



U.S. Department
of Transportation
**Federal Highway
Administration**

Office of the Administrator

1200 New Jersey Ave., SE
Washington, D.C. 20590

May 23, 2017

In Reply Refer To:
HOTM

The Honorable Bruce Bassett
Mayor of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

Dear Mayor Bassett:

Thank you for your letter of May 12 regarding Mercer Island access to I-90. The Department of Transportation recognizes the importance of I-90 to Mercer Island. However, the Department is restricted by Federal law in allowing single occupancy vehicle (SOV) access to high occupancy vehicle (HOV) lanes.

Congress specified HOV passenger requirements initially in 1991 and codified them in their current form in 2005 as part of Public Law 109-59. The HOV facility statute (23 U.S.C. 166(a)) allows exceptions to the occupancy requirement for motorcycles, public transportation vehicles, high occupancy toll vehicles (HOT), and low emission and energy-efficient vehicles. It does not give the Department legal authority to grant either a temporary or permanent waiver to permit other SOV access to HOV lanes.

Allowable SOV access to HOV facilities exists for two other reasons: 1) HOV facilities were built before 1991 (i.e., they are “grandfathered”) and have not been significantly altered since enactment of the original HOV statute; 2) Congress enacted legislation to address specific facilities. Any grandfathered facility must be brought into compliance if its design is altered. Your letter references two facilities, I-5 in Seattle and I-80 in Sacramento, which were constructed prior to 1991, so are grandfathered as is until their design is altered.

The Federal Highway Administration stands ready to support Washington State and Mercer Island authorities in developing a solution consistent with 23 U.S.C. 166.

Sincerely yours,

Walter C. Waidelich, Jr.
Acting Deputy Administrator