

**SOUND TRANSIT
STAFF REPORT**

MOTION NO. M2003-44

**Agreement for Operation and Use of Sound Transit Funded
HOV and Direct Access Facilities between Sound Transit and
the Washington State Department of Transportation**

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Finance Committee	4/17/03	Discussion/Possible Action to Recommend Board Approval Action	Agnes Govern, Director, Regional Express	206-398-5037
Board	4/24/03			

Contract/Agreement Type:	✓	Requested Action:	✓
Competitive Procurement		Execute New Contract/Agreement	
Sole Source		Amend Existing Contract/Agreement	
Memorandum of Agreement	✓	Contingency Funds Required	
Purchase/Sale Agreement		Budget Amendment Required	

✓ Applicable to proposed transaction.

OBJECTIVE OF ACTION

- Execute an agreement with the Washington State Department of Transportation (WSDOT) for the operation and use of Sound Transit funded HOV and direct access facilities.

ACTION

- Authorize the Executive Director to execute an agreement with WSDOT that provides for the operation and use of Sound Transit funded HOV and direct access facilities and describes Sound Transit's role should changes be proposed to the HOV system. The agreement also provides a mechanism to protect transit speed and reliability and Sound Transit's investment in the HOV system.

KEY FEATURES

- Reaffirms respective commitments by WSDOT and Sound Transit to the terms of the 1997 MOU Establishing a Cooperative Relationship with WSDOT (GCA 1218): The 1997 Memorandum of Understanding (MOU) provided:

“WSDOT will accept HOV Access Improvements and title on State Routes and upon their completion, maintain and operate them consistent with the laws, procedures and policies applicable to the balance of the HOV system and state highway system. WSDOT shall maintain the facilities hereby conveyed in accord with their intended function for a normal useful life (normally 20 years for roadways) and obtain RTA [Sound Transit] formal approval if it becomes necessary to move or otherwise change the function of an RTA-funded facility.”

- Requires that the Transportation Commission consult with the Sound Transit Board prior to making any changes regarding HOV system operations and/or HOV performance standards.
- Limits use of the direct access ramps to transit buses and high-occupancy vehicles.
- Gives the Sound Transit Board the ability to make recommendations at any time to the Transportation Commission regarding existing HOV system performance to ensure the effectiveness of the Sound Transit-funded HOV improvements.
- Gives Sound Transit a role in the review and approval process mandated by FHWA of any proposed significant HOV operating policy changes. This FHWA-mandated process includes a review of original studies, project agreements, legislative history, sources and amounts of funding; commitments made in the environmental processing and project approval; operational assessment of existing HOV lanes; analysis of predicted operation of the current and planned future transportation network with the proposed operational change; assessment of the predicted performance of alternate lane management strategies; air quality analysis and conformity determination; and determination by the Clean Air Agency of need to modify the State Implementation Plan for Air Quality.

Sound Transit is given the opportunity as part of this review process to provide information specifically on transit speed and reliability. The elements of the review process will be shared with the Sound Transit Board as part of the consultative process regarding any change in HOV system operations that negatively impacts transit speed and reliability. This review and consultation will take place prior to any change.

- WSDOT and the Transportation Commission will consider taking actions to preserve the effective operation of the Sound Transit-funded facilities. These actions include: improved incident response activities, pursuit of increased HOV violation fines, changes to hours of operation and minimum occupancy requirements, continued evaluation of HOV system operations and funding, lane management strategies including HOT lanes, identification of any capital improvements needed to maintain transit as a priority user and to keep the direct access facilities compatible with FHWA and WSDOT design guidelines, and seeking state funding for the capital and operational impacts of any system changes on transit.
- WSDOT assumes Sound Transit's continuing control obligations with respect to Federal Transit Administration grant funds to the extent such funds are utilized for direct access and HOV facilities as provided in the FTA Master Grant Agreement.
- Requires that Sound Transit undertake all reasonable steps to:
 - Operate transit vehicles able to maintain highway speeds;
 - Instruct all Sound Transit personnel, including contract operators, on applicable laws and operational characteristics of HOV facilities;
 - Provide at least the service frequency and span of service called for in the Service Implementation Plan;
 - Gives expansion of service on the WSDOT HOV system a higher priority than expenditures that do not directly contribute to increased ridership;
 - Provide incentives to encourage utilization of transit service using the HOV system;

- Support WSDOT grants application for projects that improve or complete the HOV system;
- Participate in incident response efforts to clear disabled transit buses from the freeway; and
- Support publicly WSDOT efforts to improve the operations of the HOV system.
- Creates contractual obligations between Sound Transit and WSDOT. The failure of one party to fulfill its obligations under the proposed agreement shall give the other party the right to seek enforcement in a court of law and to seek any legal or equitable relief to which it may be entitled.

BUDGET DISCUSSION

This action does not have any immediate budget impact. It seeks to protect the investment included in the budget related to the HOV system.

REVENUE, SUBAREA, AND FINANCIAL PLAN IMPACTS

This action does not have any impact on revenue, subarea and financial plan.

M/W/DBE – SMALL BUSINESS PARTICIPATION

Not applicable.

HISTORY OF PROJECT

This proposed agreement follows through on previous Board direction.

1996 – Sound Move:

“The RTA will negotiate an agreement with the state Transportation Department and the Puget Sound Regional Council similar to the state Transportation Commission’s existing Statewide Freeway HOV Policy to specify mutually acceptable speed and reliability standards, and how these standards will be monitored and maintained. In negotiating this agreement the RTA will seek to specify how it will be compensated if those standards are not maintained and the advantages to transit created by its investment are reduced.” (Pg. 13)

1997 – MOU Establishing a Cooperative Relationship with WSDOT (GCA 1218):

“The RTA will be making significant investments into the State High-Occupancy vehicle system and has an on-going interest in how the system functions. Before committing RTA funds for HOV projects, the RTA Board must be satisfied the HOV system will be managed in a way that maintains adequate speed and reliability for transit over the normal useful life of the system.

Through the process outlined in the State Transportation Commission Statewide Freeway HOV policy, the RTA will negotiate an agreement with WSDOT and Puget Sound Regional Council to specify mutually acceptable speed and reliability standards and how those standards will be monitored and maintained.” (Pg. 8)

“WSDOT will accept HOV Access Improvements and title on State Routes and upon their completion, maintain and operate them consistent with the laws, procedures, and policies applicable to the balance of the HOV system and state highway system. WSDOT will maintain the facilities hereby conveyed in accord with their intended function for a normal useful life (normally twenty years for roadways) and obtain RTA formal approval if it becomes necessary to move or otherwise change the function of an RTA-funded facility. Operations and maintenance of transit amenities such as passenger shelters, lighting, and signage will be the responsibility of transit operators and addressed in the interlocal agreements between RTA and the local transit operator prior to conveyance of the HOV Access project to WSDOT.” (Pg. 9)

2002 - Motion No. M2002-72 (6/13/02 Board meeting):

“It is further moved that the Executive Director is directed through her designees to negotiate additional agreements or amendments to existing agreements with WSDOT for the purpose of resolving outstanding issues critical for the on-time, on-budget delivery of the Sound Transit program. These issues to be negotiated shall include, but are not limited to the following:

- Provide for HOV speed and reliability standards and monitoring in accordance with the 1997 Memorandum of Understanding and Sound Move, which calls for an agreement to be negotiated regarding mutually acceptable HOV speed and reliability standards;
- Provide a process for determining impacts, costs and reimbursements for the value of any Sound Transit funded improvements and for the adjustment of Land Bank credits in the event the improvement is converted to State general purpose use;
- Resolve issues regarding potential restrictions on Link Light Rail use of state highway right of way; and
- Provide for an agreement to meet the continuing control requirements of federal funding agencies.

The Executive Director shall present proposed agreements to the Sound Transit Board for approval no later than January 2003.”

CONSEQUENCES OF DELAY

The Bellevue Direct Access contract is currently out to bid and bids are scheduled to open on May 14, 2003. Bids will not be opened unless WSDOT and Sound Transit have executed a construction project agreement. Action on the construction agreement was deferred pending approval of an agreement that protects Sound Transit investments in the HOV system. It may be possible to request bidders to honor their bids beyond the scheduled opening, but delay in the bid opening would jeopardize a schedule that is already very challenging.

REGIONAL PARTNERSHIP AND COOPERATION

WSDOT and Sound Transit have worked cooperatively to negotiate this agreement. The final proposed agreement was shaped by a subcommittee of the Sound Transit Board and representatives from the Washington State Transportation Commission and WSDOT Secretary MacDonald.

LEGAL REVIEW

BN 4/4/03

SOUND TRANSIT

MOTION NO. M2003-44

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the Executive Director to execute an Agreement for Operation and Use of Sound Transit-funded HOV and Direct Access Facilities with the Washington State Department of Transportation.

Background:

Motion No. M2003-44 authorizes the Executive Director to execute an agreement between Sound Transit and WSDOT. The purpose of the agreement is to protect Sound Transit's investment in the direct access ramps and the HOV system while preserving the Transportation Commission's authority and ability to make operational changes as necessary for the effective functioning of the overall highway system.

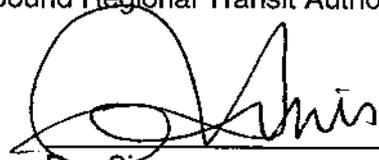
The agreement reaffirms respective commitments by the two parties to the terms of the 1997 Memorandum of Understanding (MOU), requires that the Sound Transit Board be consulted prior to any changes in the HOV system operations and/or performance standards, limits use of the direct access ramps to transit buses and high-occupancy vehicles, and gives Sound Transit a role in the review and approval process mandated by FHWA of any proposed significant HOV operating policy changes. In the agreement, WSDOT assumes Sound Transit's continuing control obligations with respect to FTA grant funds to the extent such funds are used for direct access and HOV facilities; Sound Transit agrees to take reasonable steps to operate transit vehicles able to maintain highway speeds; instruct Sound Transit operators on applicable laws and operational characteristics of HOV facilities; provide service frequency and span of service outlined in the Service Implementation Plan; provide incentives to encourage utilization of transit service using the WSDOT HOV system; participate in incident response efforts to clear disabled transit buses from the freeway; support WSDOT grant applications for HOV projects; and support publicly WSDOT efforts to improve the operations of the HOV system.

The proposed agreement creates contractual obligations between Sound Transit and WSDOT and the failure of one party to fulfill its obligations shall give the other party the right to seek enforcement in a court of law.

Motion:

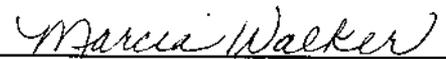
It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that The Executive Director is authorized to execute an Agreement for Operation and Use of Sound Transit-funded HOV and Direct Access Facilities with the Washington State Department of Transportation.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on April 24, 2003.



Ron Sims
Board Chair

ATTEST:



Marcia Walker
Board Administrator

final

**AGREEMENT FOR OPERATION AND USE OF SOUND TRANSIT FUNDED
HOV AND DIRECT ACCESS FACILITIES**

This Agreement is made and entered into this 22 day of May, 2003, by and between the STATE OF WASHINGTON by and through its DEPARTMENT OF TRANSPORTATION (hereinafter "WSDOT") and the CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (hereinafter "SOUND TRANSIT"), (referred to collectively as "Parties").

BACKGROUND

1. The Transportation Commission ("the Commission") of the State of Washington is created under RCW 47.01.051, and pursuant to RCW 47.01.071, the Commission is authorized to prepare a transportation policy for the State and provide for the effective coordination of state transportation planning with local and regional transportation plans and programs.
2. RCW 47.06.040 authorizes WSDOT to develop a statewide multimodal transportation plan, under RCW 47.01.071(3) and in conformance with federal requirements, that includes a State-owned facilities component of the plan.
3. Under RCW 47.06.050, WSDOT also develops capacity and operational improvement plans to enhance operational efficiencies using among other strategies: access management, transportation system management, demand management and high-occupancy vehicle facilities.
4. The state legislature pursuant to RCW 47.06.140 has declared transportation facilities and services to be of statewide significance including high-capacity transportation systems operated by regional transit agencies.

5. Under RCW 47.06.140, WSDOT is also encouraged to work in cooperation with regional transportation planning and transit agencies to plan for improvements to transportation facilities and services of statewide significance. Improvements to facilities and services of statewide significance identified in the statewide multimodal plan are considered essential state public facilities.

6. The Commission has adopted and has the authority to revise a Statewide Freeway High Occupancy Vehicle policy.

7. Sound Transit is a regional transportation authority organized pursuant to RCW 81.104.015, and 81.112 and is authorized to plan and implement a high capacity transportation system within its jurisdictional area.

8. Using local revenues and federal grant funds, Sound Transit has and will continue to construct a high capacity transportation system pursuant to Sound Move, its regional transportation plan.

9. The construction of high occupancy vehicle improvements (“HOV improvements”) and direct access ramps is part of Sound Transit’s regional transportation plan. Sound Transit and WSDOT entered into a Memorandum of Understanding Establishing a Cooperative Relationship with Washington State Department of Transportation Regarding Regional Express/HOV Program dated October 23, 1997 (hereinafter “1997 MOU”) which has guided and been relied upon by both Sound Transit and WSDOT in developing and implementing their respective roles and obligations relating to the Sound Transit Regional Express plan. The “1997 MOU” states, among other things:

“WSDOT will accept HOV Access Improvements and title on State Routes and upon their completion, maintain and operate them consistent with the laws, procedures and policies applicable to the balance of the HOV system and state

highway system. WSDOT shall maintain the facilities hereby conveyed in accord with their intended function for a normal useful life (normally twenty years for roadways) and obtain RTA [Sound Transit] formal approval if it becomes necessary to move or otherwise change the function of an RTA-funded facility.”

10. Sound Transit’s plan provides for the construction of five HOV improvements and ten direct access ramps to be constructed with local revenue and federal funds and operated as part of the State-owned highway system. (The projects are shown in Exhibit 1–WSDOT’s Puget Sound Core HOV System, Sound Transit’s Proposed Projects to Support HOV System and Proposed Sound Transit HOV Improvement Projects).

11. In order to satisfy its undertakings under Sound Move, Sound Transit expects to contribute approximately \$500 million to construct HOV improvements and direct access ramps, as shown in Exhibit 1.

12. To recognize Sound Transit’s funding contribution, Sound Transit seeks: (1) WSDOT’s affirmation that these HOV and direct access facilities will continue to be operated to facilitate and accommodate transit uses and operations in accordance with the purposes for which they are funded and (2) the Commission’s adoption of policies, including speed and reliability performance standards for the WSDOT HOV system, that preserves the value and usefulness for transit of the facilities.

AGREEMENT

This Agreement is entered into by WSDOT and Sound Transit in recognition of their respective investments for the construction of HOV lanes and improvements and direct access ramps for the state highway system. The direct access and HOV facilities, which are the subject of this Agreement, are identified by Exhibit I, which is attached and incorporated into this Agreement by reference. Exhibit I, shall be supplemented by the Parties to include additional Sound Transit federally funded direct access and HOV projects as *Sound Move* is amended by the Sound Transit Board.

Whereas, it is in the interests of both Sound Transit and WSDOT to achieve improved utilization of the WSDOT HOV system in order to help meet the needs of regional travel growth, it is agreed as follows:

1. WSDOT and Sound Transit affirm their respective commitments to the terms of the 1997 MOU.
2. The use, operation and maintenance of the WSDOT HOV system and direct access ramps shall be conducted by WSDOT in the following manner:
 - A. Consultative Role for Sound Transit: WSDOT shall operate the WSDOT HOV system in a manner that will be consistent with the Commission's current or future adopted policies and performance standards governing the operation of the system within Sound Transit's jurisdictional area. The Commission will consult with the Sound Transit Board prior to making any changes regarding HOV system operations and/or HOV performance standards.
 - B. Operation of Direct Access Ramps: WSDOT shall limit use of the direct access ramps to transit buses and vehicles carrying two or more passengers, and shall operate those facilities in a manner that is consistent with present or future adopted policies governing such facilities.
 - C. Protecting HOV System Performance: Subject to the Commission's authority to manage the highway system, WSDOT shall use reasonably practicable efforts to preserve the overall functioning and operational effectiveness of the Sound Transit funded HOV improvements and direct access facilities in a manner that is consistent with present or future adopted policies governing such facilities. The Sound Transit Board may make recommendations to the Commission regarding existing HOV system performance to ensure overall functioning and operational effectiveness of the Sound Transit-funded HOV

improvements. The Commission's current HOV Speed and Reliability Standards Policy and the HOV System Performance Policy are attached and incorporated herein as Exhibit 2 and Exhibit 3 respectively.

D. Review Process: WSDOT recognizes that FHWA has issued guidelines governing review and approval of proposed significant HOV operating policy changes. It is WSDOT's intent that Sound Transit will be part of that review process, providing information specifically on transit speed and reliability. Exhibit 4 attached and incorporated herein outlines the submittal requirements for the FHWA review and approval process for significant changes. Such review will be shared with the Sound Transit Board as part of the consultative process regarding any change in HOV system operations that negatively impacts transit speed and reliability. The review and consultation will take place prior to any change.

E. Preserving Effective Operation of Sound Transit funded facilities: In operating the system, WSDOT and the Commission will consider taking the following actions so as to preserve effective operation of the Sound Transit funded facilities:

- i. Improved incident response activities.
- ii. Pursuit of increased HOV violation fines.
- iii. Changes to hours of operation.
- iv. Changes to minimum occupancy requirements.
- v. Continued evaluation of HOV system operations and funding.
- vi. Lane management strategies including HOT lanes.
- vii. Identification of any needed capital improvements needed to maintain transit as a priority user and to keep the direct access facilities compatible with FHWA and WSDOT design guidelines.
- viii. WSDOT will seek state funding for the capital and operational impacts of any system changes on transit.

F. Continuing Control Obligations: WSDOT shall assume and adhere to Sound Transit's continuing control obligations with respect to Federal Transit Administration grant funds to the extent such funds are utilized for direct access and HOV facilities as provided in the FTA Master Grant Agreement, including Federal Transit Administration (FTA) laws, regulations and policies that implement the continuing control obligations of the Master Grant Agreement, dealing directly, as necessary, with the Federal Transit Administration.

3. Sound Transit shall undertake all reasonable steps to accomplish the following:

A. Obtain and operate transit vehicles that are able to maintain highway speeds on all parts of the WSDOT HOV system, even when said vehicles are carrying a full load of passengers.

B. Instruct all Sound Transit personnel, including contract operators, on applicable laws and operational characteristics of HOV facilities.

C. Provide at least the service frequency and span of service called for in Sound Transit's Service Implementation Plan. Expansion of service on the WSDOT HOV system will be a higher priority than service expenditures that do not directly contribute to increased transit ridership.

D. Provide incentives to encourage utilization of transit service using the WSDOT HOV system.

E. Support WSDOT grants applications for projects that improve or complete the WSDOT HOV system.

F. Participate in incident response efforts to clear disabled transit buses from the freeway.

G. Support publicly WSDOT efforts to improve the operations of the HOV system.

4. WSDOT may suspend the application of this Agreement during periods of national emergency, natural disaster, or any other force major event that WSDOT could not have reasonable anticipated or prevented. WSDOT may suspend or terminate this Agreement in the event Sound Transit fails to perform its funding obligations towards WSDOT under any construction agreements heretofore or hereafter executed by the two parties. If WSDOT exercises its right of suspension or termination of the Agreement as provided in this section, Sound Transit agrees that it shall not be entitled to legal or equitable relief in a court of law. WSDOT shall consult with Sound Transit prior to any suspension or termination of the Agreement.

5. This Agreement creates contractual obligations between Sound Transit and WSDOT based on Sound Transit's execution of its funding commitments both to third parties and to WSDOT. The failure of one party to fulfill its obligations under the Agreement shall give the other party the right to seek enforcement of any of the provisions of this Agreement in a court of law and to seek any legal or equitable relief to which it may otherwise be entitled. Prior to seeking relief in a court of law, the parties shall utilize the dispute resolution process set forth in the Memorandum of Understanding executed October 23, 1997, between WSDOT and Sound Transit. Any action to enforce the provisions of this Agreement shall be brought in Pierce County Superior Court.

6. This Agreement will be binding upon and inure to the benefit of the Parties' respective successors and assigns. If any of the terms and conditions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and conditions unaffected thereby shall remain in full force and effect. The Parties agree to negotiate in good faith to reform the Agreement to replace any invalid or unenforceable term and/or condition with a valid and enforceable term and/or condition that comes as close as possible to the intention of the stricken term and/or condition.

7. This agreement shall commence on the date last written below and shall continue for a period of twenty (20) years or until the end of the useful life of the facilities that are the subject of this Agreement.

8. If the terms of this agreement conflict with any other agreements between the parties, the terms of this agreement shall control the obligations and rights of the parties. The parties may amend this agreement as necessary provided that WSDOT's authority to amend shall be subject to the approval of the Transportation Commission and any delegations from the Commission under state law.

IN WITNESS WHEREOF, the parties hereby agree to the terms and conditions of this Agreement as of the last date written below.

For WSDOT:

By: *Dyn B. Brando*
Title: Secretary of Transportation
Date: *May 20, 2003*

For Sound Transit:

By: *Joan M. Eal*
Title: Executive Director
Date: *5-22-03*

Approved as to Form:

By: *Beltzman*
Sound Transit Legal Counsel

WSDOT's Puget Sound Core HOV System

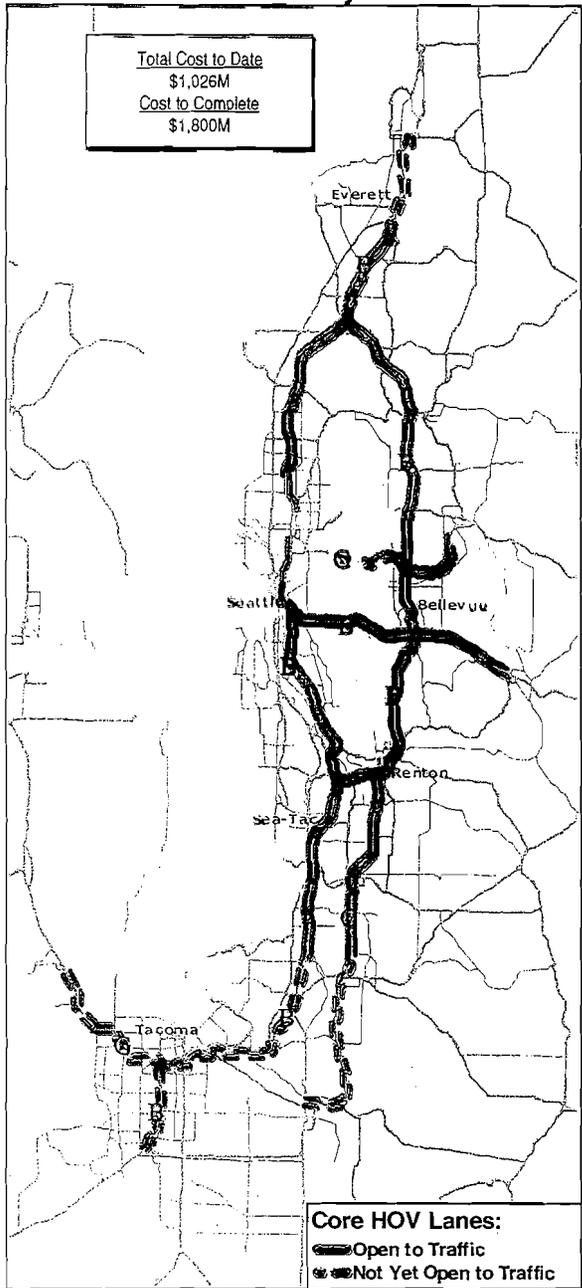
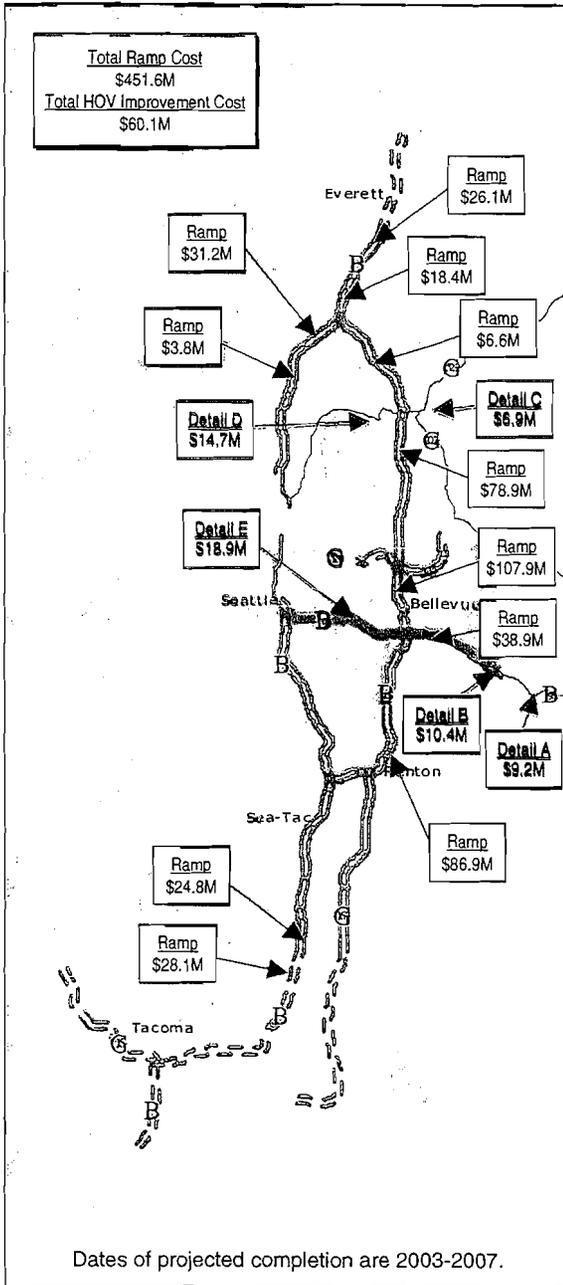


Exhibit 1 Sound Transit's Proposed Projects to Support HOV System



Proposed Sound Transit HOV Improvement Projects

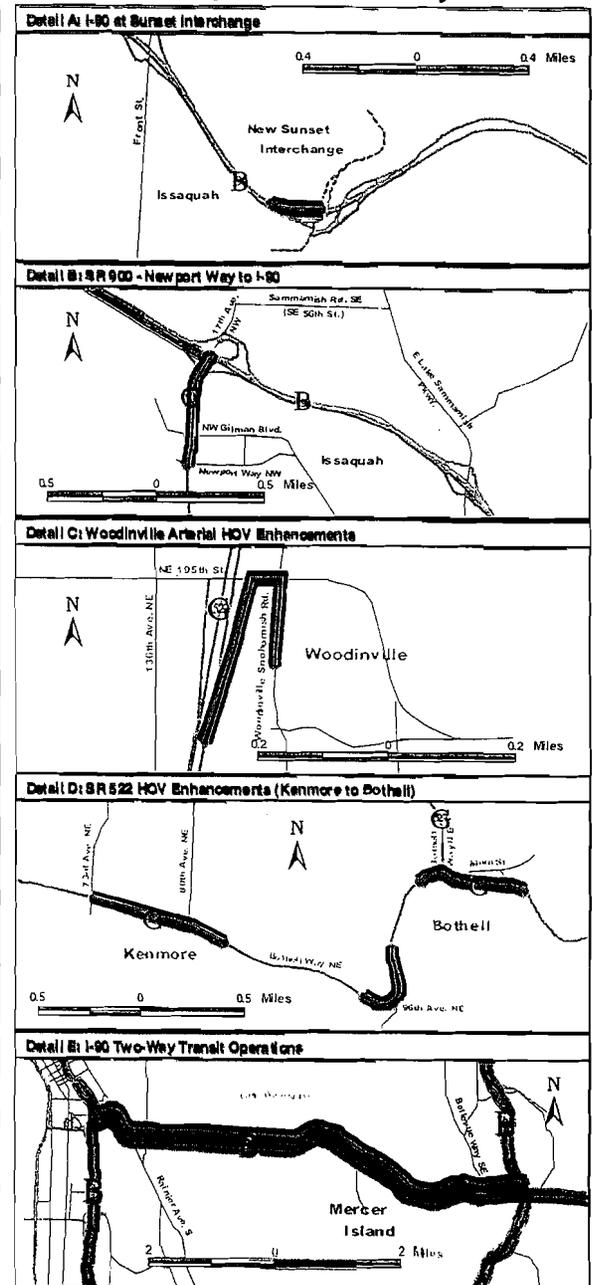


EXHIBIT 2
HOV Speed and Reliability Standard

**From Washington State Freeway HOV System Policy
Executive Summary November 1992 (Reprinted 1997)**

POLICY

1. It is WSDOT policy to offer a reliable speed and travel time advantage to HOV's both to offer an incentive to use ridesharing modes and to enhance person carrying capacity into the future. For transit riders especially, a reliable trip time is equally as important as a fast travel speed.
2. HOV lane vehicles should maintain or exceed an average speed of 45 mph or greater at least 90% of the times they use that lane during the peak hour (measured for a consecutive six-month period).

**EXHIBIT 3
HOV Systems Performance**

**From Washington State Freeway HOV System Policy
Executive Summary November 1992 (Reprinted 1997)**

POLICY

1. To accurately evaluate the system's effectiveness, WSDOT will annually collect and analyze HOV lane data including volume, vehicle occupancy, travel time savings and violation rates.
2. WSDOT shall continue encouraging support and participation from other agencies in the gathering and use of this data.
3. WSDOT shall prepare an annual HOV system report documenting system performance. Performance of general purpose lanes will be included for comparative purposes.