

– Final Draft –

MULTIMODAL CONCURRENCY STUDY

(2SHB 1565, 2005 Session)

Legal Context & Statutes Related to Concurrency

Task 4: Technical Memo

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Prepared by:

**Keith Ganey, Dan Carlson, Evans School of Public Affairs
Mark E. Hallenbeck, TRAC-UW
Anne Vernez Moudon, Luc de Montigny, Department of Urban Design
and Planning**

**Washington State Transportation Research Center (TRAC-UW)
University of Washington, Box 354802
University District Building, Suite 535
1107 NE 45th Street
Seattle, WA 98105-4631**

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Puget Sound Regional Council

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INTRODUCTION

The purpose of this memo is to document state laws requiring and supporting the implementation of multimodal transportation concurrency in Washington. Concurrency, or ensuring that public infrastructure supports development as it occurs,¹ is a requirement of the Growth Management Act (GMA) adopted by Washington in 1990. This memo describes the context of the GMA before addressing the two major parts of concurrency. Each of the parts is described generally, then by location of powers, followed by a brief discussion of current implementations and notes on legal powers still available for better support of multimodal transportation. The memo then includes a short discussion of land-use and inter-jurisdictional cooperation powers that local jurisdictions could use to further multimodal concurrency, followed by a cursory review of funding sources linked to new development. The memo closes with a summary of the status of the law and a review of powers available to further multimodal concurrency.

Despite being an important part of the GMA, concurrency has received limited formal review. Only four cases regarding concurrency have reached the appellate court level in Washington, and none have made it to the Supreme Court of Washington. Therefore, this concurrency review rests heavily on the text of the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC); where appropriate, local implementations of concurrency are used as illustrations.

The Growth Management Act

In response to the surging population growth of the 1980s, the legislature adopted the GMA to preserve rural, resource, and ecological lands while encouraging coordinated, planned urban growth. See RCW 36.70A.010, 020. Under the GMA, populous or fast growing counties and the cities they contain are required to produce comprehensive plans reflecting a consistent approach to a wide variety of government actions. RCW 36.70A.040. Presently, 29 of Washington's 39 counties are required to complete comprehensive plans compliant with the GMA.

The first three goals announced in the GMA are to promote urban growth, reduce sprawl, and encourage multimodal transportation. RCW 35.70A.020(1), (2), (3). Local jurisdictions are expected work toward these goals in a manner that is tailored to the local situation. *Id.* Where the goals are in conflict with each other, local jurisdictions are empowered to emphasize one goal or goals at the expense of others. Overall, the GMA requires that local jurisdictions follow a planning process but does not require that they reach a particular outcome. *West Seattle Defense Fund v. City of Seattle (WSDF I)*, Central Puget Sound Growth Mgmt. Hearings Bd. Case No. 94-3-0016 (4316), FDO, at 60 (1994).

The GMA requires that sufficient transportation capacity exist to accommodate new development. See RCW 36.70A.070(6)(b). In meeting this requirement, local governments first decide what transportation options are locally important. Then the

¹ In other jurisdictions, this type of provision is referred to as an Adequate Public Facilities Ordinance (APFO).

jurisdiction decides what balance between supply and demand is appropriate for its community. Once the balance has been chosen, the government must enforce it by denying approval for any development that does not maintain this balance. *Id.* Development can still continue in locally congested areas if an improvement or strategy is in place at the time of the development to accommodate the new transit demand, or such an improvement or strategy will be completed within six years. *Id.* If no improvement or strategy would accommodate the proposed development's impact, then the jurisdiction may not approve that development. *Id.* A jurisdiction can use these three decisions—what type of transportation, how much, and whether to accommodate increased demand—to enforce its chosen development vision.

THE LEVEL OF SERVICE REQUIREMENT

Description

The GMA requires local jurisdictions to establish a level of service (LOS) methodology and standard for arterials, transit routes, and locally owned transit facilities. RCW 36.70A.070(6)(a)(iii)(B), 36.70A.070(6)(b). An LOS methodology is simply an objective way to quantify transportation system performance. WAC 365-195-210. The GMA does not set a baseline standard for local jurisdictions, but it does require them to set one for themselves. *WSDF I, FDO*, at 60.

Location of Powers

Control over the definition of LOS is held locally. The transportation element of the local comprehensive plan is required to be consistent with county, regional, and state six-year transportation plans, but the only direct oversight of LOS measurements is assigned to the regional transportation planning organization (RTPO). RCW 36.70.070(6)(c). The RTPO is tasked with reviewing, but not changing, local LOS methodologies to promote a regionally consistent evaluation of transportation. RCW 47.80.023(7).

Jurisdictions may change or update LOS standards by following the rules governing comprehensive plan updates, including public participation requirements. The entire comprehensive plan must be reviewed every seven years, but partial updates may be issued once a year or more frequently if urgent. *See* RCW 36.70A.130(4), (2)(a), (2)(b). In general, changes to a comprehensive plan or to development regulations must be submitted to the department of community, trade, and economic development at least 60 days prior to adoption. RCW 36.70A.106.

Changes to the LOS methodology may be made at any time. *Sammamish Cmty. Council v. Bellevue*, 108 Wn. App. 46, 56 (2001). Comprehensive plans are required to include a LOS standard but are not required to include the LOS methodology. *Id.* Jurisdictions may change both the technical manner in which LOS is measured and the transportation facilities selected for measurement. *Montlake Cmty. Club v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 110 Wn. App. 731, 739-40 (2002).

Present Implementation

Most jurisdictions use a volume-to-capacity ratio (V/C) as their LOS methodology. The V/C ratio “measures whether or not the physical geometry of the roadway provides sufficient capacity for the number of vehicles [attempting to use the roadway].” *City of Bellevue v. E. Bellevue Cmty. Mun. Corp.*, 119 Wn. App. 405, 411 (2003).

Local jurisdictions have adopted a variety of tailored LOS standards. Some cities, such as Seattle, have decided to accept a great deal of congestion. Seattle Muni. Code Exhibit 23.52.004(B). Other cities have set their baseline closer to free flowing traffic. *See, e.g.*, Issaquah Muni. Code 18.15.220(38). Many jurisdictions use different standards for different areas, tolerating greater congestion in the commercial core, for instance, than in residential neighborhoods. *See, e.g.*, Bellevue Municipal Code 14.10.030(A).

Opportunities for Expanded Implementation

Implementations of LOS methods and standards are entitled to the presumption of validity. RCW 36.70A.3201. When challenged in court, they can only be overcome by clear and convincing evidence, not a mere preponderance of evidence. *Id.*

Localities have the power to create LOS methodologies reflecting varied transportation choices. Jurisdictions are encouraged, but not required, to innovate and find new ways to measure their traffic. WAC 365-195-325(2)(e), RCW 36.70A.108(1)(b). More jurisdictions could adopt models like Renton’s, which uses a weighted average of travel distances achieved by a single-occupancy vehicle, high-occupancy vehicle, and bus traveling for a half-hour during the afternoon rush hour. City of Renton, 2004 Comprehensive Plan, pg XI-20.

Additionally, jurisdictions have the discretion to select the aspect(s) of transportation mode(s) to measure. WAC 365-195-210 provides that “[s]tandards may be expressed in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety.” Renton’s concurrency technique focuses on speed, while Vancouver’s uses a mix of average corridor travel speed, the time it takes to clear specified intersections, and a mobility index measuring groups of intersections. City of Renton, 2004 Comprehensive Plan, pg XI-20, Vancouver Mun. Code 11.05.030(A)(2),(8),(9).

TRIP ACCOMMODATION REQUIREMENT

Description

If a proposed development would increase traffic on a locally owned facility beyond the LOS standard, then the jurisdiction must deny or delay the development unless improvements or strategies accommodate the new trips within six years. RCW 36.70A.070(6)(b); WAC 365-195-835(3)(d)(iii). Strategies for accommodating new development may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. RCW

36.70A.070(6)(b). Multimodal improvements and strategies are specifically authorized later in the code. RCW 36.70A.108(1).

If improvements or strategies are not in place at the time of the development, then a financial commitment must exist to complete them within six years. RCW 36.70A.070(6)(b). It is unclear at what point service-based accommodations would be deemed “complete” in the meaning of the statute. By their very nature, service accommodations are an ongoing process unlike a physical improvement, which has an objective completion point.

A jurisdiction may establish a minimum number of new trips required to trigger concurrency enforcement. A development generating a handful of trips does not require evaluation or mitigation if the jurisdiction includes the trips as part of later system reviews. *See Progress Clark County, Inc., et al. v. City of Vancouver*; Order Finding Compliance; W. Wash. Growth Mgmt. Hearings Bd. (October 30, 2003) (Approving Vancouver Muni. Code 11.95.080, which exempts developments creating 10 or fewer trips from concurrency requirements, but includes the new trips as part of the city’s annual concurrency review).

Additionally, jurisdictions are not required to deny, delay, or mitigate development if the local LOS conditions allow the development, but the development would cause a facility owned by the state or a neighboring jurisdiction to fail the applicable LOS test. See RCW 36.70A.070(6)(b). For certain state facilities, local jurisdictions are legally prevented from denying development on the basis of the increased traffic burdens on those state facilities. RCW 36.70A.070(6)(a)(iii)(C).

For developments generating more than a handful of new trips, the standard must be consistently applied, and no variance may be granted. *Bellevue*, 119 Wn. App. at 414. A jurisdiction may change the LOS standard in order to allow more congestion in an area, but it may not allow individually selected developments or developers to be exempted from standards the jurisdiction still enforces on others. *Id.*

Improvements and strategies required by concurrency are separate and distinct from development impact fees, although the improvements and strategies may be funded by impact fees. Impact fees can be assessed whenever a development relies on public facilities; concurrency mitigation is only required when the development would overburden those facilities. Impact fees may be spent by the jurisdiction according to its own priorities; concurrency mitigation must directly accommodate the new trips created by the development. *See Thomas M. Walsh & Roger A. Pearce, The Concurrency Requirement of the Growth Management Act*, 16 U. Puget Sound L. Rev. 1025, 1026-7 (1993).

Location of Powers

Local jurisdictions have sole authority to approve strategies or improvements necessary to accommodate development. Decisions on how to accommodate the increased demand are often made on a case by case basis but may be informed by the local needs identified in the transportation element of the jurisdiction’s comprehensive plan. RCW 36.70A.070(6)(a)(iii)(F).

While local jurisdictions are empowered to approve service-based concurrency mitigation, it is rare for a jurisdiction to directly control the provision of transit service within its borders. Instead, most jurisdictions receive transit service from a provider organized under a Public Transportation Benefit Area (PTBA) (Chapter 35.57A RCW);² Washington State Transportation Resource Manual (Updated January 2005), pg. 297. PTBAs are governed by a collection of representatives from the areas they serve. RCW 36.57A.050. As independent organizations, the governing board oversees the operations and management of the PTBAs. RCW 36.57A.080. The governing board includes elected officials from constituent jurisdictions, but the PTBAs are free to set routes and schedules without giving deference to their constituent jurisdictions. *Id.*

Present Use

Improvements and strategies are determined on a case by case basis in each jurisdiction, but most focus on improving physical facilities. Puget Sound Regional Council, *Assessing the Effectiveness of Concurrency: Phase 2 Report – Analysis of Practices*, pg. 52 (2002). Many jurisdictions use a “pay-and-go” approach in which the developer pays a portion of the costs of the mitigation, and the jurisdiction assumes the responsibility for implementing the improvements or strategies. *Id.*

Jurisdictions using service-based accommodations currently favor travel demand management (TDM). *Id.*, pg. 53. In order to address the possibility of future funding shortfalls, Issaquah makes TDM programs a condition of the permit that then stays with the development. *Id.*

Opportunities for Expanded Implementation

Localities are not limited to physical improvements and may use increased service offerings as a strategy to accommodate development. Additionally, the mitigation is not required to serve the users of the development. If improvements or strategies targeted an off-site location would improve the LOS measurement at the transportation facility affected by the proposed development, then that mitigation would also be acceptable for the proposed development.

Jurisdictions have limited opportunities for multimodal mitigation because most LOS standards do not account for non-motorized travel and do not count high-occupancy vehicles differently than single-occupancy vehicles. As multimodalism is often weakly reflected in the LOS measurement, jurisdictions have difficulty proving that multimodal improvements or strategies are well targeted for ensuring that local facilities meet or exceed the LOS standards.

² There are six exceptions. The cities of Everett, Yakima and Pullman run their own municipal systems. The counties of Garfield, Grays Harbor, and King operate systems under different authorizing statutes. Those counties maintain control of both land use and public transportation in their unincorporated areas. Washington State Transportation Resource Manual (Updated January 2005), pg. 297.

Limits on the Use of Permit Conditions

Conditioning development permits is a very complicated issue in Washington. Local jurisdictions frequently impose conditions on permit approval instead of simply issuing or denying a permit. The Washington State Supreme Court has recognized that RCW 82.02.020 defines the limits of governmental power to place conditions on new development.³ RCW 82.02.020 limits the ability of local jurisdictions to impose taxes, fees, or other costs upon development either directly or indirectly. The statute does have exceptions for certain programs and types of fees, but it makes no explicit reference to concurrency.

RCW 82.02.020 states that “no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land,” except as explicitly provided for in other parts of Chapter 82.02 RCW. Among the programs exempted from the strictures of RCW 82.02.020 are transportation impact fees (RCW 39.92), transportation benefit districts (RCW 36.73.120), “special assessments on property specifically benefited thereby,” and system improvement fees (RCW 82.02.050).

When the legality of permit conditions is evaluated, RCW 82.02.020 should be preferred to tests based upon the United States Constitution. “[N]either the United States Supreme Court nor [the Washington State Supreme Court] has determined that the tests applied in *Nollan*⁴ and *Dolan*⁵ to evaluate land exactions must be extended to the consideration of fees imposed to mitigate the direct impacts of a new development, much less to the consideration of more general growth impact fees imposed pursuant to statutorily authorized local ordinances.” *City of Olympia v. Drebeck*, 156 Wash.2d 289, 302 (2006) (Citing *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 702-03 (1999)). RCW 82.02.020 also includes restrictions on the exaction of land as a condition of permit approval.

In addition to limiting taxes and fees on developments, the RCW 82.02.020 prohibits “voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW.” As defined in RCW 39.92.020(5), off-site transportation improvements are improvements already provided for in a transportation plan. This limited definition implies that transportation improvements that are not on the

³ See, e.g., *City of Olympia v. Drebeck*, 156 Wash.2d 289 (2006); *Isla Verde Int’l Holdings, Inc. v. City of Camas*, 146 Wash.2d 740 (2002); *Benchmark Land Co. v. City of Battle Ground*, 146 Wash.2d 685 (2002).

⁴ *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) (Holding that requiring a property owner to grant the public a beach access easement was not sufficiently related to the loss of the public’s views of the ocean).

⁵ *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (Finding that the city could not require a property owner to contribute land to a community river walk as a condition of allowing a building and parking lot to be enlarged).

same land as the development, but that are not already provided for in the transportation plan, can be provided by a developer through a voluntary agreement if they are “reasonably necessary as a direct result” of the proposed development. This result is consistent with the goal of preventing duplicative fees found in RCW 82.02.050(1)(c).

While local jurisdictions generally limit mitigation conditions to provision of physical infrastructure such as roadways and sidewalks, they have the authority to require new development to contribute toward its increase in demand for transportation services as well as the physical infrastructure. See *infra* TRANSPORTATION SYSTEM FUNDING.

LAND-USE AND COOPERATION POWERS

Multimodal transportation depends on certain land-uses patterns, such as dense development, to support it. See, e.g., RCW 81.104.080. Local jurisdictions have the land-use authority to create density in numerous ways, including zoning requirements and tax incentives. While land-use powers are located in individual jurisdictions, the traffic impacts often span the transportation facilities of multiple jurisdictions. Concurrency implementations must implement the land-use element of the jurisdiction’s comprehensive plan and consider the effects on neighboring jurisdictions. See RCW 36.70A.070(6)(a)(v). Local jurisdictions do not have to express deference to the plans of neighboring jurisdictions; only consideration is required. *Id.*

Land Use

Land-use planning and transportation planning are formally divided. The separation between land-use planning and transportation planning is present in numerous places within the law. For example, RCW 35.77.010 requires a public hearing to evaluate the transportation plan, and RCW 35.63.100 requires a public hearing to evaluate the land-use plan. Nothing in either provision prevents both hearings from being held jointly, but a joint hearing is neither required nor suggested. Land-use planning and transportation planning are also divided in the GMA. In a comprehensive plan, the transportation element must “implement” the land-use element, but the land-use element is not similar. In rare instances, land-use authority is held without any transportation authority. The community councils that Bellevue has incorporated, for instance, retain land-use control of their geographic regions while possessing no transportation powers of their own. *Bellevue*, 119 Wn. App. at 410. Another instance is the Columbia Gorge Commission, which has the authority to veto developments within three Washington counties and three Oregon counties but is without any transportation powers. See RCW 43.97.015(a)(2),(3),(4). Such clear separation is unusual, but it highlights the way in which the two powers are often viewed independently. More often, transportation power is held without land-use power; only five areas of the state control both land-use and public transportation: the cities of Everett, Yakima, and Pullman and the unincorporated areas of Garfield and King counties. Washington State Transportation Resource Manual (Updated January 2005), pg. 297.

Local jurisdictions can not use the concurrency provision to prevent development outside their boundaries. Comprehensive plans, though, are required to evaluate the impacts of

their land-use and transportation decisions on the transportation systems of neighboring jurisdictions. RCW 36.70A.070(6)(a)(v). And a few jurisdictions, such as Bellevue, have unilaterally decided to disallow concurrency mitigation within its boundaries that would have the effect of shifting concurrency problems to neighboring jurisdictions. Bellevue Muni. Code 14.10.050(D)(6).

Interlocal Agreements

Interlocal agreements can be used to achieve inter-jurisdictional concurrency, provide mass transit, and enforce lockstep coordination. In Washington State, every power held individually by any two or more local jurisdictions can be shared by those jurisdictions. RCW 39.34.030. Therefore, local jurisdictions that find it useful may agree with each other to enforce concurrency not only for their own facilities but also for those of the other. King County formally provides such arrangements. King County Code 14.70.290(B),(D).

Jurisdictions may also use intergovernmental agreements to engage in partnerships with transit providers. Bellevue, for instance, is part of a long-term partnership with King Country Metro, Sound Transit, and the Bellevue Downtown Association to reduce single-occupancy vehicle trips.

Regional Transportation Planning Organizations

RTPOs, such as the Puget Sound Regional Council, are established through Chapter 47.80 RCW. RTPOs are “formed through the voluntary association of local governments” and must have as members at least 60 percent of the governments within their area representing at least 75 percent of the residents. RCW 47.80.020. RTPOs can also be designated as metropolitan planning organizations for the purposes of federal law. RCW 47.80.020; 23 U.S.C. § 134(d)(1)(B).

An RTPO has the authority under both state and federal law to develop a transportation plan for its region. RCW 47.80.023(5), 47.80.030(1); 23 U.S.C. § 134(i). The plan must “set[] forth a proposed regional transportation approach, including capital investments [and] service improvements.” RCW 47.80.030(1)(f). “All transportation projects . . . within the region that have an impact upon regional facilities or services must be consistent with the plan” RCW 47.80.030(3). The RTPO also has responsibility for certifying “that the transportation elements of comprehensive plans adopted by [local jurisdictions] within the region . . . are consistent with the adopted regional plan” RCW 47.80.23(3).

Another duty of RTPOs could be very useful in promoting multimodal concurrency. State law grants RTPOs the authority to “review LOS methodologies used by [local jurisdictions] to promote a consistent regional evaluation of facilities and corridors.” RCW 47.80.023(7). When connected with their comprehensive plan certification responsibility, RTPOs have the power to withhold certification of the transportation elements of local plans if the local plan features an LOS methodology inconsistent with the one designated by the RTPO. The RTPO is not granted any explicit authority over LOS standards, just measurement methodologies.

Regional Transportation Commission

The 2006 legislature created a new governmental task force in the central Puget Sound region. The Regional Transportation Commission (RTC) is tasked with providing a review and evaluation of transportation planning and provision in the central Puget Sound region. *See* RCW 36.120.020(8)(e). Part of the RTC's task is to propose a "regional transportation governing entity," its powers and its funding. 2006 Wash. Legis. Serv. Ch. 311 (S.H.B. 2871) (West). At this time it is too early to speculate about the results of the RTC's work.

TRANSPORTATION SYSTEM FUNDING

The funding tools available to local jurisdictions are complex and potentially overlapping. Funding tools for local improvement of transportation facilities is found in three major parts of the RCW: mitigation for impacts on the transportation system under the State Environmental Policy Act (SEPA) in RCW 43.21C.060; system impact fees provided under the GMA provision codified at RCW 82.02.050; and transportation impact fees set forth in RCW 39.92.040.

Regardless of the system used, reassessing how local jurisdictions evaluate transportation impacts could increase development incentives for multimodalism. Most jurisdictions currently assess transportation impacts of new development as the number of new vehicle trips starting or ending at the proposed development during the evening rush hour. As a result, developers are charged equally per trip, regardless of the development's location relative to complementary land uses within the jurisdiction. Jurisdictions have the authority to evaluate the impact on the basis of additional factors such as the mode of transportation used by each trip or the number of miles traveled per trip. For example, Redmond bases its impact fees on the average vehicle miles traveled per trip. Redmond Muni. Code 20D.210.10-120.

State Environmental Policy Act (SEPA)

Local jurisdictions often use Washington's State Environmental Policy Act (SEPA) for evaluating and reducing the impacts of a proposed development. SEPA allows local jurisdictions to condition permits and other actions in order "to mitigate specific adverse environmental impacts. . ." RCW 43.21C.060. Any such conditions must "be reasonable and capable of being accomplished." *Id.* Mitigation, defined by WAC 197-11-768(4), includes measures for "[r]educing or eliminating the impact over time by preservation and maintenance operations during the life of the action."

The transportation system is one of the environmental factors evaluated for significant impacts under SEPA. WAC 197-11-144(2)(c), as authorized by RCW 43.21C.110(1)(f).

Fees imposed under SEPA authority may not be legally enforceable. RCW 82.02.020 does not exempt mitigation under SEPA from the blanket prohibition against taxes or

fees placed upon development. But RCW 82.02.100 contemplates the possibility of SEPA fees overlapping with other impact fees. RCW 82.02.100 states that fees shall not be collected under both RCW 43.21C.060 and RCW 82.02.050 for the same improvement, but it is possible that the contemplated SEPA fees are fees-in-lieu-of an action or land dedication and not direct fees. If RCW 82.02.100 is interpreted to apply only to fees-in-lieu-of and not direct fees, then fees imposed by SEPA would conflict with RCW 82.02.020.

Local jurisdictions can, subject to defined criteria, encourage density by exempting infill development consisting of “new residential or mixed-use development” from the requirements of SEPA. Such exemptions must be categorical and are limited to areas where the density is less than the density called for in the comprehensive plan. RCW 43.21C.229.

System Improvement Fees

RCW 82.02.050 authorizes local jurisdictions to impose fees upon new development for the development’s impact on various capital facilities systems within that jurisdiction. Since the money is restricted to implementing sections of the capital facilities plan, system improvement fees are only useful for non-service-based multimodal efforts such as HOV lanes.

In 2006, the Washington State Supreme Court upheld the City of Olympia’s assessment of system improvement fees on a development near the city limit. *City of Olympia v. Drebeck*, 156 Wash.2d 289 (2006). The fees were based upon the cost of transportation improvements necessitated by projected growth divided by the number of new trips expected. *Id.* at 304. The developer argued that many of the trips generated by the proposed development would leave the City of Olympia’s street system after a short distance and therefore the development would not be benefit by improvements to the larger system. *Id.* at 310. The court found that “[n]otably . . . the legislature did not require that the funded facilities be *directly* or *specifically* related and beneficial to the development seeking approval.” *Id.* at 301. The court held it was sufficient that the fees funded improvements that, “when considered as a whole,” benefited the proposed development. *Id.* at 305 (quoting the findings of the Hearing Examiner).

Transportation Impact Fees

Chapter 39.92 RCW allows local jurisdictions to impose transportation impact fees based upon the expected costs of accommodated development within a defined area. Local jurisdictions have it within their power to encourage development in certain areas by creating distinct transportation impact fee areas with different fees. RCW 39.92.030(1). If distinct areas are drawn, the improvements funded by the fees collected in the different areas must also be distinct. *See id.*

Transportation impact fees include some provision for multimodal transportation. Like system improvement fees, transportation impact fees are focused in capital facilities, but the fees themselves must take into account the developer’s involvement with trip reduction programs. RCW 39.92.030(3),(6). Accounting for trip reduction programs is

further supported by the clause requiring transportation impact fees to be “reasonably necessary as a direct result of the proposed development.” RCW 39.92.030(4).

Local governments choosing to use the transportation impact fees set forth under Chapter 39.92 RCW forgo their ability to enter into voluntary agreements with developers to complete any improvements that are present in their transportation plans. *See* RCW 82.02.020. This limitation on transportation impact fees is not placed on system improvement fees. *Id.*

CONCLUSION

At present, nothing in the law prevents multimodal concurrency. Indeed, many parts explicitly support it. In theory, relevant jurisdictions possess the powers to make it a reality. But exercising some of those powers requires the commitment of significant local resources.

In furthering multimodal concurrency, the most important legal step a jurisdiction takes is selecting how to measure LOS. Not only does the measurement methodology reflect the jurisdiction’s transportation vision for how people and goods will move within its boundaries, but it also determines how funds can be spent to accommodate new transportation demand. Currently, jurisdictions vary the LOS standard to reduce concurrency pressure in target areas, and they are very successful at working with developers to accommodate new growth, but their integration of multimodalism is still progressing.

Regional LOS coordination is also an important step. Coordination of LOS standards would be more effective if a region employed a uniform LOS methodology. In King County, for instance, most jurisdictions implement LOS differently than their neighbors, making coordination of the LOS standards like coordinating apples with oranges. Explicitly empowering counties or RPTOs to propagate a single methodology, or set of compatible methodologies, would enhance regional transportation analysis. The new requirement that RPTOs create a measurement of total multimodal capacity for regional growth centers creates a regionally applied methodology for the first time. RCW 47.80.030(1)(f).