

MUKILTEO MULTIMODAL PROJECT

Record of Decision



AUGUST 2014

Table of Contents

1	Decision	1
1.1	Project Description	1
1.2	Basis for the Decision.....	3
1.2.1	Planning and Project Development Process	3
1.2.2	Purpose and Need.....	4
2	Alternatives Considered In the Final EIS	6
3	Measures to Minimize Harm and Project Commitments	7
4	Monitoring and Enforcement	7
5	Opportunities to Comment	7
6	Determination and Findings	9
6.1	National Environmental Policy Act	9
6.2	Executive Order 13175 Consultation and Coordination with Indian Tribes	10
6.3	Executive Order 12372 Intergovernmental Review of Federal Programs	11
6.4	Clean Air Act	12
6.5	Clean Water Act, Coastal Zone Management Act, and Rivers and Harbors Act.....	12
6.6	Endangered Species Act.....	13
6.7	Magnuson-Stevens Fisheries Conservation and Management Act	14
6.8	Marine Mammal Protection Act	14
6.9	Fish and Wildlife Coordination Act	14
6.10	Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act	15
6.11	Executive Order 12898 Environmental Justice	15
6.12	Section 106 of the National Historic Preservation Act.....	16
6.13	Section 4(f) of the U.S. Department of Transportation Act.....	17
6.13.1	Absence of Prudent and Feasible Avoidance Alternatives	18
6.13.2	Determining “Least Harm” Alternatives	18
6.13.3	Section 4(f) Evaluation	18
6.14	Americans with Disabilities Act/Architectural Barriers Act.....	19
6.15	Executive Order 11988 Floodplain Management.....	19
6.16	Resource Conservation and Recovery Act	19
6.17	Noise Control Act	20
7	References	21

Appendices

- A Figures
- B Project Commitments
- C Biological Opinions, Commitments, and Authorizations
- D Section 106 Memorandum of Agreement
- E Comments Received on the Final EIS

Acronyms and Abbreviations

ABA	Architectural Barriers Act
ADA	Americans with Disabilities Act
BMP	best management practice
CFR	Code of Federal Regulations
DOT	Department of Transportation
EA	environmental assessment
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FTA	Federal Transit Administration
HOV	high-occupancy vehicle
IHA	Incidental Harassment Authorization
LEED	Leadership in Energy and Environmental Design
Magnuson-Stevens Act	Magnuson-Stevens Fisheries Conservation and Management Act
MMPA	Marine Mammal Protection Act
MOA	Memorandum of Agreement
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System
NRHP	National Register of Historic Places
ROD	Record of Decision
SEPA	State Environmental Policy Act
SHPO	State Historic Preservation Officer
Sound Transit	Central Puget Sound Regional Transit Authority
SR	State Route
USC	United States Code
USFWS	U.S. Fish and Wildlife Service
WDFW	Washington Department of Fish and Wildlife
WSDOT	Washington State Department of Transportation
WSF	Washington State Ferries

1 DECISION

The Federal Transit Administration (FTA), pursuant to 23 Code of Federal Regulations (CFR) 771.127, issues this Mukilteo Multimodal Project Record of Decision (ROD) finding that the requirements of the National Environmental Policy Act (NEPA) have been satisfied for the construction of the project by the Washington State Department of Transportation (WSDOT), Ferries Division. This ROD also provides findings on other environmentally related federal statutory requirements.

This ROD is based on the close review and independent evaluation of the planning and environmental process followed by WSDOT which involved numerous cooperating and participating agencies in developing project alternatives and evaluating their effects. These participants include the City of Mukilteo, the City of Everett, Snohomish County, the Port of Everett, Sound Transit, Community Transit, the U.S. Air Force, the U.S. Army Corps of Engineers, the Samish Indian Nation, the Stillaguamish Tribe, the Suquamish Tribe, and the Tulalip Tribes. This process has produced the *Mukilteo Multimodal Project Draft Environmental Impact Statement* (January 2012) and the *Mukilteo Multimodal Project Final Environmental Impact Statement* (June 2013) and has led to the determinations made herein (collectively referred to as the “environmental review documents”).

This ROD summarizes the Mukilteo Multimodal Project, the background of its development, the alternatives that FTA and WSDOT considered, the opportunity to comment, the public/tribal/agency comments and their responses, the basis for the decision, and the mitigation measures the project requires. The ROD does not replace or negate any of the information or descriptions in the environmental review documents. Rather, the ROD and its associated published environmental review documents (incorporated herein by reference) are part of the FTA environmental record for the project. On the basis of its consideration of the environmental review documents, FTA finds that the project has met all applicable standards and that this ROD is complete and supports the determination that all NEPA requirements have been met.

1.1 Project Description

The selected Mukilteo Multimodal Project is the Preferred Alternative as described in the Final Environmental Impact Statement (EIS). The project is designed to improve the operations and facilities serving the mainland terminus of the Mukilteo-Clinton ferry route. The ferry route is part of Washington State Route (SR) 525, the major transportation corridor crossing Possession Sound, which separates Island County (Whidbey Island) from the central Puget Sound mainland. The route connects local and regional transportation systems serving many modes of travel, including bus and rail transit, freight, and vehicles, as well as bicycle and pedestrian use. In Appendix A, Figure 1-1 shows the regional setting, Figure 1-2 shows the general project area, and Figure 1-3 shows the Preferred Alternative.

WSDOT will develop the project on the western portion of the Mukilteo Tank Farm, a 20-acre area previously used by the U.S. Air Force. The Tank Farm currently contains lands, buildings, and building remnants; the foundations of fuel tanks that have been removed; and a large pier formerly used for fuel storage and loading. Much of the shoreline is armored with riprap. The project will construct in-water and upland facilities

for ferry terminal operations, provide a six-bay transit center, and improve connections to Sound Transit's Sounder commuter rail at Mukilteo Station.

The in-water facilities comprise the features needed for the ferry slip, including wingwalls and fixed dolphins. A floating dolphin will be relocated from the existing ferry terminal. The project will construct a new transfer span, including hydraulic-lifting mechanisms and structures and a bridge seat foundation, as well as a new concrete trestle and bulkhead. The Tank Farm Pier, which includes approximately 3,900 piles, will be removed. The project will dredge about 23,500 cubic yards¹ from part of the area now occupied by the pier to create a 500-foot-wide by 100-foot-long channel with a depth of 30 feet; this channel will allow a navigation depth of -28 feet at an average lowest tide.

WSDOT will remove the existing ferry slip and all of its marine structures, including the Port of Everett-owned public fishing pier and day moorage. The project will reconstruct the fishing pier and day moorage near the new multimodal facility.

A new passenger building and a maintenance building will be combined as a two-story building and aligned parallel to the shoreline. The building will bridge over the vehicle driveway to the ferry trestle, and an overhead passenger loading ramp will connect the second story of the building to the ferry passenger deck.

Other components of the project, described more fully in the Final EIS, include:

- A vehicle holding area with a capacity of about 266 vehicles.
- A building above the new toll booths containing the terminal supervisor's area.
- A new transit center with six new bus bays and a transit passenger area.
- Designated ferry employee parking spaces.
- A reconstructed First Street/Park Avenue intersection.
- A realignment and extension of First Street as a four-lane roadway with sidewalks and bicycle lanes, generally along the southern portion of the Mukilteo Tank Farm. These improvements will extend from the new signalized intersection with SR 525 to a traffic signal at the entrance to the new ferry terminal, and from there will continue as a two-lane road to the new bus transit and paratransit center and the Mount Baker railroad crossing.
- A new public parking lot near SR 525 between the BNSF Railway tracks and the new First Street extension to replace displaced on-street parking.
- A modified access road and parking layout that maintains existing functions and capacity for the Mukilteo Station and replaces displaced parking.
- A stormwater treatment facility between Front Street and the First Street extension east of Park Avenue.

¹ The volume of dredged material is larger than the 19,500 cubic yards described in the Final EIS to allow for a cap of clean material if the newly exposed sediment surface is contaminated.

- A pedestrian pathway next to First Street connecting to a waterfront promenade and incorporated into the passenger building, allowing continuous pedestrian access along the WSDOT-controlled portion of the waterfront.
- Other sidewalks and crosswalks linking the Mukilteo Station, ferry terminal, and transit center.
- New security fences and gates surrounding the holding area and the terminal.

1.2 Basis for the Decision

1.2.1 Planning and Project Development Process

The City of Mukilteo undertook planning efforts for its central waterfront in the early 1990s. The City's *Comprehensive Plan* derived several policies from the March 1995 *Mukilteo Multimodal/Intermodal Terminal and Access Study and Programmatic EIS* (City of Mukilteo 1995), which strongly endorsed moving the ferry terminal away from its current location. In 2004, WSDOT accelerated its own planning for improvements to ferry operations, safety, transit connections, and access. It initiated the NEPA review process in 2004 with work on an environmental assessment (EA). Early in 2006, based on environmental analysis and comments from the public, tribes, and agencies, FTA determined that an EIS would be required. FTA issued a Notice of Intent in the Federal Register in February 2006. In 2007, the Washington State Legislature put the project on hold due to funding and constructability issues associated with the previously identified alternatives, and pending the finalization of the Ferries Division's long-range plan.

In 2009, WSDOT completed the *Washington State Department of Transportation Ferries Division Final Long-Range Plan: 2009–2030* (WSDOT 2009) (Long-Range Plan). The Long-Range Plan presents a vision for the future of the ferry system that maintains current levels of service and includes limited terminal improvements. This vision is now a part of the latest *Washington Transportation Plan 2030*, which was adopted by the Washington State Transportation Commission in December 2010.

WSDOT and FTA reinitiated this project's environmental process in early 2010 with new project alternatives for review and evaluation.

The reinitiated NEPA/State Environmental Policy Act (SEPA) process included another round of project scoping, which started in February 2010, followed by a formal comment period that ran from September 29 through November 19, 2010. This led to the alternatives evaluated in the Draft and Final EIS. FTA published the Draft EIS in January 2012.

After considering comments received on the Draft EIS, FTA and WSDOT concluded that the Elliot Point 2 Alternative best meets the project's purpose and need. The project team considered suggestions from commenters and refined the Elliot Point 2 design to further improve its ability to meet the purpose and need, reduce environmental impacts, and enhance other benefits. FTA and WSDOT collaborated with interested tribes and others to determine a culturally sensitive design approach to guide the project. The modified alternative is the Final EIS's Preferred Alternative, to which this ROD applies. The Final EIS was issued June 7, 2013.

1.2.2 Purpose and Need

The Mukilteo Multimodal Project's purpose is to provide safe, reliable, and efficient service and connections for general-purpose transportation, transit, high-occupancy vehicles (HOVs), pedestrians, and bicyclists traveling between Island County and the Seattle/Everett metropolitan area and beyond. The project is intended to:

- Reduce conflicts, congestion, and safety concerns for pedestrians, bicyclists, and motorists by improving local traffic and safety at the terminal and the surrounding area.
- Provide a terminal and supporting facilities with the infrastructure and operating characteristics needed to improve the safety, security, quality, reliability, and efficiency of multimodal transportation.
- Accommodate future demand projected for transit, HOV, pedestrian, bicycle, and general-purpose traffic.

The existing facility suffers from shortcomings related to safety, multimodal connectivity, and capacity, and it fails to support the goals of local and regional long-range transportation and comprehensive plans, or to satisfy future travel demand. The Final EIS provides detailed background information on the complete statement of need for the project, but the major issues are highlighted below.

Safety and Security

Current circumstances create a number of safety and security concerns—at the pedestrian/vehicle interface, with the general traffic flow in the SR 525/Front Street vicinity, and maintaining safety and security for the facility itself. Improvements are needed because:

- *The existing timber structures, including the docking facilities, have exceeded their useful lives.* The Mukilteo ferry terminal has received few improvements since it was built in 1952.
- *The existing terminal does not meet current seismic standards.* The deep, potentially liquefiable soils that lie beneath it are highly susceptible to lateral spreading during an earthquake.
- *The existing facility has city streets within the terminal area and does not allow for a physical separation between the terminal and open public areas.* This configuration conflicts with U.S. Coast Guard and U.S. Department of Homeland Security protocols requiring WSDOT to secure terminal areas when there is a natural disaster, heightened security alert, or other emergency. This layout increases safety and security concerns, and could require WSDOT to interrupt service or close the terminal to respond to an emergency or heightened security alert.
- *The SR 525/Front Street intersection creates hazardous conflicts.* Pedestrians who access the terminal area, transit facilities, surrounding businesses, and Mukilteo Lighthouse Park compete with vehicles for access to this intersection. Collisions near the SR 525/Front Street intersection have included sideswipes, pedestrian/vehicle accidents, and collisions with parked vehicles. Moreover, congestion often encourages pedestrians to make high-risk decisions to cross the intersection during breaks in ferry traffic.

- *Inadequate bus facilities increase congestion and risk.* The lack of passenger drop-off/pick-up facilities and poor bus access to the two bus bays exacerbate the problems described above.
- *Passengers must use routes that do not meet the requirements of the Americans with Disabilities Act (ADA).* This occurs during loading and unloading from the ferry or when passengers are traveling between the toll booths and the terminal building.

Transit Connectivity and Reliability

The current facility provides poor connections among transit, rail, and ferry modes, undermining the quality and reliability of the transportation system and worsening the transportation and safety problems related to the terminal. The major concerns are:

- *Transit connections at the Mukilteo ferry terminal cannot adequately serve current or future needs.* The two bus bays, located 200 feet away, uphill and across a major local street, are inadequate to support the current service, including staging and layover needs for transit operations. Boarding areas and amenities for transit riders are also limited. The current configuration will not allow bus service to be expanded. In addition, the streets between the ferry terminal and the Mukilteo Station (approximately 2,000 feet from the existing terminal) lack adequate pedestrian and bicycle facilities.
- *Current conditions make it difficult to achieve adequate schedule reliability, further degrading multimodal connectivity.* Without reliable ferry service, passengers cannot make on-time connections to scheduled bus and train service. The current vehicle staging system slows fare collection, which delays departures. Lack of a dedicated HOV access lane impedes WSDOT's preferential program for carpools and worsens operating efficiency. Moreover, because pedestrians walking on and off the ferry use the same span that vehicles use, passengers and vehicles must be loaded at separate times, causing system inefficiency and often delays that can last throughout the day.

Growth in Travel Demand

The Mukilteo-Clinton route connects the two segments of SR 525, the major transportation corridor between Island County (Whidbey Island) and the Seattle-Everett metropolitan area. SR 525 is classified as a Highway of Statewide Significance. In addition to serving ongoing travel demand, SR 525 (including the ferry) is needed to connect the communities and military facilities on the island for evacuations, disaster relief, and medical emergencies.

WSDOT forecasts higher future demand for multimodal facilities serving the route. Specifically, WSDOT predicts the total annual ridership (vehicle drivers, vehicle passengers, and walk-on passengers) on the route to grow to about 5,939,000 riders in 2030 (WSDOT 2009), compared to 3,835,000 riders in 2012 (WSDOT 2012).

The Mukilteo-Clinton route serves many commuters today, and employment growth on both Whidbey Island and on the mainland will continue to increase the need for trips by ferry. In response, the Long-Range Plan calls for meeting the growing demand at the Mukilteo ferry terminal primarily through increasing the share of walk-on trips. This

reinforces the need for improved connections between ferries and other modes, including transit, bicycle, and walking.

Other Related Objectives

Through its planning and outreach efforts, including scoping comments, WSDOT has also identified environmental and project development goals to help guide the project:

- *The project should be fiscally responsible and supportive of state, regional, and local transportation plans including, but not limited to, the Long-Range Plan, as well as regional and local land use plans.*
- *The project should be sensitive to the rich cultural and environmental resources in the vicinity in a manner that respects and enhances these resources.*
- *The project should not preclude development of a second slip at the terminal in the future to provide operational flexibility or additional capacity.*

2 ALTERNATIVES CONSIDERED IN THE FINAL EIS

In addition to the Preferred Alternative, the Final EIS evaluated the No-Build, Existing Site Improvements, and Elliot Point 1 alternatives.

The No-Build Alternative provides a baseline against which to compare the effects of the Build alternatives. It includes what would be needed to maintain the existing ferry terminal at a functional level. Under the No-Build Alternative, an improved multimodal transportation facility to meet future demand or operational needs would not be developed. Instead, the No-Build Alternative assumes that maintenance and structural replacements would occur in accordance with legislative direction to maintain and preserve ferry facilities, but WSDOT would make no investments to improve the operation, safety, security, or capacity at the terminal.

The Existing Site Improvements Alternative would construct an improved multimodal facility by replacing the existing Mukilteo ferry terminal with an expanded terminal and multimodal center on and around the current site. This expansion would improve some local traffic and safety features at the terminal facility as well as some of the multimodal transportation connections. It would provide capacity for growth in transit service at the terminal and would place buses closer to the Mukilteo Station than they are at the existing terminal.

The Elliot Point 1 Alternative would build a new ferry terminal on the eastern portion of the Mukilteo Tank Farm with an integrated multimodal center. It would remove the existing ferry terminal and Tank Farm Pier. Because the shoreline slopes more gradually in this location compared to the Preferred Alternative, the ferry slip would be at least 250 feet away from the top of the current riprap shoreline, which would require a longer trestle leading to the transfer span and towers, and new piles to support the trestle. First Street would be realigned and extended as a four-lane roadway from SR 525 to the Mount Baker Terminal.

The initial EIS process (starting in 2006) studied a different set of alternatives. These were removed from further consideration after they were determined to be no longer reasonable for WSDOT to pursue, based on potential impacts on archaeological resources, the amount of over-water construction, geotechnical conditions, and cost

concerns. The *Alternatives History through 2009* report (*Appendix E* to the Final EIS) describes the alternatives and concepts previously considered.

3 MEASURES TO MINIMIZE HARM AND PROJECT COMMITMENTS

FTA and WSDOT have designed the Preferred Alternative to avoid and minimize harm. In addition, Appendix B, which is incorporated herein by reference, establishes the mitigation measures that are required of WSDOT under this ROD. Pursuant to 23 CFR 771.109(d), WSDOT will ensure that all environmental mitigation identified in this ROD is implemented unless it receives concurrence from the FTA to do otherwise.

WSDOT shall meet the conditions of all applicable state, federal, and local permits and approvals that are required to allow construction and operation; achieve performance standards incorporated into final design; observe best management practices (BMPs); and implement the mitigation measures developed to address specific impacts as identified in Appendix B. This commitment includes WSDOT's obligation to comply with the terms of the Section 106 Memorandum of Agreement (MOA), which was developed to resolve the project's adverse effects on historic and cultural resources (see Section 6.12 below).

The mitigation measures described in Appendix B are conditions of this Mukilteo Multimodal Project ROD. These measures will be incorporated in contracts that may be awarded for construction of the project and will be relied upon by other federal permitting agencies. FTA considers the mitigation measures to be material conditions of this ROD and will incorporate them in any future grant agreement that FTA may award WSDOT for the construction of the Mukilteo Multimodal Project. FTA finds that with the accomplishment of these mitigation commitments, WSDOT will have taken all reasonable, prudent, and feasible means to avoid or minimize environmental harm from this project.

4 MONITORING AND ENFORCEMENT

To ensure compliance with required mitigation and to assist with FTA oversight, WSDOT will establish a mitigation monitoring program for the project that will track, monitor, and report the status of the environmental mitigation actions identified in the ROD. This monitoring program will be approved by FTA and may, upon FTA approval, be revised as necessary during the permitting process in order to implement mitigation measures during final design and construction.

5 OPPORTUNITIES TO COMMENT

Since the Mukilteo Multimodal Project was initiated in 2004, WSDOT and FTA have provided frequent opportunities for interested members of the public, agencies, and tribes to engage, share concerns, and discuss specific project details with WSDOT staff. Public involvement activities to date have included public meetings, agency and tribal meetings, online meetings, and stakeholder briefings. For more information, see *Chapter 7 Agency, Tribal, and Public Involvement* in the Final EIS.

The environmental review process for the Mukilteo Multimodal Project began with work to develop a NEPA EA in 2004. WSDOT held two public EA scoping meetings in the fall of 2004. Because of information acquired during development of the EA, FTA concluded that the project warranted an EIS. On February 17, 2006, FTA published a Notice of Intent to prepare an EIS for the Mukilteo Multimodal Project and announced a 30-day public comment period that ended on April 5, 2006. FTA and WSDOT requested public comments on the scope of the alternatives and the impacts to be considered, and held two public meetings in March 2006. FTA and WSDOT also held a scoping meeting for agencies and tribes on March 21, 2006.

The Washington State Legislature put the project on hold in 2007 due to funding and constructability issues associated with the previously identified alternatives, and to allow time for WSDOT to complete a long-range plan for the ferry system.

WSDOT and FTA reinitiated the environmental review process in February 2010, and conducted a second scoping period, including a public comment period, from September through November 19, 2010. They held another round of public scoping meetings in October 2010, hosting four in-person open houses to serve directly affected populations, and one online open house to increase participation among the broader community. Approximately 160 people attended the meetings in Whidbey Island, Mukilteo, Edmonds, and Everett; 15 people participated in the virtual online open house. WSDOT received approximately 365 public comments during the scoping period at public meetings, by mail, e-mail, and online using a Google map comment tool.

Following publication of the Draft EIS in January 2012, WSDOT and FTA hosted public meetings with hearings on February 22 and 23, 2012. The meetings in Mukilteo and Clinton included an informal open house, an overview presentation, and a formal hearing for public comment. Approximately 175 people attended the meetings. The 45-day comment period ended on March 12, 2012.

After considering the comments on the Draft EIS, WSDOT identified a Preferred Alternative, and FTA and WSDOT formally consulted with other agencies and tribes in accordance with the requirements of Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act (ESA). These consultations, as well as related agency and tribal meetings on natural resource impacts, helped define additional environmental protections to be implemented as part of the project.

WSDOT and FTA involved agencies and tribes early in the environmental review process and have continued to consult since then. FTA, working with the WSDOT Mukilteo Multimodal Project Tribal Liaison, formally engaged with potentially affected tribes to assess their interest in the Mukilteo Multimodal Project. In particular, FTA participated in government-to-government consultations with all the tribes who signed the Point Elliott Treaty because the Mukilteo shoreline is recognized as the area where the treaty was signed. FTA also consulted with all the tribes whose treaty rights could be affected by the project.

FTA and WSDOT offered each potentially affected tribe the opportunity to participate in the development of the EIS. Four tribes accepted cooperating agency status (a higher level of participation): Samish Indian Nation, Stillaguamish Tribe of Indians, Suquamish Tribe, and Tulalip Tribes.

WSDOT and FTA participated in well over 50 meetings with tribes from 2010 to 2013. These meetings covered a range of environmental and project implementation issues of interest to the tribes. As the EIS process continued, the key topics of discussion were cultural resources, ecosystems, fishing, and the treaty rights of the tribes.

The public and agency *Coordination Plan* and the *Tribal Consultation Plan* are included in *Appendix H* of the Final EIS.

Comment letters on the Final EIS were received from the City of Mukilteo and the U.S. Environmental Protection Agency (EPA), and they, along with FTA's responses, are included in Appendix E of this ROD.

6 DETERMINATION AND FINDINGS

6.1 National Environmental Policy Act

Title 42, Sections 4321 through 4347 and 4372 through 4375 of the United States Code (USC), as well as Executive Order 11514, Protection and Enhancement of Environmental Quality, require that federal agencies evaluate the environmental impacts of their actions, integrate such evaluations into their decision-making processes, and implement appropriate policies.

The environmental record for the Mukilteo Multimodal Project includes the *Mukilteo Multimodal Project Draft EIS* (January 2012), the *Mukilteo Multimodal Project Final EIS* (June 2013), and the supporting materials incorporated therein. These documents represent the detailed statements required by NEPA describing:

- The environmental impacts of the proposed action.
- The adverse environmental effects that cannot be avoided, should the proposed action be implemented.
- Alternatives to the proposed action.
- Irreversible and irremediable commitments of resources that would be involved should the proposed action be implemented.

Having carefully considered the environmental record, mitigation measures (included in Appendix B of this ROD), public and agency comments, and the findings below, FTA has determined that:

- The environmental project review application includes a record of the environmental impacts of the proposal; adverse environmental effects that cannot be avoided; alternatives to the proposal; and irreversible and irremediable impacts on the environment.
- The environmental process included cooperation and consultation with the Secretary of the Interior and the Administrator of the EPA.
- All reasonable steps have been taken to minimize adverse environmental effects of the proposed project.
- The project meets its purpose and need and the requirements of NEPA.

6.2 Executive Order 13175 Consultation and Coordination with Indian Tribes

Under Executive Order 13175 and other federal authorities, FTA conducted government-to-government consultation and coordination with the following federally recognized tribes:

- Lummi Nation
- Muckleshoot Indian Tribe
- Nooksack Indian Tribe
- Samish Indian Nation
- Sauk-Suiattle Indian Tribe
- Snoqualmie Tribe
- Stillaguamish Tribe of Indians
- Suquamish Tribe
- Swinomish Indian Tribal Community
- Tulalip Tribes
- Upper Skagit Tribe

In addition, consultation and coordination occurred with two non-federally recognized tribes under provisions of Section 106:

- Duwamish Tribe
- Snohomish Tribe of Indians

In particular, FTA contacted tribal governments about four broad areas of concern.

First, FTA consulted with tribal governments representing the tribes who signed the Point Elliott Treaty, because the Mukilteo shoreline is recognized as the area where the treaty was signed. The area has great cultural and historic significance for that reason. Second, archaeologists have discovered an archaeological site within the project footprint that dates back many centuries; FTA consulted with interested tribal governments on a project design that would avoid, minimize, and mitigate impacts to this important cultural resource. With the input received from tribes and other interested parties, FTA and WSDOT then developed a Memorandum of Agreement (MOA) to address potential effects to the cultural and historic properties. Under the MOA, FTA and WSDOT shall avoid disturbing the area known to contain intact archaeological artifacts. The MOA also commits WSDOT to preparing, with tribal input, (a) a culturally sensitive design; (b) a plan for the treatment of known archaeological and cultural materials; and (c) a plan for proceeding in the event of an inadvertent discovery of cultural or historic artifacts.

Third, FTA consulted on a government-to-government basis with each of the four tribes that have treaty-protected usual and accustomed fishing and hunting grounds within the project area. FTA and WSDOT entered into agreements with the Suquamish Tribe,

Swinomish Indian Tribal Community, and Tulalip Tribes to resolve the treaty issues raised by the project and will implement the mitigation measures called for under the executed agreements. After consulting at length with FTA, the Lummi Nation declined to execute an agreement. The tribe stated that it “does not object to the proposed project, but also has not surrendered any rights.” FTA and WSDOT will continue to coordinate with all three signatory tribes to implement mitigation measures agreed upon during consultation, and to continue coordination with the Lummi Nation.

Fourth, FTA consulted with several tribes interested in the project’s potential effects on fish and other biological resources in the project vicinity; the tribal input helped shape the mitigation identified in the Final EIS and required by this ROD.

Chapter 7, Agency, Tribal, and Public Involvement of the Final EIS contains more details about these tribal consultations.

Aside from those specific issues, FTA also offered each potentially interested tribe the opportunity to act as a cooperating agency under NEPA. Four tribes accepted cooperating agency status: Samish Indian Nation, Stillaguamish Tribe of Indians, Suquamish Tribe, and Tulalip Tribes. The Upper Skagit Tribe declined to participate in deference to other tribes and the Nooksack Indian Tribe declined to participate because the project was outside of its area of interest.

FTA and WSDOT invited interested tribes to meet with them at a number of key milestones during the development of the EIS, including project scoping, the screening of alternatives to be considered in the EIS, the publication of the Draft EIS, and the publication of the Final EIS. FTA and WSDOT also invited tribal representatives (both staff and leadership) to meetings discussing the analysis of potential project impacts to cultural resources and natural resources. FTA and WSDOT acted on a tribal suggestion that the project engage an architect with expertise in designing culturally sensitive projects in Indian country and provided several opportunities for tribes to meet with the architect to discuss design goals, themes, materials, etc. In addition, throughout the NEPA process, the project team kept tribes informed about progress, impact analyses, and upcoming milestones, and gave them the opportunity to provide feedback through written comments and meetings.

The Final EIS responds to and incorporates tribal comments and suggestions made in response to the Draft EIS.

FTA finds that the requirements of Executive Order 13175 have been met.

6.3 Executive Order 12372 Intergovernmental Review of Federal Programs

Executive Order 12372 directs federal agencies to consult with and solicit comments from state and local governments whose jurisdictions would be affected by a federal action. As required by 23 USC 139, FTA asked agencies and tribes to comment on the purpose and need for the project, the range of alternatives to be considered, and the Draft EIS. FTA accepted comments and offered briefings to agencies and tribes during the scoping period in 2010, during the development of the Draft EIS, and during the preparation of the Final EIS. Several agencies and tribes reviewed and commented on the Draft EIS. *Appendix K, Draft EIS Comments and Responses*, in the Final EIS contains responses to all public and agency comments received during the Draft EIS comment

period. Appendix E to this ROD contains a comment from the City of Mukilteo on the Final EIS and FTA's response.

State and local agencies accepted invitations to be cooperating or participating agencies for the project, as discussed in *Chapter 7, Agency, Tribal, and Public Involvement*, of the Final EIS.

FTA finds that the requirements of Executive Order 12372 have been met.

6.4 Clean Air Act

Under the Clean Air Act, EPA has established National Ambient Air Quality Standards (NAAQS), which specify maximum allowable concentrations for certain criteria pollutants (EPA 2011). Washington State and the Puget Sound Clean Air Agency have adopted these standards. Proposed transportation projects requiring federal funding or approval must demonstrate compliance with EPA's Transportation Conformity Rule (40 CFR Part 93). This rule requires showing that a project would not cause or contribute to any new violation of any NAAQS, increase the frequency or severity of any existing NAAQS violations, or delay timely attainment of the NAAQS.

This project meets project-level air quality conformity in accordance with state and federal regulations as follows:

- The project is included in the Puget Sound Regional Council's Regional Transportation Plan.
- The project is included in the current Transportation Improvement Plan.
- The project meets the local hot-spot conformity requirements. Because the project has been included in the modeling for the Regional Transportation Plan and the Transportation Improvement Plan, it demonstrates conformity to the State Implementation Plan. The project meets project-level conformity requirements because it would not cause any new NAAQS exceedance or worsen any existing one, and would not delay the timely attainment of any standard.

6.5 Clean Water Act, Coastal Zone Management Act, and Rivers and Harbors Act

The Clean Water Act (33 USC § 1251 et seq.) establishes the basic structure for regulating discharges of pollutants (including dredged materials) into the waters of the United States, and for regulating quality standards for surface waters. It therefore applies to the project's dredging and its stormwater discharges. Permits will be required for both activities. The project will satisfy all requirements arising from these permits. The project will not fill any wetlands.

Project activities will be consistent with the Coastal Zone Management Act (16 USC §§ 1451-1462) through compliance with the Shoreline Management Act and the shoreline management plans of local jurisdictions. The project will obtain permits and approvals necessary to meet applicable Shoreline Management Plan requirements.

Under Section 10 of the Rivers and Harbors Act (33 USC § 403), the building of piers within navigable waters requires approval by the U.S. Army Corps of Engineers. The project will obtain such a permit and comply with its conditions.

The final mitigation package for pier removal and construction activities will be developed during final design through the appropriate permitting processes in compliance with the requirements of the U.S. Army Corps of Engineers, EPA, and state agencies.

Accordingly, the FTA finds that the project meets the requirements of the Clean Water Act, Coastal Zone Management Act, and Rivers and Harbors Act.

6.6 Endangered Species Act

The Endangered Species Act (ESA) (16 USC § 1531 et seq.) is intended to protect threatened and endangered species and the ecosystems on which they depend. When the federal government takes an action subject to the ESA, it must comply with Section 7 of the ESA. Section 7 (a)(2) generally requires that any action authorized, approved, or funded by a federal agency is not likely to jeopardize the continued existence of any threatened or endangered species or adversely modify any designated critical habitat of such species. Federal agencies must consult with federal wildlife agencies to ensure that their actions satisfy these requirements.

FTA therefore consulted with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). It submitted a Biological Assessment to these agencies on October 29, 2012.

The USFWS issued a letter (December 19, 2012) concurring with the FTA's Biological Assessment determinations of "may affect, likely to adversely affect" for bull trout and bull trout critical habitat. The USFWS issued its Biological Opinion (July 8, 2013) concurring with the FTA's Biological Assessment determinations of "may affect, not likely to adversely affect" determination for marbled murrelet, and concluding that the project is not likely to jeopardize the continued existence of bull trout and is not likely to destroy or adversely modify bull trout critical habitat. The Biological Opinion included an incidental take statement on bull trout, and defined the terms and conditions of the allowed incidental take. The Biological Opinion also included conservation recommendations for the project.

NMFS issued a Biological Opinion on July 31, 2013 concluding the action, as proposed, is not likely to jeopardize the continued existence of Puget Sound Chinook salmon, Puget Sound steelhead, southern resident killer whales, humpback whales, and Steller sea lions. NMFS also concluded the project is not likely to destroy or adversely modify the critical habitats for Puget Sound Chinook salmon and southern resident killer whales. The Biological Opinion contains an incidental take statement on salmon and steelhead and specifies protective measures and habitat conservation actions.

NMFS did not authorize any incidental take of marine mammals in the Biological Opinion because the take of marine mammals was not yet authorized under Section 101(a)(5) of the Marine Mammal Protection Act (MMPA). On June 18, 2014, following the issuance of such an authorization (see Section 6.8 below), NMFS amended the 2013 Biological Opinion to allow the incidental take of southern resident killer whales and humpback whales from September 1, 2014 to August 31, 2015. Washington State Ferries (WSF) must apply for further authorizations as needed after August 31, 2015.

FTA finds that the project meets the requirements of the ESA.

6.7 Magnuson-Stevens Fisheries Conservation and Management Act

The Magnuson-Stevens Fisheries Conservation and Management Act (16 USC § 1801 et seq.) requires federal fisheries management regulations to identify and conserve habitat that is essential to federally managed fish species. Essential fish habitat is defined as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” If an action will adversely affect essential fish habitat, then NMFS must provide conservation recommendations to the federal action agency managing essential fish habitat.

FTA’s Biological Assessment determined that the project will adversely affect essential fish habitat. NMFS concurred with this determination and provided conservation recommendations. FTA agreed to implement 16 of 18 of the measures and conservation recommendations in a letter to NMFS dated August 15, 2013, which is included in Appendix C. Accordingly, FTA finds the project meets the requirements of the Magnuson-Stevens Act.

6.8 Marine Mammal Protection Act

The Marine Mammal Protection Act (16 USC § 1361 et seq.) prohibits, with certain exceptions, the “take” of marine mammals in United States waters. “Take” includes harassment and disturbance, whether intentional or not. The project includes a number of avoidance and minimization measures designed to protect marine mammals.

As described in the Biological Assessment, the project had to obtain an Incidental Harassment Authorization (IHA) through the MMPA separate from the incidental take statement authorized under the ESA. On March 18, 2014, the National Oceanic and Atmospheric Administration (NOAA) issued an IHA to the WSF, which is valid from September 1, 2014 to August 31, 2015, the first year of construction of the 3-year project. Subsequent work will require additional authorizations.

Marine mammal monitoring and other conditions of the IHA will be implemented during pile removal and pile-driving. FTA finds that the project meets the requirements of the MMPA.

6.9 Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act (16 USC §§ 661-667) requires consultation with the USFWS to evaluate and mitigate impacts to fish and wildlife resources whenever water resources are affected by federal agency actions. During the course of the project, FTA invited USFWS to provide input on the Draft EIS and Biological Assessment. Additional information related to the Biological Assessment was provided. The Final EIS responded to USFWS’s comments received on the Draft EIS, which are included in *Appendix K, Draft EIS Comments and Responses*, in the Final EIS.

Accordingly, FTA finds that the project meets the requirements of the Fish and Wildlife Coordination Act.

6.10 Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act

The Migratory Bird Treaty Act (16 USC § 703-712) prohibits taking, killing, or possessing native migratory birds. The Bald and Golden Eagle Protection Act (16 USC § 668) prohibits “taking” or disturbing bald eagles, including their nests, to a degree that causes injury or interferes with normal behavior. Bald eagles were identified as a species that occurs in the project area.

FTA finds that with the mitigating actions identified in Appendix B of this ROD, which include the conditions stated in the Biological Opinions, the project meets the requirements of the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

6.11 Executive Order 12898 Environmental Justice

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority and Low-Income Populations” (1994), directs federal agencies to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. Department of Transportation (DOT) Order No. 5680.1 to Address Environmental Justice in Minority Populations and Low-Income Populations requires agencies to 1) explicitly consider human health and environmental effects related to transit projects that may have a disproportionately high and adverse effect on minority and low-income populations; and 2) implement procedures to provide “meaningful opportunities for public involvement” by members of these populations during project planning and development.

As part of the project planning process and continuing through completion of the Final EIS, FTA and WSDOT performed meaningful and extensive outreach efforts to minority and low-income communities to ensure their active participation. *Chapter 4, Environmental Impacts and Mitigation*, of the Final EIS describes these outreach efforts.

The Final EIS concludes that two potential impacts would disproportionately affect Native Americans. The project would interfere with certain tribes’ treaty-protected rights to fish in Possession Sound, and the project could adversely affect cultural resources of importance to several tribes.

FTA and WSDOT have conducted government-to-government consultations with four tribes whose treaty-protected fishing rights would be affected by the project. The consultations helped identify mitigation measures, and FTA and WSDOT have executed agreements with the Suquamish Tribe, Swinomish Indian Tribal Community, and Tulalip Tribes committing to these measures. After extensive consultations with FTA and WSDOT, the Lummi Nation has declined to sign a similar agreement, but has stated that it does not object to the project advancing. FTA and WSDOT will continue to coordinate with all three signatory tribes and to implement mitigation measures agreed upon during consultation. FTA and WSDOT will continue coordination with the Lummi Nation.

Similarly, as described in Section 6.12 of this ROD, FTA and WSDOT consulted with tribes, the State Historic Preservation Officer (SHPO), and others interested in cultural and historic resources, and developed a variety of measures to mitigate potential impacts

to cultural and historic resources. A Memorandum of Agreement (Appendix D to this ROD) documents the project's commitments to protect those resources.

In other areas, adverse impacts such as unmitigated noise impacts, traffic impacts, visual impacts, and displacements do not fall disproportionately on low-income communities. The Preferred Alternative will not displace housing, social service providers, unique ethnic establishments, or other resources that are particularly important to low-income and minority populations. The Preferred Alternative will benefit environmental justice populations at similar or higher levels than the general population by:

- Creating jobs to construct the new terminal facilities.
- Enhancing public shoreline access and the aquatic environment through removing the Tank Farm Pier over-water structures and piles that are potential sources of contamination. The removal of the existing terminal and Tank Farm Pier will also open up additional waters for tribal and public fishing, and will also improve public waterfront access.
- Providing increased transit capacity and reliability, as well as improved safety conditions for motorists, bicyclists, and pedestrians accessing the ferry and the waterfront.

Chapter 4, Section 4.5, of the Final EIS, contains more details about FTA's environmental justice analysis.

Accordingly, FTA finds that the project will not have a disproportionately high and adverse effect on minority or low-income populations and that appropriate outreach has been conducted such that meaningful opportunities for public involvement for those populations have been achieved. Therefore, the project includes the commitments needed to meet the requirements of Executive Order 12898 and DOT Order 5680.1.

6.12 Section 106 of the National Historic Preservation Act

The National Historic Preservation Act (NHPA) (16 USC § 470) establishes government policy and procedures regarding "historic properties," which include districts, sites, buildings, structures, and objects that are listed in or eligible for listing on the National Register of Historic Places (NRHP). Section 106 of the NHPA requires federal agencies to consider the effects of their actions on historic properties.

FTA has consulted with the SHPO and others and has identified five historic and/or archaeological resources in the area of potential effects that are listed in or recommended as eligible for listing on the NRHP. The Preferred Alternative would affect three of them:

- Point Elliott Treaty Site, a NRHP-eligible site where the 1855 treaty between the United States government and Puget Sound Native American tribes was signed.
- Old Mukilteo Townsite, a NRHP-eligible site holding archaeological remains of the early Mukilteo business district.
- Mukilteo Shoreline Site, a NRHP-eligible archaeological site with a shell midden and other deposits dating back more than 1,000 years.

The Preferred Alternative would not alter any of the characteristics that make the Point Elliott Treaty Site eligible for the NRHP, and aside from the geographic setting, there are no remaining features related to the site's historic significance.

FTA and WSDOT determined that excavation will have an adverse effect on the Old Mukilteo Townsite and may have an adverse effect on the Mukilteo Shoreline Site. The SHPO concurred with an adverse effect finding for the project under Section 106. FTA and WSDOT then undertook consultations under Section 106 to develop an agreement defining the measures the project will take to resolve adverse effects. Consulting parties included interested tribes, local governments, a non-profit historic preservation group, and the American Council on Historic Preservation, along with FTA, WSDOT, and the SHPO.

Although the Preferred Alternative has been designed to minimize excavating within the Old Mukilteo Townsite, some construction would occur on or near it. The MOA defines the measures the project will take to resolve adverse effects, including data recovery and public dissemination of investigative findings. This ROD requires compliance with the MOA stipulations. The MOA is included in Appendix D of this ROD.

The Preferred Alternative has also been designed to avoid excavation within the known limits of the Mukilteo Shoreline Site with intact archaeological/stratigraphic context. As described in the MOA, WSDOT has committed to redesign any elements of the project that would otherwise require such excavation in order to avoid impacts. If direct excavation impacts to the Mukilteo Shoreline Site cannot be avoided following all feasible avoidance planning and redesign, such impacts may occur only after all Signatory and Concurring Parties sign an Amendment to the MOA that specifically allows it.

WSDOT will use context-sensitive solutions to incorporate into the design significant historical and cultural themes or events related to the site, reflecting its importance both as a place of gathering for over a thousand years and the Treaty of Point Elliott. The Design Criteria for Cultural Elements reference document, developed with tribal participation, will inform this work.

Based on the cultural resources analysis; the extensive consultation and coordination with the SHPO, tribes, and other consulting parties; and the execution of the MOA with stipulations to resolve adverse effects; FTA finds that there is adequate mitigation for the adversely affected resources and that suitable procedures exist to address any inadvertent discovery. Therefore, the requirements of the National Historic Preservation Act for this project have been fulfilled.

6.13 Section 4(f) of the U.S. Department of Transportation Act

Section 4(f) of the U.S. Department of Transportation Act (49 USC § 303) requires that the use of land from important public parks, recreation areas, wildlife refuges, or land containing historical sites of local, state, or federal significance be approved and constructed only if (a) there is no feasible and prudent alternative, and (b) the project includes all possible planning to minimize harm to these resources. If resources protected by Section 4(f) are involved in a project's planning, a determination whether there is a "use" of those resources is required. Section 4(f) evaluations also require review by the U.S. Department of the Interior.

6.13.1 Absence of Prudent and Feasible Avoidance Alternatives

None of the project's proposed alternatives completely avoids using Section 4(f) resources. Therefore, FTA must determine if there are other prudent and feasible alternatives that would avoid using Section 4(f) resources.

The Preferred Alternative would use four resources that also would be used by the other Build alternatives. Any other alternative within the Mukilteo waterfront area would also use these resources, even if some design elements were modified or the alternatives had different footprints. FTA and WSDOT considered alternatives outside of Mukilteo that would have avoided these resources but determined they did not meet the project's purpose and need and worsened environmental effects (see *Chapter 2, Alternatives* of the Final EIS for more information). The No-Build Alternative would also use at least one Section 4(f) resource, and as it also does not satisfy the purpose and need, it is not a prudent and feasible alternative to a use. Therefore, FTA determined that there are no feasible and prudent Section 4(f) avoidance alternatives.

6.13.2 Determining "Least Harm" Alternatives

Because no alternative completely avoids Section 4(f) uses, FTA must identify one or more "least harm" alternatives, considering factors defined in Section 4(f) regulations. *Appendix I, Final Section 4(f) Evaluation*, of the Final EIS lists the factors to be considered; they include the remaining impacts to the Section 4(f) resources after mitigation, the degree to which each alternative meets the project's purpose and need, and any adverse impacts after mitigation to resources not protected by Section 4(f) resources.

FTA has incorporated in its analysis the results of the environmental analysis, public comments on the Draft EIS, the information gathered through continuing Section 4(f) evaluation and coordination, and Section 106 consultations with other agencies, tribes, and interested parties. *Appendix I* of the Final EIS describes in more detail each of the alternatives' performance with respect to all of the least harm factors. The primary conclusions of this complex analysis are:

- The Preferred Alternative is most able to mitigate adverse impacts on the affected Section 4(f) properties.
- The Preferred Alternative best meets the project's purpose and need.
- The Preferred Alternative has similar or lower environmental impacts than the other alternatives and offers the highest benefits to other environmental resources.

In addition, the costs of the alternatives are not substantially different to the point that cost would either prevent or provide a major advantage toward implementation of a particular alternative.

6.13.3 Section 4(f) Evaluation

The full Section 4(f) evaluation in *Appendix I* of the Final EIS provides a complete description of the factors FTA has considered and the analysis performed to support its finding that:

- FTA has found no feasible and prudent avoidance alternatives to using protected Section 4(f) resources.
- In developing the Preferred Alternative, WSDOT and FTA have conducted all possible planning to minimize harm to each property that would be used.
- Considering the Preferred Alternative's mitigation and enhancement measures for Section 4(f) uses, as well as its impacts and benefits, the Preferred Alternative would have the least overall harm to Section 4(f) resources and the environment.

The U.S. Department of the Interior has reviewed FTA's evaluation and informed FTA that it had no comments on it. Accordingly, FTA finds that the project meets the requirements of Section 4(f).

6.14 Americans with Disabilities Act/Architectural Barriers Act

The ADA (42 USC § 126 and 47 USC § 5) addresses issues relating to accessibility to places of public accommodation; the Architectural Barriers Act (ABA) (42 USC § 4151) further specifies accessibility standards. The project facilities will be designed to meet all ADA and ABA requirements. Accordingly, FTA finds that the project will meet the standards and requirements of the ADA and ABA.

6.15 Executive Order 11988 Floodplain Management

Executive Order 11988 requires federal agencies to avoid to the extent possible the long-term and short-term adverse impacts caused by using and modifying floodplains, and to avoid floodplain development wherever there is a practicable alternative. This order directs each agency to preserve the natural and beneficial values served by floodplains in carrying out its responsibilities with respect to federal approvals and project funding, among other directives.

A small portion at the west edge of the project (part of the First Street extension) is located within the Federal Emergency Management Agency's 100-year floodplain. Because most of the existing flooding in the waterfront area is related to high tides or storm surges, the Preferred Alternative's changes to stormwater flows would not increase the risk of flooding. The development of a new roadway within the floodplain, much of which is on retained fill, would not reduce storage capacity or increase the risk of flooding in other areas. Any new outfalls would be designed and sited to prevent impacts from occasional tidal backwater that could flood the site and adjacent areas.

FTA finds that the project meets the requirements of Executive Order 11988.

6.16 Resource Conservation and Recovery Act

Several federal authorities regulate the generation, transportation, treatment, storage, and disposal of hazardous waste. These include the Resource Conservation and Recovery Act (42 USC § 82 subchapter III and §§ 6901-6992k), as well as other regulations.

As described in *Section 4.8, Hazardous Materials*, of the Final EIS, construction of the Preferred Alternative will affect three sites that had previous contamination. The U.S. Air Force conducted a survey of the current and past storage tanks on the Mukilteo Tank Farm that contained fuel or other hazardous materials. The survey found that all the tanks had been substantially cleaned up. The Preferred Alternative will appropriately

manage remnant contamination that might be encountered on the Mukilteo Tank Farm, as well as creosote-treated piles that will be removed from the existing ferry terminal and the Tank Farm Pier. Project commitments related to hazardous materials are described in Appendix B of this ROD.

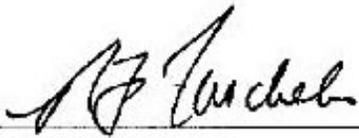
FTA finds that the project will comply with federal hazardous waste requirements.

6.17 Noise Control Act

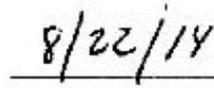
The Noise Control Act (as amended by the Quiet Communities Act) (42 USC 65 §§ 4901-4918) requires federal agencies to develop programs to promote an environment free of noise that jeopardizes public health and welfare. This act requires that the agencies comply with state and local noise ordinances.

Under the Preferred Alternative, all project elements are far enough from the noise-sensitive land uses to avoid potential long-term (operational) impacts. However, some construction activities would generate high noise levels. WSDOT will implement measures to minimize noise and vibration activities associated with construction as described in Appendix B of this ROD.

FTA finds that with these mitigation measures, the project will comply with the Noise Control Act and Quiet Communities Act.



R.F. Krochalis
Regional Administrator, Region 10
Federal Transit Administration



Date of Approval

7 REFERENCES

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