WSDOT’S PROPOSAL TO TOLL I-90 VIOLATES FEDERAL LAW

1. Tolling of I-90 has not been approved by the Federal Highway Administration.
   - I-90 cannot be tolled unless approved by the Federal Highway Administration (FHWA). No approval has been granted.
   - Tolling I-90, as proposed by WSDOT, conflicts with federal law and would establish a poor national precedent.

2. Federal transportation law generally prohibits tolls on Interstate highways.
   - Tolling of interstates is generally prohibited by law. Congress has created only narrow exceptions to this general prohibition - none allows tolling of an existing interstate for the purpose of replacing or reconstructing a different highway.

3. Approval of the I-90 Proposal would be an improper use of the VPPP.
   - WSDOT claims it will use the Value Pricing Pilot Program (“VPPP”) to toll I-90 to pay for SR 520. However, the VPPP does not apply here; it allows tolling only to test innovative strategies for congestion reduction.
   - The I-90 tolling proposal’s purpose is to generate revenue, not to relieve congestion, and it is not innovative. Contrary to VPPP requirements, WSDOT has repeatedly described the I-90 proposal in terms of revenue generation. WSDOT candidly admits that its primary purpose is to generate revenue to fund the SR-520 bridge. In addition, the Washington State Legislature specifically directed WSDOT to analyze tolling on I-90 to provide funding for SR-520. Using the VPPP to generate funding for an entirely different state road is the antithesis of the state level innovation intended for the VPPP.
   - With its most recent legislative overhaul – Moving Ahead for Progress in the 21st Century (“MAP-21”), Congress did not reauthorize the VPPP, fund the VPPP, or incorporate the VPPP into the mainstream tolling program. The FHWA has recognized Congress’s intent to discontinue the program by publishing guidance directing states away from the VPPP.
   - A VPPP proposal must meet a number of other criteria including lack of public controversy, avoidance of traffic diversion, and equity. I-90 tolling is controversial and is opposed by Lake Washington residents and cities. Tolling I-90 will cause diversion, increased traffic congestion, and disproportionate impacts to cities north and south of the Lake (like the diversion due to tolling on SR-520), and impacts drivers with limited or no transportation alternatives (“transportation-disadvantaged groups”). Finally, the proposal is not equitable, because it would require drivers who do not use SR-520 to pay for the majority of SR-520 reconstruction costs.

4. FHWA and WSDOT are not following an open and transparent process for making a decision on I-90.
   - We believe FHWA is not following its documented and specific VPPP review procedure in this case. FHWA has provided no explanation for departing from an established and transparent process.
   - The 1976 Memorandum of Agreement (“MOA”) between the City of Mercer Island and the State requires consultation and concurrence by the City prior to changes in the operation of I-90. WSDOT has failed to comply with its obligations under the 1976 MOA and has not obtained the City’s concurrence to tolling.