more force that the same rule must

apply where the lands of the sovereign are sought to be taken”), *superseded by statute on other grounds, City of Seattle v. State*, 54 Wn.2d 139, 145, 338 P.2d 126, 129 (1959); *see also, Pub. Util. Dist. No. 1 of Okanogan Cty. v. State*, 182 Wn.2d 519, 536, 342 P.3d 308, 316 (2015) (when interpreting a statute that is being relied on to support the condemnation of state land “[n]ot only does the power to condemn a particular type of land need to be statutorily given, but the power to condemn such lands when they are held in the state’s governmental capacity must be as well”).³ Special purpose units of government like a regional transit authority, for example, have no authority to condemn the property of the State itself, or general purpose units of government created by the Legislature, *without specific legislative authorization*. It has long been clear that a municipality may not condemn state-owned lands without clear, express statutory authority. *City of Tacoma v. Taxpayers of Tacoma*, 49 Wn.2d 781, 798, 307 P.2d 567 (1957); *P.U.D. No. 1 of Okanogan Cty.*, 182 Wn.2d at 536-37.

³ While this Court addressed property held in a governmental capacity in *P.U.D. No. 1*, it makes no difference that Seattle’s property here was arguably property held in a proprietary capacity. The core principle – express legislative authorization to condemn the property of a government – has long applied with equal force to such property. *Seattle & Montana Ry. Co. v. State*, 7 Wash. 150, 152, 34 Pac. 551 (1893) (railroad could not condemn state tideland property; Court observed that absent such a restriction, the railroad could take the land on which the Capitol is located for a depot and shops).

While the Court of Appeals is certainly capable of resolving these issues initially, Sound Transit is moving forward with its development, which will destroy the use of the property at issue. The public interests at stake and the issues involved mean that regardless of the outcome, one party will petition this Court for review. These issues can only finally be resolved at this Court, and it makes sense to shorten the timeline and have this Court review the issues now to remove the uncertainty for the governments at issue, as well as the citizens they serve.

(2) Direct Review Is Warranted Because Sound Transit Lacks Statutory Authority to Condemn the Property at Issue

Turning to the specific statute at issue here, the trial court erred by failing to strictly scrutinize the condemnation authority afforded Sound Transit. The court should have focused on the plain language of RCW 81.112.110.⁴ See Appendix at 1.

By its plain, unambiguous language, RCW 81.112.080(2) confers eminent domain authority on Sound Transit, but that authority is limited in

⁴ This is required by this Court's approach to statutory interpretation. The core requirement of this Court's statutory interpretation regimen is that courts must execute the intent of the Legislature by implementing the plain language of a statute. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001). "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. *Campbell & Gwinn, L.L.C.*, 146 Wn.2d at 9-10. If the language of the statute is plain, that ends the courts' role. *Cerrillo v. Esparza*, 158 Wn.2d 194, 205-06, 142 P.3d 155 (2006). Here, the plain language of RCW 81.112.080 controls.

scope. That statute does not *anywhere* explicitly state that Sound Transit may take the property of other units of local government generally, nor the property of general purpose government units specifically. This is a prioritization decision that must rest with the Legislature, not Sound Transit.

Under this Court's precedents, including cases involving first-class cities, one local government cannot condemn the property of another *without express legislative authorization to do so*. *E.g., King County v. City of Seattle*, 68 Wn.2d 688, 690, 414 P.2d 1016 (1966) (County could not condemn Seattle's property "in the absence of express or necessarily implied legislative authorization"). No such express statutory authority is present here.⁵ Nor is such expansive authority fairly implied from the language of RCW 81.112.080(2), strictly construed as this Court has directed. Because the Legislature used the word "all" in RCW 81.112.080(2), that does not somehow extend Sound Transit's condemnation power to property of other governments. In *King County*, this Court rejected a similar contention that a general statutory grant of

⁵ By contrast, the statute at issue in *P.U.D. No. 1 of Okanogan Cty.*, expressly authorized condemnation of other governmental properties. *See also*, RCW 47.52.050 (state transportation condemnation authority); RCW 53.34.170 (port districts); RCW 54.16.050 (PUDs).

eminent domain power as to “property” or “any property” included the right to condemn other governments’ property. *Id.* at 690.

Moreover, the language in RCW 81.112.080(2) that requires Sound Transit to obtain permission from other governments to acquire their transportation property or facilities fairly implies that the Legislature denied Sound Transit the right to condemn the property of other governments when its authority on its core function was so constricted.

Finally, nothing in RCW 81.112.080 gave Sound Transit the authority to condemn Seattle’s property to facilitate Bellevue’s planned expansion of 124th Avenue.

This case is one for this Court. While this Court has never definitively interpreted the criteria for review under RAP 4.2(a) generally or RAP 4.2(a)(4) specifically, this case involves a fundamental and urgent issue of broad public importance meriting ultimate resolution by this Court. It is a case of first impression for the interpretation of RCW 81.112.080 (even though the trial court’s interpretation of that statute is obvious or probable error in light of this Court’s principles for condemnation statutes). As such, review is merited.⁶ Indeed, this Court

⁶ This Court has frequently concluded that issues of first impression qualify for direct review under RAP 4.2(a). *See, e.g., In re Guardianship of Lamb*, 173 Wn.2d 173, 265 P.3d 876 (2011) (use of guardianship fees for advocacy activities); *Rental Housing Ass’n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009) (whether a city’s response to a public records request was a proper claim of exemption

has granted direct review of first-impression matters of statutory interpretation. *E.g.*, *Glass v. Stahl Specialty Co.*, 97 Wn.2d 880, 652 P.2d 948 (1982) (interpretation of 1981 tort reform legislation). This is a classic instance of a dispute between local governments over the scope of their powers, the type of case this Court takes to definitively identify and delineate the respective powers of those governments,⁷ an issue of broad public importance, particularly where Sound Transit's conduct here is so fully capable of repetition. Finally, this issue impacts public resources. This Court grants direct review in cases affecting public resources.⁸

sufficient to trigger the applicable statute of limitations); *York v. Wahkiakum Sch. Dist. No. 200*, 163 Wn.2d 297, 178 P.3d 995 (2008) (constitutionality of random drug testing of student athletes); *King Co. v. Central Puget Sound Growth Mgmt. Hearings Board*, 142 Wn.2d 543, 14 P.3d 133 (2000) (recreational use of land in areas designated under GMA for agricultural purposes); *e.g.*, *Bohme v. PEMCO Mut. Ins. Co.*, 127 Wn.2d 409, 411-12, 899 P.2d 787 (1995) (interpretation of insurance policy excluding government-owned vehicles from the definition of underinsured motor vehicles); *Wagenblast v. Odessa Sch. Dist. No. 105-157-166J*, 110 Wn.2d 845, 846, 758 P.2d 968 (1988) (legality of exculpatory clause required of student athletes as a prerequisite to student participation in certain school-related activities); *State v. Gunwall*, 106 Wn.2d 54, 56, 720 P.2d 808 (1986) (admissibility of evidence obtained from a pen register). *See also*, *Expedia, Inc. v. Steadfast Ins. Co.*, 180 Wn.2d 793, 329 P.3d 59 (2014) (court granted review under RAP 13.5 on whether decision on duty to defend should await insurer's discovery on policy defenses).

⁷ The Court has granted direct review when a public agency's authority is involved. *See, e.g.*, *Seattle Seahawks, Inc. v. King County*, 128 Wn.2d 915, 913 P.2d 375 (1996) (contract dispute between county and professional football team over construction of new football stadium); *Boeing Co. v. State*, 89 Wn.2d 443, 572 P.2d 8 (1978) (State authority regarding dangerous roadway).

⁸ This Court routinely grants direct review in cases involving issues of public finance. *E.g.*, *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012) (funding of common school education in Washington); *Sheehan v. Central Puget Sound Regional Transit Auth.*, 155 Wn.2d 790, 123 P.3d 88 (2005) (MVET levied by Sound Transit and Seattle monorail). This Court has also directly reviewed issues of a local government's

Ultimately, it makes very little sense, when public funds and public projects are at issue, for a case to be first heard by the Court of Appeals. The added delay and expense to taxpayers is needless when this Court can readily avoid both by granting direct review on a question that undoubtedly will be ultimately resolved by this Court in any event.

(3) Direct Review Is Warranted Because the Condemnation Threatens a Vital Existing Public Use of the Property, and the Trial Court's Decision Does Not Engage In Prior Public Use Analysis

There is also a vital and immediate public interest in resolving whether the prior public use doctrine allows a major electrical transmission corridor to be destroyed in favor of use for public transportation. This is not an academic or parochial question. It potentially impacts every citizen in western Washington in the very near future.

When a use proposed by the condemnor “will either destroy the existing use or interfere with it to such an extent as is tantamount to destruction, the exercise of the power will be denied unless the legislature has authorized the acquisition either expressly or by necessary implication.” *Pub. Util. Dist. No. 1 of Okanogan Cty. v. State*, 182 Wn.2d 519, 539, 342 P.3d 308 (2015).

condemnation authority. *In re City of Seattle, supra; HTK Mgmt. LLC v. Seattle Popular Monorail Auth.*, 155 Wn.2d 612, 121 P.3d 1166 (2005).

Sound Transit cannot dispute that the City's prior use of this property is a public use. The generation and transmission of electrical power has long been recognized as a public use by this Court. *Carstens v. Pub. Util. Dist. No. 1 of Lincoln Cty.*, 8 Wn.2d 136, 143, 111 P.2d 583 (1941), citing *State ex rel. Washington Water Power Co. v. Superior Court for Grant Cty.*, 8 Wn.2d 122, 111 P.2d 577 (1941).

Sound Transit's proposed condemnation would render the easement unusable for an electrical transmission line. Appendix at 4. It would effectively sever the transmission line corridor and destroy this prior public use of the property. *Id.*

Because Sound Transit's proposed use of the condemned property is incompatible with – and would destroy – the transmission line easement, its condemnation is barred by the prior public use doctrine.

As with the question of Sound Transit's statutory authority, the prior public use issue is a legal question that this Court must ultimately resolve. Time is of the essence, as Sound Transit continues to condemn more public property without authority, and threatens to sever a vital electrical transmission corridor.

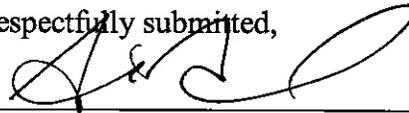
E. CONCLUSION

This controversy has an immediate impact on the public interest, and requires this Court's ultimate resolution of the eminent domain

authority of special purpose local governments like Sound Transit. The issue affects not only Seattle, but other Washington cities and counties as well. This Court should grant direct discretionary review. RAP 2.3(b); RAP 4.2(a).

DATED this 8th day of May, 2017.

Respectfully submitted,



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WASHINGTON STATE SUPREME COURT

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

Respondent,

v.

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

Petitioners.

ANSWER TO THE CITY OF SEATTLE'S
STATEMENT OF GROUNDS
FOR DIRECT REVIEW

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I. NATURE OF THE CASE AND DECISION

The trial court correctly ruled that Sound Transit's eminent domain statute allowed it to acquire property within a portion of City Light's electrical transmission line easement, and that the prior public use doctrine does not prohibit the condemnation. The resulting Order and Judgment Adjudicating Public Use and Necessity ("PU&N Judgment") is entirely unremarkable in its application of law to fact.

This matter concerns one of four properties along Sound Transit's future East Link light rail line that are subject to City Light's electrical transmission easement. The four properties are located in the City of Bellevue at the intersection of 124th Avenue NE and the East Link line.¹ Sound Transit successfully moved for entry of an order and judgment adjudicating public use and necessity as to each of the four properties. City Light claimed in its opposition to the PU&N Judgment that Sound

¹ The other properties are the subject of these pending cases: *Central Puget Sound Reg'l Transit Auth. v. Ann Seena Jacobsen, et al.*, Cause No. 16-2-06769-7 SEA ("*Jacobsen*"), which is pending in the Court of Appeals under Cause No. 76252-4-1; *Central Puget Sound Reg'l Transit Auth. v. WR-SRI 120TH North LLC, et al.*, Cause No. 17-2-00988-1 SEA ("*Spring District*"), which is the subject of a pending motion for direct review to this Court, No. 94255-2; and *Central Puget Sound Reg'l Transit Auth. v. Sternoff, et al.*, Cause No. 16-2-08800-7 SEA ("*Sternoff*"), in which the trial court's public use and necessity order as to the property owner was affirmed by the Court of Appeals under Cause No. 75372-0-I, with review denied by this Court on February 8, 2017, No. 93913-6, and the trial court's public use and necessity order as to City Light was entered on April 19, 2017.

Transit did not have the statutory authority to condemn publicly owned property, that Sound Transit's condemnation of City Light's easement was prohibited by the prior public use doctrine, and that Sound Transit was improperly acting for the City of Bellevue. App. 4-5, 11-12. The trial court correctly rejected those arguments and issued the PU&N Judgment from which City Light now seeks direct review. App. 16-20.

The argument that Sound Transit cannot condemn public property contradicts the plain statutory language and undermines the concept of a "regional transit authority." City Light's related contention that the prior public use doctrine precludes Sound Transit's condemnation of portions of its easement ignores the specifics of Sound Transit's project and decades of case law. And City Light's argument that Sound Transit cannot condemn property for the City of Bellevue misrepresents the facts and is identical to the property owner's argument in *Sternoff*, which was previously rejected by the Court of Appeals, with review denied by this Court. App. 21.

City Light's request for direct review of the PU&N Judgment should be denied for both policy and procedural reasons. Direct review would open an unnecessary, duplicative avenue of review of the same

issue—Sound Transit's authority to condemn portions of City Light's easement along 124th Avenue NE—currently on accelerated review with the Court of Appeals in *Jacobsen*, Cause No. 76252-4-1.² City Light's request should also be denied because City Light cannot establish a fundamental and urgent issue of broad public import necessary for acceptance of direct review under RAP 4.2(a)(4).

II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Sound Transit's enabling statute gives it broad authority to take "all" property necessary to construct and operate a regional transit system. Does City Light's status as a public utility prevent Sound Transit from condemning portions of City Light's easement to construct and operate its regional light rail project?

2. The prior public use doctrine allows condemnation of publicly owned land already devoted to a public use when the proposed use is compatible with the prior public use. Competing public uses are compatible unless the proposed public use will destroy the existing use or interfere with it to an extent tantamount to destruction. Does the prior public use doctrine prohibit Sound Transit from condemning City Light's

² City Light filed its brief with the Court of Appeals on May 18, 2017.

property when Sound Transit's project will not destroy City Light's existing use?

3. An agency's project design, construction plans, and designation of property as necessary for the project are conclusive unless the opposing party proves arbitrary and capricious conduct amounting to constructive fraud. Sound Transit's project includes a bridge where 124th Avenue NE will cross the light rail line, designed to accommodate the City of Bellevue's plans to widen 124th Avenue NE. Is the trial court's determination that property needed for the bridge is necessary for Sound Transit's project supported by substantial evidence?

III. ANSWER TO GROUNDS FOR DIRECT REVIEW

A. Accepting Direct Review Would Create Piecemeal Review of the Same Legal Issues Currently on Accelerated Review With the Court of Appeals.

The trial court, rejecting City Light's arguments to the contrary, correctly ruled that Sound Transit has the authority to condemn city-owned property and the prior public use doctrine does not bar the condemnation. City Light was similarly unsuccessful on these same arguments in opposition to Sound Transit's motions for public use and necessity in the *Jacobsen*, *Spring District*, and *Sternoff* cases, which

involved the same Sound Transit project and the same City Light easement. App. 26-28, 34-36, 40-42. The trial courts also rejected City Light's contention that Sound Transit was improperly condemning portions of the easement for the City of Bellevue. *Id.*

In *Jacobsen*, City Light filed and the trial court also denied a motion for summary judgment dismissing the condemnation for the same reasons ("SJ Denial"). App. 43-45. City Light appealed the PU&N judgment to the Court of Appeals under Cause No. 76252-4-1, and also sought direct discretionary review from this Court of the SJ Denial. App. 46-56, 57-64. On March 31, 2017, this Court denied City Light's petition for direct discretionary review of the SJ Denial because it did not want to open a parallel avenue of review of the same legal issues pending in the Court of Appeals. App. 65-70. By requesting direct review in this case (and in *Spring District*, No. 94255-2) of the same legal issues currently on accelerated appeal in *Jacobsen*, City Light again seeks duplicative, parallel review.

City Light's request should be denied because there is a case further along in the appellate process that will settle the same legal issues between the parties. There is no need for separate direct review of the

PU&N Judgment in this case where a single round of briefs addressing the merits of the same issues in *Jacobsen* will resolve the relevant issues.³

B. City Light Fails to Establish a Basis for Direct Review.

City Light has failed to establish a basis for direct review. A party may obtain direct review of a trial court decision only if it establishes one of the six grounds listed in RAP 4.2(a). City Light argues only one ground, RAP 4.2(a)(4): "a fundamental and urgent issue of broad public importance meriting ultimate resolution by this Court." City Light fails to demonstrate, however, that its request for direct review is so fundamental and urgent as to require this Court's immediate attention. As a result, the standard for direct review is not met.

City Light wrongly characterizes this case as a vital, pervasive dispute about government powers. The issue here is not nearly so structural, nor so broad. First, this is not a clash of government entities or governmental functions. It is a dispute about a city-owned public utility

³ In its Statement of Grounds for Direct Review, City Light suggests that all matters on appeal should be accepted by this Court, consolidated, and resolved "efficiently." *See* Statement of Grounds for Direct Review at 5. At this time, Sound Transit opposes such consolidation because (1) City Light has not formally submitted a proper motion to consolidate the actions, (2) City Light has not moved for direct review of the *Jacobsen* PU&N Judgment, and (3) Sound Transit fears these maneuvers will further delay Sound Transit's project and thwart the progress that has already been made towards accelerated resolution these issues at the Court of Appeals.

easement on property located outside both the city boundaries and the utility's service area. The subject property, located in the City of Bellevue, is subject to an easement held by City Light in a proprietary capacity. *See Washington Public Power Supply System v. General Electric Company*, 113 Wn.2d 288, 301, 778 P.2d 1047 (1989) (electrical transmission is a proprietary, not governmental, function). Second, these disputes affect only the four properties at the intersection of the East Link light rail line and City Light's 124th Avenue NE transmission corridor.

Moreover, as discussed in more detail below, the PU&N Judgment in this case represents a basic application of the statute's plain language and well established case law. Indeed, Sound Transit's authorizing statute has been consistently interpreted by four different trial courts as authorizing Sound Transit to condemn city-owned property.⁴ App. 19-20, 26-28, 34-36, 40-42.

City Light incorrectly asserts that its request for direct review meets the RAP 4.2(a)(4) standard because the scope of Sound Transit's eminent domain authority is an issue of "first impression." First, the rule does not allow direct review merely because a case may raise an issue of

⁴ *See* FN 1, above.

first impression. Second, the cases cited by City Light are distinguishable and do not apply here. *See* Statement of Grounds for Direct Review 11-13. Those cases involve broad questions of public importance or significant constitutional disputes, not a statutory construction issue that impacts four particular properties. This case does not merit direct review simply because no prior appellate case addresses City Light's specific arguments.

C. The Trial Court Properly Decided the Substantive Issues.

City Light spends the bulk of its briefing arguing the merits. RCW 81.112.080(2) authorizes Sound Transit to condemn "all" property and rights of way necessary for its transit system and supporting facilities. The trial courts, which have unanimously interpreted this statute to allow Sound Transit to condemn City Light's easements, and ruled the condemnations necessary for Sound Transit's project, are right. Sound Transit briefly addresses these substantive issues below.

1. Sound Transit has the authority to condemn City Light property.

The trial court correctly ruled Sound Transit has statutory authority to condemn publicly owned property. Statutory analysis "always begins with the plain language of the statute." *Rest. Dev., Inc. v. Cananwill*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). On its face, RCW 81.112.080

specifically authorizes Sound Transit to condemn "all lands, rights-of-way, [and] property necessary for such high capacity transportation systems" (emphasis added). The word "all" distinguishes Sound Transit's condemnation authority from the county-condemnation statute addressed in the case City Light relies on, *King County v. City of Seattle*, 68 Wn.2d 688, 690, 414 P.2d 1016 (1966). And in *Newell v. Loeb*, 77 Wash. 182, 200, 137 P. 811 (1913), this Court held that the legislature's use of the word "all" in a condemnation statute conferred the power to condemn property devoted to a public use.

Considering the statute as a whole compels the same conclusion.⁵ RCW 81.112.080 expressly references "rights-of-way" in its grant of condemnation authority. Because "rights-of-way" are routinely publicly owned,⁶ it would not make sense for the Legislature to expressly grant condemnation rights over "all ... rights-of-way" if it intended to limit the condemnation authority to only private property.

⁵ "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Davis v. State ex rel. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (quoting *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)).

⁶ See, e.g., RCW 47.04.040; RCW 47.14.010; RCW 47.24.030; RCW 47.28.020; RCW 47.30.030; RCW 47.32.010 (all referring to publicly owned "rights-of-way").

In addition, the statute contains an exception that proves the rule. The statute explicitly excludes from Sound Transit's condemnation power municipally-owned property and facilities already used for public transportation; these may be acquired or used only by consent.

"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." RCW 81.112.080

This statutory limitation on Sound Transit's right to condemn publicly owned property already used for public transportation is necessary only because the statute otherwise grants Sound Transit the power to condemn "all" property, including property that is publicly owned. Unlike City Light's proposed construction, this gives effect to all the words in the statute and makes sense: if property is already being used for public transportation, the use of that property for a regional transportation system should be collaborative.

Finally, City Light simply ignores the long line of cases that hold condemnation statutes cannot be construed to defeat the purpose of the

grant.⁷ Although "statutes which delegate the state's sovereign power of eminent domain to its political subdivisions are to be strictly construed," the power may be conferred "by necessary implication;" "a statutory grant of such power is not to be so strictly construed as to thwart or defeat an apparent legislative intent or objective." *Devonshire*, 70 Wn.2d at 633 (citing *Welcker*, 65 Wn.2d 677).

Here, City Light would have this Court construe Sound Transit's condemnation authority so strictly as to defeat the purpose of the grant—to enable Sound Transit to design, construct, and operate a comprehensive regional public transportation facility. RCW 81.112.080; *see also* RCW 81.112.010 (statutory purpose). Regional transit authorities building a regional transit system through dense urban areas must be able to condemn publicly owned property to achieve this statutory purpose. Otherwise, every public right of way, public building, public installation, or public property interest would be a potential dead end.

⁷ *See, e.g. City of Tacoma v. Welcker*, 65 Wn.2d 677, 683, 399 P.2d 330 (1965); *State ex rel. Devonshire v. King County*, 70 Wn.2d 630, 633, 424 P.2d 913 (1967); *HTK Management, LLC v. Seattle Popular Monorail Auth.*, 155 Wn.2d 612, 622, 121 P.3d 1166 (2005).

2. The prior public use doctrine does not prohibit condemnation of City Light's property.

City Light's argument that the prior public use doctrine prohibits this condemnation action is similarly misplaced. It ignores the specifics of Sound Transit's project and misapplies the compatibility test invoking the doctrine's protections.

Sound Transit's project is compatible with City Light's use of its easement. See *Public Utility District No. 1 of Okanogan County v. State*, 182 Wn.2d 519, 538-39, 342 P.3d 308 (2015) (competing public uses are incompatible when the proposed public use will destroy the existing use or interfere with it to such an extent as is tantamount to destruction). In this condemnation action, Sound Transit's project takes a small area west of 124th Avenue NE. To the extent this requires reconfiguration of City Light's transmission line at an increased cost, that cost does not destroy City Light's easement or interfere to an extent tantamount to destruction.⁸

Moreover, Sound Transit has consistently assured City Light that Sound Transit's project will not destroy or substantially interfere with City

⁸ The remedy for any restrictions on use or increased costs resulting from Sound Transit's acquisition is found in the just compensation phase of the proceedings, when damages to the remainder caused by the taking are determined, but such damages are irrelevant at this time. See *State v. McDonald*, 98 Wn.2d 521, 525-26, 656 P.2d 1043 (1983) (where only part of a single tract of land is taken, the measure of damages is fair market value of the land taken, together with damages to the land not taken).

Light's use of its easements along 124th Avenue NE. App. 71-72. At the conclusion of Sound Transit's project, City Light will still own a substantial electrical utility easement that it may utilize according to its stated purpose. The two uses are thus compatible.

3. The proposed condemnation is necessary for the East Link project.

Finally, City Light argues briefly that Sound Transit's enabling statute does not allow it to "condemn Seattle's property to facilitate Bellevue's planned expansion of 124th Avenue." Statement of Grounds for Direct Review at 11. This characterization—that Sound Transit is condemning the property on behalf of a third party in an attempt to do an end run around the condemnation process—badly misstates the facts of this case, the East Link project, and Sound Transit's collaboration with the City of Bellevue.

The record does not support City Light's claim that Sound Transit is condemning property for the City of Bellevue. On the contrary, the 124th Avenue NE bridge over the light rail trackway is an integral part of Sound Transit's East Link project. App. at 86. The bridge is well within RCW 81.104.015(2) definition of a "high capacity transportation system," which expressly includes "supporting services and facilities." And it is not

underhanded or impermissible for Sound Transit to design its bridge to accommodate the City of Bellevue's longstanding plans to widen the arterial. Indeed, the owner in *Sternoff* made exactly the same argument City Light is making here, appealed the trial court's necessity finding, which was affirmed, and its Petition for Review to this Court was denied. *Id.*

IV. CONCLUSION

Direct review should be denied because reviewing the PU&N Judgment in this case would duplicate appellate proceedings in *Jacobsen* already pending in the Court of Appeals under accelerated review. In addition, City Light exaggerates the nature and scope of the issues presented. This action concerns one of four properties where Sound Transit's project impacts a portion of City Light's proprietary electrical transmission easement, which runs along 124th Avenue NE in Bellevue. It does not affect any governmental function and does not raise "a fundamental and urgent issue of broad public import which requires prompt and ultimate determination," RAP 4.2(a)(4). To the contrary, the resolution of this matter is based on a straightforward reading of plain statutory language, and the trial courts that have considered the issue have

unanimously and consistently ruled that the statute grants Sound Transit the authority to condemn publicly owned property in general, and the prior public use doctrine does not prevent Sound Transit's condemnation of the City Light easement interests at issue. As to the argument that Sound Transit is condemning property for the City of Bellevue, the Court of Appeals has already rejected that same argument and this Court denied the owner's Petition for Review.

DATED this 22nd day of May, 2017.

MILLER NASH GRAHAM & DUNN LLP

s/Jeffrey A. Beaver

Jeffrey A. Beaver, WSB No. 16091
Jacqualyne J. Walker, WSB No. 45355
Emily R. Krisher, WSB No. 50040
Attorneys for Respondent Sound Transit

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The Honorable Jeffrey Ramsdell
Noting Date: May 31, 2017
(Without Oral Argument)
Moving Party: Petitioner Sound Transit

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority, dba SOUND TRANSIT,	) No. 17-2-12144-4 SEA
Petitioner,	) PETITIONER’S MOTION FOR ORDER) AND JUDGMENT ADJUDICATING) PUBLIC USE AND NECESSITY
vs.)
WR-SRI 120TH NORTH LLC, a Delaware limited liability company; et. al.,	) Tax Parcel Nos. 067100-0000, 067100-0020,) 067100-0030, 067100-0040, and 067100-0060
Respondents.)

I. RELIEF REQUESTED

Petitioner, Central Puget Sound Regional Transit Authority, dba Sound Transit’s (“Petitioner”) moves the Court for an order and judgment adjudicating public use and necessity as to Respondents named in this action.

II. STATEMENT OF FACTS

Public Use and Necessity: This is a condemnation action. On November 5, 1996, November 4, 2008, and November 8, 2016, voters approved local funding to implement a regional high-capacity transit system for the Central Puget Sound region (“Sound Move, ST2, and ST3”). See, Declaration of Tom Wilson filed in support of this motion (“Wilson Decl.”). In part, Sound Move, ST2, and ST3 provide for the implementation of a high-capacity light rail service and transit improvements. They further provide for the construction, operation,

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1 maintenance and permanent location of an electric light rail project (“Link light rail”) connecting
2 some of the state’s largest employment and education centers, highest density residential areas,
3 and highest regional transit ridership areas. Wilson Decl. Link light rail is being expanded from
4 downtown Seattle to Mercer Island, South Bellevue, downtown Bellevue, Bel-Red, and Overlake
5 (the “East Link Extension” or the “Project”). Certain real property and real property rights must
6 be acquired for purposes of locating, constructing, maintaining, and operating the East Link
7 Extension. *Id.*

8 In order to construct the Project, certain real property and real property rights are
9 necessary for the City of Bellevue’s Bel-Red Transportation Improvements, which includes
10 widening 124th Ave NE. *Id.* As part of the agreement to expand light rail to Bellevue,
11 Petitioner and the City of Bellevue entered into a Memorandum of Understanding for
12 Intergovernmental Cooperation for the East Link Project which requires certain real property and
13 real property rights for the 124th Ave NE project. *Id.*

14 On September 26, 2013, by Petitioner’s Resolution No. R2013-21 (the “Resolution”), the
15 Sound Transit Board of Directors (the “Board”) authorized the condemnation, taking, damaging,
16 and appropriation of certain lands, properties and property rights determined by the Board to be
17 necessary for the construction, operation, and maintenance of the East Link Extension. *Id.* A
18 copy of the Resolution is attached as Exhibit 1 to the Amended Petition in Eminent Domain on
19 file in this condemnation action, which Exhibit is incorporated here by this reference.

20 Petitioner and the City of Bellevue entered into certain agreements with regard to
21 construction of the East Link Extension. *Id.* These provide for interlocal cooperation in order to
22 ensure, among other things, that the East Link Extension segments within the City of Bellevue
23 are: (a) constructed in accordance with City of Bellevue codes, development standards and
24 permitting requirements; and (b) delivered in an efficient and cost effective manner (“Project
25 Development Conditions”). *Id.* Construction of the East Link Extension segments in the City of
26 Bellevue requires compliance with the Project Development Conditions, which, among other

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1 things, require acquisition of portions of the Parcel for associated public improvements
2 including, but not limited to, right-of-way improvements. *Id.*

3 Notice has been given by way of the Petition that modifications to the East Link
4 Extension design (the “Project Design”) may occur in connection with Petitioner’s chosen
5 construction delivery method, Project Development Conditions, mitigation of damages, or
6 otherwise and any such modifications are necessary to the East Link Extension. *Id.* It is
7 intended that the impact from such modifications, if any, as to the portions of the Parcel being
8 acquired will be captured as part of the parties’ respective value conclusions and just
9 compensation. *Id.* These modifications are not an abandonment or material modification of the
10 East Link Extension. Wilson Decl. To facilitate Respondents’ preparation of their case,
11 Petitioner will, upon request, provide notice of the current status of the Design as it relates to the
12 Parcel. *Id.*

13 By adoption of the Resolution, the Board resolved the East Link Extension to be a public
14 use for a public purpose. *Id.* By adoption of the Resolution, the Board also resolved that: (a)
15 such land, property and property rights identified in the Resolution are necessary for the location,
16 construction, operation and maintenance of the East Link Extension; and (b) the public health,
17 safety, necessity, convenience and welfare demands and requires that such land, property and
18 property rights be immediately acquired to locate, construct, operate and maintain the East Link
19 Extension. *Id.* The Board’s finding of necessity implicitly includes a finding of necessity for
20 the taking of that portion of the land, property and property rights identified in the Resolution
21 required for construction of the East Link Extension in conformance with the Project Design and
22 with the local permitting jurisdiction’s codes, development standards and permitting
23 requirements imposed as conditions to construction of the East Link Extension. *Id.*

24 Included as part of the property determined by the Board to be necessary for the East
25 Link Extension is real property in which the Respondents hold an interest, identified as King
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1 County Tax Parcel Nos. 067100-0000, 067100-0020, 067100-0030, 067100-0040, and 067100-
2 0060 (the "Parcels"). *Id.*

3 With this action, Petitioner seeks to appropriate portions of the Parcels required for the
4 East Link Extension. The Parcels to be acquired herein are substantially as follows:

- 5 1. The permanent taking of a portion of the Parcels for a permanent wall easement,
6 substantially as described, depicted, and provided for in **Exhibit 1** of the Findings
7 of Fact, Conclusions of Law and Order and Judgment Adjudicating Public Use
8 and Necessity filed herewith ("Proposed Order");
- 9 2. The permanent taking of a portion of the Parcels for a permanent sidewalk and
10 utility easement, substantially as described, depicted, and provided for in **Exhibit**
11 **2** to the Proposed Order; and
- 12 3. The temporary taking of a portion of the Parcels for a temporary construction
13 easement, substantially as described, depicted, and provided for in **Exhibit 3** to
14 the Proposed Order.

15 Exhibits 1-3 to the Proposed Order are incorporated here by this reference and the real
16 property and real property interests described therein are hereinafter collectively referred to as
17 the "Condemned Property."

18 By adoption of the Resolution, the Board resolved that: (a) the Condemned Property is
19 necessary for the location, construction, operation and maintenance of the East Link Extension;
20 and (b) public health, safety, necessity, convenience and welfare demand the Condemned
21 Property be acquired by condemnation for the location, construction, operation and maintenance
22 of the East Link Extension. Wilson Decl. The Board's finding of necessity with regard to the
23 Condemned Property implicitly includes a finding of necessity for the taking of that portion of
24 the Condemned Property required for construction of the East Link Extension in conformance
25 with the Project Design and with the Project Development Conditions imposed as conditions to
26 construction of the East Link Extension. *Id.*

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1 Notice of Final Action: Before taking final action to adopt Resolution R2013-21, which
2 authorizes condemnation of the subject property, Petitioner mailed and published notice as
3 required under RCW 8.25.290. *See*, Declaration of Mike Bulzomi Regarding Notice of Final
4 Action (“Bulzomi Decl.”) attached as Exhibit A to the Declaration of Jeffrey A. Beaver
5 Regarding Notice of Final Action and In Support of Petitioner’s Motion for Public Use and
6 Necessity, which Declaration is filed herewith (“Beaver Decl.”). Specifically, on September 10,
7 2013, which was at least 15 days before the September 26, 2013 Board meeting at which
8 Petitioner proposed to take final action authorizing the acquisition of the subject property
9 through condemnation, Petitioner mailed a notice of its intent to take final action (the “Mail
10 Notice”) by certified mail to each and every property owner of record as indicated on the tax
11 rolls of the county to the address provided on such tax rolls for the subject property. Bulzomi
12 Decl. Attached as Exhibit 1 to the Bulzomi Decl. is a true and correct copy of the Mail Notice
13 with Certified Mail Receipt. The Mail Notice included a general description of the subject
14 property including its address and tax parcel number and indicated that the Resolution
15 authorizing condemnation of the subject property would be considered and potentially adopted
16 during the Board meeting. *Id.* The Mail Notices gave the date, time and location of the Board
17 meeting. *Id.*

18 In addition, Petitioner also published a notice of its intent to take final action authorizing
19 the acquisition of the subject property through condemnation (the “Publication Notice”). *Id.*
20 The Publication Notice described the subject property by its tax parcel numbers or address and
21 indicated that the Board would determine at the meetings whether or not to adopt resolutions
22 authorizing Petitioner to condemn the subject property. *Id.* The Publication Notice gave the
23 date, time and location of the Board meeting. *Id.* The Publication Notice was published in *The*
24 *Seattle Times*, being the legal newspaper with the largest circulation in the jurisdiction where the
25 subject property is located, once a week for two consecutive weeks before the date of the
26 September 26, 2013 Board meeting. *Id.* *The Seattle Times* is also the legal newspaper routinely

1 used by Petitioner. Attached as Exhibit 2 to the Bulzomi Decl. are true copies of the Affidavit of
2 Publication evidencing the dates of publication in *The Seattle Times*. *Id.* Proof of circulation as
3 established by publisher's affidavit is on file with Petitioner. *Id.*

4 Public Use and Necessity Determination as to Respondent WR-SRI 120th North LLC.

5 On December 22, 2016, James A. Pierre, Vice President of property owner WR-SRI 120th North
6 LLC, signed an agreement granting Sound Transit possession and use of Parcel 067100-0000
7 (the "Agreement"). The Agreement was recorded in King County under Recording No. 2017-
8 0103001574 on January 3, 2017, and is attached as Exhibit 5 to the Petition in Eminent Domain
9 on file herein. Pursuant to the Agreement, WR-SRI 120th North LLC surrendered and conveyed
10 to Sound Transit possession and use of the Condemned Property in accordance with the terms
11 and conditions and described, depicted, and provided for in the Agreement. In the Agreement,
12 WR-SRI 120th North LLC also acknowledged and agreed that the Project is for a public purpose
13 and that there is public use and necessity for Sound Transit's acquisition of the Condemned
14 Property. Further, WR-SRI 120th North LLC agreed to the entry of an order and judgment
15 adjudicating public use and necessity that is the subject of this motion.

16 Public Use and Necessity Determination as to Respondent City of Seattle ("City Light").

17 The subject property is one of four properties located at what will be the intersection of the East
18 Link light rail trackway and 12th Avenue NE in Bellevue, WA. City Light holds easements for
19 the construction, operation, and maintenance of an electrical transmission system on the
20 properties bordering the eastern and western sides of 124th Ave NE, including the subject
21 property. City Light currently owns and operates an electrical transmission line that runs along
22 the west side of 124th Ave NE. The easements that are the subject of this condemnation action
23 run below this transmission system, and Sound Transit intends to preserve City Light's rights
24 along the west side of 124th Ave NE so as to not disrupt City Light's continued use of its existing
25 transmission line. *See* Declaration of Larry Smith filed herewith. City Light has contested

26 Sound Transit's right to condemn its easement along 124th Ave NE in all four of the

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1 condemnation matters Sound Transit has initiated concerning properties along 124th Ave NE.
2 Each of the four trial courts that has heard City Light's arguments has affirmed Sound Transit's
3 authority to condemn City Light's easement, and each has granted Sound Transit's motion for
4 public use and necessity.¹ City Light has appealed these trial court rulings, which are currently at
5 various stages of appellate review at the Court of Appeals and Washington Supreme Court.²

6 III. STATEMENT OF THE ISSUES

- 7 A. Whether Petitioner is authorized to bring and maintain this condemnation action;
8 and
9 B. Whether Petitioner's Motion should be granted and an Order and Judgment
10 Adjudicating Public Use and Necessity entered by this Court.

11 IV. EVIDENCE RELIED UPON

12 The files and records on file herein and the testimony to be adduced at the hearing, if any,
13 including the Declaration of Tom Wilson, the Declaration of Jeffrey A. Beaver, the Declaration
14 of Larry J. Smith, and the Declaration of Mike Bulzomi, together with exhibits thereto, filed in
15 support of this Motion, which declarations are incorporated here by this reference.

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21 ¹ See Revised Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating Public Use and
22 Necessity re City of Seattle Property Interests, *Sound Transit v. Jacobsen*, King County No. 16-2-06769-7
23 SEA (Dec. 19, 2016); Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating Public Use
24 and Necessity re City of Seattle, *Sound Transit v. WR-SRI 120th North LLC*, King County No. 17-2-00988-
25 1 SEA (Feb. 13, 2017); Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating Public
26 Use and Necessity as to the City of Seattle, *Sound Transit v. Safeway Inc.*, King County No. 16-2-09223-3
SEA (March 27, 2017); and Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating
Public Use and Necessity as to the City of Seattle, *Sound Transit v. Sternoff L.P.*, King County No. 16-2-
08800-7 SEA (April 19, 2017) attached hereto as Exhibits B-D to the Beaver Decl.

² Seattle has appealed the Revised Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating Public
Use and Necessity re City of Seattle in the *Jacobsen* case. That appeal is still pending at the Washington Court of
Appeals. City Light also appealed the public use and necessity determinations in the *WR-SRI 120th North* and
Safeway Inc. cases to the Washington Supreme Court.

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V. AUTHORITY

A. PETITIONER IS AUTHORIZED TO BRING AND MAINTAIN THIS CONDEMNATION ACTION.

Petitioner undertook diligent efforts to provide the notice required pursuant to RCW 8.25.290 prior to taking final action authorizing this condemnation action. This condemnation action is brought by Petitioner pursuant to an express legislative delegation of the power to condemn.

1. **Notice of Final Action:** Pursuant to RCW 8.25.290(1), the condemnor must provide notice before it takes final action authorizing a condemnation action. The notice is to be given by certified mail to the taxpayer of record at the address on the county tax rolls and to be published. RCW 8.25.290(2). As described above, Petitioner timely mailed and published notice before taking final action to authorize the condemnation of the Condemned Property. Petitioner's efforts should be found to constitute sufficient notice under RCW 8.25.290.

2. **Express Legislative Delegation of Power to Condemn:** This condemnation action is brought by Petitioner pursuant to an express legislative delegation of the power to condemn. Specifically, Petitioner is authorized to condemn all lands, rights of way, property, equipment, and accessories necessary for the construction, operation, maintenance and location of a high-capacity regional mass transportation system pursuant to the procedures established for condemnation by cities of the first class. This authority is set forth in RCW 81.112.080, which provides, in relevant part, as follows:

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 . . . high-capacity transportation facilities and properties within authority boundaries . . . and such other facilities and properties as may be necessary . . . together with all lands, rights of way, property, equipment, and accessories necessary for such high-capacity transportation systems 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

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1 RCW 81.112.080.

2 Sound Transit anticipates that City Light will dispute Sound Transit's authority to
3 condemn City Light's property interest on the Parcel (an electrical transmission line
4 easement) on the grounds that Sound Transit's enabling statute does not explicitly enable
5 it to condemn property owned by another public entity. City Light has raised these
6 objections to Sound Transit's condemnation authority in four cases thus far, each
7 involving property abutting the same intersection as the Parcels in this case. In all four
8 cases, this trial court rejected City Light's arguments and made a finding of public use
9 and necessity in favor of Sound Transit. See the public use and necessity orders attached
10 as Exhibits B-D to the Beaver Decl.

11 **B. PETITIONER'S MOTION SHOULD BE GRANTED AND AN ORDER AND**
12 **JUDGMENT ADJUDICATING PUBLIC USE AND NECESSITY ENTERED BY**
13 **THIS COURT.**

14 The exercise of a statutory right of eminent domain by condemnation occurs in three
15 phases: (a) adjudication of public use and necessity; (b) determination of just compensation to
16 be awarded to the owner; and (c) payment of just compensation and transfer of title. *Mercer*
17 *Island School District v. Scalzo, Inc.*, 54 Wn.2d 539, 540, 342 P.2d 225 (1959); *Des Moines v.*
18 *Hemenway*, 73 Wn.2d 130, 138, 437 P.2d 171 (1968).

19 This Motion addresses only the first of the three phases – the adjudication of public use
20 and necessity. In order to enter a decree of public use and necessity, this Court must find that:
21 (1) the use is really a public use; (2) the public interest requires it; and (3) the property to be
22 appropriated is necessary for that use. *Des Moines*, 73 Wn.2d at 138.

23 1. **Public Use:** The issue of whether the proposed acquisition is actually for a public
24 use is a judicial question.

25 Eminent Domain. Private property shall not be taken for private use . . .
26 [w]henever an attempt is made to take private property for a use alleged to be
public, the question of whether a contemplated use be really public shall be a
judicial question

PETITIONER'S MOTION FOR ORDER
AND JUDGMENT ADJUDICATING
PUBLIC USE AND NECESSITY -- 9
4847-7286-5863.1

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1 Const. Art. 1 §16 (amend. IX). In addition, RCW 8.12.090 specifically states that the issue of
2 public use in condemnations by cities of the first class is a judicial question.

3 Whenever an attempt is made to take private property, for a use alleged to be
4 public under authority of this chapter, the question whether the contemplated use
5 be really public shall be a judicial question and shall be determined as such by the
6 court before inquiry is had into the question of compensation to be made.

6 RCW 8.12.090.³

7 However, the Court shall give a legislative determination of public use great weight. *Des*
8 *Moines v. Hemenway*, 73 Wn.2d at 133; *Tacoma v. Welcker*, 65 Wn.2d 677, 399 P.2d 330
9 (1965). Public transportation has long been recognized as a public use within the contemplation
10 of the power of eminent domain. *State ex rel. Devonshire v. Superior Court for King County*, 70
11 Wn.2d 630, 636, 424 P.2d 913 (1967) (citing *State ex rel. McIntosh v. Superior Court for Pacific*
12 *County*, 56 Wash. 214, 105 Pac. 637 (1909), *cert. denied*, 389 U.S. 1023 (1967)).

13 In this case, Petitioner's evidence shows that the Condemned Property, which is being
14 condemned in order to permanently locate, construct, operate and maintain the Project, is being
15 acquired for a public use – a regional high-capacity mass transportation system as authorized by
16 the State Constitution and the legislature. It should be noted that the specific plans for the
17 Condemned Property are not relevant in adjudicating the public use and necessity of a
18 condemnation action. *See State ex rel. Agee v. Superior Court for King County*, 58 Wn.2d 838,
19 365 P.2d 16 (1961). Certification of public use requires only that the property condemned be put
20 to the use designated therein and determined to be public. *Id.*

21 2. **Public Interest and Public Necessity:** In contrast to public use, the issues of
22 public interest and public necessity are solely legislative. *See State ex rel. Sternoff v. Superior*
23

24 ³ RCW 8.12.090 does not require a testimonial evidentiary hearing before the issue of public use and necessity may
25 be adjudicated. *Blaine v. Feldstein*, 129 Wn. App. 73, 76, 117 P.3d 1169 (2005). Rather, the statute requires that
26 the same procedures used in "other civil actions" be used. *Id.* In other civil actions, such evidentiary hearings are at
the discretion of the trial court and are typically used only if there are relevant factual or credibility issues that
require such a hearing. *Id.*

PETITIONER'S MOTION FOR ORDER
AND JUDGMENT ADJUDICATING
PUBLIC USE AND NECESSITY -- 10

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1 *Court for King County*, 52 Wn.2d 282, 325 P.2d 300 (1958). “Necessity” means reasonable
2 necessity under the circumstances. *Des Moines*, 73 Wn.2d at 133. “It does not mean immediate,
3 absolute or indispensable need, but rather considers the right of the public to expect or demand
4 that certain services be provided.” *Des Moines* at 140 (citing *Tacoma v. Welcker*, 65 Wn.2d 677,
5 399 P.2d 330 (1965); *In re Port of Seattle*, 66 Wn.2d 598, 404 P.2d 25 (1965)). It encompasses
6 “reasonable anticipation of future needs.” *State ex rel. Hunter v. Superior Court for Snohomish*
7 *County*, 34 Wn.2d 214, 216, 208 P.2d 866 (1949).

8 A declaration by the appropriate legislative body that the proposed acquisition is in the
9 public interest and necessary to accomplish a public purpose, “will, by the courts, be deemed
10 conclusive, in the absence of proof of actual fraud or such arbitrary and capricious conduct as
11 would amount to constructive fraud.” *Welcker*, 65 Wn.2d at 684; *In re Port of Seattle*, 80 Wn.2d
12 392, 495 P.2d 327 (1972)(*emphasis added*); *see also State ex rel. Dungan v. Superior Court for*
13 *Grant County*, 46 Wn.2d 219, 279 P.2d 918 (1955) (holding that in condemnation proceedings
14 brought by cities, the court is bound by the legislative determination of the city council that
15 taking or damaging certain land is necessary for the contemplated project). Moreover, selection
16 of a specific site for the proposed use is also a legislative question. The legislature’s
17 determination is deemed conclusive unless proved to have been done without statutory authority,
18 in bad faith, as an abuse of power, or in an arbitrary and capricious manner. *State ex rel.*
19 *Hunter*, 34 Wn.2d at 216.

20 The objector has the burden of proving fraud or constructive fraud. *In re Port of Grays*
21 *Harbor*, 30 Wn. App. 855, 862, 638 P.2d 633 (1982), *review denied*, 97 Wn.2d 1010 (1982).
22 Arbitrary and capricious is “willful and unreasoning action without consideration and regard for
23 the facts and circumstances.” *Welcker*, 65 Wn.2d at 683-85. The fact that there is room for two
24 opinions does not make the legislative action arbitrary and capricious if it is “exercised honestly,
25 fairly, and upon due consideration,” even where a belief may exist that an erroneous conclusion
26 has been reached. *Miller v. Tacoma*, 61 Wn.2d 374, 378 P.2d 464 (1963).

PETITIONER’S MOTION FOR ORDER
AND JUDGMENT ADJUDICATING
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1 Petitioner, through the exercise of proper legislative authority, has declared that public
2 interest, necessity and convenience require acquisition of the Condemned Property for the
3 location, construction, operation and maintenance of the Project. See Resolution No. R2013-21
4 (Exhibit 1 to the Petition in Eminent Domain filed in this condemnation action). Petitioner's
5 Resolution regarding public interest, public necessity and site selection is conclusive on the
6 Court based on the Washington State Supreme Court's decision in *State ex rel. Sternoff*, 52
7 Wn.2d 282. Moreover, Petitioner's decision does not constitute fraud, nor is it arbitrary and
8 capricious so as to constitute constructive fraud.

9
10 **VI. ORDER**

11 A form of proposed Findings, Conclusions, Order and Judgment are filed herewith.

12 DATED this 15th day of May, 2017.

13 MILLER NASH GRAHAM & DUNN LLP

14
15 By 

16 Marisa L. Velling, WSBA# 18201
17 Jeffrey A. Beaver, WSBA# 16094
18 Connor M. O'Brien, WSBA# 40484
19 Attorneys for Petitioner Sound Transit

20 LCR 7(b)(5)(B)(vi) Certification: I certify that
21 this motion contains 3802 words, in compliance
22 with the Local Civil Rules
23
24
25
26

The Honorable Jeffrey Ramsdell
Noting Date: May 31, 2017
(Without Oral Argument)
Moving Party: Petitioner Sound Transit

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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

Petitioner,

v.

WR-SRI 120th NORTH LLC, a Delaware limited
liability company; et al.,

Respondents.

No. 17-2-12144-4 SEA

CITY OF SEATTLE’S OPPOSITION TO
PETITIONER’S MOTION FOR ORDER
AND JUDGMENT ADJUDICATING
PUBLIC USE AND NECESSITY

Oral Argument Requested

Tax Parcel Nos. 067100-0000, 067100-0020,
067100-0030, 067100-0040 and 067100-0060

I. Relief Requested

Through this condemnation action, Central Puget Sound Regional Transit Authority (“Sound Transit”) is seeking to condemn property within an existing Seattle-owned easement and directly underneath a Seattle-owned high voltage transmission line. The condemnation, and the extinguishment of Seattle’s easements rights that would result, would destroy and render unusable the nearly 90-year old easement and make it impossible for Seattle to continue to operate the transmission line.

Given the importance of the infrastructure at risk Seattle is compelled to oppose Sound Transit’s condemnation. The Court should deny Sound Transit’s motion because Sound Transit does not have the statutory authority condemn public property and because the property it is seeking

to condemn is not necessary for Sound Transit's light rail system and thus it falls outside of Sound Transit's condemnation authority. The motion should also be denied because Sound Transit's condemnation is barred by the Prior Public Use Doctrine, which prohibits the condemnation of property currently being used for a public purpose if the condemnation is incompatible with the existing use.

Finally, this opposition is only preliminary response by Seattle. As referenced in Seattle's motion for a continuance, Seattle needs an opportunity to conduct some reasonable, focused discovery in order to fully respond to the issues raised in Sound Transit's motion.

II. Statement of Facts

A. Background

By its petition in eminent domain (the "Petition") filed in this action, Sound Transit seeks to condemn portions of a parcel of real property adjacent to 124th Avenue NE in the City of Bellevue identified by the above-referenced tax parcel numbers ("Subject Property"). Even though Sound Transit is seeking to only condemn temporary construction easements and sidewalk and wall easements, as reflected in the prayer for relief section of the Petition, it is nonetheless seeking to fully extinguish Seattle's easement rights over the property being condemned by having the title in all property being condemned conveyed to it "free and clear of any right, title and interest of" of all respondents, including Seattle.

B. Seattle Owns a Transmission Line Easement over the Property Sound Transit Seeks to Condemn.

In 1931 Seattle acquired an easement over the Subject Property for the construction, operation, and maintenance of an electrical transmission line system ("Transmission Line Easement"). Declaration of John Bresnahan ("Bresnahan Decl.") at ¶2. Ex. A. Per the terms of

the Transmission Line Easement, Seattle has the right to operate electrical transmission lines over the Jacobsen Property, and to construct and maintain a transmission line tower and related facilities on the property. *Id.* The Transmission Line Easement does not contain any limitations on the voltage of the transmission line Seattle can run over the property, or on the size, type, or location of the transmission line tower that it can construct on the property. *Id.*

The Transmission Line Easement is part of a series of similar easements and fee parcels that run contiguously for 100 miles from generating facilities on the Skagit River to a Maple Valley substation. (“Transmission Line Corridor”) *Id.* at ¶ 3. The Transmission Line Corridor is also an integral part of a larger, regional electrical transmission line system that runs from Canada to California. *Id.* For most of its length, the Transmission Line Corridor is approximately 150 feet wide and is intended to accommodate two high voltage transmission lines. *Id.* The corridor was established before the City of Bellevue was incorporated, and Seattle undertakes regular efforts to protect and preserve the corridor from development encroachments so that it can continue to serve its intended purpose. *Id.*

C. Seattle Operates a 230 kV Electrical Transmission Line over the Property That Sound Transit’s Seeks to Condemn.¹

Seattle operates a dual circuit 230 kV transmission line (“Transmission Line”) within the Transmission Line Easement. *Id.* at ¶4. The Transmission Line is an important part of Seattle’s electrical transmission system and is particularly important because it allows Seattle to have a direct electrical transmission connection to a sub-station and distribution system in the southern part of the city, thereby bypassing a bottleneck in electrical transmission capacity in the north part of Seattle. *Id.*

¹ In Seattle’s electrical transmission system, any line over 115 kV (or 115,000 volts) is considered a high voltage transmission line. Bresnahan Decl., at ¶ 3.

In the vicinity of the Subject Property, the Transmission Line runs along the east side of 124th Avenue, and is supported by a series of lattice towers and monopole structures. *Id.* at ¶ 5. The Transmission Line runs over the full north-south length of the Subject Property. *Id.* The Transmission Line wires are 48 feet above grade and the nearest support structure to the area being condemned is a lattice tower located approximately 65 feet to the north. *Id.* For safety reasons, the minimum clearance needed for a 230 kV line is 23.7 feet in every direction. *Id.*

D. Because Sound Transit Seeks to Extinguish all of Seattle’s Easement Rights Over The Property It Seeks to Condemn, Sound Transit’s Condemnation is Incompatible with Seattle’s Continued use of the Transmission Line Easement and Operation of the Transmission Line.

The Transmission Line Easement, like most other such easements owed by Seattle, includes both aerial and ground easement rights. *Id.* at ¶ 6. Sound Transit’s condemnation affects a substantial portion of the Transmission Line Easement on the Subject Property. Bresnahan Decl., at ¶ 7. The temporary construction easement Sound Transit seeks to condemn covers the full width of the easement on the northern part of the Subject Property. *Id.* The sidewalk easement Sound Transit seeks to condemn runs down the center the Transmission Line Easement, directly under the Transmission Line, for most of the north-south length of the Subject Property. *Id.*

The extinguishment of Seattle’s easement rights over the portions of the Subject Property that Sound Transit seeks to condemn, would destroy the Transmission Line Easement and render it unusable for its intended purpose because it would be impossible for Seattle to continue to legally operate the Transmission Line over the Subject Property. Bresnahan Decl., at ¶ 8. This, in turn, would result in a break in the 100+ mile Transmission Line Corridor connecting the City with its hydroelectric facilities on the Skagit River, thereby rendering the corridor unusable for its intended purpose. *Id.*

Seattle has previously accommodated surface-level structures such as roads and sidewalks within other transmission line easements within its system subject to the execution of appropriate easement or consent agreements that allow both uses to safely coexist. *Id.* at 9. It could likely have done so here, but for Sound Transit’s quest to fully extinguish Seattle’s easement rights, which would render the Transmission Line Easement unusable. *Id.* Despite submitting declarations on a number of occasions describing its intent to restore sufficient easement rights to Seattle so that it can continue to operate the Transmission Line, Sound Transit has never transmitted a written proposal describing what rights it is willing to convey or preserve nor has it identified any conditions or terms it would require Seattle to submit to in order to get its easement rights back. King Decl., at ¶ 2.

E. In this Action Sound Transit is Condemning Property for a Bellevue Road Widening Project - not its Light Rail Project.

Sound Transit is constructing a retained-cut, perpendicular light rail line crossing underneath 124th Avenue NE. King Decl., at ¶ 3. As part of a separate project, Bellevue is widening and improving 124th Avenue to add one or more travel lanes. The widening of 124th Avenue NE in the vicinity of the Subject Property is part of a larger project to widen that road between Northrup Way to NE 14th Street in connection with the redevelopment of the Spring District section of Bellevue. *Id.*

The fact that the two projects are separate is confirmed in multiple agreements between Sound Transit and Bellevue. In a May 6, 2015, Cost Sharing Agreement those parties acknowledged that the Bellevue road widening project is not required for the construction of the light rail line, but rather, is “necessitated as a result of the City’s CIP [Capital Investment Program].” *Id.* at Ex. B.

F. Sound Transit Voluntarily Agreed To Condemn Property for Bellevue - It Was Not Forced or Required to do so by any “Development Conditions.”

In its motion Sound Transit falsely claims that its condemnation of property for Bellevue's project is required by unspecified "Project Development Conditions." In fact, Sound Transit and Bellevue negotiated an arrangement whereby Sound Transit would condemn property for Bellevue. Sound Transit touted its "extensive consultation and collaboration" with Bellevue in previous briefing to the Supreme Court. King Decl., Ex. C. Specifically, it claimed that it "engaged in extensive consultation and collaboration with the City of Bellevue about the final project alignment, design, and construction process. This culminated in an Amended and Restated Umbrella Memorandum of Understanding (the "Amended MOU") and related agreements executed in May 2015." *Id.* In the above-reference Cost Sharing Agreement, Sound Transit and Bellevue acknowledged that they agreed to coordinate in order to "improve efficiencies and reduce costs" not because Bellevue imposed any requirements on Sound Transit. King Decl., Ex. B.

All of this flies in the face of Sound Transit's current claim that the property it is seeking to condemn for Bellevue's separate project is "necessary" for Sound Transit's project because of some unidentified "Project Development Conditions."

G. Procedural History

This is the fifth lawsuit Sound Transit has brought to condemn property for these two projects. The prior four lawsuits are on appeal. This suit is unique in that it is the first time that Sound Transit is seeking to condemn property solely for the Bellevue road widening project.

Although it has taken the position that it is being forced to acquire the property for the Bellevue road widening project because of conditions imposed by Bellevue, Sound Transit has steadfastly refused to provide any communications between it and Bellevue that would support that contention. King Decl. at ¶ 6. Further, Sound Transit has contended that the acquisition of the

property for Bellevue is necessary to accommodate the perpendicular light rail crossing of 124th Avenue. *Id.* At the same time, Sound Transit has refused to produce any documents that support the supposed necessity, including but not limited to, any alternative designs that it considered that would have allowed construction of the light rail line without the widening of the road. *Id.* In conjunction with this opposition, Seattle has filed a motion for a continuance to afford it time to conduct discovery to obtain, inter alia, this information and documents regarding the purported necessity of the acquisition of property for Bellevue's road widening project. *Id.*

III. Statement of Issues

1) Whether, given that Sound Transit lacks the statutory authority to condemn any public property including property owned by a city such as Seattle, this Court should deny Sound Transit's Motion;

2) Whether, given that Sound Transit lacks the statutory authority to condemn property solely for the benefit of Bellevue's road widening project that is not necessary for its light rail project, this Court should deny Sound Transit's Motion;

3) Whether, given that Sound Transit's condemnation of the Transmission Line Easement would make it impossible for Seattle to continue to operate the Transmission Line and render the easement unusable for its intended public purpose, this Court should deny Sound Transit's Motion based on the Prior Public Use Doctrine.

IV. Evidence Relied Upon

This opposition is based on the Declarations of John Bresnahan and Russell King and pleadings and records on file in this matter.

V. Authority

A. Sound Transit's Motion For Public Use And Necessity Should Be Denied Because Sound Transit Does Not Have Statutory Authority To Condemn The Transmission Line Easement.

1. A Party's Power To Condemn Is Limited By The Statute Delegating It Condemnation Authority.

An entity's authority to condemn is defined and limited by the scope of the condemnation power delegated to it by statute. *Pub. Util. Dist. No. 1 of Okanogan Cty. v. State*, 182 Wash. 2d 519, 534, 342 P.3d 308, 315 (2015) ("States may delegate [condemnation] powers to municipal corporations and political subdivisions, but such delegated authority extends only so far as statutorily authorized."). Statutes that delegate the State's sovereign power of eminent domain to its political subdivisions are to be strictly construed. *Pub. Util. Dist. No. 2 of Grant County v. N. Am. Foreign Trade Zone Indus., LLC*, 159 Wash.2d 555, 565, 151 P.3d 176 (2007); *King County v. City of Seattle*, 68 Wash. 2d 688, 690, 414 P.2d 1016, 1018 (1966); *Spokane Airports v. RMA, Inc.*, 149 Wash. App. 930, 940, 206 P.3d 364, 369 (2009).

2. When A Party Seeks To Condemn Property That It Does Not Have Statutory Authority To Condemn, It Is Not Entitled To An Order On Public Use And Necessity As To That Property.

Where a condemning entity seeks to condemn property that it is not authorized by statute to condemn, the petition for eminent domain should be dismissed as to that property. *King County*, 68 Wash. 2d at 694. This is true regardless of whether the condemning party can establish public use and necessity. *Id.* at 692 (Petition in eminent domain was properly dismissed on summary judgment where court held that King County lacked statutory authority to condemn property owned by the City of Seattle). In effect, if the condemning party is not authorized to condemn the property, then it cannot establish public use and necessity. *See State v. Superior Court of Chelan*

Cty., 36 Wash. 381, 386, 78 P. 1011, 1013 (1904) (“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.”), *superseded by statute on other grounds*, *City of Seattle v. State*, 54 Wash. 2d 139, 145, 338 P.2d 126, 129 (1959)).

3. As the Condemning Party, Sound Transit has the Burden of Proof to Show that its Condemnation is Authorized by Statute.

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. v. City of Seattle*, 68 Wn.2d 688, 693, 414 P.2d 1016, 1020 (1966) (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).

B. The Statute Granting Sound Transit Condemnation Power Does Not Authorize Sound Transit to Condemn Public Property Owned By Cities.

The statute granting Sound Transit condemnation authority, RCW 81.112.080, grants Sound Transit limited condemnation authority as follows:

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

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.

RCW 81.112.080 (emphasis added).²

Read together, these two sections provide that, under RCW 81.112.080, Sound Transit can acquire or condemn property that is either: 1) a private or public transportation facility or property, provided that Sound Transit can only purchase or use an existing public transportation facility with the consent of the public owner; or 2) necessary for a high capacity transportation system. The Seattle-owned property Sound Transit seeks to condemn here is not a private or public “transportation facility or property” - it is an easement for an electrical transmission line.

Accordingly the first category does not apply.

1. RCW 81.112.080 Does Not Contain An Express Grant Of Authority To Condemn Public Property.

As to the second category, property necessary for a high capacity transportation system, RCW 81.112.080, is silent as to whether Sound Transit is authorized to condemn that type of property when it is owned by cities or other public entities. It is a bedrock principle of

² The statute also dictates that Sound Transit is to follow the same procedures followed by Cities when condemning property. Similar language is found in other statutes delegating condemnation authority to other types of entities, and it is interpreted as specifying the rules and procedures that the condemning authority must follow rather than expanding on the explicit grant of condemnation authority found elsewhere in the statute. *See Pub. Util. Dist. No. 2 of Grant Cty. v. N. Am. Foreign Trade Zone Indus., LLC*, 159 Wash. 2d 555, 567, n.12, 151 P.3d 176, 182 (2007).

condemnation law that, where a statute delegates condemnation power but is silent as to whether the delegation includes the power to condemn public property, the statute will be construed as only delegating the power to condemn private property. *King County. v. City of Seattle*, 68 Wash. 2d 688, 691, 414 P.2d 1016, 1018 (1966) (“[o]ur eminent domain act, as applied to railroads, must be construed, as are all such acts, as having regard only to the taking of private property, unless there is either express or clearly implied authority to extend them further.”) (citation omitted); *Seattle & Montana Ry. Co. v. State*, 7 Wash. 150, 34 Pac. 551 (1893) (Supreme Court rejected the view that a railroad had the authority to condemn state lands where a statute gave such railroads the sweeping power to “enter upon any land” and acquire “so much of said land ... as may be necessary” for the railroad). As Sound Transit’s authority to condemn property “extend[s] only as far as statutorily authorized” and statutes “which delegate the condemnation power of the state to its political subdivisions are strictly construed,” this silence is fatal to Sound Transit’s effort to condemn the Transmission Line Easement. *King County*, 68 Wash. 2d at 690 (King County was not authorized to condemn property owned by a city “in the absence of express or necessarily implied legislative authorization” regardless whether the city’s property was devoted to a public use).³

2. The Legislature Does not use Language such as that Found in RCW 81.112.080 to Convey the Power to Condemn Public Property.

The Legislature has enacted many condemnation statutes granting the 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

³ There is no basis for the Court to find that the power to condemn public property is necessarily implied in the statute, and doing so would be contrary to the requirement that such statutes be strictly construed.

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 and did not grant Sound Transit the authority to condemn Seattle’s property. *See State v. Larson*, 184 Wn.2d 843, 851, 365 P.3d 740, 744 (2015) (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).⁴

D. Sound Transit Does Not Have The Authority To Condemn Aerial Rights Or Sidewalk Easements That Are Not Necessary For The Construction Of The Below Grade Light Rail System It Is Building.

Under RCW 81.112.080, Sound Transit only has the authority to condemn property that is necessary for its “high capacity transportation system.” The term “high capacity transportation system” is not defined in RCW 81.112.080 but, it is defined in a related statute, RCW 81.104.015(2), as:

a system 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, including interim express services and high

⁴ The undersigned counsel was unable to find a single Washington statute that has been interpreted as conveying the power to condemn public property that did not include language such as “public property” or the description of the specific types of public property that can be condemned (i.e. “state, county, and school lands”).

occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways.

RCW 81.104.015(2)(emphasis added).⁵

Through this action, Sound Transit is seeking to extinguish all of Seattle’s easement rights on and over the affected property – this includes the aerial easement rights that Seattle relies on to operate and maintain its Transmission Line. It also seeks to condemn easements for sidewalks. All of this property is being condemned for the benefit of Bellevue and none of it is, strictly speaking, necessary for Sound Transit’s project.⁶

The light rail line that Sound Transit is building on the subject property will be built in a “retained cut” configuration. King Decl., ¶ 5, Ex. A. That means that it will be constructed at or below grade. Under these circumstances, it is inconceivable that Sound Transit needs to condemn all of Seattle’s aerial easement rights over the property in question. Specifically, it is inconceivable that Sound Transit needs to condemn aerial rights that extend to 48+ feet above grade (where the existing Transmission Line wires are located) in order to build a below grade rail line.

The sidewalks that will be built on the easement being condemned by Sound Transit are part of Bellevue’s road widening project. They are not connected to any part of the light rail project. The sidewalks run north south and the nearest Sound Transit station is being constructed more than 600 feet to the west.

As the aerial easement rights and sidewalk easements are not necessary for Sound Transit’s

⁵ It is appropriate for the Court to consider related statutes when it is determining the legislature’s intent regarding the meaning of a term in a statute. See *Washington State Dep’t of Revenue v. Fed. Deposit Ins. Corp.*, 190 Wash. App. 150, 162, 359 P.3d 913, 917 (2015)

⁶ In connection with eminent domain statutes, “necessary” means “reasonable necessity, under the circumstances of the particular case.” *City of Tacoma v. Welcker*, 65 Wash. 2d 677, 683, 399 P.2d 330, 335 (1965).

light rail system, RCW 81.112.080, does not grant Sound Transit the authority to condemn those property rights. Further, as Sound Transit has failed to satisfy its burden to prove that the property it is seeking to condemn is necessary for its project, and thus within its condemnation authority, its motion for public use and necessity should be denied. *See King County*, 68 Wash. 2d at 692-93; *City of Des Moines v. Hemenway*, 73 Wash. 2d 130, 138, 437 P.2d 171, 176 (1968) (in case involving condemnation for a marina, even though condemnation for such use was deemed to be a public use, case was properly dismissed as to properties outside the city limits because the statute delegating condemnation power to third class cities did not authorize such cities to condemn property outside of their city limits).

E. Sound Transit Has the Burden to Prove that its Condemnation is Necessary for its Light Rail System and thus Authorized by RCW 81.112.080 – It is Not Entitled To Any Presumptions to that Effect.

Whether property being condemned is “necessary” for the purposes of determining public use and necessity is a separate question from whether the property being condemned is among the types of the property that the condemning entity has authority to condemn. On the former, the legislative body's declaration of necessity is entitled to judicial deference and is conclusive in the absence of proof of actual fraud or such arbitrary and capricious conduct as would constitute constructive fraud.⁷ But, the latter question, whether the property being condemned is within the condemning entity’s statutory condemnation power, is a judicial question and the legislative body is not entitled to such deference. *King County*, 68 Wash. 2d at 693 (“the county cannot bring the action within the ambit of [the statute purportedly granting it condemnation power], merely by

⁷ *See City of Bellevue v. Pine Forest Properties, Inc.*, 185 Wash. App. 244, 260, 340 P.3d 938, 946 (2014) (City was entitled to presumption that its determination of necessity was valid (absent fraud or constructive fraud) where it was condemning private property for a public transportation purpose – i.e. something that was clearly within the city’s condemnation authority under RCW 8.12.030 – there was no question about whether City was authorized to condemn the property in question)

legislatively declaring the fact.”).

Specifically to this case, Sound Transit is not entitled to any deference on the question of whether the property is “necessary for a high capacity transportation system” and thus authorized by RCW 81.112.080 – that is for the Court to decide. It has to prove that is the case – and it has failed to do so.⁸

King County informs this issue. In that case, the condemning party, the County, argued that it was entitled to condemn the property in question, a road owned by Seattle, under authority purportedly granted to it by RCW 08.08.090. *King County*, 68 Wash. 2d at 692. According to the County, that statute authorized the County to condemn property owned by a city if the condemnation was done in “aid of a definitive government undertaking to build or operate a public work.” *Id.* at 694. The only evidence that King County submitted to support its claim that the condemnation was in support of such an undertaking was a resolution passed by the county council so stating – it presented no evidence of the existence of a “government undertaking” or of any nexus between the county’s condemnation and any such an undertaking. The Supreme Court held that that evidence was insufficient to show that the condemnation action was in fact authorized by the statute. Specifically, the Court held “the county cannot bring the action within the ambit of [the statute purportedly granting it condemnation power], merely by legislatively declaring the fact.” *Id.* at 693. Based on that holding, the Court upheld the dismissal of the County’s petition in eminent domain on summary judgement. *Id.*

⁸ Contrary to any suggestion for Sound Transit, the Court of Appeal’s unpublished opinion in the *Sternoff* matter did not resolve the issue of whether Sound Transit’s condemnation of property in this case is necessary for Sound Transit’s project. In addition to the fact that this case involves property interests completely different from those at issue in *Sternoff*, the issue of Sound Transit’s statutory authority to condemn property was not resolved by the Court of Appeals’ unpublished decision in *Sternoff* as that issue was not raised in the case. Further, the Court of Appeals expressly stated in its unpublished opinion that the decision in that case did not affect Seattle’s property rights.

Here, the only “evidence” that Sound Transit submitted with its Motion for Public Use and Necessity to show that the property it is seeking to condemn is necessary for its light rail crossing is the resolution of the Sound Transit board and the discredited claim that Sound Transit was required to condemn the property due to “Project Development Conditions.” And, Seattle has submitted evidence, in the form of the agreements between Sound Transit and Bellevue, that shows that Sound Transit voluntarily undertook to condemn the property in question and was not forced to do so. King Decl., Exs. __ and ____.⁹

Under the circumstances, the evidence submitted by Sound Transit insufficient for the Court to conclude that Sound Transit has the statutory authority to condemn all of the property it is seeking to condemnation, and Sound Transit’s Motion for Public Use and Necessity Should be therefore be denied. *Id.*

F. Sound Transit Cannot Expand its Condemnation Authority via an Agreement with Bellevue.

Sound Transit does not have the authority to condemn public property or property solely for Bellevue’s project, and it cannot expand its condemnation authority through agreements with Bellevue. Condemnation actions must be brought in the name of the party with the authority to condemn the property in question, and condemnation authority cannot be expanded, sold, or delegated via contract. *See Spokane Airports v. RMA, Inc.*, 149 Wash. App. 930, 941, 206 P.3d 364, 370 (2009) (“The City and the County did not have authority to delegate their power to condemn to Spokane Airports.”).

If Bellevue needs to condemn property for its sidewalks it needs to file a condemnation action. This is not an academic or abstract issue. Bellevue and Sound Transit have materially

⁹ Through discovery Seattle expects to uncover additional evidence that the condemnation of property for Bellevue’s road widening project is not necessary for Sound Transit’s project.

different condemnation authority conveyed to them under completely different statutes.¹⁰

Further, in order for Bellevue to condemn Seattle's property, it would need to pass an ordinance after appropriate notice and an open hearing to give the residents of Bellevue an opportunity to weigh in. All of this was circumvented by the arrangement between Bellevue and Sound Transit whereby Sound Transit agreed to condemn property for Bellevue.

G. Sound Transit's Condemnation Of Seattle's Property Rights Is Barred By The Prior Public Use Doctrine.

Even if the Court concludes that Sound Transit has authority to condemn public property, including city-owned property, and that the condemnation of property for sidewalks is necessary for Sound Transit's below-grade light rail line, the Court should deny Sound Transit's motion because its condemnation of the specific property as issue in this case is barred by the Prior Public Use Doctrine because it "will either destroy the existing [public] use or interfere with it to such an extent as is tantamount to destruction" *Pub. Util. Dist. No. 1 of Okanogan Cty. v. State*, 182 Wash. 2d 519, 538–39, 342 P.3d 308, 317–18 (2015)(citation omitted); A.S. Klein, Annotation, *Power of Eminent Domain as between State and Subdivision or Agency Thereof, or as between Different Subdivisions or Agencies Themselves*, 35 A.L.R.3d 1293, 1305 (1971).

Here, the condemnation and extinguishment of Seattle's easement rights over the Subject Property is incompatible with Seattle's continued prior public use of the Transmission Line Easement, and will make it impossible for Seattle to operate the current 230 kV transmission line or

¹⁰ Sound Transit's condemnation authority comes from RCW 81.112.080, and Bellevue's condemnation authority comes from RCW 8.12.030 and RCW 35.22.280. It's worth noting that, although the issue is not implicated here because Sound Transit is the condemning party, Bellevue likely lacks the statutory authority to condemn Seattle's property. See 1959 Op. Att'y Gen. No. 69 (RCW 8.12.030 "cannot be construed as granting the power to condemn property of a city or town by another city" because the statute does not list city-owned property as one of the types of property that cities are authorized to condemn.). Bellevue's condemnation would also likely be barred by the Prior Public Use Doctrine.

any transmission line over the property.¹¹ Bresnahan Decl., at ¶4

Sound Transit presents no evidence that its condemnation is compatible with Seattle's use of the Transmission Line Easement nor could it because the effect of the condemnation would be to extinguish all of Seattle's easement rights over the full width of the easement. Without aerial easements rights over the property being condemned, Seattle could not legally operate a transmission line within the easement. *Id.* As a result, it would be impossible for Seattle to use the Transmission Line Easement for its intended public purpose.

Instead of providing any evidence of compatibility Sound Transit attempts to avoid the bar presented by Prior Public Use Doctrine by professing an "intention to restore" some of Seattle's easement rights through a "residual transmission line easement" so that Seattle can continue to operate the Transmission Line.¹² No matter how sincere such an intent is, it offers Seattle no protection whatsoever nor does it have any bearing on the Court's legal determination of whether Sound Transit's condemnation is barred by the Prior Public Use Doctrine. As an initial matter, Sound Transit relies solely on the expression of its intention - it does not point to any written proposal or offer that it has made to Seattle that would protect Seattle's interests - nor could it because Sound Transit has never made any such proposal. More importantly, Sound Transit's expression of intent has no legal significance because, if the Court grants Sound Transit's motion for public use and necessity, it will set in motion a process that will inevitably lead to the extinguishment of Seattle's aerial easement rights, subject only to Sound Transit paying just compensation to Seattle. Once that process has started, Sound Transit will have no obligation to

¹¹ Seattle's operation of the Transmission Line is a public use. *In Carstens v. Pub. Util. Dist. No. 1 of Lincoln Cty.*, 8 Wash. 2d 136, 143, 111 P.2d 583 (1941) ("[t]he generation and distribution of electric power has long been recognized as a public use by this court.").

¹² This intention is expressed in paragraph 3 of the Declaration of Larry Smith filed with Sound Transit's motion.

convey back to Seattle the easement rights required for it to continue to operate the Transmission Line nor would the Court be in a position to ensure that happened or that Sound Transit lives up to its professed “intent” to preserve the Transmission Line.

Sound Transit could have avoided its condemnation being barred by the Prior Public Use Doctrine. Had it limited its condemnation to only those areas and rights that it actually needs for its project and not sought to completely and unnecessarily extinguish Seattle’s nearly 90-year-old easement rights, Seattle could likely have tolerated the planned construction activities and sidewalks within its Transmission Line Easement. But, instead of doing that, Sound Transit filed a petition in eminent domain that asks for title in all property being condemned, including the property being condemned for temporary construction easements and for sidewalk easements, to be conveyed to it “free and clear of any right, title and interest of” of Seattle. As a result, the condemnation would destroy the Transmission Line Easement and make it impossible for Seattle to continue to operate the Transmission Line within the easement, an outcome that is prohibited by the Prior Public Use Doctrine.

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VI. Conclusion

Based on the foregoing, and the other pleadings and papers on file with this Court in this matter, The City of Seattle respectfully requests that this Court deny Sound Transit's Motion for Public Use and Necessity.

DATED this 26th Day of May, 2017.

PETER S. HOLMES
Seattle City Attorney

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Attorneys for Respondent City of Seattle
The above signed attorney certifies that this memorandum
contains 5,382 words in compliance with KCLCR 7
(5)(B)(vi)

The Honorable Jeffrey Ramsdell
Noting Date: May 30, 2017
(Without Oral Argument)
Moving Party: Petitioner Sound Transit

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

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

Petitioner,

vs.

WR-SRI 120TH NORTH LLC, a Delaware
limited liability company; et al.,

Respondents.

No. 17-2-12144-4 SEA

DECLARATION OF MARISA L. VELLING
OPPOSING SEATTLE CITY LIGHT'S
MOTION TO CONTINUE MOTION FOR
PUBLIC USE AND NECESSITY

Tax Parcel Nos. 067100-0000, 067100-0020,
067100-0030, 067100-0040, and 067100-
0060

Marisa L. Velling does hereby state and declare as follows:

1. I am an attorney with the law firm of Miller Nash Graham & Dunn LLP, the attorneys of record for Petitioner Central Puget Sound Regional Transit Authority ("Sound Transit") in this case. I have responsibility for this case and am competent to testify to the matters set forth in this declaration.

2. This case concerns one of four properties at the intersection of Sound Transit's future light rail trackway and 124th Avenue NE in Bellevue (the "124th Properties"). As to each of these properties, Sound Transit is taking multiple property interests necessary to construct and operate the trackway, including property and property interests associated with the 124th Avenue NE bridge that will be built to carry vehicular and pedestrian traffic across the new trackway. Seattle City Light is a party to each of the condemnations at this intersection because it has an

DECLARATION OF MARISA L.
VELLING IN SUPPORT OF RESPONSE
TO SEATTLE'S MOTION TO CONTINUE

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4841-3085-0377.4

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1 electrical transmission easement along 124th Avenue NE. Each of the 124th Properties is
2 encumbered by Seattle's transmission line easement: the "Sternoff" property, the "Safeway"
3 property, the "Jacobsen" property, and the "Spring District" property.

4 3. This property at issue in this case is a very small corner of the "Spring District"
5 property located at the southwest corner of the intersection of 124th Avenue NE and the future
6 trackway. Attached hereto as **Exhibit A** is a true and correct copy of the "Key Map" of the
7 Spring District parcel, which shows the entire parcel in relation to the future trackway, 124th
8 Avenue NE, and City Light's existing power line easements along 124th Avenue NE. In addition
9 to the trackway through the property and the 124th Avenue NE bridge at the northeastern corner
10 of the property, the Spring District property will also be the location of the new Sound Transit
11 120th Avenue NE light rail station, which will span the future trackway in the northwest
12 quadrant of the property.

13 4. Attached hereto as **Exhibit B** is a true and correct copy of the "Parcel Map"
14 showing the very small portion of the Spring District property at issue in this case. It involves
15 less than 20,000 square feet of the 943,100 square-foot parcel where the future trackway meets
16 124th Avenue NE at the property boundary.

17 5. The rest of the Spring District property interests Sound Transit is acquiring are the
18 subject of a separate condemnation action, *Sound Transit v. WR-SRI 120th North LLC, et. al.*,
19 King County Cause No. 17-2-00988-1 SEA ("Spring District I"). A true and correct copy of the
20 Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating Public Use and
21 Necessity as to Respondent City of Seattle entered by the Honorable Mariane Spearman on
22 February 13, 2017 in Spring District I is attached as Exhibit C to the Declaration of Jeffrey A.
23 Beaver Regarding Notice of Final Action and in Support of Petitioner's Motion for Order and
24 Judgment Adjudicating Public Use and Necessity ("Beaver Dec.") on file herein.

25 6. Two separate condemnation actions were brought in connection with the Spring
26 District property because the property is also the location of the future light rail station, and

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1 Sound Transit anticipated that the valuation issues in connection with this station location would
2 be more complex than those relating exclusively to the trackway and associated right of way
3 improvements, such as the 124th Avenue NE bridge. In addition, Sound Transit was able to
4 obtain from the Spring District property owner a pre-condemnation an Administrative Possession
5 and Use Agreement with respect to the owner's property interests sought in this action. And it
6 was also believed that separate condemnation actions would provide the most flexibility for the
7 project schedule.

8 7. From the outset of the project, Sound Transit anticipated that it would be able to
9 collaborate with City Light to craft appropriate agreements that would give Sound Transit the
10 rights it needs in the City Light easement area to construct and operate its project. To date, that
11 has not occurred. City Light has opposed Public Use and Necessity as to each of the four
12 properties along 124th Avenue NE where Sound Transit's future trackway crosses the City Light
13 easement. As to each of those properties, the trial court has found Public Use and Necessity and
14 entered order and judgment accordingly (the "PU&N Judgments"). Those PU&N Judgments are
15 attached to the Beaver Dec. as Exhibits B ("Jacobsen" property), C (Spring District I), D
16 ("Safeway" property), and E ("Sternoff" property). City Light has appealed all four PU&N
17 Judgments. As a result of this opposition, it became apparent that the Administrative Possession
18 and Use Agreement Sound Transit acquired from the property owner in connection with the
19 property at issue in this matter would not be sufficient to allow Sound Transit to begin
20 construction of the trackway and associated 124th Avenue NE right of way improvements,
21 including the 124th Avenue bridge; instead it would likely be necessary for Sound Transit to
22 complete the full condemnation process as to City Light's interests in order to proceed with the
23 project at this location. Sound Transit therefore filed this action.

24 8. The only difference between Sound Transit's project on the Spring District
25 property and its project on the other three properties at the intersection of the future Sound
26 Transit trackway and 124th Avenue NE is that the Spring District property is also a station

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1 location. But this matter does not concern the station. It concerns the same trackway and the
2 same right of way improvements, including the 124th Avenue NE bridge, that the trial courts
3 presiding over the condemnations of the Jacobsen property (the Honorable Kenneth Schubert),
4 the Safeway property (the Honorable Barbara Linde), and the Sternoff property (the Honorable
5 Sue Parisien) have already ruled were necessary for Sound Transit's project. See Beaver Ex. B,
6 Ex. D, Ex. E.

7 9. In those cases, and in Spring District I, City Light made the same argument it
8 claims warrants a continuance here: that because Sound Transit would ultimately transfer its
9 right of way improvement to the City of Bellevue, those right of way improvements were not
10 "necessary" for Sound Transit's project. Each of the trial courts rejected those arguments. In
11 addition, in the Sternoff case, the owner made the same argument, and appealed the resulting
12 PU&N Judgment. That appeal is complete. Attached hereto as **Exhibit C** is a true and correct
13 copy of the Court of Appeals opinion in *Sound Transit v. Sternoff L.P.*, No. 75372-0-I, affirming
14 the Sternoff PU&N Judgment as to the owner. The Washington State Supreme Court denied the
15 owner's Petition for Review.

16 10. City Light also argues that it needs discovery regarding the "Project Development
17 Conditions" referred to in the Declaration of Tom Wilson in Support of Petitioner's Motion for
18 Order and Judgment Adjudicating Public Use & Necessity ("Wilson Dec.") in this matter. The
19 Wilson Dec. merely uses "Project Development Conditions" as a defined term for certain
20 requirements imposed by "certain agreements with regard to construction of the East Link
21 Extension," specifically the interlocal cooperation provisions that ensure compliance with the
22 City of Bellevue's codes, development standards, and permitting requirements and allow the
23 project to proceed efficiently and in a cost effective way. Wilson Dec. ¶ 5. The referenced
24 agreements are public documents readily available on the City of Bellevue's website, and have
25 been previously submitted and/or referenced in connection with the PU&N Judgments entered
26 with respect to the Jacobsen, Safeway, and Sternoff properties and in Spring District I. This

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1 webpage <http://www.ci.bellevue.wa.us/east-link-mou.htm> contains the relevant links. For the
2 Court's convenience, a true and correct copy of the print-friendly version of the webpage is
3 attached hereto as **Exhibit D**, but I note that not all the actual links show up as links on this
4 version.

5 11. The same agreements and conditions that made acquisition of property and
6 property interests for construction of right of way improvements, including the 124th Avenue NE
7 bridge, "necessary" for Sound Transit's project with respect to the Jacobsen, Safeway, and
8 Sternoff properties apply to the acquisition at issue here, which is for the same improvements,
9 including the same bridge, at the same intersection of the same future trackway with 124th
10 Avenue NE.

11 12. The delay occasioned by City Light's requested continuance would prejudice
12 Sound Transit. Attached hereto as **Exhibit E** is a true and correct copy of the Declaration of
13 Tom Wilson in Support of Motion for Accelerated Disposition in the Jacobsen property appeal,
14 which recounts how a delay in these condemnation proceedings will affect Sound Transit's
15 construction schedule, increase project costs, and cause public inconvenience and harm.

16
17 I declare under penalty of perjury of the laws of the State of Washington that the
18 foregoing is true and correct.

19 EXECUTED in Seattle, Washington this 25th day of May, 2017.

20
21 
22 _____
23 MARISA L. VELLING

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26
DECLARATION OF MARISA L.
VELLING IN SUPPORT OF RESPONSE
TO SEATTLE'S MOTION TO CONTINUE

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

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