



April 18, 2007

Michael D. Meyer, Chairman  
Expert Review Panel  
93 Pike Street—Suite 315  
Seattle, Washington 98101

Re: ST 2 Financial Plan

Chairman Meyer:

I am Sound Transit's General Counsel and write in response to the April 9th letter from Mr. Will Knedlik. In the letter, Mr. Knedlik asserts that Sound Transit is legally limited to a 17% debt level and may not issue more than \$800 million in bond debt to finance Sound Move and ST2.

We have carefully reviewed Mr. Knedlik's allegations and concluded that they are factually inaccurate and legally without merit. The law in Washington is clear. Under Washington statutory law, Sound Transit may issue bond debt equal to 1.5% of the assessed property value of the taxable property within the Sound Transits district boundary without voter approval, and up to 5% of the assessed property value with the approval of 3/5 of the voters.

RCW 81.112.130 states:

Notwithstanding RCW 39.36.020(1), an [regional transit ] authority may at any time contract indebtedness or borrow money for authority purposes and may issue general obligation bonds in an amount not exceeding, together with any existing indebtedness of the authority not authorized by the voters, one and one-half percent of the value of the taxable property within the boundaries of the authority; and with the assent of three-fifths of the voters therein voting at an election called for that purpose, may contract indebtedness or borrow money for authority purposes and may issue general obligation bonds therefor, provided the total indebtedness of the authority shall not exceed five percent of the value of the taxable property therein. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW.

Based on the assessed property values, Sound Transit is authorized to issue more than \$3.7 billion in bond debt without voter approval and could issue more than \$14.1 billion with voter approval.

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Joni Earl

Mr. Knedlik's claim is also factually wrong because the Regional Transit System Plan upon which he bases his claim was proposed and *rejected by voters* in a March 1995 election. Mr. Knedlik's claim is based on the following language contained in The Regional Transit System Plan rejected by the voters:

Maximum Bond Level: To ensure that the RTA maintains a reasonable financially prudent debt level, an overall long term debt ceiling of \$800 million shall be established. This ceiling represents 17% of the total Phase I capital program.<sup>1</sup>

But this provision never became effective because after the Regional Transit System Plan was voted down, the Sound Transit Board voted to rescind and abandon that plan. After the plan lost at the polls, the Sound Transit Board enacted Resolution 73 which states:

Section 4. The Board of the RTA hereby rescinds Resolution No. 40, adopted October 28, 1994, which adopted a Regional Transit System Plan, approving within said Plan a Phase I System Plan.

The Regional Transit System Plan upon which Mr. Knedlik relies was repealed and no longer effective after the Board enacted Resolution 73.

In that same Resolution 73, the Sound Transit Board voted to replace the Regional Transit System Plan with the Sound Move Ten-Year Transit Plan.

Section 1. The Board of the RTA hereby adopts the Ten-Year Regional Transit System Plan substantially as contained in Exhibit A attached hereto, together with its related Appendices, and further identifies said Plan as the RTA's high capacity transportation plan to be implemented pursuant to Chapters 81.104 and 81.112 RCW.

In contrast to the rescinded Regional Transit System Plan, which did purport to limit bond debt to \$800 million, the new Sound Move Ten-Year Transit System Plan contained no such limits. The new plan noted only that the agency would borrow conservatively to ensure that the bonds could be repaid.

Conservative borrowing levels—The RTA is committed to placing limits on its use of long-term debt. It has adopted several policies to make sure this commitment is met. These policies establish the conservative approach the RTA will use to calculate the cash flow available to service debt, set a debt service coverage ratio policy, and reserve a portion of the RTA's debt financing capacity to provide a future potential funding source for unforeseen circumstances.

See, Sound Move Ten-Year Regional Transit System Plan at 36.

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<sup>1</sup> Mr. Knedlik has also misread the actual meaning of the provision in the Regional Transit System Plan upon which he relies. This provision established a \$800 million bond debt ceiling. It does not, as Mr. Knedlik claims, establish a 17% debt ceiling. Rather, the clause states that a \$800 million bond limit, represents 17% of total program costs. The 17% figure is the calculated ratio resulting from a \$800 million bond ceiling and a \$3.914 billion dollar project cost, not an independent financial constraint.

This language does not include a \$800 million bond ceiling or proscribe a 17% debt limit. Instead, the plan committed that a conservative approach would be used in issuing debt to ensure that the agency could pay the debt service and have borrowing capacity in reserve.

There is simply no factual basis for Mr. Kendlik's claims that a debt ceiling contained in a repealed transit plan that was rejected by voters should supersede the actual plan approved by the voters—a plan that did not contain a bond debt ceiling or debt level limit.<sup>2</sup>

There is also no legal basis for Mr. Knedlik's claim. The Washington Supreme Court has rejected arguments that Sound Transit is subject to specific financial limits. We refer the panel to the Washington State Supreme Court decision in *Sane Transit v. Sound Transit*, 85 Wn.2d 50 (2004) in which the Court held that the financial information provided to voters were estimates, and that the voters did not impose specific budget limits on Sound Transit.

Mr. Knedlik's claim that Pierce County Ordinance 94-148 limits Sound Transit to \$800 million in bond debt is also without factual or legal support. Because Pierce County Ordinance 94-148 related to the repealed Regional Transit System Plan that was rejected by the voters in 1995, Ordinance 94-148 has no factual or legal relevance to the Sound Move Ten-Year Regional Transit System Plan approved by the voters in 1996.

Ordinance 94-148 was adopted by Pierce County to satisfy a statutory requirement that after reviewing the proposed transit plan, each county must vote to participate as one of the counties included in the Sound Transit District. *See*, RCW 81.112.030. Under this state law, Pierce County's sole authority was to indicate its yes or no decision whether to become part of the new regional transit authority. Pierce County did not have the authority to impose conditions on the content of Sound Transit's proposed transit plan. And Pierce County did not attempt to do so. The ordinance merely stated the County's decision to participate in the regional transit authority and incorporated the transit plan by reference to indicate the County's support for the plan.

Pierce County Ordinance 94-148 states in pertinent part:

WHEREAS, Washington State law requires the legislative authorities of participating Counties to affirm their continued participation in the RTA if a revised Master Plan is produced;

NOW THEREFORE,

Section 1. The Pierce County Council hereby indicates its support of "The Regional Transit System Master Plan" as adopted by the Regional Transit Authority on October 29, 1994, which is attached hereto as Exhibit "A", and incorporated herein by reference.

Section 2. The Pierce County Council hereby confirms Pierce County's continued participation in the Regional Transit Authority.

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<sup>2</sup> The Sound Transit financial policies do provide that the agency should manage its finances such that it maintains certain levels of cash assets to cover its bond debt payments. And those policies have been followed.

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By its terms, Ordinance 94-148 relates only to the The Regional Transit System Plan voted down in 1995. The content of the ordinance does not apply to the Sound Move Ten-Year Regional Transit System Plan. There is no legal merit to Mr. Knedlik's argument that this ordinance somehow limits Sound Transit's bond debt capacity.

Additionally, it should be noted that state law required only that counties review the proposed transit plan before the *first* ballot measure submitted to voters. *See*, RCW 81.112.030. This statute provided that if the first proposed transit plan was rejected by the voters, then the Sound Transit Board was free to change the plan or its district boundaries and submit a new plan to the voters without any input from the counties.

RCW 81.112.030(9) states in pertinent part:

If the vote on a proposition fails, the board may redefine the proposition, make changes to the authority boundaries, and make corresponding changes to the composition of the board. If the composition of the board is changed, the participating counties shall revise the membership of the board accordingly. The board may then submit the revised proposition or a different proposition to the voters.

Sound Transit followed the procedure provided in this statute. After the first transit plan was defeated (The Regional Transit System Master Plan), the Sound Transit Board adopted and submitted a new plan (Sound Move Ten-Year Regional System Plan) to the voters—a plan without a bond ceiling. The counties did not review or enact legislation relating to the Sound Move plan because the statute did not authorize them to exert any control over the second ballot measure proposed by Sound Transit. RCW 81.112.030(9) conclusively refutes Mr. Knedlik's argument that Sound Transit was somehow bound by the terms of Pierce County Ordinance 94-148 when it submitted its second ballot measure to the voters.

If this letter does not address your questions or concerns regarding Mr. Knedlik's assertions, please contact me at (206) 398-5017.

Yours truly,



Desmond L. Brown  
General Counsel

DLB:ahw

c: Expert Review Panel  
ST Finance Committee  
Joni Earl