Washington State Department of Transportation

Transportation Concurrency Analysis State-Owned Facilities

Oversight Committee Meeting 2

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PSRC Conference Room, Seattle
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Summary of First Meeting

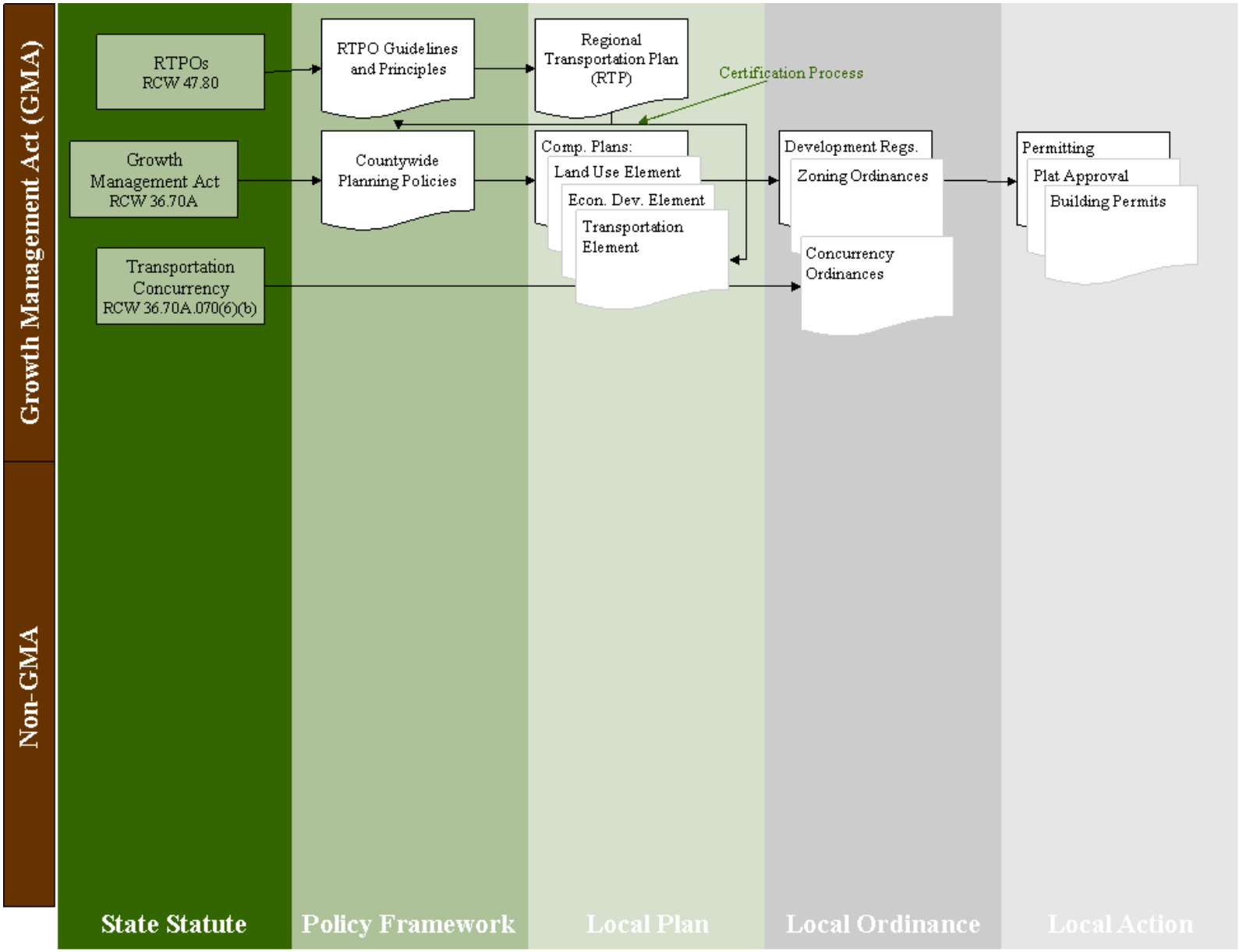
Issues Identified at July 11 Meeting:	Today's Topics:
What is the relationship between SEPA, impact fees and the GMA and how might these tools be used to integrate land use decisions with state highway function and investment?	Current Law: Mitigation Tools
How do state agencies and RTPOs practice their roles in local land use planning?	Current Practice
How have local comprehensive plans, access management plans, and WSDOT's participation in local land use influenced the development of state highways?	Current Practice – Case Study, US 2 in Monroe
Does concurrency terminology require clarification? Should minimum LOS be established?	Identify Gaps in Law
How well are current practices working?	Identify Gaps in Practice

Analysis Products Identified at July 11 Meeting:

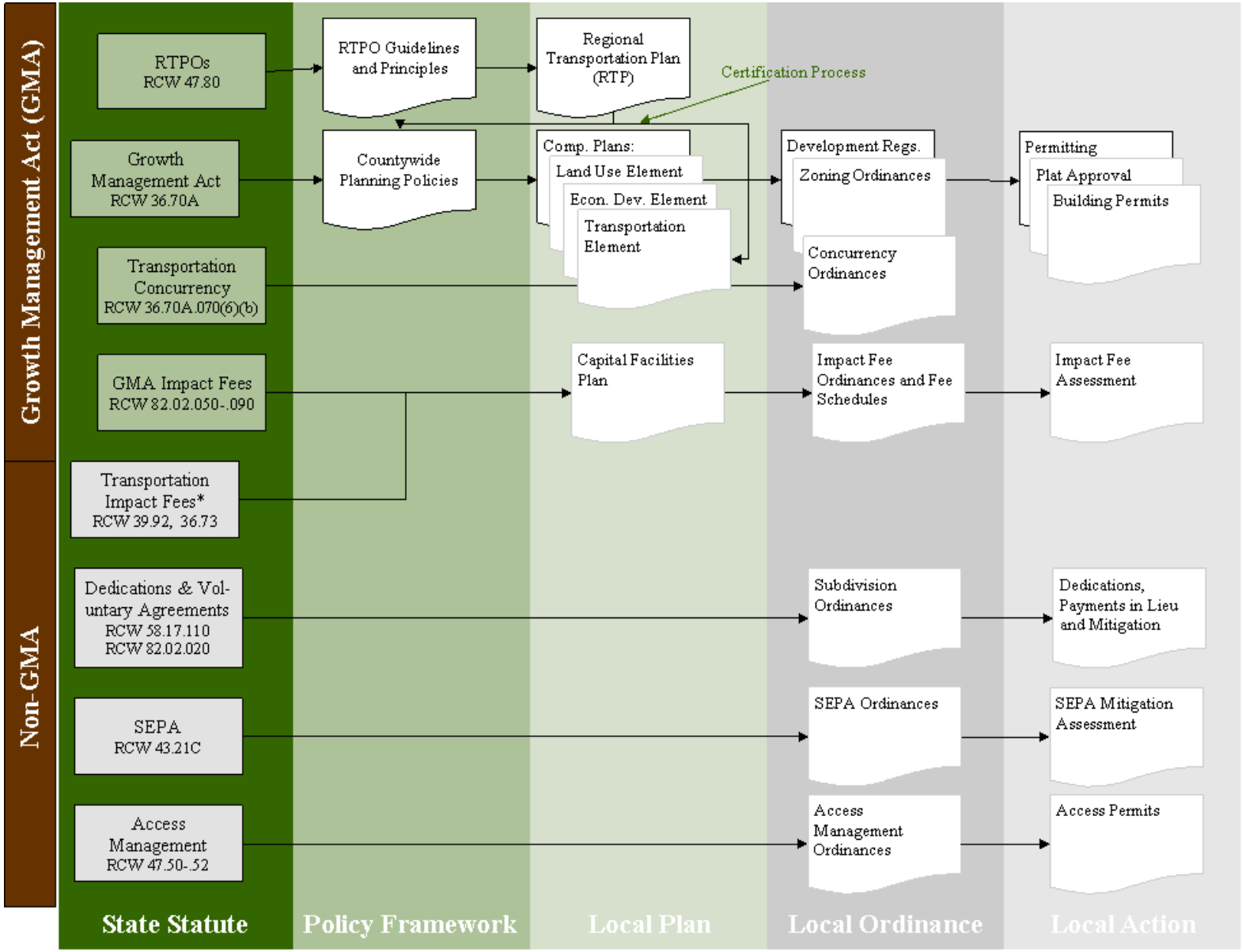
- Based on identified gaps, consider policy options
- Assess the impacts of policy options, considering geographic differences
- Discuss the pros and cons of policy options

Next Steps

July 11 Meeting – Concurrency Under the GMA



Today's Meeting – Mitigation Tools



*NOTE: If Transportation Impact Fee is assessed by a Transportation Benefit District, project must be listed in the State or RTPO transportation plan.

Tools – Dedication & Voluntary Agreements

Authority comes from

- constitutional police powers - (WSC Article 11§11)
- platting statutes – if subdivision proposals do not serve the public use and interest and make appropriate provisions for public health, safety and general welfare they must be denied or conditioned to address the deficiencies of the proposal (RCW 58.17.110)
- excise tax statutes – prohibits local governments from imposing taxes, fees or charges on building construction or land development; but allows by exception land dedication and voluntary agreements (RCW 82.02.020)

Allows

- land dedication
- voluntary payments in lieu of land dedications
- voluntary mitigation fees, and
- voluntary developer-provided improvements

Limitations

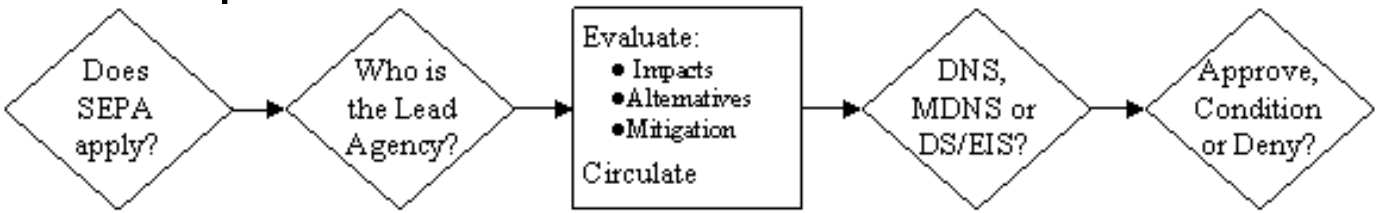
- must be expended within 5 years or refunded with interest
- does not provide a mechanism for mitigation impacts to state facilities
- must be reasonably necessary as a direct result of the proposed development or plat
- cannot result in private property being taken for public use, without just compensation

Tools – SEPA Substantive Authority

Authority comes from

- the 1971 State Environmental Policy Act (SEPA) which defines a process for state and local governments to disclose and consider environmental impacts when making decisions (RCW 43.21C)

SEPA review process



Allows

- any governmental action to be denied or conditioned to mitigate specific adverse environmental impacts identified in SEPA environmental documents
- the lead agency to consider state agency comments and mitigation requests
- an undefined time frame for use of mitigation fees

Limitations

- some statutory, rule, emergency, and infill exemptions
- must be based on adopted policies incorporated into regulations, plans, or codes
- must be related in purpose and extent to SEPA-documented specific adverse impacts
- mitigation measures must be reasonable and capable of being accomplished
- denials must find that reasonable mitigation measures are insufficient to mitigate significant adverse impacts identified in the EIS
- intended to address gaps and overlaps

Tools – GMA Impact Fees

Authority comes from

- the Growth Management Act (GMA) adopted in 1990 (RCW 82.02.050-.090)

Allows

- local governments to require that new growth and development pay a proportionate share of the new facilities needed to serve it
- costs to be assessed for area-wide system improvements within the community at large (no individualized assessments of a development's direct impacts on each planned improvement required)

Limitations

- can only be used by cities and counties fully planning under the GMA
- can only be imposed for statutorily defined public facilities (e.g. public streets and roads)
- can only be imposed for the proportionate share of the costs of new system improvements that are reasonably related to and reasonably beneficial to the new development
- must be balanced by other sources of public funds
- must be expended or encumbered on projects listed in the capital facilities plan within six years of collection or refunded with interest
- does not provide a mechanism for mitigating impacts to state-owned facilities

Tools - Transportation Impact Fees

Transportation Impact Fees

- Authority comes from the Local Transportation Act (LTA) adopted in 1988 (RCW 39.92)
- Allows local governments to singly or jointly impose impact fees on new development to fund a portion of needed off-site transportation improvements
- Can only be used for major and minor arterials and intersection improvements designated in a local plan and undertaken by the local government; must be reasonably necessary as a direct result of the proposed development, must be expended or refunded within six years of collection

Transportation Benefit Districts

- Authority comes from the 2005 Transportation Benefit District (TBD) Act (RCW 36.73)
- Allows local governments (except in King, Pierce or Snohomish counties) to singly or jointly establish an independent authority that can assess taxes, fees, and tolls; including LTA impact fees for projects constructed by the TBD that are identified in State or RTPO transportation plans
- Must be approved by popular vote, developments of less than 20 residences are exempt, city or county transportation impact fees paid by the development must be credited

Note: The Regional Transportation Investment District Act (RCW 36.120) allows local governments in King, Pierce, and Snohomish counties to jointly establish an independent regional transportation authority through legislative action and a popular vote. While this entity could levy taxes, fees and tolls; it would not be authorized to impose impact fees.

Tools - Access Management

Authority comes from

- the Limited Access Facilities Act of 1951 (RCW 47.52)
- the Highway Access Management Act of 1991 (RCW 47.50)

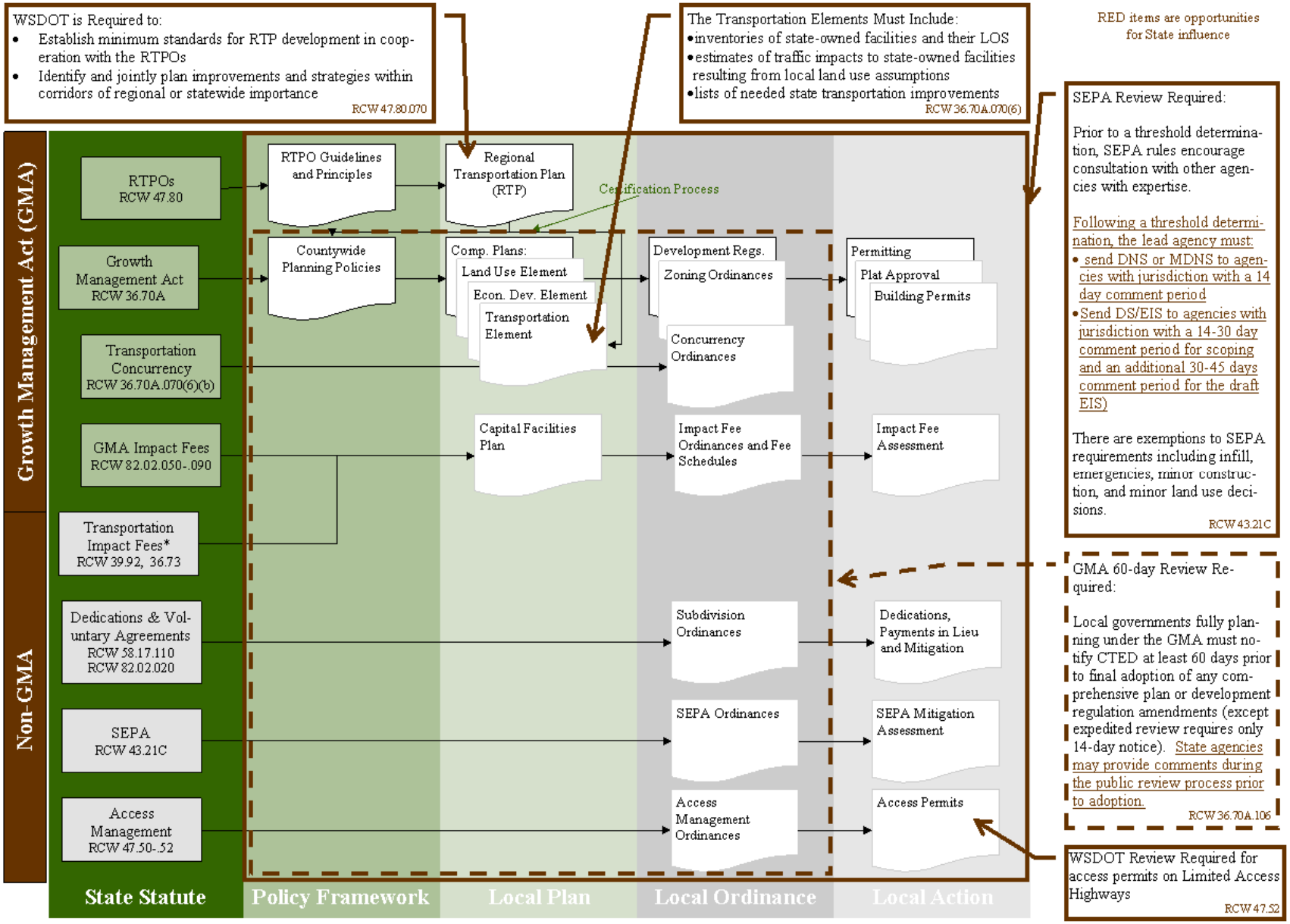
Allows

- the state to regulate vehicular traffic movement onto and off of the state transportation system to preserve safety and efficiency and to protect the public's investment in their transportation system
  - limited access provides the state the ability to regulate access through the purchase of access property rights (WSDOT or FHWA access permit required)
  - managed access applies to all state highways that are not limited access and allows the state to review connections when the intensity of use changes or during a safety or mobility project design (WSDOT access permit required in the unincorporated county, cities issue permits within their boundaries, regardless of population size)

Limitations

- Limited Access:
  - Pre-existing driveways are grandfathered in on partial and modified limited access routes
- Managed Access:
  - All connections in existence prior to July 1, 1990 are grandfathered in on managed access routes if there is no change in use or traffic volumes

Opportunities for State Influence



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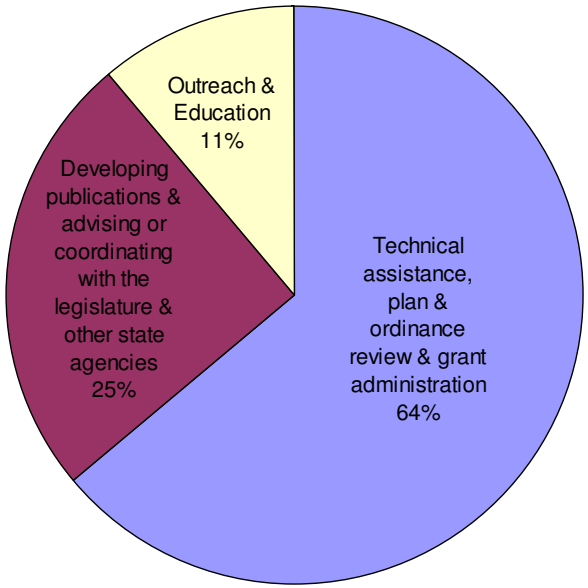
How Does CTED Influence Local Land Use?

- Places primary emphasis on providing technical and financial assistance in the early stages of local land use planning
- Coordinates state agency GMA guidance
- Coordinates state agency review
- Maintains compliance records which may be considered by granting authorities
- Approaches local government as a partner in planning and implementing the GMA. However, if local governments do not meet GMA requirements, CTED may request the Governor to appeal a local decision to a GMHB

*Note: financial sanctions may also be imposed by the Governor (only imposed once)

How Does CTED Spend It's Time?



Growth Management Services employs 21.5 FTE & has a $5.25 million annual budget, including $3 million in pass-through grant funds.

In 2005, 1198 review items were received, 540 were forwarded to a planner for review, and 84 comment letters were sent.

How Does WSDOT Influence Local Land Use?

- Coordinates the development of the Washington Transportation Plan and route development plans at the region level
- Review and comment on local comprehensive plan and development regulations
- May appeal (if on record) through local process

- Review, comment, and request mitigation through SEPA
  - Subject to local governments' decisions to condition approvals
  - May work directly with developers to mitigate impacts if local project review process allows
- May appeal SEPA determinations (only 2 appeals in the last 5 years)
- Issues access permits on limited access state facilities and managed access state facilities in unincorporated areas

WSDOT budgets 1 FTE for comprehensive plan review and 25 FTE for development project review statewide.

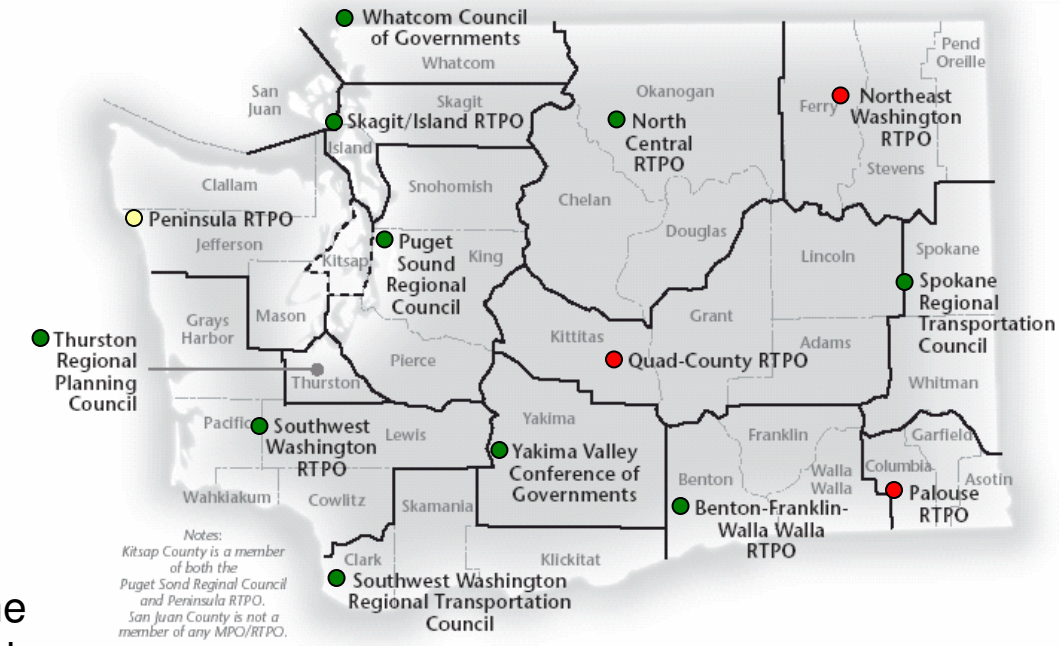
Five of the six WSDOT regions have agreements with some local agencies to collect SEPA mitigation.

In 2005, 3271 projects were reviewed through SEPA, 2066 were determined to have no significant impact, mitigation was requested for 559, and some amount of mitigation was received for 343.

In 2005, WSDOT obtained $2.9 million in traffic mitigation fees, $11.8 million estimated developer improvements, $3.3 million estimated right of way donations.

How Do RTPOs Influence Local Land Use?

- 14 RTPOs – Includes 38 of 39 Counties in the State (San Juan)
  - 10 are also MPOs and have dedicated professional staff (●)
  - 1 is staffed by the WSDOT (○)
  - 3 are staffed by existing local staff who have other duties (●)
- Certification of the transportation elements is an inconsistent process and sometimes lacks local cooperation and awareness



- In 2002, 4 RTPOs had not certified the transportation elements of any local plans
- A more recent informal survey returned by 8 of the 14 RTPOs indicated:
  - certification does not consistently occur (5 regularly use, 2 sometimes, and 1 never)
  - the certification process ranges from a minimal "rubber stamp" approval to a more rigorous evaluative process (4 use a worksheet or checklist completed by the local agency combined with RTPO staff review, 1 uses a checklist completed by RTPO staff, and 2 involve RTPO staff review of draft plans without a checklist)
  - the certification process is not always valued (4 say the process is beneficial, 2 say not beneficial, and 1 says don't know)
  - PSRC has tied the certification process to eligibility for federal transportation funds administered by their organization

What Do Local Governments Say About Concurrency?

The Puget Sound Regional Council completed a study of the effectiveness of concurrency within the Puget Sound in 2002-03.

Survey Results (68 respondents):

- 36 (53%) did not have a transportation concurrency ordinance
- 36 (53%) say that their concurrency system has no discernable impact on development projects
- 49 (72%) say < 10% of transportation improvement costs are paid by development fees/assessments
- 29 (43%) say they account for and incorporate state highway facilities in their concurrency programs
- 5 (7%) believe that state facilities should have to address concurrency at some level

Focus Group Results (19 jurisdictions):

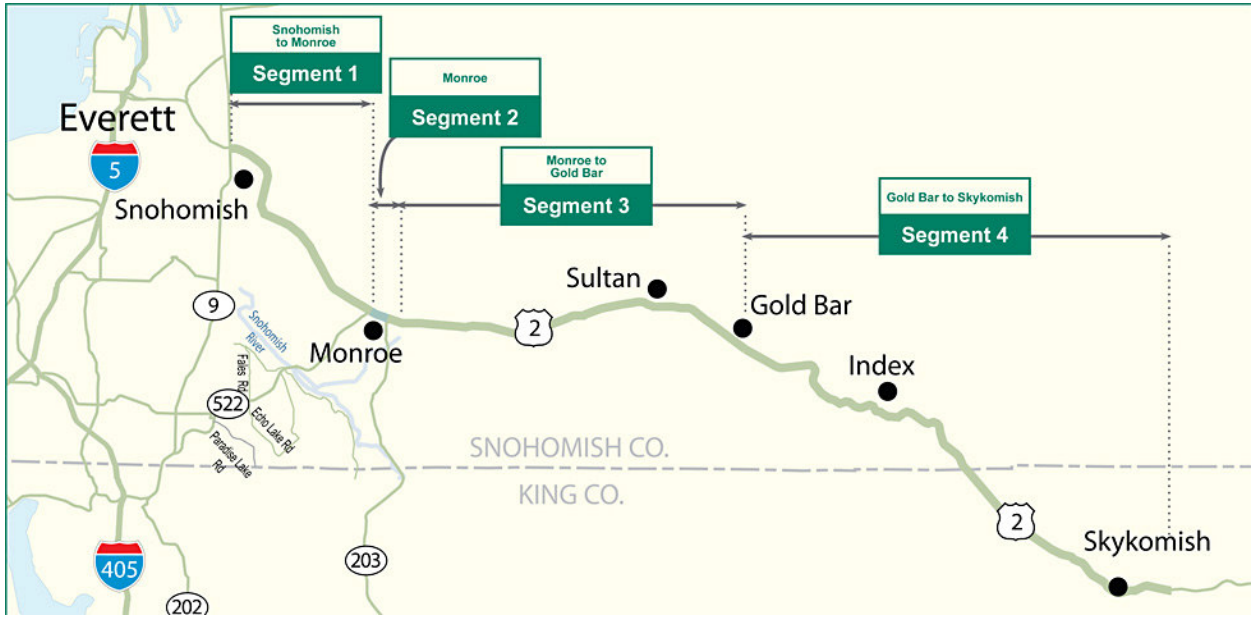
- While a few indicate that traffic on state facilities has led to developments being denied or modified, most say that state traffic has not had an impact on development.
- There is strong neighborhood opposition to expanding local streets for pass-through traffic from state route spillover.
- In some jurisdictions, locally maintained streets have no concurrency issues except in the proximity of state roadways.

Workshop Results (90 participants):

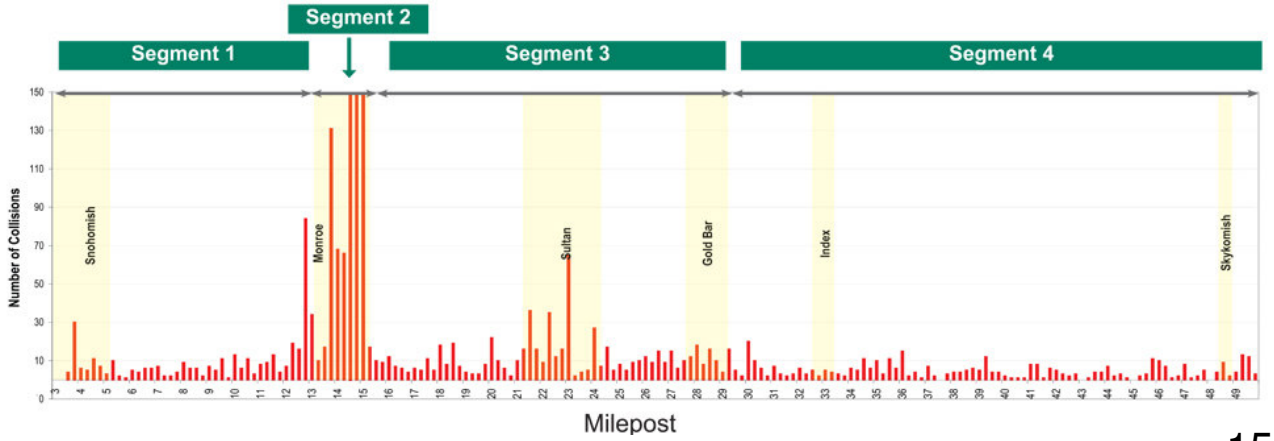
- No major changes need to be made to the law– concurrency practices should be allowed to mature.
- Incentive-based approaches would be more effective, and acceptable, than regulatory approaches.
- Exemptions can be useful and should be permitted in some fashion.
- Jurisdictions are concerned about the state's inability to fund transportation projects, especially those that would provide relief from traffic impacts on local roads that access and intersect state facilities.
- Participants were unanimous that the state should not have a role in local concurrency decisions.
- Participants are interested in greater clarity regarding highways that are not of statewide significance, but they did not specifically decide what the role of the state should be.

Example: US 2 Study Area

- $1.3 million Route Development Plan initiated in November, 2005 to address safety and mobility concerns
- Between 1999 and March 2006, there have been over 2,500 collisions in the study area including 33 fatalities
- Since 1993, WSDOT has invested $36 million towards the maintenance and preservation of roadways in the study area

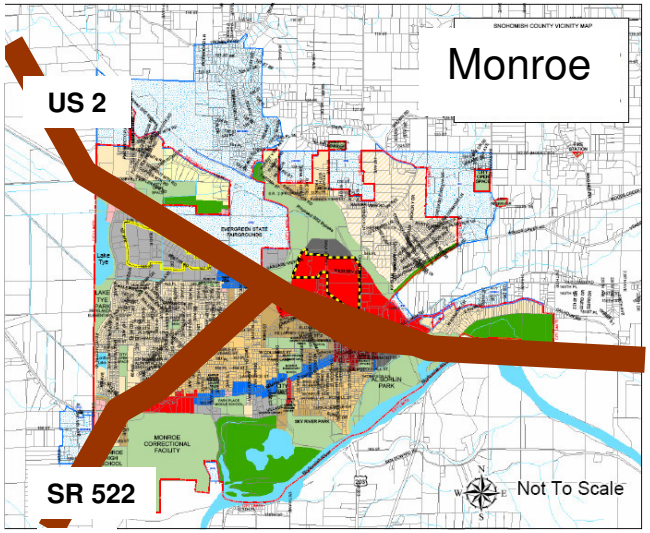


Number of Collisions on US 2, 1/99-2/06



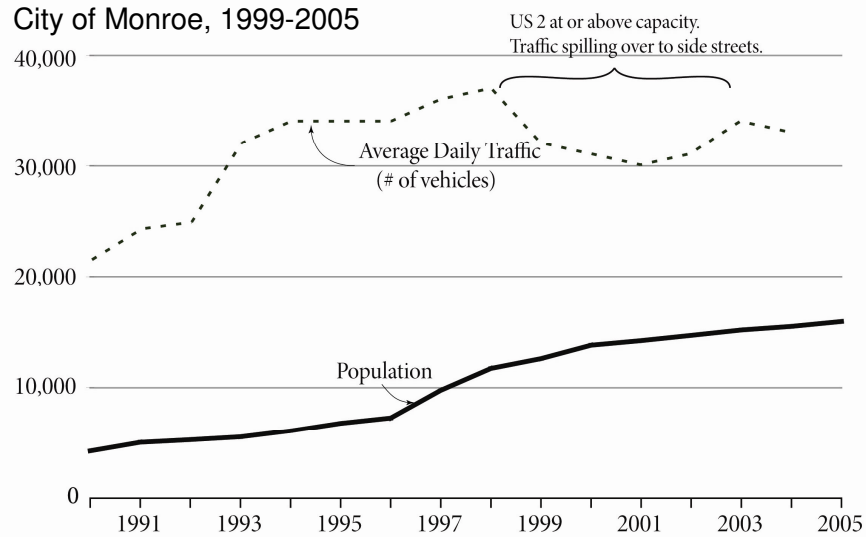
Example: US 2 in Monroe has Safety & Mobility Issues

- US 2 lined with urban development including multiple stoplights and access points restricting traffic flow
- Since 1990, Monroe's population almost quadrupled from 4,200 to 16,000. It is projected to increase to 26,590 by 2025.
- Average daily traffic has increased over 54% resulting in traffic diversion onto local roadways and even through parking lots to avoid congestion
- From 1999-2005, there have been 1,110 collisions. Collision rates are significantly higher than the statewide average (4.53 collisions per million vehicle miles compared to 1.11 statewide average)



Population and Average Daily Traffic on US 2

City of Monroe, 1999-2005



Source: WSDOT NW Region Office and Office of Financial Management

Example – Planning for US 2 in Monroe

MONROE:

- Monroe completed its required comprehensive plan update in 2005
- Monroe has a transportation concurrency ordinance and collects mitigation fees based on SEPA.

PSRC:

- PSRC reviewed Monroe's 2005 draft transportation element and commented on: documenting "reasonable measures" taken before expanding the UGA, implementing a system of joint planning with Snohomish County within the UGA, and adding new GMA requirements for pedestrian/bicycle facility planning.

CTED:

- CTED reviewed Monroe's draft comprehensive plan update and wrote a comment letter in 2004.

WSDOT:

- WSDOT reviewed Monroe's draft comprehensive plan update in 2004 and did not comment.
- WSDOT & Monroe have an interlocal agreement (from 1990) to mitigate development impacts through SEPA. Mitigation is collected for specific improvements identified in the plan.
  - Applies to developments that add 25 peak hour trips to a state highway intersection of LOS "C" or greater
  - $239 per average daily trip generated is collected for the US 2 bypass, totaling $299,820 since 2000
  - mitigation collected for WSDOT projects accounts for 31% of all traffic mitigation fees collected in Monroe
  - US 2 bypass fees collected over the last 5 years amount to 0.2% of the $100 million est. project cost
- WSDOT Access Management
  - Access Status: full limited access to the SR 522 interchange, managed access class 2 through Monroe
  - Access Issues: commercial driveway spacing ranges from 50' to 250'
  - Access Plan: existing route is planned for full/modified limited access; proposed bypass will be full limited access

Identified Gaps in Law – Transportation Concurrency

- Concurrency does not apply to jurisdictions that are not fully planning (10 counties, 63 cities)
- Transportation facilities and services of statewide significance (HSS) are exempt from the transportation concurrency requirement, except in Island and San Juan counties
- Law is silent on transportation facilities and services that are not of statewide significance (non-HSS)
- LOS does not guarantee a uniform minimum level of service
- Because targeted concurrency exemptions are not allowed (e.g. for infill) concurrency requirements can trigger inefficient land use
- The time frame for completing concurrency improvements (6 years) limits the types of improvements that can be considered
- The State's influence over local land use plans and regulations that might impact state facilities is limited because the presumption of validity means that local judgment prevails until appealed
- RTPO certification process has no minimum performance requirements

Identified Gaps in Law – Mitigation Tools

- There are no mitigation tools the state can use directly
- The only potential mitigation that can clearly be collected for state facilities is through SEPA or transportation impact fees
- SEPA mitigation collected for state facilities depends on the decision of a local agency to condition development approval
- Mitigation tools that focus on direct impacts (land dedication, voluntary agreements, and SEPA) and time limits for the expenditure of funds (5-6 year limits, except SEPA) tend to result in:
  - mitigation projects that are shorter-term and smaller-impact, or
  - minimal developer contributions to larger projects which are still funded primarily through general resources
- SEPA is a tool intended to address gaps and overlaps, it is costly to implement on a case-by-case basis for every project

Identified Gaps in Current Practice

CTED:

- Transportation planning guidance documents (1993,1998) and the WAC procedural criteria (2001) have not been recently updated due to limited resources
- Limited staff resources results in the review of only the most important local plans and regulations which focus on the most high-impact issues overall

WSDOT:

- Limited resources result in focusing on project review instead of plan review
- There is not a clearly defined method for using the information on impacts to state facilities that local governments provide in their transportation elements as a result of HB 1487 (the “Level of Service” Bill)
- Some comment opportunities are lost because SEPA submittals to WSDOT depends on local governments’ judgment that WSDOT would be interested
- Plan review, SEPA mitigation, and access permitting practices vary widely across the state
- Grandfathered and illegal accesses result in the exacerbation of land use impacts

RTPOS:

- Voluntary formation of RTPOs makes submittal practices and the comment process politically sensitive
- Varied staffing levels results in varied levels of planning and certification
- Additional guidance and technical assistance by WSDOT is needed in some cases

LOCAL:

- Varied resource levels result in varied levels of planning and regulation
- State highway impacts are addressed at the local level more because of local initiative than because of robust state planning tools

Themes for Further Analysis

- Are there statutory changes that would effectively address the identified gaps in law that limit the ability of local governments and the State to address land use impacts to state-owned facilities?

- Are there changes in practice that would effectively address the identified gaps in practice that result in the inconsistent application of current laws?

Next Steps

- Based on identified gaps, consider policy options
- Assess the impacts of policy options, considering geographic differences
- Discuss the pros and cons of policy options