

SOUND TRANSIT

RESOLUTION NO. R99-35

Surplus Real Property Disposition Policy, Procedures and Guidelines BACKGROUND AND COMMENTS

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Real Estate/Transit Oriented Development Subcommittee	12/02/99 01/06/00	Discussion/Possible Action to Recommend Board Approval	Jeri Cranney	689-4934
Executive Committee	01/07/00	Discussion/Possible Action to Recommend Board Approval		
Board	01/13/00	Discussion/Possible Action		

ACTION:

Approval of Resolution No. R99-35 would establish policies, procedures and guidelines (“Policies”) for the disposition of surplus real property. These Policies would allow Sound Transit to implement uniform and fair disposition of real property and allow the achievement of the following goals:

- ◆ Allow flexibility to realize the greatest possible return on the public investment
- ◆ Utilize the disposition of Sound Transit Real Property to mitigate impacts from implementation of the Sound Move Plan
- ◆ Utilize the disposition of Sound Transit Real Property to encourage Transit-Oriented Development
- ◆ Utilize the disposition of Sound Transit Real Property to encourage, as appropriate:
 - Economic Development
 - Housing, commercial, mixed-use, industrial, and other appropriate uses
 - Parks, trails, and open space preservation
 - Environmental protection, enhancement, and preservation

BACKGROUND:

In May 1999, the Real Estate and Transit Oriented Development subcommittee was established to provide Sound Transit with clear direction on how to approach, create and implement Transit Oriented Development policies and procedures. Its first business was to develop a method for evaluating potential development projects that could either be solicited or proposed. On September 23, 1999, the Sound Transit Board approved Motion No. M99-60, which provided criteria to evaluate such development projects. The proposed Real Property Policy, Procedures and Guidelines will establish procedures for the disposition of surplus property consistent with

adopted Transit Oriented Development Criteria as well as assist Sound Transit staff in evaluating all Real Property Acquisitions needed for any Sound Move projects.

RELEVANT BOARD POLICIES AND PREVIOUS ACTIONS TAKEN:

- ◆ Adoption of Sound Move, The Ten-Year Regional Transit System Plan (May 31, 1996). Sound Move calls for making policy commitments to link land use and transit planning to enhance communities and to increase transit ridership.
- ◆ Motion No. M98-25, adopted April 4, 1998, adopted Transit Oriented Development policies.
- ◆ Motion No. M98-55, created the Real Estate and Transit Oriented Development subcommittee of the Executive Committee.
- ◆ Approval of Real Estate Property Acquisition and Relocation Policies, Procedures and Guidelines (April 23, 1998)
- ◆ Motion No. M99-60, adopted September 23, 1999, approved Transit Oriented Development Criteria that will be used to evaluate all potential development opportunities.

KEY FEATURES:

There are six main components to the Real Property Disposition Policy, Procedures and Guidelines. These six components are summarized below and described in detail in the proposed Policies (Attachment A).

A. Real Property Inventory and Surplus Real Property Inventory and Utilization Plan

- ◆ Biennial Real Property Inventory – Consistent with requirements for federally assisted property such inventory will occur every two years, or more often as deemed necessary. Sound Transit’s Real Estate Division shall prepare a current inventory of all Sound Transit owned Real Property with detailed information
- ◆ Biennial Surplus Real Property Inventory and Utilization Plan – Every two years, Sound Transit’s Real Estate Division shall prepare a Surplus Property Inventory and Utilization Plan. This plan shall identify assets of the agency, identify opportunities for surplus properties and provide planning for considering Real Property to be Surplus Property.
- ◆ Notice to FTA - Surplus Real Property Inventory and Utilization Plan – Sound Transit shall notify FTA as required

B. Methods of Disposition

- ◆ Federally Assisted Property – when this type of property is no longer needed for the originally authorized purpose, Sound Transit will request disposition instructions from FTA.
- ◆ Non-Federally Assisted Property – all sales and transfers of non-Federally Assisted Property shall be made to the highest responsible bidder at public auction or by sealed bid, with recognition given to impacted property owners, tenants and other government agencies.
- ◆ All Property dispositions will adhere to existing Sound Transit policies for establishing the Fair Market Value and Appraisal/Market Analysis as well as the Accountancy Act (RCW 43.09.210), Intergovernmental Transfers (RCW 39.33 and 43.09.210), other applicable state and federal requirements as identified in the Policies.

C. Surplus Property and Disposition Method Approval Process

- ◆ Establishes clear procedures for the approval of all declaration of property to be Surplus Property and the Disposition of said property. No disposition of land will be made to Sound Transit officers, employees, or contractors.

D. Incidental Uses, Leases and Easements

- ◆ Sound Transit shall employ maximum flexibility in determining the best use of its Real Property. To this end, Sound Transit shall seek use of its Real Property for raising additional revenues for the transit system or, enhance system ridership or provide other transit benefits.
- ◆ Licenses and Lease of Sound Transit Real Property – Sound Transit may license or lease any of its Real Property and its appurtenances under the limitations and restrictions established in the policies.
- ◆ Establishes policies and procedures to allow Sound Transit to have a building or other improvement for its use erected on Real Property owned or to be acquired by Sound Transit for a reasonable rental amount.

E. Transit-Oriented Development; Joint Development and Public/Private development projects on or with Sound Transit Real Property

- ◆ When acquiring Real Properties, the Real Estate Division shall consider the opportunities for future use of the land and its development potential. This would include consideration of the Transit Oriented and Joint Development possibilities.
- ◆ The Real Estate Division shall work with the Directors of the Sound Transit Departments to determine potential development opportunities on Sound Transit Real Property. These opportunities would be based on locally adopted station area plans and include such actions as:
 - Preparing an inventory of publicly owned Real Property
 - Evaluation of the potential real estate opportunities of these sites
 - Prepare market and financial feasibility studies
 - Foster Partnerships with local governments and community development groups
 - Solicit developer proposals when appropriate and with Board approval
 - Negotiate agreements associated with development, sale, lease
 - Monitor the development and use of assets

FUNDING:

There is no funding associated with the development of this policy. Implementation of this policy as designed may require additional resources for staffing, professional services, or consultant expertise. Such funding will need to come from approved project budgets. The sale of surplus property may offset some of these costs.

ALTERNATIVES:

Non-approval of a Surplus Real Property Policies, Procedures and Guidelines could jeopardize funding from federal sources for some or all portions of Sound Move.

CONSEQUENCES OF DELAY:

As Sound Transit begins to acquire Real Property for Sound Move projects, it is important to provide clear, fair and equitable direction to staff in evaluating Real Property needs for these projects. There are currently several property scenarios that require immediate attention by Sound Transit staff. Delaying these policies and procedures may result in missed opportunities for Transit Oriented and Joint Development projects.

The FTA also requires Sound Transit to have Disposition Policies and Procedures.

LEGAL REVIEW:

The Background and Comments and the Resolution have been reviewed and accepted by the Legal Department.

SOUND TRANSIT

RESOLUTION NO. R99-35

A RESOLUTION of the Board of the Central Puget Sound Regional Transit Authority adopting the Real Property Disposition Policy, Procedures and Guidelines for the disposition of surplus real property.

WHEREAS, the Central Puget Sound Regional Transit Authority (“Sound Transit”) is a duly organized regional transit authority existing under RCW Chapters 81.104 and 81.112 and has powers necessary to implement a high capacity transportation system; and

WHEREAS, on November 5, 1996, central Puget Sound area voters approved local funding for Sound Move, Sound Transit’s ten-year plan for regional high-capacity transit including light rail, commuter rail and regional express bus services; and

WHEREAS, it is necessary for Sound Transit to acquire real property for these systems and upon completion of these projects may in some cases result in surplus real property being realized; and

WHEREAS, by Motion No. No. M99-60, the Sound Transit Board adopted Transit Oriented Development evaluation criteria to be used in the process of identifying and/or evaluating proposed development opportunities around Sound Transit facilities; and

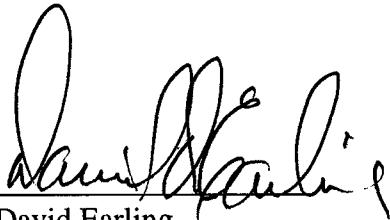
WHEREAS, the proposed Real Property Disposition Policy, Procedures and Guidelines would allow Sound Transit to implement uniform and fair disposition of surplus real property and achieve related goals and objectives that include flexibility to realize the greatest possible return on the public investment, utilization of the disposition of Sound Transit Real Property to mitigate impacts from implementation of Sound Move, utilization of the disposition of Sound Transit real property to encourage Transit Oriented Development, economic development,

affordable housing, parks, trails and open space preservation, and environmental protection, enhancement and preservation; and

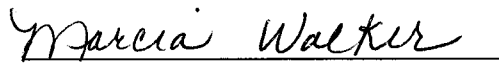
WHEREAS, the proposed Real Property Disposition Policy, Procedures and Guidelines comply with applicable state and federal laws and requirements;

NOW, THEREFORE, BE IT RESOLVED by the Board of the Central Puget Sound Regional Transit Authority that the Board does hereby adopt the attached Real Property Disposition Policy, Procedures and Guidelines.

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on the 13th day of January, 2000.


David Earling
Board Chair

ATTEST:


Marcia Walker
Board Administrator

**CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
REAL PROPERTY DISPOSITION POLICY, PROCEDURES AND GUIDELINES**

Revised 12/29/99

1. Policy and Goals

Sound Transit intends to dispose of its surplus property in order to implement the following policies and to achieve the following goals:

- Comply with Sound Transit adopted policies, state law and federal grant requirements.
- Implement the Sound Move plan on time and at minimum expense.
- Utilize the disposition of Sound Transit Real Property to encourage Transit-Oriented Development; Joint Development and public and private projects at and around Sound Transit facilities to build transit ridership, enhance communities and aid economic development.
- Allow flexibility to realize the greatest possible return on the public investment in Real Property that Sound Transit no longer needs to accomplish its purposes.
- Utilize the disposition of Sound Transit Real Property to support the retention of existing businesses in their current neighborhoods through strategic relocation activities.
- Utilize the disposition of Sound Transit Real Property to mitigate impacts arising from the implementation of the Sound Move plan including environmental impacts identified in the National Environmental Policy Act/State Environmental Policy Act process and displacement of residents and businesses arising from the project.
- Utilize the disposition of Sound Transit Real Property to encourage realization of other objectives, as appropriate, such as:
 - Economic development;
 - Housing, commercial, mixed-use, industrial and other appropriate uses
 - Parks, trails and open space preservation; and
 - Environmental protection and enhancement, including conservation and rehabilitation of the habitat of threatened or endangered species.

2. Definitions

- a. Air Rights means the space located above, at, or below (subterranean) the surface of the ground, lying within a project's Real Property limits.
- b. Fair Market Value means an amount in an open and competitive market that a well informed, willing seller, who desires but is not required to sell, would accept, and that a well informed, willing buyer, who desires but is not required to buy, would pay for Real Property after due consideration of all of the elements affecting value.

- c. Federally Assisted Property means Real Property acquired in whole or in part with FTA funds.
- d. FTA Joint Development Rules means Appendix B of FTA Circular 9300.1A; FTA “Policy on Transit Joint Development”, 62 Federal Register, Number 50, March 14, 1997, pages 122266 – 122269; and, the “Joint Development” Appendix of FTA Circular 5010.1C dated October 1, 1998, all as now or hereafter modified.
- e. FTA means the Federal Transit Administration of the United States Department of Transportation.
- f. High Capacity Transportation means a system of public transportation services within an urbanized region operating principally on exclusive rights of way, and the supporting services and facilities necessary to implement such a system, including interim express services and high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways.
- g. Incidental Use of Project Real Property means, for Federally Assisted Property, authorized use for purposes other than provision of transit service and, for all Real Property, authorized use for purposes other than High Capacity Transportation services. For Federally Assisted Property, such use must be compatible with the approved purposes of the project and not interfere with intended mass transportation uses of project assets. For all Real Property, such use must also be compatible with and not interfere with the High Capacity Transportation uses of the Real Property. Air Rights licenses and leases may be treated as incidental uses and not as disposition of Surplus Property.
- h. Joint Development means a transportation project that enhances economic development or incorporates private investment including commercial and/or residential development, pedestrian and bicycle access to a mass transportation facility, and/or the renovation and improvement of historic transportation facilities, because the project: (1) enhances the effectiveness of a mass transit project, and is related physically or functionally to that mass transit project; or (2) establishes new or enhanced coordination between mass transportation and other transportation; and, (3) provides a fair share of revenue for mass transportation use, all as more fully defined in the FTA Joint Development Rules. A transportation project is *physically related* to a capital project if it provides a direct physical connection with transit services or facilities. This includes projects using Air Rights or projects built within or adjacent to transit facilities. A transportation project is *functionally related* to a capital project if it is related by activity and use, and it is functionally linked (with or without a direct physical connection) to transit services or facilities. Also, a project is functionally related to a capital project if it provides a beneficial service to the public (or community

service) and enhances use of or access to transit. Functional relationships do not extend beyond the distance most people reasonably can be expected to walk to use a transit service. The eligible project area for a functionally related project is estimated to be within a radius of approximately 1,500 feet from the center of a transit facility. The eligible project area for a functionally related project will be identified by Sound Transit in consultation with FTA's Regional Office on a case-by-case basis.

- i. Net Proceeds from the Sale of Project Real Property means the amount realized from the sale of Surplus Property no longer needed for transit purposes less the expense of any actual and reasonable selling and maintenance and/or repair expenses incurred in preparing the property for sale.
- j. Real Property means land, including affixed land improvements, structures and appurtenances, and including fee estates, leaseholds, easements, vested reversionary interests, future interests and other real property interests, but not including movable machinery and equipment.
- k. Surplus Property means Real Property that Sound Transit determines, in the manner provided herein, is no longer currently required and is not likely in the future to be required for its needs or fulfillment of its responsibilities under an FTA assisted grant or its high capacity transportation or other authorized purposes.
- l. Surplus Real Property Inventory and Utilization Plan means the document which lists each piece of Real Property acquired by Sound Transit, identifies whether Sound Transit acquired such piece of Real Property with or without participation of Federal funds, designates pieces of Real Property Sound Transit no longer needs for approved FTA project purposes or for general Sound Transit purposes, evaluates the Transit-Oriented Development potential of such Surplus Property and states how Sound Transit plans to use or dispose of the Surplus Property.
- m. Transit-Oriented Development means compact public and private development that supports transit use by emphasizing pedestrian and transit access, such as by clustering development and mixing land uses and activities at and around transit facilities. Joint Development is a subset of Transit-Oriented Development.

3. Real Property Inventory and Surplus Real Property Inventory and Utilization Plan

- a. Biennial Real Property Inventory. Every two years, or more often as deemed necessary, Sound Transit's Real Estate Division shall prepare a current inventory of all Sound Transit owned Real Property with detailed information as to current division or line of business custodianship; whether the Real Property is Federally Assisted Property; location; summary of any conditions on the title; original acquisition cost; the Federal participation ratio; FTA grant number; appraised value and date of appraisal; a brief description of improvements; local zoning and

other significant applicable land use regulations and constraints; and the current use of the Real Property.

- b. Biennial Surplus Real Property Inventory and Utilization Plan. Every two years Sound Transit's Real Estate Division shall also prepare a Surplus Property Inventory and Utilization Plan. The biennial Surplus Real Property Inventory and Utilization Plan shall identify and explain the reason for considering the Real Property to be Surplus Property. Such reasons may include one or more of the following:
- i. The Real Property was purchased for construction staging purposes such as access, storage or underpinning, and construction is completed;
 - ii. The Real Property, when purchased, exceeded Sound Transit's need for the project (uneconomic remnant, purchased to logical boundary, part of administrative settlement, etc.);
 - iii. The intended use of the Real Property is no longer possible because of system changes, such as alignment, or amendments to the project grant agreement;
 - iv. Improvements to the Real Property were damaged or destroyed, and therefore the Real Property is not being used for project purposes, but it is still needed for the project. If so, the improvements may be renovated or replaced. In this case, applicable cost principles must be observed; or
 - v. A portion of the Real Property remains unused, will not be used for project purposes in the foreseeable future, and can be sold or otherwise disposed.

The Surplus Real Property Inventory and Utilization Plan also shall identify the characteristics of the Surplus Property that determine its economic value and potential uses and the anticipated disposition or action proposed. For each piece of potentially Surplus Property identified, the Plan also shall evaluate (I) the value of that Real Property to Transit-Oriented Development; (II) whether the disposition of that Real Property should be deferred in anticipation of a assembly of property that would benefit or encourage Transit-Oriented Development or Joint Development; (III) whether the disposition of that Real Property should be deferred and/or aggregated with other Real Property to support the retention of existing businesses in their current neighborhoods through strategic relocation activities; and (IV) whether the disposition should include encumbering the Surplus Property with a restrictive covenant requiring the Surplus Property to be used for Transit Oriented Development.

- c. Notice to FTA; Surplus Real Property Inventory and Utilization Plan Available to FTA. Sound Transit shall notify FTA when it removes Federally Assisted Property from the service originally intended at grant approval and put to additional or substitute uses. Unless FTA and Sound Transit agree otherwise, the

Surplus Real Property Inventory and Utilization Plan is to be retained by Sound Transit and made available upon FTA request and during the FTA triennial review process.

4. *Methods of Disposition.*

- a. Federally Assisted Property. When Federally Assisted Property is no longer needed for the originally authorized purpose, Sound Transit will request disposition instructions from FTA. Following are the allowable alternative disposition methods.
 - i. Sell and Reimburse FTA. Competitively market and sell the Real Property and pay FTA its share of the Fair Market Value of the property. The FTA's share equals the percentage of FTA participation in the original grant times the Net Proceeds from the Sale of Project Real Property.
 - ii. Offset. Sell the Real Property and apply the Net Proceeds from the Sale of Project Real Property to the cost of replacement property under the same program. Return any surplus proceeds to FTA. [Common Rule 49 CFR Part 18.31]
 - iii. Sell and Use Proceeds for Other Capital Projects. Sell the Real Property and use the Net Proceeds from the Sale of Project Real Property to reduce the gross project cost of another FTA eligible capital transit project. [49 U.S.C., 5334(g)(4)]. Sound Transit shall record the receipt of the proceeds in Sound Transit's accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the liability as the proceeds are applied to one or more FTA approved capital projects. The subsequent capital grant application shall contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.
 - iv. Sell and Keep Proceeds in Open Project. If the grant is still open, Sound Transit may sell Surplus Property and apply the Net Proceeds from the Sale of Project Real Property to the original cost of the total Real Property purchased for that project.
 - v. Transfer to Public Agency for Non-Transit Use. Follow procedures for publication in Federal Register to transfer Real Property to a public agency with no repayment to FTA. [49 U.S.C., 5334(g)(1)]
 - vi. Transfer to Other Project. Transfer the Real Property to another FTA eligible project. The Federal interest continues.
 - vii. Retain Title With Buyout. Compensate FTA by computing percentage of FTA participation in the original cost. Multiply the current Fair Market

Value of the Real Property by this percentage. Sound Transit shall document the basis for value determination with an appraisal or market survey.

Sound Transit shall follow sales procedures that provide for competition to the extent practicable and result in the highest possible return or at least payment of appraised Fair Market Value.

A transfer that is part of a Joint Development is not a disposition of Federally Assisted Property. A Joint Development project must yield a fair and equitable return to Sound Transit in the form of cash and other benefits the present value of which equals or exceeds market value as represented either by highest and best use of the Real Property or by highest and best *transit* use of the Real Property, taking into account in either valuation the local transportation, land use, and economic development plans. A Real Property's "highest and best use" is the use -- from among reasonably probable and legal alternative uses that are physically possible, appropriately supported, and financially feasible -- that results in the highest anticipated selling price. The way highest and best *transit* use differs from highest and best use is through recognition that value to the transit system is not in the selling price alone. "Highest and best *transit* use" is that combination of residential, commercial, retail, public, and/or parking space and amenities to be included in the Joint Development, which is calculated to produce the greatest level of social, economic, and financial benefit to the transit system and the community that it serves. These benefits may include transit benefits, such as increasing ridership, reducing trip durations or improving connections between trips, that maximizes the value of the asset to transit.

- b. Non-Federally Assisted Property.
 - i. Sale of property - Public Auction, Sealed Bid or Direct Negotiation. Sales and transfers of non-Federally Assisted Property may be made to the highest responsible bidder at public auction, by sealed bid or by a direct negotiation.
 - ii. Trades of Property. The Executive Director may trade Sound Transit Real Property for Real Property of similar value. The Executive Director also may trade Sound Transit Real Property for Real Property of dissimilar value if Sound Transit or the owner of the Real Property makes a cash payment to the other in an amount equal to the difference in Fair Market Values between the Real Properties in order to make the aggregate property and cash values similar.
 - iii. Use of Listing Service. The Executive Director may use a residential or commercial real estate listing service when he has determined that the proceeds of sale to Sound Transit will be greater if the Real Property is listed and sold through such a service.

- iv. Donation or Sale to Non-Profit Organization or Other Government Agencies. The Executive Director may, in the best interests of Sound Transit, donate or negotiate the sale of Sound Transit Surplus Property with bona fide nonprofit organizations that provide services to the poor and infirm or with other governmental agencies with which reciprocal agreements exist. The Executive Director also may, in the best interest of Sound Transit, procure services to support Sound Transit in lieu of payment with nonprofit organizations that provide services that will increase transit ridership and/or benefit the public.
 - v. Sales by Sealed Bid or Auction. The highest bid shall be the bid that yields the financial return and other transit benefits, such as increasing ridership, reducing trip durations or improving connections between trips that maximizes the value of the asset to transit. Sound Transit may, if it deems such action to be for the best public interest, reject any and all bids, either written or oral, and withdraw the Real Property from sale. Sound Transit may then renegotiate the sale of withdrawn Real Property, providing the negotiated price is higher than the highest rejected bid.
 - vi. Other Agencies Procedures. Unless the procedures of a grant agency having an interest in Real Property expressly requires disposition in a manner different from the procedures set forth in this policy, (such as may be the case for highway property as required by Article II, Section 40 of the Washington State Constitution) the Real Property shall be disposed of in accordance with the procedures required by this policy.
 - vii. Financial Investment Properties. Financial Investment Properties are those Real Properties not currently needed and not likely in the future to be needed for Sound Transit use but are held to provide a financial return to Sound Transit. While the objective of Sound Transit is to dispose of this type of Real Property, disposal should not occur until optimal market conditions exist for maximizing financial return to Sound Transit. A proposal to dispose of a Real Property in this category shall be based upon an appraisal that has been performed according to established Sound Transit guidelines. A Financial Investment Property shall be sold if analysis of its income-producing potential and current market sales conditions demonstrates that a greater return to the public will be provided through sale of this Real Property.
- c. All Property.
- i. *Fair Market Value and Appraisal/Market Analysis.* Subject to Section 4.b(4) above, unless otherwise authorized in this policy, a Real Property should not be sold for less than its Fair Market Value after an appraisal by a qualified real estate appraiser (or market analysis, if the Executive Director has determined that the cost of an appraisal is not warranted)

unless Sound Transit will realize a greater benefit, such as for example, achieving a successful Transit-Oriented Development or Joint Development.

- ii. *Intergovernmental Transfers.* If Sound Transit conveys Real Property to another government agency in Washington, Sound Transit also shall comply with the requirements of chapter 39.33 RCW. These requirements include conducting a public hearing if the Fair Market Value of the Real Property exceeds \$50,000. Such public hearings may be conducted before a committee of the Sound Transit Board. Sound Transit shall negotiate for the receipt of "full value" for the Real Property transferred.

5. *Surplus Property and Disposition Method Approval Process.*

- a. Surplus Property: Executive Director Declaration; Board Approval When determined by the Executive Director that certain Real Property is no longer necessary for present or future project purposes and after consideration of the Surplus Real Property Inventory and Utilization Plan, the Executive Director may declare such Real Property to be Surplus. If the Fair Market Value of such Real Property exceeds \$200,000, such declaration must be approved by the Executive Committee of the Sound Transit Board. If the Fair Market Value of such Real Property exceeds \$5,000,000, such declaration must be approved by the Sound Transit Board.
- b. Disposition Method: Executive Director Declaration; Board Approval. Upon the declaration of certain Real Property as Surplus and after consideration of the Surplus Real Property Inventory and Utilization Plan, the Executive Director may undertake the disposition of such Surplus Property by a particular method or methods described in Section 4 of these Policies, Procedures and Guidelines. If the Fair Market Value of such Real Property exceeds \$200,000, such decision must be approved by the Executive Committee of the Sound Transit Board. If the Fair Market Value of such Real Property exceeds \$5,000,000, such decision must be approved by the Sound Transit Board.
- c. No Disposition to Sound Transit Officers, Employees or Contractors. Sound Transit shall not sell, trade or otherwise dispose of any Surplus Property to an officer, employee or contractor of Sound Transit or any member of such officer's, employee's or contractor's immediate family. Such prohibition shall apply for a period extending six months following the termination of such officer's term; such employee's employment; or such contractor's contract.

6. *Incidental Uses, Leases and Easements.*

- a. Incidental Use. Incidental use of Real Property does not require a declaration that the Real Property is Surplus Property. Sound Transit shall employ maximum flexibility in determining the best use of its Real Property. To this end, Sound

Transit shall seek incidental uses of its Real Property that can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership or provide other transit benefits. For example, Sound Transit may be able to encourage incidental use of Air Rights. Sound Transit shall obtain FTA approval as required for these incidental uses of Federally Assisted Property, which incidental uses must be compatible with the original purposes of the FTA grant. Sound Transit shall effect such Incidental Uses by means of granting licenses, leases or easements. Incidental use of Federally Assisted Property is subject to the following considerations:

- i. *Needed Property.* The FTA related restrictions on the incidental use of Real Property apply only to Federally Assisted Property that continues to be needed and used for an FTA project or program.
 - ii. *Purpose & Activity.* The incidental use must not compromise the safe conduct of the intended purpose of the initial mass transit project activity.
 - iii. *Continuing Control.* Incidental use must not interfere with Sound Transit's continuing control over the use of the Real Property or its continued ability to carry out the project or program. As with Joint Development (the requirements for which are described in Section 8 hereof) any legally enforceable arrangement between Sound Transit and the incidental user of the Real Property that preserves the defined physical and functional relationship between the incidental use and the transit use of the Real Property satisfies this requirement.
 - iv. *Non-Profit Use.* Uses by non-profit organizations are also permitted.
 - v. *Air Rights Income.* Proceeds from licensing and/or leasing of Air Rights over Federally Assisted Property should reflect appraised Fair Market Value (except to the extent otherwise permitted for Joint Development). Income received from the authorized use of Air Rights may be retained by Sound Transit (without returning the Federal share) if the income is used for eligible transit planning, capital and operating expenses. This income cannot be used as part of the local share of the grant from which it was derived. However, it may be used as part of the local share of another FTA grant.
- b. Licenses and Leases of Sound Transit Real Property. If it appears that it is in the best interests of Sound Transit, Sound Transit may license or lease any of its Real Property and its appurtenances in the manner provided for herein, provided that these procedures are not a limitation of Sound Transit's authority under any procedure that Sound Transit may lawfully employ to license or lease property. Such licenses and leases may be made upon Surplus Property or, for Real Property that is not Surplus Property may constitute Incidental Uses. If such license or lease constitutes an Incidental Use of Real Property then such license or

lease may comply with the provisions hereof regarding incidental uses. If such Real Property constitutes Surplus Property, then the Executive Director may comply with the following guidelines;

- i. Sound Transit may enter into licenses (revocable by Sound Transit at will) or rental agreements for a term less than one year, including month-to-month rental agreements, on terms and conditions that are in the best interest of Sound Transit. All such licenses and rental agreements are subject to approval by the Executive Director.
- ii. Sound Transit may, in the best interests of Sound Transit, enter into agreements for the use of Sound Transit Real Property with bona fide nonprofit organizations, with another governmental agency when the Real Property is to be used to provide services which will benefit the implementation of Sound Move.
- iii. All licenses and leases will be awarded upon the best terms and conditions available to Sound Transit. When Sound Transit authorizes a new lease, or the renewal of a lease once executed and delivered, the Real Estate Division shall obtain an appraisal (or market analysis, where the cost of an appraisal is not warranted) of the fair market rental value of such Real Property, and such fair market rental value will serve as the basis for the new lease or renewal. The requirement of obtaining an appraisal or market analysis may not apply when any such new lease or renewal of an existing lease involves satisfying relocation requirements and policies or achieving a successful Transit-Oriented Development or Joint Development. Sound Transit must receive some consideration from the lessee for such leases that must not be “grossly inadequate” under state law. After such review, the Executive Director shall determine whether the new lease, or renewal of an existing lease, is to be awarded by competitive bidding or by negotiation with interested parties using customary real estate practices, without bidding. New leases shall be awarded by competitive bidding unless the Executive Director determines it is advantageous to Sound Transit to negotiate without bidding, or when Sound Transit lists the property with a licensed real estate broker following customary real estate practices.
- iv. When Sound Transit elects to lease its Real Property pursuant to public bidding, Sound Transit shall advertise to the extent which Sound Transit deems necessary to effect an advantageous lease. Such advertising shall include publishing a notice in a legal newspaper at least once a week for three consecutive weeks, the last notice to appear no more than five days prior to the date of the auction or bid opening. When a lease of Sound Transit Real Property is awarded through competitive bidding, the lease shall be awarded to the highest responsible bidder; provided, that whenever there is reason to believe that the highest acceptable bid is not

the best rental obtainable, all bids may be rejected and Sound Transit may call for new bids or enter into direct negotiations to achieve the best possible rental. The highest bid shall be that that provides a combination of use and rent revenues that represents either the highest and best use of the property or the highest and best transit use of the property. Each bid, with the name of the bidder, shall be recorded by the Real Estate Division, and each record, with the name and address of the successful bidder and the amount of the successful bid, shall, after the awarding of the lease, be open to public inspection at the Real Estate Division. In determining the highest responsible bidder, in addition to rental, the following elements shall be given consideration:

- (1) The financial responsibility of the bidder, and references therefor;
 - (2) The previous and existing compliance by the bidder with the terms of other leases of Sound Transit Real Property and the laws relating thereto;
 - (3) The compatibility of the use with the intention of Sound Move, surrounding uses, neighborhood zoning, and local station area plans; and
 - (4) Such other information as may be secured relevant to the decision to award the lease.
- v. If the aggregate of all the rent to be paid under the lease exceeds \$200,000, such decision of the Executive Director must be approved by the Executive Committee of the Sound Transit Board. If the aggregate of all the rent to be paid under the lease exceeds \$5,000,000, such decision of the Executive Director must be approved by the Sound Transit Board.

c. Conveyance of Easements upon Sound Transit Real Property. The Executive Director may convey temporary or permanent easements upon Sound Transit Real Property. If such easement constitutes an Incidental Use of Real Property then such conveyance should comply with the guidelines herein regarding incidental uses. If such easement constitutes Surplus Property, then the Executive Director should use the guidelines hereof regarding disposition of Surplus Property. If the sales price of the easement exceeds \$200,000, such decision of the Executive Director must be approved by the Executive Committee of the Sound Transit Board. If the sales price of the easement exceeds \$5,000,000, such decision of the Executive Director must be approved by the Sound Transit Board.

7. *Disposition Planning [Alternate means of Property Acquisition]*

Sound Transit shall use its best efforts to accomplish the goals set forth in Section 1 of these policies by consciously planning for *disposition* of Real Property at the time it *acquires*

Real Property. When acquiring Real Properties, the Real Estate Division should consider the opportunities for future use of the land and its development potential. The Real Estate Division should consider the Transit-Oriented Development, Joint Development and strategic relocation possibilities of alternate Real Property acquisitions at the time of the initial Real Property acquisition. In addition, Sound Transit should make every effort to use one or several of the following acquisition tools, in a manner consistent with the remainder of these policies and applicable laws and regulations, to accomplish its purposes:

- (1) Acquisition of a Real Property interest lesser than the owner's full estate where such an interest is all that is necessary for the project and other purposes of Sound Transit and such a lesser acquisition is in Sound Transit's and the public's best interest.
- (2) Acquisition of an estate greater than that strictly necessary for the project where acquisition of a such additional interest is necessary or convenient in order to accomplish the public purposes of Sound Transit including, without limitation, the timely negotiated purchase of the Real Property or the successful achievement of Transit-Oriented Development.
- (3) Acquisition of a less than fee simple estate such as an easement for a particular Sound Transit purpose. Such lesser estates may also be a restricted fee interest where the owner retains development rights or other particular interests. Such lesser interest may also include a condominium interest in a three-dimensional portion of the fee simple estate.
- (4) Utilization of time-shifting tools, which include strategies for securing rights to Real Property in anticipation of future appropriation of funds. Among such tools are: Options (the vested right to purchase Real Property in the future) and Phased-Acquisitions (the right or promise to purchase additional property). These tools also include strategies for allowing sellers to retain certain temporary future uses of the Real Property. Among these tools are: Life and Term Estates (acquisition of vested future interest in Real Property subject to seller's ownership for a period of time); Sale with leaseback (acquisition of a present interest subject to lease reserved by seller); and Sale with right of repurchase subject to Sound Transit easement (present acquisition of fee estate, seller keeps right to repurchase the Real Property – subject to necessary Sound Transit easement – in the future.).
- (5) Flexible easement locations that allow Sound Transit or the seller retaining easements to shift the location of such easements to accommodate better and higher uses of the Real Property while maintaining the integrity of Sound Transit's and the seller's respective uses.

8. *Transit-Oriented Development, Joint Development, Strategic Relocation and Public/Private development projects on or with Sound Transit Real Property*

- a. The Real Estate Division shall work with the Directors of the Sound Transit Departments to determine the potential Transit-Oriented Development, Joint

Development, strategic relocation and public/private uses of Sound Transit-owned Real Property. The Real Estate Division shall assist the Sound Transit Departments in capital facilities planning and investigate the feasibility of, and when feasible, facilitate Transit-Oriented Development, Joint Development, strategic relocation and public/private partnerships in the use of Sound Transit Real Property. These investigations shall utilize the Transit-Oriented Development policies, process and evaluation criteria adopted by the Board through Motions M98-25 and M99-60 and shall be guided by local station area plans and shall include such actions as:

- i. Preparing an inventory of vacant, underutilized and publicly-owned Real Property within the transit station market area including all types of public ownership such as: unused rights of way, utility corridors, parks, schools, general government buildings, police and fire stations, public housing, and park-and-ride facilities;
- ii. Evaluating the potential real estate opportunities of these sites;
- iii. Preparing market and financial feasibility studies, holding public meetings, and preparing recommendations;
- iv. Fostering partnerships and other productive working relationships with local governments and community groups that support Transit-Oriented Development, Joint Development, and strategic relocation;
- v. Briefing the Executive Director and Board;
- vi. Soliciting developer proposals;
- vii. Selecting the developer and obtaining Board approval;
- viii. Negotiating the developer agreement; and
- ix. Monitoring the development and use of assets.

b. For Federally Assisted Property, under the FTA Joint Development Rules, joint Transit-Oriented Development can be accomplished through a sale or lease of Real Property, or through direct participation of the transit agency in the development, e.g., as a general partner, depending upon the needs of the project. To qualify as a “transportation project”, Sound Transit must retain sufficient continuing control over the Real Property to ensure its continued physical or functional relationship to transit. This control may be exerted through any number of legally enforceable contractual arrangements, such as an easement to ensure unimpeded access between the development and the transit facility by transit patrons, retention of a reversionary interest to take effect in the event access becomes unreasonably curtailed, et cetera. Any legally enforceable arrangement between Sound Transit and the developer that preserves the defined physical or functional relationship between the development and the transit facility will satisfy this requirement.

9. *Additional Means of Property Disposition.* The Executive Director may dispose of Sound Transit property in a manner not described herein, provided that the Board of Directors approves the alternative disposition method by Resolution.