MEMORANDUM OF UNDERSTANDING
BETWEEN
THE WASHINGTON STATE DEPARTMENT OF ECOLOGY AND
THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY
REGARDING CAPITAL EXPANSION PROJECTS

#GA 0269 - 19

This MEMORANDUM OF UNDERSTANDING ("MOU"), effective this 4th day of
December, 2019, is entered into between THE WASHINGTON STATE DEPARTMENT
OF ECOLOGY ("Ecology") and the CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY ("Sound Transit"). Collectively, in this MOU, Ecology and Sound Transit are
referred to as "the Parties." For and in consideration of the mutual covenants contained herein,
Ecology and Sound Transit do hereby agree as follows regarding Sound Transit’s existing and
future capital expansion projects.

RECITALS

WHEREAS, Ecology has jurisdictional authority over the Washington Water Pollution
Control Act (RCW 90.48) and is also designated as the state water pollution control authority for
purposes of the federal Clean Water Act;

WHEREAS, Sound Transit is a regional transit authority created pursuant to RCW
81.104 and 81.112 with all powers necessary to implement a high capacity transit system within
its boundaries in King, Pierce, and Snohomish Counties;

WHEREAS, the Central Puget Sound area voters have approved funding for various
Sound Transit capital expansion plans, including Sound Move in 1996, Sound Transit 2 in 2008,
and Sound Transit 3 in 2016. Sound Transit 2 (ST2) includes light rail extensions that are either
in or about to start construction and are scheduled for completion in 2024. Sound Transit 3
(ST3) includes light rail extensions that are in the project development phase and scheduled for
completion in 2041;

WHEREAS, light rail propulsion is electric and does not require fueling and can either
be mixed with vehicular traffic in the street or on exclusive guideway;

WHEREAS, Ecology and Sound Transit both recognize the mutual benefits of the
expansion of Sound Transit’s light rail system in the Central Puget Sound Region, including the
ability of Sound Transit’s high capacity light rail system to meet long-term regional
transportation needs, reduce greenhouse gas emissions and help address traffic congestion in the
region;

WHEREAS, the Parties have a joint interest in serving the Central Puget Sound Region
with high quality, convenient, public transit. The light rail system provides a reliable, high
frequency transportation option for residents and regional commuters and to benefit residents and
workers by linking to multiple destinations in the region;
WHEREAS, the Parties also have a joint interest in protecting the environment, recognizing Ecology’s mission to, among other things, protect water quality, and Sound Transit’s commitment to environmental stewardship and sustainability;

WHEREAS, the Parties acknowledge that certain light rail projects will require federal Clean Water Act Section 401 Water Quality Certifications that will require compliance with water quality standards;

WHEREAS the Parties also acknowledge a mutual desire to secure coverage under Washington State’s Municipal Stormwater General Permit for discharges from municipal separate storm sewer systems owned or operated by Sound Transit;

WHEREAS, the Parties acknowledge that although stormwater runoff from various land uses are well characterized and best management practices are used to ensure compliance with water quality standards, no conclusive characterization of stormwater runoff from light rail in the Puget Sound Region has been completed.

WHEREAS, the Parties desire to work cooperatively to identify innovative strategies to protect Washington State’s waters and to identify and address water quality and stormwater issues (if any) on a reasonable schedule consistent with Ecology’s regulatory requirements.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Sound Transit and Ecology will work cooperatively to conduct a study to characterize the quality of stormwater discharged from light rail guideway. The study will be completed in accordance with an Ecology-approved Quality Assurance Project Plan (QAPP), within two (2) years from the effective date of the approved QAPP. The data and analysis from the study will be used, among other things, to inform the design of future Sound Transit light rail projects that will be completed between 2030 and 2041 and that may discharge stormwater to surface waters of the state of Washington.

2. Ecology and Sound Transit will work cooperatively to evaluate coverage as a secondary permittee under the State of Washington Phase II Municipal Stormwater General Permit (“MS4 Permit”) for stormwater discharges from municipal separate storm sewer systems owned or operated by Sound Transit. In this regard, the Parties acknowledge and agree that certain provisions in the MS4 Permit are not applicable to Sound Transit’s stormwater discharges.

3. As part of its evaluation of coverage under the MS4 Permit, Sound Transit will consider using the demonstrative approach to MS4 Permit compliance, which may involve developing specific best management practices for Sound Transit’s projects and incorporating those best management practices into a Sound Transit Stormwater Management Manual. The Parties agree to work collaboratively in evaluating the MS4 Permit coverage issues and identifying reasonable compliance pathways, which could include Sound Transit electing to conduct an AKART (All Known, Available, and Reasonable Methods of Prevention and Treatment) Study.

4. Ecology acknowledges that Sound Transit has and may enter into concurrence agreements with local governments for purposes of these light rail projects, and that such
5. Ecology agrees that this MOU is based in part on, and supplements, its 2014 and 2015 letters to Sound Transit discussing stormwater discharges from Sound Transit’s light rail projects, which are Appendices to this MOU and incorporated by reference. In addition, this MOU clarifies Ecology’s response to comments about light rail in the 2019 Stormwater Management Manual for Western Washington (SWMMWW) and Municipal Stormwater Permits. For projects scheduled to be completed by 2024, Ecology provides assurance through this MOU that it will rely on local jurisdictions’ concurrences/local programs and permits to support the current design of the 2024 projects, regarding stormwater treatment or detention. Ecology will not direct any changes to the design of those projects with respect to stormwater treatment or detention. For ST3 projects not yet in design and which are scheduled to be completed between 2030 and 2041, the characterization study referenced in paragraph 1 will be used to inform the design of those projects.

6. The Parties acknowledge that Ecology and the Washington State Department of Transportation (WSDOT) cooperatively administer a demonstrative approach team for addressing stormwater runoff from linear transportation projects. Sound Transit will consider participation in this approach.

7. For 401 Certifications issued between now and 2024, Ecology will consider the agreements contained herein when evaluating conditions necessary to ensure compliance with water quality standards, or reference coverage as a secondary permittee under the MS4 Permit, if coverage has been obtained by the time the light rail projects are operational.

8. This MOU will remain in effect until August 1, 2024, unless this MOU is extended by mutual written agreement of the Parties or superseded by a future written agreement of the Parties.

9. From time to time, the Parties may wish to revise this MOU. Any revision of this MOU must be made in writing, and signed by the Ecology Director and Sound Transit CEO. Such modification will become effective on the date of execution by the last signatory.

10. Each Party’s Designated Representative is identified below. Each Designated Representative will serve as the single point of contact for purposes of ensuring implementation of the commitments in this MOU. Either Party may change its Designated Representative after consultation with the other Party, provided that the new Designated Representative has appropriate qualifications and level of authority to fulfill the expectations of the role.

**SOUND TRANSIT:**

Don Billen  
Executive Director, Planning  
Environment, and Project Development  
Sound Transit  
401 S Jackson St.  
Seattle, WA 98104

**ECOLOGY:**

Heather Bartlett  
Water Quality Program Manager  
Department of Ecology  
300 Desmond Dr. SE  
Lacey, WA 98503  
(360) 407-6405
11. The Parties will work cooperatively and in good faith to resolve issues. Any disputes or questions of interpretation of this MOU or the performance of either Party under this MOU that may arise between Sound Transit and Ecology shall be governed under the dispute resolution provisions in this Section. Cooperation and communication are essential to resolving issues efficiently.

In the event of a dispute regarding implementing this MOU, the parties shall make all reasonable efforts to resolve the dispute at the lowest possible level. The parties may request assistance of a mutually agreed upon facilitator at any time. If the parties engage a facilitator, the timelines will be adjusted according to a mutually agreed upon schedule. Unresolved disputes will be settled in the following hierarchical process:

Step 1. If disputes cannot be resolved between immediate staff and supervisors, staff will document the issue, its nature, timing, background, attempts at resolution, and any other relevant facts. Staff from each party will present a consolidated request for resolution to the Designated Representatives.

Step 2. If the Designated Representatives cannot resolve the dispute within 14 days, they will document this step and send the entire packet on to the Ecology Deputy Director and Sound Transit Deputy CEC.

Step 3. If the Deputy Director and Sound Transit Deputy CEO cannot resolve the dispute within 14 days, they will document efforts and send the entire packet to the Ecology Director and Sound Transit CEO, who will attempt to resolve the dispute in a timely manner.

12. If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provision of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

DATED this 9th day of December, 2019.

WASHINGTON STATE DEPARTMENT OF ECOLOGY

By ____________________________
Maia Bellon, Director

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

By ____________________________
Peter Rogoff, CEO

GA 0269-19
February 4, 2015

Ms. Karin Ertl
Sound Transit
401 South Jackson Street
Seattle, WA 98104

RE: Railways as Pollution-Generating Surfaces

Dear Ms. Ertl:

This letter is to clarify aspects of the Washington State Department of Ecology's (Ecology) comment letter of July 24, 2014, regarding Sound Transit’s Long Range Plan Update Draft Supplemental EIS (Draft EIS). The Draft EIS focuses on how, when, and where mass transit should grow in the Sound Transit service area to support and respond to an estimated 30 percent growth in population by 2040. The document is a high-level, broad-based planning tool to implement Sound Transit’s long-range vision. It does not provide any project-specific details or information. Similarly, Ecology’s July 24, 2014, comments on the Draft EIS are also high-level and overarching in nature.

Ecology’s July 24, 2014, letter states that Ecology considers any rail track to be a pollution-generating surface. This statement is not based on any specific studies, but rather reflects Ecology’s default position based on a general consideration of how railways are constructed and operated. Individual projects will undergo site-specific analyses during project-level environmental review to determine appropriate stormwater controls.

Ecology is interested in reviewing the studies upon which Sound Transit based its decision to better inform our position regarding the pollution-generating nature of light railways. Ecology would also like to review any studies Sound Transit can offer related to the pollution-generating nature of other rail surfaces (e.g., commuter rails). Please work with Robert (Bobb) Nolan, PE, stormwater engineer working out of our Bellevue NW Regional Office, to share those materials with Ecology’s stormwater engineers. You may contact Bobb at robert.nolan@ecy.wa.gov or (425) 649-7197.
Ecology appreciates the opportunity to provide this clarification, and we look forward to working with Sound Transit to better understand and plan for the environmental benefits of its expanding regional transit system.

Sincerely,

Bill Moore, P.E.
Water Quality Program
Program Development Services Section Manager

cc: Josh Baldi, NW Regional Director, Ecology
    Alice Kelly, NW Regional Planner, Ecology
    Kevin C. Fitzpatrick, WQP Section Manager, Ecology NWRO
    Erik Stockcake, SEA Section Manager, Ecology NWRO
    Raman Iyer, CTAU Unit Supervisor, Ecology NWRO
    Dave Garland, Watershed Unit Supervisor, Ecology NWRO
    Robert Nolan, PE, Ecology NWRO
    Anne Dettenbach, Ecology NWRO
    Ed O’Brien, PE, Ecology HQ
July 24, 2014

Sound Transit
Attn: Karin Ertl
401 South Jackson Street
Seattle, WA  98104

Re:  Sound Transit 2014 Long-Range Plan Update Draft Supplemental EIS
     Ecology SEPA 201402979

Dear Ms. Ertl:

Thank you for the opportunity to comment on Sound Transit’s Long Range Plan Update Draft Supplemental EIS. This document focuses on how, when, and where mass transit should grow in the Sound Transit service area to support and respond to an estimated 30% growth in population by 2040. The Department of Ecology (Ecology) reviewed the draft plan and offers the following comments.

General

Ecology appreciates Sound Transit’s commitment to reducing the environmental impacts of traffic to the State’s air, water, and land, and supports the thorough analysis Sound Transit has undertaken to evaluate the impacts of various forms of mass transit.

Water Quality and Hydrology

WATER QUALITY
Anne Dettelbach, Northwest Regional Office (425) 649-7093
Bobb Nolan, PE, Northwest Regional Office (425) 649-7197
Ed O’Brien, PE, Headquarters (360) 407-6438

- Ecology considers any rail track to be a pollution-generating surface. This is true for light rail and commuter rail surfaces. Therefore, operating a rail system IS considered a pollutant generating activity.

- Specific potential sources of pollutants carried by stormwater runoff include:
  - Metals from track abrasion;
  - Metals from wheel abrasion;
Material from disk brakes;
Material from lubrication and noise mitigation activities;
Blow-in pollutants from surrounding pollution-generating surfaces (e.g., roads).

Ecology notes that some of these pollutants may require enhanced treatment.

- Ecology determines the 'perviousness' of a surface in the following manner:
  - If the track is at grade on ballast, the track and ballast are considered impervious surfaces. This is due to the heavily compacted underlying surface.
  - If the track is elevated, and stormwater runoff drips off the edges without collecting or concentrating, then the surface directly below the tracks determines whether it is impervious or not.
  - If the track is elevated, and the stormwater runoff collects into a conveyance system or concentrates by any other method, the surface is considered an impervious surface.

- New impervious surfaces will trigger flow control requirements if the applicable thresholds are exceeded. These thresholds are set forth in stormwater management manuals such as the Stormwater Management Manual for Western Washington (2012).

- In all cases, Sound Transit should confer with the jurisdictions through which its project travels to determine necessary stormwater control requirements (flow control or runoff treatment).

If you have questions or would like to respond to these comments, please contact the appropriate reviewing staff listed above. Thank you for considering these comments from the Department of Ecology.

Alice Kelly
Regional Planner
Department of Ecology
Northwest Regional Office

cc: Josh Baldi, NW Regional Director, Ecology
    Kevin Fitzpatrick, WQP, Ecology
    Raman Iyer, WQP, Ecology
    Anne Dettelbach, WQP, Ecology
    Bobb Nolan, PE, Ecology
    Ed O’Brien, PE, Ecology