May 22, 2013

VIA CERTIFIED MAIL

Lynn Peterson
Washington State Department of Transportation
PO Box 47316
310 Maple Park Avenue SE
Olympia WA 98504-7316

Re: Scoping for I-90 Tolling Project Environmental Impact Statement

Dear Ms. Peterson:

We write on behalf of the City of Mercer Island ("City") to request that WSDOT renew its notice for public comments as to the appropriate scope of environmental review for tolling Interstate-90 ("I-90"). This is needed due to the Legislature’s recent requirement in Engrossed Substitute Senate Bill 5024 ("ESSB 5024") that WSDOT prepare an Environmental Impact Statement ("EIS") prior to making any decision on tolling I-90.

Further, a closer examination of the Puget Sound Regional Council’s ("PSRC") study on regional tolling impacts will likely reveal many advantages to harmonizing the agencies’ efforts. In any event, the City requests that WSDOT coordinate the EIS process with the PSRC study, including its analysis of regional impacts and the full array of funding options for the SR 520 Bridge Replacement Project.

A. Additional Scoping is Necessary to Address ESSB 5024.

ESSB 5024 significantly expands the geographic scope of WSDOT’s environmental review of the I-90 tolling proposal, and requires the agency to study a broader range of alternatives, including funding alternatives to tolling. Additional scoping is necessary to allow the public to participate meaningfully in the EIS process directed by the Legislature. See Coal. for a Sustainable 520 v. U.S. Dep’t of Transp., 881 F.Supp.2d 1243, 1248-49 (W.D. Wash. 2012). The purpose of scoping under the National Environmental Policy Act ("NEPA") is to “ensure[] that interested parties are aware of and able to participate meaningfully in the entire EIS process, from start to finish.” Id.

WSDOT’s prior scoping efforts in early 2013 focused on a limited “study area” and a narrow range of tolling-oriented alternatives,¹ and thus did not provide sufficient notice to all

¹ http://www.wsdot.wa.gov/Projects/I90/CrossLakeWATolling/ProjectStudyArea.htm.
potentially affected parties. For instance, it is likely that the narrowly defined "study area" suggested a lack of impacts outside the "study area" such that potentially interested parties did not realize the need to participate in EIS development. *Nw. Coal. for Alternatives to Pesticides v. Lyng*, 844 F.2d 588, 594-95 (9th Cir. 1988) (holding that a federal agency "violated both the spirit and the letter of [NEPA] by failing to notify" interested persons).

In this instance, for example, drivers and citizens in the I-405 corridor in general, and in Renton and Kenmore in particular, were not alerted to potential impacts and thus were not given the necessary legal notice. Further, while the City's scoping letter recommended that WSDOT examine alternative funding mechanisms, it is likely that other commenters with potentially valuable ideas did not provide them in response to WSDOT's narrowly drafted request for comments.

Given the expanded scope of analysis, the City respectfully requests that WSDOT and Federal Highway Administration ("FHWA") publish a Notice of Intent to Prepare an EIS (as required by 40 C.F.R. § 1501.7 and 23 C.F.R. § 771.123(a)), circulate this notice to the entire affected geographic area, and solicit additional comments on the appropriate scope of the NEPA analysis.

**B. WSDOT Should Coordinate the EIS with the Puget Sound Regional Council's Study.**

As described in the City's February 22, 2013 scoping letter to WSDOT, NEPA requires WSDOT to address impacts to transportation and other resources in the Central Puget Sound Region due to diversion from I-90. Such diversion-related impacts include increased congestion on the network of highways and roads around Lake Washington (and corresponding impacts to exports and trade), increased public safety and air quality impacts throughout the region (including in many minority and low-income communities), and increased greenhouse gas emissions and stormwater contamination due to the increase in vehicles miles traveled and vehicle hours of delay.

The piecemeal nature of the state's current tolling approach means that the Central Puget Sound Region will face high levels of such impacts for decades to come as the state implements its regional tolling plan one road at a time. Thus, the I-90 tolling proposal and the prospect of further diversion-related impacts prompted a broad coalition of Lake Washington communities to request that the PSRC convene stakeholders to analyze "a system-wide approach to tolling our region's major highway facilities as an alternative to the

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2 As explained in the City's February 22, 2013 scoping letter to WSDOT, the EIS should examine transportation and associated impacts in the four-county Central Puget Sound Region. This study area is consistent with federal and state transportation law as well as WSDOT's EISs for the Alaskan Way Viaduct and the Transportation 2040 Plan.
current path of implementing tolling on a corridor by corridor basis.” This study would occur before the 2014 legislative session.3

Given the overlap in timeline and subject matter, WSDOT should coordinate its environmental review of tolling I-90 with the PSRC’s broader regional study. In addition to the NEPA mandate to eliminate duplication, 40 C.F.R. § 1506.2 (directing agencies to coordinate NEPA review with state and local environmental studies), the PSRC process is also highly relevant to the project’s participation in the Value Pricing Pilot Program (“VPPP”). As WSDOT is aware, the FHWA requires applicants to the VPPP to show that “stakeholder groups . . . are involved in and supportive of the project, and the project is likely to win broad public support.”4

Very truly yours,

K&L GATES LLP

By

William H. Chapman

cc: Victor Mendez, FHWA
Regina McElroy, FHWA
Daniel Mathis, FHWA
Bruce Bassett, Mayor of Mercer Island
Mercer Island City Council
Noel Treat, City of Mercer Island
Katie Knight, City of Mercer Island
Arthur W. Harrigan, Calfo Harrigan Leyh & Eakes
Timothy G. Leyh, Calfo Harrigan Leyh & Eakes

3 Letter from King County and Cities of Bellevue, Clyde Hill, Hunts Point, Kenmore, Lake Forest Park, Mercer Island, Newcastle, Redmond, Renton, Seattle, and Yarrow Point to PSRC and WSDOT (Apr. 22, 2013).