

## MEMORANDUM

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August 10, 2007

TO: Joint Transportation Committee of the Washington Legislature

FROM: The Keystone Center, Mike Hughes and Jody Erikson

RE: Interim Report – Mediation – State Route 520

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### Introduction

In the legislation that began our mediation work, we were required to provide the Governor and the Legislature's Joint Transportation Committee with a progress report. We reach the August 1 deadline having spoken to neighborhood representatives; local, state and federal officials; and advocacy groups interested in transportation, parks, urban design, the environment, economic development, public engagement and higher education. These conversations were aimed at understanding the needs of each stakeholder group interested in the 520 Bridge questions – both substantive needs (improve water quality, provide safe and efficient travel, etc.) and procedural needs (transparency, closure, inclusion, parity, timeliness, etc.). When the conversations moved to positions “I prefer interchange X to interchange Y”, we diverted them back to the deeper discussion of interests; in mediation, it is the interests that will serve as the criteria by which the group judges which set of transportation solutions and associated mitigation is the best for everyone.

### Draft Process

This is a work in progress; the conclusions we draw and the process ideas we put forward in this memorandum will change until we actually convene the first mediation session, expected to begin in September (see schedule attached). The following is our best thinking about how the mediation should proceed and the interests it will respond to – based on what we heard from the stakeholders and our judgment about good process – divided among these four subjects:

1. **Situation Assessment** – the mediators' view of the topics to be considered in mediation
2. **Convening** – our recommendation for bringing the parties into the first mediation session
3. **Initial Statement of Interests** – a preliminary list of the needs and concerns of the major interest groups
4. **Process Design** – our recommended course of action for the mediation, including a first meeting date, a preliminary schedule and the protocols for the mediation

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## 1. Situation Assessment

After a series of interviews, we have come to these conclusions about the 520 bridge mediation:

- a. The mediation process should serve as a point of integration for the separate efforts envisioned in the legislation, in the transportation agencies' project development processes and in the supplemental environmental impact statement.

The mediation should help all parties reach the same end point – consensus on a preferred alternative that includes sufficient detail and analysis to satisfy NEPA requirements; allows the two lead agencies to conclude their decision making; and allows the Federal Highway Administration to sign a Record of Decision. The result achieved in mediation should include the high-capacity transit plan and the plan should dovetail with the mediated solution.

- b. The process should address what are widely considered to be the greatest risks of failure for the mediation – questions of final decision-making authority, closure and follow-through.

The mediation process must be structured in ways that maximize the potential for an implementable solution. In order to accomplish this, we have included in our process one option for keeping the Governor, the Legislature and other elected and appointed officials fully integrated in the mediation process. We recommend creating an Oversight Committee that can focus on whether the mediated solution is implementable and can ensure that the parties in mediation understand the sideboards, constraints and limitations that surround their work.

- c. Our mediation strategy should capitalize on what makes public processes work well in the region and respond directly to those aspects of the region's political and social culture that impede good decision making.

We respond to our observations in this area with a set of operating protocols that will guide the process. The draft protocols and the process design speak to:

- The importance of the relationship between representatives at the table and the organizations/constituencies they purport to represent
- Willingness to use the mediation as the venue for a final resolution of the 520 questions and to move on
- The need to put one's cards on the table in full view of all other stakeholders
- The civility of public discourse
- The level of attention paid in the mediation to individual interests, community interests and the greater public interest
- The importance of describing the internal diversity within one's own organization (and allowing for the real complexity and internal diversity in other organizations)

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- d. The mediation has to work across vastly different levels of authority – from state-wide elected authority to informal, community leadership.

We have met those who have formal, elected authority and clear responsibility to speak on behalf of a clearly delineated set of easily identified stakeholders. We have met those who purport to be a necessary participant in mediation who have little or no explicit license to speak on behalf of the group they say they lead, only to have members of that group tell us that ‘s/he doesn’t speak for me’. Of necessity, we have combined very different kinds of organizations with very different levels of leadership in the mediation process and constructed protocols that respond to the need for close connection between one’s statements in mediation and the diverse views of the constituency being represented. There is one exception we make to this effort to blend different kinds of organizations. We will work with the Governor’s Office to develop a process that provides for a government-to-government discussion with the appropriate tribal governments. We do not expect tribal representatives to participate directly in the mediation; we intend to design a process that provides access to the mediation without compromising tribal sovereignty.

- e. The mediation has to take into account a long history of conflict over the 520 corridor, specifically and a host of adjacent conflicts, generally.

We have been reminded of the opposition to the original construction of the 520 bridge and told repeatedly that that conflict is not gone. We have heard about local electoral races, ballot measures, other transportation projects and more that complicate the personal and political relationships among the parties and will complicate the mediation. We have heard repeatedly about a lack of trust in decision makers and a suspicion that the mediated solution will not hold. We expect to have to help the parties move beyond their past and focus on the future together. We know that the participants may have to spend some time talking about the past in order to move beyond it.

- f. The mediation has to live within the legal constraints of the legislation that began it.

We have been quizzed about the legislation and have heard some very unusual interpretations of it. From our discussions with most of you we believe we understand your intent and we will be clear in the protocols, at the start of the mediation, and throughout our work about how the legislation has set the table, so to speak, and what we will do to ensure that we do not run afoul of its limitations.

- g. The mediation has to respond to the explicit interests of the stakeholders and help to uncover the deeper, unspoken interests; the mediation must foster solutions that respond to all interests as fully as is possible.

This is a fundamental statement of our approach to mediation and will serve as a guidepost throughout the process we describe below.

## 2. Convening

Although we haven't made this explicit in our conversations with stakeholders and potential participants, we always allow ourselves to ask whether or not this case is mediable and in doing so allow for the possibility that we would not convene a mediation at all. We have reached the conclusion that there will be real value in mediation and (although a consensus is by no means guaranteed) we are hopeful that a mediated solution is possible. Our optimism stems from these sources:

1. Urgency – There is a real sense that this problem must be solved and that now is the time to solve it. The circumstances that contribute to urgency include:
  1. The inflation risk if the project is delayed
  2. The safety problems and the bridge's vulnerability to earthquake and weather
  3. The need to conclude the EIS process
  4. The sense of momentum coming from elected officials, most notably in the form of the mediation legislation
2. Willing Parties – There are identifiable parties who are prepared to participate in the mediation and who have expressed a willingness to work toward a solution.
3. Alternative to Settlement – There is a viable alternative to mediation that would limit the control of the parties who may participate in mediation: the Department of Transportation and Sound Transit could complete the EIS, announce a preferred alternative and request that the Federal Highway Administration issue a Record of Decision. This improves the chance that the parties will take control of their own fate by entering into mediation.

## 3. Interests

The following list is a starting point; it is not associated with one stakeholder. It is not expressed in any order of priority. These are the needs that the mediation must address:

- Safety
  - Provide a safe environment for the traveling public
  - Address the significant earthquake and windstorm deficiencies
- Long-term mobility and cross-lake travel demand
  - Provide for work/home and home/work trips
  - Provide for regional commercial travel
  - Provide for commercial travel between communities on the east and those on the west
  - Provide for regional non-work trips – recreation, arts, cultural, retail, etc.
- Transit system integration
  - Make the 520 Corridor an effective part of the region's transit systems
  - Fulfill long-term transit plans for the region as they apply to the 520 corridor

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- Neighborhood quality
  - Avoid neighborhood impacts
  - Minimize unavoidable impacts
  - Balance the inclusion of transit links with the need to minimize interchange footprints, parking impacts, etc.
  - Maximize bike and pedestrian opportunities/connectivity
  - Protect historic resources
  - Address traffic impacts as travelers leave the 520 Corridor
  - Address congestion on local roads
  - Protect neighborhood interests during construction – noise, delay, congestion, cut-through travel on local roads
- Access
  - Improve access for northeast neighborhoods
  - Provide access to local roads and businesses
- Environmental quality
  - Improve water quality
  - Protect park lands
  - Protect anadromous fish and fish habitat
  - Protect endangered and threatened species
  - Protect wetlands
- Aesthetics, views and visual impacts
  - Produce a solution that is well integrated into its surroundings
  - Protect views from the roadway and address the impacts for those who will view the roadway
- Educational quality
  - Protect the educational mission of the University of Washington
- Financial realities
  - Manage project costs
  - Ensure an implementable project budget
  - Address the cost of the project in relationship to the state’s transportation funding capabilities and the statewide transportation needs
- Economic vitality
  - Provide a transportation solution that enhances regional economic activity and protects existing economic assets
  - Protect regional economic activity and local tax base during construction
- Fulfill regulatory requirements and advance comprehensive plans
  - Align 520 project elements with state requirements
  - Align 520 project elements with federal regulatory requirements (Section 4f and other park and recreation protection; Section 404 and other wetland, water quality and navigable waterway protection; Section 106 and other historic preservation protection; Endangered Species Act and other habitat protection; and NEPA requirements associated with the Supplemental EIS)
  - Align 520 project elements with the mediation legislation
  - Align 520 project elements with local and state plans

#### 4. Process

We seek to build the mediation process by consensus whenever and wherever we can. At the same time, we will use our mediation experience to make unilateral process decisions when the process point is vital enough and when we find that a participant is unaware of or unconcerned about the process problem they would create if free to make one's own choice. What follows will undoubtedly be a mix of these two; we are hopeful that we can refine this process with the stakeholders and gain the acceptance of all of the potential parties and, at the same time, we expect that there are a few process points that we will simply insist on. Below, we refer to three processes – the mediation itself, an oversight committee made up of leaders who must stay close to the mediation if it is to be implemented and a small set of optional public meetings.

##### a. 520 Mediation

The purpose of this group is to work together to:

- Create a common understanding of the transportation, environmental, neighborhood and economic issues associated with State Route 520 reconstruction
- Articulate various solutions to these issues in Seattle and explore the advantages and disadvantages of each solution – using the legislatively prescribed 6-lane preferred alternative as the only basis for discussion
- Ensure that these possibilities fit with the emerging solutions to the same set of issues on the east side of the lake
- Arrive, if possible, at a consensus solution
- Reach agreement on the components of an impact plan for addressing impacts of State Route 520 bridge replacement and HOV project design on Seattle city neighborhoods, parks and institutions and ensure that these are integrated into the high-capacity transit plan and the Supplemental EIS

##### Meetings

In order to reach agreement in the timeframe envisioned in the legislation, the 520 mediation sessions will take place no less than once each month and twice a month if necessary. The group may establish task groups to complete more detailed work and make recommendations to the larger group. Task groups will meet between full sessions.

##### Decision Making and Deliberation

The group's highest goal is consensus. A consensus agreement is one that all group members can support, built by identifying and exploring all parties' interests and by developing an outcome that satisfies these interests to the greatest extent possible. There will be no voting in any formal way. (Should the group not reach consensus, the

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mediators will satisfy the requirements of the legislation by indicating the level of support for any solution or set of solutions, but will not represent these levels numerically.) Participants will agree to use this venue to attempt to resolve all questions associated with the 520 Impact Plan for Seattle. At the same time, the participants recognize that there are other venues for addressing their concerns, including the formal comment periods associated with state and federal environmental review processes. Participation in this 520 mediation process does not preempt participation in any other venue.

*The East-West Question*

We read the mediation legislation as a mandate to focus on the unresolved portions of the EIS Preferred Alternative on the west side of the corridor. We would be fools to reopen decisions that are nearly completed with the east-side communities. However, we would be likewise foolish to ignore the possibility that options generated in the mediation could impact the interests of the communities and constituencies on the east side of the lake. Therefore, we will conduct the mediation in such a way that the focus will be on the west-side issues; that representatives of east-side interests will be not just in the room, but fully engaged; and that if something changes that triggers a reopening for the east-side issues, we will reopen the process discussion.

*Relationship to Other Groups*

This mediation is not the first venue for Route 520 discussions; it isn't the only venue at present. We will rely on members of the Department of Transportation staff to work as effective liaisons to those who are working on the Supplemental EIS. We have asked these same staff and the federal officials who will participate in the mediation to work as liaisons to the Resource Agency Coordination Process (federal, state and local resource agencies).

*Independent Review*

We are torn between a desire to allow the mediation participants a full opportunity to discuss independent review and the December 1 legislative deadline. We are walking this tightrope by assembling a list of potential consultants now and holding out hope that we will have time to give the mediation participants a bite at this apple. We have been looking and will continue to look for consultants in two ways – using our own network to identify well respected organizations that have no vested interest or complicating history with the project and contacting the National Center for Infrastructure Expertise and other reputable, national organizations for referrals.

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Criteria for Inclusion

In order to create a list of mediation participants, we asked ourselves and the stakeholders these questions:

- Are all interests represented by at least one agency or group?
- Does each organization/agency represent a well-defined constituency (as opposed to an individual such as a single property owner)?
- Are the government agencies with permitting authority included?
- Which areas or neighborhoods are directly impacted (the facilities would lie within the boundary; the residents would see or hear the facility); and which are affected at some greater distance (potential for changes in traffic patterns, etc.)?

There are some fairly obvious criteria that we did not use – balance being one of them. We favor inclusion over balance given the large number of advocacy and neighborhood organizations from within Seattle that everyone insists must participate to make the process legitimate. Were we to try to balance this number with similar numbers from other categories of stakeholder groups, we have two problems – an unworkably large number of participants and seats that we can't possibly fill because no one would step forward to take them all.

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*[NOTE: Changes to the following list are the only revision to the August 1 memorandum]*

Using the criteria and based on the conversations with stakeholders, the following is a list of organizations and agencies to be represented in the mediation:

1. Washington Department of Transportation (lead agency – EIS)
2. Sound Transit – (lead agency – EIS)
3. Office of the Governor
4. Legislature (rotating seat)
5. University of Washington
6. King County Metro Transit
7. Seattle Mayor's Office
8. Seattle City Council
9. City of Seattle Design Review Commission
10. Washington Arboretum – Botanical Garden's Council
11. Cascade Bicycle Club
12. Seattle Yacht Clubs
13. Friends of Seattle's Olmsted Parks
14. Transportation Choices Coalition
15. Seattle Chamber of Commerce
16. Montlake
17. Madison Park
18. Roanoke/Portage Bay
19. Laurelhurst

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20. North Capital Hill
21. Eastlake
22. Ravenna Bryant
23. University District
24. Yarrow Point
25. Medina
26. Clyde Hill
27. Hunts Point
28. Bellevue
29. Kirkland
30. Federal Highway Administration
31. Federal Transit Administration
32. NOAA Fisheries (National Marine Fisheries Service) & U.S. Fish and Wildlife Service (one seat)
33. U.S. Coast Guard

With our help, each group will select one individual to represent the organization. These individuals must be able and willing to:

- engage in thoughtful, thorough deliberation
- advocate for the interests of his/her agency
- share relevant information with other group members
- keep constituents informed and advocate within constituent organizations for support of the group's work
- represent the diversity of opinions from constituents, not just one's own view or one subset of opinions
- keep the other mediation participants informed about constituent perspectives
- work to identify promising options
- refrain from undermining group recommendations and reports
- secure approval within the organization for permission (within limits) to negotiate an agreement
- explicitly inform the group when the limits of authority are reached
- elevate issues within the organization as a way of addressing the limitation
- work towards resolution in the mediation process (not outside the process)
- attend all mediation sessions
- seek to put the public interest ahead of self-interest
- work toward solutions that all can agree to, leaving previously held positions and favorite solutions aside

**b. Oversight Committee**

This high-level team of elected and appointed officials will convene once, or twice at most, to measure the progress of and support for the consensus-building effort. We envision that two meetings would be the minimum needed to fully assess emerging agreements from the mediation and weigh in with any concerns or questions. The membership would be the official him or herself, not staff.

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**DRAFT Membership**

This group may include:

- Governor – Christine Gregoire
- Joint Transportation Committee House Chair – Judy Clibborn
- Joint Transportation Committee – Senate Chair – Mary Margaret Haugen
- Joint Transportation Committee – House Ranking Minority Member – Fred Jarrett
- Joint Transportation Committee – Senate Ranking Minority Member – Dan Swecker
- Mayor of Seattle – Greg Nickels
- Executive, King County – Ron Sims
- Senator, 48<sup>th</sup> District – Rodney Tom
- Representative, 48<sup>th</sup> District – Ross Hunter
- Representative, 48<sup>th</sup> District – Deborah Eddy
- Senator, 43<sup>rd</sup> District – Ed Murray
- Representative, 43<sup>rd</sup> District – Jamie Pedersen
- Representative, 43<sup>rd</sup> District – Frank Chopp
- CEO, Sound Transit – Joni Earl
- President, University of Washington – Mark Emmert

**c. Public Meetings**

The mediation sessions will be open to the public, not as public meetings complete with comment periods, etc., but as working sessions that interested members of the public and press can observe. At key points in the mediation, the mediators will ask the group whether a public meeting might be advantageous. The public meeting could allow the mediation participants to gather input on alternatives, provide a more complete update of their work, or test an emerging agreement. For any public meeting opportunity, we imagine actually needing at least three separate meetings – one north of the Montlake Cut, one south of the Cut and one on the east side of the Lake Washington.

**d. Schedule and Milestones – Preliminary**

The following schedule must be aligned with the progress of the Supplemental EIS and the high-capacity transit study. The mediators will use this very preliminary outline to begin the mediation, will add detail as that becomes possible and will revise the schedule and milestones in response to the progress of the mediation and the studies.

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<b>Mediation Process Activity/Milestone</b>	<b>Dates</b>
Process Design <ul style="list-style-type: none"> <li>• Finalize identification of mediation participants in dialogue with all parties</li> <li>• Draft and distribute process design – information about independent technical support and relationship of the mediation to the Supplemental EIS</li> </ul>	Aug, 07
Interim Report <ul style="list-style-type: none"> <li>• Mediation process</li> <li>• Participants’ interests – initial list</li> </ul>	Aug 1 ‘07
Opening Mediation Session <ul style="list-style-type: none"> <li>• Affirm purpose, process, participation, etc.</li> <li>• Scope interests – initial list</li> <li>• Data needs discussion</li> <li>• Update and discussion – Independent Review</li> </ul>	Sept, 07
Mediation Session #2 <ul style="list-style-type: none"> <li>• Purpose and Need</li> <li>• Framing the Issues</li> <li>• Options – Initial Discussion</li> <li>• Data needs discussion</li> <li>• Update and discussion – high-capacity transit plan</li> </ul>	Oct, 07
Mediation Session #3 <ul style="list-style-type: none"> <li>• Review Data</li> <li>• Continue Options Discussion</li> </ul>	Nov, 07
Mediation Session #4 <ul style="list-style-type: none"> <li>• Continue Options Discussion</li> <li>• Narrow Options</li> <li>• Provide Options to WSDOT for Analysis in SDEIS</li> </ul>	Dec, 07
	Jan, 07
Public Meetings <ul style="list-style-type: none"> <li>• Presentation of and Feedback about Options</li> </ul>	Feb, 08
Mediation Session #5 <ul style="list-style-type: none"> <li>• Evaluate and Refine Options</li> </ul>	Mar, 08
Mediation Session #6 <ul style="list-style-type: none"> <li>• Evaluate and Refine Options</li> </ul>	Mar, 08
Mediation Session #7 <ul style="list-style-type: none"> <li>• Evaluate and Refine Options</li> </ul>	Apr, 08
Mediation Session #8 <ul style="list-style-type: none"> <li>• Narrowing and Eliminating Options</li> <li>• Building on the Most Viable Options, including Mitigation Packages</li> </ul>	May, 08

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<p>Mediation Session #9</p> <ul style="list-style-type: none"> <li>• Consensus Building – Preferred Options and Accompanying Mitigation</li> </ul>	June, 08
<p>Mediation Session #10</p> <ul style="list-style-type: none"> <li>• Consensus Building – Preferred Options and Accompanying Mitigation</li> </ul> <p>Implementation Issues</p>	July, 08
<p>Mediation Session #11</p> <ul style="list-style-type: none"> <li>• Consensus Building – Preferred Options and Accompanying Mitigation</li> <li>• Implementation Issues</li> </ul>	Aug, 08
<p>Public Meetings</p> <ul style="list-style-type: none"> <li>• Feedback – Mediated Settlement</li> </ul>	Nov, 08
<p>Mediation Session #12</p> <ul style="list-style-type: none"> <li>• Revisions Based on Public Comment</li> <li>• Implementation Issues</li> <li>• Final Agreement</li> </ul>	Dec, 08