

Attachment D

Scoping Comment Letters from Agencies and Organizations



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ECOSYSTEMS,
TRIBAL AND PUBLIC
AFFAIRS

November 6, 2013

Ms. Lindsey Handel
Federal Highway Administration
Washington Division
711 S. Capitol Way, Suite 501
Olympia, Washington 98501

Ms. Angela Angove
I-90 Tolling Environmental Manager
Washington Department of Transportation
999 Third Avenue
Seattle, Washington 98104

Dear Ms. Handel and Ms. Angove:

The U.S. Environmental Protection Agency has reviewed the Notice of Intent to prepare an Environmental Impact Statement for the I-90 tolling Project. We are submitting scoping comments in accordance with our responsibilities under the National Environmental Policy Act and Section 309 of the Clean Air Act. Thank you for the opportunity to participate in this process.

FHWA and WSDOT propose to establish tolling on the I-90 Bridge across Lake Washington, which connects Seattle, Mercer Island, and Eastside communities. The stated purpose and need are to manage congestion and traffic flow in the Cross-Lake Washington Corridor, and to generate revenue for the completion of the SR 520 Bridge Replacement and HOV Program and for maintenance and future transportation improvements on I-90. FHWA and WSDOT planned to prepare an environmental assessment for this project and conducted scoping between January 22 and February 22, 2013. The initial scoping period generated approximately 3,400 comments, most of which expressed concern with or opposition to tolls on I-90. The Washington State Legislature subsequently passed Engrossed Substitute Senate bill 5024 to require an EIS for the project.

We offer the following comments regarding the purpose and need, range of alternatives, and issues to address in the EIS:

Purpose and Need:

The proposed project appears consistent with the Puget Sound Regional Council long range transportation plan, *Transportation 2040*, which calls for the use of tolls and other pricing approaches as part of the financial strategy to fund planned projects, as a system management tool, and as a means to reduce vehicle miles traveled and greenhouse gas emissions¹. The Plan states that funding strategies need to include a nexus between the toll and the use of the revenues. This project has such a nexus; however, there is a need to define the integration.

¹ PSRC Transportation 2040, Executive Summary, page 7

Recommendations:

- As background information to the purpose and need, discuss how the proposed action complies with *VISION 2040* and *Transportation 2040*, PSRC's regional growth strategy and supporting transportation plan.
- Provide more information in the purpose and need regarding the use of toll revenues for the I-90 Bridge facility.

To avoid uneven distribution of effects, a tolling or pricing strategy would ideally be applied region or system-wide, which over time is the stated intent of *Transportation 2040*. The regional Metropolitan Planning Organization, PSRC, is the appropriate entity to lead, develop, and implement such a strategy in coordination with its federal, state, and local partners and member jurisdictions.

Recommendation: Enlist PSRC to evaluate compatibility of the proposed action with *VISION 2040* and *Transportation 2040*. Make use of their staff expertise, data, existing studies², and modeling tools to assess the positive and negative effects of incremental tolling of individual facilities vs. region wide application as part of a comprehensive tolling and transportation strategy, and seek their recommendations for action to strategically implement incremental, regional or system-wide tolling.

Range of Alternatives:

The initial range of alternatives addressed only the location where tolls would be collected – between Seattle and Mercer Island, between Bellevue and Mercer Island, or partial tolls collected for each segment traveled. The current range of alternatives has been expanded to include a variety of strategies for generating revenue.

These include:

- Additional federal funds for SR 520
- State gas tax funds for SR 520
- Vehicle miles traveled (VMT) tax
- Transportation Benefit District
- King County motor vehicle excise tax
- Adjusted tolls on SR 520
- Increased transit service
- Widening I-90
- Implement tolls on other facilities.

Our concern with this range of alternatives is that, individually, they may not address the stated purpose and need. However, if several strategies were combined to offer a range of strategic packaged alternatives, they could potentially form new alternatives that respond more directly to the purpose and need.

Recommendation: Consider forming strategic packaged alternatives that would meet the project purpose and need.

² Evaluation of Tolling Concepts for a Regional Transportation Plan, M. Kitchen, M. Outwater, C. Johnson, J. Frkonja, PSRC, June 3, 2009.

Issues Recommended for Analysis in the EIS:

Traffic Impacts

The current tolling of the SR 520 Bridge has resulted in toll avoidance and increased traffic impacts on alternate transportation routes and facilities³⁴. There are generally four east-west routes between Seattle and the east side of Lake Washington: I-90, SR 520, SR 522 around the north end of the Lake, and I-405 and associated arterials around the south end of the Lake. The positive and negative effects on traffic and congestion with and without the proposed project need to be analyzed, including but not necessarily limited to effects on SR 520, I-90, I-405, SR 522, and associated local arterials. If new traffic impacts, such as congestion, safety issues, or other effects would arise, the EIS should discuss potential mitigation for these effects and who would bear the costs of mitigation.

Environmental Justice, Vulnerable, Disadvantaged Populations and Communities

Pursuant to the NEPA, Executive Order 12898 on Environmental Justice, and Executive Order 13045 on Children's Health and Safety, the EIS should include a robust analysis of potential positive or negative impacts the proposed action may have on vulnerable populations, including persons with low income, minorities, the elderly, disabled, and children. There are a number of communities and pockets of communities that should be considered. Consider, for example, the potential impacts to low income and minority communities if tolling on I-90 diverts traffic to the southern end of Lake Washington. This is one of the areas that has a concentration of low income and minority populations. Here and in other areas that may experience increased traffic, impacts may be greater than elsewhere because of existing stresses due to current environmental justice related impacts and conditions in those communities. We recommend evaluating the impacts of potential diversion of traffic to areas that have vulnerable populations. Such an analysis should include things such as demographic composition, cumulative impacts of multiple stressors, potential for use of side streets and intercity streets (detours off the interstates), impact of diverted traffic in emergency situations where major traffic could be rerouted from interstates through neighborhoods, and other effects.

Consider also the potential impacts to vulnerable populations on Mercer Island, such as, elderly, children, minority populations, and linguistically isolated communities. Specifically, neighborhoods along I-90 may have significant exposure to air pollutants. There may be negative economic impacts for a retired population on fixed income, and for low income workers who commute to Mercer Island for work. There may be negative economic impacts for low to middle class populations who live and/or work on or off the island.

Given the potential for economic, environmental and public health impacts to low income, minority, and other vulnerable populations, a systematic, regional approach using available data should be used to assess, minimize, and otherwise mitigate impacts from the proposed action.

Community Impacts

Increased use of toll-free routes around the north and south ends of Lake Washington that may occur need to be evaluated for their potential effects on communities and neighborhoods, including those that are not considered low income, minority, vulnerable or disadvantaged. Traffic increases and congestion,

³ The New Normal? Analysis of 520 Tolling on Puget Sound Traffic, INRIX, May 2012.

⁴ Letter to Governor Jay Inslee, Senator Curtis King, Senator Tracey Eide, Representative Judy Clibborn from Mayors of Bothell, Kenmore, Kirkland, Lake Forest Park, and Woodinville, February 27, 2013.

safety issues, noise, air quality, and quality of life impacts may arise. Potential mitigation for these effects should also be included.

Economic Impacts and Benefits

Because tolling may increase attraction to some routes and create avoidance of others, the positive and negative effects to businesses, property values, and related factors should be examined. The NEPA analysis should also disclose the increased cost of travel via different routes due either to tolls or out-of-direction travel and potential associated travel time increases.

Effects on Travel Demand and Need for Transit and Other Travel Alternatives

While some travelers will choose alternate routes, others may choose to forego single occupant vehicular travel that becomes more difficult or costly. The NEPA analysis should address the latter effect for each alternative east-west route and for the full area of potential effect due to the proposed I-90 tolling project. Any decrease in travel demand should also be evaluated for its potential effect on the projected need or demand for capacity increases in the transportation system. Consider whether or not all current planned roadway projects would still be necessary or justified in terms of providing increased capacity. In response to travel demand that may shift from SOV to alternative travel modes, it is important to analyze the availability and adequacy of alternative transportation modes, including public transit, park and ride lots, and non-motorized bicycle/pedestrian facilities, within each travel corridor.

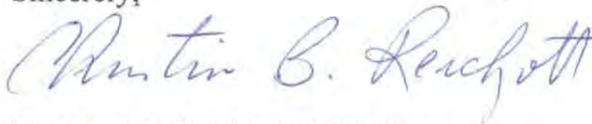
Air Quality and Greenhouse Gas Emissions

The EIS should include an analysis of effects on air quality, both positive and negative, that are area-wide as well as localized or hotspot in nature. Criteria pollutants and air toxics emissions and their associated health effects need to be discussed, and any sensitive receptors/locations that would experience increased emissions and/or exposure to these pollutants should be identified.

Overall project effects on greenhouse gas emissions should be estimated for the various alternatives and the relative contribution of each in helping us achieve statewide greenhouse gas reduction goals.

Thank you for the opportunity to offer comment and to be a part of this interesting and challenging project. We hope the results will inform and engage all parties in efforts to achieve the regional *VISION*. If you have questions or need more information, please contact me at (206)553-1601 or via electronic mail at reichgott.christine@epa.gov, or you may contact Elaine Somers of my staff at (206)553-2966 or via electronic mail at somers.elaine@epa.gov.

Sincerely,



Christine B. Reichgott, Manager
Environmental Review and Sediment Management Unit



STATE OF WASHINGTON

FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD

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31 January 2013

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Web Site
www.fmsib.wa.gov

Mr. Craig Stone
WSDOT Toll Division, Director
Mail Stop TB-85
Seattle, WA 98104

Dear Mr. Stone:

The Freight Mobility Strategic Investment Board has been following with interest the WSDOT proposal to toll I-90. At our January 25, 2013 meeting, the Board raised some concerns and would like to provide the following input:

According to your documents, "the purpose of the I-90 Tolling Project is to raise revenue for substantial transportation improvements in the Cross-Lake Washington Corridor and to help alleviate congestion on I-90 between I-5 and I-405."

We are concerned that the purpose lacks relevance to freight moving from the Port of Seattle and other freight intermodal terminals to and from Eastern Washington and beyond. I-90 is a major freight corridor with the link from I-405 to I-5 comprising a small segment in the movement of imports and exports. Trucks are approximately 10 percent or less of the overall traffic on our interstates and generally operate at different peak hours than passenger vehicles.

Washington's manufactured and agricultural exports including hay, fruit, grain and produce would all be asked to pay for improvements to a bridge that freight wouldn't use. Congestion impacts to freight on I-90 from Seattle to Bellevue would only potentially alleviate a small segment of the congestion experienced on I-90.

- ❖ Can the proposed EA study topics be expanded to include the impact on intrastate & interstate freight movement, especially export freight between the Port of Seattle and Eastern Washington?

Craig Stone

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- ❖ Shippers look at overall costs of moving cargo. What impact would tolls have on moving a significant number of containers and truck load cargo on the utilization of Washington ports like the Port of Seattle?
- ❖ As a discretionary port, will tolls on freight divert traffic to another port either within Washington State or to an out-of-state port competitor?
- ❖ What are the congestion benefits to freight that would travel well past the Bellevue area?
- ❖ If the I-90 tolling project is determined to adversely impact intra and/or interstate freight, shippers/haulers, will tolling revenue be allocated for freight mitigation/improvements?

Thank you for considering our concerns.

Cordially,



Karen Schmidt
Executive Director

cc: Freight Mobility Strategic Investment Board
Tay Yoshitani, Port of Seattle
Larry Pursley, Washington Trucking Association
Eric Johnson, Washington Public Ports Association
Mike Moore, Pacific Merchant Shipping Association

City of
Bellevue



Post Office Box 90012 • Bellevue, Washington • 98009 9012

February 19, 2013

Ms. Angela Angove
Washington State Department of Transportation
999 Third Avenue, Suite #2200
Seattle, WA 98104

RE: I-90 Tolling Environment Assessment Study

Dear Ms. Angove:

Thank you for the opportunity to provide early feedback regarding the I-90 Tolling Environmental Assessment (EA) that WSDOT is initiating this spring per state legislative direction. The City of Bellevue has enjoyed a highly collaborative working relationship with WSDOT and our regional partners over the years on numerous improvements to I-90. With the same level of commitment to improve our regional and state transportation system, we look forward to participating in this important work as it evolves this year and future implementation interfaces with several other key I-90 improvements.

The Bellevue City Council has a long history of providing proactive policy direction regarding key highway investments and improvements given the important relationship between our state and local transportation systems and our region's economic health. Attached is our Council's *2013 State Legislative Statement of Policy* adopted in December 2012 that articulates Bellevue's overall tolling policy principles and specific language about SR 520 and I-90. Among these principles, our Council continues to underscore the need to ensure that traffic diversion and associated effects on Bellevue's local street network be minimized and effectively mitigated by the state. With regard to I-90 tolling, Council has been very clear: 1) WSDOT should engage with affected communities, stakeholders and cross-lake users of both I-90 and SR 520 bridges to ensure that the legislature's direction to toll I-90 to help fund the remaining costs associated with the SR 520 bridge replacement project be done in an open and transparent manner; and, 2) a meaningful portion of the tolling revenue should be used to fund overall operation, maintenance and improvements to I-90. As the EA work moves towards completion and we gain a comprehensive understanding of the various funding scenarios, our Council will provide more specific policy direction.

Thank you for your time and consideration.

Sincerely,

David Berg, PE
Director, Transportation Department

cc: Bellevue City Councilmembers
Steve Sarkozy, Bellevue City Manager
Kim Becklund, Bellevue Transportation Policy Advisor



CITY OF BELLEVUE

2013 STATE LEGISLATIVE STATEMENT OF POLICY

GENERAL POLICY

The City of Bellevue supports State legislative efforts to encourage cost-effective State, regional and local policy planning and delivery of government services. The City supports legislation that enhances local flexibility to address issues of local concern. The City opposes legislation that mandates increased local costs or results in an inappropriate diminution of local authority over local affairs.

A. ECONOMIC DEVELOPMENT. Support legislation recognizing that the State and local governments play an important role in maintaining, expanding and diversifying local economies. Support legislation or funding that would enhance cities' ability to support job retention and growth; support workforce development; provide economic development loans and grants; finance public improvements for economic development purposes, including tax increment financing mechanisms and new State infrastructure matching programs, loans or grants; and support Brownfields cleanup activities.

B. TRANSPORTATION

1. **Bellevue's Transportation Priorities.** The City of Bellevue, as home to King County's second largest metropolitan center, requires a broad mix of transportation solutions including highway, regional bus, regional light rail, pedestrian and bicycle infrastructure, local transit and local roadway improvements to support growth.

New Transportation Revenue Package: Bellevue supports the development of a state-enacted transportation package that provides new revenues for roads and transit, including an increase in the State gas tax, dedicated gas tax funding for local distribution and focuses on the following projects that are of critical importance to Bellevue:

- Completion of projects identified in the I-405 Master Plan
 - NE 6th extension to 120th Ave NE
 - One new lane in each direction from I-90 to Renton
 - NE 12th to SE 8th restriping to accommodate an additional lane each direction
 - Completion of SB SR 520 to I-405 braided ramp at NE 10th
- Funding for a full new interchange at 124th on SR 520

2. **Transportation Funding.** The State highway and federal interstate system in East King County fails to meet the needs of the region and is threatening the quality of life and economic prosperity of those living and working in the region. The Legislature should ensure the State gas tax provides adequate revenue to address near-term transportation system funding for the State and local government transportation needs, including increasing the state gas tax and indexing the gas tax for inflation. Bellevue supports legislation that provides new local authority transportation tools and new revenue sources that provide a sustainable revenue stream to meet State and regional transportation needs.

3. **Tolling.** Bellevue supports the following principles concerning tolling of State highways (these principles are excerpted from previously-adopted Council policies and interest statements):
- a. The State should develop a region-wide phasing plan that responds to the need to provide geographic balance and regional equity in the use of tolling to improve overall highway system performance and manage regional travel demand;
 - b. Tolling should be used as both a tool for managing and improving highway operations for all users and as a revenue tool to augment project funding;
 - c. Revenue raised in the corridor should be spent in the corridor (this has been State law for the last several years, with the exception of 2012, when the Legislature passed a bill allowing future I-90 toll revenue to be used to help fund SR 520);
 - d. Traffic diversion and its associated effects on local roads should be minimized and the State should mitigate negative impacts; and,
 - e. The State should continually monitor and evaluate the impacts and performance of all tolled lanes and assess the impact on general purpose, transit and HOV travel lanes, including occupancy parameters for 2+ and 3+ HOV users and ensure that 2-person carpools either improves or holds harmless general purpose lane performance as compared with any No Build scenario.
 - f. Toll revenue should be used to optimally leverage State gas tax revenues, bonding availability and Federal partnership funding.

Corridor-Specific Guiding Principles: The City shall engage with WSDOT and refine tolling guidance over time as the region's tolling plan is implemented. The following principles should guide this engagement with regard to Bellevue's key highways—I-405, SR 520 and I-90:

- **I-405:** In addition to Bellevue's tolling principles, WSDOT should ensure that the Express Toll Lanes being planned and constructed on I-405 be consistent with the I-405 Master Plan and implemented where new capacity has been, or will be added, to accommodate the toll lanes.
- **Cross Lake Corridors - SR 520 & I-90:** In addition to Bellevue's tolling principles, WSDOT should engage with affected communities, stakeholders and cross-lake users of both bridges to ensure that the Legislature's direction to toll I-90 to help fund remaining costs associated with the SR 520 bridge replacement project be done in an open and transparent manner. A meaningful portion of the tolling revenue generated by I-90 tolls should be used to improve overall operation, maintenance and improvements (e.g., capital improvements such as targeted capacity improvements, park-and-ride lot expansion, transit service, enhancements, etc.) to I-90 through a future formal agreement with WSDOT.

C. FINANCE

1. **Local Revenue Authority.** Oppose legislation that would reduce the City's tax or license base or revenue authority, or would adversely alter or limit the distribution or application of revenue at the local level. Support legislation that provides additional financial flexibility at the discretion of the city legislative body, while recognizing the need for local government to streamline its revenue collection processes and act in a "business friendly" manner.

2. **Business and Occupation (B&O) Tax Authority.** Bellevue opposes legislation that will reduce municipal B&O taxing, administration and licensing authority or revenue. Bellevue, along with four other cities, is leading the effort to streamline administration and reporting of the local share of the B&O tax through development of a single multi-city portal for registering businesses and reporting and paying local B&O taxes. This approach would provide greater efficiency while retaining local control, flexibility and revenue capacity from this important funding source. Bellevue supports use of the Model Business and Occupation Gross Receipts Tax Ordinance with limited exceptions to allow flexibility to each city to adjust its tax structure to meet local business needs and priorities, and economic development goals.
3. **Sales Tax.** Bellevue supports continued mitigation for losses to jurisdictions that are negatively impacted from changes to sales tax sourcing, until such time as voluntary compliance of the collection and payment of State and local sales tax on interstate mail order and internet sales, or federal mandate, results in net positive revenues from the sourcing change.
4. **Telecommunications Taxes.** Bellevue opposes any reduction in the ability of municipalities to impose reasonable taxes and fees on telecommunication services.
5. **Sales Tax Limitations.** Bellevue opposes legislation to extend sales tax to new areas of local government operations, such as parks and recreations programs for youth.
6. **Utility Lien Law.** Bellevue opposes legislation that would preempt existing city authority to place liens on property or discontinue service to assure payment for utility services.
7. **City Utility Tax Authority.** Support maintenance of existing city utility tax revenues and utility authority.

D. ENERGY, ENVIRONMENT AND UTILITIES

Bellevue considers natural resources to be key community assets for current and future generations and supports legislation and funding to maintain the City's quality of life, including preserving and protecting a healthy environment and economy.

1. ENERGY

- a. **Clean Energy and Technology Sector.** Bellevue supports funding that would enhance cities' ability to attract and retain emerging clean economy businesses and jobs, including funding or favorable financing mechanisms for development of infrastructure required to accommodate them.
- b. **Renewable Energy and Energy Efficiency.** Bellevue supports incentives for the installation of renewable energy generation equipment and facilities, including solar, heat recovery and geothermal. The City also supports incentives to encourage energy efficiency, conservation and the use of advanced biofuels (e.g. biodiesel and ethanol, among others).
- c. **Public-Private Partnerships.** Bellevue supports legislation enabling public-private partnerships that increase the functionality and value of public facilities (e.g., park-and-ride facilities).

2. AIR QUALITY AND CLIMATE

- a. **Green Fleets.** Bellevue supports incentives for government fleets to transition to cleaner, more fuel-efficient vehicles, such as hybrids and plug-in electric vehicles.
- b. **Electric Vehicle Infrastructure.** Bellevue supports funding for regional, state and multistate electric vehicle (EV) infrastructure planning and implementation efforts.
- c. **Air Pollution Prevention.** Bellevue supports increased funding for local and regional air quality and pollution reduction programs, including those managed by the Puget Sound Clean Air Agency (PSCAA) and the Clean Cities Coalition. Bellevue supports legislation that would provide the option for all larger cities to be directly represented on the PSCAA Board of Directors.
- d. **Commute Trip Reduction.** Bellevue supports Commute Trip Reduction funding and policies that reduce demand on local and state roads.

3. WATER SUPPLY

Bellevue supports State policy that:

- a. Encourages cooperative efforts of local governments to undertake water supply planning, develop new water resources, and link systems together for greater efficiency.
- b. Provides tools that allow local governments and water supply agencies to equitably balance competing demands on water resources, including a balance between in-stream and out-of-stream benefits.
- c. Creates incentives to pursue and encourage cost-effective water conservation measures for all segments of water users.
- d. Eliminates the legal uncertainty created by recent Washington State Supreme Court cases regarding the appropriate mechanism or process to pay for fire hydrants, the supporting water system facilities and water for fire flow, by providing local governments and water utilities flexibility in cost recovery mechanisms.

Bellevue opposes:

- a. Changes to the municipal water law statute that would jeopardize the ability of the Cascade Water Alliance to meet its obligations to its members.

4. STORMWATER MANAGEMENT AND NPDES PERMIT

The City supports:

- a. Additional funding to help cities implement the municipal stormwater discharge permit under Phase II of the National Pollutant Discharge Elimination system (NPDES);
- b. Flexible and direct funding to cities and counties to meet NPDES requirements based on a per-capita or other formula that recognizes the burdens of the new regulations to different jurisdictions; and
- c. An alternative monitoring strategy for the next NPDES municipal stormwater permit that provides more meaningful and useful results, is less expensive, and meets multiple objectives, such as Chinook recovery or Growth Management Act directives.

The City opposes:

- a. New permit requirements that exceed what is reasonable and practicable regarding urban runoff;
- b. New permit requirements that undermine local land use authority and/or conflict with the Growth Management Act vesting rules and other local government functions;
- c. Permit-mandated watershed scale stormwater planning that undermines the local land use control and/or potentially expands City liability for the actions of other jurisdictions; and
- d. Department of Ecology rulemaking that results in unrealistic water quality standards and enforcement through Water Quality Cleanup Plans and the NPDES Permit.

5. SOLID WASTE

- a. **Preserve Local Authority.** Bellevue supports preserving existing city authority over solid waste management, especially waste stream control and recycling.
- b. **Lifecycle Product Stewardship.**

Bellevue supports:

- Improved packaging requirements to include significant recycled content and to improve the ease of recycling products at the end of their useful life;
- Programs that encourage manufacturer responsibility for developing and implementing a collection system for the reclamation and proper disposal of their products at the end of the products' useful life;
- A convenient, safe, secure and environmentally sound medicine take-back program for unwanted medicines from households through a mechanism that covers the cost of collection, transportation and Legislation for point of sale fees on hazardous waste products to support the operation of specialized collection facilities;
- Legislation to allow cities with essential public facilities within their boundaries (e.g. transfer stations) to receive reasonable fees to mitigate the related public safety and infrastructure impacts, costs, and loss of tax revenue; and
- Disposal that does not rely on local government funding.

6. OTHER ENVIRONMENTAL INITIATIVES

- a. **Salmon Recovery and Endangered Species Act (ESA) Funding.** The City supports increased funding for salmon recovery focused on watershed forums' implementation plans. Bellevue also supports legislation that streamlines permitting for ESA-related projects.
- b. **Puget Sound Partnership.** The City supports legislation that is compatible with current planning efforts and activities related to water quality, quantity and habitat, as well as consistency with community values and appropriate fiscal constraints. Bellevue opposes adoption of actions or legislation that imposes unrealistic or infeasible water quality, quantity or habitat or monitoring requirements in urban areas.

- c. **Flood Control.** Bellevue supports legislation that would require balancing public safety concerns with habitat protection when reviewing and/or issuing permits for flood control projects. The City also supports efforts to ensure there is a nexus between the expenditure of funds within a flood control zone and the contribution and benefit received by areas within the zone.
- d. **Reclaimed Water.** Bellevue supports legislation requiring a cost-benefit analysis from purveyors of reclaimed water to ensure that general rate-paying customers are not subsidizing those who will benefit directly from the reclaimed water system.
- e. **Lakeline Funding.** The City supports funding to repair and/or replace deteriorating segments of the sewer pipeline located along the shore of Lake Washington and Lake Sammamish.

E. GENERAL GOVERNMENT

1. **Insurance/Tort Reform.** Bellevue supports efforts by the State to reduce liability costs which will add a greater degree of certainty to business and government budgets and improve the economic environment. Bellevue supports legislation to amend State tort statutes to remove unreasonable municipal and private sector liabilities, specifically:
 - a. **Joint and Several Liability.** Exempt cities and towns from joint and several liability for the acts of other persons at fault;
 - b. **Cap Non-Economic Damages:** Provide caps on non-economic damages for local government entities, their officers, employees, and volunteers and for businesses and health care providers.
2. **Procurement.** Oppose efforts to mandate a specific statewide procurement code for local use.
3. **Job Order Contracting (JOC).** Bellevue supports extension of JOC legislation for public works projects to allow continued cost savings in the procurement of these projects.
4. **Protect Public Intellectual Property.** Support legislation to grant local authority to calculate and assess charges for custom electronic products developed from electronic information systems when provided to persons or organizations for other than governmental uses. Permissible charges for such data should include a reasonable amount to cover staff time to research and develop the information system.
5. **Bid Limits.** Support legislation giving cities greater flexibility with bidding procedures and increases in bid limits.
6. **Public Works.** Support legislation that clarifies, streamlines, and/or simplifies prevailing wage processes, reduces fees for processes, and/or limits increases in hourly wage rates to reflect inflationary rates. Support legislative or regulatory changes that ensure job classifications for prevailing wage purposes reflect industry practices.
7. **Telecommunications and Rights-of-Way.** Protect local authority to require franchises to manage city rights-of-way and to protect publicly-owned infrastructure. Bellevue supports current State law requiring utilities to bear the cost of relocating their facilities in public rights-of-way.

8. Disclosure of Information.

- a. Bellevue takes a customer focused approach in providing efficient and effective access to public records, and is committed to allocating resources to respond appropriately to the Public Records Act while balancing resources and customer expectations. The City recognizes that some local government agencies have been overwhelmed in their efforts to meet their obligations under the Act due to the actions of a small number of requestors. In this light, the City supports legislation that would permit injunctive relief from abusive and punitive requestors, and would allow cities to develop resource limits to prevent escalating records requests from draining budgets.
- b. Bellevue also supports providing exemptions to the public disclosure act that would protect personal information of clients participating in City-sponsored activities, such as parks and recreation programs, and confidential or proprietary information supplied by persons or entities doing business with governments.

- 9. Eminent Domain Authority.** Bellevue will monitor proposals to change eminent domain authority to ensure that the ability of local governments to use eminent domain in appropriate situations is not diminished and to ensure that the costs and administrative burden for using eminent domain authority are not unreasonably increased.

F. GROWTH MANAGEMENT, LAND USE AND PLANNING

- 1. Growth Management.** Support legislation providing incentives to focus future growth in cities and urban centers. Support legislation to enable local governments to address growth management issues through balanced regional policy planning and local program implementation as envisioned by the policy coordination and consistency requirements of the State Growth Management Act (GMA). Oppose legislation that would exempt essential public facilities from compliance with SEPA and oppose legislation that would decrease the City's ability to regulate and influence the siting of essential public facilities.
- 2. Transit-Oriented Development (TOD).** Support legislation that provides cities with additional support, incentives and authority to encourage compact growth around transit stations and areas served by high frequency transit, such as the option of SEPA exemptions or additional authority regarding concurrency. Oppose any form of mandatory TOD legislation imposed on cities that would limit local government zoning authority. Monitor legislation and proposals regarding "value capture financing" in areas currently identified or zoned for TOD-type development.
- 3. Concurrency.** Bellevue supports the premise of GMA concurrency, and further supports ensuring that cities have clear authority to implement concurrency in a manner best suited to meet city-wide growth management goals. The City opposes any changes that would undermine local land use authority.
- 4. Regulatory and Permitting Reform.** The City supports defining, coordinating, simplifying and streamlining land use decisions and permitting under the GMA as well as under SEPA and the Shorelines Management Act, balancing benefits of statewide uniformity with the need for local communities to govern themselves. The City opposes legislation that would diminish the City's authority over permitting and fees.
- 5. Shoreline Management.** The Legislature should provide full funding to implement and update shoreline management requirements.

6. **Property Rights.** Support a balanced approach to property rights, which recognizes the community benefits from land use and zoning authority and which recognizes the limits of municipal financial resources while respecting the rights of property owners to be free from unreasonable intrusion into the use and development of property.
7. **State Building Codes.** Oppose legislation that would impose significant new administrative burdens on local government.

G. PUBLIC SAFETY AND THE COURTS

1. **Juvenile Justice and Services.** Support legislation maintaining strong sanctions for chronic, misdemeanor behavior for juvenile offenders and permit greater judicial discretion to impose detention. State policy should recognize legitimate city land use and other regulatory concerns related to juvenile justice issues, including but not limited to, facilities siting and operation issues. Support continued and enhanced state funding of juvenile justice systems, including local government programs for providing alternatives to incarceration, programs to keep youth off drugs, and the provision of drug treatment.
2. **Gun Legislation.** Support appropriate gun licensing legislation, as well as:
 - a. Enhanced penalties for persons using or possessing guns in the commission of a crime;
 - b. Legislation making any felony conviction and juvenile adjudications reasons for disqualifying applicants from firearm possession permits and linking the possibility of restoration of possession rights to the seriousness of the underlying felony offense/juvenile adjudication;
 - c. The ability of local governments to restrict or prohibit the possession of firearms in schools, city parks and other city facilities regardless of gun permits; and
 - d. Legislation allowing for the forfeiture of guns in the possession of a suicidal person.
3. **Hate Crimes.** Support legislation that provides civil equality, fairness and tolerance of differences consistent with the State and federal constitutions.
4. **Vehicle Prowling.** Support legislation redefining vehicle prowling in the first degree as prowling of all types of vehicles rather than simply certain vehicles in order to make penalties in this area more consistent.
5. **Fire Safety Standards.** Oppose State regulation of fire response times and staffing standards.
6. **Provide Adequate Funding for Police Training Academy.** Support adequate State funding for the Basic Law Enforcement Academy to ensure local agencies are able to meet their police training needs within a reasonable time.
7. **Medical Marijuana/Legalization of Adult Marijuana Use.** City staff is evaluating this issue and will propose a position once more is known about the potential impact of the ballot initiative regarding adult recreational marijuana use, the federal response, and subsequent to a discussion by the Council of the primary policy questions about the appropriate role for local zoning authorities. At a minimum, the City will monitor and advocate for Bellevue's interests as appropriate.

H. PARKS, OPEN SPACE, AND ENVIRONMENT

1. **Parks and Open Space.** Support legislation to secure long-term State funding for maintenance of existing parks, as well as acquisition/development of open space and active and passive parks consistent with local and county-wide planning policies.
2. **Forest Practices Permits.** Support legislation requiring that all forest practices permits issued for properties within city limits or within urban growth boundaries be subject to local government review processes.
3. **Park Usage Liability.** Support existing protections for local government from liability in park facilities.

I. PERSONNEL AND LABOR RELATIONS

1. **Interest Arbitration.** Oppose expansion of compulsory interest arbitration. Bellevue supports legislation to:
 - a. Revise the factors considered in binding interest arbitration for police and fire to include the city's ability to pay, economic conditions, other city priorities, qualifications of arbiters, local labor market conditions and internal equity with other city employees;
 - b. Make wage comparability requirements consistent between police and fire to eliminate West Coast comparisons when sufficient in-state comparables exist; and
 - c. Use 90 percent of the Consumer Price Index as appropriate cost of living measure in determining wage increases.
2. **Workers Compensation.** To address rising workers compensation costs, the City supports a comprehensive evaluation of the workers compensation system to provide greater certainty, fairness and accountability for both employers and employees. The City opposes legislation that would limit the ability of cities and towns to self-fund workers' compensation programs. The City opposes the expansion of occupational disease presumptions for firefighters.
3. **Disclosure of Labor Negotiations Materials.** Support legislation that would exempt from public disclosure requirements materials and information gathered and prepared in anticipation of labor negotiations, disclosure of which would reveal the municipality's collective bargaining strategy in current or future negotiations.
4. **LEOFF II Right to Sue.** The City supports legislation to amend State law to clarify that LEOFF II members may not sue their city employers for on-the-job injuries, but may sue only for intentional acts.
5. **Retiree Benefits for Firemen's Pension Fund Member's Surviving Spouses.** Bellevue and other cities support closing the loophole in the recent amendment to the Firemen's Pension Action to prevent deathbed election of benefits that would be costly to the City.
6. **Control Pension Costs.** Bellevue urges the Legislature to consider and limit fiscal impacts to local governments if legislation is considered that will change employer contribution rates, or provide enhanced benefits in the LEOFF, PERS, and PSERS systems. Bellevue also supports the State providing financial assistance to cities to help pay for LEOFF 1 liabilities.

7. **Manage LEOFF 1 Retiree Medical Costs.** Bellevue supports the State providing financial assistance to cities to help pay for LEOFF 1 medical costs.

J. HEALTH AND HUMAN SERVICES

1. **State Support for Social Service Programs.** Major cuts to social service programs at the State level could result in shifting the responsibility and costs for providing such services to local governments. The City supports:
 - a. Continued state funding for public health and human services and opposes legislation that would result in shifting the costs of providing such services, including mental and dental health, to local governments. The City supports the County as the appropriate regional provider of public health care services, while recognizing the unique issues of urban health departments may require supplemental State funding. Oppose legislation that would require increasing City financial contributions to County public health systems.
 - b. State funding of effective mental health and substance abuse treatment and prevention programs
 - c. Maintain State funding for job training, ESL training, and child care for those making the transition from welfare to work and those who become unemployed during the recession.
2. **Adult Family Homes.** Monitor legislation regarding the siting and operation of adult family homes.
3. **Eastside Human Service Forum Priorities:** Bellevue is a member of the Eastside Human Services Forum and supports the following priorities:
 - a. Protect Home Visiting funding and protect current investments in the Early Childhood Education and Assistance Program (ECEAP), the Working connections Child Care Program, and WAKids, the new State kindergarten assessment.
 - b. Protect Washington's current long-term care infrastructure and maintain the investment in services that enable older adults and people with disabilities to remain in their homes and in the community, such as the Community Alternative Program waiver and programs and services funded by the Senior Citizens Services Act and family caregiver programs. Protect vulnerable older adults and people with disabilities through programs such as the State Long Term Care Ombudsman, Office of Public Guardianship, and through continued oversight of Adult Family Homes.
 - c. Protect funding to the Housing Trust Fund, the Housing and Essential Needs Program (which replaced the Disability Lifeline), and extend foster care for all youth until age 21.
 - d. Protect funding for the Washington Information Network (WIN 2-1-1) and protect programs that provide basic needs to all residents, such as food and health care, including mental health, substance abuse and medical interpretation.

Issues to Monitor: funding for Naturalization Services; adequate, sustainable funding for community health and human services; funding for the Federal Supplemental Nutrition Assistance Program (SNAP); efforts pertaining to implementation of the Affordable Care Act; and linkages to housing for individuals at risk for homelessness upon leaving state mental health, foster care, correctional and juvenile rehabilitation systems.

K. EARLY CHILDHOOD, SCHOOL-AGED CHILDREN/YOUTH AND EDUCATION PROGRAMS The City supports strong state programs for children and families, including early childhood education, school readiness, after-school programs, access to quality child care, drop-out prevention, family support, prevention of child abuse, special education and local government partnerships with school districts.

L. HOUSING AND HOMELESSNESS

- 1. State Housing Funding/Strategies.** Support a permanent source of funding for the State Housing Trust Fund to support the State's and County's goals to end homelessness in accord with the Ten-Year Plan to End Homelessness. Support State funding for rental assistance and services for homeless people and those at risk of homelessness. Support strategies that create incentives for the creation of more low-income, senior and workforce housing.
- 2. Group Care Facilities.** In concert with related changes in federal law, support changes in State law that will preserve local municipal authority to shape our communities while considering and balancing the needs of everyone. In particular, support changes to ensure that the State Department of Social and Health Services and other State agencies are responsive to local safety and neighborhood concerns in siting and overseeing group care facilities.



February 19, 2013

RECEIVED

FEB 22 2013

AWV Facilities Team

Angela Angove
I-90 Tolling Project
999 Third Avenue, Suite 2200
Seattle, WA 98104

RE: I-90 Tolling Environmental Assessment

Dear Ms. Angove:

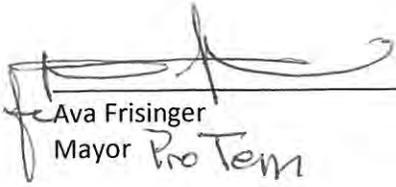
We are hereby submitting comments on behalf of the City of Issaquah regarding the I-90 Tolling Environmental Assessment. While the City will not take an official position on whether to toll or not to toll until the Environmental Assessment is completed, the City does have a perspective related to tolling I-90. These positions are as follows:

- The State should use a portion of revenues generated from I-90 tolls for the improvement of the I-90 corridor. As the toll is a user fee, the users of the I-90 corridor should benefit from the collection of the fee.
- A portion of the toll revenues should go to mass transit in order to alleviate traffic congestion on the I-90 corridor.
- There should be equity for all users of the I-90 corridor. There should not be populations that are exempted from tolling, thereby receiving public benefit at no cost to them.
- The City is in **opposition** to the tolling of off-ramps and on-ramps in the City of Issaquah, specifically exit 13, exit 15, exit 17, and exit 18. It would be inequitable to toll these ramps unless every ingress or egress from an Interstate was tolled across the State.
- We request that when the WSDOT holds public scoping meetings in the future, that said scoping meetings are also held in the City of Issaquah. The City is happy to work with you to provide a venue for those meetings.

In addition, we are providing an excerpt of the public comments received from the Public Hearing that was held before the Issaquah City Council on February 19, 2013, which is attached hereto as Exhibit A, and written comments received prior to the Public Hearing, attached hereto as Exhibit B.

We appreciate being a cooperating agency in this study and participating further in the analysis. We also hope to be a partner in engaging our citizenry to attend scoping meetings and provide input to the analysis.

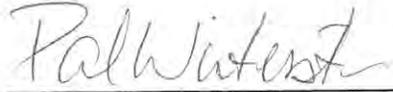
Thank you for consideration of our comments.



Ava Frisinger
Mayor Pro Tem



Fred Butler
Council President



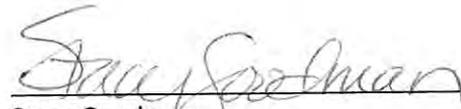
Paul Winterstein
Deputy Council President



Eileen Barber
City Council



Joe Forkner
City Council



Stacy Goodman
City Council



Tola Marts
City Council



Joshua Schaer
City Council

Exhibit A

I, Deanne Jacobson, do hereby certify that the comments below are a true and correct excerpt of the testimony provided during the Public Hearing held on Tuesday, February 19, 2013, before the Issaquah City Council.

WITNESS my hand this 20th day of February, 2013.

The public hearing was opened at 8:03 PM.

1. Lorraine Larsen, Jasmine Pl. NW, spoke against the proposed tolling on I-90. She noted that the State needs to consider the financial impacts that the tolls will have on the average worker. In addition, she addressed concern about the proposed gas tax increase, noting that if the gas tax were approved, Washington State would be tied with New York State for having the highest gas tax rate.
2. Mike Beard, 995 NW Inneswood Pl., noted he is strongly against the proposed tolling on I-90. He noted that after he read the proposed letter to Washington State Department of Transportation (WSDOT), he didn't feel the City's letter represents the citizens and businesses of Issaquah. He noted that the City wasn't taking a strong enough position against the proposed tolling. He noted that tolls would be bad for business and for the financial health of local workers and citizens. He also suggested that the proposed I-90 tolling may be for the purposes of paying for the 520 toll bridge.
3. Kristy Tripple, 1595 NW Gilman Blvd., Suite 1, spoke on behalf of Rowley Properties. She indicated that tolling on I-90 would directly impact all citizens and workers in Issaquah. She asked that the City provide the following information for WSDOT's consideration while they conduct the Environmental Impact Statement:
 - Limit tolling of I-90 to the bridge.
 - Treat 520 and I-90 bridges as part of an overall system.
 - Address in the final EIS impact study the equity for all users of the I-90 corridor.
 - Exclude tolling of off-ramps and on-ramps in the City of Issaquah and along the I-90 corridor. It would be inappropriate to toll this corridor and ramps unless every ingress or egress from an Interstate was tolled across the State.
4. Bill Ramos, 385 SE Andrews St., addressed concern about the impact tolling will have on citizens in combination with proposed cuts to bus routes, in particular, Route 214. He noted his support of specific language the City is proposing in its letter to WSDOT relating to the "equitableness to all users of the I-90 corridor."

5. Connie Marsh, 1175 NW Gilman Blvd., Suite B-11, indicated that tolling I-90 would have severe impacts on her store and other businesses. She suggested that people would not drive from other areas to shop in Issaquah if they had to pay a toll. She discussed that bus service/routes would need to increase everywhere to minimize impacts. She noted that a toll bridge would divide the East and West sides.

The Public hearing was closed at 8:15 PM.

(Note: Written comments were received from Matthew Bott, Chief Executive Officer of the Greater Issaquah Chamber of Commerce, and included in the record as Exhibit B.)

Deanne Jacobson

From: Matt Bott <mbott@issaquahchamber.com>
Sent: Tuesday, February 19, 2013 3:40 PM
To: City Council; Ava Frisinger
Cc: Autumn Monahan; Bob Harrison
Subject: I-90 Tolling-Comments for Public Hearing

Dear Mayor Frisinger and Members of the Issaquah City Council,

On behalf of the Greater Issaquah Chamber of Commerce, I am writing to you in regards to the public hearing scheduled for tonight, February 19th, 2013, on the topic of the I-90 Tolling Study and the City's response thereof. I would ask that this email be included as a part of the public record for this citizen outreach.

Adequate transportation infrastructure for local mobility are crucial aspects to maintaining and enhancing Issaquah's economic vitality, business viability/visibility and quality of life. Therefore, the Greater Issaquah Chamber of Commerce fully supports the City's engagement on this issue and urges your continued advocacy for our community's best interests as it relates to the issue of I-90 tolling.

In the Chamber's 2013 Board-approved transportation agenda, developed in collaboration with ten other regional chambers, we specifically mention that "revenues from tolling should be collected and spent on projects for the benefit of those who pay them" thus concurring with the City's proposed language on the topic of preserving toll revenue for the benefit of those paying the tolls. Further, we concur with the City's opposition to the tolling of off-ramps and on-ramps in the City of Issaquah, specifically exit 13, exit 15, exit 17, and exit 18 given the impact to business and our community. It would be inequitable to toll these ramps unless every ingress or egress from an Interstate was tolled across the State. We also join you in requesting that future outreach by WSDOT include a public meeting in Issaquah as these proposed transportation changes will undoubtedly have a profound effect on our community and our local economy.

The Chamber stands with City leaders and countless businesses and individual in our deep concern for this matter. Thank you for the opportunity to share our thoughts and for your continued diligence in monitoring this issue. If there is anything that the Chamber can do to support you in this effort, please do not hesitate to let us know.

Regards,

Matthew B. Bott, MBA
Chief Executive Officer



Helping Local Businesses Succeed By:

- Strengthening the Local Economy
- Promoting Our Community
- Providing Networking Opportunities
- Representing Business to Government

155 NW Gilman Issaquah, WA 98027 mbott@issaquahchamber.com

Phone: (425)-392-7024 Fax: (425)-392-8101

www.issaquahchamber.com [Visit the Chamber on Facebook](#)



City Of Kenmore, Washington

February 22, 2013

John White, Director of Tolled Corridors Development
401 2nd Avenue S, Suite 300
Seattle, WA 98104

RE: I-90 Tolling Project Scoping Comments

Dear Mr. White:

Thank you for your January 31, 2013 letter inviting the City of Kenmore to be a Participating Agency in the environmental process for the I-90 Tolling Project environmental review. I have contacted Angela Angove and she has verified we are considered a Participating Agency.

While the City of Kenmore has already provided you with a copy of our adopted Resolution No. 13-212 regarding our I-90 Project concerns, I have attached it to this letter to ensure it is part of the Scoping record.

As you know, Kenmore is located on the northern shores of Lake Washington and SR 522 goes through our downtown. Our downtown is bordered on the south by Lake Washington and Sammamish River. There is one public Sammamish River crossing in Kenmore on 68th Avenue NE (about one block south of SR 522). SR 522 in Kenmore carries over 50,000 cars per day and 68th Avenue NE over the Sammamish River carries 24,000 cars per day. The population of Kenmore is approximately 21,000.

SR 520 Tolling Impacts

Traffic has increased on SR 522 post tolling of SR 520. The numbers we have seen range from 9-13%. WSDOT does not believe the am/pm peak to be significantly impacted for travelers along the larger Monroe/Woodinville to Seattle SR 522 corridor. This conclusion is an oversimplification of how increased traffic of this magnitude impacts our City. Impacts to Kenmore's residents are real and include increased noise, air pollution, traffic congestion (not just on SR 522 but also on our north-south and east-west local roads), utilization of transit and parking in our neighborhoods. Concurrent with the tolling beginning, the aging West Sammamish River Bridge is now showing increased cracking and tilting where the bridge had been stable since the 1990s.

The City of Kenmore has received no mitigation funding for the tolling of the SR 520 Bridge, yet we have sustained real impacts that affect our residents and businesses.

18120 68th Ave NE · PO Box 82607 · Kenmore, WA 98028

Office: (425) 398-8900 · Fax: (425) 481-3236 · cityhall@kenmorewa.gov
www.kenmorewa.gov

I-90 Tolling Project

The City of Kenmore is concerned about cumulative impacts to our City from regional tolling. We believe it short sighted to continue isolating SR 520 and I-90 as the cross lake corridors when there are four corridors that serve the communities surrounding Lake Washington: SR 522, SR 520, I-90 and I-405. Based on WSDOT's own data, it is clear SR 522 is now utilized by former SR 520 vehicles.

We believe it is unacceptable to use "post SR 520 tolling" traffic levels as the environmental process "baseline" condition for I-90 Tolling Project NEPA review. As part of the justification for tolling I-90 is to raise funds for SR 520 bridge construction (as is tolling of SR 520), WSDOT tolling activity in the region must cumulatively be reviewed. We are also concerned about future tolling projects (Hot Lanes) on I-5 and I-405 and their cumulative impacts to the City of Kenmore. We would like to see all tolling reviewed as part of the I-90 Tolling Project.

We request that all NEPA discipline reports specifically investigate impacts to Kenmore residents and traffic circulation within Kenmore. We specifically request that the following concerns be investigated for Kenmore as part of the environmental review for the I-90 Tolling Project:

- Include the following portions of the City of Kenmore within the Area of Potential Effect (APE) as increased traffic has been experienced and more is anticipated with I-90 tolling: SR 522, 68th Avenue NE, Juanita Drive, NE 170th Street/Simonds Road, and NE 181st Street.
- Impacts to transit ridership (METRO and Sound Transit) and the need for additional parking area and structures.
- Impacts to SR 522 operation. What modifications has WSDOT made to the signals along SR 522 since tolling began? Has any "green time" been taken from north-south movements within the City? Traffic has increased on NE 170th Street/Simonds Road as well as 68th Avenue/Juanita Drive. Traffic backs up northbound and southbound to SR 522 along 68th Ave NE/Juanita worse than before.
- Experienced and expected changes to truck traffic volumes/tonnage along SR 522, NE 170th/Simonds Road, 68th Avenue NE/Juanita Drive has increased and may be a cause in the relatively sudden instability of the West Sammamish Bridge on 68th Avenue NE.
- Evaluate diversion of SR 522 traffic to parallel streets. Specifically NE 181st Street and NE 175th Street.
- How are pedestrians impacted by increased volumes of SR 522?
- How is the community impacted by increased traffic from a noise, air pollution, and stormwater perspective?
- With heavier congestion and volumes, business access is more difficult and our businesses are impacted.

Thank you for the opportunity to provide input into the scoping process. Kenmore residents have sacrificed since incorporation in 1998 to put over \$10 million of our own money (almost \$500 per resident) into SR 522 improvements that benefit the region. We request mitigation for

the impacts from SR 520 tolling and a Kenmore-specific review of impacts and mitigation for the proposed I-90 Tolling Project.

Kenmore's mitigation needs benefit the region. These needs include, but are not limited to: additional transit parking, increased capacity of the south leg of SR 522/68th Avenue NE, replacement/rehab of the West Sammamish River Bridge, SR 522 West B Construction, adaptive signal technology for SR 522 signals including those in close proximity (NE 181st Street, NE 175th Street, and NE 170th Street) to improve community circulation.

We also request that WSDOT provide financial resources to pay Kenmore to secure assistance for technical review of project environmental documents. As a small agency, staff of 28, we do not have the internal ability to do so without financial help.

In conclusion, we would like to stress that we are pleased to be part of the I-90 Tolling Project review. I look forward to working with your team as it moves through the process. We strongly encourage WSDOT to include SR 522 and I-405 in its view of corridors that serve the east-west Puget Sound communities. We also strongly urge WSDOT to review all tolling with the potential to impact the SR 522 corridor at the same time instead of piecemeal.

Please don't hesitate to contact me for additional information. I can be reached at (425) 984-6150.

Sincerely,



Kristen M. Overleese, PE
Director of Engineering and Environmental Services

Encl.

cc: Kenmore City Council
Rob Karlinsey, City Manager

**CITY OF KENMORE
WASHINGTON**

RESOLUTION NO. 13-212

**A RESOLUTION OF THE CITY COUNCIL OF
KENMORE, WASHINGTON, REQUESTING
MITIGATION RESOURCES FROM THE STATE
OF WASHINGTON TO ADDRESS IMPACTS
FROM REGIONAL TOLLING**

WHEREAS, there are four east-west corridors connecting the communities surrounding Lake Washington: SR 522, SR 520, I-90 and I-405;

WHEREAS, the Washington State Department of Transportation has applied tolling to SR 520 and, as a result, the City of Kenmore has experienced increased volumes of traffic on SR 522, the Sammamish River Bridge, and local streets;

WHEREAS, the City of Kenmore has received no mitigation funding as a result of SR 520 tolling impacts;

WHEREAS, the City of Kenmore believes increased traffic resulting from SR 520 tolling has negatively impacted the City with noise pollution, air pollution, increased traffic volumes, increased parking in neighborhoods as a result of increased transit ridership, and increased congestion on north/south and east/west corridors within the City;

WHEREAS, the City of Kenmore believes that tolling of I-90 will result in additional traffic on SR 522 and Kenmore's local streets which will negatively impact traffic flow, public safety, and the quality of life for Kenmore residents;

WHEREAS, the City of Kenmore is concerned that cumulative impacts of Washington State Department of Transportation activity, including tolling, on other Lake Washington east/west corridors will not be evaluated for Kenmore specifically;

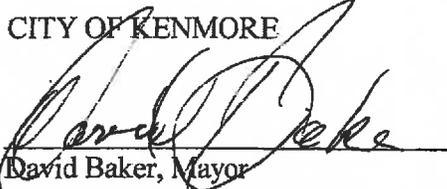
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Washington State Department of Transportation must review the impacts specific to the City of Kenmore that would result from the cumulative impacts of regional tolling: traffic impacts (City-wide, not just east/west along SR 522), air pollution, noise pollution, transit impacts, parking impacts, etc.

Section 2. The City expects mitigation resources from the State of Washington to address impacts from regional tolling. Mitigation measures are likely to include transportation capacity improvements as well as repairs, replacements, and retrofitting of affected transportation structures and systems.

PASSED BY THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, AT A
REGULAR MEETING THEREOF THIS 28th DAY OF JANUARY, 2013.

CITY OF KENMORE



David Baker, Mayor

ATTEST/AUTHENTICATED:



Patty Safran, City Clerk

Mayor
Mary Jane Goss

17425 Ballinger Way NE
Lake Forest Park, WA 98155-5556
Telephone: 206-368-5440
Fax: 206-364-6521
E-mail: cityhall@ci.lake-forest-park.wa.us
www.cityoflfp.com



Councilmembers
Don Fiene
Tom French
Jeff R. Johnson
Sandy Koppenol
Robert E. Lee
Catherine Stanford
John A. E. Wright

October 25, 2013

I-90 EIS Scoping Comments
c/o WSDOT; Angela Angove
999 Third Ave., Suite 2200
Seattle, WA 98104

Re: City of Lake Forest Park I-90 EIS Scoping Comments

Dear WSDOT:

Thank you for the opportunity to comment on the scope of the Environmental Impact Statement (EIS) for the I-90 Tolling Project. As you are aware, Lake Forest Park is a participating agency in the Project. This letter has been discussed and approved by the Lake Forest Park City Council.

Our comments on the scope of the EIS are governed by five principles:

- By law, the EIS must include a reasonably thorough discussion of the significant aspects of the probable environmental consequences of I-90 tolling. This discussion must include an analysis of the impacts of toll avoidance.
- The EIS' discussion of toll avoidance impacts must include an analysis of cumulative impacts, including impacts on area roadways (including SR 522) from current tolling on the SR 520 bridge, and the proposed I-90 tolling.
- The area in which the EIS analyzes toll avoidance impacts must include all of the primary transportation system routes likely to be affected by toll avoidance trips. These include all four major east-west routes: I-90, SR 520, SR 522 and I-405.
- The EIS tolling avoidance impact analysis should not limit its review to the "box" defined only by I-90, SR 520, I-405 and I-5.
- The EIS must identify appropriate and effective mitigation for all of the impacts identified in the EIS tolling avoidance analysis.

These principles are discussed in more detail below.

Toll Avoidance Impacts.

The I-90 Tolling Project involves installation of tolling equipment at both ends of I-90 where it crosses Lake Washington. Typically, a project EIS analyzes the direct impacts of a project itself. With this project, however, experience has shown that the Tolling Project will prompt a substantial number of drivers to avoid I-90. This toll avoidance will have substantial impacts on other areas of

Puget Sound, including but not limited to the City of Lake Forest Park. In order for the EIS to be legally adequate, it must include a reasonably thorough discussion of the probable environmental consequences of I-90 tolling, and this legal standard means that the EIS must include an analysis of the impacts of not just the tolls themselves, but of toll avoidance.

Cumulative Impacts.

Both NEPA and SEPA also requires that an EIS include an analysis of cumulative impacts. For the I-90 Tolling Project, this means that the cumulative impacts analysis must include not only the impacts of avoidance of the I-90 tolls, but of the cumulative impacts of I-90 and SR 520 toll avoidance. Since tolling has been implemented on the SR 520 Bridge, Lake Washington north end communities have experienced increased traffic volumes and congestion on SR 522 and other state and local highways and roads. Intersection safety cameras have shown approximately 7,000 vehicles per day increase in Lake Forest Park to a total approaching 60,000 vehicles since tolling began, which is more than 100% over the original state estimate of impact. News of a recent USDOT study that shows a 20% drop in the use of SR 520 is not surprising. One impact has been stop-and-go morning commutes through Lake Forest Park on SR 522. Yet our City has received little to no mitigation funding as a result of SR 520 tolling impacts, and certainly none that improve the traffic situation. I-90 tolling can be expected to increase the impacts to Lake Forest Park on SR 522. The EIS analysis must address the cumulative impact of combined I-90 and SR 520 toll avoidance.

EIS Impact Study Area

In order for the EIS to contain a reasonably thorough discussion of impacts, the area in which toll avoidance impacts are analyzed must be appropriately sized to take into account all of the primary, likely trip diversion routes. There are four east-west corridors connecting the communities surrounding Lake Washington: SR 522, SR 520, I-90 and I-405. The impacts on all four of these corridors must be considered when evaluating toll avoidance impacts from I-90 tolling.

Tolling of the I-90 Lake Washington Bridge will very likely result in additional traffic on SR 522 and other roads and transportation systems here at the north end of the Lake, as drivers who currently divert south to I-90 to avoid SR 520 tolls decide to divert to SR 522 instead. We are concerned that the cumulative impacts of regional tolling on our north/south and east/west corridors will continue to go unaddressed, especially with the narrow focus of ESHB 2190 and ESSB 5024 in defining the project. The description of the WSDOT I-90 Bridge tolling study mission as defined by the Legislature fails to view transportation as the system that it is and tolling as the system it should be – if tolling is to become the chosen method of funding transportation facilities. Primary commuter routes are not limited to “the box” defined by I-405 and I-5 on the east and west, and I-90 and SR 520 on the north and south. With substantial numbers of commuters driving in from Monroe, Woodinville, Duvall, Bothell and other points northeast, SR 522 has become a primary commuter route for drivers seeking to avoid tolls. A similar phenomenon occurs with I-405 south of the Lake, for commuter traffic originating in Covington, Maple Valley, and other points southeast.

In order for the EIS to be legally adequate, its scope must include an analysis of toll avoidance impacts over all of the likely primary transportation system routes, and these include SR 522 as it passes through the City of Lake Forest Park. We urge the State to review the impacts specific to our north end cities that would result from the cumulative consequences of regional tolling: traffic

volumes and congestion, air pollution, noise pollution, transit, safety, and parking.

Mitigation

Another requirement the EIS must meet is the requirement to identify and discuss appropriate and effective mitigation for impacts disclosed by the EIS. The I-90 Tolling EIS will need to identify and discuss mitigation measures for tolling avoidance impacts, in Lake Forest Park and other jurisdictions. Mitigation measures should include pedestrian and vehicle safety improvements, noise improvements, improved transit and transit access, as well as transportation capacity improvements, repairs, replacements, and retrofitting of affected transportation structures and systems.

While it is not the task of the EIS to actually impose mitigation requirements, please note that at the time of project approval, Lake Forest Park will expect that the State of Washington will provide necessary resources for mitigation needed to address impacts in Lake Forest Park from regional tolling.

Conclusion

Thank you for considering our comments on the scope of the EIS as regional tolling policies are being evaluated. We look forward to thoughtful discussions and evaluations that include our north end cities.

Sincerely,

A handwritten signature in cursive script that reads "Mary Jane Goss".

Mayor Mary Jane Goss
City of Lake Forest Park

February 22, 2013

VIA E-MAIL AND US MAIL

Angela Angove
Washington State Department of Transportation
999 Third Avenue, Suite 2200
Seattle, WA 98104

Re: I-90 Tolling Proposal Environmental Assessment (EA) Scoping Comments

Dear Ms. Angove:

This law firm represents the City of Mercer Island (“City”) as to WSDOT’s proposed tolling of I-90 and the NEPA process associated therewith. We write on behalf of the City to comment on the proposal by the Federal Highway Administration (“FHWA”) and Washington State Department of Transportation (“WSDOT”) to prepare an Environmental Assessment (“EA”) for tolling the Interstate-90 (“I-90”) bridge over Lake Washington.

The City is on record as opposing tolling I-90 for the reasons set forth in Resolution 1402.¹ The purpose of this letter is to comment on the NEPA review for tolling. Therefore, this letter will not repeat the many other arguments based in policy, equity, and the law that inform the City’s opposition, but rather will focus on issues related to NEPA review. As discussed below, taking a hard look at tolling’s environmental effects will demonstrate that the effects are significant and require an EIS, but will also illustrate why FHWA and the state legislature should reject tolling.

These significant environmental effects include regional impacts to a variety of resources, including transportation, air quality, greenhouse gases, and public safety, especially in combination with other tolling plans within the Central Puget Sound Region. In addition, the social and economic impacts to Mercer Island – and other communities – will

¹ Attached as Exhibit A is a copy of Resolution 1402 (adopted Oct. 6, 2008); the City recently re-affirmed this Resolution and its conclusion that the 1976 Memorandum of Agreement (“MOA”) requires that WSDOT must seek the City’s concurrence before modifying the structure and operation of I-90.

lead to significant environmental effects.² The significance of these impacts makes this a controversial action that under NEPA and WSDOT's own guidance requires an EIS. Within the EIS, both WSDOT and FHWA should develop, evaluate, and consider reasonable alternatives that will fulfill both the funding and congestion reduction objectives and mitigate impacts to all residents of the Central Puget Sound Region.

Comments on the National Environmental Policy Act Process

I. Tolling I-90 Will Have Significant Environmental Effects and WSDOT and FHWA Must Prepare an Environmental Impact Statement.

Tolling I-90 will affect a wide range of resources, and impacts on some of those resources will be "significant." NEPA requires preparation of an EIS for a "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (emphasis added). "If there is a substantial question whether an action 'may have a significant effect' on the environment, then the agency must prepare an Environmental Impact Statement." *Center for Biological Diversity v. National Highway Transp. Safety Agency*, 538 F.3d 1172, 1185 (9th Cir. 2008) (remanding for further NEPA analysis). WSDOT's proposal to prepare an EA fails to recognize that its decision to toll I-90 will have significant impacts.

A. Tolling I-90 Will Have Significant Impacts to Transportation and Other Related Resources.

NEPA requires agencies to consider direct effects, which are caused by the action and occur at the same time and place, and indirect effects, which are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. § 1508.8(a), (b). The indirect transportation impacts of tolling I-90 will be

² Supporters of tolling sometimes dismiss such potential economic impacts, particularly as such impacts pertain to Mercer Island. This letter provides facts to demonstrate that such impacts are significant and warrant NEPA's "hard look." For instance, a commuter with a toll each way each workday will pay nearly \$1,750 per year for roundtrip, daily tolls. For a person renting an apartment on the North End of Mercer Island who commutes to Seattle or Bellevue, this is equivalent to a rent increase greater than \$140/month. For a person with a \$40,000 annual income, this amounts to a tax increase greater than 4%. WSDOT's Alaskan Way Viaduct EIS accepted the logic that tolling will change behavior and cause impacts; early returns on the SR-520 tolling experiment appear to prove it. If a 4% tax hike at the upper end of the economic scale is worth a decade of national debate, surely a 4% hike at the family wage level merits at least a study of its impacts. These are not trivial impacts and require thorough analysis before the experiment is extended.

particularly significant in the Central Puget Sound Region highway system³ due to diversion. Both FHWA and WSDOT have previously concluded that tolling (and diversion caused by tolling) can result in potentially significant adverse impacts to transportation resources at a level that requires analysis in an EIS.

The FHWA recently prepared a Supplemental Environmental Impact Statement (“SEIS”) for an analogous project in order to analyze the significance of impacts to transportation.⁴ The Ohio River Bridges project involved the construction of two new bridges between Louisville, Kentucky, and southern Indiana; after the initial FEIS, FHWA proposed tolling as a source of revenue to pay for the construction work. As part of the SEIS, FHWA conducted an extensive transportation impacts analysis covering three parallel bridges in the same region (not all of which would be tolled) and ultimately concluded that interstate users would divert to secondary and local roads to avoid tolls associated with the bridges.⁵

Similarly, WSDOT’s Final Environmental Impact Statement for the Alaskan Way Viaduct Replacement Project also recognized that tolling can cause potentially significant adverse impacts to transportation. The Draft Supplemental EIS and Final EIS analyzed transportation impacts within the Central Puget Sound region and determined that tolling through-traffic on SR 99 (i.e., not cars entering or exiting in downtown) would cause an estimated 40,000 to 45,000 daily trips to shift to I-5 and city streets,⁶ that tolling would increase Vehicle Miles Traveled, Vehicle Hours Traveled, and Vehicle Hours of Delay within the region,⁷ and that the “diverted traffic and increased congestion would have the

³ The study area for this proposal should extend beyond the “Cross-Lake Washington Corridor” described in WSDOT’s materials to include the four-county Central Puget Sound Region (King, Kitsap, Pierce and Snohomish counties) that is the relevant planning unit for state and federal transportation planning purposes. Transportation 2040: Toward a Sustainable Transportation System at i (2010)

<http://www.psrc.org/transportation/t2040/t2040-pubs/final-draft-transportation-2040>. WSDOT used this geographic scope for the Alaskan Way Viaduct Replacement Project traffic analyses. Alaskan Way Viaduct Replacement Project Draft Supplemental Environmental Impact Statement (“DSEIS”) (2010) at 208; Alaskan Way Viaduct Final Environmental Impact Statement (“FEIS”) Appendix IX at 4 (2011).

⁴ 76 Fed. Reg. 8808, 8808 (Feb. 15, 2011).

⁵ Ohio River Bridges Final SEIS at 5-11 (Apr. 2012). For the SEIS, the FHWA consultant prepared a 151-page “Louisville-Southern Indiana Ohio River Bridges: Traffic Forecast” to examine the impacts of tolling on air quality, noise, highway capacity, historic resources, and environmental justice. *Id.*, Appendix H.1.

⁶ Alaskan Way Viaduct DSEIS at 209-214; Alaskan Way Viaduct FEIS, Appendix IV, at 26 (incorporating DSEIS findings into FEIS).

⁷ Alaskan Way DSEIS at 208-09; Alaskan Way FEIS, Appendix IV, at 22-23.

potential to result in effects on the disciplines of environmental justice, historic and cultural resources, air quality, energy and greenhouse gases, and noise.”⁸

The experience with SR-520 also shows that diversion causing significant impacts is likely to happen within the Central Puget Sound Region. Despite WSDOT’s prediction in the SR-520 Variable Tolling EA that transportation impacts due to diversion would be insignificant,⁹ WSDOT’s October 2012 update on SR-520 tolling suggested that SR-520 tolling caused greater diversion than anticipated with a 13% increase in traffic on both SR-522 and I-90. SR-522 thus has received an additional 4,000 cars per day; on I-90, this appears to have imposed an additional 15,000 cars per day.¹⁰ The perceived need to mitigate SR-520’s diversion by tolling I-90 further illustrates the significance of these impacts. Depending on the process required to implement I-90 tolls, temporal overlap in the SR-520 and I-90 tolls may cause even more cars to divert to SR-522 and I-405 to avoid paying tolls. Transportation impacts would also be magnified during SR-520 bridge reconstruction when overall capacity is lower than normal and I-90 provides the only direct access across Lake Washington.

Given the interconnectedness of the highways in the Central Puget Sound Region, severe congestion on SR-522 and I-405 may limit the benefits of reduced congestion on I-90.¹¹ The Alaskan Way DSEIS analysis concluded that all of the toll alternatives under consideration would cause so much diversion to surface streets that vehicle queues would back up on to the SR-99 mainline and degrade SR-99 operations.¹² Given existing congestion, it is likely that tolling I-90 within the geographically larger Central Puget Sound Region will cause similar effects at I-90 interchanges. Regardless of whether WSDOT agrees with the City as to the relative impacts, clearly WSDOT has previously concluded the nature of such impacts are significant; this element of “controversy” merits consideration in an EIS. 40 C.F.R. § 1508.27(b)(4), (5). Whatever the outcome may be, NEPA requires that

⁸ Alaskan Way DSEIS at 223; Alaskan Way FEIS, Appendix IV, at 33-41.

⁹ SR-520 Variable Tolling Project EA at 5-3 (2009) (anticipating a reduction in cross-lake trips overall and predicting that “the regional transportation network . . . is relatively unaffected by the proposed tolling on SR 520”), 5-5 (estimating 1-3% increase in traffic on SR-522 and I-90), 1-3 (predicting “minimal to no noticeable diversion of traffic to SR-522, I-405, and I-5”), 1-7 (no “cumulative effect on travel patterns” because of “existing capacity restraints” and planned construction on I-90).

¹⁰ For context, WSDOT’s January 2012 SR-520 tolling update reported an increase in traffic on I-90 (11% or 15,000 cars), SR-522 (9% or 4,000 vehicles), I-5 (2% or 4,000 vehicles) in downtown Seattle, and I-405 (5% or 10,000 vehicles) in downtown Bellevue.

¹¹ The SR-520 Variable Tolling Environmental Assessment (2009) notes that “all routes that cross or go around Lake Washington operate poorly during peak periods due to congestion; these routes include SR 520, I-90, and SR 522.” *Id.* at 5-3.

¹² Alaskan Way DSEIS at 209; Alaskan Way FEIS, Appendix IV, at 22-23.

WSDOT and FHWA at least perform this analysis.

Other factors counsel in favor of an EIS. For instance, diversion to SR-522 and I-405 may also impact public safety by slowing down emergency responders. Actions that pose a threat to public safety are another factor in the determination of whether to prepare an EIS. 40 C.F.R. § 1508.27(b)(2). Given the already congested nature of the roads within the Central Puget Sound Region, WSDOT and FHWA should consider the “significant” cumulative impacts of tolling I-90 on public safety.

In the same vein, the agencies should also consider the significant accompanying impacts to air quality, greenhouse gas emissions (due to increased Vehicle Miles Traveled, Vehicle Hours of Travel, and Vehicle Hours of Delay), and increased likelihood of accidents in an EIS before deciding whether to impose tolls on I-90. Because other roads in the Central Puget Sound Region are already congested, cumulative impacts can be substantial even if the impacts of the I-90 tolling proposal are minimal.¹³

In addition to these significant impacts, the WSDOT Environmental Procedures Manual explains that the agency should prepare an EIS for projects that are “apt to create substantial public controversy.”¹⁴ In addition to the “controversy” regarding this proposal’s impacts (as described above), the project is also “controversial” in terms of public opposition – several hundred people showed up at a recent public meeting to protest tolling I-90. John White of WSDOT recently spoke at the Mercer Island Chamber of Commerce and noted that the Mercer Island scoping meeting was the largest turnout he had ever seen, even when compared to public meetings for the SR-520 and Alaskan Way Viaduct projects. The I-90 tolling proposal is clearly just as “controversial” as these other projects for which WSDOT prepared EISs, which provides another rationale for WSDOT and FHWA to prepare an EIS instead of an EA.

NEPA also requires preparation of an EIS where a proposed action might adversely affect structures listed on the National Register of Historic Places (“NRHP”). 40 C.F.R. § 1508.27(b)(8). Because the Lacey V. Murrow Bridge is listed on the NRHP, WSDOT and FHWA should closely examine any adverse impacts to the structure or aesthetics of the bridge in an EIS.

¹³ WSDOT Guidance on Preparing Cumulative Impact Analyses at 5 (2008) (“The cumulative impact analysis should focus on . . . resources currently *in poor or declining health* or at risk even if project effects are relatively small”).

¹⁴ WSDOT Environmental Procedures Manual at 300-4 (2012).

Finally, the I-90 tolling proposal has no temporal limitation. This was key to WSDOT's analysis of the SR-520 Variable Tolling Project, and this difference should inform WSDOT and FHWA's evaluation of each element of the environment considered in the NEPA process.

B. WSDOT and FHWA Must Prepare an EIS to Analyze Cumulative Impacts, Including Those Caused by Additional Foreseeable Tolling.

NEPA requires agencies to consider the "cumulative impacts" of an action, i.e., "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.7; *Kern v. Bureau of Land Mgmt.*, 284 F.3d 1062, 1075 (9th Cir. 2002) (noting that both EAs and EISs need to analyze cumulative impacts). Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.7. "It is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now." *Kern*, 284 F.3d at 1075.

Tolling I-90 is one action within an overall plan to impose tolling in the Puget Sound Region on major highways between many communities, including I-405, SR-522 and the mainstem I-5 corridor. Specifically, the Transportation 2040 Plan (the federal Regional Transportation Plan for the Central Puget Sound Region), calls for "additional high-occupancy toll lanes brought into operation in the first decade of the plan" and further calls for partial tolling to fund "major highway capacity projects" with the intent to "manage and finance the highway network as a system of fully tolled facilities."¹⁵ The Plan projects that tolls will increase from \$400 million during the plan's first decade to \$3 billion in the plan's last decade.¹⁶ Chapter 47.56 RCW already authorizes WSDOT to impose tolls on portions of I-5 and I-405,¹⁷ and the Transportation 2040 Plan FEIS clearly depicts all these highway segments (including all of I-5 and I-405 through the Puget Sound Regional Council's four-county planning area) with future tolls.¹⁸ These other tolling actions under the plan are reasonably foreseeable and their cumulative impacts must be reviewed in the I-90 EIS. 40 C.F.R. § 1508.7.

As WSDOT noted in its January 11, 2013 letter commenting on the Gateway Pacific Terminal, "[I]t will be important for the EIS to evaluate the cumulative effects to the state's

¹⁵ Transportation 2040 at 47 (emphasis added).

¹⁶ *Id.* at 44 (Figure 23).

¹⁷ RCW 47.56.890 (authorizing toll on existing I-5 bridge over Columbia River); RCW 47.56.880 (authorizing tolls on express lanes in I-405 corridor).

¹⁸ Transportation 2040 Final Environmental Impact Statement ("FEIS") at 3-39 (2010). Exhibit 3-17 (attached to this letter as Exhibit B) is an illustration of the "Preferred Alternative Tolling Scenario."

transportation system of this proposal in light of other similar proposals.”¹⁹ Perhaps the most striking deficiency in WSDOT's environmental review proposal is its disregard for the cumulative impacts of the tolling proposed in the region's adopted plan. Clearly this is a proposal where the system-wide cumulative effects of similar tolling proposals as outlined in "Transportation 2040" should be examined in one project specific EIS now that a specific proposal is on the table.²⁰

C. Tolling I-90 Will Have Significant Local Impacts to Social and Economic Resources on Mercer Island.

The effects analysis extends to social and economic impacts where such impacts are interrelated with natural and physical effects. 40 C.F.R. § 1508.14; *City of Rochester v. U.S. Postal Service*, 541 F.2d 967, 973-74 (2d Cir. 1976) (remanding for preparation of an EIS where U.S. Postal Service failed to consider “substantial environmental effects” such as increasing commuter traffic by car; loss of job opportunities; departure of residents to other communities; and the ultimate economic and physical deterioration of the community); *see also Trinity Episcopal School Corp. v. Romney*, 523 F.2d 88, 93-94 (2d Cir. 1975) (noting that NEPA “must be construed to include protection of the quality of life of city residents” and criticizing the agency for failing to consider the proposed action’s effects on urban factors such as traffic; parking; neighborhood stability; implications for the city's growth policy; and overall urban decay). WSDOT itself has called for agencies conducting NEPA analyses to “assess economic benefits and impacts . . . to local and state economies.”²¹ The City believes that these impacts require preparation of an EIS, but also asks that regardless of the form of the NEPA analysis, WSDOT and FHWA should address these social and economic impacts during the NEPA process.

Tolling I-90 will significantly impact social and economic resources on Mercer Island and it is reasonably foreseeable that these social and economic impacts will lead to the environmental degradation of Mercer Island. Tolling I-90 will make Mercer Island less attractive to businesses, residents, and employees. In the long-term, this could lead to vacancies in commercial and residential property and undermine the City’s efforts (consistent

¹⁹ Letter from Stephen T. Reinmuth, WSDOT, to GPT/BNSF Custer Spur EIS Co-Lead Agencies, re: Gateway Pacific Terminal Environmental Impact Statement Scoping Comments (Jan. 11, 2013) (hereinafter “WSDOT Letter (Jan. 11, 2013)”).

²⁰ The Transportation 2040 FEIS only analyzed alternatives which included some form of tolling or user fees, which provides no basis for the relevant comparison here. Transportation 2040 FEIS at 3-6. *See also* Alaskan Way Viaduct DSEIS at 206 (recognizing that “[a]s appropriate for long-range Regional Transportation Plans, the *Transportation 2040 Final EIS* did not identify specific impacts from tolled projects or cumulative impacts from multiple tolled projects occurring at once.”).

²¹ WSDOT Letter (Jan. 11, 2013).

with the Growth Management Act) to create a vibrant economic town center that is integrated with the region and will accommodate a certain level of anticipated growth. WSDOT and FHWA should prepare an EIS to analyze how these significant impacts to businesses, community cohesion, and real estate values will weaken the tax base of the Mercer Island City and School District, modify land use, and degrade the physical environment on Mercer Island. *See West 514 v. Spokane Cty.*, 53 Wn. App 838, 847-48, 770 P.2d 1065 (1989) (recognizing need for EIS under the State Environmental Policy Act (SEPA) to analyze blight impacts of regional shopping center on downtown of city); WAC 197-11-444(2)(b) (including land use as an “element of the environment” which requires analysis under SEPA).

Because there is no public access to Mercer Island other than I-90, WSDOT and FHWA should carefully consider the many ways in which tolling I-90 will have significant effects on community cohesion and the Mercer Island economy as discussed below.

Impacts to the City, School District, and Mercer Island Businesses

WSDOT and FHWA should analyze the average cost that tolling I-90 would impose on employees of the City of Mercer Island, the Mercer Island School District, and a variety of Mercer Island businesses. Employees might have to pay just to get to work,²² while employees of Seattle and Eastside businesses have the option of diverting to I-405 and SR-522. The Island hosts a wide variety of businesses ranging from Farmers Insurance to the numerous day care facilities and private schools scattered all over the Island; many of these employees live off-Island. For full time employees who work on Mercer Island, this amounts to an annual pay cut in the thousands of dollars and a disproportionate contribution toward the SR-520 bridge. For tutors and coaches who might spend 2-3 hours on the Island at a time for fairly limited wages or employees of day care facilities and service-oriented businesses (e.g., Starbucks), paying the toll constitutes an even larger pay cut. Simple economics suggests that Island employers will have to subsidize the tolls for their employees, raise salaries, or accept that it will be difficult to attract and keep good employees.

The City and School District would be in a similar position. Nearly all City employees (218 of 225 employees) and roughly two-thirds (333) of School District employees live off Island. The School District Board of Directors recently estimated that it would cost the District \$500,000 to cover the cost of the toll for the 180 school days per year, which assumes a relatively low toll (the same rate currently imposed on SR-520) and does not include summer-time teacher training. Assuming the same toll rate and 240 working days per year (i.e., excluding two weeks of vacation and ten days of public holiday), the City can either spend more than \$375,000 per year to do the same or ask each of its employees to assume more than \$1,700 per year in additional commuting costs. Like Mercer Island

²² The SR-520 peak hours toll is currently \$7.18 per day round-trip.

businesses and the School District, the City would have to divert money from operations and capital improvements just to retain current employees.

WSDOT and FHWA should also analyze the average cost (e.g., decline in revenue, reduced competitiveness vis-à-vis off-Island businesses) that tolling I-90 would impose on Island businesses and City revenues. Imposing an I-90 toll will increase the cost of raw materials and the cost of shipping finished products; these changes will affect the bottom line of every business on the Island. The toll will also make it difficult for businesses on the Island to attract consumers and clients from off Island. This includes a wide variety of service and food establishments which might otherwise attract customers from Seattle or Bellevue, medical and other professionals whose clients span the Puget Sound region, and the Mercer Island Youth and Family Services (“MIYFS”) Thrift Store. In the case of the Mercer Island Community Event Center, which hosts weddings, fundraisers, and a wide variety of other large-scale events, the toll will reduce the Center’s utilization rate (and the City’s revenue) if organizers have to ask their guests to pay several dollars in tolls just to attend the event. Limiting access to the Island will hit certain types of organizations particularly hard, including Youth Theatre Northwest, the Jewish Community Center and other groups that offer entertainment and services.

WSDOT and FHWA should consider the effect of these social and economic impacts on real estate occupancy rates on Mercer Island. A small percentage of commercial real estate on Mercer Island is currently unoccupied due to the recession; the toll (and its related economic impacts to businesses) will make Mercer Island less attractive to businesses currently on the Island. In the long term, tolling I-90 will make it more difficult to fill the existing vacancies and draw new businesses to Mercer Island businesses to replace the ones which choose to leave.

Impacts to Mercer Island Residents

WSDOT and FHWA should estimate the average cost of tolling for Mercer Island households, especially the most financially vulnerable households, and prepare data that permits comparison to other communities in the region. By our rough calculations, Mercer Island makes up only 3% of the households in the region, but may end up paying for 20% of the remaining SR-520 bridge funding.²³ Indeed, some families estimate that imposing a \$4 toll will cost them more than \$5,000 per year. This is an exorbitant amount for Mercer Island residents to pay, especially given the inaccessibility of the SR-520 bridge.

Tolling will impose an even more disproportionate burden on Mercer Island residents

²³ The population of Mercer Island comprises 3% of the 700,000 people who live in Bellevue, Mercer Island, and Seattle, and Islanders’ trips are roughly 20% of the total trips across the I-90 bridge.

who live on a fixed income. For instance, roughly 20% of Mercer Island's 23,000 residents are 65 years of age or older (compared to 12% of King County's population). Mercer Island's population is not large enough to host as wide a variety of medical professionals as Seattle and Bellevue, so residents must leave the Island to obtain critical services. For those elderly residents who live on a fixed income and rely on automobile access to their off-Island doctors, tolling I-90 at a level equivalent to SR-520 would present a serious hardship.

Similarly, tolling will cause a decline in revenue for the MIYFS Thrift Store, which sells gently used, high-quality items and uses the proceeds to fund mental health counseling, school counselors, emergency assistance, and other human services programs for low-income Mercer Island residents. More than 200 households sought the MIYFS's food bank and emergency financial services in 2012. We estimate that roughly 35% of the Thrift Shop's customers come from off-Island. Imposing a toll will make it less attractive for bargain-hunters to visit the Thrift Shop, and thus negatively impact MIYFS services and the low-income Mercer Island residents it supports.

WSDOT and FHWA should evaluate the social and economic impacts of reduced access to off-Island establishments (e.g., performing arts venues, sporting venues, civic events, museums, recreational opportunities and shopping). While Mercer Island is a distinct community, it considers itself a part of the greater Puget Sound region and its residents enjoy the opportunities offered in neighboring cities. Tolling I-90 means that Mercer Island residents cannot access any of these amenities without paying a toll, unlike every other community in the Puget Sound which has untolled alternate routes.

Impacts to Non-Residents and Island Establishments Which Attract Non-Residents

WSDOT and FHWA should evaluate and attempt to quantify the economic and social impacts for the religious and educational institutions which currently attract off-Island visitors and low-income individuals who patronize these establishments (e.g., reduced attendance or decline in revenue or donations). For instance, Mercer Island hosts a synagogue serving much of the Puget Sound area, and many churches on the Island draw from populations in neighboring communities. Mercer Island Presbyterian Church has historically partnered with churches in low-income regions throughout the Puget Sound region. Depending on personal financial resources, tolling will discourage and impair some individuals from observing their religious beliefs with other members of their communities. Consider this simple fact -- a daily or weekly two-way toll on an annual basis would be a significant part of the collection plate or the charitable donation for many who commute to religious institutions.

Mercer Island also hosts private schools such as Northwest Yeshiva High School, the French American School, and various pre-schools that attract off-Island students. Roughly 70% of the students from St. Monica's Parish School come from off Island, as do 30% to

50% of students at various preschools. At the French American School, a full quarter of the students at the French American School receive a scholarship (up to a 90% discount on tuition). Tolling I-90 could interfere with the ability of a low-income family to take advantage of these educational opportunities and impair the ability of these institutions to thrive on Mercer Island.

WSDOT and FHWA should comprehensively analyze the significant social, economic, and environmental impacts in communities east and west of the I-90 bridge due to the toll severing this important arterial. WSDOT itself recently advocated a broad geographic scope of NEPA review for a proposed action that it believed would have widespread impacts to the transportation system and other resources.²⁴ While the cities in the Central Puget Sound Region are diverse, our communities are integrated in many ways. Tolling I-90 will have the effect of increasing distances between the cities, particularly for the elderly and individuals of modest means (e.g., students). For instance, residents of both Mercer Island and Seattle frequently use I-90 to access the extensive wilderness recreation areas, and many of those individuals volunteer to restore and maintain those resources. Some communities east of the bridge rely heavily on the economic contributions of these avid hikers, bikers, and conservationists. Tolling I-90 will hamper habitat restoration efforts, reduce social benefits to the volunteers, deter recreation-related tourism, further burden the state and federal agencies who rely heavily on volunteers to maintain wilderness areas for recreation purposes, and ultimately the direct social and economic impacts will lead to indirect environmental impacts. If crossing the bridge in the opposite direction, tolls will discourage residents of east-side communities from accessing the many educational and cultural resources in Seattle. Impacts to social, economic, and natural resources will extend both east and west of the I-90 bridge over Lake Washington.

In sum, WSDOT and FHWA should thoroughly examine the scope and extent of these impacts during its NEPA review. Moreover, because the impact to social and economic resources is likely to cause significant environmental degradation within the local context of Mercer Island, WSDOT and FHWA should analyze these impacts in detail in an EIS and strongly consider mitigation measures that preserve “equitable and dependable access.”

²⁴ WSDOT Letter (Jan. 11, 2013).

II. WSDOT and FHWA Must Consider a Reasonable Range of Alternatives.

NEPA requires agencies to consider all reasonable alternatives. *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 198 (D.C. Cir. 1991). The purpose of the I-90 tolling project is currently defined to include: (1) raise revenue for substantial transportation improvements in the “Cross-Lake Washington Corridor”; and (2) help alleviate congestion on I-90 between I-5 and I-405.²⁵ As currently drafted, this combination of purposes sharply limits the alternatives analysis. *Id.* (“An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action, and the EIS would become a foreordained formality.”).

A. *The No Action Alternative Should be Reviewed As a Valid Policy Choice.*

NEPA requires review of the No Action Alternative. 40 C.F.R. § 1502.14(d). Careful review of the No Action Alternative is particularly warranted here for two reasons. First, the 1976 Memorandum of Agreement is based on the understanding that I-90 is the only public access to Mercer Island. WSDOT and the FHWA recognize the Agreement as an “existing commitment” and part of the “local transportation planning process.” Second, the policy alternative of not tolling the system, or its parts, was not analyzed in the Transportation 2040 Plan and Final Environmental Impact Statement²⁶ and it is critical for the legislature to have an accurate understanding of the No Action Alternative and its impacts so that it can understand the changes that tolling would create. *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972) (“NEPA was intended to provide a basis for consideration and choice by the decisionmakers in the legislative as well as the executive branch”). While it should be no surprise that the City continues to fight to ensure “equitable and dependable access” to the Island, it is important to recognize that NEPA, properly done, will enable the legislature to fully consider issues of equity and access for the system as a whole, by providing information that allows a meaningful comparison of the No Action Alternative to other options.

B. *The Alternatives Should Include Different Combinations of Revenue Tools in Transportation 2040.*

As a threshold matter, even if the narrow purpose statement is accepted, this does not limit the scope of environmental review to various tolling options. WDOT and FHWA are required by law to examine the range of reasonable alternatives, *Headwaters, Inc. v. Bureau of Land Mgmt.*, 914 F.2d 1174, 1180 (9th Cir. 1990) (in evaluating whether an agency considered a reasonable range of alternatives, “the touchstone for our inquiry is whether an

²⁵ WSDOT Scoping Notice (Jan. 24, 2013).

²⁶ See Transportation 2040 FEIS at 3-6 (noting that all Plan alternatives include tolling).

EIS's selection and discussion of alternatives fosters informed decision-making and informed public participation.”), and there are clearly other reasonable mechanisms for raising revenue and/or alleviating congestion.

Instead, WSDOT and FHWA should consider alternatives which combine mechanisms for funding and reducing congestion on I-90. This is consistent with WSDOT's recent recommendation that the U.S. Army Corps of Engineers should conduct an expansive alternatives analysis for the construction of the Gateway Pacific Terminal in Bellingham, WA.²⁷ To address potential transportation impacts to the Edmonds ferry, WSDOT suggested that the Corps should analyze the reasonable alternative of relocating the ferry terminal.²⁸ At the very least, WSDOT and FHWA should analyze the impacts of tolling on Mercer Island's many Seattle-region educational facilities, including St. Monica's Parish School, Northwest Yeshiva High School, and the French-American School, and develop alternatives that would mitigate such impacts.

The City of Mercer Island asks for examination of less extreme alternatives here. The Puget Sound Regional Council (“PSRC”) issued the “Transportation 2040” Plan in order to guide regional transportation planning for the four-county Central Puget Sound Region (King, Kitsap, Pierce and Snohomish counties).²⁹ The Transportation 2040 Plan relies on several funding options – not just tolling – and explicitly includes continuation of and expansion upon the traditional financing scheme (retail sales tax, fuel sales tax, etc.).³⁰ Another alternative could be imposition of a gas tax, as recently proposed in the Washington House of Representatives.³¹ This recent legislative activity – and the requirement of legislative approval for the proposal and any alternatives thereto – makes it especially important that WSDOT and FHWA analyze traditional funding mechanisms in the NEPA process. *Natural Resources Defense Council v. Morton*, 458 F.2d at 837.

C. The Alternatives Analysis Should Include Different Levels of Tolls and Different Geographic Coverage.

To the extent that WSDOT and FHWA proceed with tolling, the agencies should follow the Transportation 2040 Plan, which explicitly recognizes the need for a “nexus” between the road being tolled and the road being improved.³² For the near-term “high-occupancy toll lanes and individual facility toll financing” contemplated in the

²⁷ See WSDOT Letter (Jan. 11, 2013).

²⁸ *Id.*

²⁹ Transportation 2040 at i.

³⁰ *Id.* at 45.

³¹ Andrew Garber, *House Democrats to Propose \$6 Billion Transportation Package*, THE SEATTLE TIMES (Feb. 12, 2013).

³² Transportation 2040 at 45.

Transportation 2040 Plan, the Plan anticipates that such “toll revenues are essentially dedicated to making the investments in these corridors possible.”³³

Alternatives might, for example, combine tolls on the new SR-520 bridge (after construction) and other congestion relief methods for I-90. *N. Buckhead Civic Ass'n v. Skinner*, 903 F.2d 1533, 1542 (11th Cir. 1990) (“a discussion of alternatives that would only partly meet the goals of the project may allow the decisionmaker to conclude that meeting part of the goal with less environmental impact may be worth the tradeoff with a preferred alternative that has greater environmental impact”); *Town of Mathews v. U.S. Dep't of Transp.*, 527 F. Supp. 1055, 1057 (W.D.N.C. 1981) (invalidating alternatives analysis because NEPA “does not permit the agency to eliminate from discussion or consideration a whole range of alternatives, merely because they would achieve only some of the purposes of a multi-purpose project.”). WSDOT and FHWA should analyze the transportation impacts of such an alternative; some combination of congestion relief and the forthcoming I-90 HOV lanes may sufficiently alleviate congestion to make other (more equitable) funding mechanisms viable.

The Transportation 2040 Plan also recognizes that broad geographic tolling (i.e., including all of the I-450 lanes, I-5, and SR-522) would be more effective at balancing revenue and impacts.³⁴ WSDOT and FHWA should consider imposing lower tolls on more roads within the Central Puget Sound Region to meet the stated purposes, be more consistent with the Transportation 2040 Plan, and spread burdens more equitably between Central Puget Sound Region communities.

D. The Alternatives Analysis Should Thoroughly Explore Subalternatives to Mitigate Impacts to Mercer Island.

To the extent that WSDOT and FHWA proceed with tolling, the agencies should carefully consider options that balance the burden between Mercer Island residents and employees and those who directly benefit from replacement of the SR-520 bridge. As WSDOT knows, there are many potential refinements – or subalternatives – within the tolling alternative that should also be examined carefully:

1. Segmented Tolls
2. Only pay the toll if you drive the entire bridge (e.g., placement of gantries at east and west ends of bridge; no charge unless a car passes both gantries)

³³ *Id.* at 48 (“Guidance on the Use of Tolling Revenues”).

³⁴ Transportation 2040 at 46 (“Generally, the effectiveness of congestion tolling is the greatest with broad geographic coverage. Broader coverage can reduce the problem of diverted traffic: traffic that is ‘tolled-off’ the priced facility and now is using and congesting other roadways.”).

3. Only pay the toll if you drive in a designated direction
4. Pay no more than one toll per day
5. Pay tolls only when returning to Mercer Island
6. Provide an annual pass (cap) for tolls paid by Mercer Island residents and employees
7. Reduced toll for trips only to/from Mercer Island

The NEPA document should also acknowledge that depending on how tolling is implemented, Mercer Island residents will not necessarily have the same access to transit options to mitigate these impacts. WSDOT's own data show that unlike park and ride spaces in Bellevue, Kirkland or Sammamish, over one half of the spaces are used by non-Mercer Island commuters that travel to the Island. Depending on how WSDOT implements tolling, this problem may worsen if commuters park on the Island and switch to the bus or light rail in order to avoid paying the toll. Thus, the provision of park and ride spaces does not necessarily provide dependable or equitable access to Mercer Island residents who are unable to use the majority of spaces and have no access to such spaces after approximately 7:30 a.m. when the lot is full. Depending on the extent to which WSDOT and FHWA's implementation of tolling minimizes impacts to the City and its residents, the EA or EIS should provide for mitigation to offset the disproportionate impacts to Mercer Island residents.

Conclusion

- Under NEPA, agencies must prepare an EIS where there is a "substantial question" that an action's effects will be significant. In prior EISs, WSDOT and FHWA recognize that tolling causes diversion and the impacts of such diversion can be significant (and thus require preparation of an EIS). The City has provided more than enough information to show that diversion is likely to have significant impacts in the Central Puget Sound Region; WSDOT and FHWA should prepare an EIS.
- The proposal to toll I-90 is merely one action in a menu of transportation choices laid out – but not thoroughly analyzed for NEPA purposes – in the Transportation 2040 Plan and FEIS. This proposal presents the perfect opportunity for WSDOT and FHWA to fulfill their obligations under NEPA to fully examine the cumulative impacts of tolling I-90 and other roads in the Central Puget Sound Region.
- Tolling I-90 will cause a wide range of social and economic impacts which are likely to cause environmental degradation in the long term. WSDOT has advocated in favor of an expansive review of economic impacts to the state and local economies for other projects, and the City of Mercer Island requests that WSDOT and FHWA prepare an EIS to analyze these impacts here.

- WSDOT and FHWA should consider a reasonable range of alternatives, which must include a full analysis of the No Action alternative, different combinations of revenue tools in the Transportation 2040 Plan, different levels and geographic scope of tolling options, and sub-alternatives that mitigate impacts to Mercer Island and other Central Puget Sound residents.

The City of Mercer Island looks forward to further discussions regarding solutions that meet the State's funding needs, preserve "equitable and reliable access" to Mercer Island, and address congestion on I-90. Thank you for the opportunity to participate in the National Environmental Policy Act ("NEPA") process.

Very truly yours,

K&L GATES LLP

By

William H. Chapman

A handwritten signature in black ink, appearing to read "W. H. Chapman", written over the printed name.

EXHIBIT A

**CITY OF MERCER ISLAND
RESOLUTION NO. 1402**

**A RESOLUTION OF THE CITY OF MERCER ISLAND, WASHINGTON
REGARDING TOLLING ON LAKE WASHINGTON BRIDGES.**

WHEREAS, the geographic position of Mercer Island, separated from the mainland on all sides, means those who live and work on the Island cannot leave their community without using I-90; and

WHEREAS, if tolls are imposed on the I-90 bridges, Mercer Island residents, unique among all others in the Puget Sound region, would have to pay a fee penalty each time they traveled to or from their city; and

WHEREAS, Mercer Island is a small and primarily residential community of 22,000, with limited medical care, other professional services, retail and entertainment opportunities on the Island, thereby requiring access to the mainland to fulfill the needs and obligations of daily living; and

WHEREAS, if a proposal to toll I-90 across Lake Washington is advanced, the Department of Transportation and Washington State Transportation Commission are obliged under the terms of paragraph 14 of the 1976 Memorandum of Agreement to “take no action which would result in a major change in either the operation or the capacity of the I-90 facility without prior consultation with and the involvement of the other parties [to the Memorandum of Agreement], with the intent that concurrence of the parties be a prerequisite to Commission action to the greatest extent possible under law.”

WHEREAS, The Washington State Highway Commission originally approved 10 lanes for I-90, 4 general purpose lanes west bound, 2 transit lanes, and 4 general purpose lanes east bound (4-2T-4); and

WHEREAS, both the original and amended I-90 Environmental Impact Statements (EIS) were based on this configuration; and

WHEREAS, Mercer Island was projected to generate almost one full lane of traffic into Seattle; and

WHEREAS, Mercer Island has already made significant sacrifices in agreeing to give up the 4th general purpose lane for the right of Mercer Island traffic to use the transit lanes on a third priority basis

WHEREAS, the I-405 final environmental impact statement (FEIS) approved on June 10, 2002 and issued on June 28, 2002 is a comprehensive analysis studying the major transportation corridors east of I-5 and including the operation of I-90; and

WHEREAS, the I-405 Corridor Program Record of Decision documents the FEIS as approved by 24 agencies; and

WHEREAS, the Mercer Island City Council has consistently asserted the City's right and responsibility to protect Island residents, businesses and visitors from degradation of their mobility to and from the Island; and

WHEREAS, plans are now underway to replace the failing SR 520 bridge across Lake Washington, and \$1.5 to \$2 billion more is needed to fund the bridge replacement project; and

WHEREAS, roadway tolling has been identified as one of the possible revenue sources for the needed project funding; and

WHEREAS, tolling SR 520 in order to generate revenue to fund replacement of the 520 bridge places the responsibility for payment on those who actually use 520, but tolling I-90 to help fund 520 places a burden on those who do not and will not directly benefit; and

WHEREAS, the 520 Tolling Implementation Committee appointed by the State Legislature is charged with evaluating the feasibility of raising the needed funds through tolling on 520 and possibly also tolling on I-90; and

WHEREAS, the Tolling Committee's initial evaluation results indicate that more than enough revenue would be collected if I-90 were tolled in addition to 520 given the initial toll rate assumptions; and

WHEREAS, these initial evaluation results also show only a small diversion of traffic from SR 520 to I-90 if tolls are collected on SR 520 alone; and

WHEREAS, the Tolling Committee is also evaluating the "reasonableness" of tolls that might be imposed on one or both of the cross-Lake Washington bridges, and reasonableness includes the concept of equity; and

WHEREAS, the citizens and businesses of Mercer Island will be uniquely and unfairly impacted if tolls are exacted on their travel to and from their community; and

WHEREAS, tolling I-90 to pay for a new SR-520 bridge would place a disproportionate share of the costs on Mercer Island residents

WHEREAS, under State and Regional Growth Management principles all jurisdictions must achieve a balance between housing and employment, and for Mercer Island this requires daily in-migration of employees, and tolls on I-90 would be a material barrier to achieving this important goal; and

WHEREAS, the 520 Tolling Implementation Committee has requested input on their initial evaluation results from all affected communities and their elected representatives,

NOW THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Mercer Island as follows:

SECTION 1.

Any proposal to toll I-90 across Lake Washington would constitute an action resulting in a major change in the operation and capacity of the I-90 facility and therefore would trigger the consultation and concurrence provisions contained in paragraph 14 of the Memorandum of Agreement.

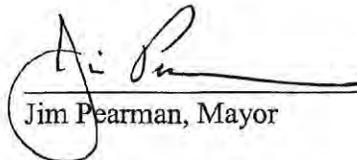
SECTION 2.

Both the continuous HOV lanes planned for construction between Seattle and Bellevue and across Mercer Island on I-90 (R8A) and the consultation and concurrence prerequisites of the Memorandum of Agreement must be completed prior to implementation of tolling on I-90.

SECTION 3.

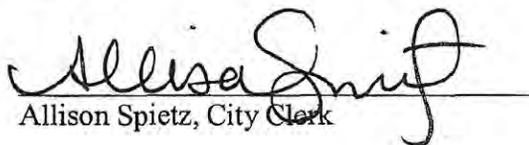
Tolls must not be imposed on travel to and from Mercer Island on I-90, the only means of public access to and from the Island.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AT ITS REGULAR MEETING ON THE 6th DAY OF OCTOBER, 2008.



Jim Pearman, Mayor

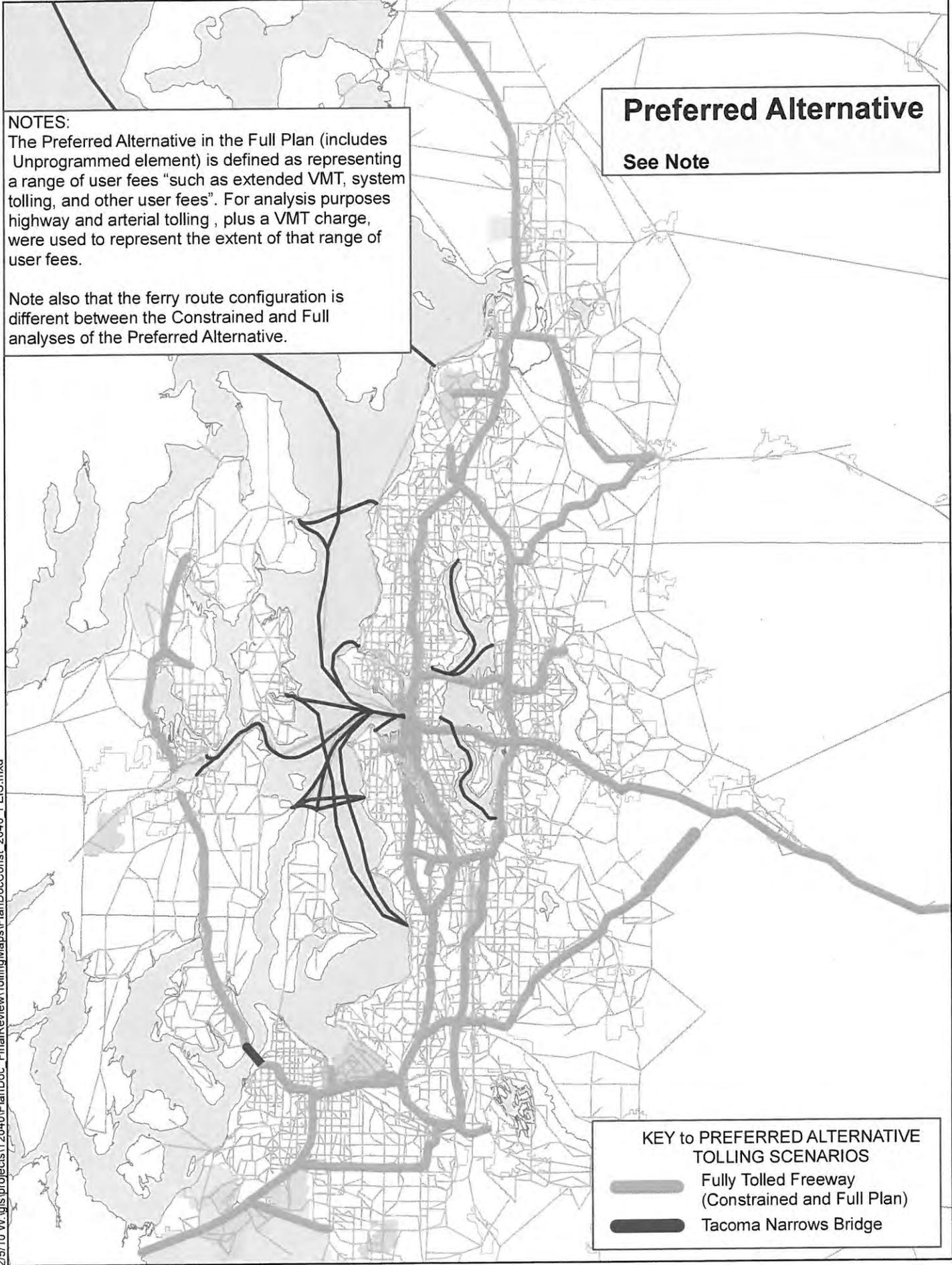
ATTEST:



Allison Spietz, City Clerk

EXHIBIT B

Exhibit 3-17 Preferred Alternative Tolling Scenario



NOTES:
The Preferred Alternative in the Full Plan (includes Unprogrammed element) is defined as representing a range of user fees "such as extended VMT, system tolling, and other user fees". For analysis purposes highway and arterial tolling , plus a VMT charge, were used to represent the extent of that range of user fees.

Note also that the ferry route configuration is different between the Constrained and Full analyses of the Preferred Alternative.

Preferred Alternative
See Note

KEY to PREFERRED ALTERNATIVE TOLLING SCENARIOS

- Fully Tolloed Freeway (Constrained and Full Plan)
- Tacoma Narrows Bridge

November 6, 2013

William Chapman
bill.chapman@klgates.com**VIA Email and US Mail**Angela Angove
Washington State Department of Transportation
999 Third Avenue, Suite 2200
Seattle, WA 98104

Dear Ms. Angove:

This law firm represents the City of Mercer Island (“City”) with respect to the Washington State Department of Transportation’s (“WSDOT”) proposal to toll Interstate 90 (“I-90”) and the associated National Environmental Policy Act (“NEPA”) / State Environmental Policy Act (“SEPA”) review.¹ We write on behalf of the City to provide additional comments on the expanded scope of review.

The City continues to oppose tolling I-90. As with its February 22, 2013 scoping letter, however, the City’s comments will focus on helping WSDOT to develop a comprehensive Environmental Impact Statement (“EIS”) sufficient to withstand judicial review under NEPA or the SEPA.

As a participating agency, the City looks forward to working with WSDOT and Federal Highway Administration (“FHWA”) on development of an EIS that thoroughly analyzes the environmental impacts of tolling I-90 and all reasonable alternatives, including significant diversion-related impacts to transportation, water quality, greenhouse gases, public health and safety, and air quality. While this letter points to certain alternatives that it believes could have less environmental impact, the City does not endorse any particular alternative. Instead, the City’s goal is that the EIS will explore in detail all funding alternatives (as per Engrossed Substitute Senate Bill (“ESSB”) 5024)) and all reasonable alternatives (as required by NEPA).

EXECUTIVE SUMMARY

The City expressly incorporates its comments from the February 22, 2013 scoping letter attached hereto for WSDOT’s convenience. *See* Attachment A. These comments build on the

¹ WSDOT has stated its intent to adopt the EIS to meet its SEPA obligations. WSDOT, I-90 Tolling Project: Scoping Summary Report, at 3 (July 2013).

City's earlier comments but also reflect its concerns with the revised purpose and need statement and scoping materials.

- WSDOT should modify the purpose and need statement to reflect the Legislature's intent in ESSB 5024 to mitigate impacts to "affected residents" and identify alternative funding sources for the SR-520 Bridge Replacement and HOV Program ("SR-520 Project").
- NEPA and SEPA require WSDOT to consider all reasonable alternatives, and failure to analyze a reasonable alternative is grounds for invalidation of an EIS. ESSB 5024 directs WSDOT to examine "all funding alternatives." WSDOT's summary matrix of preliminary alternatives suggests that despite ESSB 5024, the agency is taking a narrow view of "reasonable" alternatives. However, an alternative may be "reasonable" even if it satisfies only some of the purposes of a multi-purpose project. In order to help identify all "reasonable alternatives," this comment letter provides a list of known funding alternatives for transportation infrastructure, as well as additional background on funding mechanisms which it believes are likely to illustrate a range of environmental impacts and facilitate informed decision-making.
- NEPA and SEPA require WSDOT to analyze and disclose all significant environmental impacts, wherever they might occur. Given the likelihood of diversion to other routes, the study area for this EIS should encompass the entire Central Puget Sound Region ("CPSR"). This would also be consistent with ESSB 5024, which expressly directed WSDOT to study environmental impacts on the network of roads and highways around Lake Washington.

I. The "Purpose and Need" Statement Is Inconsistent with ESSB 5024.

The Washington Legislature directed WSDOT to "prepare a detailed environmental impact statement that complies with the national environmental policy act regarding tolling Interstate 90 between Interstate 5 and Interstate 405 for the purposes of both managing traffic and providing funding for the construction of the unfunded state route number 520 from Interstate 5 to Medina project." ESSB 5024.

From this language, WSDOT extrapolated the following purpose and need for tolling I-90: (1) "manage congestion and traffic flow on I-90 between I-5 and I-405, which is in the Cross-Lake Washington Corridor" and (2) "contribute revenues to the sustainable, long-term funding for timely completion of the SR 520 Bridge Replacement and HOV Program and maintenance and future transportation improvements on I-90 in the Cross-Lake Washington Corridor."² This description of the purpose and need for tolling I-90 is inappropriately narrow and inconsistent with ESSB 5024.

² WSDOT, I-90 Tolling Project: Purpose and Need Statement (July 18, 2013), http://www.wsdot.wa.gov/NR/rdonlyres/F6C93F1B-3C6C-4589-BF13-ACEE6F4F8052/0/Revised_Purpose_and_Need_I90Tolling20130718.pdf.

A. WSDOT Should Revise the Purpose and Need Statement to Address ESSB 5024's Concerns about Disproportionate Impacts.

Senator Steve Litzow and Representative Judy Clibborn – sponsors of the bill that ultimately passed as ESSB 5024 – recently weighed in on WSDOT's interpretation and its failure to reflect the legislative intent behind ESSB 5024.³ The purpose of ESSB 5024 was to ensure that certain “affected residents” (i.e., those who rely on I-90 to access employment and necessary medical care) would not bear a disproportionate share of impacts. Thus, WSDOT should modify the purpose and need statement to include “(2) identify a fair and equitable source of revenue for the completion of the SR 520 Bridge Replacement and HOV Program.”

The City also believes that the purpose and need statement should also focus on funding the SR-520 Project instead of “future transportation improvements on I-90 in the Cross-Lake Washington Corridor.” The Legislature did not direct WSDOT to identify a source of ongoing funding for I-90, and it appears that this language would narrow the range of reasonable alternatives by requiring the funding alternatives to cover unspecified future improvements of unstated cost.⁴ Focusing on options which can produce revenue of this magnitude could exclude otherwise reasonable alternatives that would distribute burdens more fairly.

ESSB 5024 also added language requiring the EIS for this proposal to “review any impacts to the network of highways and roads surrounding Lake Washington.” ESSB 5024. Given the broad and nonspecific nature of the mandate to “manage traffic” and the Legislature's express directive to expand this EIS's geographic scope, WSDOT should revise the first prong of its purpose and need statement to: “(1) mitigate the impacts of congestion and traffic flow on the network of highways and roads surrounding Lake Washington.”

If the purpose and need statement fails to recognize the concerns embodied in ESSB 5024, the I-90 tolling EIS would be contrary to state statute and the resulting EIS would be subject to an adequacy challenge under NEPA or SEPA.

B. WSDOT Should Delete Language Which Improperly Limits the Range of Reasonable Alternatives.

The purpose and need statement in an EIS cannot be so narrow that there is only one reasonable alternative. *E.g., Natural Resources Defense Council v. Evans*, 232 F. Supp. 2d 1002 (N.D. Cal. 2002). WSDOT's purpose and need statement also narrows the funding prong to require that revenue be both “long-term” and result in “timely” completion of the SR-520

³ Letter from Senator Steve Litzow and Representative Judy Clibborn to Lynn Peterson, WSDOT (Oct. 15, 2013). See Attachment B.

⁴ Washington's policy on how to use toll revenue, *see* RCW 47.56.830 (“All revenue from an eligible toll facility must be used only to improve, preserve, manage, or operate the eligible toll facility on or in which the revenue is collected.”) is certainly relevant to the Legislature's decision, but its current use in the purpose and need statement to narrow the range of reasonable alternatives to tolling I-90 is inappropriate.

Project.⁵ These qualifiers do not appear in ESSB 5024 and could improperly narrow the range of “reasonable alternatives.” WSDOT should adhere to the Legislature’s express language and remove qualifiers that suggest an intent to unduly narrow the range of alternatives.

Also unclear is whether WSDOT could proceed with the SR-520 Project in phases without jeopardizing public safety, or whether WSDOT’s requirement that the revenue source be “timely” is merely a preference. Previous materials on the SR-520 Project have described it as fully funded except the section of highway from Interstate 5 (“I-5”) to the Montlake neighborhood.⁶ The current scoping materials, however, indicate that the bridge cannot be replaced without tolling I-90, i.e., that the unfunded portion of the project is the bridge itself.⁷ WSDOT is already building the replacement SR-520 bridge,⁸ which suggests that the lack of funding for the I-5 to Montlake portion does not create quite the threat to public safety that the current purpose and need statement indicates.

II. The EIS Must Provide Further Background on the “Need.”

The draft EIS must also provide a more comprehensive explanation of the “need” for congestion management and SR-520 funding.

With respect to the need for funding, it is unclear how WSDOT can accurately determine whether a particular funding alternative (or combination thereof) will be sufficient to meet the “need” if it does not have up-to-date cost estimates. The Capital Finance Plan and EIS for the SR-520 Project date back to 2007 and early 2011, respectively.⁹ A great deal has changed in the past few years, including a significant decrease in overall regional travel and a trend among young drivers to reject driving and car ownership (both of which could affect traffic and revenue estimates);¹⁰ receipt of additional federal funding for SR-520;¹¹ imposition of tolls on the existing

⁵ WSDOT also inserted the term “sustainable”; interpreting “sustainable” as “continuing” or “ongoing” would be inconsistent with ESSB 5024, which directed WSDOT to study tolling for a specific limited purpose (funding the SR-520 Project).

⁶ The website for the SR 520 Bridge Replacement and HOV Program shows that only the southern half of the West Approach of SR-520, between I-5 and Montlake, is unfunded. <http://www.wsdot.wa.gov/projects/SR520Bridge/>. See also WSDOT, I-90 Tolling Project: Purpose and Need Statement (Jan. 17, 2013) (explaining that without I-90 tolling revenue, the SR-520 Bridge Project will remain “underfunded pending action by the state legislature” without reference to public safety).

⁷ WSDOT, I-90 Tolling Project: Purpose and Need Statement (July 18, 2013) (“Delays would extend the time users depend on seismically-deficient structures that are at risk of failure or sudden closure due to an earthquake.”).

⁸ The website for the SR 520 Project shows that the bridge is already under construction.

<http://www.wsdot.wa.gov/projects/SR520Bridge/>.

⁹ WSDOT, SR 520 Finance Plan (2007); WSDOT, SR 520, I-5 to Medina: Bridge Replacement and HOV Project Final Environmental Impact Statement (2011). Both documents are available at the WSDOT website:

<http://www.wsdot.wa.gov/Projects/SR520Bridge/Library/technical.htm#finance>.

¹⁰ Christian Gaston, *The Oregonian*, “Columbia River Crossing: If They Build It, Who Will Drive Over It?” (Oct. 20, 2013), http://www.oregonlive.com/politics/index.ssf/2013/10/columbia_river_crossing_if_the.html.

¹¹ WSDOT, “WSDOT announces SR 520 pontoon design changes and repairs, results of internal review” (Feb. 26, 2013), http://www.wsdot.wa.gov/News/2013/02/26_SR520_PontoonsUpdate.htm.

SR-520 bridge; and the discovery of design and construction errors on the SR-520 Project (which influence the risk of a cost overrun).¹²

WSDOT should also provide further explanation as to its threshold for “congestion” and how it evaluates a road’s Level of Service. For instance, the Final EIS for the Columbia River Crossing – which similarly aims to improve reliability and travel times on the I-5 bridge over the Columbia River – defines “traffic congestion” as occurring when “average vehicle travel speed on the freeway falls below 30 mph” and defines “congestion” in terms of “the number of hours during a typical day when this condition occurs.”¹³ A quantitative metric will help the public and Legislature make an informed decision as to the value of each alternative relative to its environmental impacts (i.e., by comparing the level of congestion reduction that is associated with each alternative).

III. WSDOT Should Define the Study Area to Include the Four-County Central Puget Sound Region.

WSDOT’s most recent scoping materials indicate that “[t]he specific boundaries of the project study area will be defined in the EIS.”¹⁴ The City appreciates WSDOT’s reconsideration of the study area described in previous scoping materials, which included only SR-520 and I-90 between I-5 and I-405, but is concerned by the agency’s failure to adopt the geographic scope requested by the Washington State Legislature and the City’s previous scoping letter.¹⁵ Both ESSB 5024 and NEPA/SEPA require WSDOT and FHWA to examine impacts within a broad geographic area – at a minimum, the entire CPSR – for the I-90 tolling EIS.

A. ESSB 5024 Requires a Broad Geographic Scope of Review.

ESSB 5024 explicitly directs WSDOT to analyze impacts to the network of highways and roads around Lake Washington.¹⁶ Due to diversion, tolling I-90 will impact far more road miles than the several miles of I-90 between I-5 and I-405. As explained in the City’s prior comment letter, such diversion is likely to have substantial environmental impacts on a regional and local level, especially with respect to transportation, land use, air quality, water quality, greenhouse gases, noise, and public health and safety, and may impose a disproportionate burden on environmental justice communities.¹⁷

¹² *Id.*

¹³ Federal Highway Administration (“FHWA”) & Federal Transit Administration (“FTA”), Columbia River Crossing Final EIS, at 3-31.

¹⁴ 78 Fed. Reg. 59414, 59414 (Sept. 26, 2013).

¹⁵ Letter from City of Mercer Island to WSDOT, at 3 n.3 (Feb. 22, 2013).

¹⁶ ESSB 5024.

¹⁷ Letter from City of Mercer Island to WSDOT, at 2-7 (Feb. 22, 2013).

B. NEPA Requires WSDOT to Analyze Impacts within the Central Puget Sound Region (at a Minimum).

NEPA review extends to the impacts of a proposed action regardless of where such impacts occur. 40 CFR 1508.25(c); *Border Power Plant Working Group v. U.S. Dep't of Energy*, 260 F. Supp. 2d 997 (S.D. Cal. 2003) (requiring the EIS for a transmission line from Mexico to the United States to analyze the air and water quality impacts of the Mexican power plants generating the electricity across the border in the US). Indeed, under the Department of Ecology's expansive view of SEPA, the EIS could extend to impacts in distant states and foreign countries.¹⁸

As both WSDOT and FHWA have recognized, it is "reasonably foreseeable" that tolling may lead to diversion and that such diversion can significantly impact transportation and other resources.¹⁹ This four-county region is likely to include all of the possible diversion routes and will encompass all of the direct and indirect impacts to transportation, air quality, etc. within the network of roads and highways around Lake Washington. Restricting analysis of tolling's environmental impacts to the miles of highway on I-90 and SR-520 between I-5 and I-405 precludes full disclosure of this proposal's impacts and interferes with informed decision-making. *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1077 (9th Cir. 2011) (concluding that EIS violated NEPA by failing to disclose significant environmental impacts). This is required by NEPA and SEPA independent of the explicit directive by the Legislature in 2013.

A broad scope of review is consistent with prior WSDOT and FHWA practice. WSDOT's EIS for the Alaskan Way Viaduct examined not only State Route 99 and its interchanges in downtown Seattle, but also analyzed diversion-related impacts within the entire four-county Central Puget Sound Region.²⁰ FHWA also chose a broad scope of review in the EIS for the Ohio River Bridges Project in Louisville, Kentucky, and analyzed diversion-related impacts to a variety of resources (e.g., land use, transportation) within five counties surrounding downtown Louisville.²¹

Unlike WSDOT's newly coined concept of the "Cross-Lake Washington Corridor" (which appears to have no independent legal or administrative existence in transportation planning and funding²²), the CPSR is the relevant administrative unit for planning and funding

¹⁸ Letter from Maia D. Bellon, Director, Washington Dep't of Ecology to the Honorable Doug Ericksen (Aug. 22, 2013) (explaining that SEPA review extends to impacts from activities occurring in other states and countries). See Attachment D.

¹⁹ WSDOT, Alaskan Way Viaduct Replacement Project Final Supplemental EIS ("SEIS"), Appendix IX at 4 (2011); FHWA, Ohio River Bridges Final SEIS, at 5-11, Appendix H.1. See also Letter from City of Mercer Island to WSDOT, at 2-4 (diversion-related impacts) and 7-11 (socioeconomic and land use impacts) (Feb. 22, 2013).

²⁰ WSDOT, Alaskan Way Viaduct Replacement Project Final SEIS, Appendix IX at 4 (2011).

²¹ FHWA, Ohio River Bridges Final SEIS, at 5-11, Appendix H.1.

²² WSDOT is the only entity to refer to SR-520 and I-90 as the "Cross-Lake Washington Corridor" and even then, only in the context of using I-90 to generate revenue for SR-520. Only the Washington State Legislature can designate portions of the state highway system as a single "eligible toll facility," and it has consistently treated I-90

transportation projects under the governance of the Puget Sound Regional Council (“PSRC”). Many of the funding alternatives are likely to implicate funding decisions within the Region as a whole. Carving out a smaller area could make the analysis of funding alternatives more difficult and less transparent.

Finally, the PSRC’s long-term transportation plan - the Transportation 2040 Plan - projects a system of “fully tolled facilities” in the Region.²³ Therefore, the EIS must consider the impacts of these “reasonably foreseeable actions” within the cumulative impacts section. *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998) (remanding EIS for failure to disclose the impacts of reasonably foreseeable actions). Because the Transportation 2040 Plan EIS did not address the impacts of tolling facilities on a piecemeal basis,²⁴ that EIS does not fulfill NEPA/SEPA obligations for this proposal. A study area that includes all of the CPSR is the minimum necessary to understand the cumulative impacts of these reasonably foreseeable actions.

IV. WSDOT Should Consider a Wide Range of Alternatives, including “All” Funding Alternatives²⁵ and Other Reasonable Alternatives.

“The purpose of NEPA is to require disclosure of relevant environmental considerations that were given a ‘hard look’ by the agency, and thereby to permit informed public comment on proposed action and any choices or alternatives that might be pursued with less environmental harm.” *Lands Council v. Powell*, 395 F.3d 1019, 1027 (9th Cir. 2005). Under NEPA, agencies have a duty “to study all alternatives that appear reasonable and appropriate for study . . . , as well as significant alternatives suggested by other agencies or the public during the comment period.” *Roosevelt Campobello Int’l Park Comm’n v. United States EPA*, 684 F.2d 1041, 1047 (1st Cir. 1982) (quotations omitted).

“[T]he existence of reasonable but unexamined alternatives renders an EIS inadequate.” *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992). The obligation to consider a wide range of alternatives is especially important where the proposed action would have substantial impacts. *Olmsted Citizens for a Better Community v. United States*, 793 F.2d 201, 208 (8th Cir. 1986). Tolling I-90 will have significant environmental impacts, and WSDOT should analyze more than one action alternative to help the Legislature choose between greater (and lesser) environmental harms.

and SR-520 as separate “corridors.” RCW 47.56.870 (authorizing tolls on the “State Route number 520 corridor”); RCW 47.20.645 (referring to the “Interstate 90 Corridor”).

²³ See Letter from City of Mercer Island to WSDOT, at 6-7 (Feb. 22, 2013) (explaining why regional tolling is a reasonably foreseeable future action); PSRC, Transportation 2040 EIS, at 47. Exhibit 3-17 of this EIS, attached to the February 22, 2013 letter, shows that tolling is expected to extend north and south of I-90 and SR-520.

²⁴ WSDOT, Alaskan Way Viaduct Replacement Project Draft SEIS, at 306 (recognizing that “[a]s appropriate for long-range Regional Transportation Plans, the Transportation 2040 Final EIS did not identify specific impacts from tolled projects or cumulative impacts from multiple tolled projects occurring at once.”).

²⁵ While “financing options” might be a more appropriate phrase, this letter will follow the Legislature’s lead and refer to “funding alternatives” as in ESSB 5024.

A. WSDOT Must Analyze “All” Funding Alternatives to Tolling I-90.

The Notice of Intent to Prepare an EIS states that “[a]ll reasonable alternatives recommended by the Washington State Legislature, the public, and agencies will be considered and evaluated in the EIS to determine if they meet the purpose and need of the project: the EIS will also include a No-Build Alternative.”²⁶

While NEPA allows agencies to focus on a limited set of alternatives when appropriate,²⁷ agencies are still required to define alternatives in sufficient detail, including any necessary infrastructure and costs of administration, to “sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decisionmaker and the public.” 40 CFR 1502.14. Here, the EIS needs to address the needs of both WSDOT and the Washington Legislature. *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972) (“NEPA was intended to provide a basis for consideration and choice by the decisionmakers in the legislative as well as the executive branch.”).

An EIS that considers “all” funding alternatives will help the Legislature decide how to fund the SR-520 Project by identifying the environmental impacts of various funding alternatives. 40 CFR 1502.2(e) (“The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate ... decisionmaker.”). Thus, WSDOT should carefully consider each funding mechanism and only dismiss a funding alternative from full consideration if WSDOT can offer a detailed explanation for why a particular alternative is not available to the Legislature.

B. WSDOT Should Consider All Reasonable Alternatives, Including Alternatives that Only Meet One of the Purposes.

WSDOT’s review of funding alternatives may, in fact, help the Legislature decide to accept an alternative that only meets one of the purposes of tolling I-90 in ESSB 5024. In the meantime, NEPA “does not permit the agency to eliminate from discussion or consideration a whole range of alternatives, merely because they would achieve only some of the purposes of a multi-purpose project.” *Town of Mathews v. U.S. Dep’t of Transp.*, 527 F. Supp. 1055, 1057 (W.D.N.C. 1981) (invalidating alternatives analysis).

Even if a single funding mechanism is insufficient by itself, it may narrow the funding gap enough to secure legislative approval of additional state funding. *N. Buckhead Civic Ass’n v. Skinner*, 903 F.2d 1533, 1542 (11th Cir. 1990) (“a discussion of alternatives that would only partly meet the goals of the project may allow the decisionmaker to conclude that meeting part of

²⁶ 78 Fed. Reg. 59414, 59414 (Sept. 26, 2013) (emphasis added).

²⁷ Even if WSDOT does not see the funding alternatives as “reasonable,” NEPA encourages agencies to meet multiple statutory requirements in a single document. 40 CFR 1506.4.

the goal with less environmental impact may be worth the tradeoff with a preferred alternative that has greater environmental impact”).

For instance, a comprehensive review of environmental impacts of various funding and traffic management alternatives might reveal that WSDOT can reduce congestion on I-90 by converting the High Occupancy Vehicle (“HOV”) lanes to High Occupancy Toll (“HOT”). While HOT lanes may not raise enough revenue to cover the estimated \$1.4 billion funding gap for the SR-520 Project, the HOT revenue may provide enough revenue for the Legislature to find additional funding. An EIS disclosing far less environmental impact from HOT lanes than general tolling could shift the legislative discussion.

C. Many of the Funding Mechanisms Provide “Reasonable Alternatives” to Tolling All Lanes of I-90.

The preliminary list of alternatives in WSDOT’s scoping materials suggests that other funding mechanisms may not produce as much revenue as tolling I-90. The same matrix, however, suggests that even the act of tolling I-90 would not qualify as a “reasonable” alternative for both purposes in ESSB 5024.²⁸ The City hopes that WSDOT’s draft EIS will explain the “current information” indicating that tolling I-90 will not meet the funding gap for the SR-520 Project either. Given this uncertainty, it would be both shortsighted and inconsistent with ESSB 5024, NEPA, and SEPA to dismiss other funding alternatives from further consideration in the EIS based on the inability to fully address the funding gap for the SR-520 Project.

An alternative is “reasonable” if it is “practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”²⁹ The Legislature has many options for funding transportation infrastructure, and the City has provided a list of funding mechanisms in Attachment C. In particular, WSDOT and FHWA should consider the following reasonable alternatives to tolling all lanes of I-90: increasing fuel tax revenue; imposing a fee on Vehicle Miles Traveled (“VMT”); setting up a carbon tax for transportation fuels; implementing HOT lanes; and seeking additional federal, state, or county funding for I-90 (e.g., license fees, car tabs).

We expand on the potential advantages of each of these alternatives below for the sole purpose of assuring their inclusion in the detailed analysis of WSDOT’s EIS. The City does not endorse any particular alternative over another alternative. Given the potential advantages, the EIS should clearly identify these options as alternatives and then provide the policy and environmental impact analysis so that public reviewers and the Legislature can understand the pros and cons that NEPA’s “hard look” will reveal.

²⁸ Footnote 2 of this matrix states that: “Current information suggests that none of the proposed toll alternatives would completely fill the revenue gap for the SR-520 Program. Additional revenues will be necessary.” WSDOT, What We Heard During Initial Scoping: Potential Build Alternatives (2013), <http://www.wsdot.wa.gov/Projects/I90/CrossLakeWATolling/ScopingInformation.htm>.

²⁹ 46 Fed. Reg. 18026 (Mar. 23, 1981).

1. “No Action” Alternative / Modify the SR-520 Project

The City’s prior scoping letter sets out in detail the reasons why WSDOT should carefully consider the No Action alternative.³⁰ Section II of this letter expresses the City’s concern that the need for funding the SR-520 Project is not being stated accurately in current scoping materials. The City worries that this inaccuracy will also permeate the EIS’s description of the No Action alternative and the environmental impacts of failing to fund the remainder of the SR-520 Project.

NEPA requires the inclusion of a No Action alternative in order to compare the impacts of the action alternatives to the *status quo ante* so that “agencies [can] compare the potential impacts of the proposed major federal action to the known impacts of maintaining the status quo.” *Custer County Action Ass’n v. Garvey*, 256 F.3d 1024, 1040 (10th Cir. 2001). Given WSDOT’s insistence that it cannot complete the SR-520 Project as currently proposed without I-90 tolling revenue,³¹ the EIS should define the No Action alternative as a reduced scope of work and budget for the SR-520 Project. Any other characterization could skew the NEPA analysis and interfere with the public’s ability to participate in the decision-making process.

2. Increase in Fuel Tax Revenue

In many ways, the most reasonable alternative is to increase the revenue from motor fuels excise tax, which has historically been the most popular method of funding transportation investments.³² Higher excise taxes on motor fuels could raise significant amounts of revenue.³³ Further, arguably such an increase is long overdue – fuel taxes have not kept pace with inflation³⁴ and would only require an additional \$0.03/gallon to raise the necessary funds.³⁵ Indeed, the adverse effects of gasoline consumption (pollution, congestion, etc.) justify a fuel tax at least three times the current fuel tax rate.³⁶ In addition, fuel taxes are generally recognized as more efficient because fuel taxes cost much less to collect and administer than tolls.³⁷ Finally, this alternative does not impose inequitable burdens on any particular community in the CPSR and could reduce congestion.

³⁰ Letter from City of Mercer Island to WSDOT, at 12 (Feb. 22, 2013).

³¹ WSDOT, I-90 Tolling Project: Purpose and Need Statement (Jan. 17, 2013) (without I-90 tolling revenue, the SR-520 Bridge Project will remain “underfunded pending action by the state legislature”).

³² National Cooperative Highway Research Program (“NCHRP”), *Future Financing Options to Meet Highway and Transit Needs*, at 5-5 (2006).

³³ William S. Gale, Samuel Brown, & Fernando Sautiel, *Carbon Taxes as Part of the Fiscal Solution* (Mar. 12, 2013), <http://www.brookings.edu/research/papers/2013/03/12-carbon-tax-gale>.

³⁴ *Id.*

³⁵ WSDOT, *What We Heard During Initial Scoping: Potential Build Alternatives* (2013), <http://www.wsdot.wa.gov/Projects/I90/CrossLakeWATolling/ScopingInformation.htm>.

³⁶ William S. Gale, Samuel Brown, & Fernando Sautiel, *Carbon Taxes as Part of the Fiscal Solution* (Mar. 12, 2013), <http://www.brookings.edu/research/papers/2013/03/12-carbon-tax-gale>.

³⁷ *E.g.*, Martin Wachs, *After the Motor Fuel Tax: Reshaping Transportation Financing*, *Issues in Science and Technology* (Summer 2009), www.issues.org/25.4/wachs.html.

3. Vehicle Miles Traveled Fee

VMT is also a practicable and feasible alternative. After fuel taxes, experts on transportation policy consider a VMT fee system to be the “most viable approach” to funding transportation.³⁸ A VMT system can “help to finance transportation projects even when traditional financing approaches have proven insufficient” and “avoid[] the problem of diverted traffic . . . that is associated with more limited applications of tolling.”³⁹ Other benefits of a VMT funding mechanism include (i) a more equitable pricing structure than motor fuel tax and vehicle registration fees; (ii) the ability to index the VMT fee to carbon output; (iii) the opportunity to send stronger pricing signals than fuel taxes or registration fees.⁴⁰ In addition, WSDOT can eliminate the need for tolls for the network of roads and highways around Lake Washington and meet its revenue goals for SR-520 while distributing burdens fairly between communities and minimizing congestion on the network of highways.

The technology to implement a VMT program is available.⁴¹ Pilot studies in both Oregon and Washington using two different technologies showed a decrease in vehicle miles traveled on urban roads during peak hours.⁴² In fact, the PSRC studied the viability of a VMT system on a network of arterial roads and highways from Puget Sound (to the west), Everett (to the north), the Sammamish Plateau (to the east), and Renton/Seatac (to the south) over 18 months and concluded that “a system for charging for the use of an entire network of roads is indeed feasible, and even cost-effective, given the sizable opportunities to realize broad benefits to society.”⁴³

WSDOT’s preliminary alternatives matrix, however, points to a number of implementation issues, including: “Work on the required infrastructure, regulations and procedures has not begun leading to a long timeframe for implementation.”⁴⁴ However, the assumptions underlying this conclusion are not clearly stated, including whether this “long timeframe” would reflect all of the work done by the PSRC to test VMT fees on the network of roads and highways near Lake Washington. WSDOT has not even prepared a draft EIS for the tolling proposal, so it is difficult to see how the timeline would differ significantly for a VMT

³⁸ Congressional Research Service, *Funding and Financing Highways and Public Transportation*, at 8-9 (2013) (noting that studies on VMT “almost universally” support transition to a VMT system).

³⁹ PSRC, *Traffic Choices Study: Summary Report*, at 17 (2008).

⁴⁰ NCHRP, *Future Financing Options to Meet Highway and Transit Needs*, at 5-9 (2006).

⁴¹ PSRC, *Traffic Choices Study: Summary Report*, at 18 (2008) (noting that in-vehicle tolling devices allow “flexible extensions or alterations of the road tolling network”).

⁴² Congressional Budget Office, *Alternative Approaches to Funding Highways*, at 16 (2011).

⁴³ PSRC, *Traffic Choices Study: Summary Report*, at 7, 11, 18 (2008).

⁴⁴ The City hopes that WSDOT’s summary matrix of alternatives is not a preliminary attempt to shift public opinion with respect to the reasonableness of each alternative. For instance, the matrix similarly states that “tolls on other facilities could not be implemented in a timely manner for completion of the SR 520 Program.” In the draft EIS, WSDOT should clearly describe the facilities being tolled, the basis for concluding that such toll revenues would be untimely, the revenue that could be raised, and quantitative estimates for the environmental impacts (e.g., reductions in congestion, increase in peak hour average speed, vehicle miles traveled).

proposal.⁴⁵ This is exactly the sort of innovative congestion relief strategy that FHWA prefers for Value Pricing Pilot Program approval.⁴⁶

Ultimately, a comparison of the environmental impacts of a VMT program and tolling should help both the Legislature and the public analyze the best mechanism for funding SR-520. Two major advantages of a VMT program are that (1) tolling secondary roads represent a significant revenue opportunity (roughly half of the revenues in the PSRC study); and (2) tolling secondary roads will prevent traffic diversion onto these roads and a significant degradation of service quality.⁴⁷ While there are undoubtedly implementation issues with VMT (as with all of the funding mechanisms, including tolling), an EIS is an appropriate way to disclose such impacts and uncertainties and seek public comment.

4. "High Occupancy Toll" Lanes

Alternatively, instead of tolling all lanes of all roads around Lake Washington, WSDOT could implement HOT lanes, whether on I-90 alone or on the network of roads and highways around Lake Washington (including I-90).⁴⁸ As with VMT fees, there is clear legal authority. 23 U.S.C. 166. Further, HOT lanes would accomplish similar goals to a VMT program, as HOT lanes can reduce congestion and provide funding.⁴⁹ Indeed, the SR-167 HOT lanes are generating more revenue than expected.⁵⁰ If WSDOT imposes only HOT tolls on I-90, the ability to choose whether to pay a toll is likely to mitigate impacts to "affected residents" and other communities. WSDOT should at least consider the environmental impacts of tolling under other statutory authorities.

5. Carbon Tax

Economists and transportation experts have also increasingly called for a carbon tax on the consumption of fuels for transportation.⁵¹ Indeed, the Governor of Washington recently

⁴⁵ The City assumes that WSDOT has not taken steps that run afoul of the NEPA prohibition on irretrievable commitments. 40 CFR 1506.1.

⁴⁶ 75 Fed. Reg. 64397 (Oct. 19, 2010) (soliciting proposals for VPPP approval and noting "[t]he FHWA is especially interested in grant applications for projects that do not involve highway tolls.>").

⁴⁷ PSRC, Traffic Choices Study: Summary Report, at 26 (2008).

⁴⁸ WSDOT initially proposed either tolling the HOV lanes only (under its HOT authority, 23 U.S.C. § 166) or all of the lanes (through the Value Pricing Pilot Program). See WSDOT, Expression of Intent (2009). WSDOT has never explained why HOT tolling would not meet its congestion reduction needs.

⁴⁹ PSRC, Transportation 2040 Final EIS, Appendix F: Financial Strategy Background, at 22 (2010) (noting that a recent study found that for the Atlanta metropolitan area, "TOT [Truck-only Tolls ("TOT")] lanes had a high potential for relieving congestion, potentially even more than HOV or HOT lanes.>").

⁵⁰ WSDOT, "SR 167 HOT Lanes: Common Questions"

<http://www.wsdot.wa.gov/Tolling/SR167HotLanes/FAQ.htm#C3>

⁵¹ E.g., <http://standupeconomist.com/why-connect-a-carbon-tax-to-transportation-infrastructure-maintenance/>;

[\[http://www.transportation-finance.org/funding_financing/funding/proposed_funding_sources/carbon_tax_cap_trade_program.aspx\]\(http://www.transportation-finance.org/funding_financing/funding/proposed_funding_sources/carbon_tax_cap_trade_program.aspx\).](http://www.transportation-</p></div><div data-bbox=)

identified the need for a work group to develop a carbon tax proposal,⁵² and that work group has identified a carbon tax on transportation as one of the more cost-effective mechanisms for reducing greenhouse gas emissions.⁵³ The work group will not make its final recommendations to the Legislature until the end of December 2013,⁵⁴ but it would be logical to address transportation emissions as a priority, given that they account for 44 percent of Washington's carbon dioxide output.⁵⁵ A carbon tax would raise funds, address congestion on more than one road, reduce greenhouse gases, and all without imposing a disproportionate burden on any one community.⁵⁶

Carbon taxes can raise significant amounts of revenue and significantly reduce emissions.⁵⁷ For instance, British Columbia's carbon tax, which applies to transportation fuels, raised \$1.12 billion in 2012-2013⁵⁸ and is expected to reduce carbon emissions by 3 million metric tons annually by 2020.⁵⁹ Further, carbon taxes are easy to implement and do not require new technology or increase the costs of compliance for users.⁶⁰ Finally, other regional governments have already shown that carbon taxes can result in reduced greenhouse gas emissions.⁶¹

⁵² John Stang, *Carbon Taxes? Inslee Wants a Look* (Oct. 15, 2013), <http://crosscut.com/2013/10/15/olympia-2013/116932/inslee-wants-look-carbon-tax-credit-trading/>.

⁵³ Washington State Climate Legislative and Executive Workgroup ("CLEW"), Economic Impact Summary Significant Programs (Nov. 5, 2013) (hereinafter "Economic Impact"), http://www.governor.wa.gov/issues/economy/climateWorkgroup/documents/CLEW_EconomicImpactSummary_20131106.pdf (comparing the \$/MtCO_{2e} for various GHG emissions reduction strategies and basing carbon tax analysis on British Columbia tax, which addresses the transportation sector); CLEW, Evaluation of Approaches to Reduce Greenhouse Gas Emissions in Washington State - Final Report (Oct. 14, 2013), at 29, http://www.governor.wa.gov/issues/economy/climateWorkgroup/documents/Task_4_Final_Report_10-13-2013.pdf. Washington's Governor recently committed to adopt new policies to reduce greenhouse gas emissions.

⁵⁴ Senate Bill 5802, <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5802>.

⁵⁵ CLEW, Evaluation of Approaches to Reduce Greenhouse Gas Emissions in Washington State, at 2.

⁵⁶ For instance, British Columbia used its carbon tax revenue to mitigate impacts to low-income households. CLEW, Economic Impact (Nov. 5, 2013), http://www.governor.wa.gov/issues/economy/climateWorkgroup/documents/CLEW_EconomicImpactSummary_20131106.pdf.

⁵⁷ William S. Gale, Samuel Brown, & Fernando Saltiel, Carbon Taxes as Part of the Fiscal Solution (Mar. 12, 2013), <http://www.brookings.edu/research/papers/2013/03/12-carbon-tax-gale>.

⁵⁸ Government of British Columbia, Carbon Tax Report and Plan (2013), www.fin.gov.bc.ca/tbs/tp/climate/carbon_tax.htm.

⁵⁹ J. Sumner, L. Bird, & H. Smith, National Renewable Energy Laboratory, Carbon Taxes: A Review of Experience and Policy Design Considerations (2009), at 17, <http://www.nrel.gov/docs/fy10osti/47312.pdf>.

⁶⁰ Texas A&M University, Possible Funding Options: Statewide Approaches, http://mobility.tamu.edu/mip/strategies_pdfs/financing/technical_summary/Carbon-Tax-2-Pg.pdf (giving carbon taxes a 3/5 rating for sustainability and 4/5 rating for reliability).

⁶¹ William S. Gale, Samuel Brown, & Fernando Saltiel, Carbon Taxes as Part of the Fiscal Solution (Mar. 12, 2013), <http://www.brookings.edu/research/papers/2013/03/12-carbon-tax-gale> (reporting study results that British Columbia's carbon tax led to a 9.9% reduction in greenhouse gas emissions, compared to a 4.6% reduction for the rest of Canada, where comprehensive carbon taxes did not apply).

Given these potential advantages, the EIS should clearly identify this option as an alternative and then provide the policy and environmental impact analysis so that public reviewers can understand the pros and cons that NEPA's "hard look" will reveal.

6. Additional Sources of Federal, State, or County Funding

The Columbia River Crossing Final EIS (Chapter 4) provides a summary of federal or state revenue and financing options.⁶² WSDOT should also analyze whether the SR-520 Project is eligible for additional federal funding (or, if it has already done so, then it should share its analysis in the EIS so the public can understand the options and impacts), and whether this could help meet the SR-520 Project funding gap or reduce it enough for other funding mechanisms to make sense.

D. Alternatives that Combine Funding Mechanisms Are Also "Reasonable Alternatives."

The City believes it is "practical and feasible" for the agency to examine different combinations of actions, and requests that the draft EIS include such alternatives. The number of combination alternatives would necessarily be limited by each funding mechanism's ability to produce revenue and the size of the budget gap for the SR-520 Project. At the least, WSDOT could create enough combinations to illustrate the range of revenue and environmental impacts associated with different funding strategies.

For instance, the EIS could evaluate the feasibility of and impacts from the Legislature taking action to increase the motor fuel excise tax by less than \$0.03 per gallon and authorize WSDOT to develop express lane tolling on I-90 and other roads and highways around Lake Washington (e.g., SR-522 and the southern diversion route of I-5 and I-405). As WSDOT concedes in its preliminary alternatives matrix, express lane tolling can also reduce congestion and produce up to \$250 million in revenue.

This is exactly the sort of analysis that should help individual legislators and the public understand transportation funding and congestion management. Without any combination alternatives, the EIS's failure to consider a reasonable alternative will leave it vulnerable to NEPA and SEPA challenges.

⁶² FHWA & FTA, Columbia River Crossing Final EIS, at 4-6 to 4-9.

CONCLUSION

The City appreciates the opportunity to comment on the expanded scope of NEPA/SEPA review for the proposal to toll I-90 and looks forward to ongoing communications with respect to the purpose and need of the I-90 tolling proposal and the range of reasonable alternatives. As explained in the February 22, 2013 scoping letter, the City believes that this proposal will have significant environmental impact and merits a comprehensive environmental review.

Yours truly,



William Chapman

Cc: U.S. Senator Patty Murray
U.S. Senator Maria Cantwell
U.S. Representative Adam Smith
U.S. Representative Dave Reichert
Victor Mendez, Federal Highway Administration
Regina McElroy, Federal Highway Administration
Daniel Mathis, Federal Highway Administration
Washington Representative Judy Clibborn
Washington Senator Steve Litzow
Mercer Island City Council
Bruce Bassett, Mayor, City of Mercer Island
Katie Knight, City Attorney, City of Mercer Island
Noel Treat, City Manager, City of Mercer Island
Arthur W. Harrigan, Calfo Harrigan Leyh & Eakes, LLP
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Attachments

ATTACHMENT A



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February 22, 2013

VIA E-MAIL AND US MAIL

Angela Angove
Washington State Department of Transportation
999 Third Avenue, Suite 2200
Seattle, WA 98104

Re: I-90 Tolling Proposal Environmental Assessment (EA) Scoping Comments

Dear Ms. Angove:

This law firm represents the City of Mercer Island ("City") as to WSDOT's proposed tolling of I-90 and the NEPA process associated therewith. We write on behalf of the City to comment on the proposal by the Federal Highway Administration ("FHWA") and Washington State Department of Transportation ("WSDOT") to prepare an Environmental Assessment ("EA") for tolling the Interstate-90 ("I-90") bridge over Lake Washington.

The City is on record as opposing tolling I-90 for the reasons set forth in Resolution 1402.¹ The purpose of this letter is to comment on the NEPA review for tolling. Therefore, this letter will not repeat the many other arguments based in policy, equity, and the law that inform the City's opposition, but rather will focus on issues related to NEPA review. As discussed below, taking a hard look at tolling's environmental effects will demonstrate that the effects are significant and require an EIS, but will also illustrate why FHWA and the state legislature should reject tolling.

These significant environmental effects include regional impacts to a variety of resources, including transportation, air quality, greenhouse gases, and public safety, especially in combination with other tolling plans within the Central Puget Sound Region. In addition, the social and economic impacts to Mercer Island – and other communities – will

¹ Attached as Exhibit A is a copy of Resolution 1402 (adopted Oct. 6, 2008); the City recently re-affirmed this Resolution and its conclusion that the 1976 Memorandum of Agreement ("MOA") requires that WSDOT must seek the City's concurrence before modifying the structure and operation of I-90.

lead to significant environmental effects.² The significance of these impacts makes this a controversial action that under NEPA and WSDOT's own guidance requires an EIS. Within the EIS, both WSDOT and FHWA should develop, evaluate, and consider reasonable alternatives that will fulfill both the funding and congestion reduction objectives and mitigate impacts to all residents of the Central Puget Sound Region.

Comments on the National Environmental Policy Act Process

I. Tolling I-90 Will Have Significant Environmental Effects and WSDOT and FHWA Must Prepare an Environmental Impact Statement.

Tolling I-90 will affect a wide range of resources, and impacts on some of those resources will be "significant." NEPA requires preparation of an EIS for a "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (emphasis added). "If there is a substantial question whether an action 'may have a significant effect' on the environment, then the agency must prepare an Environmental Impact Statement." *Center for Biological Diversity v. National Highway Transp. Safety Agency*, 538 F.3d 1172, 1185 (9th Cir. 2008) (remanding for further NEPA analysis). WSDOT's proposal to prepare an EA fails to recognize that its decision to toll I-90 will have significant impacts.

A. Tolling I-90 Will Have Significant Impacts to Transportation and Other Related Resources.

NEPA requires agencies to consider direct effects, which are caused by the action and occur at the same time and place, and indirect effects, which are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. § 1508.8(a), (b). The indirect transportation impacts of tolling I-90 will be

² Supporters of tolling sometimes dismiss such potential economic impacts, particularly as such impacts pertain to Mercer Island. This letter provides facts to demonstrate that such impacts are significant and warrant NEPA's "hard look." For instance, a commuter with a toll each way each workday will pay nearly \$1,750 per year for roundtrip, daily tolls. For a person renting an apartment on the North End of Mercer Island who commutes to Seattle or Bellevue, this is equivalent to a rent increase greater than \$140/month. For a person with a \$40,000 annual income, this amounts to a tax increase greater than 4%. WSDOT's Alaskan Way Viaduct EIS accepted the logic that tolling will change behavior and cause impacts; early returns on the SR-520 tolling experiment appear to prove it. If a 4% tax hike at the upper end of the economic scale is worth a decade of national debate, surely a 4% hike at the family wage level merits at least a study of its impacts. These are not trivial impacts and require thorough analysis before the experiment is extended.

particularly significant in the Central Puget Sound Region highway system³ due to diversion. Both FHWA and WSDOT have previously concluded that tolling (and diversion caused by tolling) can result in potentially significant adverse impacts to transportation resources at a level that requires analysis in an EIS.

The FHWA recently prepared a Supplemental Environmental Impact Statement ("SEIS") for an analogous project in order to analyze the significance of impacts to transportation.⁴ The Ohio River Bridges project involved the construction of two new bridges between Louisville, Kentucky, and southern Indiana; after the initial FEIS, FHWA proposed tolling as a source of revenue to pay for the construction work. As part of the SEIS, FHWA conducted an extensive transportation impacts analysis covering three parallel bridges in the same region (not all of which would be tolled) and ultimately concluded that interstate users would divert to secondary and local roads to avoid tolls associated with the bridges.⁵

Similarly, WSDOT's Final Environmental Impact Statement for the Alaskan Way Viaduct Replacement Project also recognized that tolling can cause potentially significant adverse impacts to transportation. The Draft Supplemental EIS and Final EIS analyzed transportation impacts within the Central Puget Sound region and determined that tolling through-traffic on SR 99 (i.e., not cars entering or exiting in downtown) would cause an estimated 40,000 to 45,000 daily trips to shift to I-5 and city streets,⁶ that tolling would increase Vehicle Miles Traveled, Vehicle Hours Traveled, and Vehicle Hours of Delay within the region,⁷ and that the "diverted traffic and increased congestion would have the

³ The study area for this proposal should extend beyond the "Cross-Lake Washington Corridor" described in WSDOT's materials to include the four-county Central Puget Sound Region (King, Kitsap, Pierce and Snohomish counties) that is the relevant planning unit for state and federal transportation planning purposes. Transportation 2040: Toward a Sustainable Transportation System at i (2010)

<http://www.psrc.org/transportation/t2040/t2040-pubs/final-draft-transportation-2040>.

WSDOT used this geographic scope for the Alaskan Way Viaduct Replacement Project traffic analyses. Alaskan Way Viaduct Replacement Project Draft Supplemental Environmental Impact Statement ("DSEIS") (2010) at 208; Alaskan Way Viaduct Final Environmental Impact Statement ("FEIS") Appendix IX at 4 (2011).

⁴ 76 Fed. Reg. 8808, 8808 (Feb. 15, 2011).

⁵ Ohio River Bridges Final SEIS at 5-11 (Apr. 2012). For the SEIS, the FHWA consultant prepared a 151-page "Louisville-Southern Indiana Ohio River Bridges: Traffic Forecast" to examine the impacts of tolling on air quality, noise, highway capacity, historic resources, and environmental justice. *Id.*, Appendix H.1.

⁶ Alaskan Way Viaduct DSEIS at 209-214; Alaskan Way Viaduct FEIS, Appendix IV, at 26 (incorporating DSEIS findings into FEIS).

⁷ Alaskan Way DSEIS at 208-09; Alaskan Way FEIS, Appendix IV, at 22-23.

potential to result in effects on the disciplines of environmental justice, historic and cultural resources, air quality, energy and greenhouse gases, and noise.”⁸

The experience with SR-520 also shows that diversion causing significant impacts is likely to happen within the Central Puget Sound Region. Despite WSDOT’s prediction in the SR-520 Variable Tolling EA that transportation impacts due to diversion would be insignificant,⁹ WSDOT’s October 2012 update on SR-520 tolling suggested that SR-520 tolling caused greater diversion than anticipated with a 13% increase in traffic on both SR-522 and I-90. SR-522 thus has received an additional 4,000 cars per day; on I-90, this appears to have imposed an additional 15,000 cars per day.¹⁰ The perceived need to mitigate SR-520’s diversion by tolling I-90 further illustrates the significance of these impacts. Depending on the process required to implement I-90 tolls, temporal overlap in the SR-520 and I-90 tolls may cause even more cars to divert to SR-522 and I-405 to avoid paying tolls. Transportation impacts would also be magnified during SR-520 bridge reconstruction when overall capacity is lower than normal and I-90 provides the only direct access across Lake Washington.

Given the interconnectedness of the highways in the Central Puget Sound Region, severe congestion on SR-522 and I-405 may limit the benefits of reduced congestion on I-90.¹¹ The Alaskan Way DSEIS analysis concluded that all of the toll alternatives under consideration would cause so much diversion to surface streets that vehicle queues would back up on to the SR-99 mainline and degrade SR-99 operations.¹² Given existing congestion, it is likely that tolling I-90 within the geographically larger Central Puget Sound Region will cause similar effects at I-90 interchanges. Regardless of whether WSDOT agrees with the City as to the relative impacts, clearly WSDOT has previously concluded the nature of such impacts are significant; this element of “controversy” merits consideration in an EIS. 40 C.F.R. § 1508.27(b)(4), (5). Whatever the outcome may be, NEPA requires that

⁸ Alaskan Way DSEIS at 223; Alaskan Way FEIS, Appendix IV, at 33-41.

⁹ SR-520 Variable Tolling Project EA at 5-3 (2009) (anticipating a reduction in cross-lake trips overall and predicting that “the regional transportation network . . . is relatively unaffected by the proposed tolling on SR 520”), 5-5 (estimating 1-3% increase in traffic on SR-522 and I-90), 1-3 (predicting “minimal to no noticeable diversion of traffic to SR-522, I-405, and I-5”), 1-7 (no “cumulative effect on travel patterns” because of “existing capacity restraints” and planned construction on I-90).

¹⁰ For context, WSDOT’s January 2012 SR-520 tolling update reported an increase in traffic on I-90 (11% or 15,000 cars), SR-522 (9% or 4,000 vehicles), I-5 (2% or 4,000 vehicles) in downtown Seattle, and I-405 (5% or 10,000 vehicles) in downtown Bellevue.

¹¹ The SR-520 Variable Tolling Environmental Assessment (2009) notes that “all routes that cross or go around Lake Washington operate poorly during peak periods due to congestion; these routes include SR 520, I-90, and SR 522.” *Id.* at 5-3.

¹² Alaskan Way DSEIS at 209; Alaskan Way FEIS, Appendix IV, at 22-23.

WSDOT and FHWA at least perform this analysis.

Other factors counsel in favor of an EIS. For instance, diversion to SR-522 and I-405 may also impact public safety by slowing down emergency responders. Actions that pose a threat to public safety are another factor in the determination of whether to prepare an EIS. 40 C.F.R. § 1508.27(b)(2). Given the already congested nature of the roads within the Central Puget Sound Region, WSDOT and FHWA should consider the “significant” cumulative impacts of tolling I-90 on public safety.

In the same vein, the agencies should also consider the significant accompanying impacts to air quality, greenhouse gas emissions (due to increased Vehicle Miles Traveled, Vehicle Hours of Travel, and Vehicle Hours of Delay), and increased likelihood of accidents in an EIS before deciding whether to impose tolls on I-90. Because other roads in the Central Puget Sound Region are already congested, cumulative impacts can be substantial even if the impacts of the I-90 tolling proposal are minimal.¹³

In addition to these significant impacts, the WSDOT Environmental Procedures Manual explains that the agency should prepare an EIS for projects that are “apt to create substantial public controversy.”¹⁴ In addition to the “controversy” regarding this proposal’s impacts (as described above), the project is also “controversial” in terms of public opposition – several hundred people showed up at a recent public meeting to protest tolling I-90. John White of WSDOT recently spoke at the Mercer Island Chamber of Commerce and noted that the Mercer Island scoping meeting was the largest turnout he had ever seen, even when compared to public meetings for the SR-520 and Alaskan Way Viaduct projects. The I-90 tolling proposal is clearly just as “controversial” as these other projects for which WSDOT prepared EISs, which provides another rationale for WSDOT and FHWA to prepare an EIS instead of an EA.

NEPA also requires preparation of an EIS where a proposed action might adversely affect structures listed on the National Register of Historic Places (“NRHP”). 40 C.F.R. § 1508.27(b)(8). Because the Lacey V. Murrow Bridge is listed on the NRHP, WSDOT and FHWA should closely examine any adverse impacts to the structure or aesthetics of the bridge in an EIS.

¹³ WSDOT Guidance on Preparing Cumulative Impact Analyses at 5 (2008) (“The cumulative impact analysis should focus on . . . resources currently *in poor or declining health* or at risk even if project effects are relatively small”).

¹⁴ WSDOT Environmental Procedures Manual at 300-4 (2012).

Finally, the I-90 tolling proposal has no temporal limitation. This was key to WSDOT's analysis of the SR-520 Variable Tolling Project, and this difference should inform WSDOT and FHWA's evaluation of each element of the environment considered in the NEPA process.

B. WSDOT and FHWA Must Prepare an EIS to Analyze Cumulative Impacts, Including Those Caused by Additional Foreseeable Tolling.

NEPA requires agencies to consider the "cumulative impacts" of an action, i.e., "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.7; *Kern v. Bureau of Land Mgmt.*, 284 F.3d 1062, 1075 (9th Cir. 2002) (noting that both EAs and EISs need to analyze cumulative impacts). Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.7. "It is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now." *Kern*, 284 F.3d at 1075.

Tolling I-90 is one action within an overall plan to impose tolling in the Puget Sound Region on major highways between many communities, including I-405, SR-522 and the mainstem I-5 corridor. Specifically, the Transportation 2040 Plan (the federal Regional Transportation Plan for the Central Puget Sound Region), calls for "additional high-occupancy toll lanes brought into operation in the first decade of the plan" and further calls for partial tolling to fund "major highway capacity projects" with the intent to "manage and finance the highway network as a system of fully tolled facilities."¹⁵ The Plan projects that tolls will increase from \$400 million during the plan's first decade to \$3 billion in the plan's last decade.¹⁶ Chapter 47.56 RCW already authorizes WSDOT to impose tolls on portions of I-5 and I-405,¹⁷ and the Transportation 2040 Plan FEIS clearly depicts all these highway segments (including all of I-5 and I-405 through the Puget Sound Regional Council's four-county planning area) with future tolls.¹⁸ These other tolling actions under the plan are reasonably foreseeable and their cumulative impacts must be reviewed in the I-90 EIS. 40 C.F.R. § 1508.7.

As WSDOT noted in its January 11, 2013 letter commenting on the Gateway Pacific Terminal, "[I]t will be important for the EIS to evaluate the cumulative effects to the state's

¹⁵ Transportation 2040 at 47 (emphasis added).

¹⁶ *Id.* at 44 (Figure 23).

¹⁷ RCW 47.56.890 (authorizing toll on existing I-5 bridge over Columbia River); RCW 47.56.880 (authorizing tolls on express lanes in I-405 corridor).

¹⁸ Transportation 2040 Final Environmental Impact Statement ("FEIS") at 3-39 (2010). Exhibit 3-17 (attached to this letter as Exhibit B) is an illustration of the "Preferred Alternative Tolling Scenario."

transportation system of this proposal in light of other similar proposals.”¹⁹ Perhaps the most striking deficiency in WSDOT's environmental review proposal is its disregard for the cumulative impacts of the tolling proposed in the region's adopted plan. Clearly this is a proposal where the system-wide cumulative effects of similar tolling proposals as outlined in "Transportation 2040" should be examined in one project specific EIS now that a specific proposal is on the table.²⁰

C. Tolling I-90 Will Have Significant Local Impacts to Social and Economic Resources on Mercer Island.

The effects analysis extends to social and economic impacts where such impacts are interrelated with natural and physical effects. 40 C.F.R. § 1508.14; *City of Rochester v. U.S. Postal Service*, 541 F.2d 967, 973-74 (2d Cir. 1976) (remanding for preparation of an EIS where U.S. Postal Service failed to consider “substantial environmental effects” such as increasing commuter traffic by car; loss of job opportunities; departure of residents to other communities; and the ultimate economic and physical deterioration of the community); *see also Trinity Episcopal School Corp. v. Romney*, 523 F.2d 88, 93-94 (2d Cir. 1975) (noting that NEPA “must be construed to include protection of the quality of life of city residents” and criticizing the agency for failing to consider the proposed action’s effects on urban factors such as traffic; parking; neighborhood stability; implications for the city's growth policy; and overall urban decay). WSDOT itself has called for agencies conducting NEPA analyses to “assess economic benefits and impacts . . . to local and state economies.”²¹ The City believes that these impacts require preparation of an EIS, but also asks that regardless of the form of the NEPA analysis, WSDOT and FHWA should address these social and economic impacts during the NEPA process.

Tolling I-90 will significantly impact social and economic resources on Mercer Island and it is reasonably foreseeable that these social and economic impacts will lead to the environmental degradation of Mercer Island. Tolling I-90 will make Mercer Island less attractive to businesses, residents, and employees. In the long-term, this could lead to vacancies in commercial and residential property and undermine the City’s efforts (consistent

¹⁹ Letter from Stephen T. Reinmuth, WSDOT, to GPT/BNSF Custer Spur EIS Co-Lead Agencies, re: Gateway Pacific Terminal Environmental Impact Statement Scoping Comments (Jan. 11, 2013) (hereinafter “WSDOT Letter (Jan. 11, 2013)”).

²⁰ The Transportation 2040 FEIS only analyzed alternatives which included some form of tolling or user fees, which provides no basis for the relevant comparison here. Transportation 2040 FEIS at 3-6. *See also* Alaskan Way Viaduct DSEIS at 206 (recognizing that “[a]s appropriate for long-range Regional Transportation Plans, the *Transportation 2040 Final EIS* did not identify specific impacts from tolled projects or cumulative impacts from multiple tolled projects occurring at once.”).

²¹ WSDOT Letter (Jan. 11, 2013).

with the Growth Management Act) to create a vibrant economic town center that is integrated with the region and will accommodate a certain level of anticipated growth. WSDOT and FHWA should prepare an EIS to analyze how these significant impacts to businesses, community cohesion, and real estate values will weaken the tax base of the Mercer Island City and School District, modify land use, and degrade the physical environment on Mercer Island. *See West 514 v. Spokane Cty.*, 53 Wn. App 838, 847-48, 770 P.2d 1065 (1989) (recognizing need for EIS under the State Environmental Policy Act (SEPA) to analyze blight impacts of regional shopping center on downtown of city); WAC 197-11-444(2)(b) (including land use as an "element of the environment" which requires analysis under SEPA).

Because there is no public access to Mercer Island other than I-90, WSDOT and FHWA should carefully consider the many ways in which tolling I-90 will have significant effects on community cohesion and the Mercer Island economy as discussed below.

Impacts to the City, School District, and Mercer Island Businesses

WSDOT and FHWA should analyze the average cost that tolling I-90 would impose on employees of the City of Mercer Island, the Mercer Island School District, and a variety of Mercer Island businesses. Employees might have to pay just to get to work,²² while employees of Seattle and Eastside businesses have the option of diverting to I-405 and SR-522. The Island hosts a wide variety of businesses ranging from Farmers Insurance to the numerous day care facilities and private schools scattered all over the Island; many of these employees live off-Island. For full time employees who work on Mercer Island, this amounts to an annual pay cut in the thousands of dollars and a disproportionate contribution toward the SR-520 bridge. For tutors and coaches who might spend 2-3 hours on the Island at a time for fairly limited wages or employees of day care facilities and service-oriented businesses (e.g., Starbucks), paying the toll constitutes an even larger pay cut. Simple economics suggests that Island employers will have to subsidize the tolls for their employees, raise salaries, or accept that it will be difficult to attract and keep good employees.

The City and School District would be in a similar position. Nearly all City employees (218 of 225 employees) and roughly two-thirds (333) of School District employees live off Island. The School District Board of Directors recently estimated that it would cost the District \$500,000 to cover the cost of the toll for the 180 school days per year, which assumes a relatively low toll (the same rate currently imposed on SR-520) and does not include summer-time teacher training. Assuming the same toll rate and 240 working days per year (i.e., excluding two weeks of vacation and ten days of public holiday), the City can either spend more than \$375,000 per year to do the same or ask each of its employees to assume more than \$1,700 per year in additional commuting costs. Like Mercer Island

²² The SR-520 peak hours toll is currently \$7.18 per day round-trip.

businesses and the School District, the City would have to divert money from operations and capital improvements just to retain current employees.

WSDOT and FHWA should also analyze the average cost (e.g., decline in revenue, reduced competitiveness vis-à-vis off-Island businesses) that tolling I-90 would impose on Island businesses and City revenues. Imposing an I-90 toll will increase the cost of raw materials and the cost of shipping finished products; these changes will affect the bottom line of every business on the Island. The toll will also make it difficult for businesses on the Island to attract consumers and clients from off Island. This includes a wide variety of service and food establishments which might otherwise attract customers from Seattle or Bellevue, medical and other professionals whose clients span the Puget Sound region, and the Mercer Island Youth and Family Services ("MIYFS") Thrift Store. In the case of the Mercer Island Community Event Center, which hosts weddings, fundraisers, and a wide variety of other large-scale events, the toll will reduce the Center's utilization rate (and the City's revenue) if organizers have to ask their guests to pay several dollars in tolls just to attend the event. Limiting access to the Island will hit certain types of organizations particularly hard, including Youth Theatre Northwest, the Jewish Community Center and other groups that offer entertainment and services.

WSDOT and FHWA should consider the effect of these social and economic impacts on real estate occupancy rates on Mercer Island. A small percentage of commercial real estate on Mercer Island is currently unoccupied due to the recession; the toll (and its related economic impacts to businesses) will make Mercer Island less attractive to businesses currently on the Island. In the long term, tolling I-90 will make it more difficult to fill the existing vacancies and draw new businesses to Mercer Island businesses to replace the ones which choose to leave.

Impacts to Mercer Island Residents

WSDOT and FHWA should estimate the average cost of tolling for Mercer Island households, especially the most financially vulnerable households, and prepare data that permits comparison to other communities in the region. By our rough calculations, Mercer Island makes up only 3% of the households in the region, but may end up paying for 20% of the remaining SR-520 bridge funding.²³ Indeed, some families estimate that imposing a \$4 toll will cost them more than \$5,000 per year. This is an exorbitant amount for Mercer Island residents to pay, especially given the inaccessibility of the SR-520 bridge.

Tolling will impose an even more disproportionate burden on Mercer Island residents

²³ The population of Mercer Island comprises 3% of the 700,000 people who live in Bellevue, Mercer Island, and Seattle, and Islanders' trips are roughly 20% of the total trips across the I-90 bridge.

who live on a fixed income. For instance, roughly 20% of Mercer Island's 23,000 residents are 65 years of age or older (compared to 12% of King County's population). Mercer Island's population is not large enough to host as wide a variety of medical professionals as Seattle and Bellevue, so residents must leave the Island to obtain critical services. For those elderly residents who live on a fixed income and rely on automobile access to their off-Island doctors, tolling I-90 at a level equivalent to SR-520 would present a serious hardship.

Similarly, tolling will cause a decline in revenue for the MIYFS Thrift Store, which sells gently used, high-quality items and uses the proceeds to fund mental health counseling, school counselors, emergency assistance, and other human services programs for low-income Mercer Island residents. More than 200 households sought the MIYFS's food bank and emergency financial services in 2012. We estimate that roughly 35% of the Thrift Shop's customers come from off-Island. Imposing a toll will make it less attractive for bargain-hunters to visit the Thrift Shop, and thus negatively impact MIYFS services and the low-income Mercer Island residents it supports.

WSDOT and FHWA should evaluate the social and economic impacts of reduced access to off-Island establishments (e.g., performing arts venues, sporting venues, civic events, museums, recreational opportunities and shopping). While Mercer Island is a distinct community, it considers itself a part of the greater Puget Sound region and its residents enjoy the opportunities offered in neighboring cities. Tolling I-90 means that Mercer Island residents cannot access any of these amenities without paying a toll, unlike every other community in the Puget Sound which has untolled alternate routes.

Impacts to Non-Residents and Island Establishments Which Attract Non-Residents

WSDOT and FHWA should evaluate and attempt to quantify the economic and social impacts for the religious and educational institutions which currently attract off-Island visitors and low-income individuals who patronize these establishments (e.g., reduced attendance or decline in revenue or donations). For instance, Mercer Island hosts a synagogue serving much of the Puget Sound area, and many churches on the Island draw from populations in neighboring communities. Mercer Island Presbyterian Church has historically partnered with churches in low-income regions throughout the Puget Sound region. Depending on personal financial resources, tolling will discourage and impair some individuals from observing their religious beliefs with other members of their communities. Consider this simple fact -- a daily or weekly two-way toll on an annual basis would be a significant part of the collection plate or the charitable donation for many who commute to religious institutions.

Mercer Island also hosts private schools such as Northwest Yeshiva High School, the French American School, and various pre-schools that attract off-Island students. Roughly 70% of the students from St. Monica's Parish School come from off Island, as do 30% to

50% of students at various preschools. At the French American School, a full quarter of the students at the French American School receive a scholarship (up to a 90% discount on tuition). Tolling I-90 could interfere with the ability of a low-income family to take advantage of these educational opportunities and impair the ability of these institutions to thrive on Mercer Island.

WSDOT and FHWA should comprehensively analyze the significant social, economic, and environmental impacts in communities east and west of the I-90 bridge due to the toll severing this important arterial. WSDOT itself recently advocated a broad geographic scope of NEPA review for a proposed action that it believed would have widespread impacts to the transportation system and other resources.²⁴ While the cities in the Central Puget Sound Region are diverse, our communities are integrated in many ways. Tolling I-90 will have the effect of increasing distances between the cities, particularly for the elderly and individuals of modest means (e.g., students). For instance, residents of both Mercer Island and Seattle frequently use I-90 to access the extensive wilderness recreation areas, and many of those individuals volunteer to restore and maintain those resources. Some communities east of the bridge rely heavily on the economic contributions of these avid hikers, bikers, and conservationists. Tolling I-90 will hamper habitat restoration efforts, reduce social benefits to the volunteers, deter recreation-related tourism, further burden the state and federal agencies who rely heavily on volunteers to maintain wilderness areas for recreation purposes, and ultimately the direct social and economic impacts will lead to indirect environmental impacts. If crossing the bridge in the opposite direction, tolls will discourage residents of east-side communities from accessing the many educational and cultural resources in Seattle. Impacts to social, economic, and natural resources will extend both east and west of the I-90 bridge over Lake Washington.

In sum, WSDOT and FHWA should thoroughly examine the scope and extent of these impacts during its NEPA review. Moreover, because the impact to social and economic resources is likely to cause significant environmental degradation within the local context of Mercer Island, WSDOT and FHWA should analyze these impacts in detail in an EIS and strongly consider mitigation measures that preserve "equitable and dependable access."

²⁴ WSDOT Letter (Jan. 11, 2013).

II. WSDOT and FHWA Must Consider a Reasonable Range of Alternatives.

NEPA requires agencies to consider all reasonable alternatives. *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 198 (D.C. Cir. 1991). The purpose of the I-90 tolling project is currently defined to include: (1) raise revenue for substantial transportation improvements in the "Cross-Lake Washington Corridor"; and (2) help alleviate congestion on I-90 between I-5 and I-405.²⁵ As currently drafted, this combination of purposes sharply limits the alternatives analysis. *Id.* ("An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality.").

A. *The No Action Alternative Should be Reviewed As a Valid Policy Choice.*

NEPA requires review of the No Action Alternative. 40 C.F.R. § 1502.14(d). Careful review of the No Action Alternative is particularly warranted here for two reasons. First, the 1976 Memorandum of Agreement is based on the understanding that I-90 is the only public access to Mercer Island. WSDOT and the FHWA recognize the Agreement as an "existing commitment" and part of the "local transportation planning process." Second, the policy alternative of not tolling the system, or its parts, was not analyzed in the Transportation 2040 Plan and Final Environmental Impact Statement²⁶ and it is critical for the legislature to have an accurate understanding of the No Action Alternative and its impacts so that it can understand the changes that tolling would create. *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972) ("NEPA was intended to provide a basis for consideration and choice by the decisionmakers in the legislative as well as the executive branch"). While it should be no surprise that the City continues to fight to ensure "equitable and dependable access" to the Island, it is important to recognize that NEPA, properly done, will enable the legislature to fully consider issues of equity and access for the system as a whole, by providing information that allows a meaningful comparison of the No Action Alternative to other options.

B. *The Alternatives Should Include Different Combinations of Revenue Tools in Transportation 2040.*

As a threshold matter, even if the narrow purpose statement is accepted, this does not limit the scope of environmental review to various tolling options. WDOT and FHWA are required by law to examine the range of reasonable alternatives, *Headwaters, Inc. v. Bureau of Land Mgmt.*, 914 F.2d 1174, 1180 (9th Cir. 1990) (in evaluating whether an agency considered a reasonable range of alternatives, "the touchstone for our inquiry is whether an

²⁵ WSDOT Scoping Notice (Jan. 24, 2013).

²⁶ See Transportation 2040 FEIS at 3-6 (noting that all Plan alternatives include tolling).

EIS's selection and discussion of alternatives fosters informed decision-making and informed public participation.”), and there are clearly other reasonable mechanisms for raising revenue and/or alleviating congestion.

Instead, WSDOT and FHWA should consider alternatives which combine mechanisms for funding and reducing congestion on I-90. This is consistent with WSDOT's recent recommendation that the U.S. Army Corps of Engineers should conduct an expansive alternatives analysis for the construction of the Gateway Pacific Terminal in Bellingham, WA.²⁷ To address potential transportation impacts to the Edmonds ferry, WSDOT suggested that the Corps should analyze the reasonable alternative of relocating the ferry terminal.²⁸ At the very least, WSDOT and FHWA should analyze the impacts of tolling on Mercer Island's many Seattle-region educational facilities, including St. Monica's Parish School, Northwest Yeshiva High School, and the French-American School, and develop alternatives that would mitigate such impacts.

The City of Mercer Island asks for examination of less extreme alternatives here. The Puget Sound Regional Council (“PSRC”) issued the “Transportation 2040” Plan in order to guide regional transportation planning for the four-county Central Puget Sound Region (King, Kitsap, Pierce and Snohomish counties).²⁹ The Transportation 2040 Plan relies on several funding options – not just tolling – and explicitly includes continuation of and expansion upon the traditional financing scheme (retail sales tax, fuel sales tax, etc.).³⁰ Another alternative could be imposition of a gas tax, as recently proposed in the Washington House of Representatives.³¹ This recent legislative activity – and the requirement of legislative approval for the proposal and any alternatives thereto – makes it especially important that WSDOT and FHWA analyze traditional funding mechanisms in the NEPA process. *Natural Resources Defense Council v. Morton*, 458 F.2d at 837.

C. *The Alternatives Analysis Should Include Different Levels of Tolls and Different Geographic Coverage.*

To the extent that WSDOT and FHWA proceed with tolling, the agencies should follow the Transportation 2040 Plan, which explicitly recognizes the need for a “nexus” between the road being tolled and the road being improved.³² For the near-term “high-occupancy toll lanes and individual facility toll financing” contemplated in the

²⁷ See WSDOT Letter (Jan. 11, 2013).

²⁸ *Id.*

²⁹ Transportation 2040 at i.

³⁰ *Id.* at 45.

³¹ Andrew Garber, *House Democrats to Propose \$6 Billion Transportation Package*, THE SEATTLE TIMES (Feb. 12, 2013).

³² Transportation 2040 at 45.

Transportation 2040 Plan, the Plan anticipates that such “toll revenues are essentially dedicated to making the investments in these corridors possible.”³³

Alternatives might, for example, combine tolls on the new SR-520 bridge (after construction) and other congestion relief methods for I-90. *N. Buckhead Civic Ass’n v. Skinner*, 903 F.2d 1533, 1542 (11th Cir. 1990) (“a discussion of alternatives that would only partly meet the goals of the project may allow the decisionmaker to conclude that meeting part of the goal with less environmental impact may be worth the tradeoff with a preferred alternative that has greater environmental impact”); *Town of Mathews v. U.S. Dep’t of Transp.*, 527 F. Supp. 1055, 1057 (W.D.N.C. 1981) (invalidating alternatives analysis because NEPA “does not permit the agency to eliminate from discussion or consideration a whole range of alternatives, merely because they would achieve only some of the purposes of a multi-purpose project.”). WSDOT and FHWA should analyze the transportation impacts of such an alternative; some combination of congestion relief and the forthcoming I-90 HOV lanes may sufficiently alleviate congestion to make other (more equitable) funding mechanisms viable.

The Transportation 2040 Plan also recognizes that broad geographic tolling (i.e., including all of the I-450 lanes, I-5, and SR-522) would be more effective at balancing revenue and impacts.³⁴ WSDOT and FHWA should consider imposing lower tolls on more roads within the Central Puget Sound Region to meet the stated purposes, be more consistent with the Transportation 2040 Plan, and spread burdens more equitably between Central Puget Sound Region communities.

D. The Alternatives Analysis Should Thoroughly Explore Subalternatives to Mitigate Impacts to Mercer Island.

To the extent that WSDOT and FHWA proceed with tolling, the agencies should carefully consider options that balance the burden between Mercer Island residents and employees and those who directly benefit from replacement of the SR-520 bridge. As WSDOT knows, there are many potential refinements – or subalternatives – within the tolling alternative that should also be examined carefully:

1. Segmented Tolls
2. Only pay the toll if you drive the entire bridge (e.g., placement of gantries at east and west ends of bridge; no charge unless a car passes both gantries)

³³ *Id.* at 48 (“Guidance on the Use of Tolling Revenues”).

³⁴ Transportation 2040 at 46 (“Generally, the effectiveness of congestion tolling is the greatest with broad geographic coverage. Broader coverage can reduce the problem of diverted traffic: traffic that is ‘tolled-off’ the priced facility and now is using and congesting other roadways.”).

3. Only pay the toll if you drive in a designated direction
4. Pay no more than one toll per day
5. Pay tolls only when returning to Mercer Island
6. Provide an annual pass (cap) for tolls paid by Mercer Island residents and employees
7. Reduced toll for trips only to/from Mercer Island

The NEPA document should also acknowledge that depending on how tolling is implemented, Mercer Island residents will not necessarily have the same access to transit options to mitigate these impacts. WSDOT's own data show that unlike park and ride spaces in Bellevue, Kirkland or Sammamish, over one half of the spaces are used by non-Mercer Island commuters that travel to the Island. Depending on how WSDOT implements tolling, this problem may worsen if commuters park on the Island and switch to the bus or light rail in order to avoid paying the toll. Thus, the provision of park and ride spaces does not necessarily provide dependable or equitable access to Mercer Island residents who are unable to use the majority of spaces and have no access to such spaces after approximately 7:30 a.m. when the lot is full. Depending on the extent to which WSDOT and FHWA's implementation of tolling minimizes impacts to the City and its residents, the EA or EIS should provide for mitigation to offset the disproportionate impacts to Mercer Island residents.

Conclusion

- Under NEPA, agencies must prepare an EIS where there is a "substantial question" that an action's effects will be significant. In prior EISs, WSDOT and FHWA recognize that tolling causes diversion and the impacts of such diversion can be significant (and thus require preparation of an EIS). The City has provided more than enough information to show that diversion is likely to have significant impacts in the Central Puget Sound Region; WSDOT and FHWA should prepare an EIS.
- The proposal to toll I-90 is merely one action in a menu of transportation choices laid out – but not thoroughly analyzed for NEPA purposes – in the Transportation 2040 Plan and FEIS. This proposal presents the perfect opportunity for WSDOT and FHWA to fulfill their obligations under NEPA to fully examine the cumulative impacts of tolling I-90 and other roads in the Central Puget Sound Region.
- Tolling I-90 will cause a wide range of social and economic impacts which are likely to cause environmental degradation in the long term. WSDOT has advocated in favor of an expansive review of economic impacts to the state and local economies for other projects, and the City of Mercer Island requests that WSDOT and FHWA prepare an EIS to analyze these impacts here.

Angela Angove
February 22, 2013
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- WSDOT and FHWA should consider a reasonable range of alternatives, which must include a full analysis of the No Action alternative, different combinations of revenue tools in the Transportation 2040 Plan, different levels and geographic scope of tolling options, and sub-alternatives that mitigate impacts to Mercer Island and other Central Puget Sound residents.

The City of Mercer Island looks forward to further discussions regarding solutions that meet the State's funding needs, preserve "equitable and reliable access" to Mercer Island, and address congestion on I-90. Thank you for the opportunity to participate in the National Environmental Policy Act ("NEPA") process.

Very truly yours,

K&L GATES LLP

By

William H. Chapman

A handwritten signature in black ink, appearing to read "W. H. Chapman", written over a horizontal line.