

**REGIONAL TRANSIT AUTHORITY**

**MOTION NO. 98-25**

**Adopting TOD Policies  
BACKGROUND AND COMMENTS**

<b>Meeting:</b>	<b>Date:</b>	<b>Agenda Item:</b>	<b>Staff Contact:</b>	<b>Phone:</b>
<b>Board of Directors</b>	<b>4/9/98</b>	<b>No. 9A-1</b>	<b>Barbara Gilliland, Program Manager, Systems Integration Agnes Govern, Director, Regional Express</b>	<b>206-684-1630  206-684-1673</b>

**ACTION:**

Approval of a motion adopting transit-oriented development policies to guide staff work and development on and around Sound Transit station areas, transit centers, and park and ride lots.

**BACKGROUND:**

In September 1997, the Board established the Transit-Oriented Development (TOD) Task Force, established principles and the mission of the task force, and approved a work program to address development issues associated with transit oriented development at Sound Transit facilities.

Since its inception, the Task Force has been reviewing the current status of TOD in the region including a review of what others are doing, legal issues, and identification of barriers to development. Based on these discussions, the Task Force evaluated a number of recommendations and a range of approaches to bring to the Board.

**RELEVANT BOARD POLICIES AND PREVIOUS ACTIONS TAKEN:**

RTA enabling legislation, RCW 81.104.080(2), Interlocal agreements between transit authorities, cities, and counties shall set forth conditions for assuring land uses compatible with development of high capacity transportation systems.

Adoption of *Sound Move*, the Ten-Year Regional Transit System, May 31, 1996, making policy commitments to link land use and transit planning, design, and implementation to enhance communities and to increase transit ridership.

Motion No. 36, adopted June 12, 1997, created the TOD Task Force.

Motion No. 45, adopted November 13, 1997, adopted principles, mission, and work program of the Transit-Oriented Development Task Force.

**KEY FEATURES:**

Proposes policy recommendations to guide development on Sound Transit facilities, establishes policy for working with others on development that occurs surrounding Sound Transit facilities,

and describes how TOD work will be incorporated into the Sound Transit work programs. (See Attachment A.)

**FUNDING:**

It is recommended that TOD work be integral to the development of each station, transit center, and park and ride lot facility using Sound Transit funds to leverage additional funds that may be available through various available grant resources.

**ALTERNATIVES:**

RTA enabling legislation and statements in *Sound Move* require Sound Transit to adopt policies related to transit supportive land use development. The Task Force evaluated a range of options around each policy recommendation ranging from intensive involvement to a more monitoring role. The Board could re-evaluate any recommendation and have the range of options presented. In addition, the Board could add other recommendations if identified.

**CONSEQUENCES OF DELAY:**

Agreements and contracts with local jurisdictions are already underway. Adoption of policy recommendations will further clarify Sound Transit's role in TOD on and around its facilities and further incorporate this element into the Sound Transit work program.

**REGIONAL TRANSIT AUTHORITY**

**MOTION NO. 98-25**

A motion of the Board of the Regional Transit Authority for the Pierce, King, and Snohomish Counties region adopting transit oriented development policies to guide staff work and development on and around Sound Transit station areas, transit centers, and park and ride lots.

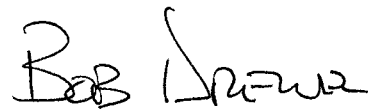
**Background:**

In September 1997, the Board established the Transit Oriented Development (TOD) Task Force, established principles and the mission of the task force, and approved a work program to address development issues associated with transit oriented development at Sound Transit facilities.

**Motion:**

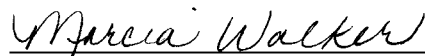
It is hereby moved by the Board of the Regional Transit Authority that the policy recommendations be adopted substantially in the form of Attachment A and that the Task Force be sunset and a new subcommittee be established under the Finance Committee to address Real Estate and Transit Oriented Development issues as they arise.

Approved by the Board of the Regional Transit Authority for the Pierce, King, and Snohomish Counties region at a regular meeting thereof on the ninth day of April 1998.



Bob Drewel  
Board Chair

ATTEST:



Marcia Walker  
Board Administrator

Attachment "A"



**SOUNDTRANSIT**

Central Puget Sound  
Regional Transit Authority

**RTA SOUND TRANSIT**

**TRANSIT-ORIENTED DEVELOPMENT TASK FORCE**

**March 13, 1998**

*Month, day, year*

## **RECOMMENDED TRANSIT-ORIENTED DEVELOPMENT POLICIES**

### **I. TRANSIT-ORIENTED DEVELOPMENT ON SOUND TRANSIT PROPERTY**

Sound Transit should use *all* its own sites to demonstrate good transit-oriented design and land use mixes that are appropriate to their setting, transit mode, and market conditions.

*To accomplish this, Sound Transit should:*

#### **A. Preserve Development Opportunities on Sound Transit Property**

1. Where local jurisdictions station area plans and market analyses indicate that such development would be appropriate, Sound Transit should, at a minimum, preserve options for future TOD projects in its facility plans and environmental work.
2. Where there is the greatest potential for such development, additional resources should be focused to determine what TOD projects would bring the greatest return to Sound Transit and the local community.
3. In addition, Sound Transit should re-evaluate the development potential at its facilities as the system develops and development conditions change.

#### **B. Promote TOD in the Acquisition/Use/Disposition of Excess Land**

Sound Transit should consider the following options for each property on an individual basis:

1. Sound Transit should consider the potential for TOD as it acquires land and develops its site plans.
2. Working with the local jurisdiction, Sound Transit should place deed restrictions or other restrictions on surplus land, specifying that it must be used for transit-oriented development that complies with local plans and codes. Establishing such a policy will help ensure that Sound Transit meets all applicable local and federal requirements.
3. Sound Transit should consider providing incentives to assure that desired types of development are built on its surplus land.
4. Sound Transit could maintain ownership of some of this land and undertake development of the site itself or under contract.

#### **C. Preserve Options Through Local Station Area Plan and Project Reviews**

1. In addition to the station area support provided via its current interlocal agreements, Sound Transit should become more substantially involved with station area plan and project reviews at key facilities where access and land use issues will significantly affect system operations.
2. The level of this involvement should reflect the local community's participation, its needs and interests, as well as Sound Transit's own priorities and resource availability.

## **II. TRANSIT-ORIENTED DEVELOPMENT TECHNICAL SUPPORT**

### **A. Assisting Other Technical Support Programs**

The Sound Transit should consider that the work it does via its interlocal agreements constitutes a significant contribution to TOD technical support and look to other organizations, such as the Puget Sound Regional Council, to continue the broader TOD education and promotion efforts.

### **B. Addressing Legal Issues**

Sound Transit should participate with representatives of TOD interests to address TOD legal issues that specifically affect Sound Transit system operations and goals, prepare a TOD-supportive legislative agenda, and as a member of this coalition, encourage its passage in a future legislative session.

### **C. Transit-Oriented Development Incentive Programs**

1. Sound Transit should work with its partners to encourage the creation of a TOD pilot program to help demonstrate the highest quality TOD principles.
2. To the extent allowed by state law, the Sound Transit Board should explore use of creative financing opportunities such as grant funds to support pilot development projects that meet Sound Transit and local station area development goals.

**TRANSIT-ORIENTED DEVELOPMENT**  
**POLICY IMPLEMENTATION RECOMMENDATIONS**

Sound Transit's Transit-Oriented Development Task Force recommends the following organizational and management approaches be taken to assure accomplishment of the transit-oriented development policies adopted by Sound Transit Board.

**A. Incorporating TOD Policies into the Sound Transit Program**

1. The agency directors and program managers within each line of business will be responsible for implementing the Board's adopted TOD policies as part of their project development work.
2. The Real Estate Division will develop and request Board approval, acquisition, and relocation policies and procedures that reflect the Board's adopted TOD policies.
3. In order to coordinate the TOD work of Sound Transit and that of other organizations such as the Regional Council, staff from Systems Integration will serve as the liaison to those organizations and Sound Transit.
4. TOD work within the lines of business and the Real Estate Division will be considered an integral part of each affected project and any costs will be considered part of the project development costs.
5. To be certain that the TOD policies are implemented within the overall Sound Transit program, training will be provided to staff who will be doing TOD-related work.

**B. Sound Transit Board Participation**

The Board should create a Real Estate/Transit-Oriented Development Subcommittee of the Finance Committee to review and act on matters related to implementing real estate and TOD policies.



**SOUNDTRANSIT**

Central Puget Sound  
Regional Transit Authority

## BACKGROUND REPORT ON TRANSIT- ORIENTED DEVELOPMENT

*March 1998*

This is the first part of a two-part  
Task Force report  
to  
the Regional Transit Authority  
Board of Directors.  
The second part is *Recommendations*.



**Transit-Oriented Development (TOD)** can be defined as compact public and private development that supports transit use by emphasizing pedestrian and transit access, clustering development, and mixing land uses and activities at and around transit facilities.

**Transit-oriented development occurs incrementally, over many years, as market conditions, the regional economy, and factors such as zoning and infrastructure availability come into play. The existence of a transit facility, by itself, will not generate development.**

*Transit-oriented development, appropriately scaled and designed, is important to the success of light rail, commuter, rail and regional bus operations.*

## I. INTRODUCTION

### The Importance of Transit-Oriented Development to Sound Transit

The Washington State High Capacity Transit Act of 1990 requires the linkage of land use planning with the development of high capacity transit systems. Regional transit authorities are required to enter into agreements, with local jurisdictions, to establish conditions to support the high capacity transit system through transit-oriented development.<sup>1</sup> In addition, the agreements must be consistent with state planning goals in the Growth Management Act.<sup>2</sup>

Transit-oriented development (TOD) is important to Sound Transit for four major reasons. Experience in other regions where TOD has been encouraged at and around regional and local transit facilities suggests that this type of development can increase system ridership, help generate revenues for the system, provide potential cost-sharing opportunities, and support local and regional development goals.

#### Task Force History and Mission

The Regional Transit Authority Board created its Transit Oriented Development Task Force with the adoption of Motion No. 36 in June 1997. The Task Force began meeting in September and immediately developed a work program, mission statement, and *Transit-Oriented Development Principles to Guide RTA Station Area Programs* (see page 4). The Task Force's overall goals were to:

- Assess the status of and issues related to TOD in the vicinities of planned RTA passenger facilities; and
- Identify roles that Sound Transit could consider taking relative to TOD both at its own facilities and in the areas around those facilities.<sup>3</sup>

#### Transit-Oriented Development Task Force Mission Statement

The Task Force will:

1. Develop policy recommendations that ensure that the RTA *Transit-Oriented Development Principles to Guide RTA Station Area Programs* are carried out.
2. Convene local land use agencies, transit agencies, and other interests to discuss transit-oriented development and how it can be promoted.
3. Provide information on transit-oriented development matters.
4. Monitor progress by land use agencies and the RTA in establishing transit-oriented programs for station areas.
5. Identify transit-oriented development issues that should be addressed by the RTA over time.
6. Provide a status report to the RTA Board in January 1998. . . . Strive to complete the work of the Task Force by March 1998.

*Adopted by the RTA Board, Nov. 13, 1997*

<sup>1</sup> Chapter 81.104.080. RCW.

<sup>2</sup> Chapter 36.70A RCW.

<sup>3</sup> The Task Force used the following definitions to frame its work:

*Station areas:* Generally the quarter-mile area surrounding a station in which transit-oriented development can be expected to occur, if conditions permit. *Note that "station area" is used both for rail and for bus passenger facilities.*

*Sound Transit Facilities:* Sound Transit-owned or leased passenger facilities which could be candidates for TOD. Examples include rail stations, transit centers, flyer stops, park and ride lots, and space shared in multi-modal facilities.

Over the next four months, the Task Force received briefings on a variety of TOD topics including organizing for transit-oriented development, reviewing the status of station area planning in cities to be served by Sound Transit, involving the private sector, providing TOD technical support, and joint development.

In addition to this report, Task Force products include a series of briefing memos and short papers including:

- *RTA Transit-Oriented Development and Joint Development -- Legal Opportunities and Constraints*, by Bob Gunter, Sound Transit General Counsel, September 12, 1997 (memo).
- *Transit-Oriented Development Principles to Guide RTA Station Area Programs* (adopted by the Sound Transit Board, November 13, 1997).
- *Status Report on Local Jurisdictions' Transit-Oriented Planning for RTA Passenger Facilities*, by Caroline L. Feiss, Consultant, December 8, 1997 (briefing paper).
- *Financing and Regulatory Strategies to be Considered in Enlisting Participation of Private Sector in Promoting Transit-oriented Development in and around RTA Stations*, by J. Tayloe Washburn, January 9, 1998 (memo).
- *Status Report to the RTA Board*, January 9, 1998 (1-page hand out).
- *Transit Agency Technical Support: A Sampling from Around the U.S.*, by Caroline L. Feiss, Consultant, January 14, 1998 (briefing paper).
- *Joint Development: A Review of Some of the Literature*, by Caroline L. Feiss, Consultant, February 3, 1998 (briefing paper).

### **Purpose of this Report**

At the time that it adopted the Task Force work program and mission, the Board asked that the Task Force report back to the Board in March 1998 on:

- Task Force accomplishments;
- The status of transit-oriented development;
- TOD issues and opportunities of potential interest to RTA;
- Recommendations as to possible TOD roles for Sound Transit; and
- Suggestions for the disposition of the Task Force.

**This document is one half of the requested report and covers the first three topics. The Task Force recommendations are contained in a separate *Recommendations* report.**

## **II. THE STATUS OF TRANSIT-ORIENTED PLANNING IN THE SOUND TRANSIT REGION**

In general, transit-oriented development in the vicinities of planned Sound Transit facilities is either still in the planning stage or occurred at some time in the past, as a result of market conditions and other factors unrelated to the future Sound Transit system.

## **The Status of Local Planning<sup>4</sup>**

Local jurisdictions are responsible for land use planning and regulation of development at Sound Transit facility sites and the areas that surround them. All the cities interviewed have or are preparing comprehensive plans that include general location, design, access, and land use objectives for the planned Sound Transit facilities. Some cities have moved beyond the comprehensive plan stage and have prepared station area plans, city center plans, or other studies that more specifically address the station/transit center and its impacts on its immediate surroundings. A few have adopted specific design guidelines or zoning code provisions to support their plans. Tacoma's Tacoma Dome Station mixed-use zoning district is an example.

Most all the cities interviewed are "gearing up" for active work on their station areas. Most have appointed a staff person to serve as coordinator for Sound Transit facility-related work and some have named staff liaisons from some or all city departments that will work on station area planning. A few have established advisory groups with representatives from the community, business groups, and land owners.

Local cities are very clear about their interest in leading the planning for the areas around Sound Transit facilities. In a number of cases, local planners stated that their planning was far ahead of Sound Transit's and a major role for Sound Transit is not envisioned at this point. However, where planning was less advanced, there was considerable interest in Sound Transit participation. Generally, Sound Transit was looked to for guidance on various aspects of transit-oriented development. For cities where such assistance was mentioned, possible Sound Transit roles ranged from providing background information to active participation with local planning activities.

Almost all the cities have an interest in some kind of joint development at Sound Transit facilities. This uniformity may reflect a lack of understanding about "joint development" or its real prospects except where substantial land is acquired and new construction is planned. In some cases, cities may really want a facility designed for *joint use*, such as providing space for complementary uses (newsstands, espresso carts, etc.) or a weekend farmers' market.

The interviewees were asked if they thought their cities had any additional expectations relative to Sound Transit and facility-related development. Since the people interviewed were staff, their responses may not reflect all perspectives within a particular community. A sample of these expectations include:

- Building the facilities and providing the services described in Sound Transit's 10-year plan;
- Providing funds and technical support for station area planning, traffic mitigation, and joint development;
- Working to resolve constitutional and statutory barriers to public involvement in station area and joint development;
- Becoming visible advocates for high quality transit-oriented development; and
- Actively participating in community planning work so that Sound Transit becomes part of the community.

### **Sound Transit's Current and Planned TOD-Related Activities**

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<sup>4</sup> This section is drawn from *Status Report on Local Jurisdictions' Transit-Oriented Planning for RTA Passenger Facilities*, by Caroline L. Feiss, Consultant, December 8, 1997. The paper covers interviews with staff people assigned to work with Sound Transit from 16 cities or about 80% of the communities with planned Sound Transit facilities.

**Board TOD Policies:** The Sound Transit Board has taken a number of steps in support of transit-oriented development. In June 1997, the Board created the Transit Oriented-Development Task Force and staffed it. In November the Board adopted principles to guide land use and transit work and the mission statement and work program for the Task Force (see above).

**Agency and Jurisdiction Agreements:** Each of Sound Transit's Lines of Business departments (regional express bus, Link light rail and Sounder commuter rail) have been working on agreements with partner agencies. In those agreements, especially with those agencies with land use authority, Sound Transit has been incorporating language regarding land use expectations and responsibilities.

**The TOD Task Force:** During its six months, the Task Force has had the opportunity to consider a range of issues related to how Sound Transit might participate in transit oriented development on its own properties, in planning for areas around its facilities, and in supporting others efforts.

Task Force recommendations to be considered for adoption by the Sound Transit Board will further define areas the agency could be involved with such as:

- Property development;
- Joint development;
- Technical support to local jurisdictions and private development interests;
- Financial support for station area planning;
- Resolution of legal issues; and
- Encouragement of other entities' efforts supporting TOD.

#### **The RTA's Transit-Oriented Development Principles to Guide RTA Station Area Programs**

1. The RTA will promote and encourage transit-friendly, transit-oriented development, joint development, and quality public and private projects at and around RTA passenger facilities to enhance communities, build transit ridership, and aid economic development.
2. The RTA acknowledges the authority of local jurisdictions to conduct and implement station area planning around RTA transit stations.
3. The RTA's authority extends to planning and implementing high capacity transit services and facilities, and to encourage and jointly develop RTA transit stations.
4. The RTA will support and work collaboratively with local jurisdictions and the private sector committed to quality transit-oriented development around RTA facilities.

The RTA will negotiate agreements and contracts with local jurisdictions with these principles in mind and will use them when coordinating its station work with local jurisdictions.

*Adopted by the RTA Board, Nov. 13, 1997*

### III. TRANSIT-ORIENTED DEVELOPMENT ISSUES

#### Station Area Planning

Planning and the regulation of development at stations and in their surrounding station areas is the responsibility of the local general purpose government. Sound Transit's interest in what is planned for the areas in which its facilities are to be located include:

- What types of development will be allowed on Sound Transit-owned or leased land (the facility site itself). This will affect what kinds of transit-oriented development Sound Transit will be able to undertake, should it choose to do so.
- What types of development will be allowed in the quarter- to half-mile area around the Sound Transit facility which will influence the extent to which significant transit-oriented projects will happen. This could affect system ridership.

Clearly, not all station sites or station areas will be suitable for extensive TOD, but some kind of planning work will be needed at all of them, even if it is only to develop neighborhood preservation plans or traffic mitigation programs. The extent to which Sound Transit becomes involved in station area planning activities will depend on factors such as the desires of the local community, the significance of Sound Transit facility within the context of the entire system, market potentials for TOD, Sound Transit resource availability, and the nature of the issues that could affect the success of the facility and its integration with its surroundings.

#### Private Sector Participation<sup>5</sup>

Since most transit-oriented development *at and around* Sound Transit facilities will be done by the private sector, involving private development interests and their resources and experience in station area programs is in the interest of both Sound Transit and local jurisdictions. Seeking the advice of a spectrum of the private sector up front could help Sound Transit and its host jurisdictions better understand private developers' needs, time frames, and constraints.

A wide spectrum of the development community could build quality TOD projects, even at higher-than-standard densities and with special design criteria, *if there is sufficient incentive to do so*. Those incentives must result in an adequate return on investment by establishing a predictable development process and schedule. Additional incentives, provided by the public sector, such as assembling properties, offering some sort of tax relief, providing cash incentives, and reducing certain procedural barriers also can help attract private developers.<sup>6</sup>

The private sector can participate in TOD in two arenas: at transit facilities in joint development projects or in the station areas around the facilities -- either independently or as partners with the public sector. One relatively standard type of joint development occurs when the transit agency leases or sells the air rights over a station or parking lot for development. If Sound Transit wants to do this, it should consider building that type of development into its current station designs and environmental work so that opportunities are not precluded by the physical designs of the stations or lots.

Sound Transit could bring private developers into joint development projects at stations in a number of ways, including having the developer buy the land and construct the station and associated development and then sell or lease the project to Sound Transit. Sound Transit

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<sup>5</sup> This section is drawn from "Financing and Regulatory Strategies to be Considered in Enlisting Participation of Private Sector in Promoting Transit-oriented Development in and around RTA Stations," by J. Tayloe Washburn, January 9, 1998.

<sup>6</sup> These incentives and the financing and regulatory strategies outlined here will need to be reviewed by legal counsel as to constitutional and statutory limitations on their use in Washington.

could lease air rights at a reduced rate for projects that meet public goals such as affordable housing or daycare. The Sound Transit could use public funds, bonding, and other carefully-drafted financial incentives to make a TOD project that has a public purpose pencil out for a developer.

Local jurisdictions also can provide financial incentives to encourage transit-oriented development although, again, there are legal constraints which may limit the use of some options. For example, urban renewal can be used by a city to assemble land, make infrastructure improvements, add pedestrian and transit-oriented amenities, and in other ways make a currently blighted station area more desirable for private investment.

A financing strategy available to Sound Transit, local governments, and the private sector is partnering with housing authorities. Housing authorities have a wide array of statutory authorities to develop, finance, and own housing and related facilities as long as at least half of the housing is occupied by low-income residents. Housing authorities have access to a range of subsidies including tax-exempt bonds and property and lease-hold tax exemptions. A related source of support is the Washington State Housing Finance Commission which issues multi-family "private activity" bonds and allocates low-income housing tax credits, both of which can reduce the developer's overall cost of financing a project. Sound Transit and local governments should consider asking the Commission to provide higher ratings for TOD projects.

The private sector needs to know that the process and regulations governing a transit-oriented development project will not change during a project or delay a project. Sound Transit and local jurisdictions can help provide this assurance by taking steps such as simplifying regulations and streamlining procedures for projects within station areas.

Planning and regulation can also promote transit-oriented development and provide disincentives for inappropriate development in station areas. The adoption of TOD policies and station area subarea plans into jurisdictions' comprehensive plans, as called for by the Growth Management Act, can:

- Help integrate the station area plan with jurisdiction-wide land use and capital facility plans;
- Bring station area projects into a city's funding and regulatory streams governed by comprehensive plans;
- Reduce regulatory hurdles and increase options for funding since the station area has been endorsed by the adoption of the comprehensive plan or plan amendment;
- Reduce delays when there are discretionary permitting decisions (such as for street vacations and conditional use permits); and
- Potentially limit opportunities for project opponents to use SEPA policies to stop station area projects.

Local jurisdictions can encourage TOD projects by adopting station area regulatory incentives to allow higher floor ratios (one way to achieve density), reduce or eliminate parking requirements, provide priority permit processing, reduce permit fees, allow clustering and transfers of development rights, prohibit low-density and auto-oriented uses, allow mixed uses and reward quality pedestrian and transit-supportive design.

Local jurisdictions can also adopt local substantive SEPA policies that state that the jurisdiction acknowledges the importance of transit-oriented development and accepts certain categories of impacts associated with this type of development. Such policies show developers that the jurisdiction is serious about TOD and further reduce opportunities for project opponents to use SEPA to block projects.

Both Sound Transit and local governments should consider proposing legislative changes that could substantially improve opportunities for private TOD projects in station areas. These could include:

- Statutory exemption under SEPA for TOD projects where other actions such as the comprehensive plan/subarea planning processes provide adequate environmental review and mitigation;
- Expanding statutory exemptions in state constitution property tax uniformity provisions to include TOD property tax exemptions or abatement for a limited number of years, if such provisions do not now exist; and
- Statutory exemption from the leasehold excise tax for TOD projects on RTA or other public property.

### **Provision of Technical Support<sup>7</sup>**

While transit-oriented development has existed for years in the region's older urban centers, it is a relatively new concept in the newer suburban communities within the Sound Transit region and one that has few good examples. Transit agencies in other regions have found that providing technical support to a variety of interests may be the best way to encourage transit-oriented development. These agencies offer technical support to the private sector, local jurisdictions, and the community. Examples include creating wide-spectrum technical assistance programs, providing real estate market information, design guidance, informational programs and materials, funding, and project management support. Some transit agencies provide some or all of the assistance themselves while others work with other entities such as regional agencies, universities, community groups, or planning and design organizations.

Transit agency technical support, developed in other regions of the country, include:

- *A Transit-Oriented Development Program* that created TOD design concepts, model station area plans, a joint development process building on the concepts, and an information program to disseminate the concepts and examples of their use.
- *Station Area Development Profiles* designed to provide development interests information about the benefits of and opportunities for development at and around stations. An attractive brochure for each station, covers market information, maps, available land, property ownerships and uses, transit use statistics, what is planned for the station, and more.
- *A newsletter* focusing on transit-oriented development information, legal issues, upcoming events, TOD project profiles, and resources (people and books).
- *Transit-oriented development conferences* to share experiences with and benefits of TOD. Reports of the proceedings help spread the word.
- *Transit-oriented station area development guidelines* with examples for a variety of locations from downtowns to developing suburban areas. The emphasis is on laying out urban form and land uses to create the right environment for TOD.

Transit agency provided transit-oriented development support may include one or more of the following components:

- *Information programs* covering TOD design concepts, why TOD might be beneficial to a community, local examples, and examples from elsewhere.

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<sup>7</sup> This section is drawn from *Transit Agency Technical Support: A Sampling from Around the U.S.* by Caroline L. Feiss, Consultant, January 21, 1998.

- *Information for host communities* on TOD planning and zoning, expedited permitting processes, community involvement ideas, and developer incentive approaches.
- *Assistance* with neighborhood meetings, workshops, and other events.
- *A joint development program* providing information on transit facility plans, opportunities for joint development, model agreements, financing options, and staffed with people with development and real estate experience.
- *Market information* both on a site basis and for the larger community and region.
- *Funding assistance* for planning, pilot projects, and TOD incentives.
- *Assistance* with identifying and resolving legal and financial issues and barriers.

The provision of technical support can be costly, especially if considerable support is provided over a region as large as Sound Transit's. As Sound Transit considers its appropriate roles relative to technical support, it will need to keep in mind:

1. Its mission and mandates;
2. The value of this work to Sound Transit now and in the future;
3. The potential for duplicating others' efforts;
4. The potential for encouraging others to provide the support; and
5. The availability of RTA resources (staff and consultants, appropriate expertise, money, time).

### **Legal Authorities<sup>8</sup>**

Sound Transit is mandated by the High Capacity Transit Act<sup>9</sup> to work with local jurisdictions to "assure land uses compatible with development of high capacity transit systems," and has a broad range of express and implied powers which can further TOD. Nonetheless, there are some clear legal constraints on Sound Transit's ability to engage in certain transit-oriented development activities:

1. State and local governments cannot contract in ways that compromise their police and regulatory powers beyond what is authorized in state law and the constitution.
2. With respect to joint development opportunities, Sound Transit must:
  - avoid any unconstitutional gifts of funds or lending of credit to the private sector under Article 8 Section 7 of the State Constitution;
  - satisfy the "public purpose" doctrine;
  - use its condemnation powers appropriately; and
  - avoid subsidies of another government's operations in violation of RCW 43.09.210.
3. Federal grant agreements and regulations on the uses of federal money may also constrain development activities.

Generally, however, Sound Transit appears to have broad authorities to work with local jurisdictions on their station area planning and at its own properties for TOD programs including joint development. Recent decisions of the Washington State Supreme court have confirmed that when a municipal corporation acts as a business in a proprietary capacity, its powers are construed broadly and TOD would appear to fit into this category. In fact, actions taken pursuant to

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<sup>8</sup> This section is drawn primarily from "RTA Transit-Oriented Development and Joint Development -- Legal Opportunities and Constraints," a memo to the Task Force from Bob Gunter, General Counsel, Sept. 12, 1997.

<sup>9</sup> Chapter 81.104.080. RCW.



a proprietary function are deemed authorized at law unless they are beyond the purposes of the enabling statute or contrary to an express statutory or constitutional provision. Our courts have previously ruled that the operation of a transit system is a proprietary function. Coupled with the express direction in Sound Transit's enabling legislation to coordinate with local jurisdictions to facilitate compatible land uses, Sound Transit should be understood to have very flexible powers in implementing TOD initiatives.

For example, RCW 81.112.070 and RCW 81.112.080 give RTA extensive general contracting powers which extend to public and private enterprise. Sound Transit is also authorized to develop and commercially lease space in intermodal transportation centers under RCW 81.75 and to directly engage in a number of related commercial activities. Sound Transit also has implied powers under common law.

It should also be noted that RCW 81.112.070 specifically grants Sound Transit any powers necessary ". . . to implement a high capacity transportation system and to develop revenues for system support." That statute also specifically authorizes contracts which would involve the provision or receipt of services, facilities or property rights to provide revenues for the system. Thus the Legislature already has delegated to the Sound Transit Board substantial discretion to determine how revenues to support the system can be generated. This could include longer term involvement by Sound Transit in commercial activities at and in the vicinity of its stations. This area will need further legal clarification, but Sound Transit does appear to have a broader range of proprietary powers than most special purpose agencies.

The Federal Transit Administration has expanded its authorized uses of federal funds for private development to enhance transit in qualified joint development projects. Such projects must include a transit element and enhance economic development, the effectiveness of a mass transit project, and include non-vehicular capital improvements that result in increased transit use.<sup>10</sup>

### **TOD on Sound Transit Property<sup>11</sup>**

Sound Transit will own or lease substantial land for its facilities and for construction staging areas, buffers, and other facility-related uses. As it acquires land and constructs its facilities, it may wish to consider incorporating transit-oriented development projects to help pay a portion of facility construction costs, bring in revenues, meet local or regional growth management and other public policy objectives, or encourage ridership. Sound Transit can either:

- Build TOD projects itself, or
- It can enter into joint development programs with public or private sector partners.

A Sound Transit commitment to building transit-oriented development at its own sites, which are appropriate for such development, could help demonstrate the viability of TOD projects to the private sector and the community. While TOD is not a major Sound Transit goal, encouraging it could, over time, bring benefits in the forms of increased ridership and revenues as well as promote local land use plans which support compatible development.

Additionally, current federal initiatives suggest additional funding may be available to transit systems that promote or engage in transit-oriented development programs including joint

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<sup>10</sup> FTA C9300.1, Appendix B; 62 Federal Register 12266 March 14, 1997.

<sup>11</sup> This section is based on "Joint Development: A Review of Some of the Literature," prepared for the TOD Task Force by Caroline Feiss, Consultant, February, 1998.

development at their own facilities. The Region X FTA Office recently has shown its strong support for such activities at intermodal projects involving Pierce Transit and Kitsap Transit. There is no reason to expect any less enthusiasm for Sound Transit-related joint development projects.

Sound Transit has authority to undertake both its own TOD projects and joint development, if it has the interest and resources to do so. Other transit agencies around the country do engage in TOD programs to some extent or other, with varying successes.

Robert Cevero, an expert on TOD, points out that successful transit-oriented development at rail stations (and by inference, potentially at other major regional transit facilities) *can only occur when certain conditions are in place:*

- A growing regional economy;
- The presence of supportive programs such as zoning that allows higher densities; and
- Infrastructure, such as sidewalks, plazas, street improvements.<sup>12</sup>

Examples of transit agency TOD projects include large office and mixed-used developments in the air rights over stations and parking lots; apartment and condo projects built on excess land adjacent to transit facilities; space within stations to accommodate public services (police, post office) and retail; and a variety of pedestrian connections between transit facilities and nearby commercial or residential developments.

**Joint Development:** Joint development may be the only way to leverage sufficient resources to do anything more than build basic transit facilities. While Sound Transit may or may not see itself as a land developer or landlord, given the agency's current mandates, this option should be further studied, particularly where a continuing role in the development at and around stations can further transit system goals.

Cevero studied some 115 joint development projects at rail stations around the country. His findings, while specific to joint development, probably apply to most TOD projects where the conditions are right:

1. There are many varieties of joint development found around the country, although joint leases of station space and station restoration cost sharing are most common.
2. Direct joint development revenues have not been all that beneficial to transit, representing a very small part of agency revenues. This may reflect transit's inexperience with real estate dealings and markets. Legal and political restrictions also can limit transit's development activities.
3. Joint development does, however, improve farebox yields by generating more trips.
4. Office rents around stations seem to increase most sharply during the year before station opening and also increase as ridership increases. *Most significantly it is systemwide ridership, not station ridership that results in substantial rent increases.*

**Joint Development can be defined as:** any formal, legally binding arrangement between a public entity and a private individual or organization that involves either private-sector payments to the public entity or private-sector sharing of capital or operating costs, in mutual recognition of the enhanced real estate development potential or higher land values created by the siting of a public transit facility.  
*Robert Cevero*

<sup>12</sup> Robert Cevero. "Rail Transit and Joint Development: Land Market Impacts in Washington, D.C. and Atlanta" in *Journal of the American Planning Association*, Vol. 60, No. 1, Winter 1994.

5. However, office rents near terminal stations were substantially lower than those near in-line stations, all things being equal. This may reflect distance to downtown as well as the presence of park and ride lots which may depress rents. Economic downturns apparently undo any rent increases caused by station proximity.
6. Private sector development interests view joint development projects as good investments due to their capacities to produce higher rents.
7. Station proximity also can lower office vacancy rates.
8. Joint development correlated with higher rents, lower vacancies, and larger building size, but it also reflects and affects the market for development at the station.

Most significantly, Cevero says the commercial market that dominated station area joint development over the last two decades has resulted in a commercial space surplus: *the challenge for station development now is residential*. Cities around the world, with long histories of rail, demonstrate that clustered residential development is crucial for increasing ridership. Many U.S. communities are now trying to develop dense, mixed-use communities around their stations. BART has been looking at leasing its parking lots at some stations for private housing development, particularly affordable housing. Cities should set the stage to reward this kind of development with various incentives such as tax credits, impact fee reductions, etc.

**Preserving Options:** While Sound Transit may not wish to actively engage in TOD projects in the short-term, it may be in its interest to take steps now, to preserve development options for the future. A number of transit systems that have not done so in the past, have regretted the foreclosed opportunities resulting from changed markets and other conditions.

Sound Transit may wish to:

- Consult with the development community to secure its ideas and interest concerning TOD potential at Sound Transit facilities.
- Adopt policies indicating interest in TOD at its facilities where conditions warrant such development.
- Establish objectives for TOD and then inventory its planned facilities, analyze their potentials for various types of development, and focus attention only on those facilities where TOD is likely to bring in the greatest returns.
- For those facilities that are suitable for TOD, undertake the design, environmental, and permitting work to accommodate additional or larger buildings up front. Agencies that have not done so were unable, in many cases, to retrofit sites for TOD when such development became desirable.
- Re-evaluate the development potential at its facilities on an ongoing basis.
- Ensure that its property acquisition and relocation programs reflect the potential for TOD initiatives by providing policy guidelines on the amount, location, and possible uses of property purchased or condemned for Sound Transit facilities.