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**BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND**

In the Matter of the Appeal of
**CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY,**
Petitioner,
v.
CITY OF MERCER ISLAND,
Respondent.

No. APL21-001
**DECLARATION OF MICHELLE
RUSK IN SUPPORT OF SOUND
TRANSIT’S CLOSING ARGUMENT**

Michelle Rusk declares as follows:

1. I am one of the attorneys representing Central Puget Sound Regional Transit Authority. I am a resident of the State of Washington, over the age of eighteen years, and competent to be a witness herein.
2. Attached as Exhibit 1 are true and accurate copies of pages 83-84, 104-105, 109, and 128-130 from a transcript of the testimony of Patrick Yamashita on March 17, 2021 and March 19, 2021 prepared by Seattle Deposition Reporters, LLC at the request of Sound Transit’s counsel.
3. Attached as Exhibit 2 are true and accurate copies of pages 7-8, 12-15, and 44-45 from a transcript of the testimony of Jeff Thomas on March 19, 2021 prepared by Seattle Deposition Reporters, LLC at the request of Sound Transit’s counsel.

DECLARATION OF MICHELLE RUSK - 1

**FOSTER GARVEY PC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3292
PHONE (206) 447-4400 FAX (206) 447-9700**

Exhibit 1

BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND

In the Matter of the Appeal of)	
)	
CENTRAL PUGET SOUND TRANSIT)	
AUTHORITY,)	
)	
Petitioner,)	
)	
v.)	No. APL 21-001
)	
CITY OF MERCER ISLAND,)	
)	
Respondent.)	
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EXCERPT FROM HEARING
TESTIMONY OF PATRICK YAMASHITA
MARCH 17, 2021
MARCH 19, 2021

Transcribed from Audio Recording

HEARD BEFORE:

JOHN GALT
HEARING EXAMINER

TRANSCRIBED BY: SUSAN E. ANDERSON, RPR, CCR
License No. 2493

1 MR. SCHNEIDER: Ms. Pratt, I assume you're
2 bringing it up again? Yes?

3 MS. PRATT: No. You wanted to see the
4 condition. I could pull it up here.

5 MR. SCHNEIDER: We'll bring it up, you
6 brought it up last time, but we'll bring it up.

7 MS. PRATT: Thank you.

8 MR. SCHNEIDER: Michelle, we'll do it in a
9 moment.

10 Q. (By Mr. Schneider) Okay, so here is the code
11 section you cite as authority for the statement that
12 real property must be city right-of-way to be included
13 in a right-of-way permit. And where in this code
14 section does it say anything about that?

15 A. What I was asking is can you go back to the
16 conditions of permanent rule you talk about?

17 Q. Okay.

18 A. I just wanted to read that, I'm sorry.

19 (Inaudible).

20 Q. I'm sorry, we'll go there.

21 A. Okay. Sorry about that.

22 Q. And the sentence we're talking about is the
23 last sentence on the page 10 there.

24 A. Okay. Let me look at this. I think that's a
25 typographical error. I believe it should be 19.09 to

1 reference the right-of-way section.

2 Q. Okay.

3 A. And I wrote this so that's probably my, that
4 is my error.

5 Q. Okay. Well, let's go to 19.09.060 then.

6 A. Do you have it?

7 Q. We'll bring it up.

8 A. Okay.

9 Q. Okay, so where in this section does it say
10 that?

11 A. On whoever is operating this, could you hover
12 your mouse or curser over right-of-way, any -- where
13 it says right-of-way in blue. So that's the
14 definition of right-of-way. Land acquired by
15 reservation, dedication, prescription or condemnation
16 and intended to be used by a roadside (inaudible) line
17 or other. And then it continues in that definition.

18 Q. Okay. So your position, the city's position,
19 the city code is that right-of-way permits apply to
20 land that is right-of-way, correct?

21 A. Yes. That's correct.

22 Q. Okay. But you applied a right-of-way permit
23 to the private parcels, correct?

24 A. With the understanding or assumption that it
25 was going to be conveyed, yes.

1 Q. Okay. So the city imposed conditions in its
2 permit decision using a right-of-way permit that only
3 applies to property that is right-of-way to impose
4 conditions on two parcels that are not right of way?
5 Correct?

6 A. It's hard to say yes or no, specifically it's
7 sort of. The conditions are related to the fact that
8 we can't authorize the work on the private persons for
9 a right-of-way permit until they are conveyed as
10 right-of-way.

11 Q. Okay.

12 A. So if that means yes then yes.

13 Q. Okay. Let's go back to 13A. We could bring
14 that up on the screen please. So it says permission,
15 the last line, permission to construct the curb cut is
16 denied for the reasons stated above. And -- and in
17 the middle of the paragraph above it says the use of
18 the city's right-of-way as a bus bay for layovers and
19 passenger drop-off purposes are not uses authorized
20 under a right-of-way permit in the city code. And
21 then you cite the entire chapter of the code 19.09,
22 correct?

23 A. Yes.

24 Q. Okay. So can you identify anywhere in
25 chapter 19.09 of the city's code, where it authorizes

1 uses?

2 A. Authorizes uses? Can you go to 19.09,
3 please? That's a lot of code to look at it.

4 Q. Well, you cited the entire code, so I'm
5 asking you where in the code you were referring to
6 where it says one use is permitted and another is
7 denied?

8 A. I'm not able to give you a specific answer on
9 the spot with all of that to look at.

10 Q. Okay. My guess is this hearing is going to
11 continue until tomorrow, so if you have an opportunity
12 to look at the code and identify a section which says
13 one use is prohibited and another is not, I would
14 request that you do so.

15 MS. PRATT: Understanding we're not
16 holding the hearing tomorrow, but on Friday, isn't
17 that correct?

18 MR. SCHNEIDER: Excuse me, excuse me, I
19 stand corrected. The next day we come back which
20 would be Friday.

21 MS. PRATT: Thank you, I just want to make
22 sure.

23 Q. (By Mr. Schneider) So when has the city ever
24 issued a right-of-way for today before this permit,
25 approved for issuance to Sound Transit?

1 Q. Going back again, I apologize for leaping
2 about here. Going back to the 13A for a moment, can
3 you identify any way in which the plans that Sound
4 Transit submitted for the curb cut do not comply with
5 the code? Leaving aside the use issue, is there any
6 way in which the plans do not comply with the code?

7 A. You mean 19.09.060?

8 Q. Anywhere in the code? You cited 19.09, but
9 anywhere in the code?

10 A. Not quickly as I sit here today, no.

11 Q. Okay much and going to 13B, or at least the
12 background of 13B can you identify any way in which
13 Sound Transit's application for the building permit
14 did not comply with the building code?

15 A. That's a good question. But it's a better
16 question for somebody from (inaudible).

17 Q. Okay. Well, you can always --

18 A. It's outside of my --

19 Q. Okay. Can we bring up 19.06.060 please,
20 which was talked about in your testimony earlier Mr.
21 Yamashita? So you don't cite, you cited -- you can go
22 to 060 please. You cited 060 in condition 13B. I
23 understand from your testimony, understanding from
24 your earlier testimony this afternoon is that was a
25 typo and you meant to cite 1309. But you talked about

1 that becomes public right-of-way. And I just wondered
2 whether Mercer Island did the same, but you don't do
3 long plats, so anyway that's -- I was trying to draw
4 some parallel in my own mind.

5 THE WITNESS: I see. Uh-huh.

6 THE HEARING EXAMINER: How do you handle
7 that as opposed to how we're handling the situation
8 here with the dedication of the right-of-way before
9 the construction? Anyway, you don't have that
10 situation so you can't answer.

11 A right-of-way use permit is classified as
12 a nondiscretionary permit, is that correct? It's a
13 type 1? Nondiscretionary?

14 THE WITNESS: I don't know specifically
15 what the type is. I -- just because I'm not familiar
16 with that part of the code. If I were a planner I
17 would be able to recite all of that section of the
18 code. But it's something I'm not. My belief's no.

19 THE HEARING EXAMINER: Okay. It's still
20 the same categories as a building permit, I believe,
21 and probably a plumbing permit and a mechanical permit
22 and fire code permit, et cetera. I'm trying to
23 understand how the use question comes in to a
24 nondiscretionary permit. Can you help me any with
25 your understanding of how use comes into a

1 nondiscretionary permit? Or even design? I doubt
2 that the building department refuses to approve a
3 house plan, because the plans reviewer doesn't like
4 the design. I would think it would only be rejected
5 if it didn't meet IBC standards and the plans examiner
6 concluded it would fall over, or would be improperly
7 insulated or whatnot. But if the plans examiner
8 didn't like flat roofs and this house had a bunch of
9 flat roofs on it, I doubt that the city would deny it.

10 So it seems to me that's, you know, that's
11 a design issue. It's -- it would add discretion to
12 the building permit and the building permit's not
13 supposed to be discretionary. So if you're the plans
14 examiner I would think you just sort of bite your
15 tongue and say, Well, I don't like the design of this
16 house but that's not what I'm here to worry about.
17 And yet it seems that we've got a use component in
18 this right-of-way use permit. Can you help me any
19 with how that fits together?

20 THE WITNESS: I think it's challenging, it
21 rarely, if ever, comes up for us. Usually when I'm
22 reviewing right-of-way permits I'm the only reviewer,
23 because it is primary traffic control related and very
24 temporary in nature. If PSE is doing some work
25 running a gas line across the street or something like

1 that, those are temporary construction rated
2 activities. And yes, he has a franchise to perform
3 the work and have the facilities in the write-off.

4 THE HEARING EXAMINER: Okay.

5 THE WITNESS: So you know that that's an
6 approved use, but it's not through with the
7 right-of-way permit. It is a vehicle of the franchise
8 agreement.

9 THE HEARING EXAMINER: Okay.

10 THE WITNESS: There is no such franchise
11 or other use type of agreement.

12 THE HEARING EXAMINER: Mr. Schneider asked
13 you back in about the middle of your cross examination
14 about the bus stop, I guess there's two of them,
15 actually one on the north side and one on the south
16 side essentially across the street from where the Park
17 and Ride is. Did I -- did I understand your answer to
18 his questions correctly, I believe you said that there
19 was no prohibition of that use or no discussion of
20 that use in whatever right-of-way use permit might
21 have been required for the -- the building of those
22 pullouts?

23 THE WITNESS: I don't recall exactly what
24 the mechanism of the vehicle was to allow that use.
25 And from what I recall there was a Park and Ride there

Exhibit 2

BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND

In the Matter of the Appeal of)
))
CENTRAL PUGET SOUND TRANSIT)
AUTHORITY,)
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Petitioner,)
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v.) No. APL 21-001
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CITY OF MERCER ISLAND,)
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Respondent.)
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EXCERPT FROM HEARING
TESTIMONY OF JEFF THOMAS
MARCH 19, 2021

Transcribed from Audio Recording

HEARD BEFORE:

JOHN GALT
HEARING EXAMINER

TRANSCRIBED BY: SUSAN E. ANDERSON, RPR, CCR
License No. 2493

1 THE HEARING EXAMINER: Did it again.

2 UNIDENTIFIED SPEAKER: It's sharing your
3 view of zoom.

4 MS. PRATT: Yeah, huh.

5 THE HEARING EXAMINER: I wish I could help
6 with technical advice, but I can't. I've never tried
7 to share a web page on a Zoom.

8 MS. PRATT: Still not sharing it right.

9 THE HEARING EXAMINER: You got it.

10 MS. PRATT: It is sharing it?

11 THE HEARING EXAMINER: Yes, it's not -- it
12 doesn't look to me like it's from the MICC online
13 version, but it's -- you've got the section.

14 MS. PRATT: Okay. Thank you. I did
15 nothing different, but this time it read my mine or
16 something.

17 Q. (By Ms. Pratt) So Mr. Thomas have you had a
18 chance to review this section 19.02.010 and
19 specifically section C1 that was cited in Exhibit 8?

20 A. I have.

21 Q. And what is your understanding of how this
22 code section would apply to the Sound Transit project?

23 A. My understanding of the section and how it
24 applies to the scope of the Sound Transit project is
25 that a conditional use permit to be required. Per

1 this section for government services public facilities
2 utilities and the all inclusive museum and art
3 exhibitions subject to the conditions listed below on
4 the screen.

5 Q. Okay. And that is because those two lots A
6 and B are in residential zones, is that correct?

7 A. That's correct.

8 Q. Okay. And under C1, what, what improvements
9 in the Sound Transit Project to find to fall under the
10 C1 government services, both facilities utilities?

11 A. The stormwater facility.

12 Q. And what do you believe that is government
13 services public facilities, utilities?

14 A. A public facility.

15 Q. And below here I have the definition of
16 public facility found in section 19.16.010 of the
17 Mercer Island code. Can you go through with us why
18 you think this, the stormwater facility applies here?

19 A. Sure. It's not specifically listed in the
20 definition, but it's illustrative by fact that
21 examples include but are not limited to the following.
22 So the term "public facility" is certainly through my
23 experience widely used and a stormwater facility and
24 other types of facility such as sewer treatment
25 facilities are commonly referred to as public

1 application for processing by the city approximately
2 four months.

3 Q. Mr. Thomas, have you had any prior experience
4 with essential public facilities, EPFs?

5 A. I have in different forms and fashions I
6 would characterize most of my experience as in the
7 realm of transition health type facilities that are
8 meeting the definition. Additionally, I, a long time
9 ago I was involved in a solid waste handling facility
10 process and as well as an in a couple different forms,
11 the setting upstate educational facilities or
12 extension thereof.

13 Q. Okay. And are you seeing section 19.06.100?

14 A. I am.

15 Q. All right. Three for three.

16 Can you explain to us what this code
17 section is?

18 A. Sure. This is the section of code that
19 relates to the identification citing and regulating of
20 essential public facilities of Mercer Island.

21 Q. And does it apply to all facilities, new
22 facilities, remodeled facilities, what distinction is
23 made?

24 A. Uh-huh. So new and existing facilities. So
25 existing facilities would include the modification or

1 expansion of those.

2 Q. Okay. And in section A3 here, can you just
3 tell us you know what does this section of provide the
4 city with, what do we use this for?

5 A. Well, the intention of this section of code
6 is obviously related to the central public facilities.
7 It's to provide a process to ensure these types of
8 facilities receive the proper support row and delivery
9 of such. And to make sure that they're available,
10 these facilities are available to the citizens of
11 Mercer Island for those that are cited on the island.
12 It also speaks to public participation in providing
13 the opportunity for that. The CUP is the driver of
14 the process for essential public facilities. That's
15 provided there. And then also being able to
16 independent peer review provided for evaluation of in
17 a central public facility during the process.

18 Q. And that's in subsection F?

19 A. F, correct.

20 Q. Okay. So I'm just going to double check
21 something on 3C?

22 A. Uh-huh.

23 Q. So is this the city is given additional
24 regulatory authority for mitigation, is that correct
25 under this --

1 A. That is correct. Through the citing
2 operating modifying or expanding such facility.

3 Q. Okay. Does the EPF provisions apply to work
4 in city owned right-of-way?

5 A. Yes.

6 Q. And would it apply to residential lots?

7 A. Yes.

8 Q. Is there anywhere in the city it doesn't
9 apply, I mean does it say?

10 A. It does not. So it would apply any land
11 that's zoned in the city or however it's (inaudible).

12 Q. Okay. So have you reviewed the bus rail
13 interchange project to determine whether you think it
14 would qualify as an essential public facility under
15 the city's code?

16 A. Yes, in my opinion it would qualify.

17 Q. And why is that?

18 A. Well --

19 Q. Define the definition here of essential
20 public facility?

21 A. Yeah.

22 Q. In 19.16.010?

23 A. It, the three components of the definition
24 which in my opinion this scope of work meets is that
25 it would be owner operated by a state or local

1 government entity, provides a public service and it's
2 difficult to cite.

3 Q. And did, to your understanding did Sound
4 Transit apply for an EPF permit for the bus rail
5 interchange?

6 A. It's my understanding Sound Transit did not
7 apply for an EPF. Yeah, sorry.

8 Q. Has sounds, to your knowledge has Sound
9 Transit presented the city with any materials showing
10 that it's previously gone through an EPF process for
11 the bus rail interchange?

12 A. Not to my knowledge.

13 Q. Okay. So are you seeing MICC 19.01.040?

14 A. I am.

15 Q. Okay. Specifically this is just a general
16 question about how Mercer Island code works. If you
17 could review this item H and explain what this means
18 in terms of how the Mercer Island code works?

19 A. Well, this section of code speaks to the fact
20 that a use is prohibited if it's not specifically
21 allowed.

22 Q. Okay. And then this is section 19.05.010.
23 So am I correct that the City of Mercer Island has a
24 public institutions zone, that we're seeing here?

25 A. Correct.

1 according to the testimony of Sound Transit's
2 witnesses, what is the city going to do?

3 A. That, Mr. Schneider, is an answer I don't
4 have for you today.

5 Q. The city issued the right-of-way permit for
6 property that is not right of way, is there anything
7 in the code that authorizes that?

8 MS. PRATT: I'm going to object to that
9 being beyond the scope of his direct testimony.

10 MR. SCHNEIDER: Every witness in this
11 hearing has been asked questions beyond the scope of
12 the direct, and since, and since we have had no
13 opportunity to depose the witnesses or no (inaudible)
14 what they're going to talk about, we simply cannot
15 start abiding by that objection at this point in the
16 process. I had no --

17 THE HEARING EXAMINER: Overruled. You can
18 answer the question.

19 A. Would you like to repeat that question
20 please?

21 Q. (By Mr. Schneider) The city used a
22 right-of-way permit to impose conditions on property
23 that is not right-of-way. Is there any authority in
24 the code for that?

25 A. My understanding is that that was under the

1 assumption the right-of-way was going to be dedicated.

2 Q. Is there any authority in the code for what
3 the city did do which is impose conditions on parcels
4 A and B, which are not right-of-way at the moment?

5 A. A right-of-way permit is for public
6 right-of-way.

7 Q. Okay.

8 MR. SCHNEIDER: Thank you, that's all I
9 have.

10 THE HEARING EXAMINER: Any redirect?

11 REDIRECT EXAMINATION

12 BY MS. PRATT:

13 Q. Mr. Thomas, in your time as a director of
14 three cities and in the interim Mercer Island, how
15 many conditional use permits do you think you have
16 dealt with?

17 A. Many.

18 Q. More than 10? More than one thousand?

19 A. More than 10, less than a thousand.

20 Q. Okay. And so was your estimate of that a CUP
21 process would take three to four months based on your
22 experience as a director and having dealt with many
23 CUPs?

24 A. In part. But I would offer that it was more
25 based on a review of the process that's required by

Exhibit 3

BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND

In the Matter of the Appeal of)
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CENTRAL PUGET SOUND TRANSIT)
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EXCERPT FROM HEARING
TESTIMONY OF ERIC BECKMAN
MARCH 17, 2021

Transcribed from Audio Recording

HEARD BEFORE:

JOHN GALT
HEARING EXAMINER

TRANSCRIBED BY: SUSAN E. ANDERSON, RPR, CCR
License No. 2493

1 problem, as I said yesterday, we're all trying to walk
2 a fine line here between what's appropriate and what's
3 not given the ruling that I made about my inability to
4 give any consideration to equity or equitable estoppel
5 issues. So it is what it is. That's my ruling.

6 Q. (By Mr. Schneider) Mr. Beckman, based on your
7 conversations with Julie Underwood, did you believe
8 that you were proceeding with a project that the city
9 approved?

10 A. Yes, I did.

11 Q. You had conversations with the current city
12 manager, Jessi Bon about the project?

13 A. Yes, I have. We've talked on a number of
14 occasions, both during the time where she was the
15 acting city manager and then more recently as she was
16 named acting city manager -- or excuse me, named the
17 city manager in early 2020.

18 Q. When did your conversations with Ms. Bon as
19 the city manager first begin?

20 A. I believe rough time frame is about October,
21 excuse me, October 2019, yes.

22 Q. Has Ms. Bon -- how many conversations, a
23 rough estimate do you think you had with her about the
24 MITI project?

25 A. I would say between 10 and 12.

1 Q. Okay. In those 10 to 12 conversations has
2 Ms. Bon ever proposed an alternative to the bus
3 layover area on the north side of North Mercer Way?

4 A. No, she has not.

5 Q. Mr. Beckman, let's turn to the city's
6 acquisition and disposition of the two private
7 parcels. Again, you're responsible for the real
8 property group that handles these matters?

9 A. Yes, that is correct.

10 Q. And do you understand why Sound Transit
11 acquired the entirety of both parcels?

12 A. Yes. It was evident early on that the
13 project would create either damage, sufficient damage
14 to the houses to render them unusable or impact access
15 to the parcels so it was clear that it was described
16 earlier, you'd end up with an uneconomic remnant. So
17 the decision was made those both would be full
18 acquisitions.

19 Q. And do you know how much Sound Transit ended
20 up paying for both parcels?

21 A. Yes, I do. Parcel A, which is a smaller of
22 the two parcels was appraised --

23 Q. Excuse me, is that correct?

24 A. My apologies. Parcel B which is the smaller
25 of the two parcels, the one to the east was appraised

Exhibit 4

BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND

In the Matter of the Appeal of)	
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CENTRAL PUGET SOUND TRANSIT)	
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v.)	No. APL 21-001
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CITY OF MERCER ISLAND,)	
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Respondent.)	
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EXCERPT FROM HEARING
TESTIMONY OF STEPHEN CROSLEY
MARCH 16, 2021

Transcribed from Audio Recording

HEARD BEFORE:

 JOHN GALT
 HEARING EXAMINER

TRANSCRIBED BY: SUSAN E. ANDERSON, RPR, CCR
License No. 2493

1 Q. Okay. And Michelle, if we could bring it up
2 again, and go back to the same exhibit, or the same
3 page that shows -- it's Table 2, existing and proposed
4 curb space configurations?

5 So again, I'll do my best not to misspeak
6 this time. It's -- is it accurate to say the improved
7 service configuration is the configuration that Sound
8 Transit is attempting to build today?

9 A. That is correct.

10 Q. Okay. And what is the relationship, speaking
11 as the transit integration program manager, what is
12 the relationship between Sound Transit's ability to
13 provide one bus every four minutes and the layover
14 space on the north side of North Mercer Way?

15 A. Sure. One bus every four minutes is clearly
16 more capacity than one bus every five minutes. As you
17 can see there Metro preference would be to have, as
18 you heard previously, a lot higher volume serving
19 Mercer Island. This is the 16 buss that you see that
20 are approximately one bus every four minutes is the
21 minimum acceptable operational need that Metro has to
22 serve its customers from the East Side from areas that
23 are not duplicated by Link. Metro has compromised
24 significantly on the number of layover spaces to
25 reduce this service and anything below what we see

1 there just would not meet our operational needs and
2 serve our customers.

3 Q. And can you, Michelle, can we go to the chart
4 at the top of the page here? Well, actually, let's
5 turn the page, I'm sorry, go to figure 6. Bates No.
6 75. So as you can see from the caption this is the
7 improved service configuration as set forth in the DEA
8 study. So can you explain why that additional bus
9 layover space on the north side of North Mercer Way,
10 which in a figure is identified as the additional
11 flexible served space, can you just explain why that
12 is critical to providing the level of service that
13 we've been talking about with one bus every four
14 minutes?

15 A. Absolutely. It enables that one bus every
16 four minutes as you can see would be either a, you
17 look at it one way either 25 percent reduction if you
18 take that away, or a 33 percent increase if you had
19 that space. And again, it is the way that we're able
20 to meet that operational need of minimum 16 buses, you
21 know the minimum 16 buses per hour that we were
22 requesting at this time. Otherwise without that space
23 we would be down to 12 buses or less per hour.

24 Q. And can you take this to the next level of
25 detail and explain why that's so? What happens to the

1 buses and your ability to pick up passengers if that
2 curb space goes away?

3 A. If this curb space goes way away we are also
4 talking about bus bay No. 1, Pat, or just the
5 additional flexible curb space?

6 Q. Just the additional flexible curb space?

7 A. So again that is, that is essential in the
8 sense that when we have more than one bus, or a few
9 buses operating at this time dropping off passengers,
10 because those drop-off spaces are larger than a single
11 bus. If we had more than four buses operating we
12 would not then be able to lay over at Mercer Island
13 and we are prohibited from traveling through the town
14 center, so these buses would actually have nowhere to
15 go. So essentially it is that additional space that
16 allows us to provide that level of service that we
17 have documented in the DEA study and prior to that.

18 Q. So the -- there's an existing bus stop on the
19 north side of North Mercer Way that is planned to
20 continue, correct?

21 A. To my knowledge that that is planned to
22 continue if there is any other information I can
23 certainly respond to that, because that is also a
24 critical part of our -- of our bus interchange.

25 Q. Okay. So a bus comes in from Issaquah, it

1 discharges its passengers on that existing bus stop of
2 the north side next to the Park and Ride and then what
3 does the bus driver do once he's discharged his
4 passengers?

5 A. Once he or she has discharged their
6 passengers, that bus can either enter into that
7 flexible curb space you see there, which would be for
8 Metro just for layover; or it could operate, go around
9 the roundabout and take one of those spaces that are
10 prior to the bus bay No. 2 that you see on the screen
11 there. So again it is a, it is an additional layover
12 space that is required to meet that 16, approximately
13 16 buses per hour.

14 Q. And what does that bus driver do if that curb
15 space isn't there then?

16 A. Well, if that curb space isn't there, then we
17 would have to reduce service levels such that that
18 curb space for the settlement agreement that you see
19 there is the only operable layover space possible.
20 Assuming we do have that drop off in bus bay No. 1,
21 Pat.

22 Q. Yeah. And you said your buses are prohibited
23 from going through the Mercer Island town center, why
24 is that?

25 A. This was per the settlement agreement. And

1 it was one part --

2 MS. PRATT: Object to discussion on the
3 settlement agreement.

4 Q. (By Mr. Schneider) Without mentioning the
5 agreement is that something that the city wanted as
6 opposed to Metro wanted?

7 A. The city did not want buses traveling through
8 the city center.

9 Q. Okay. And has the city to your knowledge
10 ever proposed an alternative that would provide
11 layover space somewhere else other than on the north
12 side of North Mercer Way as depicted in figure 6?

13 A. Not to my knowledge.

14 Q. How firmly has Metro expressed its position
15 regarding this issue? And at what level within the
16 agency has this position been expressed?

17 A. I believe this -- this has been expressed at
18 the minimum to our division director level. And I
19 have spoken extensively with our division director
20 about this as well as our service development manager.
21 We do have a new, a new general manager and so the
22 parting general manager I can't speak to, I can't
23 speak to those interactions. But this is at the
24 mobility division director level one step below our
25 general manager and chief of staff.

Exhibit 5

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**BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND**

In the Matter of the Appeal of

**CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY,**

Petitioner,

v.

CITY OF MERCER ISLAND,

Respondent.

No. APL21-001

**EXCERPT FROM HEARING
TESTIMONY OF JEMAE HOFFMAN
TAKEN MARCH 24, 2021 (1:07:05 –
1:09:38)**

SCHNEIDER	Thank you. Michelle would you bring up Exhibit 10 please and turn to the last page. Exhibit 10 is my letter to the City Attorney Mr. Park that Ms. Pratt asked Mr. Yamashita about during his testimony and specifically there was a question about the language on this page in the second to the last paragraph, the second sentence it says, “the City is aware of the intended use of this area” referring to the layover area on the north side of North Mercer way as a bus bay for layovers and supplemental passenger drop-offs. Because this is how it’s use is described in what we’re referring to as the DEA Study. So can we turn now to the DEA Study please, Exhibit 1002 and page 13. Now Ms. Hoffman are you aware of that language about flexible curb space appearing in the DEA Study?
HOFFMAN	Yes I am.
SCHNEIDER	Okay. So the letter accurate, was accurate in referring to the language that’s coming from the study. Is that fair?
HOFFMAN	Yeah. These, the edits describing flexible curb space were made in January 2019 in response to discussions with Mercer Island about the study. The City Manager and Kirsten thought that calling it flexible

**EXCERPT FROM HEARING TESTIMONY OF
JEMAE HOFFMAN TAKEN MARCH 24, 2021 - 1**

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	curb space would be a good idea in case other vehicles like Rideshare or commuter ride space buses could use the space. And so we made the changes after that discussion.
SCHNEIDER	So is that phrase a phrase that the City asked to be included in the DEA Study?
HOFFMAN	They did think it would be a good idea, yes.

**EXCERPT FROM HEARING TESTIMONY OF
JEMAE HOFFMAN TAKEN MARCH 24, 2021 - 2**

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Exhibit 6

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**BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND**

In the Matter of the Appeal of
**CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY,**

Petitioner,

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CITY OF MERCER ISLAND,

Respondent.

No. APL21-001
**EXCERPT FROM HEARING
TESTIMONY OF ERIC BECKMAN
TAKEN MARCH 24, 2021 (1:45:40 –
1:47:08)**

SPEAKER	NARRATIVE
SCHNEIDER	You heard testimony Friday afternoon from Jeff Thomas, the City’s Interim Director of the Department of Planning and Community Development about the City’s EPF or Essential Public Facilities Ordinance. In your discussions with the City Managers, either with Julie Underwood in 2018 and 2019 or with the current City Manager Jessie Bons, since then, has either of them ever brought up the issue of Sound Transit having to go through the process in the City’s EPF Ordinance?
BECKMAN	No. In my discussion with the City Managers there has been no discussion of the EPF Ordinance or need to apply under that permit. And until Mr. Thomas’ testimony on Friday, I had not heard of that from either Sound Transit staff or Mercer Island staff.
SCHNEIDER	Has Sound Transit gone through a local EPF process with any of the cities or with King County that are responsible for portions of East Link?
BECKMAN	In my 17 year tenure at the agency, I do not know of a single instance where we’ve done that.

**EXCERPT FROM HEARING TESTIMONY OF ERIC
BECKMAN TAKEN MARCH 24, 2021 - 1**

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1 **DECLARATION OF SERVICE**

2 I, Nikea Smedley, under penalty of perjury under the laws of the State of Washington,
3 declare as follows:

4 On the date indicated below, I caused **DECLARATION OF MICHELLE RUSK IN**
5 **SUPPORT OF SOUND TRANSIT’S CLOSING ARGUMENT** to be filed with the Hearing
6 Examiner for the City of Mercer Island and served on the persons listed below in the manner
7 indicated:

8
9 City of Mercer Island Hearing Examiner [] Via Facsimile
John Galt [] Via Legal Messenger
10 9611 SE 36th Street [X] Via E-mail
Mercer Island, WA 98040 [] Via US Mail, postage prepaid
11 Telephone: (425) 259-3144
12 Email: jegalt755@gmail.com

13 Kim Adams Pratt, WSBA No. 19798 [] Via Facsimile
14 Eileen M. Keiffer, WSBA No. 51598 [] Via Legal Messenger
Madrona Law Group PLLC [X] Via E-mail
15 14205 SE 36th Street [] Via US Mail, postage prepaid
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16 Bellevue, WA 98006
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 Via US Mail, postage prepaid

8 ***Attorneys for Plaintiff City of Mercer Island,***
9 ***Washington***

10 DATED this 22nd day of April, 2021 at Seattle, Washington.

11 *s/Nikea Smedley*

12 _____
13 Nikea Smedley, Legal Practice Assistant