

# The Right-of-Way Agreement: Nine-Jurisdiction Plan for Tomorrow

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In January 1988, representatives of nine very diverse public jurisdictions met to sign an agreement to preserve rights-of-way for a high-capacity transit system that was, at best, a distant dream. One year later, that agreement has produced a series of accomplishments that have moved creation of high-capacity transit closer to the realm of reality. The agreement has produced tangible products for Snohomish County, cities, the public utility district, transit agencies, the Washington State Department of Transportation, and the Puget Sound Council of Governments, which were the agreement's creators and signators. These products include a series of preplanning studies, a process for integrating work programs of related projects, and a review mechanism for projects with potential impacts on the right-of-way. There are also less tangible products. First, the elected officials and staff people who were involved have a strong sense of accomplishment. Second, the agreement may serve as a model for neighboring jurisdictions. Third, the collaborative process that emerged during the design of the agreement has been used since then for other difficult issues. The steps that led to the signing of the agreement and the first year's experience in using the agreement may be instructive to other jurisdictions considering visionary projects.

Rapid growth, mounting congestion, and a sense that doing business as usual will not solve the mobility problems facing an urbanizing county led county officials to join their counterparts in the region to discuss high-capacity (express bus and rail transit) solutions. After several years of planning, the need to preserve rights-of-way for future use became a mounting priority.

Snohomish County, Washington, lies north of King County, which includes Seattle. Southwest Snohomish County, which lies along the I-5 corridor and is rapidly urbanizing, is bounded at its northern edge by Everett, the county seat and site of the future Navy Homeport. Scattered through the area are a number of substantial employers, including Boeing's largest commercial aircraft plant, and the Technology Corridor dotted with high-technology complexes. The balance of the county is lower density suburban and rural.

## POPULATION AND EMPLOYMENT

As presented in Table 1, Snohomish County is no longer a sleepy suburban area providing bedrooms for Seattle and King County. The Puget Sound Council of Governments (PSCOG) projects phenomenal growth for the whole central Puget Sound area and particularly Snohomish County.

Southwest Snohomish County's growth promises to be even more dramatic. In 1980, Southwest Snohomish County had

63.0 percent of the county's population and 72.9 percent of its jobs. By the year 2020, the southwestern portion of the county is projected to double its population and increase its employment base by a factor of 2½ (1).

## Travel Demand

The I-5 corridor from the Snohomish County line to Seattle is the most heavily traveled corridor in Washington state. In 1980, 36 percent of Snohomish County's residents and 50 percent of Southwest County's workers commuted to (or through) King County. Almost all of these trips used, in some part, the I-5 corridor (2). Much of this commuter demand, projected to double by 2020, will have to be carried on I-5 because the only existing alternative, I-405, bypasses Seattle and no alternative routes have been developed or are planned.

According to the North Corridor Extension (NEXT) Project estimates, by 2000, King County-bound transit use rates from Southwest Snohomish County will double the mid-1980s' rate, which ranged from 5 to 15 percent. By 2020, transit use is projected to increase substantially as land use densities enhance access to transit and massive congestion drives people away from their automobiles.

## High-Capacity Transit Planning: 1983–1986

The combination of population and employment growth and projected travel demand in the I-5 corridor led King and Snohomish County officials to begin a series of high-capacity transit studies in the early 1980s. Three major studies formed the basis for the right-of-way preservation program.

1. The first project, conducted by PSCOG and Metro Transit, covered I-5 north of Seattle to just north of the Snohomish County line. The North Corridor Project determined that rail or high-speed bus was feasible in the North Corridor.

TABLE 1 SNOHOMISH COUNTY, WASHINGTON, POPULATION AND EMPLOYMENT FORECASTS

| Forecast   | 1980    | 1990    | 2000    | 2020    |
|------------|---------|---------|---------|---------|
| Total      |         |         |         |         |
| Population | 337,720 | 429,016 | 555,854 | 788,346 |
| Households | 120,699 | 164,285 | 220,288 | 334,693 |
| Employment | 116,582 | 153,819 | 205,444 | 297,245 |

SOURCE: PSCOG, June 1988

2. Based on that study, the Snohomish County Transportation Authority (SNO-TRAN) undertook an analysis (the NEXT Project) of high-capacity transit feasibility in Southwestern Snohomish County. This project stretched from the Snohomish County line to just north of Everett.

3. In response to expressions of interest from other parts of King County, Metro and PSCOG undertook the Multi-Corridor Project, a broader based high-capacity transit study, which added the corridors east and south of Seattle to the work done to the north. A fourth study, the TAC-SEA Project, explored extensions of the high-capacity system south to Tacoma.

In January 1986, the Board of SNO-TRAN found that rail transit would be feasible in the Southwest Snohomish County portion of the I-5 corridor and instructed the NEXT Project to continue work toward the creation of a rail system. Priority was given to right-of-way preservation because reality indicated that any high-capacity system, specially rail, would be many years in the future.

This reality was borne out by subsequent actions of the Multi-Corridor Project. In June 1986, the Multi-Corridor Project was held off until some time between 1993 and 1995, when a variety of indicators would structure the next steps in high-capacity transit (rail) planning. Because King County would contain 90 percent of some 110 mi of a regional rail transit system, the action of the Multi-Corridor Project put all rail planning in the region effectively in limbo.

### **SNO-TRAN's Decision to Move Forward**

Despite the decision in King County, SNO-TRAN officials adopted an interim work program, designed to carry forward high-capacity planning until the 1993-1995 reconsideration of rail system development. The interim work program was designed to address unanswered questions and solve problems in Snohomish County that local officials felt could not be held off. Right-of-way preservation topped the list.

Three issues emerged immediately. Rights-of-way could not be preserved because (a) regional decisions effectively eliminated the project from the short-term calendar; (b) no one knew if the project ever would come into Snohomish County; and (c) SNO-TRAN, the countywide public transportation planning agency, only had a staff of three and no assets that could be used to secure land.

The one asset that SNO-TRAN and the NEXT Project had was cooperation. The NEXT Project had been created as a joint endeavor of PSCOG, SNO-TRAN, and the county's two transit operators. A 13-member policy committee made up of elected officials, representing all the jurisdictions in the NEXT study area, provided overall policy coordination. A technical advisory committee (TAC) of senior planning and public works personnel from each of the study area jurisdictions supported the project staff and the policy committee.

In addition to a structure that brought in all the affected parties, the NEXT Project actively sought consensus throughout its first phase. When SNO-TRAN adopted the concept of rail, that action was taken to each of the jurisdictions in the study area for ratification. The *NEXT Newsletter* was sent regularly to public officials, community leaders, and agency

personnel to keep information moving throughout the study area and beyond.

### **THE AGREEMENT**

As early as December 1985, development of a right-of-way preservation strategy had become a major topic for NEXT Project participants. Before the June 1986 Multi-Corridor Project action to hold off rail planning, it had been assumed that right-of-way acquisition might begin as early as 1990, following the official designation of the high-capacity corridor.

#### **The Genesis of the Right-of-Way Agreement**

Following the Multi-Corridor Project action, the NEXT Project Team convened a special meeting of the TAC to consider what elements of the NEXT Project work program could be rescued. The TAC recommended an intergovernmental agreement that would hold right-of-way until a rail system construction program could be approved for the region. An 18-month development program began that resulted in a nine-jurisdiction agreement to preserve options for high-capacity transit rights-of-way in the I-5 corridor.

#### **The Battle to Agree**

In 6 months, the TAC decided what the agreement would contain and in another 4 months a first draft was created. By the time it was transmitted to the attorneys of the nine jurisdictions in May 1987, the agreement had gone through three major revisions. The attorneys took another 4 months to review the document; by the time their last review was completed, six more versions had been developed. By the time the nine agencies signed the agreement in January 1988, the agreement had undergone 11 formal revisions.

What were the issues that resulted in so many changes over the 18-month design period of the agreement? Some concerned overall policy relative to rail versus other high-capacity transit modes. In a largely suburban county, the logic of fixed-route rail versus more flexibly routed bus transit was a major concern. Other issues were motivated by fear that the process was moving too fast and might jeopardize later efforts including those to secure federal funding. Specifically, concerns were voiced about UMTA's prohibition on prematurely selecting alignments and sites before completing UMTA's full alternatives analysis process. At the time these debates were going on, the use of federal funds for the high-capacity system was considered definite. Concerns about local autonomy and land use planning processes headed many agendas. Local control of land use planning is a binding principle in Washington state and one that was jealously guarded by each of the jurisdictions' representatives. Adding complexity to already complex planning and project review procedures raised hackles on virtually all the participants. Legal issues such as binding of future decision makers and interfering with the state's environmental protection laws dominated much of the attorneys' discussions.

A substantive issue that could have killed the agreement emerged after months of negotiation. Several of the jurisdictions raised fears that the agreement would undercut or supersede comprehensive plans, transportation planning policies, and standing procedures for environmental reviews. For example, from Snohomish County's perspective this agreement applied to an area greater than any covered by any of its plans. (The county does not have a single, comprehensive plan.) The implications of this issue alone suggested months of debate. As a result of a session with the jurisdictions' attorneys, it was decided that this agreement would be classed with those agreements (favored by policy makers) that set direction but do not have force of law. This agreement then would be considered an informal agreement rather than a legally binding formal contract. Although this arrangement appeared inadequate to those who felt right-of-way preservation called for stronger actions, the majority knew that the only way the agreement would be approved was to make it voluntary.

The extent to which the participants exerted efforts to make the agreement work was gratifying. For example, the nine attorneys agreed to send a set of delegates to hash out the last necessary legal language changes. The attorneys, along with the TAC members, then acted as advocates for the agreement when the final draft went to each of the nine jurisdictions for adoption. Without their support, the entire effort would have floundered.

### The Product

In reviewing the 11 versions of the agreement, it is hard to discern the major changes that occurred during its construction. Many of the changes were small—wording changes to please one jurisdiction or another. Other changes were substantive and reflected serious analyses of issues related to preserving land without solid authority to do so.

The final agreement contains four major elements:

1. Statements of concurrence that high-capacity transit can benefit Snohomish County residents and businesses and that right-of-way for the high-capacity transit system and its associated facilities should be preserved through policy and planning actions consistent with other governmental considerations.
2. Statements of roles and responsibilities for each of the nine signator jurisdictions.
3. Descriptions of a right-of-way reservation program that includes a project review process, authorizes special studies, and encourages public information efforts about right-of-way reservation. The agreement establishes budgetary procedures to support the reservation program.
4. Maps of the right-of-way with proposed station areas and park-and-ride lot locations. Right-of-way is defined in the agreement to include both the land for tracks or busways and land for all related facilities such as stations, parking, and maintenance yards.

Two of these elements have proved to be most significant in the year since the agreement was signed: the roles and responsibilities, and the reservation program.

### Roles and Responsibilities

According to the agreement, "the parties . . . have set out the following roles and responsibilities." Six pages assigned functions to each of the nine signator agencies. Briefly, these roles and responsibilities are as follows.

SNO-TRAN will manage the right-of-way reservation program, administer funds, coordinate program-related work, and serve as liaison with the parties.

Snohomish County and the cities of Everett, Lynnwood, and Mountlake Terrace will be responsible for local land use planning and decision making along the right-of-way. They will include the I-5 corridor as the high-capacity transit system corridor in their comprehensive and transportation planning considerations. In addition, they will study land use and transportation impacts in the vicinities of the proposed stations and (if consistent with other governmental considerations) adopt policies encouraging future developments that are compatible with or support the high-capacity transit system. They will participate in the right-of-way reservation review process.

Community Transit and Everett Transit, the two transit operators, will (a) designate the I-5 corridor in their transit plans as the future high-capacity transit route; (b) evaluate future bus service requirements and begin planning transitional service and facilities that can be converted to or complement the high-capacity transit system; and (c) participate in the right-of-way process.

The Washington State Department of Transportation (DOT), with jurisdiction over the I-5 corridor, will (a) cooperate with local jurisdictions in the development of the high-capacity transit system; (b) participate in the right-of-way review process; and (c) "review for consistency with the high capacity system all decisions affecting the I-5 right-of-way . . . ."

The public utility district (PUD), responsible for the old interurban rail right-of-way parallel to I-5 and a key alternative in certain areas, will "recognize and consider" the interurban right-of-way for high-capacity transit and participate in the right-of-way review process.

PSCOG will "adopt and maintain a regional high capacity transit plan component as part of the Regional Transportation Plan" and will manage the right-of-way review process.

### THE RIGHT-OF-WAY RESERVATION PROGRAM

The Right-of-Way Reservation Program element of the agreement has three parts, two of which have been particularly successful during the agreement's first year.

#### The Right-of-Way Review Process

The right-of-way review process took many additional months to define once the agreement was signed. When the agreement was being drafted, there was consensus that the review process should be referenced only generally so that the particulars of the process could change over time, as an understanding of how it worked was gained and as conditions changed. Under no circumstances was the process of amending the agreement every time the review process needed revision considered desirable.

The review process design eventually was fitted into the existing State Environmental Protection Act (SEPA) check list review process. This was done to (a) avoid creating another review process; (b) fit this review into existing review agency staff assignments; (c) fit this review into a formal processing timetable; and (d) reach a spectrum of agencies that might have an interest in the review. A universal priority was keeping the process simple and not adding to the work loads or time lines that review agencies must follow.

Once these decisions were made, PSCOG developed a review form that was discussed thoroughly and revised several times before the TAC adopted it.

Only after the review process had been formalized was the following set of unanticipated loopholes in the program identified:

1. The review process starts simultaneously with the SEPA review stage, which is far down the project development process. In some cases, earlier notification would be more beneficial because the project could be altered before plans solidified.

2. Major interjurisdictional projects may slip through the process if responsibility for notifying PSCOG is unclear. An example is a proposal to use the interurban right-of-way for a bicycle trail that would cross four jurisdictions' boundaries and operate on the PUD's right-of-way.

3. Projects already beyond the SEPA review stage may proceed without any notification to PSCOG. This process has resulted in the loss of one potential station area in which a massive project, approved several years ago but as yet unbuilt, was suddenly constructed, to the surprise of the right-of-way agreement participants.

Solutions to these loopholes are emerging. In the first two cases, the affected jurisdictions have been so conscientious that early notification of a number of important projects has occurred. Every effort is made to remind local reviewers of the review process so that the process keeps working.

A solution to the third loophole and to the potential problem of local agencies' simply forgetting to notify PSCOG about a project is being explored. One possibility, although expensive to develop and update, would be a land development status inventory of the key parcels along the right-of-way. However, such an inventory would give notice of projects already in the pipeline that would never ordinarily come up for right-of-way review.

#### Reviews to Date

To date, the review process has been successful in the following ways:

1. The Interurban Trail project was brought to the attention of the NEXT Project early in its development so that trail planners were aware of potential right-of-way conflicts; the PUD was reminded of its agreement to preserve the right-of-way for high-capacity transit; and NEXT Project staff were added to the Trail Project task force for the balance of the project. In the end, the PUD issued a revocable use permit

for the trail, reasserting its commitment to hold the right-of-way for future high-capacity transit use. Further, the trail planners, working with the NEXT Project planners, ended up understanding each others' safety, construction, and operational issues, so the two projects may be developed side-by-side.

2. A developer proposed an apartment complex that intruded into the PUD's right-of-way near Everett. The right-of-way review process caught the intrusion and notified the PUD, which had not been aware of it. The project was redesigned. As a result, high-capacity transit right-of-way setback standards are being developed.

3. The State DOT and the PUD had been negotiating to expand a park-and-ride lot that lies on the interurban right-of-way. The expansion was predicated on a proposed perpetual easement for high-capacity transit use. Because the NEXT Project strongly supported the easement concept, the project went ahead.

4. A major developer is proposing a mixed-use development at the site of a proposed park-and-ride lot to serve a proposed station. After initial discussions, the developer pointed out that the site would not support a public station-oriented parking facility in addition to the private uses planned. This defect may affect the location of a future station or it may be possible to negotiate a public access easement to the station from the development and from the bus stop that serves the development.

#### Special Studies

The Right-of-Way Reservation Program also authorized any of the signators to undertake special studies to help preserve rights-of-way or in other ways support the intent of the agreement.

#### The Station Area Studies

Since the special studies concept was proposed, SNO-TRAN has undertaken a series of station area studies designed to introduce high-capacity transit planning considerations to affected jurisdictions. These studies have been jointly sponsored by SNO-TRAN using UMTA Section 9 funds, the affected jurisdictions, Community Transit, and PSCOG. In addition, in-kind support is provided by the State DOT, the county, and jurisdictions neighboring the study area through staff participation in the study advisory committee. To date, the studies' budgets have averaged \$50,000. The studies have taken about 9 months to complete.

Under the station area study program, the I-5 corridor between the county line and downtown Everett, a distance of about 17 mi, has been divided into four overlapping study areas covering the portion of the corridor in each of four jurisdictions: Mountlake Terrace, Lynnwood, Snohomish County (unincorporated area), and Everett. The studies for Mountlake Terrace and Lynnwood are complete; the Snohomish County study will be completed at the end of 1989. The Everett study will be begun in 1990.

The station area studies are preplanning studies. A second round of station area studies is assumed once the high-capacity

system is under preconstruction design. This concept was adopted from the Portland, Oregon, MAX system planning program. At this early stage, the studies are designed to provide the following information to the affected jurisdictions:

1. Possible station areas are identified, but are purposefully vague in their definition because identifying specific sites would be premature. The station area is shown as a circle, about a quarter-mile in diameter (the walking distance standard for station planning), located in a general area where a station might be effectively located.
2. Information is collected about the existing zoning, environmental considerations, traffic, and access issues (development potentials, major public or private project impacts, and population and traffic forecasts).
3. Potential station impacts are identified including impacts on the environment, quality of life, economic development, traffic, and the overall transportation system.
4. Site-related issues that might be fatal flaws or major enhancements for a station are explored. These issues include access barriers (grade problems, hazardous pedestrian access); the proximity of major user groups (e.g., schools and apartment complexes); and environmental problems (wetlands).

Recommendations for comprehensive plan changes and new high-capacity transit-supportive land use and transportation system policies are also provided.

To date, the use of the station area studies by the local jurisdictions has been limited. Mountlake Terrace's study, completed in January 1988, spent many months under analysis by the planning commission, which recommended city council adoption of most of the study's recommendations. The community's negative reaction to the proposed actions (which would have opened the way for possible creation of mid- to high-density transit development zones and transit-supportive planning) forced the council to reconsider which elements of the planning commission's recommendations it would amend into the comprehensive plan. Finally, in September 1989, the council amended the comprehensive plan to allow for compatible site planning and transportation system improvements, but held off instituting higher density zoning until the build decision is made.

The Mountlake Terrace community's reaction reflects in part the lack of public information provided during and after the study as well as general community fears about growth, higher density development, and loss of quality of life. A theme raised by the community, and subsequently repeated elsewhere along the corridor, was outrage that communities with stations would become nothing more than access routes for neighboring communities not directly served by the system. The message was sent that if the station in Mountlake Terrace could be reserved for the city's residents, much of the opposition would be withdrawn. What was interesting was that the same people who advocated bus and rail transit protested the proposed siting of high-capacity transit facilities and the type of development needed to support the system.

The second station area study, prepared for the city of Lynnwood, has just begun planning commission review. This study may produce a different outcome than the Mountlake

Terrace study did. Lynnwood, which has a retail area of primarily single-story minimalls and no defined downtown, is considering using the concept of a downtown Lynnwood station to help create a pedestrian-oriented, mixed-use downtown. The voter initiatives in Seattle and Bellevue, capping office construction, may bring major development to Lynnwood, 17 mi north of Seattle. The station area recommendations for a business-oriented downtown, mixed with retail and residential elements around a station, may help structure thinking as development pressures mount.

### Legal Research

As part of the station area study program, a series of legal research projects has been conducted. A well-known land use planning law firm in the area was placed under contract to provide papers on issues of interest to the local jurisdictions. To date, two papers have been prepared: (a) "Scope of and Limitations on Land Use Regulatory Authority for Ensuring Development Consistent with Proposed High Capacity Transit"; and (b) "Legal Constraints on Property/Air Rights Acquisition for High Capacity Transit."

Additional legal research will be undertaken on request of the participating jurisdictions.

### Integrated Work Program

The station area study program has also served as a catalyst for planning coordination. At the outset of the Lynnwood study, it was determined that 10 major corridor-related transportation projects, being conducted by six agencies, were in progress or scheduled to begin immediately. In response, an integrated work program was developed as the first task of the station area study. The following actions are examples of what the integrated work program did.

1. It created a mechanism for sharing information between the projects even to the extent of outlining data requirements for each project and possible sources from other projects.
2. It caused several projects to be rescheduled and redefined to eliminate duplication and to move work programs to later stages on the basis of work done by earlier projects. For example, the station area study was used to scope possible station and other high-capacity transit sites. Community Transit's transit center study was held up until the station area study recommendations came in so that transit center siting could use the recommendations as a base. The State DOT's park-and-ride location study was restructured and rescheduled to become a design study, building from the transit center's findings.

The result promises to be an approach to preserving right-of-way for the HCT system through the acquisition of land for interim transit facilities that are desperately needed today. Even if the future HCT system fails to use those facilities, two current projects were furthered by this simple concept.

### CONCLUSIONS

The right-of-way agreement is popular with public officials and the media. Whether this can be a measure of long-term

success or not, is not clear. What is clear is that it gave local officials an opportunity (a) to agree on something to support and (b) to do something productive during the long wait for the regional system to develop.

The agreement has also been fairly easy to understand and to use. The review process has been integrated into SEPA reviews of local jurisdictions with apparently little difficulty. Public officials have become aware of the right-of-way and are advocates for it, something that shows up as they consider permits for projects that might affect it. The station area studies are also popular. There has been little difficulty in securing funding or eliciting advisory committee participation.

One side benefit of the agreement development process was the cadre of committed, informed, jurisdictional staff that it helped form. Since the 18 months of working together on the agreement, that same group of people has continued to work together as the technical advisory committee to the NEXT project, meeting monthly to staff the station area studies, check the right-of-way reviews, and coordinate other projects occurring in the corridor.

The agreement will have served a purpose even if the high-capacity system is not built. First, it has brought public transportation into the local land use decision-making process and has begun to build it into comprehensive plans. Second, it has helped sharpen public official awareness that transportation issues may be more manageable when addressed within partnerships. Finally, it has helped bring to the fore the reality that land for community facilities—in this case stations and park-and-ride lots—is disappearing much more quickly than had been recognized. As an educational device, the agreement has proved its worth.

There are problems too. The ultimate effectiveness of the strong antigrowth movement in the county and the region can not be predicted. The reaction of the Mountlake Terrace community to the prospect of higher density development around stations was one manifestation of that antigrowth sentiment. In the November 1989 election, one of the Mountlake Terrace council members who had staunchly supported the high-capacity program was defeated. As she had also championed other projects that would have affected the single-

family residential character of the city, the degree to which her high-capacity system position affected the vote is unclear.

The lack of an adopted regional high-capacity system plan with such features as specified alignments, adopted technology, and formal station siting criteria means that regardless of their best intentions, public officials are unable to expedite approvals of projects. Developers cannot be required to comply with something that is still conceptual.

The context may change. In November 1988, the Seattle Metro Council acted to rescind the 1986 action putting aside rail planning and to take the lead for the development of the regional rail system. In the fall of 1989, Metro began a \$15 million series of studies to move toward the design of the initial system. At some point in the foreseeable future, it may be possible to move the right-of-way agreement from its nonbinding status to an action status.

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