

RESOLUTION NO. R2011-22
Amending the Adopted 2011 Budget

MEETING:	DATE:	TYPE OF ACTION:	STAFF CONTACT:	PHONE:
Operations & Administration Committee	12/8/11	Recommendation to the Board	Brian McCartan, Executive Director Finance & Information Technology	206-398-5100
Board	12/15/11	Final Action	Desmond Brown, General Counsel	206-398-5017

PROPOSED ACTION

Amends the Adopted 2011 Budget for non-operating expenses from \$50,314,431 to \$51,024,491 to include sufficient budget to cover the cost of the Rainier Valley light rail construction litigation.

KEY FEATURES

- This amendment adds \$710,060 to the Adopted 2011 Budget for non-operating project expenses for legal fees.
- The 2011 legal services costs are higher than originally budgeted in non-operating project expenses because Sound Transit and the contractor agreed to accelerate the schedule to resolve large and complex claims related to the Rainier Valley light rail segment.
- The legal costs of resolving the Rainier Valley claims were incurred over the period of late 2010 through mid-2011.
- The Board previously authorized a budget amendment on July 28, 2011 for increased costs that occurred in 2010.
- The legal cost in 2011 of resolving the Rainier Valley claims was \$4,528,342. The non-operating project expense budget included \$1,500,000 for this matter.
- Staff forecasts that under-expenditures for other legal matters that were budgeted to occur in 2011 but not spent will be available to cover \$3,918,282 of this shortfall, leaving a net budget shortfall of \$610,060.
- Staff is also requesting an additional \$100,000 budget authorization to cover currently unknown expenditures for other legal matters that may be identified through the year-end close process.

FISCAL INFORMATION

This action will increase the 2011 annual expense budget for non-operating project legal costs by \$710,060. The increase reflects a net change in the budget. This budget request is sufficient to cover all related costs identified to date, including a contingency of \$100,000 to be used only if additional costs are identified before completion of the year-end closing process.

There is sufficient financial capacity within the North King County subarea to absorb these additional expenses without endangering the completion of any Board approved projects or any elements of the Agency's current long-term financial plan. This budget increase was included in the finance plan that was reviewed with the Board in October and November of 2011.

**Non-Operating Expenses
Adopted 2011 Budget Summary**

	Adopted 2011 Budget	This Action	Revised 2011 Budget
Non-operating Property Expense	\$ 1,123,500	\$ -	\$ 1,123,500
Non-operating Project Expense	4,766,000	710,060	5,476,060
Subtotal	5,889,500	710,060	6,599,560
Donations and other non-cash Expenses	44,424,931		44,424,931
Total Non-Operating Costs	\$ 50,314,431	\$ 710,060	\$ 51,024,491

BACKGROUND

An amendment to the Adopted 2011 Annual Budget in the amount of \$710,060 is needed to cover additional non-operating project legal expenses. In 2011, Sound Transit budgeted \$4,766,000 for non-operating project expenses, of which \$4,505,000 was budgeted for a number of project legal expense matters.

Of this amount, \$1,500,000 was budgeted for 2011 for the defense of the \$130 million construction claim by RCI/Herzog Joint-Venture for building the Rainier Valley light rail segment. This was in addition to the expenditures for this case that occurred in 2010. Expenditures in 2011 for this matter amounted to \$4,528,342. Because of all the work to defend against the claim, RCI/Herzog Joint Venture reduced its original claim to an amount between \$40 million and \$85 million and the claim was settled in July 2011 for \$80.1 million.

Upon review of the other budgeted legal matters, staff forecasts that existing budget for non-operating project legal expenses will be available to cover all of this variance except for \$610,060. In order to cover additional costs identified before completion of the year-end closing process, staff is requesting an additional \$100,000 for a total budget increase of \$710,060.

Sound Transit has determined that Generally Accepted Accounting Principles require that these costs be expensed rather than charged to the project's capital budget.

SMALL BUSINESS PARTICIPATION

Not applicable to this action.

EQUAL EMPLOYMENT WORKFORCE PROFILE

Not applicable to this action.

ENVIRONMENTAL COMPLIANCE

Jl 12/07/2011

PRIOR BOARD/COMMITTEE ACTIONS

Resolution No. R2011-03: Amending the Adopted 2010 Annual Budget for Non-Operating Expenses from \$24,494,772 to \$39,494,772.

TIME CONSTRAINTS

A one month delay would not create a significant impact.

PUBLIC INVOLVEMENT

Not applicable to this action.

LEGAL REVIEW

JW 12/7/2011

RESOLUTION NO. R2011-22

A RESOLUTION of the Board of the Central Puget Sound Regional Transit Authority amending the Adopted 2011 Annual Budget for Non-Operating Expenses from \$50,314,431 to \$51,024,491.

WHEREAS, the Central Puget Sound Regional Transit Authority, commonly known as Sound Transit, was formed under RCW Chapters 81.104 and 81.112 for the Pierce, King, and Snohomish Counties region, by action of their respective county councils, pursuant to RCW 81.112.030; and

WHEREAS, Sound Transit is authorized to plan, construct, and permanently operate a high-capacity system of transportation, infrastructure and services to meet regional public transportation needs in the Central Puget Sound region; and

WHEREAS, in general elections held within the Central Puget Sound Regional Transit Authority district on November 5, 1996 and November 4, 2008, voters approved local funding to implement a regional high-capacity transportation system for the Central Puget Sound region; and

WHEREAS, the Sound Transit Board has adopted financial policies to govern the financing and implementation of the regional transit system and to specify budgetary guidelines for providing subarea equity in accomplishing the same; and

WHEREAS, by Resolution No. R2010-24, the Sound Transit Board adopted the 2011 Budget on December 16, 2010; and

WHEREAS, because Sound Transit and RCI/Herzog agreed to an accelerated arbitration late in 2009, sufficient legal costs associated with the arbitration litigation to resolve construction claims by RCI/Herzog for building the Rainier Valley light-rail segment were not included in the 2011 non-operating project expense budget; and

WHEREAS, under Generally Accepted Accounting Principles, these costs should be charged to the non-operating expense budget; and

WHEREAS, there is currently insufficient uncommitted budget within this expense category to absorb these added costs; and

WHEREAS, said budget amendment is consistent with and affordable under Board-adopted Sound Transit financial policies; and

WHEREAS, a two-thirds affirmative vote of the entire membership of the Sound Transit Board is required to amend the Adopted 2011 Budget.


NOW, THEREFORE, BE IT RESOLVED by the Board of the Central Puget Sound Regional Transit Authority that the Adopted 2011 Annual Budget for non-operating expenses is amended from \$50,314,431 to \$51,024,491.

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on December 15, 2011.



Aaron Reardon
Board Chair

ATTEST:



Marcia Walker
Board Administrator