



TO: Sound Transit Board of Directors

FROM: Peter Rogoff
Chief Executive Officer

DATE: September 14, 2017

SUBJECT: Upcoming Washington State Senate Work Sessions on Sound Transit

On Sept. 26 and Oct. 5 the Washington State Senate's Law and Justice Committee plans to conduct work sessions, scheduled at the request of Senators Dino Rossi and Steve O'Ban, to review various assertions related to Sound Transit, most of which have been raised and addressed previously.

This memo outlines the issues we believe will be raised at the hearing along with factual information for your background. The assertions we respond to below are derived from the news releases and correspondence with Sound Transit issued by the two Senators; their public disclosure requests, in response to which we have provided approximately 7,000 pages of documents; and interviews with Sound Transit staff led by counsel from the Washington State Senate's Majority Coalition Caucus (MCC).

Also attached is a timeline for the process utilized by the Sound Transit Board in shaping the Sound Transit 3 (ST3) ballot measure as well as legislative hearings and actions to secure the revenue authority that enabled the ballot measure. This information also serves to debunk falsehoods that have been promoted by various parties.

Over the last several months and weeks, Sound Transit staff have been processing voluminous public records requests and participating in interviews by Senate staff as part of the process leading up to the Senate work sessions. While this has been a time-consuming process, please know that the agency and staff remains focused on our core missions of providing high quality transit service to more than 150,000 daily commuters and building the extensive transit network that has been adopted and funded by the region's voters. By the end of 2017 Sound Transit will be underway with the planning, design and construction of [24 voter-approved train and bus projects](#) across Pierce, King and Snohomish counties. We are not allowing this inquiry to distract the agency from meeting its obligations to voters and to our riders.

1. Assertion:

“Sound Transit promoted a version of a bill in 2015 that was unconstitutionally drafted in such a way as to resurrect a twice-repealed MVET schedule in violation of Article 2, Section 37 of the Washington State Constitution.... The unconstitutionally drafted legislation was included in the ten or so bills that made up the 2015 Connecting Washington transportation revenue package.” The Senators have also asserted that Sound Transit intentionally misled elected officials about the MVET depreciation schedule that was part of the legislation.

Response:

The ST3 authorizing legislation adopted in 2015 clearly and explicitly directed that the increased Sound Transit MVET use the older vehicle depreciation schedule from the 1990s. This is the same depreciation schedule that has been in place for Sound Transit’s MVET since 1999 and that applied to vehicles across Washington until the statewide MVET was rescinded. The revised 2006 schedule was created by the Legislature to authorize 2007 voter consideration of a proposed Regional Transportation Investment District (RTID) MVET in the Puget Sound area. Voters rejected that RTID proposal, and to date the 2006 depreciation schedule has never been applied to any vehicles in Washington. The ST3 authorizing legislation was required to use the vehicle depreciation schedule from the 1990s because the agency had already sold bonds in 1999 pledging to bondholders that revenues would be collected under the schedule that was in effect at that time. Even so, the 2015 ST3 legislation did not extend the use of this schedule permanently. Rather, the legislation mandated that Sound Transit MVET collections shift to the 2006 schedule in 2028, the earliest date possible once the 1999 bonds are retired.

It is inaccurate to suggest that the 2015 legislative provisions related to the MVET depreciation schedule were somehow snuck past the Legislature. Every proposal for ST3 revenue authority beginning with the Governor’s transportation package proposal, followed by independent legislation in the House and Senate, and finally by authorization language in SB 5987 sponsored by Sen. Curtis King (R- Yakima), employed identical language regarding the depreciation schedule to be used. In fact, on the Senate floor, Senators Marko Liias (D- Mukilteo) and Curtis King (R- Yakima) explicitly described the terms of Sound Transit’s implementation of the depreciation schedules, and successfully requested rejection of [Amendment 53 to Senate Bill 5987](#) offered by Sen. Doug Ericksen, R-Ferndale. Ericksen’s amendment would have directed the agency to move immediately to a different valuation schedule. It was overwhelmingly rejected on a voice vote. House amendment H-2685-1 from Representative Shea was also proposed to the House Transportation Committee for the purpose of requiring the use of an alternative depreciation schedule. That amendment also failed.

Senators were presented with clear and accurate information about the depreciation schedule both in the legislation and during debate and chose not to modify it prior to adoption of the final authorizing legislation. Further, Sound Transit is confident of the constitutionality of the 2015 legislation.

2. Assertion:

Sound Transit misled lawmakers about the total time period for the package for which they sought authorization. At a committee hearing in 2015, Sound Transit board members repeatedly spoke of needing the Legislature to authorize “the full \$15 billion” in taxing authority if the agency was to extend light rail to Tacoma and Everett. “The bottom line is that the reason that legislators relied on Sound Transit’s representations in committee testimony was that the total authorization was \$15 billion over a 16- year time period. Based upon that testimony, they had no reason to limit the time period of the authorization.” The assertion then insinuates that this deception led to an increase in the size and scope of the ballot proposition from \$15 billion to \$54 billion.

Response:

It is important to note that \$15 billion represents the amount that new tax revenue could generate over 15 years. The Sound Transit Board chose to extend the term of the system expansion plan to 25 years, thus increasing the amount of new tax revenue from \$15 billion to \$27.7 billion in that 25-year period. The total ST3 revenues, including federal funding, fares, bonding and miscellaneous revenue amount to \$54 billion, a figure that is not comparable to \$15 billion, which represents new taxes only.

Sound Transit worked closely with the Governor and Legislature leading up to and through the 2015 session to identify new tax sources that could comprise an ST3 revenue package. In November of 2014 when the Sound Transit Board identified its legislative request, the agency issued a [news release](#) reflecting that \$15 billion was the amount of new taxes that could be collected in the first 15 years. The news release also made clear that “no decisions have been made about the scale of the measure”. In discussing the request to the Legislature, Board members emphasized the importance of maintaining enough revenue capacity for the projects and services” that emerge as priorities from a robust public involvement process.

Among the allegations investigated by the Washington Public Disclosure Commission (PDC) following a November 2016 complaint by Will Knedlik was one of Sound Transit “deceiving legislators into believing Sound Transit was asking for only \$15 billion in new taxing authority.” Following its investigation the PDC’s [report](#) to the Attorney General stated, “No evidence was found that members of Sound Transit staff or its contracted lobbyists deceived or attempted to deceive any legislator regarding any aspect of Sound Transit 3.”

People frequently talked about “\$15 billion” during the 2015 legislative session based on anticipation that an ST3 measure might mirror the 15-year period of ST2. However, the agency made clear repeatedly that the Board had not yet determined the scale or duration of the measure, and that existing taxes, bonds and federal funds would also be part of the funding. It was emphasized that the details of the measure would be shaped by extensive public involvement in 2015 and 2016. As covered extensively by news media, the Sound

Transit Board moved toward a larger measure spanning 25 years based on public input that they wanted a transit option from road congestion that was rapidly worsening in all corners of the taxing district and would continue to worsen due to continuing population growth. Sound Transit did not hear concerns by legislators as discussion moved to a larger measure occurred in late 2015 and early 2016. Most importantly, the region's voters adopted the larger package proposed by the Sound Transit Board when they approved Proposition 1 by a margin of more than 100,000 votes.

Senate Bill 5987, a bi-partisan state transportation revenue package passed in July 2015, authorized Sound Transit to seek voter approval for tax increases to fund ST3. The legislation could have but did not include either a spending ceiling or a tax sunset requirement.

3. Assertion:

Sound Transit directly or indirectly participated in the public campaign to support the ballot measure through “a public-outreach survey distributed by the agency in 2016 that sought feedback about Sound Transit’s planned expansion and at least one question gauged whether voters would be willing to vote for the ballot measure. After the Public Disclosure Commission said the poll likely ran afoul of state law that bars public agencies from supporting political campaigns, Sound Transit pulled the question from the survey.”

Response:

As part of spring 2016 outreach effort seeking public input on a draft ST3 package, Sound Transit encouraged public participation in a non-scientific online survey. No question in this survey asked “whether voters would be willing to vote for the ballot measure.” In addition to questions about transit projects being proposed in the draft plan, the survey contained several questions asking people’s reactions to various rationale for a package. The PDC received an inquiry about this discrete set of questions. After reviewing these questions, a staff member for the PDC called Sound Transit to informally advise the agency that the questions might be considered inappropriate under state law since they could be used to develop materials promoting the ballot measure. After receiving this call Sound Transit promptly deleted the questions. Following the PDC’s informal advice there was no PDC finding that a violation of law had occurred.

4. Assertion:

Sound Transit directly or indirectly participated in the public campaign to support the ballot measure because it “illegally provided the email addresses of ORCA cardholders to a political campaign in favor of Prop. 1.”

Response:

This relates to an inadvertent staff error that was first investigated by Sound Transit and then thoroughly investigated, considered, and dismissed by the PDC in 2016. Here is a

summary of what transpired:

In April 2016, Sound Transit received a public disclosure request from a pro-transit organization for all e-mail addresses on file of citizens who subscribe to Sound Transit public outreach channels. Along with providing e-mail addresses that were required to be released under state law, Sound Transit staff inadvertently turned over e-mail addresses that were exempt from disclosure requirements. The response inadvertently included a list of approximately 173,000 e-mail addresses of ORCA card subscribers who in 2011 had been e-mailed a survey related to ORCA.

The fact that the disclosure request was from a pro-transit organization did not result in it being treated differently than any other request, with state law requiring that the identity of the requestor not be considered in the response. Sound Transit, the PDC and the Washington Attorney General's Office each investigated the matter and concluded no violation had occurred, as the staff who processed the records request were completely unaware that the agency was releasing exempt addresses.

Within hours of learning it mistakenly included the addresses, Sound Transit notified all of the affected subscribers and apologized. The agency also immediately notified the campaign organization of the mistake and secured verbal and written commitments to delete the addresses. Following this incident, Sound Transit took immediate measures to ensure that all ORCA e-mail addresses are maintained separately from information that could be subject to public disclosure.

5. Assertion:

Sound Transit directly or indirectly participated in the public campaign to support the ballot measure because it spent \$7.8 million in 2016 on “marketing, lobbying, communications and neighborhood outreach... which coincided with the campaign to support ST3. According to Sound Transit's own budgeting documentation, this represented an increase in its communications and external affairs budget of almost \$2 million from 2014 to 2016 - a 25 percent increase that was implemented during the budgeting process at the time the legislature was considering and passing the Connecting Washington package.”

Response:

These claims represent an inaccurate understanding of past preliminary budgets and overstates actual expenditures.

From 2014 to 2015, Sound Transit's Communications and External Affairs (CEA) department's actual spending increased from \$6.137 million to \$6.977 million, an increase of \$840,000 or 13.7 percent. From 2015 to 2016, the year when the agency finalized the ST3 plan and forwarded it to the ballot, CEA's actual spending decreased by \$467,000 or 6.7 percent to \$6.51 million. Rather than increasing CEA's spending by \$2 million or by 25 percent as the Senators allege, the department's spending actually grew

by just \$373,000 or 6.1 percent between 2014 and 2016. These expenses cover agency communications activities including but not limited to promoting transit ridership through advertising and other channels as well as providing public information through the agency's website, social media channels, rider outreach staff, media relations and speakers bureau.

The Washington Policy Center and others have asserted that Sound Transit expenditures promoting the March 2016 opening of the University Link stations were inappropriate. While the agency responded by reducing expenditures for future openings and increasing emphasis on securing partner funding, claims that agency expenditures were for a "party" are inaccurate. More than two thirds (68 percent) of the cumulative \$800,000 in expenses were for crowd control, public safety and security. Promoting the opening of these stations helped increase ridership levels dramatically, driving farebox revenues to exceed projections by more than \$1 million. Inclusive of expenses for opening three new stations, CEA's actual spending decreased in 2016 over 2015 as noted above.

6. Assertion:

"Sound Transit downplayed the actual cost of ST3 to taxpayers, evidenced by the intensity of taxpayer outrage from every corner of the RTA, including many who voted for ST3. For example, Sound Transit led people to conclude that the combined taxes (sales, property and MVET) they would pay would be about \$169 per adult per year or roughly \$14 a month - a figure that clearly was misleading."

Response:

Sound Transit provided accurate and thorough public information about the cost of ST3 to district residents, and both the scale and composition of the ST3 package were shaped over several years by intensive public input efforts.

Regarding the MVET, agency information made clear an annual tax increase of \$80 would be collected for each \$10,000 of assessed vehicle value. Agency information reflected that a vehicle with the Sound Transit District's median value of \$5,333 would see an annual MVET increase of \$43. After the election an analysis using 2016 data concluded that the typical increase amount would be \$42.

A website for the ST3 measure which provided interested parties with comprehensive information saw 184,000 visits. Additionally, beyond the normal transparency standards for ballot measure communication, Sound Transit included on its website a [tax calculator](#) that allowed users to estimate for themselves their future tax obligations. The on-line tax calculator was used by thousands of regional taxpayers prior to the election. The [Seattle Times](#) prominently published its own similar tax calculator which was likely utilized by a great many more taxpayers.

In October, Sound Transit printed and mailed to 1.2 million voter households in the district a Mass Transit [Voter's Guide](#), which detailed the costs and contents of ST3 as required by RCW 81.104.140(8).

Finally, the Proposition 1 ballot measure [text](#) clearly stated the identified tax sources for voters' consideration.

This level of public information hardly qualifies as an attempt to prevent voters from learning the costs associated with the ballot measure.

7. Assertion:

The Senators' memo proposing the hearing referenced legislation adopted by the Senate that would revise Sound Transit's governance structure and asserted that "a single individual appoints a majority of the board members of Sound Transit."

Response:

RCW 81.112.040 describes the structure of the Sound Transit Board and the process of appointing members to the Sound Transit Board. This statute requires the Board represent the broad variety of local government interests; including small and large cities, each of the three county's legislative authority, and each transit agency that directly partners with Sound Transit. Per state law, each County Executive is given the duty to consult with local jurisdictions and use that feedback to make a decision on the most appropriate selection to serve on the Sound Transit Board, and appointments are confirmed by the respective county councils. The 18-member Board includes Washington's Secretary of Transportation, with the remaining 17 seats apportioned between Pierce, King and Snohomish counties based on population and reapportioned at each census. Major decisions and actions taken by the Board require a two-thirds majority to pass.

The legislation mentioned in the letter, which was sponsored and supported by the letter's authors, would have introduced districts in which some board members would be representing a disproportionate amount of the Regional Transit Authority area.

In addition to the proposed legislation's direct negative impact on proportionate representation across the Sound Transit District, it would remove local government representation on the Board. This change would undermine Sound Transit's ability to work cooperatively to reach agreements with municipalities, resulting in longer implementation periods and higher costs for system improvements. It would also open the door for special interests, including those with conflicts of interest, to fund board member elections and sway the composition of the Board.

8. Assertion:

Sound Transit's employee compensation is excessive in relation to other public agencies.

Response:

Sound Transit is working to advance one of the nation's most ambitious transportation infrastructure construction programs, and the composition of our workforce reflects this.

The employee population of Sound Transit is composed of highly technical and experienced professionals. The majority of positions (79 percent) are salaried and consist of roles such as urban planners, engineers, architects, construction managers, system engineers and project managers. More than 80 percent of Sound Transit's positions require college degrees.

Sound Transit does not have the large numbers of hourly employees such as operators and maintenance staff typically seen in other transit agencies. Sound Transit contracts with other entities for these services, and the typically lower compensation levels associated with these services do not show up in agency salary data. Any comparison between Sound Transit's compensation levels with an agency that is not engaged in similar capital-intensive work or that has significant numbers of hourly employees would be an "apples to oranges" comparison.

Sound Transit's compensation strategy is focused on attracting and retaining the highly qualified, mission-driven employees who are capable of successfully advancing billions of taxpayer dollars in investments. Before Sound Transit positions are advertised, an independent review of the Seattle-area job market determines the salary range for comparable positions, and our positions are typically hired at 90 to 95 percent of the salary level that is identified as the market midpoint. As Sound Transit is required to compete for top level executives against similar agencies across the country, compensation for certain senior management positions are baselined against comparable positions nationally.

**9. Assertion:
Sound Transit has inappropriately provided financial support to Transportation Choices Coalition, the Economic Alliance of Snohomish County and other local business and transit industry organizations. This same charge has been raised repeatedly by the Washington Policy Center (WPC), including in an August 2017 "Policy Note."**

Response:

After a 2008 WPC complaint to the Washington State Auditor, the Auditor issued a [report](#) in 2009 that specifically states it is within Sound Transit's authority to pay membership dues that support the work of nonprofit organizations to encourage local job growth through transit improvements and to educate the public regarding transit issues.

Sound Transit, like the majority of transit agencies in Washington, has for many years maintained a membership with Transportation Choices Coalition (TCC) as well as other community organizations who promote transit. Membership dues to TCC are determined by transit agency size and the number of riders it serves. As a result, Sound Transit and King County Metro are charged higher membership dues than other agencies, such as Pierce Transit and Everett Transit. Our dues payments to TCC help support their work educating residents about transit options through events such as Ride Transit Month in Pierce, King and Snohomish County; organizing volunteers to support bus driver

appreciation day, and providing outreach to low-income and minority transit-dependent communities.

Membership with the Economic Alliance of Snohomish County, the Tacoma/Pierce Chamber of Commerce and the Greater Seattle Chamber of Commerce among other business organizations acknowledge the strong connection between economic health and regional mobility. Joint programs with these groups help businesses meet their commute trip reduction goals through transit assuring that employees can reliably get to work and home each day regardless of traffic congestion.

While the Auditor's review identified deficiencies in Sound Transit's procedures prior to 2008 to document benefits for agency sponsorship of non-profit events, including \$8,050 in sponsorship costs dating back to 2006, Sound Transit now ensures all expenditures related to support for non-profit organizations are thoroughly documented. Thus, in keeping with the Auditor's direction, subsequent to 2008 Sound Transit documents the educational and promotional benefits accrued to the agency in exchange for its sponsorship support.

The WPC inaccurately characterized the Auditor's guidance, saying: "Despite a warning in 2009 from the State Auditor not to purchase sponsorships at nonprofits' annual fundraising events, Sound Transit officials continue to purchase sponsorships." Rather, the Auditor counseled Sound Transit to document that any event sponsorship include the opportunity to "provide information to the public about the Transit Authority's services." Sound Transit has been doing this since receiving the Auditor's guidance in 2008.

Next steps

Sound Transit will provide members of the committee with information at the upcoming hearings. Sound Transit will also oppose legislative actions that would harm our ability to deliver voter-approved projects. These include SB 5893 that the Washington State Senate adopted along party lines in the last session that would cause an estimated \$5 billion loss in direct revenue with an overall negative impact of at least \$12 billion to Sound Transit's financial plan. This legislation sponsored by Sen. O'Ban would cut the voter-approved MVET rate of 1.1 percent by more than half to 0.5 percent. It would also shift collections to either Kelley Blue Book or National Automobile Dealers Association values, whichever is lower, further reducing the amount and predictability of MVET revenues, and require Sound Transit to pay \$1 per MVET payment to the State Motor Vehicle Fund for highway projects.

Sound Transit will continue working to secure the federal funding for completing voter-approved projects. The Washington State Senate's proposed \$12 billion hit comes on the heels of significant federal funding uncertainties triggered by the budget policies of the new Administration. The Trump proposed budget recommended elimination of the New Starts program through which Sound Transit has assumed securing approximately \$5 billion in federal funding over the next 25 years. Most immediately Sound Transit is working to secure the \$1.17 billion federal grant for the Lynnwood Link project that was

in the final stages of the approval pipeline prior to the new Administration.

In 2016, Pierce County saw more new residents move within its borders than [any other county in the nation](#), fueled by people's search for housing. Snohomish County attracted new residents at the second highest rate in the country. [Seattle](#) is seeing the fastest growth of any large city in the country. Regional voter-approved investments in response to our critical transportation needs cannot be completed on the timelines in our ballot measures if we experience the significant funding reductions being considered at either the State or Federal level.