

August 22, 2013

William H. Chapman

Lynn Peterson  
Secretary of Transportation  
Washington State Department of Transportation  
P.O. Box 47316  
310 Maple Park Avenue SE  
Olympia, WA 98504-7316

Dear Secretary Peterson:

We write on behalf of the City of Mercer Island to follow-up on concerns regarding the Washington State Department of Transportation's ("WSDOT") planned Environmental Impact Statement ("EIS") process and its work with Puget Sound Regional Council ("PSRC") related to a proposed regional tolling analysis.

The City supports the agencies' efforts to coordinate these overlapping studies, but is concerned that you have not yet provided any information about how WSDOT intends to proceed with the coordination of the regional analysis and the NEPA process.

The City is also concerned that WSDOT may be making preliminary decisions about the scoping process that are inconsistent with ESSB 5024 and will result in a more limited NEPA process than the Legislature intended. The most recent WSDOT update (dated June 14, 2013) indicated that WSDOT and the Federal Highway Administration ("FHWA") are "revising the purpose and need statement for the project" and "determining the range of alternatives to be included within the [EIS]."

This determination appears premature. As the President's Council on Environmental Quality ("CEQ") guidance states, the purpose of scoping is not to solicit comments on already-defined alternatives, but to allow the public to participate in the process of defining the scope of analysis and range of alternatives.<sup>1</sup>

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<sup>1</sup> Council on Env'tl. Quality, Memorandum for General Counsels, NEPA Liaisons, and Participants in Scoping (1981) (noting that CEQ developed the scoping process because "the consideration of issues and choice of alternatives to be examined was in too many cases completed outside of public view").

The City has particular concerns that WSDOT might start the second round of scoping with either no funding alternatives or an overly narrow range of alternatives. As you know, ESSB 5024, Sec. 306 broadly requires a study of alternatives and specifically states that:

As part of the project in this subsection (8) [i.e., preparation of the EIS for the I-90 tolling proposal], the department shall perform a study of all funding alternatives to tolling Interstate 90 to provide funding for construction of the unfunded state route number 520 . . . .

(emphasis added).

Presenting a limited range of alternatives at the beginning of the scoping process would contravene NEPA and the mandate of ESSB 5024 by discouraging comments on alternative funding mechanisms and suggestions for environmentally preferable alternatives.

The City understands, however, the need to focus the public's comments in order to solicit the most relevant information. To the extent that WSDOT is making decisions now on which alternatives to present to the public as a starting point for the NEPA analysis, the City reiterates its request that the scoping materials for the EIS include at least the following funding alternatives: a budget reduction (through redesign, postponement or other measures) for the SR-520 project, a gas tax, motor vehicle excise tax, a carbon tax, funding mechanisms based on vehicle miles traveled, and other options.

NEPA sets out a certain process for public participation, and the City appreciates the need for an orderly process. WSDOT's predecessor made a commitment in the 1976 Memorandum of Agreement ("MOA"), however, to consult with the City and other MOA stakeholders and obtain their concurrence when proposing changes to the operation of I-90. Rather than creating a step that applies only at the end of the decision-making process, the MOA established a cooperative partnership between WSDOT and the MOA stakeholders. Collaboration on transportation planning and environmental review has historically resulted in mutually acceptable outcomes, and the City encourages WSDOT to renew these relationships.

As part of this enhanced coordination, the City respectfully requests (1) the opportunity to review and comment on preliminary drafts of the revised Purpose and Need Statement before the public comment period; (2) responses to its inquiries on the coordinated WSDOT-PSRC effort and the range of alternatives that WSDOT intends to present for public comment; and (3) the opportunity for all MOA stakeholders to participate throughout the NEPA process.

The City looks forward to working with WSDOT, PSRC, EPA and the other MOA signatories to develop a comprehensive EIS that meets all the requirements of NEPA and ESSB 5024.

Yours truly,

A handwritten signature in black ink that reads "Bill Chapman". The signature is written in a cursive, flowing style.

**William H. Chapman**

K&L Gates LLP

cc: Mercer Island City Council  
cc: Bob Drewel, Executive Director, PSRC  
cc: Michael McGinn, Mayor, City of Seattle  
cc: Conrad Lee, Mayor, City of Bellevue  
cc: Dow Constantine, County Executive, King County  
cc: Joni Earl, Sound Transit  
cc: Dennis McLerran, Regional Administrator, Environmental Protection Agency  
cc: Christine Reichgott, NEPA Review Team, Environmental Protection Agency  
cc: Senator Steve Litzow, Washington State  
cc: Representative Judy Clibborn, Washington State