

**MOTION NO. M2010-72****Joint Use Agreement with The BNSF Railway Company for the Seattle-to-Tacoma Sounder Segment**

MEETING:	DATE:	TYPE OF ACTION:	STAFF CONTACT:	PHONE:
Board	07/22/10	Final Action	Bonnie Todd, Executive Director of Operations <b>Martin Young, Commuter Rail Operations Manager</b> Jordan Wagner, Senior Legal Counsel	206-398-5367 <b>206-398-5115</b> 206-398-5224

**PROPOSED ACTION**

Authorizes the chief executive officer to execute a Joint Use Agreement for the use of The BNSF Railway Company's Seattle-to-Tacoma corridor under easement rights purchased for the operation of four additional Sounder commuter rail weekday round trips.

**KEY FEATURES**

- Sound Transit is acquiring rights to add four weekday peak-direction round trips on The BNSF Railway Company (BNSF) railway between Tacoma and Seattle under Resolution No. R2010-14. These four round trips were included in the ST2 plan for Sounder service expansion.
- The Joint Use Agreement specifies the conditions under which trains may start operating and provides the terms under which the four new round trips can be operated on the BNSF corridor between Seattle and Tacoma when the Commuter Rail Service Agreement expires in 2040.
- In addition to this action, the Board will consider a concurrent action to amend the Commuter Rail Service Agreement with BNSF to add the operation of four round trips to the nine round trips currently operated on the Sounder commuter rail south corridor.

**PROJECT DESCRIPTION**

The Seattle-to-Tacoma Sounder segment is a 40-mile long BNSF railroad corridor between Seattle and Tacoma that includes seven Sounder commuter rail stations – King Street (Seattle), Tukwila, Kent, Auburn, Sumner, Puyallup, and Tacoma. The Tacoma-to-Lakewood segment is eight miles long, including over one mile of new track to be constructed by Sound Transit and seven miles of track purchased from BNSF that will be upgraded for commuter rail by Sound Transit. This segment will serve stations in South Tacoma and Lakewood. It will connect to the Seattle to Tacoma segment at the Tacoma Dome Station.

BNSF owns the right-of-way between Everett and Tacoma. Tacoma Rail owns an approximately one-mile segment between BNSF's tracks in Tacoma and the Tacoma Dome Station. Sound Transit owns the right of way between M Street in Tacoma, and Lakewood. Sound Transit has acquired the necessary property interests over the approximately 1.2 mile segment between the Tacoma Dome Station and M Street for the construction of the D Street – M Street Track and Signal Project. Construction on the Tacoma to Lakewood corridor is being completed in two phases; the M Street to Lakewood phase began in 2009 and the D Street to M Street phase is tentatively scheduled to begin in 2010.

Extensive track and signal improvements throughout the 40-mile Seattle-to-Tacoma corridor were completed under the May 2000 Construction Agreement and Service Agreement between Sound Transit and BNSF. These improvements increased the rail capacity of the corridor to support nine round trip Sounder trains each weekday without compromising freight mobility in the Puget Sound area.

## FISCAL INFORMATION

The Adopted 2010 Lifetime Budget for Sounder South Expanded Service is \$190,760,657 with a right of way phase budget of \$184,991,348. The proposed action is to authorize the execution of a Joint Use Agreement for the use of BNSF's Seattle-to-Tacoma corridor under easement rights purchased for the operation of four additional Sounder commuter rail round trips. This action does not require any expenditure authority, the easement expense was authorized by the Board under Resolution No. R2010-14.

Sound Transit's use of the corridor will be controlled under the Service Agreement until its expiration in 2040. The cost of operations under the Joint Use Agreement will start in 2040 and will be included in future years' operating budgets. This item has been fully incorporated in agency financial planning and there is adequate budget programmed in the current financial plan for the subject action.

## BUDGET TABLE

### Summary for Board Action (Year of Expenditure \$000)

#### Project: 510 - Sounder South Expanded Service

	2010 Board Adopted Budget <sup>1</sup> (A)	Committed To Date <sup>2</sup> (B)	This Action (C)	Total Committed & Action (D)	Uncommitted (Shortfall) (E)
Agency Administration	\$ 5,544	\$ 5,544	\$ -	\$ 5,544	\$ -
Preliminary Engineering	\$ 225	\$ 61	\$ -	\$ 61	\$ 165
Final Design	\$ -	\$ -	\$ -	\$ -	\$ -
Right of Way	\$ 184,991	\$ 185,069	\$ -	\$ 185,069	\$ (78)
Construction	\$ -	\$ -	\$ -	\$ -	\$ -
Vehicles	\$ -	\$ -	\$ -	\$ -	\$ -
Contingency	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Current Budget</b>	<b>\$ 190,761</b>	<b>\$ 190,674</b>	<b>\$ -</b>	<b>\$ 190,674</b>	<b>\$ 87</b>

#### Notes:

<sup>1</sup> Project budget is located on pages 68 and 69 of the Adopted 2010 Transit Improvement Plan budget book. Project has been renamed Sounder South Expanded Service combining projects 510 and 520.

<sup>2</sup> Committed to date amount includes actual outlays and commitments through April 30, 2010 including the commitment made to BNSF for four additional easements.

## EQUAL EMPLOYMENT WORKFORCE PROFILE

Salaried Employees: 24% women and 27% minorities; Union-represented: 4% women and 17% minority.

## BACKGROUND

BNSF currently operates nine weekday round trips for Sound Transit between Seattle and Tacoma. Under Resolution No. R2010-14, BNSF will sell Sound Transit easements that will allow four additional weekday round trips from Seattle to Tacoma. These four additional easements will be permanent (in contrast to the existing south-line easements which are for 40 years only).

The Joint Use Agreement provides the terms under which the four new weekday round trips, can be operated on the BNSF corridor between Seattle and Tacoma when the Commuter Rail Service Agreement expires in 2040, but does not require using BNSF as the service provider. The Joint Use Agreement also specifies the conditions under which the four additional trains may start operating. For example, the Joint Use Agreement provides deadlines for BNSF to provide levels of design for its proposed track and signal work and for Sound Transit to complete environmental documentation or acquire necessary permits for such work. The inability to keep to the schedule may delay easement closing dates and estimated deposit dates, which may ultimately delay operation of an additional round trip.

The Commuter Rail Service Agreement, as amended in 2003, describes the terms for the operation of Sounder commuter trains by BNSF on the Seattle to Lakewood corridor through 2040. The addition of the four round trips to the Service Agreement is being considered by the Board under a separate action. The operating rights for the nine round trips currently in operation will expire in 2040. If no arrangements are made to increase or continue that initial nine train service plan, the only rights that Sound Transit will have to operate service will be the four peak direction round trips acquired in the Purchase and Sale Agreement.

## **ENVIRONMENTAL COMPLIANCE**

Required environmental documentation under NEPA and SEPA has been completed by Sound Transit for Easements 1 and 2. A NEPA Documented Categorical Exclusion (DCE) was approved the Federal Transit Administration on November 4, 2009 for Easements 1 and 2. Sound Transit issued a SEPA Determination of Nonsignificance (DNS) on November 13, 2009 for Easements 1 and 2. For Easements 3 and 4, Sound Transit will complete required NEPA and SEPA environmental documentation and staff will then return to the Sound Transit Board for authorization to make deposits and close.

SSK 7-15-20

## **PRIOR BOARD/COMMITTEE ACTIONS**

Motion No. M2007-98 – Authorized the chief executive officer to execute an amendment to the BNSF Railway Company Service Agreement for Sounder commuter rail for the Seattle to Tacoma Corridor to permit up to six round trips before completion of Phase 2 railroad improvements under the BNSF Railway Company Construction Agreement.

Motion No. M2003-136 – Authorized the Chief Executive Officer to execute a First Amendment to the Commuter Rail Service Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company.

Resolution No. R99-22 – Authorized the Executive Director to execute two contracts with The Burlington Northern and Santa Fe Railway (BNSF), each to be substantially in accordance with the basic terms for such agreements set forth in the Background and Comments attached hereto as Exhibit A. The first is a long-term contract that will provide for BNSF to operate *Sounder* commuter rail service between Seattle and Tacoma (Operating Agreement). The second is a contract that will specify agreed-upon capital improvements on and around BNSF's existing railroad right-of-way, and provide for BNSF to construct those improvements and for Sound Transit to contribute approximately \$200 million and other public authorities to contribute approximately \$70 million to the cost of such construction (Construction Agreement).

## **TIME CONSTRAINTS**

BNSF will not commit to the terms of the purchase and sale agreement of the four commuter rail easements if these agreements are not authorized by the Board in July.

## **PUBLIC INVOLVEMENT**

Not applicable to this action.

## **LEGAL REVIEW**

JW 7/16/10

**MOTION NO. M2010-72**

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to execute a Joint Use Agreement for the use of The BNSF Railway Company's Seattle-to-Tacoma corridor under easement rights purchased for the operation of four additional Sounder commuter rail weekday round trips.

**BACKGROUND:**

The BNSF Railway Company (BNSF) currently operates nine weekday round trips for Sound Transit between Seattle and Tacoma. Under Resolution No. R2010-14, BNSF will sell Sound Transit easements that will allow four additional weekday round trips from Seattle to Tacoma. These four additional easements will be permanent (in contrast to the existing south-line easements which are for 40 years only).

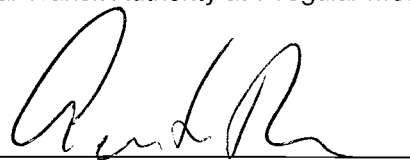
The Joint Use Agreement provides the terms under which the four new weekday round trips, can be operated on the BNSF corridor between Seattle and Tacoma when the Commuter Rail Service Agreement expires in 2040, but does not require using BNSF as the service provider. The Joint Use Agreement also specifies the conditions under which the four additional trains may start operating. For example, the Joint Use Agreement provides deadlines for BNSF to provide levels of design for its proposed track and signal work and for Sound Transit to complete environmental documentation or acquire necessary permits for such work. The inability to keep to the schedule may delay easement closing dates and estimated deposit dates, which may ultimately delay operation of an additional round trip.

The Commuter Rail Service Agreement, as amended in 2003, describes the terms for the operation of Sounder commuter trains by BNSF on the Seattle to Lakewood corridor through 2040. The addition of the four round trips to the Service Agreement is being considered by the Board under a separate action. The operating rights for the nine round trips currently in operation will expire in 2040. If no arrangements are made to increase or continue that initial nine train service plan, the only rights that Sound Transit will have to operate service will be the four peak direction round trips acquired in the Purchase and Sale Agreement.

**MOTION:**

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the chief executive officer is authorized to execute a Joint Use Agreement for the use of The BNSF Railway Company's Seattle-to-Tacoma corridor under easement rights purchased for the operation of four additional Sounder commuter rail weekday round trips.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on July 22, 2010.



Aaron Reardon  
Board Chair

ATTEST:

  
Marcia Walker  
Board Administrator