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

CITY OF MERCER ISLAND, a
Washington municipal corporation,

Plaintiff,

vs.

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, a department of
the State of Washington; ROGER MILLAR,
acting in his capacity as the Secretary of the
Washington State Department of
Transportation; and CENTRAL PUGET
SOUND REGIONAL TRANSIT
AUTHORITY, a Washington regional transit
authority,

Defendants.

Case No.

VERIFIED COMPLAINT

COMES NOW, the CITY OF MERCER ISLAND, by and through its undersigned
counsel, and alleges as follows:

I. INTRODUCTION

1.1 The City of Mercer Island (Mercer Island) seeks to enforce long-standing and
binding promises that the Washington State Department of Transportation (WSDOT) and the
Central Puget Sound Regional Transit Authority (Sound Transit) made to Mercer Island and its
residents.

1 1.2 In the 1970s, WSDOT proposed a substantial expansion of Interstate 90 (I-90).
2 Mercer Island (and other cities) objected to the proposal due to the substantial impacts the
3 widened freeway would cause to the city and its residents. Mercer Island's concerns were
4 grounded in its unique geographical circumstance. After extensive negotiations among all of the
5 affected jurisdictions, WSDOT agreed to construct I-90 in a way that both preserved the then-
6 existing access of Mercer Island traffic to and from the island and minimized traffic impacts on
7 the island. A critical element of the agreement was that Mercer Island traffic would be allowed
8 to use the "transit lanes" of I-90 (now referred to as the center lanes), and that WSDOT would
9 take no future action that would result in a "major change" of I-90 without "prior consultation
10 with and involvement," of Mercer Island, requiring Mercer Island's "concurrence . . . to the
11 greatest extent possible under law." The parties documented this in a regional agreement dated
12 December 1976 (1976 Agreement), a copy of which is attached hereto as exhibit A.

13 1.3 Nearly three decades later, in 2004, WSDOT, Mercer Island, Sound Transit, and
14 the other signatories amended the 1976 Agreement to allow Sound Transit to develop light rail in
15 the center lanes, referred to as the East Link light rail project. WSDOT and Sound Transit
16 promised Mercer Island that they would identify and satisfactorily address any loss of mobility to
17 and from Mercer Island "prior to the time the center roadway converts" to light rail. In reliance
18 on that binding pledge, Mercer Island agreed to give up its existing contractual right to use the
19 center lanes. The parties documented this in a regional agreement dated August 2004 (2004
20 Amendment), a copy of which is attached hereto as exhibit B.

21 1.4 WSDOT and Sound Transit have chosen to ignore their long-standing promises to
22 Mercer Island and its residents. They have announced their intention to close the center lanes in
23 the immediate future, but have not satisfactorily addressed the loss of mobility and substantial
24 impacts that the closure of those lanes will have on Mercer Island and its residents. They have
25 failed to adequately study, assess, and mitigate the impacts of this project on Mercer Island and

1 its residents as required by the State Environmental Policy Act and the Growth Management Act.
2 Because Mercer Island and its residents imminently will suffer significant and irreparable harm,
3 Mercer Island has no choice but to seek to enforce the agreements WSDOT and Sound Transit
4 made decades ago and to require compliance with statutory requirements and legislative
5 directives.

6 II. PARTIES

7 2.1 The City of Mercer Island is a municipal corporation formed and existing under
8 the laws of the State of Washington and chapter 35A.13 RCW. The City of Mercer Island is
9 pursuing this lawsuit for the interests of itself and the residents and businesses of Mercer Island.

10 2.2 The Central Puget Sound Regional Transit Authority (Sound Transit) is a regional
11 transit authority formed and existing under the laws of the State of Washington and chapter
12 81.112 RCW.

13 2.3 The Washington State Department of Transportation (WSDOT) is a department of
14 the State of Washington and acts on its own behalf, the State of Washington, and as the
15 successor to the Washington State Transportation Commission pursuant to RCW 47.01.031.

16 2.4 Roger Millar is the Secretary of the Washington State Department of
17 Transportation and is sued solely in his capacity as the Secretary, in which capacity he acted at
18 all relevant times.

19 III. JURISDICTION AND VENUE

20 3.1 The Court has jurisdiction over this matter and the parties pursuant to RCW
21 2.08.010.

22 3.2 Venue is proper pursuant to RCW 4.12.025 because Sound Transit transacts
23 business in King County, pursuant to RCW 4.92.010 because an action against a department of
24 the State of Washington may be commenced in any county where venue is proper as to any other
25 defendant, and pursuant to RCW 34.05.514 because the City of Mercer Island is located in King

1 County.

2 **IV. BACKGROUND FACTS**

3 4.1 **The City of Mercer Island.** The City of Mercer Island is located in King
4 County, Washington. Mercer Island is a family-oriented community consisting principally of
5 residential neighborhoods. It is home to over 24,000 residents. Mercer Island also has numerous
6 businesses that serve both the island community and others in the region.

7 4.2 Mercer Island and its residents are committed to helping the Puget Sound region
8 address its transportation needs. In support of the region's transportation goals, it has actively
9 supported light rail and sought to facilitate the construction and implementation of the light rail
10 system. Mercer Island residents and businesses will pay tens of millions of dollars in property,
11 sales, use, and motor vehicle excise taxes to Sound Transit in the coming years. Mercer Island
12 intends to continue supporting the region's transportation needs, but cannot be unfairly burdened
13 or inequitably treated in light of the prior commitments and promises made to Mercer Island and
14 its residents.

15 4.3 **Mercer Island and its Mobility.** Mercer Island is geographically unique in the
16 State of Washington. Mercer Island is surrounded by Lake Washington with extremely limited
17 access. The only roadway accessing Mercer Island is I-90, and there is no other readily available
18 method to travel to and from the island. There is no ferry nor any other road between the island
19 and the mainland.

20 4.4 Because of its geographic isolation, Mercer Island always has sought to preserve
21 accessibility to and from Mercer Island for its residents, workers, businesses, and visitors. That
22 accessibility today depends entirely on I-90. Many Mercer Island residents work or travel to
23 nearby cities and locations on a daily basis. Mercer Island businesses depend heavily on their
24 customers having the ability to travel to and from Mercer Island. Many other people live
25 elsewhere but work on Mercer Island and travel daily to their places of employment. On an

1 average weekday, over 157,000 vehicles travel on I-90 between Mercer Island and Seattle. The
2 vehicles and persons traveling to and from Mercer Island have no other option but to use I-90.

3 **4.5 1976 Agreement.** In the mid-1970s, the Washington State Highway
4 Commission, now known as WSDOT, proposed a redesign and significant expansion of I-90.
5 All of the affected jurisdictions, including the cities of Seattle, Bellevue, and Mercer Island,
6 objected to the proposed redesign and expansion. Mercer Island was concerned about the
7 construction impacts, property loss, environmental impacts, and that an expanded highway
8 would result in higher traffic volumes, hampering the ability of people to get on and off the
9 island, in addition to disrupting traffic on the island.

10 **4.6** Based on its concerns, Mercer Island requested that the Highway Commission
11 dedicate a lane on the proposed expanded highway to use by Mercer Island traffic to preserve
12 existing mobility. The City of Seattle objected to the Highway Commission's proposal based on
13 the number of proposed lanes and the impacts the expanded highway would cause on Seattle's
14 neighborhoods. The City of Bellevue favored an expanded highway, but objected to Mercer
15 Island being provided access that differed from other users. The disagreement among the
16 affected jurisdictions and the Highway Commission extended for years, causing the proposed
17 expansion of I-90 to be highly in doubt.

18 **4.7** Through extended rounds of negotiation and mediation, the affected jurisdictions
19 and the Highway Commission resolved their differences and reached an agreement on the
20 proposed I-90 expansion. Each affected jurisdiction and the Highway Commission compromised
21 its position in consideration of the mutual promises made by the others. They memorialized their
22 agreement in the 1976 Agreement.

23 **4.8** In the 1976 Agreement, Mercer Island relinquished its demand for a lane
24 dedicated exclusively to Mercer Island traffic. In consideration of Mercer Island's compromise,
25 the parties agreed that all Mercer Island traffic would be provided access to the "transit lanes" of

1 the proposed expanded I-90 highway. 1976 Agreement ¶ 1(e), at 4. These lanes are now
2 referred to as the center lanes. The parties' agreement recognized Mercer Island's unique
3 geographical limitations and the mutual desire to preserve Mercer Island's then-existing
4 mobility. The 1976 Agreement also addressed the concerns of the other affected jurisdictions,
5 providing accommodations to the City of Seattle and the City of Bellevue to resolve their
6 objections and secure their agreement.

7 4.9 Apart from addressing the proposed expansion of I-90, the affected jurisdictions
8 and the Highway Commission also resolved how the region would treat future development of
9 the I-90 corridor to avoid future disputes. The parties agreed that any subsequent change to the
10 "mode of operation" of I-90 must account for the particular needs of the affected jurisdictions,
11 including "equitable access for Mercer Island." Moreover, the concurrence of Mercer Island and
12 the other parties to the agreement would be a "prerequisite" to any future changes:

13 This agreement represents substantial accommodations by the parties of positions
14 held heretofore. Such accommodations were made in order to achieve a
15 unanimous agreement upon which to proceed with the design and construction of
16 I-90 and related projects. This agreement, therefore, sets forth the express intent of
17 the existing governing bodies that the parties to this agreement understand that
18 their respective governing bodies are limited in the degree to which they can bind
19 their successors with respect to the exercise of governmental powers vested in
20 those governing bodies by law. Accordingly, the Commission will **take no action**
21 which would result in a major change in either the operation or the capacity of the
22 I-90 facility **without** prior consultation with and **involvement of the other parties**
23 **to this agreement**, with the intent that **concurrence of the parties be a**
24 **prerequisite to Commission action** to the greatest extent possible under law.

25 1976 Agreement ¶ 14, at 12–13 (emphasis added).

4.10 Mercer Island, its residents, and its businesses, have relied on the commitments
contained in the 1976 Agreement. People have chosen to live and work on Mercer Island,
purchase homes, and operate businesses knowing that their mobility would be preserved and
that, if there were changes to I-90, those changes would not occur without considering and
adequately addressing the impacts the changes would have on the ability to access and travel

1 within Mercer Island, and without Mercer Island's concurrence as a condition of any change.

2 4.11 Based on the commitments memorialized in the 1976 Agreement, Mercer Island
3 has borne the burden of having an expanded eight-lane transcontinental highway crossing and
4 dividing its island. For years, Mercer Island and its residents experienced significant
5 construction activity while WSDOT expanded I-90. Since its completion, Mercer Island and its
6 residents have endured for decades the impacts caused by a highway dividing the island with
7 over 150,000 vehicles passing through their city daily.

8 4.12 **2004 Amendment.** In 1993, Sound Transit was formed and it immediately began
9 plans to create a light rail system to serve the Puget Sound region. As part of its system, Sound
10 Transit proposed using I-90 as the route for light rail to cross Lake Washington as part of what is
11 referred to as the East Link.

12 4.13 In 2004, the parties to the 1976 Agreement and Sound Transit entered into an
13 amendment of it to allow Sound Transit to develop High Capacity Transit in the center lanes of
14 I-90, which would require closure of the center lanes to vehicular traffic (the 2004 Amendment).
15 Because the 1976 Agreement provided Mercer Island the contractual right to use the center
16 lanes, Mercer Island agreed to the 2004 Amendment based on WSDOT and Sound Transit
17 "recogniz[ing] the I-90 facility as . . . the only means of mobility to and from Mercer Island,"
18 and their commitment, before closure of the center lanes occurred, to satisfactorily address
19 impacts to that mobility that would be caused by the closure of the center lanes. 2004
20 Amendment at 2, 4.

21 4.14 The 2004 Amendment provides in part:

22 **To the extent of any loss of mobility to and from Mercer Island** based on the
23 outcome of studies, additional transit facilities and services such as additional bus
24 service, parking available for Mercer Island residents, **and other measures shall**
25 **be identified and satisfactorily addressed** by the [Washington State Highway]
Commission, in consultation with the affected jurisdictions pursuant to paragraph
14 of the [1976] Agreement, **prior to the time** the center roadway converts to
High Capacity Transit.

1 2004 Amendment at 4 (emphasis added).

2 4.15 The 1976 Agreement and the 2004 Amendment were vital for the Puget Sound
3 region and the State of Washington, allowing the affected jurisdictions and WSDOT to resolve a
4 complex transportation issue. The 1976 Agreement and the 2004 Amendment facilitated the
5 construction and expansion of the I-90 highway, created the conditions that would allow for the
6 extension of the light rail system to areas east of Seattle, and protected the specific and unique
7 interests of all of the parties to the agreements. The agreements reflect a careful balance of
8 regional projects and the burdens that those projects have on particular jurisdictions. The 1976
9 Agreement and the 2004 Amendment serve as a standard for regional cooperation among
10 governmental entities addressing significant and contentious issues.

11 4.16 Until very recently, WSDOT and Sound Transit reaffirmed their obligations under
12 the 1976 Agreement and the 2004 Amendment to preserve the mobility of Mercer Island and its
13 residents. In 2006, WSDOT reassured Mercer Island that it would “honor our understanding of
14 the agreement reached by the signatories regarding Mercer Island access to HOV [high
15 occupancy vehicle] lanes.” In 2005, Sound Transit confirmed that the 2004 Amendment
16 “commits Sound Transit to the guiding principles for implementing [High Capacity Transit] in
17 the I-90 roadway.” More recently, in July 2015, Sound Transit committed itself “to work with
18 the City of Mercer Island [and] the Mercer Island public . . . to identify issues to be addressed
19 with regard to implementation of and access to East Link light rail . . . , including obligations
20 under the 2004 Amendment . . . and other matters involving the East Link light rail that directly
21 impact the City of Mercer Island.”

22 4.17 **Requirements by the State Legislature.** As contemplated by the 2004
23 Agreement and to accommodate traffic displaced from the center lanes by construction of light
24 rail, WSDOT is constructing two additional lanes on the outer lanes of I-90. This project is
25 referred to as “R8A” and the to-be-constructed lanes are referred to as the “R8A lanes.”

1 4.18 The parties to the 2004 Amendment contemplated that one method to partially
2 maintain mobility to and from Mercer Island was for WSDOT to dedicate the R8A lanes to
3 transit, high occupancy vehicles, and Mercer Island traffic, as the parties had agreed to allow for
4 the center lanes in the 1976 Agreement.

5 4.19 The Washington State Legislature specifically conditioned WSDOT's expenditure
6 of R8A construction funds and WSDOT's transfer of the center lanes to Sound Transit on
7 allowing Mercer Island traffic to use the R8A lanes. In its 2008 budget appropriation for the
8 R8A project, the Legislature enacted a law with explicit direction to WSDOT:

9 Expenditure of the funds on construction is **contingent upon** revising the access plan
10 for Mercer Island traffic **such that Mercer Island traffic will have access to the outer**
11 **roadway high occupancy vehicle (HOV) lanes** during the period of operation of such
12 lanes following the removal of Mercer Island traffic from the center roadway and prior
13 to conversion of the outer roadway HOV lanes to high occupancy toll (HOT)
14 lanes. Sound Transit **may only have access** to the center lanes when alternative R8A is
15 complete.

16 Laws of 2008, ch. 121, § 306(3) (emphasis added). In 2009, the Legislature enacted the same
17 law in appropriating funds for the R8A project, reaffirming that:

18 Expenditure of the funds on construction is **contingent upon** revising the access plan
19 for Mercer Island traffic **such that Mercer Island traffic will have access to the outer**
20 **roadway high occupancy vehicle (HOV) lanes** during the period of operation of such
21 lanes following the removal of Mercer Island traffic from the center roadway and prior
22 to conversion of the outer roadway HOV lanes to high occupancy toll (HOT)
23 lanes. Sound Transit **may only have access** to the center lanes when alternative R8A is
24 complete.

25 Laws of 2009, ch. 8, § 304(3) (emphasis added).

 4.20 **Federal Highway Administration Action.** WSDOT has had a contractual
obligation since 1976 to address the loss of mobility to and from Mercer Island prior to the
closure of the center lanes. The State Legislature in 2008 and 2009 directed WSDOT to allow
Mercer Island traffic to access the to-be-completed R8A lanes as a method to partially address
the loss of mobility caused by closure of the center lanes. Yet despite that knowledge, WSDOT

1 only recently concluded it should seek approval from the Federal Highway Administration
2 (FHWA) to allow Mercer Island traffic to use the R8A lanes.

3 4.21 By letter dated August 5, 2016, FHWA refused to issue the requested exemption
4 from statutory restrictions on the use of the R8A lanes if WSDOT designates them HOV.
5 Nonetheless, WSDOT has stated it intends to designate the R8A lanes HOV, thus barring the
6 vast majority of Mercer Island traffic from the R8A lanes and the primary I-90 access ramps,
7 despite the Legislature's explicit directives to the contrary.

8 4.22 **Non-Compliance with the State Environmental Policy Act.** As required by the
9 State Environmental Policy Act, in July 2011, WSDOT and Sound Transit issued what purports
10 to be a final Environmental Impact Statement (EIS) for Sound Transit's East Link light rail
11 project. But in analyzing the environmental impacts caused by the closure of the center lanes,
12 WSDOT and Sound Transit's traffic analysis explicitly assumed all Mercer Island traffic would
13 be able to use the R8A lanes. WSDOT and Sound Transit have not prepared any analysis or a
14 supplemental EIS to address the known significant adverse environmental impacts caused by
15 barring the vast majority of Mercer Island traffic from the R8A lanes and from critical access
16 ramps to and from Mercer Island.

17 4.23 **WSDOT's and Sound Transit's Lack of Action.** Despite their contractual and
18 statutory obligations, WSDOT and Sound Transit have done nothing to meaningfully address the
19 loss of mobility or impacts that will occur on Mercer Island prior to the closure of the center
20 lanes and elimination of access ramps to I-90. WSDOT has made no effort to comply with the
21 Legislature's directive to ensure that Mercer Island traffic has access to the R8A lanes before it
22 transfers the center lanes to Sound Transit. WSDOT and Sound Transit have the ability to
23 address the loss of mobility and impacts, including designating the R8A lanes as managed lanes
24 or express lanes, constructing additional ramps to access I-90 from Mercer Island and vice-versa,
25 preserving Mercer Island traffic's access to particular I-90 ramps, closing the center lanes later in

1 the process of constructing the East Link light rail project, and providing parking dedicated to
2 Mercer Island residents.

3 4.24 **Loss of Mobility and Impacts.** Closure of the center lanes and elimination of
4 certain access ramps to I-90 is imminent. WSDOT and Sound Transit intend to close the center
5 lanes in June 2017 and have refused to delay the closure, notwithstanding that light rail will not
6 become operational for at least six years. Simultaneously, WSDOT and Sound Transit intend to
7 eliminate westbound access to I-90 from the sole primary arterial on Mercer Island (Island Crest
8 Way) and another significant arterial (77th Street), removing the two primary and critical
9 methods by which Mercer Island traffic has accessed I-90 over the last four decades.

10 4.25 By simultaneously closing the center lanes, removing critical access ramps, and
11 closing other key facilities (including the South Bellevue Park and Ride), all without
12 implementing any mitigation measures before these changes occur, WSDOT and Sound Transit
13 will cause Mercer Island to suffer significant and adverse impacts on the existing mobility to,
14 from, and on Mercer Island.

15 4.26 Among other impacts, traffic to and from Mercer Island will be unable to use I-90
16 in a manner even close to the existing uses. Mercer Island traffic will face substantial delays to
17 access I-90, the only route to and from Mercer Island. Traffic on local intersections and streets
18 will exceed capacity, resulting in many intersections falling below the adopted minimum level of
19 service, in violation of the Growth Management Act. The closure of the center lanes and
20 elimination of access ramps will redirect traffic on Mercer Island to residential streets, some with
21 school crosswalks, that are not designed to handle the significant increase in traffic volume.
22 Passenger vehicles, commercial vehicles, and freight trucks will be forced into areas that lack
23 minimum safety and traffic improvements. The safety of Mercer Island children, pedestrians,
24 bicyclists, and automobile users will be compromised as a result.

25 4.27 The future operation of a light rail system will not resolve these impacts. Sound

1 Transit states that the light rail system will not become operational until 2023, if not later.
2 During the six-year (or more) construction period, Mercer Island residents and businesses will
3 have no way to ameliorate the loss of mobility or impacts. Nor will any future light rail system
4 eliminate the loss of mobility and the impacts to lives and safety that the closure of the center
5 lanes and access ramps will cause now or in the future.

6 4.28 If the closure of the center lanes occurs without satisfactorily addressing the loss
7 of mobility beforehand, Mercer Island will forever lose the contractual rights that it specifically
8 bargained for and accepted as a compromise in the 1976 Agreement and the 2004 Amendment.
9 Closure of the center lanes will be contrary to the Legislature's specific directives to WSDOT
10 not to transfer the center lanes to Sound Transit until Mercer Island traffic is provided access to
11 the R8A lanes. If WSDOT and Sound Transit do not honor the promises they made to Mercer
12 Island decades ago, their breaches will be an affront to the regional cooperation that is critical if
13 the Puget Sound region is to continue to grow and develop in a sustainable and equitable manner.

14 **V. FIRST CAUSE OF ACTION – BREACH OF CONTRACT**
15 (against WSDOT and Sound Transit)

16 5.1 Mercer Island realleges the above paragraphs.

17 5.2 WSDOT and Sound Transit have breached their contractual obligations under the
18 1976 Agreement and the 2004 Amendment in that the closure of the center lanes is imminent and
19 WSDOT and Sound Transit have not adequately or fairly consulted Mercer Island about the
20 closure; have not obtained Mercer Island's concurrence in the terms of that decision; and have
21 taken no meaningful steps to identify and satisfactorily address the loss of mobility to and from
22 Mercer Island prior to that closure.

23 5.3 Sound Transit's and WSDOT's failures to meet their obligations will cause
24 Mercer Island irreparable harm and damage unless they are required to specifically perform their
25 obligations.

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VI. SECOND CAUSE OF ACTION – DECLARATORY JUDGMENT
(against WSDOT and Sound Transit)

6.1 Mercer Island realleges the above paragraphs.

6.2 The Declaratory Judgments Act entitles Mercer Island, as an entity interested under a “written contract or other writings constituting a contract” to “obtain a declaration of rights, status, or other legal relations” based on that contract. RCW 7.24.020.

6.3 Mercer Island is entitled to a declaration that the 1976 Agreement and the 2004 Amendment require that, prior to the closure of the center lanes, WSDOT and Sound Transit must adequately and fairly consult Mercer Island; obtain Mercer Island’s concurrence in the terms of that decision; and identify and satisfactorily address the loss of mobility to and from Mercer Island prior to that closure.

VII. THIRD CAUSE OF ACTION – PROMISSORY ESTOPPEL
(against WSDOT and Sound Transit)

7.1 Mercer Island realleges the above paragraphs.

7.2 WSDOT and Sound Transit promised Mercer Island that they would preserve the mobility to and from Mercer Island prior to the closure of the center lanes. WSDOT and Sound Transit reasonably should have expected that their promises would cause Mercer Island to change its position in reliance on their promises.

7.3 Mercer Island changed its position in justifiable reliance on the promises provided by WSDOT and Sound Transit. Among other things, Mercer Island agreed to withdraw its objections to the original proposed expansion and redesign of I-90, to consent to the proposed closure of the center lanes to allow the construction and installation of a High Capacity Transportation system, and to forego its contractual right that traffic to and from Mercer Island could use the center lanes.

7.4 Injustice only can be avoided by enforcing the promises made by WSDOT and Sound Transit.

1 **VIII. FOURTH CAUSE OF ACTION – WRIT OF MANDAMUS**
2 (against WSDOT and Secretary Millar)

3 8.1 Mercer Island realleges the above paragraphs.

4 8.2 RCW 7.16.160 provides that the Court may issue a writ of mandamus to compel
5 the performance of an act which the law especially enjoins as a duty resulting from an office,
6 trust, or station.

7 8.3 By statute, the Legislature conditioned its appropriations for the R8A project on
8 WSDOT ensuring that Mercer Island traffic would be allowed access to the new R8A lanes upon
9 closure of the center lanes. WSDOT and Secretary Millar had an obligation to fulfill the
10 condition imposed on the appropriation. WSDOT and Secretary Millar are subject to a clear
11 duty to act in the manner as directed by the Legislature.

12 8.4 Mercer Island has no plain, speedy, and adequate remedy in the law to compel
13 WSDOT and Secretary Millar to comply with the statutory directive. Mercer Island is
14 beneficially and specially interested as it is referenced specifically in the statute as the intended
15 beneficiary of the statutory directive. WSDOT's and Secretary Millar's statutory duties to
16 Mercer Island can be enforced only by an order compelling WSDOT's and Secretary Millar's
17 performance.

18 8.5 Mercer Island is entitled to a writ commanding WSDOT and Secretary Millar to
19 allow Mercer Island traffic to use the new R8A lanes when the center lanes are closed.

20 **IX. FIFTH CAUSE OF ACTION – WRIT OF PROHIBITION**
21 (against WSDOT and Secretary Millar)

22 9.1 Plaintiff Mercer Island realleges the above paragraphs.

23 9.2 RCW 7.16.290 provides that the Court may issue a writ of prohibition to restrain
24 the unauthorized exercise of executive and administrative power.

25 9.3 By statute, the Legislature prohibited WSDOT and Secretary Millar from
allowing Sound Transit access to the center lanes until "alternative R8A is complete." By the

1 same statute, the Legislature described its requirements for “alternative R8A,” that “Mercer
2 Island will have access to the outer roadway high occupancy vehicle (HOV) lanes.” WSDOT
3 and Secretary Millar are subject to a clear duty not to act contrary to this statutory directive.

4 9.4 Mercer Island has no plain, speedy, and adequate remedy in the law to prohibit
5 this unlawful action by WSDOT and Secretary Millar. Mercer Island is beneficially and
6 specially interested as it is referenced specifically in the statute as the intended beneficiary of the
7 statutory directive. WSDOT’s and Secretary Millar’s statutory duties to Mercer Island can be
8 enforced only by an order prohibiting WSDOT and Secretary Millar from allowing Sound
9 Transit access to the center lanes until they comply with the statutory directive.

10 9.5 Mercer Island is entitled to a writ commanding WSDOT and Secretary Millar to
11 desist and refrain from granting Sound Transit access to the center lanes until Mercer Island
12 traffic is allowed to use the new R8A lanes.

13 **X. SIXTH CAUSE OF ACTION – VIOLATION OF**
14 **STATE ENVIRONMENTAL POLICY ACT**
15 (against WSDOT and Sound Transit)

16 10.1 Mercer Island realleges the above paragraphs.

17 10.2 The State Environmental Policy Act (SEPA) requires an agency to prepare a
18 supplemental EIS if there are “[s]ubstantial changes to a proposal so that the proposal is likely to
19 have significant adverse environmental impacts” or there is “[n]ew information indicating a
20 proposal’s probable significant adverse environmental impacts” not “covered by the range of
21 alternatives and impacts analyzed in the existing environmental documents.” WAC 197-11-
22 600(3)(b).

23 10.3 The final EIS WSDOT and Sound Transit prepared for the East Link light rail
24 project expressly assumed that all Mercer Island traffic would be allowed to use the R8A lanes
25 upon closure of the center lanes, and identified environmental impacts and necessary mitigation
based on that assumption.

1 1. That the Court enjoin and otherwise prohibit WSDOT and Sound Transit from
2 closing the center lanes or otherwise taking action that would result in a major change in the
3 operation or capacity of I-90 prior to identifying and satisfactorily addressing the loss of mobility
4 to and from Mercer Island as set forth in the parties' agreements;

5 2. That the Court award specific performance to Mercer Island to require and
6 compel WSDOT and Sound Transit to identify and satisfactorily address the loss of mobility to
7 and from Mercer Island as set forth in the parties' agreements;

8 3. That the Court declare that prior to the closure of the center lanes, WSDOT and
9 Sound Transit must fairly and reasonably consult Mercer Island about the closure; obtain Mercer
10 Island's concurrence in the terms of that decision; and identify and satisfactorily address the loss
11 of mobility to and from Mercer Island.

12 4. That the Court issue a writ of mandamus commanding WSDOT and Secretary
13 Millar to provide Mercer Island traffic the access to the new R8A lanes upon closure of the
14 center lanes;

15 5. That the Court issue a writ commanding WSDOT and Secretary Millar to cease
16 and desist from granting Sound Transit access to the center lanes until Mercer Island traffic is
17 allowed to access the new R8A lanes;

18 6. That the Court order WSDOT and Sound Transit to prepare a supplemental EIS
19 for the East Link project that accurately identifies the environmental impacts and mitigation
20 required for the project;

21 7. That the Court enjoin and otherwise prohibit Sound Transit from performing any
22 further work on the East Link light rail project until such time that WSDOT and Sound Transit
23 have prepared a supplemental EIS for the project that accurately identifies the environmental
24 impacts and mitigation required for the project;

25 8. That, as an alternative remedy, the Court award damages to Mercer Island in the

1 amount to be proven at trial; and

2 9. That the Court grant such other relief as is equitable and just.

3 Dated this 16th day of February, 2017.

4 OFFICE OF THE CITY ATTORNEY
5 CITY OF MERCER ISLAND

6 

7 Kari L. Sand, City Attorney
8 WSBA No. 27355
9 Kari.Sand@mercergov.org

10 HARRIGAN LEYH FARMER & THOMSEN, LLP

11 By 

12 Timothy G. Leyh, WSBA No. 14853
13 Randall T. Thomsen, WSBA No. 25310
14 Kristin Ballinger, WSBA No. 28253

15 *Attorneys for Plaintiff City of Mercer Island*

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VERIFICATION

I, Julie Underwood, declare as follows:

I am the City Manager of plaintiff City of Mercer Island. I have personal knowledge of the City of Mercer Island and its activities, including those set out in the foregoing Verified Complaint and if called on to testify I would competently testify as to the matters stated herein.

I verify under penalty of perjury under the laws of the State of Washington that the factual statements in this Verified Complaint concerning Mercer Island and its activities are true and correct.

Dated this 16th day of February, 2017, at Mercer Island, Washington.


Julie Underwood

Exhibit A

MEMORANDUM AGREEMENT

City of Seattle
City of Mercer Island
City of Bellevue
King County
Metro
Washington State Highway Commission

December, 1976

MEMORANDUM AGREEMENT

WHEREAS, the cities of Seattle, Mercer Island and Bellevue; the Municipality of Metropolitan Seattle (hereinafter "Metro"); and King County by and through their respective councils and the Washington State Highway Commission (hereinafter "the Commission") desire to resolve the disputes which have surrounded the plans to construct an improved Interstate 90 (I-90) facility between Interstate 405 (I-405) and Interstate 5 (I-5); and

WHEREAS, there is a desire to create an environment of cooperation in which agreement is reached among all parties concerned relative to the design of the I-90 facility and related transportation projects; and

WHEREAS, the decisions of the Ninth Circuit Court of Appeals of the United States District Court for the Western District of Washington have required that all alternatives to the proposed highway be studied; and

WHEREAS, all parties hereto state that they have reviewed the proposed highway development and all currently available alternatives to it, including the option of withdrawal and substitution; and

WHEREAS, the I-90 facility from I-405 to I-5, when constructed, must contain all of the social and environmental amenities included in the Commission's previously adopted plans and modifications thereof contained in the Findings and Order of the Board of Review in order to be acceptable to all jurisdictions; and

WHEREAS, the parties believe that construction of the agreed upon I-90 facility will be of definite advantage to all four local jurisdictions because it will provide an excellent transit way between Seattle, Mercer Island and Bellevue; it will eliminate the dangerous three-one reversible lane operation presently employed in that corridor; it will provide improved truck access from the east to Seattle's south industrial/commercial area and port; it will provide improved capacity in the off-peak direction; it will probably provide an improved facility sooner than other approaches; it will provide access to and from I-90 and I-5 south of downtown Seattle eliminating traffic presently going through Beacon Hill residential areas; it will provide many jobs for our citizens during the period of construction; and it will repair the corridor and help knit together the communities now split by U.S. 10 west of the Mount Baker ridge and across Mercer Island; and

WHEREAS, the parties have concluded that withdrawal and substitution is not a desirable option because it would double the local matching monies required and because Mercer Island and Seattle find unacceptable a major highway/transit I-90 facility without extensive environmental amenities which amenities might not be funded under the withdrawal and substitution alternative; and

WHEREAS, it is in the best interest of the citizens of the Puget Sound area and the State of Washington that this segment of I-90 be completed in an expeditious manner; and

WHEREAS, all jurisdictions believe that sufficient public hearings have been held on the project and that no further hearings should be held unless legally required; and

WHEREAS, the parties desire to identify and establish a reasonable assurance of construction of certain priority public transportation facilities which are contained in the 1990 Transportation System Plan for the Central Puget Sound Region and which serve to ensure that I-90 functions as an integral part of the region's transportation system; and

WHEREAS, the parties desire to ensure that these future improvements are consistent with the goals and policies for regional development presently under consideration by the Puget Sound Council of Governments (hereinafter "PSCOG") and the subsequent subregional land use element of the Regional Development Plan for the Central Puget Sound Region;

NOW THEREFORE, in consideration of the mutual and reciprocal benefits accruing to each of the parties hereto, it is hereby agreed as follows:

1. The Cities of Seattle, Mercer Island and Bellevue; King County; Metro and the Commission support the construction of a facility which will accommodate no more than eight motor vehicle lanes which are arranged in the following general manner:

- (a) Three general-purpose motor-vehicle lanes in each direction shall be constructed between the South Bellevue Interchange and I-5. In addition, there will be provision for necessary weaving lanes and possible local access across the East Channel, to be determined in accordance with paragraph 1(e) below.

- (b) The facility shall also contain provision for two lanes designed for and permanently committed to transit use. The eastern and western termini for these lanes shall be designed to facilitate uninterrupted transit and carpool access to downtown Seattle and to downtown Bellevue in accordance with paragraph 3 hereinbelow. The design shall be such as to accommodate the operation of the two transit lanes in either a reversible or in a two-way directional mode.
- (c) The facility shall be designed in a manner which, as much as practicable, minimizes the width of the roadway and the taking of land.
- (d) To the extent practical, the facility shall provide priority by-pass access for local transit to the general purpose motor-vehicle lanes.
- (e) The parties agree that the transit lanes shall operate initially in a two-way directional mode, at no less than 45 mph average speed, with the first priority to transit, the second to carpools, and the third to Mercer Island traffic. In the direction of minor flow, the transit lane shall be restricted to busses. The parties further agree that the initial operation of the East Channel bridge shall consist of only three general purpose auto

lanes in each direction in addition to the transit lanes. In addition, there will be an acceleration lane from the South Bellevue Interchange which will terminate prior to the exit ramp at the East Mercer Interchange. The subsequent mode of operation of the facility shall be based upon existing needs as determined by the Commission in consultation with the affected jurisdictions, pursuant to paragraph 14 of this agreement. That determination will consider efficient transit flow, equitable access for Mercer Island and Bellevue traffic, and traffic-related impacts on Seattle.

2. The I-90 facility shall be designed and constructed so that conversion of all or part of the transit roadway to fixed guideway is possible.
3. The parties recognize that the planning, design and construction of efficient access at the eastern terminus and western terminus of this facility will enhance the operation of I-90 as a regional transportation facility. Therefore, the Commission, jointly with Seattle, Mercer Island, Bellevue, King County, and Metro, as their respective interests and responsibilities may dictate, shall immediately upon execution of this agreement undertake the development of the necessary plans and designs for, and shall further proceed, with

the required public hearings and the preparation of the necessary environmental impact statements in order to obtain maximum eligibility for Federal Interstate funding for the construction of the following projects:

- (a) Transit access from I-90 to downtown Seattle;
- (b) Transit access from I-90 to I-405 and to the Bellevue central business district;
- (c) Transit and general-purpose access from I-90 to the King County Stadium area; and
- (d) Transit and general-purpose access from I-90 to arterials serving the north Duwamish industrial/commercial area and the Seattle waterfront;
- (e) Transit access from I-90 transit lanes to I-5;

For any of the above projects or portions thereof which are not eligible for Federal Interstate funding, the Cities, the County and Metro with full support of the Commission, shall seek any available funding for such projects and shall make reasonable effort to complete the construction thereof prior to the completion of I-90.

4. The parties further agree, except as otherwise provided in this agreement, that the modified design of the facility will preserve and incorporate all of the provisions for community amenities and for reducing adverse environmental impacts as contained in limited access plans adopted by the State Highway Commission for

- (a) the segment of I-90 from the West Shore of Mercer Island to the East Channel Bridge and for

(b) the segment from I-5 to the West Shore of Mercer Island (modified by the Findings and Order of the Board of Review dated March 26, 1973, and the Stipulation to Resolve Certain Issues incorporated therein, including but not limited to the provisions for a full lid tying affected Seattle neighborhoods together. The lid shall be constructed to permit park and/or two-story residential or business construction (not industrial uses) to take place on top of the highway between the Mt. Baker tunnel and 23rd Avenue South. Additional loads may be acceptable following specific agreement between the Commission and the City of Seattle. The Commission agrees to fund the landscaping of the lid and the maintenance thereof except as may be agreed to by other parties.

5. The parties agree that the design of the entire facility shall include the following additional features:
- (a) a transit station permitting transfer of transit passengers at Empire Way South or 23rd Avenue South as more particularly set forth in the Findings and Order of the Board of Review.
 - (b) a direct Highway connection for Rainier Valley to and from the east.
 - (c) the Commission's plan for preserving access between Seattle communities over adjacent local city streets shall include improvements of South Norman Street between 20th Avenue South and 23rd Avenue South to provide access to the Judkins neighborhood,

this being done in lieu of the development of South Judkins Street as provided in the Commission's adopted plan as modified by the Findings and Order of the Board of Review.

(d) a continuous park/pedestrian link between Judkins Park and the lid over I-90 west of the Mt. Baker Ridge Tunnel.

6. The Commission agrees to participate jointly with the City of Seattle in an I-90 corridor area planning study for the purpose of designing alternative means of redeveloping areas adjacent to the I-90 project in Seattle. The extent of such study shall be defined and agreed to by Seattle and the Commission, and to the extent that the study relates to the effects of the I-90 facility in the corridor, it shall be funded by the Commission.
7. At the option of the local jurisdictions to be exercised within a reasonable time, the Commission shall transfer to the appropriate jurisdiction fee title of all state-purchased lands acquired for the I-90 project but which are outside the finally determined right-of-way lines of I-90 to the fullest extent and at the lowest cost legally possible.
8. The parties hereto agree that they will proceed under established legal processes, including regional transportation planning procedures of PSCOG and consistent with the approved Regional Development Plan of PSCOG, to determine those projects which are of highest priority in the Transportation System Plan and the Transportation

Improvement Program as the Plan and Program apply to the King County subregion. The parties hereby agree that projects (a) through (g) listed below are of highest priority and shall so indicate in the process of establishing the King County Subregional Transportation Improvement Program, the Regional 1990 Transportation System Plan, and Metro's Comprehensive Public Transportation Plan. The Commission and Metro shall work with the local jurisdictions in undertaking location and design studies for these projects at the earliest possible date commensurate with state, regional, metropolitan and local planning and priority programming practices. Projects to be considered through these processes shall include, but not be limited to, the following regional components of PSCOG 1990 Transportation Plan:

- (a) Transit/carpool lanes and/or Surveillance Control and Driver Information Systems (SC&DI) on I-5 from I-405 at Tukwila to the King County Snohomish County line;
- (b) The park-and-ride lots and flyer stops contained in the approved 1980 Plan as may be modified by Metro;
- (c) Provision for a busway or exclusive transit/carpool lane(s) as a part of the SR 99 and SR 509 corridor including a crossing of the First Avenue South Bridge, consistent with Metro's transition planning for this corridor;

- (d) Provision for a busway or exclusive transit/carpool lane(s) and/or SC&DI as a part of SR 520 from I-5 to I-405;
- (e) Redesign, in a manner acceptable to the City of Seattle, of the lanes where SR 520 meets I-5 and at the Mercer Street egress from I-5 in order to improve transit flow and reduce the congestion on I-5 between Mercer Street and Roanoke Street;
- (f) Provision for a busway or exclusive transit/carpool lane(s) and/or SC&DI as a part of I-405 from Bothell to Renton
- (g) Provision for exclusive transit lane(s) on I-405 through Bellevue which shall also include provision for a freeway flyer stop and a park-and-ride facility on I-405 between Main Street and N.E. 8th in Bellevue and provision for I-405 access improvements to the Bellevue central business district as determined by the Joint State Legislative/Highway Commission and City of Bellevue I-405 Access Study.

9. The parties agree that the I-90 facility should be operated in such a manner as to encourage growth and development in the presently urbanized areas of King County rather than in undeveloped areas. Therefore, the Commission shall conduct a study in coordination with the parties to this agreement to determine the feasibility and means of metering and controlling local access to I-90 east of Bellevue during peak hours.

10. Seattle, Bellevue, Mercer Island, King County and Metro agree that dedicated public transit rights-of-way through downtown Seattle and through downtown Bellevue are compatible with the public transportation plans of this area and are desirable to be implemented in conjunction with the completion of the I-90 facility.
11. Immediately upon the issuance of the environmental impact statement, another review team comprised of representatives chosen by each of the parties to this agreement shall be established to further monitor and advise the Commission on the development of the design and the implementation of the entire I-90 facility and the I-90 transit access provisions listed in paragraph 3 above. In addition, review teams including elected officials and citizens from Seattle, Bellevue, Mercer Island and King County may be established to further monitor and advise the Commission upon the implementation and design of the I-90 facility.
12. Upon execution of this agreement, the Commission becomes responsible for the design and construction of the facilities described in this agreement that can be funded with federal interstate funds as well as any other facilities referred to in this agreement for which the Commission, by law, has the sole responsibility; and the several parties to this agreement become responsible for the design and construction of the remaining facilities referred to in this agreement; provided that all such undertakings are subject to available funding and legal and procedural requirements. Seattle,

Bellevue, Mercer Island, King County and the Commission agree to process any permits required for construction of the agreed upon facilities in a timely and expeditious manner, as provided by law.

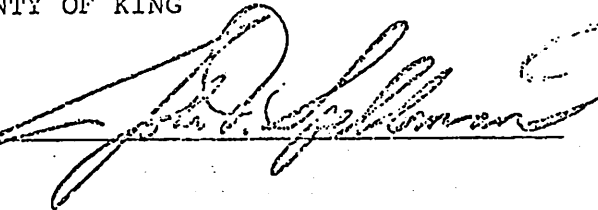
13. It is expressly understood that agreement to the above by the Commission is tentative pending review of (1) the final environmental impact statement to be filed in connection with the project and (2) the hearing record being prepared in connection with the corridor-design hearing held in January and February 1976. It is also understood that the parties have reached this agreement under the assumption and on the condition that the funding for the project, in accordance with the modified design of said project as referred to in paragraphs 1, 2 and 4 and those eligible portions under paragraph 3 which will qualify for Federal Aid Interstate monies, is approved prior to the initiation of construction and shall be funded from federal and state funds, except as agreed to by the affected jurisdiction(s).
14. This agreement represents substantial accommodations by the parties of positions held heretofore. Such accommodations were made in order to achieve a unanimous agreement upon which to proceed with the design and construction of I-90 and related projects. This agreement, therefore, sets forth the express intent of the existing governing bodies that the parties to this agreement understand that their respective governing bodies are limited in the degree to which they can bind their successors with respect to the exercise of govern-

mental powers vested in those governing bodies by law. Accordingly, the Commission will 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 involvement of the other parties to this agreement, with the intent that concurrence of the parties be a prerequisite to Commission action to the greatest extent possible under law.

Dated this 21st day of December, 1976

COUNTY OF KING

CITY OF SEATTLE

By: 


By: 

MUNICIPALITY OF METROPOLITAN

CITY OF MERCER ISLAND

SEATTLE

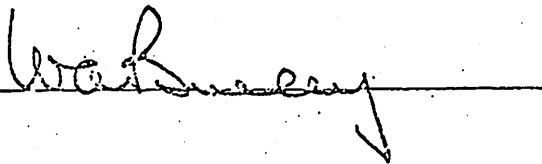
By: 

By: 

WASHINGTON STATE HIGHWAY

CITY OF BELLEVUE

COMMISSION

By: 

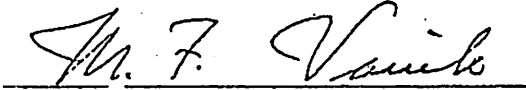
By: 

Exhibit B

**AMENDMENT To The I-90
MEMORANDUM AGREEMENT**

AUGUST, 2004

**Central Puget Sound Regional Transit Authority
City of Bellevue
City of Mercer Island
City of Seattle
King County
Washington State Transportation Commission**

August 2004
Amendment to 1976 Memorandum Agreement

WHEREAS, the Cities of Seattle, Mercer Island, and Bellevue; King County; by and through their respective governing bodies and the Washington State Transportation Commission (hereinafter "the Commission") desire to amend the existing Memorandum Agreement (the Agreement) signed by all parties in 1976 to reflect current and future conditions and demands along the Interstate 90 (I-90) corridor between Bellevue and Seattle crossing Lake Washington via Mercer Island (the "I-90 Corridor"), including increased travel growth, changes in travel patterns, and a reduction in transit reliability; and

WHEREAS, there is a desire among the parties and Sound Transit to add Sound Transit as the Regional Transit Authority with responsibility for High Capacity Transit as a signatory to this 2004 Amendment, but not to the underlying 1976 Agreement, given its role in the region generally and the I-90 Corridor specifically; and

WHEREAS, all parties recognize the I-90 facility as a key interstate corridor connecting the East and West Coasts, Eastern and Western Washington, and recognize its importance as a critical link between major urban centers in King County, and the only means of mobility to and from Mercer Island; and

WHEREAS, all parties acknowledge I-90 as a critical transportation link vital to the economy of the region and the state by providing for the movement of people and goods within the region; and

WHEREAS, all parties agree that the current configuration and operation of I-90 between Bellevue, Mercer Island, and Seattle does not address today's demands and expected growth in the region; and a new configuration that helps move more people and goods is imperative to manage congestion on what is the busiest east-west corridor in the region; and

WHEREAS, all parties recognize the importance of the environment and thereby seek to preserve and enhance its quality; and

WHEREAS, all parties agree that the ultimate configuration for I-90 between Bellevue, Mercer Island, and Seattle should be defined as High Capacity Transit in the center roadway and HOV lanes in the outer roadways; and further agree that High Capacity Transit for this purpose is defined as a transit system operating in dedicated right-of-way such as light rail, monorail, or a substantially equivalent system; and

WHEREAS, all parties agree to work cooperatively to secure funding at local, regional, state, and federal levels to fully fund both parts of the ultimate configuration of the "I-90 Corridor" (HOV lanes on the outer roadway and High Capacity Transit in the center roadway); and

WHEREAS, all parties have studied many alternatives as participants on the Steering Committee for Sound Transit and the Washington State Department of Transportation's (WSDOT) I-90 Two-Way Transit and HOV Operations Project (Project), and all parties agree that building HOV lanes on the outer roadways as identified as Alternative R-8A as set forth in the April 25, 2003 Draft Environmental Impact Statement (DEIS) prepared for the project, is an essential first step toward achieving the ultimate configuration; and

WHEREAS, all parties acknowledge that the ultimate configuration is consistent with the region's transportation action plan, Destination 2030, which focuses on integrated multi-modal transportation systems; describing facilities that weave parts of the region together by crossing county or city boundaries or access major regional activity centers as critical to the region's transportation system; and specifically calls for safety, maintenance, and capacity investments on I-90 between I-5 and I-405; and high capacity transit in the "I-90 Corridor" between Seattle and Bellevue; and

WHEREAS, all parties agree that I-90 is an integral piece of the regional bike network, providing the only bicycle-pedestrian path across Lake Washington; that the preferred alternative maintains a ten foot bicycle lane as part of providing optimal multi-modal travel in the I-90 corridor for cyclists and pedestrians; and

WHEREAS, the Cities of Bellevue, Mercer Island, and Seattle; King County; Sound Transit, and the Washington State Transportation Commission, as participants of the I-90 Steering Committee, having conducted a thorough evaluation of the performance and benefits of the alternatives, agree that Alternative R-8A has been shown to improve regional mobility by providing reliable and safe two-way transit and high occupancy vehicle operations on I-90 between Bellevue, Mercer Island, and Seattle, and mobility for Mercer Island, while minimizing impacts to the environment, to other users, and to other transportation modes; and is an essential first step toward implementing High Capacity Transit in the I-90 corridor;

NOW THEREFORE BE IT RESOLVED, the parties to this 2004 Amendment agree to the following principles regarding future development of the I-90 Corridor between Seattle and Bellevue:

1. Alternative R-8A with High Capacity Transit deployed in the center lanes is the ultimate configuration for I-90 in this segment;
2. Construction of R-8A should occur as soon as possible as a first step to the ultimate configuration;
3. Upon completion of R-8A, move as quickly as possible to construct High Capacity Transit in the center lanes;
4. Commit to the earliest possible conversion of center roadway to two-way High Capacity Transit operation based on outcome of studies and funding approvals.
5. Minimize construction impacts to the existing bicycle/pedestrian path, and maintain safe access to the path during construction;

6. Maintain the existing width of the bicycle/pedestrian path and to install screen treatments to create a safe barrier between the path users and vehicular traffic; and
7. To the extent of any loss of mobility to and from Mercer Island based on the outcome of studies, additional transit facilities and services such as additional bus service, parking available for Mercer Island residents, and other measures shall be identified and satisfactorily addressed by the Commission, in consultation with the affected jurisdictions pursuant to paragraph 14 of the Agreement, prior to the time the center roadway converts to High Capacity Transit.

King County

By: 

Its: King County Executive

City of Bellevue

By: Connie Marshall

Its: Mayor

City of Mercer Island

By: 

Its: Mayor

Washington State
Transportation Commission

By: 

Its: Chairman

City of Seattle

By: 

Its: Mayor

Central Puget Sound
Regional Transit Authority

By: Joan M. Earl

Its: Chief Executive Officer