

MOTION NO. M2017-20

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing legal action against the City of Mercer Island, the Washington State Department of Transportation (a potential non-adverse defendant), and other governmental entities deemed necessary or appropriate, to confirm Sound Transit's and the Washington State Department of Transportation's authority to take all lawful actions to construct and operate light rail on Interstate 90 or on Mercer Island between Seattle and Bellevue as approved by voters; and to enforce the 1976 Memorandum of Agreement and 2004 Amendment governing Interstate 90 between Seattle and Bellevue.

BACKGROUND:

On February 13, 2017, the City of Mercer Island enacted Ordinance No. 17-05 and Ordinance No. 17-06, purporting to establish a six-month moratorium "on the acceptance, processing, and/or approval of applications for (1) building permits... [that] relate to the siting development of any essential public facility; and (2) for any development or construction activity of any type, including the installation or removal of any structure or the removal, demolition or modification of any access ramp, that is inconsistent with, or related to a use other than, the existing public highway use of the Mercer Island I-90 Right of Way in any manner...."

The ordinances purport to prevent Sound Transit from obtaining permits from the City to begin construction of the East Link light rail project in June 2017. The ordinances also purport to prevent the Washington State Department of Transportation (WSDOT) from performing the work necessary to close the Interstate 90 center roadway to allow East Link construction to begin on Mercer Island.

The City of Mercer Island also authorized litigation against Sound Transit and WSDOT to prevent closure and transfer of the Interstate 90 center roadway to Sound Transit for light rail use. The 1976 Memorandum of Agreement and 2004 Amendment signed by the cities of Mercer Island, Seattle, and Bellevue, and by King County/Metro, and Sound Transit expressly permit the conversion of the Interstate 90 center roadway to light-rail use after new HOV lanes replace the center roadway. The ordinances' enforcement will, among other things, increase construction costs and delay the start and completion of East Link construction.

On February 16, 2017, the City of Mercer Island notified Sound Transit that it is suspending the shoreline substantial development permit issued for the East Link project in July 2016. The intended effect of the suspension is to prohibit all East Link construction on Interstate 90 within 200 feet of the Mercer Island shoreline and extending to the midway points of the Homer Hadley and East Channel bridges between Seattle and Bellevue. The suspension will, among other things, increase construction costs and delay the start and completion of East Link construction.

Sound Transit believes that the Mercer Island ordinances and the suspension of the shoreline substantial development permit are unlawful and should be challenged in appropriate legal, equitable or administrative proceedings.

MOTION:

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that legal counsel is authorized to commence legal action (including administrative appeals) in courts and/or administrative tribunals against the City of Mercer Island, WSDOT (a potential non-adverse defendant), and other governmental entities deemed necessary or appropriate, in order to challenge the applicability, validity, and enforceability of: (1) City of Mercer Island Ordinances Nos. 17-05 and 17-06; (2) the City of Mercer Island's suspension of the shoreline substantial development permit issued to Sound Transit for the East Link project, and (3) future ordinances, regulations, or any other action by the City of Mercer Island affecting Sound Transit's or WSDOT's ability to construct and operate the East Link light rail project or close the Interstate 90 center roadway, including attempts to deny issuance of additional permits or approvals. Legal counsel is further authorized to file claims and seek all writs, orders, judgments and other relief against the City of Mercer Island or other governmental entities deemed beneficial, necessary, or appropriate to implement the East Link light rail project, including, without limitation, rulings to enforce the 1976 Memorandum of Agreement and 2004 Amendment governing Interstate 90 between Seattle and Bellevue.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on February 17, 2017.



Dave Somers
Board Chair

ATTEST:



Kathryn Flores
Board Administrator