

**SOUND TRANSIT
STAFF REPORT**

RESOLUTION NO. R2005-23

**Property Acquisition for Everett Layover Track for Trains 3 and 4 and for Sounder
Everett-Seattle Permitting/Mitigation Project**

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Finance Committee	10/06/05	Discussion/Possible Action to Recommend Board Approval	Phil O'Dell, Director, Project Delivery Support Services	(206) 398-5014
Board Meeting	10/13/05	Action	James Staudinger, Real Estate Manager John McLean, Sr. Real Estate Representative	(206) 398-5026 (206) 689-4916

Contract/Agreement Type:	<input checked="" type="checkbox"/>	Requested Action:	<input checked="" type="checkbox"/>
Competitive Procurement		Execute New Contract/Agreement	
Sole Source		Amend Existing Contract/Agreement	
Agreement with Other Jurisdiction(s)		Budget Amendment	

PROJECT NAME

Everett-to-Seattle Track and Signals

PROPOSED ACTION

Authorizes the Chief Executive Officer to acquire, dispose, or lease certain real property interests by negotiated purchase, by condemnation (including settlement), condemnation litigation, or by entering administrative settlements, and to pay eligible relocation and re-establishment benefits to affected owners and tenants as necessary for (a) the construction of the Everett Station Layover Track for Trains 3 and 4, and (b) the Everett-Seattle Permitting/Mitigation Project related to Burlington Northern Santa Fe's shoreline track and facilities construction between Everett and Seattle.

KEY FEATURES of PROPOSED ACTION

Certain property has been identified as necessary for the Everett Station Layover Track (the "Layover Track Project") based upon the current level of design. The proposed action would authorize the acquisition of a single parcel, owned by BNSF, as well as the payment of eligible relocation benefits to affected owners and tenants. The subject parcel is identified on Exhibit A.

Certain property has been identified as necessary for the Everett-Seattle Permitting/Mitigation Project (the "Mitigation Project") based upon the current level of design. The proposed action would authorize the acquisition of three parcels to be later conveyed (pursuant to a separate board authorization) to the Tulalip Tribes, and the acquisition of an additional parcel, for which Sound Transit would assume direct responsibility for mitigation efforts. The action also authorizes the payment of eligible relocation benefits to affected owners and tenants. The subject parcels are identified on Exhibit B.

BUDGET IMPACT SUMMARY

Action Outside of Adopted Budget:	✓	Comments on Checked Items
This Project		
This Phase		
This Task		
Budget Amendment Required		

Key Financial Indicators:	✓	Comments on Checked Items
Contingency Funds Required		
Funding required from other parties (other than what is in financial plan)		

Not checked = action is assumed in current Board-adopted budget. No budget action or adjustment to financial plan required.

BUDGET and FINANCIAL PLAN DISCUSSION

The total adopted capital budget for the Layover Track project is \$23.1 million. Within that budget, \$750,000 has been budgeted in the right-of-way phase. The total adopted capital budget for the Permitting and Environmental Mitigation Project is \$10.3 million. Within that budget, \$1.9 million has been budgeted in the right-of-way phase.

The proposed action is consistent with those amounts, and is affordable within the agency's current long-term financial plan and subarea financial capacity. The action will have no new revenue impact on Sound Transit. The acquisition costs of specific parcels are appropriate for discussion in executive session.

BUDGET TABLE

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

Action Item: Property Acquisition for Everett Layover Track for Trains 3 and 4 and for Sounder Everett-Seattle Permitting/Mitigation Project

System-wide Layover (3X140) page 92, Adopted 2005 Budget	Current Board Adopted Budget (A)	Committed To Date (B)	This Action (C)	Total Committed & Action (D)	Uncommitted (Shortfall) (E)
1 Agency Administration	509	2	-	2	507
2 Pre-Engineering	156	35	-	35	121
3 Final Design	375	0	-	0	375
4 Right of Way	750	-	-	-	750
5 Construction	20,653	14,931	-	14,931	5,722
6 Contingency	650	-	-	-	650
7 Total Current Budget	23,092	14,968	-	14,968	8,124

Permitting and Environmental Mitigation (31131) page 91, Adopted 2005 Budget	Current Board Adopted Budget (A)	Committed To Date (B)	This Action (C)	Total Committed & Action (D)	Uncommitted (Shortfall) (E)
8 Agency Administration	1,091	1	-	1	1,090
9 Pre-Engineering	683	882	-	882	(199)
10 Final Design	762	-	-	-	762
11 Right of Way	1,934	0	-	0	1,934
12 Construction	5,819	14	-	14	5,805
13 Contingency	-	-	-	-	-
14 Total Current Budget	10,288	897	-	897	9,391

M/W/DBE – SMALL BUSINESS PARTICIPATION

Not applicable for this action.

PROJECT DESCRIPTION and BACKGROUND for PROPOSED ACTION

In order to build and operate a high capacity transit system consisting of commuter rail service, light rail service, and a program of regional express bus service, HOV improvements, and park-and-ride facilities throughout central Puget Sound, it will be necessary for Sound Transit to acquire real property. Sound Transit's authorizing legislation grants the agency the power of eminent domain to accomplish such acquisitions.

This segment of Sounder is located in the 35-mile BNSF Railway corridor between Everett and Seattle. Sound Transit and BNSF executed an agreement in December 2003 to implement commuter rail service in the corridor by providing up to four round-trip trains per day and special event trains. Under the agreement terms, Sound Transit will purchase a service easement from BNSF for each round-trip train. The agreement makes BNSF responsible for the construction of track and signal improvements needed to accommodate commuter rail service. It also makes Sound Transit responsible for acquisition of any regulatory permits required to construct track

improvements, the mitigation of construction impacts along the abutting waterfront, and the construction of stations and layover facilities.

Improvements to the Sounder Commuter Rail system between Seattle and Everett involve the Layover Track Project, the construction of additional train storage area at Everett Station for trains 3 and 4, and the Mitigation Project, required as a condition for constructing certain track and facilities improvements between Everett and Seattle. The property required for the layover track project is identified on Exhibit A.

The second project, the Mitigation Project, involves the mitigation of consequences resulting from the construction of shoreline improvements to BNSF track and facilities between Everett and Seattle. Under the Joint Use Agreement between Sound Transit and BNSF, Sound Transit is responsible for wetland mitigation, and acquiring any property required for wetland mitigation, that is necessary for required improvements proposed by BNSF. Three properties have been identified as necessary for a larger mitigation project involving Sound Transit and the Tulalip Tribes. Sound Transit would contribute (pursuant to a subsequent board authorization) the properties to a larger remediation project. That project, directed by the Tulalip Tribes, anticipates the restoration of Snohomish River estuary lands to their original condition. The properties will not be purchased until all the agencies with jurisdiction have confirmed Sound Transit's mitigation proposal. As an additional part of Sound Transit's mitigation responsibility, the agency proposes to acquire a former marina and restore the property to its original waterfront condition. The properties required for the mitigation efforts are described on Exhibit B.

The proposed acquisitions are consistent with the range of impacts and alternatives evaluated in the Sound Transit Everett-to-Seattle Commuter Rail Project NEPA/SEPA EIS.

Prior Board or Committee Actions and Relevant Board Policies

Motion or Resolution Number	Summary of Action	Date of Action
R2003-17	Authorized the Chief Executive Officer to acquire, dispose, lease and transfer certain real property interests by negotiated agreement, negotiated purchase, by condemnation (including settlement), condemnation litigation, or entering administrative settlements, and to pay eligible relocation and re-establishment benefits to affected owners and tenants as necessary for the acquisition of various properties owned by Burlington Northern Santa Fe Railway and required for the Everett-to-Seattle Segment, the Lakewood-to-Tacoma Segment, and its possible extension.	09/25/03
R2000-10	Authorized the Executive Director to acquire, dispose, or lease certain real property interests by negotiated purchase or by condemnation and to pay eligible relocation and reestablishment costs as needed for the construction and operation of commuter rail facilities for the Everett to Seattle Commuter Rail Project.	06/08/00

CONSEQUENCES of DELAY

Design and construction schedules for the Projects assume the availability of the specific properties when needed for construction. Delay in Board approval could affect the timely acquisition of the property and of the layover project, which must be completed by August 2007, for start of service of the third train.

PUBLIC INVOLVEMENT

The Everett Station layover site has been selected to reflect the written and oral testimony collected during the public involvement period for the EIS process, in meetings held with community members of Everett and with elected officials and the Technical Advisory Committees of Everett. The sites for the North Line Mitigation Project have been selected after considerable consultation with representatives of the Tulalip Tribes, FTA, US Fish & Wildlife Services, NOAA, Army Corp of Engineers, Washington Dept. of Ecology, and local jurisdictions such as Snohomish County, The Cities of Everett, Mukilteo, Edmonds, Woodway, and Shoreline.

ENVIRONMENTAL COMPLIANCE

PW 9/26/2005

LEGAL REVIEW

JB 9/21/2005

SOUND TRANSIT

RESOLUTION NO. R2005-23

A RESOLUTION of the Board of the Central Puget Sound Regional Transit Authority authorizing the Chief Executive Officer to acquire, dispose, or lease certain real property interests by negotiated purchase, by condemnation (including settlement), condemnation litigation, or by entering administrative settlements, and to pay eligible relocation and re-establishment benefits to affected owners and tenants as necessary for (a) the construction of the Everett Station Layover Track for Trains 3 and 4, and (b) the Everett-Seattle Permitting/Mitigation Project related to Burlington Northern Santa Fe's shoreline track and facilities construction between Everett and Seattle.

WHEREAS, a Regional Transit Authority, hereinafter referred to as Sound Transit, has been created for the Pierce, King, and Snohomish County region by action of their respective county councils pursuant to RCW 81.112.030; and

WHEREAS, on November 5, 1996, at a general election held within the Central Puget Sound Regional Transit Authority district, the voters approved local funding for high capacity transit in the Central Puget Sound Region; and

WHEREAS, in order to acquire the properties determined to be necessary for the construction, operation and maintenance of project improvements required under Sound Move, it is necessary for Sound Transit to acquire by negotiated purchase or to condemn certain rights in the property for public purposes, and to pay eligible relocation and re-establishment benefits to affected parties; and

WHEREAS, Sound Transit is constructing layover track for Trains 3 and 4 of the Everett-Seattle Corridor in the project known as the Everett Layover Track Extension for Trains 3 and 4 Project and is required to mitigate shoreline impacts related to improvements made along that same corridor for the project known as the Everett-Seattle Permitting/Mitigation Project (collectively, the "Projects"); and

WHEREAS, government agencies with jurisdiction over Sound Transit's proposed mitigation project continue to review the proposal (collectively, the "Mitigation Projects"); and

WHEREAS, Sound Transit has identified certain real properties as necessary for the construction and permanent location of the Projects and are reasonably described in Exhibit A of this resolution; and

WHEREAS, Sound Transit has identified certain real properties as necessary for the location of the Mitigation Projects and are reasonably described in Exhibit B of this resolution; and

WHEREAS, in order to acquire the properties determined to be necessary for the construction, operation, and permanent location of the Projects, it is necessary for Sound Transit to acquire by negotiated purchase or to condemn certain lands and rights in property for public purposes, and to pay eligible relocation and re-establishment benefits to affected parties; and

WHEREAS, Sound Transit has commissioned or will commission appraisals to determine the fair market value of the properties, and will continue to negotiate in good faith with the owners of the properties authorized to be acquired by negotiated purchase or condemned, with the intent of reaching agreements for the voluntary acquisition of the property for fair market value; and

WHEREAS, the funds necessary to acquire the property by voluntary purchase or to pay just compensation adjudged due after condemnation and the funds necessary to pay eligible relocation and re-establishment costs shall be paid from Sound Transit general funds; and

WHEREAS, the proposed acquisitions are consistent with the range of impacts and alternatives evaluated in the Sound Transit Everett-to-Seattle Commuter Rail Project Environmental Impact Statement prepared under the National and State Environmental Policy Acts.

NOW THEREFORE BE IT RESOLVED by the Board of the Central Puget Sound Regional Transit Authority as follows:

SECTION 1. The Chief Executive Officer is hereby authorized to execute such agreements as are customary and necessary for the acquisition, lease, or disposal of the real property interests described in Exhibit A (said property to be used for the Projects), and for the payment of eligible relocation and re-establishment costs. In accordance with Sound Transit's adopted Real Property Acquisition and Relocation Policies, Procedures and Guidelines, the acquisition price of the properties shall not exceed the fair market value to be determined through the appraisal process or as provided in Section 2 herein; provided that in the event the total of the acquisition, relocation, and re-establishment costs of the properties for the Projects exceeds Sound Transit's approved budget for right-of-way acquisition (plus contingency), then the Chief Executive Officer shall obtain approval from the appropriate committee or the Board, per Resolution No. 78-1, before the acquisition of the property for the Projects by purchase or by condemnation and the payment of eligible relocation and re-establishment costs.

SECTION 2. The Chief Executive Officer or her designee is hereby authorized to settle condemnation litigation or enter administrative settlements (a settlement in lieu of initiating condemnation litigation) for the acquisition of the real property interests described in Exhibits A and B. Such settlements shall be made only upon the finding of legal counsel that the settlement is consistent with the law and is reasonable, prudent, and in the public interest. Such settlements shall not exceed established project budgets. For all other settlements proposed, the Chief Executive Officer shall obtain prior approval of the appropriate committee or the Board of Directors, per Resolution No. 78-1.

SECTION 3. The Sound Transit Board deems the Projects, to be a public use for a public purpose. The Board deems it necessary and in the best interests of the citizens residing within Sound Transit's boundaries to acquire the property identified in Exhibits A and B as being

necessary for the construction, operation, and permanent location of the Projects and Mitigation Projects, parties be paid relocation and re-establishment costs associated with displacements from the properties.


SECTION 4. The Sound Transit Board of Directors finds that the public health, safety, necessity, convenience, and welfare demand and require that the properties described in Exhibits A and B be immediately acquired, condemned, appropriated, taken and damaged for the construction, operation, and permanent location of the Projects and Mitigation Projects.

SECTION 5. In addition to the authority granted the Chief Executive Officer in Section 1 above, condemnation proceedings are hereby authorized to acquire all, or any portion thereof, of the properties and property rights and/or rights in those of the properties described in Exhibits A and B, not owned by a public entity, for the purpose of constructing, owning, and operating a permanent location of the Projects. The Chief Executive Officer is also authorized to make minor amendments to the legal descriptions of the properties described in Exhibits A and B, as may be necessary to correct scrivener's errors and/or to conform the legal description to the precise boundaries of the property required for the Project and Mitigation Project.

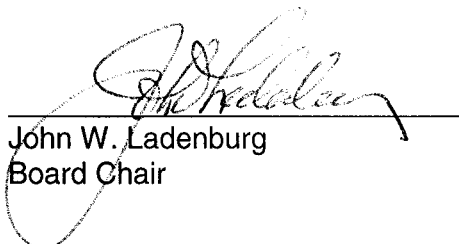
SECTION 6. The funds necessary to acquire the property by purchase or to pay just compensation adjudged due after condemnation shall be paid from Sound Transit general funds.

ADOPTED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on October 13, 2005.

ATTEST:



Marcia Walker
Board Administrator



John W. Ladenburg
Board Chair

Exhibit A – Layover Track Area

The westerly 27 feet of that portion of Section 29, Township 29 North, Range 5 East, W.M., in Snohomish County, Washington, lying northerly of the north margin of 36th Street; lying easterly of and adjoining the easterly line of that parcel described in that certain Quit Claim Deed recorded under Snohomish County Recording Number 200003290639; and lying southeasterly of the northeasterly production of the following described line:

Commencing at the centerline intersection of Smith Avenue, as constructed and monumented for road deed recorded under Recording Number 1192858 and 36th Street as Platted;
thence North 00°45'36" East 345.16 feet along said centerline of Smith Avenue to the centerline of said Section 29;
thence South 88°18'35" East along said centerline of Section 29 a distance of 30.06 feet to the East line of said Smith Avenue;
thence continue South 88°18'35" East 79.37 feet to a ½ inch inside diameter iron pipe;
thence North 04°26'00" West 200.00 feet;
thence North 86°14'39" East 83.40 feet and the point of beginning of said produced line;
thence North 76°18'21" East to the centerline of the existing Burlington Northern Mainline Tracks and the terminus of said produced line.

Exhibit B – Mitigation Properties

Hendrickson Family Trust

That portion of Section 3, Township 29 North, Range 5 East of W M, beginning at a point 555.38 feet South of quarter corner on North boundary of Section, thence East 1292.9 feet, thence South 230 feet, thence West 1919.7 feet to the bank of Ebey Slough, thence North 2°24' East 50 feet, thence North 33°51' West 210 feet; thence East 740 feet to the point of beginning, being part of Government Lots 2 and 3, records of County Auditor, said County and State, Section 3, Township 29 North, Range 5 East, W M.,

Situate in the County of Snohomish, State of Washington.

Roberts

A portion of Government Lots 2 and 3, Section 3, Township 29 North, Range 5 East, W.M., described as follows:

Beginning at a point 455.34 feet South of the quarter corner of the North boundary of the Section;
Thence East 1294.3 feet;
Thence South 0°05' West for 100 feet;
Thence West 2032.9 feet to the bank of Ebey Slough;
Thence North 53°51' West for 110 feet;
Thence North 40°22' West for 40 feet;
Thence East for 857.5 feet to the point of beginning.

Situate in the County of Snohomish, State of Washington.

Rose

All that portion of Northeast quarter of Northwest quarter of Section thirty-four (34) and of Southeast quarter of Southwest quarter of Section twenty-seven (27), Township thirty (30) North, Range five (5) East, W.M., described as follows: Beginning at the quarter corner between Sections 27 and 34, Township 30 North, Range 5 East, W.M.; thence North 89°21' West along the section line for 850 feet to the true point of beginning; thence North 37°48' East 190 feet to the South line of county road; thence South 53°12' East along county road line for 59.4 feet; thence South 34°09' West for 202.7 feet; thence North 57°30' West for 20.9 feet; thence South 33°51' West for 136.2 feet; thence South 68°16' East for 52.8 feet; thence South 17°45' West for 214.2 feet; thence South 6°50' East for 445 feet; thence South 17°28' East for 183.8 feet; thence South 0°13' East for 302.0 feet, more or less, to South line of Northeast quarter of the Northwest quarter of said Section 34; thence North 89°00' West along sixteenth line for 487 feet to the Southwest corner of said Northeast quarter of the Northwest quarter of said Section 34; thence North 0°13' West along sixteenth line for 1040 feet; thence South 89°00' East for 331 feet; thence North 0°15' West for 256.4 feet, to the North line of said Section 34; thence South 89°21' East along section line for 113 feet to the true point of beginning.

Meadowdale Marina

Lots 7, 8, 9, 10 and 11, Block A, Plat of Meadowdale Tide Lands, according to the plat thereof recorded in Volume 6 of Plats, page 28, in Snohomish County, Washington.