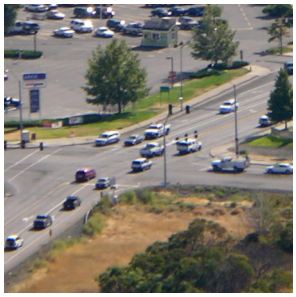
Washington State
Department of Transportation



The GMA Concurrency Goal and the State Transportation System

December 2006

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Washington State Department of Transportation Policy Development and Regional Coordination

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Acknowledgements

WSDOT would like to thank the following individuals and organizations for their participation in completing this study.

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King Cushman, Puget Sound Regional Council
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Jay Balasbas, House Republican Caucus
Joseph Backholm, Senate Republican Caucus

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Executive Summary

In 2006, the legislature funded an analysis of expanding the Growth Management Act (GMA) transportation concurrency requirement to state highways and ferry routes. The analysis objective was to determine how to ensure jurisdictional divisions do not defeat GMA concurrency goals.[1] The Washington State Department of Transportation (WSDOT) conducted the analysis by defining concurrency within the context of statutory law and judicial decisions and examining how the law has been applied through administrative practice. This information, along with findings and a detailed comparison of policy concepts to address the findings, is included in the full text of the analysis. This summary provides a brief background of concurrency, describes the analysis approach, and highlights key points of the policy concepts presented.

Concurrency

Under the 1990 GMA, concurrency is one of 14 goals local governments must consider in land use planning. The concurrency goal is intended to ensure public facilities such as sewer, water, roads, parks, and schools are adequate to serve development at the time of occupancy without decreasing service levels below locally established minimum standards. In theory, concurrency encourages land use patterns that can be served efficiently by public infrastructure, provides appropriate infrastructure at the time of new development, and prevents new development from degrading locally agreed-upon service standards for the current users of existing infrastructure.

The GMA also defines a specific transportation concurrency requirement. Cities and counties must deny development that causes the level of service on a locally-owned transportation facility to decline below the adopted standard, unless improvements or strategies to accommodate the impacts of that development are completed within six years of development approval. State-owned transportation facilities and services of statewide significance are statutorily exempt from this concurrency requirement, except in Island and San Juan counties. Approximately half of the state's highways are designated to be of statewide significance. The GMA does not specifically address concurrency for state-owned transportation facilities that are not considered to be of statewide significance.

> "What the GMA's concurrency principle guarantees is "truth in planning." That is: local governments must disclose the amount and quality of the services they will provide, how and where they will be provided, how much they will cost, and how they will be funded."
>
> *BACC. v. Clark County, 04-2-0038c, WWGMHB (2005).*

Because transportation concurrency has not consistently yielded optimal local land use patterns, capital facilities planning, or infrastructure funding practices, it has been a topic of frequent study, debate, and legislation at the state, regional, and local levels since its debut in 1990.

The original GMA did not specify how local governments should address state-owned transportation facilities in their plans and regulations. Recognizing the inconsistent and uncoordinated planning that resulted, the 1994 Legislature commissioned a study on the appropriate relationship between state transportation facilities and local comprehensive plans and concurrency regulations. Some of the study recommendations were adopted in the 1998 Level of Service Bill, which created new local planning requirements for state-owned transportation facilities and services.[2] It also implemented a new classification scheme for state-owned highways, granting the state responsibility for setting level of service standards on highways and ferry routes of statewide significance and giving the Regional Transportation Planning Organizations (RTPOs) responsibility for setting level of service standards on all other state-owned highways and ferry routes. The legislation exempted transportation facilities

1. Washington. Chapter 370. 2006 Laws of 2006 Regular Session PV: 30-31.
2. Washington. "Level of Service Bill," ch. 171, Laws of 1998

Concurrency Milestones

Growth Management Act
Created state framework for local comprehensive planning and land use regulation.
1990

SHB 1928
Required Legislative Transportation Committee to coordinate a study of the relationship between state transportation facilities and local comprehensive plans and concurrency regulations.
1994

HB 1487 (Level of Service Bill)
Created new local planning requirements and a classification scheme for state-owned transportation facilities and services and exempted those of statewide significance from the transportation concurrency requirement.
1998

3ESSB 5327: Eastside Transportation Concurrency Project
Funded a study to recommend changes in state and local law to address inter-jurisdictional concurrency approaches. Completed in 2003, the study focused on the communities of Bellevue, Kirkland, Issaquah, and Redmond.
2001

PSRC: Assessing the Effectiveness of Concurrency
A study by the Puget Sound Regional Council of the concurrency practices of local governments in the central Puget Sound region including recommendations for more effective implementation.
2002-2003

2SHB 1565: Multimodal Concurrency Required RTPOs to address concurrency for regional growth centers, added multimodal strategies to concurrency mitigation options, and commissioned a study of how to better incorporate multimodal solutions into local concurrency practices (in-progress).
2005

SRTC: Regional Transportation Concurrency System in Spokane
An in-progress study of the implementation of a regional transportation concurrency system in Spokane County.
2006

SSB 6241 Supplemental Transportation Budget Proviso
An in-progress analysis of expanding the transportation concurrency requirement to state-owned highways and ferry routes.
2006

and services of statewide significance from the transportation concurrency requirement, except in Island and San Juan counties.

In 2001, the Washington State Legislature funded another concurrency study which was completed by the Washington State Transportation Center (TRAC) in 2003. The study explored different concurrency measurement methodologies and suggested ways to use roads less, increase funding for transit services, and encourage more coordination among jurisdictions.[3] The study concluded that cities had sufficient flexibility under current law to adopt alternative concurrency methodologies independently or jointly.

In 2002, the Puget Sound Regional Council (PSRC) studied the effectiveness of concurrency as a step in implementing its long-range transportation plan for King, Kitsap, Pierce, and Snohomish counties. The study assessed local concurrency practices through a survey, case studies, and focus group discussions to determine how to better integrate concurrency with other GMA goals.[4] The study recommended: addressing multimodal considerations, coordinating with other jurisdictions, adopting compatible and consistent methodologies, tailoring concurrency to planning subareas, developing common concurrency objectives, linking interagency planning and improvements, raising more revenues for facility improvements through concurrency, and authorizing concurrency exemptions for transit.

In 2005, the Legislature again amended concurrency requirements,[5] specifically adding multimodal transportation improvements and strategies as acceptable ways to meet concurrency requirements, requiring RTPOs to address transportation concurrency for regional growth centers, and funding another concurrency study. PSRC is conducting the Multimodal Concurrency Study, due December 31, 2006, and will provide recommendations for further incorporating multimodal strategies into the concurrency requirement.

The Spokane Regional Transportation Council (SRTC) is expected to complete a regional concurrency study by the end of 2006. This study examines the legal, economic, land use, and social equity implications of adopting a regional concurrency system in Spokane County.

The present analysis, funded by the legislature in 2006, suggests how transportation and land use planning, funding, and concurrency might be changed to better preserve the investment and protect the function of state-owned highways and ferry routes.

3. Washington. Chapter 14, Laws of 2001, 2nd Special Session PV, Section 232(2).
4. Puget Sound Regional Council, "Assessing the Effectiveness of Concurrency: Final Report." July 2003, 1.
5. 2SHB 1565, Chapter 328, Laws of 2005.

The Concurrency Analysis Approach

Early in the project, the oversight committee and WSDOT staff decided to examine concurrency within the broad context of all the planning, funding, and governance tools available to address the impacts of local land use decisions on the state transportation system. The analysis assesses the current legal framework for state, regional, and local transportation planning, concurrency, and development mitigation (Chapters 2 and 4). It evaluates how state, regional, and local agencies implement these laws (Chapters 3 and 5). It identifies gaps in law and practice that impede the achievement of the GMA concurrency goal (Chapter 6). Finally, it defines and compares ten policy concepts to address the gaps (Chapter 7).

The criteria developed to compare the policy concepts are based on the objective of the analysis—to determine how to ensure jurisdictional divisions do not defeat GMA concurrency goals. The goal of concurrency can be broken down into three primary objectives: encouraging land use patterns that allow infrastructure to be provided efficiently, preventing new development from degrading service standards for existing residents, and providing appropriate infrastructure at the time of new development.

The extent to which each policy concept meets these three concurrency objectives forms the first criterion. The ability of each policy concept to increase intergovernmental collaboration, generate immediate results, and proactively address land use impacts provides additional bases for comparison. The last criterion addresses the governance structure of the policy concepts. The current planning approach of the GMA is a "bottom up" style with local jurisdictions bearing the ultimate responsibility for land use planning and implementation. Some of the identified policy concepts would modify this approach, trading some degree of local autonomy and flexibility for greater state consistency and control.

The criteria were applied using sliding scales to describe the relative effectiveness of a policy compared to the other policy concepts within the analysis. The sliding scales are a useful way to compare policy concepts, but have limitations. First, the ratings only have meaning within the context of the analysis. A policy concept that rates well on the sliding scale may be the most effective option within the analysis for addressing a particular criterion, but may not rate as well in the broader realm of all possible policy options. Also, the relative importance of the criteria is not reflected by the sliding scales—you can't sum the ratings to pick the best policy. Finally, the sliding scale ratings are subjective based on the best judgment of the analysis team.

In addition to the sliding scales, WSDOT staff and the oversight committee identified the pros and cons and relative resource requirements of each policy concept. This information is included in Chapter 7.

Concurrency Analysis Objective

The objective of the analysis is to determine how to ensure that jurisdictional divisions do not defeat the growth management act concurrency goals. [SSB 6241 Sec. 224]

GMA Concurrency Goal

Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing service levels below locally established minimum standards. [RCW 36.70A.020(12)]

Concurrency Objectives

- Encourage land use patterns that allow infrastructure to be provided in an efficient manner
- Prevent new development from degrading service standards for existing residents
- Provide appropriate infrastructure at the time of new development

Policy Comparison Criteria

1. To what extent will the policy concept meet the concurrency objectives?
   - More transportation efficient land use
   - Prevention of the degradation of state highway capacity and safety
   - Better provision of infrastructure through more effective state transportation funding
2. To what extent will the policy:
   - Increase intergovernmental collaboration?
   - Generate immediate results?
   - Proactively address land use impacts early in the process?
3. What is the governance structure of the policy? How does it balance the political trade-offs between:
   - State control versus local autonomy?
   - Statewide consistency and predictability versus local flexibility

Policy Concepts:

Planning

A. Technical Assistance
B. WSDOT Review of Local Comprehensive Plans

Governance

C. Local Incentives
D. Mandatory Good Planning Practices
E. Concurrency Expansion to State Highways and Ferry Routes

Funding

F. WSDOT Review of Development Proposals
G. Mandatory Local Enforcement of State Requested Mitigation
H. Mandatory Local Assessment of State Impact Fees
I. State Assesses and Collects Mitigation
J. System Charges

Policy Concepts

Any one of the policy concepts identified in this analysis could improve the ability of the state to address the adverse impacts of local land use decisions on state transportation facilities. Alternatively, a number of policy options could be grouped to form a more comprehensive strategy for addressing the planning, funding, and governance gaps that exist in current law and practice.

Planning

The analysis found that state, regional, and local planning for state-owned transportation facilities lack the coordination and communication needed to make the existing GMA planning requirements meaningful. Two options for improving planning are providing better technical assistance to local governments and better state review of local comprehensive plans and development regulations, particularly by the Washington State Department of Transportation (WSDOT). These planning policy concepts require minor administrative changes and a relatively small level of additional resources to implement. They do not, however, address the cities and counties that choose not to work collaboratively with the state to minimize the impacts of development on state transportation facilities.

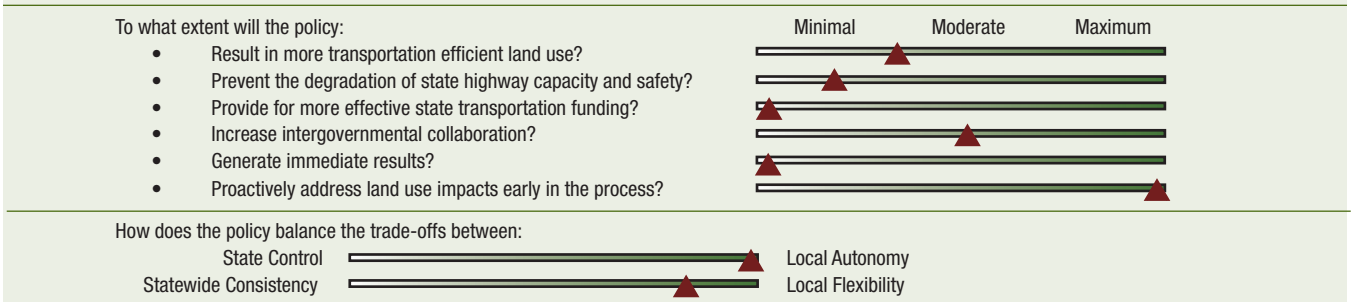
Planning - Technical Assistance

Who: CTED, WSDOT and/or RTPOs

What: Increase technical assistance to cities and counties

Why: To provide local governments with the information and resources they need to make land use decisions that minimize adverse impacts on state highways and ferry routes

How:
- Develop updated guidance documents and administrative rules for local planning, access control, and development review for state highways and ferry routes
- Devote additional staffing to provide individual and timely expert advice and analysis assistance to local governments
- Periodically offer workshops across the state on best practice planning, access control and development review for state highways and ferry routes



Increasing WSDOT participation in local land use processes is more effective than technical assistance alone because comments would be tailored to a particular legislative proposal and would receive wider public exposure through the local public involvement process.

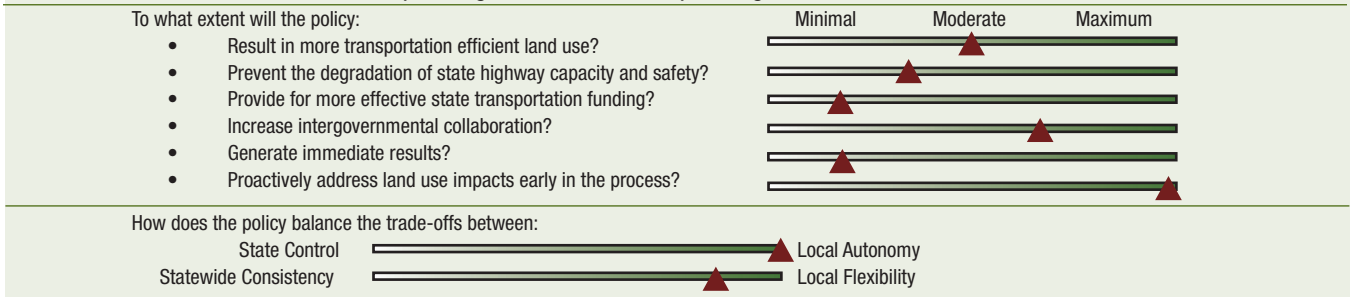
Planning - WSDOT Review of Local Comprehensive Plans

Who: WSDOT

What: Increase WSDOT participation in local land use processes

Why: To more effectively communicate the state's interest in protecting the capacity and safety of the highway and ferry systems so that local governments and the public are aware of the consequences of their decisions and so that the state is on record if an appeal is appropriate

How:
- Devote additional staffing to comprehensive plan and development regulation review and comment
- Develop systematic policies and procedures for reviewing, commenting on, and tracking local comprehensive plans and development regulations and incorporating information from local plans into the state's transportation planning process
- Develop productive and collaborative relationships with local planners and elected officials
- More consistently track, report, and follow-up on local government responses to comments
- Coordinate state corridor planning with local subarea planning



Governance

Three policy concepts, ranging from incentive-based to regulatory, suggest changes to the governance structure to provide the state with more influence over local land use decisions that impact the state transportation system. Creating incentives for or requiring local best practices in planning, mitigation, and access control involve relatively minor amendments to state law and a relatively small level of additional resources to implement. Implementation of either of these options should be preceded by the convention of local, regional, and state agency stakeholders to craft well-researched, professionally sound, and locally acceptable best practice standards.

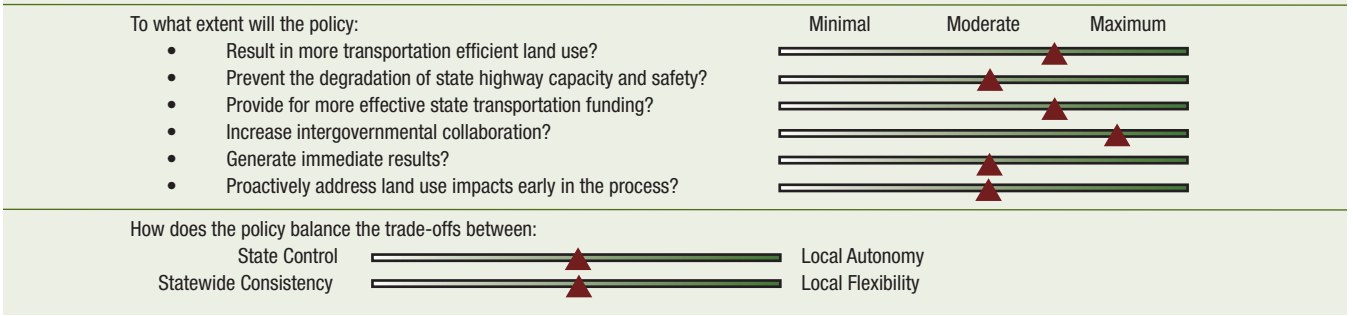
Governance - Local Incentives

Who: Legislature, WSDOT, CTED, RTPOs, CERB, CRAB, TIB, PWB, FMSIB

What: Provide incentives for local governments to adhere to best practices in planning, impact mitigation, and access control

Why: To encourage local governments to make land use choices that will protect the capacity and safety of the state highway and ferry systems

How:
- Allow local governments who have adopted best practices to permit limited concurrency exemptions for urban infill
- Better coordinate state infrastructure funding programs to give higher priority to local governments that adhere to best practices



Amending state law to require local governments to adhere to best practices in planning and access control goes further than local incentives in ensuring state transportation resources are protected from local land use impacts because of its regulatory approach. Conversely, this policy imposes implementation costs on local governments and reduces their autonomy to a greater extent than local incentives. The legislature could implement changes to planning requirements incrementally, testing the effectiveness of best practice standards on communities that take advantage of local incentives and later requiring the planning standards that prove effective.

Governance - Mandatory Good Planning Practices

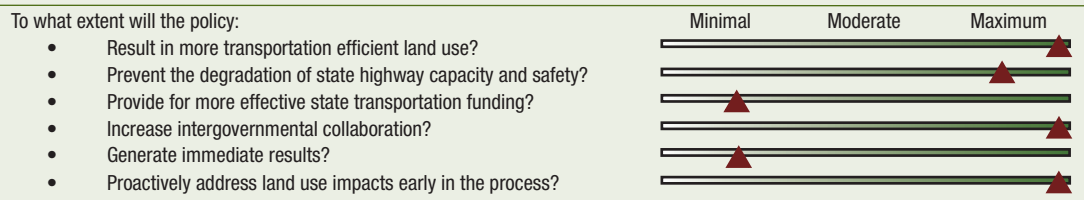
Who: CTED, RTPOs, Local Governments, WSDOT

What: Require local governments to adhere to best practices in planning and access control

Why: To ensure the protection of the capacity and safety of the state highway and ferry systems

How: Require better planning for state-owned transportation facilities in local comprehensive plans (including the transportation, land use, and capital facilities elements) by:

- Requiring confirmation from local agencies that they have adopted standards for access permitting on streets designated as state highways which meet or exceed WSDOT standards
- Amending the local planning requirements of the GMA
- Clarifying the Regional Transportation Planning Organization certification requirements, or
- Adding new WSDOT certification requirements



The expansion of concurrency to state highways and ferry routes would involve significant changes to law and substantial investment of local and regional resources. This policy might not be the most cost-efficient or effective method of preventing

Governance - Concurrency Expansion to State Highways and Ferry Routes

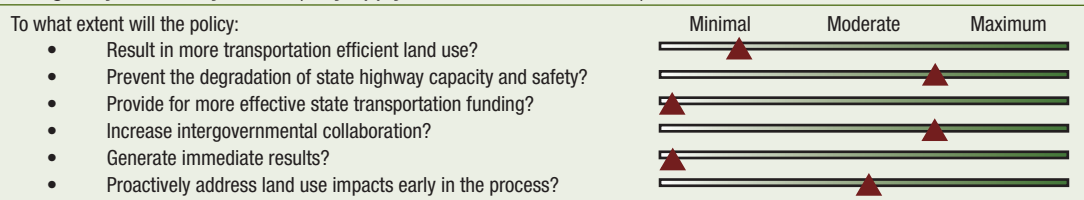
Who: WSDOT, RTPOs, Local Governments

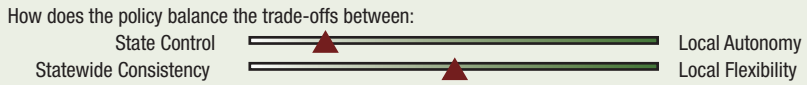
What: Expand the GMA transportation concurrency requirement to state-owned highways and ferry routes

Why: To ensure that the state highways and ferry routes necessary to support development are adequate to serve the development at the time of occupancy and use without decreasing levels of service (LOS) below the adopted standards of the state or region

How:

- Amend the GMA to require local governments to deny development if it causes the LOS on state-owned highways or ferry routes to fall below the adopted standard (may apply to HSS and/or non-HSS)
- Amend the GMA to require local governments to participate in a regional concurrency system that includes state-owned highways and ferry routes (may apply to HSS and/or non-HSS)





the degradation of state highway capacity and safety. Concurrency works best when the government that decides to allow or deny development also controls the establishment of the performance standard (level of service) and the resources to fund improvements. A policy that divides these authorities between governments is not optimal because it divides accountability. Alternatively, the legislature could consider providing incentives for local governments to participate in regional concurrency systems that include state facilities and establishing funding mechanisms that regional governments can use for growth-related transportation improvements.

Funding

The remaining policy concepts address gaps in funding that diminish the ability of the state to secure adequate investment for growth-related state transportation improvements. None of the funding options would by themselves provide sufficient resources to address the state's $37.68 billion unfunded transportation needs.[6] However, they could be combined with other transportation funding strategies (such as tolling or taxes) to provide a portion of the funding needed to address local development impacts on the state's transportation system.

Improving WSDOT's development review process would allow the state to more effectively fund growth-related transportation improvements with only minimal changes to administrative practices. However, the policy's effectiveness is moderated because mitigation negotiation is unpredictable, time-consuming and costly; local governments may choose to reduce or disregard state requested mitigation; and statute limits the types of projects that can be funded.

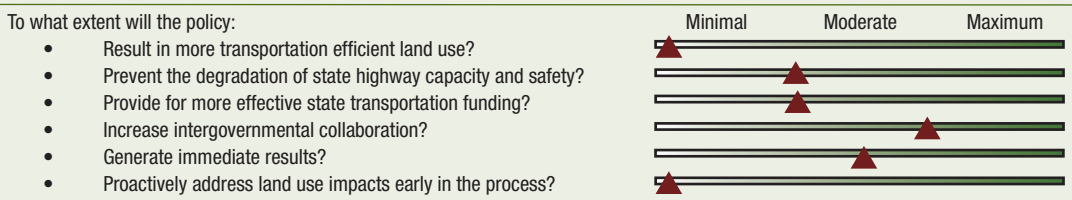
Funding - WSDOT Review of Development Proposals

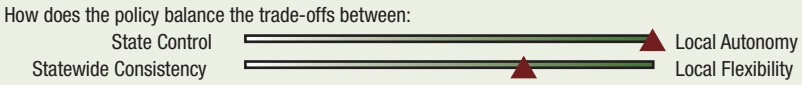
Who: WSDOT

What: Improve WSDOT development review processes

Why: To more consistently and fairly assess developments for their impacts on state highways and ferry routes and more effectively fund transportation capacity and safety improvements needed because of growth

How:
- Devote additional staffing to the review of development proposals and to the development of intergovernmental agreements with local governments for mitigation collection
- Build on the existing development services manual by establishing more detailed standards for the review of development proposals (including requirements for private traffic analyses) and the assessment of appropriate mitigation
- Establish standards for when local governments should submit development proposals to WSDOT for review and work with local governments to ensure they are implemented
- More consistently track, report, and follow-up on local government responses to mitigation requests





The other four funding policies require more significant statutory changes, more substantial resources, and additional legal and technical review. Requiring local governments to condition development approvals on WSDOT mitigation requests addresses one of the weaknesses of the current legal framework because local govern-

6. The Washington Transportation Plan, 2007-2026. Washington State Transportation Commission and Washington State Department of Transportation. November 14, 2006.

ments could not disregard development impacts on the state transportation system. The tradeoff is the fundamental alteration of the environmental review process—state transportation impacts would no longer be balanced with other identified impacts and it is unclear whether the state or local governments would bear the legal liability for appeals.

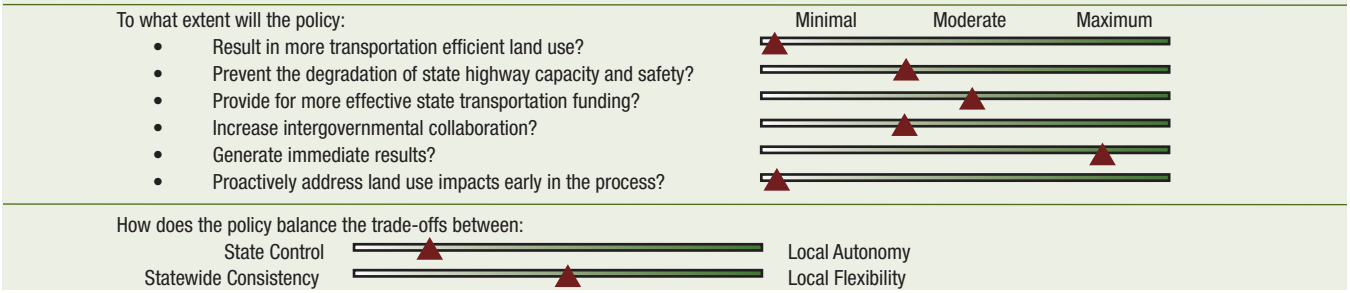
Funding - Mandatory Local Enforcement of State-Requested Mitigation

Who: WSDOT, Local Governments

What: Require local governments to condition development approvals on WSDOT mitigation requests

Why: To more consistently and fairly collect development mitigation and more effectively fund transportation capacity and system improvements needed because of growth

How: Amend the State Environmental Policy Act



Compared to the mitigation funding policies, requiring local governments to assess impact fees for state transportation improvements would provide more consistent revenue to WSDOT, a more predictable fee structure for developers, and a better mechanism for funding area-wide transportation improvements. The primary disadvantage of collecting impact fees for state transportation facilities is the technical difficulty and cost of setting up a fair fee schedule.

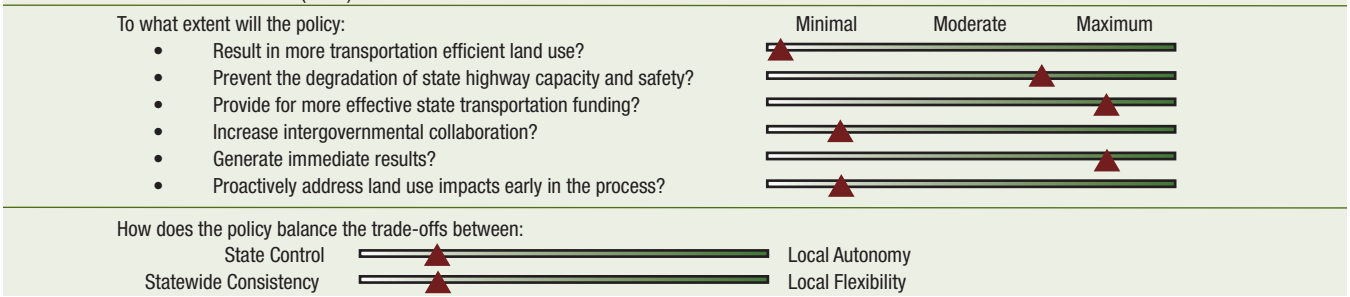
Funding - Mandatory Local Assessment of State Impact Fees

Who: WSDOT, Local Governments

What: Require local governments to assess impact fees for improvements to state-owned highways and ferry routes

Why: To more predictably assess development for growth impacts and more effectively fund state highway and ferry route capacity and safety improvements needed because of growth

How: Amend the Growth Management Act section on impact fees, the Local Transportation Act (LTA), and/or the Transportation Benefit District Act (TBD)



Authorizing WSDOT to independently assess and collect mitigation directly from the developer would produce a more consistent revenue stream for state transportation facilities and relieve local governments from the responsibility and potential liability of imposing development conditions on the state's behalf. However, it would give the state a much more direct role in local land use decisions and alter the nature of the environmental review process—state mitigation would no longer be considered in a broader context that considers and balances all the potential impacts of a government action.

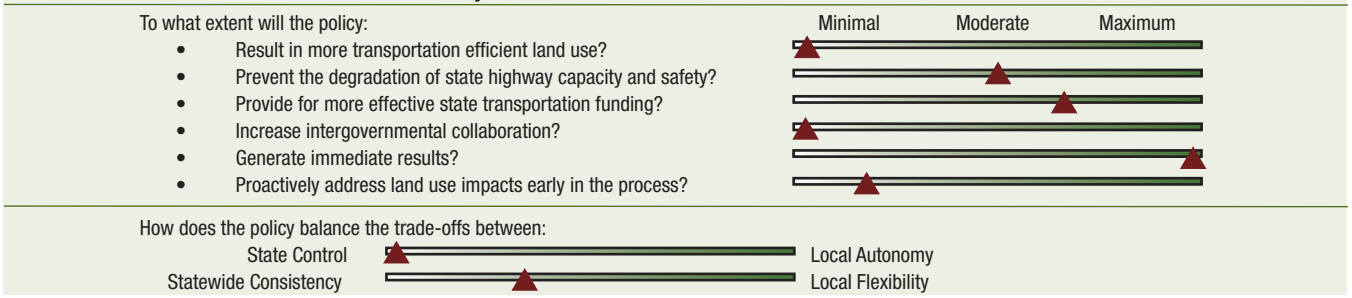
Funding - State Assesses and Collects Mitigation

Who: WSDOT

What: Authorize WSDOT to independently assess and collect mitigation directly from the developer

Why: To more consistently and fairly collect mitigation and more effectively fund transportation capacity and safety improvements needed because of growth

How: Amend the State Environmental Policy Act



To avoid the limitations of existing mitigation and impact fee rules, new legislation could be crafted to establish and collect regional system charges for area-wide state highway and ferry routes improvements needed because of growth. System charges could be implemented at the state or regional level and would provide a more predictable statewide revenue stream for regional improvements while relieving individual local governments from the responsibility and liability of imposing mitigation or fees for transportation improvements that have regional or statewide benefits. The imposition of system charges should be carefully studied and planned because the technical difficulty and cost of setting up a fair fee schedule are substantial.

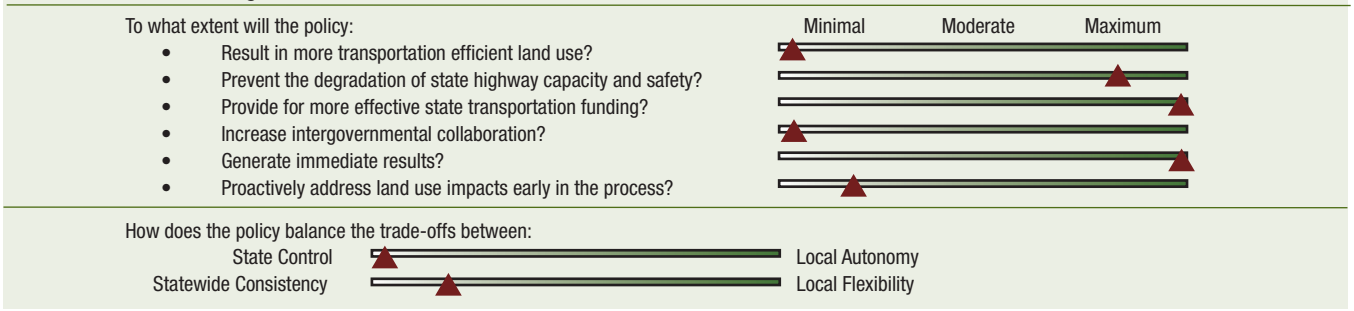
System Charges

Who: WSDOT or RTPOs

What: Amend state law as appropriate to allow the state or regional transportation planning organizations to establish and collect regional system charges directly from the developer

Why: To more predictably assess development for growth impacts and more effectively fund regional capacity and safety improvements on state-owned highways and ferry routes needed because of growth

How: Enact new legislation



While WSDOT can measurably improve its participation in planning and development review, other actions may be necessary to adequately address the adverse impacts of local land use decisions on the function of the state transportation system. These potential actions range from incentive-based to regulatory approaches. Regulatory policies provide the greatest consistency and likelihood of achieving the concurrency goal, but diminish local government autonomy and flexibility. The particular action that should be taken is a policy choice that should consider these tradeoffs as well as the resources required for implementation. In the end, limited resources and political controversy may constrain the ability of policymakers to achieve an effective balance between infrastructure availability, affordable development, and the prevention of congestion and sprawl.

Washington State Department of Transportation

For More Information:

Additional materials, background information and the full text of the analysis is available at:

www.wsdot.wa.gov/planning/concurrency

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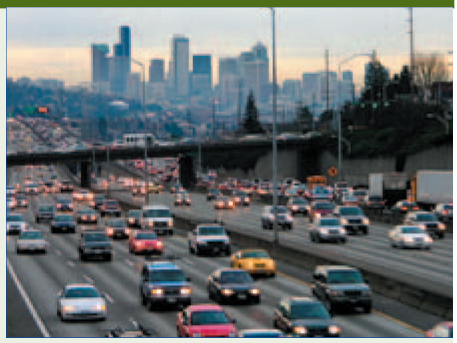


1. Introduction

What is Concurrency?

Under the 1990 Growth Management Act (GMA), concurrency is one of the 14 goals local governments must consider in land use planning. The concurrency goal is intended to ensure public facilities such as sewer, water, roads, parks, and schools are adequate to serve development at the time of occupancy without decreasing service levels below locally established minimum standards.

Additionally, the GMA defines a specific transportation concurrency requirement. Cities and counties must deny development that causes the level of service on a locally-owned transportation facility to decline below the adopted standard, unless improvements or strategies to accommodate the impacts of that development are completed within six years of development approval. State-owned transportation facilities and services of statewide significance are statutorily exempt from this concurrency requirement, except in Island and San Juan counties. Approximately half of the state's highways are designated to be of statewide significance. The GMA does not specifically address concurrency for state-owned transportation facilities that are not considered to be of statewide significance.

Concurrency is intended to encourage land use patterns that can be served efficiently by public infrastructure, to provide appropriate infrastructure at the time of new development, and to prevent new development from degrading locally agreed-upon service standards for the current users of existing infrastructure.

What is the Analysis Request?

The 2006 legislature added a proviso to the transportation budget funding an analysis of expanding the transportation concurrency requirement to state highways and ferry routes. The objective of the analysis is to determine how to ensure that jurisdictional divisions do not defeat GMA concurrency goals.[1]

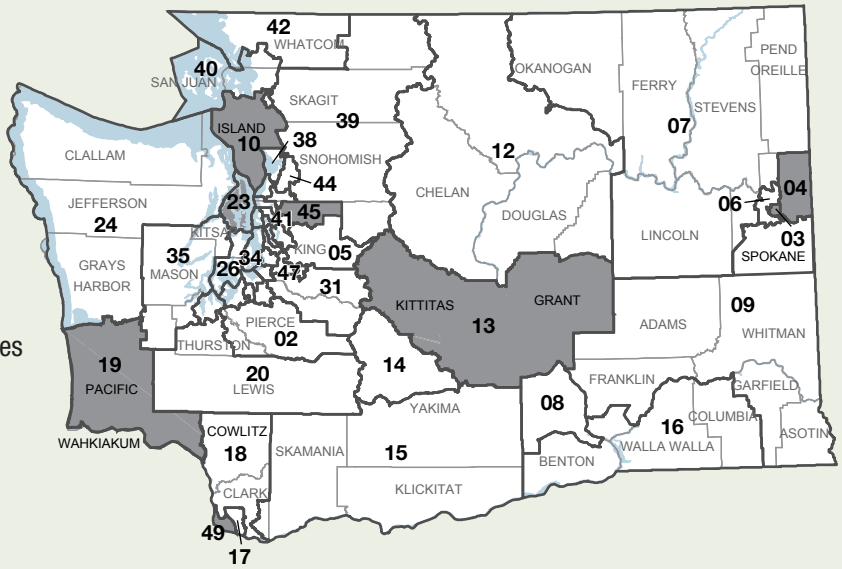
THE ANALYSIS REQUEST:
To conduct an analysis of expanding the transportation concurrency requirements prescribed under the growth management act…to include development impacts on level of service standards applicable to state-owned transportation facilities, including state highways and state ferry routes. The objective of the analysis is to determine how to ensure that jurisdictional divisions do not defeat growth management act concurrency goals.

2006 Supplemental Transportation Budget Proviso

1. Washington. Chapter 370. 2006 Laws of 2006 Regular Session PV: 30-31.

Concurrency Oversight Committee

Senator Bill Finkbeiner (R, 45th Dist.)
Senator Mary Margaret Haugen (D, 10th Dist.)
Senator Joyce Mulliken (R, 13th Dist.)
Senator Craig Pridemore (D, 49th Dist.)
Representative Lynn Schindler (R, 4th Dist.)
Representative Dean Takko (D, 19th Dist.)
Representative Alex Wood (D, 3rd Dist.)
Representative Beverly Woods (R, 23rd Dist.)
Ashley Probart, Association of Washington Cities
Eric Johnson, Washington State Association of Counties



A committee convened to oversee the analysis included members of the house and senate transportation committees, the house and senate land use committees, the Association of Washington Cities, and the Washington State Association of Counties.

What Led to the Analysis Request?

The coordination of land use planning and the timely provision of infrastructure is a complex process. Concurrency attempts to reduce this complex process to a simple question—is the infrastructure adequate to serve a particular development? Although elegant in its simplicity, the reality is that the application of transportation concurrency has not consistently yielded optimal local land use patterns, capital facilities planning, or infrastructure funding practices. Consequently, concurrency has been a topic of frequent study, debate, and legislation at the state, regional, and local levels since its debut in 1990.

The original Growth Management Act did not specify how local governments should address state-owned transportation facilities in their concurrency regulations or in their comprehensive planning. Recognizing the inconsistent and uncoordinated state and local transportation planning that resulted, the 1994 Legislature commissioned a study on the appropriate relationship between state transportation facilities and local comprehensive plans and concurrency regulations. The study recommended numerous policy amendments, some of which were adopted in the Level of Service Bill during the 1998 legislative session. The Level of Service Bill created new local planning requirements for state-owned transportation facilities and services.[2] It also implemented a new classification scheme for state-owned highways granting the state responsibility for setting service standards on highways and ferry routes of statewide significance and giving the Regional Transportation Planning Organizations responsibility for setting service standards on all other state-owned highways and ferry routes. The legislation also specifically exempted transportation facilities and services of statewide significance from the transportation concurrency requirement, except in Island and San Juan counties.

In 2001, the Washington State Legislature funded another study of the concurrency requirement focusing on new local concurrency models that could account for devel-

2. Washington. "Level of Service Bill," ch. 171, Laws of 1998

Concurrency Milestones

1990

Growth Management Act
Created state framework for local comprehensive planning and land use regulation.

1994

SHB 1928
Required Legislative Transportation Committee to coordinate a study of the relationship between state transportation facilities and local comprehensive plans and concurrency regulations.

1998

HB 1487 (Level of Service Bill)
Created new local planning requirements and a classification scheme for state-owned transportation facilities and services and exempted those of statewide significance from the transportation concurrency requirement.

2001

3ESSB 5327: Eastside Transportation Concurrency Project
Funded a study to recommend changes in state and local law to address inter-jurisdictional concurrency approaches. Completed in 2003, the study focused on the communities of Bellevue, Kirkland, Issaquah, and Redmond.

opment in neighboring jurisdictions.[3] The Washington State Transportation Center (TRAC) conducted the study, focusing on the contiguous communities of Bellevue, Kirkland, Issaquah, and Redmond. Completed in 2003, the study explored different concurrency measurement methodologies and suggested some broad policy concepts addressing how to use roads less, increase funding for transit services, and encourage more coordination among jurisdictions. The study concluded cities had sufficient flexibility under current law to adopt alternative concurrency methodologies independently or jointly and did not recommend changes to state or local law.

In 2002, the Puget Sound Regional Council (PSRC) undertook a study of the effectiveness of concurrency as a step in implementing its long-range transportation plan for King, Kitsap, Pierce, and Snohomish counties. The study assessed local concurrency practices through a survey of the 86 jurisdictions within the region, case studies, and focus group discussions at a full-day concurrency workshop. The intent of the study was to determine how to improve the integration of concurrency programs with other GMA goals.[4] The study produced a number of recommendations for improving local concurrency programs including: addressing multimodal considerations, coordinating with other jurisdictions, adopting compatible and consistent methodologies, tailoring concurrency to planning subareas, developing common concurrency objectives, linking interagency planning and improvements, raising more revenues for facility improvements through concurrency, and authorizing concurrency exemptions for transit.

In 2005, the Legislature again amended concurrency requirements,[5] specifically adding multimodal transportation improvements and strategies as acceptable ways to meet concurrency requirements, requiring Regional Transportation Planning Organizations to address transportation concurrency strategies for regional growth centers, and funding another concurrency study. The Multimodal Concurrency Study, due December 31, 2006, is being conducted by PSRC and will provide recommendations for further incorporating multimodal strategies into the concurrency requirement.

3. Washington. Chapter 14, Laws of 2001, 2nd Special Session PV, Section 232(2).
4. Puget Sound Regional Council, "Assessing the Effectiveness of Concurrency: Final Report." July 2003, 1.
5. 2SHB 1565, Chapter 328, Laws of 2005.

2002-03

PSRC: Assessing the Effectiveness of Concurrency
A study by the Puget Sound Regional Council of the concurrency practices of local governments in the central Puget Sound region including recommendations for more effective implementation.

2005

2SHB 1565: Multimodal Concurrency Study
Required RTPOs to address concurrency for regional growth centers, added multimodal strategies to concurrency mitigation options, and commissioned the in-progress multimodal concurrency study.

2006

SRTC: Regional Transportation Concurrency System in Spokane
An in-progress evaluation of the advantages and disadvantages of implementing a regional transportation concurrency system in Spokane County.

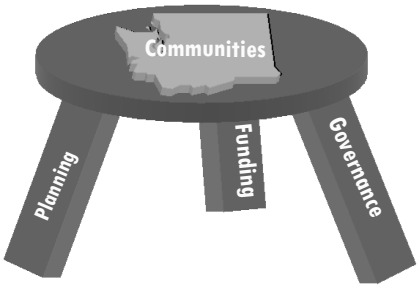
2006

SSB 6241 Supplemental Transportation Budget Proviso An in-progress analysis of expanding the transportation concurrency requirement to state-owned highways and ferry routes.

A study of the advantages and disadvantages of implementing a regional concurrency system in Spokane County will also be completed by the end of 2006. The Spokane Regional Transportation Council (SRTC) initiated this study to address the impacts of regional pass-through traffic and lack of coordination among jurisdictions. The study will examine the legal, economic, land use, and social equity implications of adopting a regional concurrency system.

In 2005 and 2006, legislators introduced various bills to address state transportation infrastructure funding and concurrency. For example, rapid development in unincorporated Pierce County that exacerbated congestion on already crowded state highways in the area prompted a proposal to expand the transportation concurrency requirement to state-owned transportation facilities in the 2006 session. Testimony received at the committee level suggested further study of the policy due to the complexity of concurrency. Those testifying also voiced concerns regarding how the proposed policy would be implemented and how needed improvements to state-owned highways and ferry routes would be funded to avoid moratoriums and sprawl. Testimony also suggested looking at alternative planning and funding policy options. While this legislation never left committee, the Senate Transportation Committee added a proviso to the 2006 Transportation Budget to fund an analysis of expanding concurrency to state-owned highways and ferry routes.

What is the Analysis Approach?



THE THREE LEGGED STOOL: Washington's transportation system requires:

- Coordinated state, regional and local transportation **planning;**
- Coordinated **funding;**
- Adequate **governance** systems to effectively implement planning and funding policies

The objective of the analysis is to determine how to ensure that jurisdictional divisions do not defeat Growth Management Act concurrency goals.[6] Concurrency requires the timely provision of infrastructure to adequately serve new development. The provision of that infrastructure requires coordinated planning, sufficient funding, and adequate governance systems. Early in the analysis, the concurrency oversight committee and WSDOT staff decided to examine concurrency within the broader context of the planning, funding, and governance tools available to address the adverse impacts of local land use decisions on the state transportation system.

The analysis began by defining the planning, funding, and governance tools available under the current law to address land use impacts on state-owned transportation facilities. WSDOT staff and the Oversight Committee then identified gaps in law and practice that impede the achievement of the Growth Management Act concurrency goals. The next step in the analysis was the development of a list of potential policy options to address the identified gaps.

Finally, with the input of the Oversight Committee, WSDOT staff compared the expansion of concurrency to state-owned transportation facilities to the other policy options that could achieve the same objective. The comparison criteria included the extent to which the policy options met concurrency objectives, increased intergovernmental collaboration, generated immediate results, and proactively addressed land use impacts to the state's highways and ferries. Additionally, the comparison addressed the resource requirements of each policy and assessed how the policies balanced the political trade-offs between state control and consistency versus local autonomy and flexibility.

6. Washington, Chapter 370, Laws of 2006 Regular Session PV: 30-31.

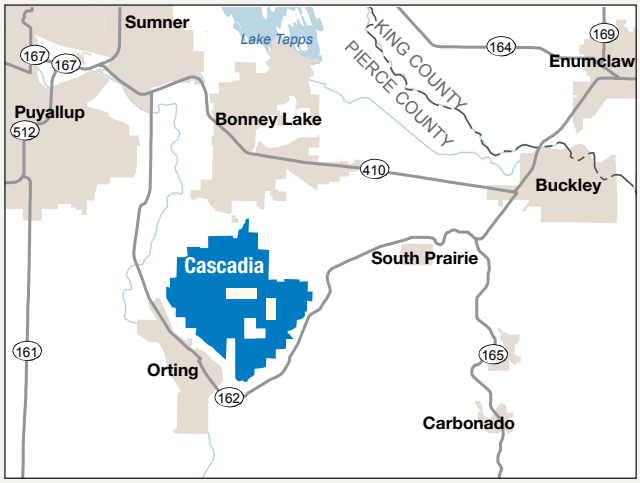
Cascadia - The Transportation Challenges of Planned Growth

In 1991, Cascadia Development Corporation purchased 4,700 acres on the Orting Plateau to develop an unincorporated employment-based master-planned community. Cascadia is one of the largest development projects in the State of Washington, anticipating the construction of 7,000 homes housing 16,700 residents, a 626-acre business and industrial park employing 9,700 workers, and a 219-acre conference center in three phases over 20 years. It obtained county permit approval for the first phase of development in 1999, broke ground in 2005, and will begin residential construction in 2007.

Many local and state officials view Cascadia as an economic boost to the region, largely because of the business and industrial component of the development. At Cascadia's groundbreaking ceremony, U.S. Senator Maria Cantwell proclaimed Cascadia "will be a catalyst for sustained economic stability in this region."[1] However, since Cascadia was first proposed, the small but quickly growing communities neighboring the development have had more experience with the impacts of growth. They also face the potential impacts of other large subdivisions, including 3,000 homes in two additional developments under construction south of Bonney Lake in unincorporated Pierce County. Both Orting and Bonney Lake have recently had second thoughts about Cascadia, reopening previously negotiated agreements with the developer to address the provision of sewer service and the mitigation of traffic impacts, respectively.

The number of trips Cascadia would add to already congested State Route 162 (SR 162) and State Route 410 (SR 410) prompted the Washington State Department of Transportation (WSDOT) to request mitigation for traffic impacts. After much debate, the county hearings examiner decided in 1998 to condition Cascadia's development approval on the funding or construction of several transportation improvements on the state system including: the installation of a new signal at SR 162 and Pioneer Way, the construction of double turn lanes on eastbound SR 410 at the Sumner-Buckley Highway, and the construction of double turn lanes on SR 410 northbound on South Prairie Road. Because Cascadia did not begin construction as quickly as anticipated and because the state needed to proceed with the SR 162 signal installation for safety reasons, the signal was installed without the developer's assistance. Cascadia is anticipated to contribute approximately $1.2 million toward the Sumner-Buckley turn lanes and $1.9 million toward the South Prairie Road turn lanes off SR 410. Cascadia will also make some local road improvements under its 1998 traffic mitigation agreement with Bonney Lake including widening and improving 198th

1 "Developer's Vision Takes Root; Ground is broken on Cascadia." The News Tribune. May 7, 2005: B1.



Avenue East, paying for some traffic signals, and contributing $360,000 toward other city road projects.

The only other state transportation improvements slated for the area over the next 15 years are a $15 million bridge replacement on SR 162 that is primarily a safety project and a $13.5 million widening and median treatment project on a 1.24 mile section of SR 410 through Bonney Lake.

These state and private contributions might seem substantial but in reality represent only a fraction of the transportation system improvements needed to ease growing traffic congestion in the area. The long-range transportation strategy for Bonney Lake calls for developing three additional north-south arterials with access to SR 410 at a cost of $7.6 million to accommodate the increased traffic anticipated from development south of its border. Pierce County is studying options for constructing a new east-west connector from the Bonney Lake plateau to SR 162. Preliminary cost estimates are not yet available for this project. In addition, Pierce County's Transportation Plan calls for widening SR 162 from two to four or five lanes. This project is not funded in the state's transportation plan, but a 2004 cost estimate for widening SR 162 from just north of Orting up to Sumner and rebuilding the SR 162/SR 410 interchange is $313 million dollars.

The Cascadia example illustrates the type of dilemma that led to the analysis request. The master-planned community was an allowed land use under Pierce County's comprehensive plan. The lack of existing capacity on SR 162, SR 410 and the local street network did not stop Cascadia from developing, and the mitigation Cascadia provided was not sufficient to fund the transportation system improvements needed to accommodate additional traffic. Neither planning, concurrency, nor mitigation have led to a workable solution for a transportation system that will serve the needs of this rapidly growing area.

2. Current Law: Planning and Concurrency Requirements for State-Owned Transportation Facilities

State statute defines the relationship between local and regional land use planning and state-owned transportation facilities in the Growth Management Act (GMA). The GMA requires local governments to include information about state-owned transportation facilities in their comprehensive plans, specifies how they should treat state-owned facilities in their transportation concurrency ordinances, and identifies the role of Regional Transportation Planning Organizations (RTPOs) in the planning process.

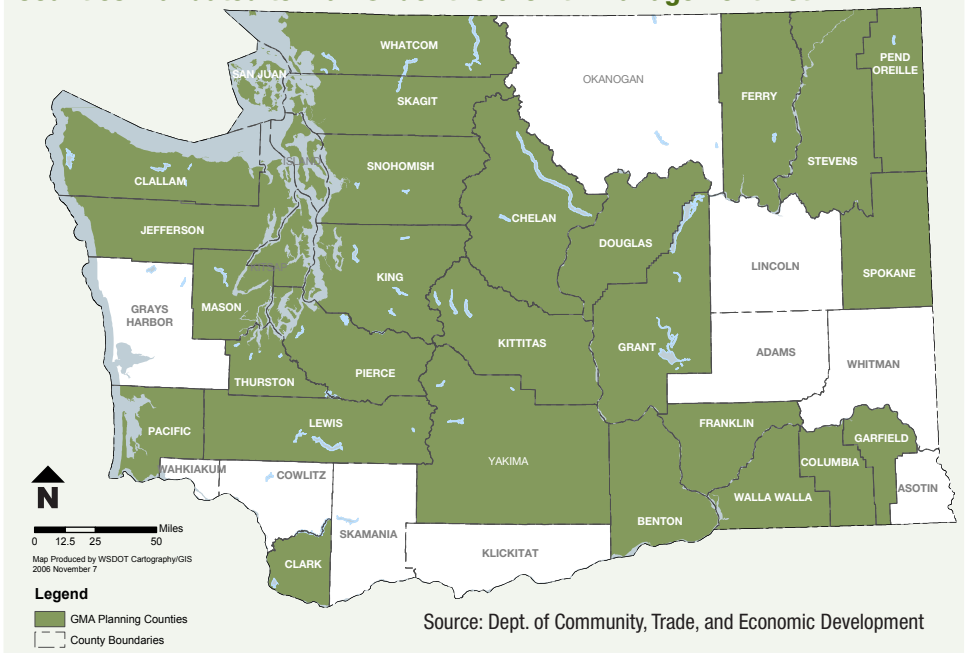
The Growth Management Act

In 1990, the Washington State Legislature adopted the GMA, creating a state policy framework for local comprehensive planning and land use regulation. The GMA's intent is to address uncoordinated and unplanned growth and to express common goals for the conservation and wise use of land. The GMA identifies 14 statewide planning goals and prescribes a process and certain minimum requirements for the adoption and update of land use plans and implementing regulations by local governments. Currently, 29 counties and 218 cities, representing 95% of the state's population, are fully planning under the GMA. The remaining 10 counties and 63 cities plan for resource lands and critical areas only.

GMA PREAMBLE: It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning.

RCW 36.70A.010

Counties Mandated to Plan Under the Growth Management Act



Source: Dept. of Community, Trade, and Economic Development

The main themes expressed in GMA goals include the:

1. concentration of population growth in urban centers to allow for more efficient provision of public services, reduce sprawl, and conserve natural resource lands and open space,
2. encouragement of affordable housing and sustainable economic development, and protection of environmentally critical areas and historic and archaeological resources, and
3. pursuit of these goals while respecting private property rights, processing permits in a timely and fair manner, and encouraging the involvement of citizens and other communities in the planning process.

The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

RCW 36.70A.3201

The legislature chose to emphasize local discretion over state control in the crafting of the GMA. Local land use plans and regulations do not require state approval, with the exception of the Shoreline Master Program which must be approved by the Washington State Department of Ecology. Instead, Washington law presumes plans and regulations are valid upon adoption. Petitions challenging a jurisdiction's compliance with the GMA are heard by one of three regional growth management hearings boards, allowing for greater sensitivity to the local context of the issue.

THE CONCURRENCY GOAL: Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

RCW 36.70A.020(12)

The 12th goal of the GMA, often referred to as the concurrency goal, is intended to ensure adequate public facilities and services are provided for new development, without decreasing service levels below locally established minimum standards. Public facilities include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools. Public services include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services. These facilities and services are typically described in the capital facilities element of a local comprehensive plan.

The growth management hearings boards have further clarified Goal 12 to convey certain duties to local governments. Public facilities and services must be:

1. listed in the capital facilities element,
2. associated with locally-established minimum standards,[1]
3. connected to a clear and specific funding strategy,[2]
4. classified based on whether or not they are "necessary to support development," and
5. if they are necessary to support development, regulated by a concurrency or adequacy mechanism that triggers a policy or regulatory reassessment if the minimum standard is not met.

"What the GMA's concurrency principle guarantees is "truth in planning." That is: local governments must disclose the amount and quality of the services they will provide, how and where they will be provided, how much they will cost, and how they will be funded."

BACC. v. Clark County, 04-2-0038c, WWGMHB (2005).

If a local government finds a necessary public facility or service is inadequate they must reduce the minimum standards, revise the land use element, change the phasing or timing of new development, or find ways to better provide facilities and services by reducing their consumption, lowering their average costs, or increasing their revenues.[3]

1. *McVittie, et al. v. Snohomish County,* 99-3-0016c, CPSGMHB (February 9, 2000).
2. *Taxpayers for Responsible Government v. City of Oak Harbor,* 96-2-0002, WWGMHB (July 16, 1996).
3. RCW 47.06.140

The Transportation Concurrency Requirement

Transportation facilities are subject to a statutorily defined concurrency requirement not specified for other public facilities and services. First, local governments are required to set level of service (LOS) standards, or minimum benchmarks of performance, for transportation facilities and services. The measures used to establish LOS standards vary by jurisdiction and may be based on the volume of traffic compared to the capacity of the facility, travel time, or a multi-variable performance indicator accounting for factors such as road conditions or safety hazards. The standards may be measured for a single intersection, road segment, traffic corridor, or traffic zone. LOS standards are often translated from numeric values to letter grades, with an "A" representing freely flowing traffic and an "F" indicating traffic at a standstill.

Once the LOS standard is established, the local government must adopt an ordinance to deny proposed developments if they cause the levels of service to decrease below the standard, unless transportation improvements or strategies to accommodate the impacts of development are made "concurrent" with development. Under the GMA, "concurrent with development" means improvements or strategies are in place at the time of development, or there is a financial commitment to complete the improvements or strategies within six years. In order to accommodate the impacts of the development, local governments may change the phasing or timing of new development, provide transportation facilities or services to serve the new development, reduce the LOS standard, or revise the land use element.

A common misconception is that concurrency guarantees some uniform minimum level of governmental services. The state has not specified any such minimums. Local governments have the authority and responsibility to set acceptable levels of service for their communities resulting in a wide variety of methodologies and standards. This discretion is constrained by the growth management hearings board finding that local governments cannot avoid the concurrency requirement entirely by manipulating the standards to allow uncontrolled development despite identified deficiencies.[4] Neither can local governments avoid the concurrency requirement by crafting exemptions of any kind.[5]

TRANSPORTATION CONCURRENCY REQUIREMENT: After adoption of the comprehensive plan…local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development… For the purposes of this subsection "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

RCW 36.70A.070(6)

Planning for State-Owned Transportation Facilities

When initially enacted, the transportation concurrency requirement was silent on the treatment of state-owned facilities. The ensuing confusion and inconsistency led the 1998 Washington State Legislature to amend the Act in two significant ways. First, it required local governments to include in their plans:

- an inventory of state-owned transportation facilities within their boundaries,
- an estimate of traffic impacts to state-owned facilities resulting from their land use assumptions,
- a list of state transportation system improvements needed to meet demand, and
- the adopted level of service standards for state-owned highways.[6]

Second, it required the Transportation Commission to establish, and the legislature to adopt a list of Highways of Statewide Significance (HSS). Highways of Statewide Significance must be planned for in the statewide multimodal plan, given higher priority for correcting identified deficiencies, and considered essential public facili-

4. *Eugene Butler et al. v. Lewis County,* 99-2-0027c, WWGMHB (June 20, 2000).

5. *Bennett et al. v. City of Bellevue,* 49852-5-I, 119 Wn. App. 405 (December 15, 2003).

6. RCW 36.70A.070(6)

ties for siting purposes. The legislature has declared approximately half of the state's highway system to be of statewide significance. HSS routes include the interstate highway system, interregional state principal arterials, and major ferry routes. The remaining state-owned transportation facilities are not of statewide significance (non-HSS) and include collector routes, principal arterials that are not interregional, and minor ferry routes.

Highways of Statewide Significance

(See Appendix C for detailed map)

The Washington State Department of Transportation (WSDOT) has the authority to make final decisions on the level of service standards for highways and ferry routes of statewide significance, after consulting with local governments.[7] Level of service standards for other state-owned facilities are jointly set by WSDOT and the Regional Transportation Planning Organizations (RTPOs). RTPOs are voluntary associations of local governments authorized by the GMA to coordinate transportation planning on a regional level. The purpose of including level of service standards for state-owned facilities in local land use plans is to monitor system performance, evaluate improvement strategies, and facilitate state and local coordination.[8]

The 1998 amendment specifically exempted transportation facilities and services of statewide significance from the concurrency requirement, except in Island and San Juan counties. The legislature did not specifically address concurrency for state-owned facilities that are not of statewide significance.

7. RCW 47.06.140
8. RCW 36.70A.070(6)(a)(iii)(C)

LOS Authority and Concurrency Vary by Transportation Facility

Facility	Level of Service	Concurrency
Local Transportation Systems	LOS set by locals through the local planning process.	Concurrency required under GMA for local transportation facilities.
State Highways and Ferries	LOS set jointly by RTPO and state.	Concurrency requirement does not address state-owned transportation facilities other than HSS.
Highways of State-wide Significance (HSS)	LOS set by state in consultation with locals.	Concurrency requirements of GMA do not apply to HSS, except in Island and San Juan counties.

There have been some unsuccessful attempts to interpret other sections of the GMA to imply a duty for local governments to coordinate more closely with the state in their transportation planning. In 2002, a petition for review filed with the Central Puget Sound Growth Management Hearings Board asserted that the spirit of the GMA planning goals demanded a more coordinated and consistent transportation planning effort between state and county governments. The petitioner specifically cited the concurrency goal and the goal encouraging efficient multimodal transportation systems in her argument. The Hearings Board ruled against the petitioner, concluding none of the GMA planning goals applied to the state. The Hearings Board noted this conclusion was unfortunate, because to truly achieve managed growth, state and local planning efforts should be better linked.[9]

In 2005, Clark County's comprehensive plan was challenged because its land use policies would result in the failure of 18 links in the state's transportation system. The petitioners argued these deficiencies should have triggered a reassessment of the county's policies and regulations based on the concurrency requirement together with the GMA's provisions for capital facilities planning. The Western Washington Growth Management Hearings Board refuted this claim, reasoning it would be impossible for the county to comply with the GMA capital facilities requirements for state-owned facilities because it does not have the authority to set levels of service, nor the responsibility to make improvement decisions on them. This, together with the concurrency exemption for state-owned facilities, led the Board to conclude that the capital facilities element requirements of the GMA do not apply to highways of statewide or regional significance.[10]

These interpretations of the GMA have defined a fairly limited coordination requirement for state and local transportation planning:

- state transportation facilities must be included in local comprehensive plans for informational purposes, but highways and ferry routes of statewide significance are specifically exempted from concurrency for most local governments,
- concurrency is not explicitly required for non-significant state-owned transportation facilities, and it is unclear whether local governments could opt to include them in their concurrency regulations.

9. *Jody L. McVittie v. Snohomish County (McVittie VIII),* 01-3-0017, CPSGMHB (January 8, 2002).
10. *The Building Association of Clark County et al. v. Clark County and State of Washington, Office of Financial Management.* 04-2-0038c, WWGMHB (November 23, 2005).

EXTERNAL CONSISTENCY PROVISION: The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the country or city has, in part, common borders or related regional issues.

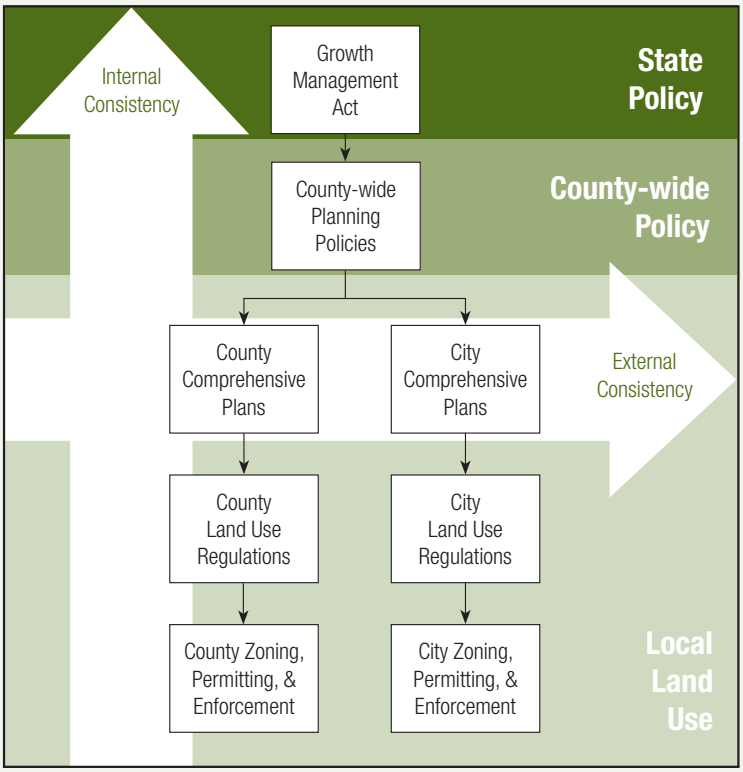
RCW 36.70A.100

Regional Coordination of Planning

The Growth Management Act defines a stronger duty for coordination and consistency among local governments than it does between local governments and the state. The preamble explicitly states local governments should cooperate and coordinate with one another in land use planning. The concepts of regional coordination and consistency are also repeated in many of the specific provisions of the Act.

Local comprehensive planning must be internally and externally consistent. Internal consistency is required among and between the elements of the comprehensive plan and the implementing development regulations.[11] External consistency requires local governments with common borders or related regional issues to ensure their plans are coordinated and consistent.[12] Under the GMA, consistency means planning and regulatory provisions are compatible, fit together, and do not thwart each other.[13]

External Consistency is Implemented Through County-wide Planning Policies



The external consistency provision is implemented primarily through county-wide planning policies. County-wide planning policies are a framework agreed upon by counties and cities that provide procedural and substantive direction to the comprehensive plans of each jurisdiction. The Central Puget Sound Growth Management Hearings Board characterizes the relationship between county-wide planning policies and local land use planning and regulation as "a hierarchy of substantive and directive policy. Direction flows first from the county-wide planning policies to the comprehensive plans of cities and counties, which in turn provide substantive direction to the content of local land use regulations, which govern the exercise of local land use powers, including zoning, permitting and enforcement."[14]

The power of county-wide planning policies to support regional planning is limited by the GMA premise that county-wide planning policies may not alter the land-use powers of cities.[15] The growth management hearings boards have identified a three-prong test to prevent county-wide planning policies from needlessly or excessively intruding upon local prerogatives.

County-wide planning policies must:

1. meet a legitimate regional objective,
2. provide substantive direction only to the provisions of a comprehensive plan, and cannot directly affect the provisions of an implementing regulation or other exercise of land use powers, and

11. RCW 36.70A.070
12. RCW.36.70A.100
13. *West Seattle Defense Fund v. City of Seattle,* 94-3-0016, CPSGMHB (April 4, 1995).
14. *City of Snoqualmie v. King County,* 92-3-0004, CPSGMHB (June 1, 1993).
15. RCW 36.70A.210(1)

3. be consistent with other relevant provisions in the GMA.[16]

The hearings boards presume that if the plans of different jurisdictions are consistent with county-wide planning policies, they are also consistent with one another.[17] Allegations of inconsistency are evaluated based upon a plan-to-plan comparison.[18] The external consistency provision also requires coordination which is evaluated based on the evidence of communication and consultation between the jurisdictions.[19] As long as the parties are at the table, however, the hearings boards do not police the coordination[20] or require one jurisdiction to comply with another's stated policy preferences.[21]

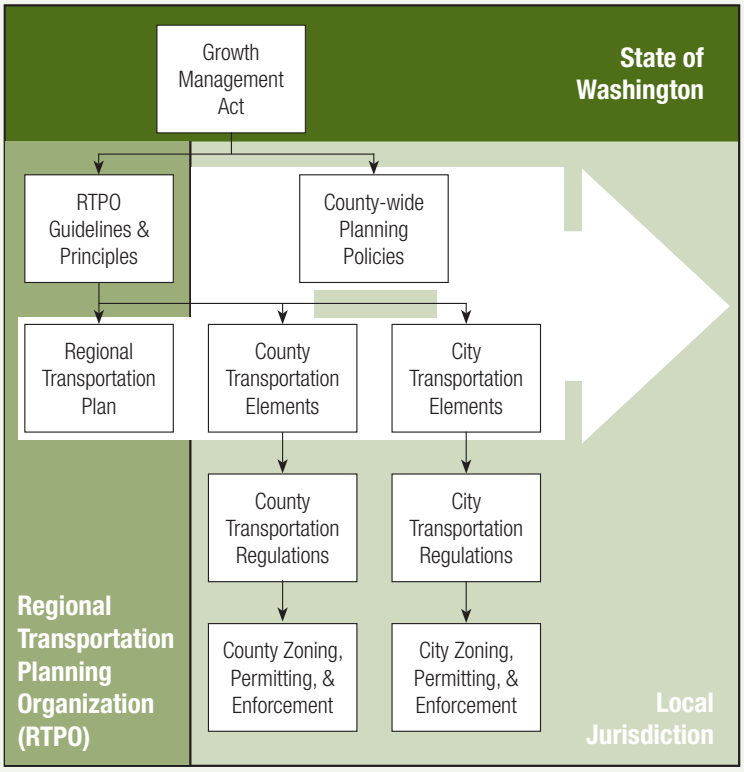
The external consistency provision compels cities and counties to ensure their comprehensive plans, including their transportation elements, are compatible with those of bordering jurisdictions, fit together, and do not thwart each other. Recognizing its inherently regional nature, the legislature required an even higher standard for the coordination of transportation planning. The GMA requires local governments to:

1. coordinate levels of service standards within the region,
2. assess the impacts of their transportation and land use policies on the transportation systems of adjacent jurisdictions, and
3. describe any other intergovernmental coordination efforts they have undertaken in the transportation element of their comprehensive plan.[22]

Additionally, the transportation elements of local comprehensive plans and the transportation related county-wide planning policies must be certified by an RTPO to ensure regional consistency.[23] The certification is based on the consistency of the local policies with the RTPO's adopted guidelines and principles and regional transportation plan as well as the general conformity of the local policies with GMA requirements.[24]

The planning authority of RTPOs was tested in a Washington State Court of Appeals case which found that when there is a conflict

RTPO Certification Ensures Regional Consistency



16. *City of Snoqualmie v. King County,* 92-3-0004, CPSGMHB (June 1, 1993).
17. *RIDGE v. Kittitas County,* 00-1-0017, EWGMHB (April 10, 2002). Also *City of Bremerton et al. v. Kitsap County,* 04-3-0009c, CPSGMHB (August 9, 2004).
18. *Corrine R. Hensley v. City of Woodinville,* 96-3-0031, CPSGMHB (February 25, 1997).
19. *RIDGE v. Kittitas County,* 00-1-0017, EWGMHB (June 7, 2001). Also *City of Edgewood et al. v. City of Sumner,* 01-3-0018, CPSGMHB (January 18, 2001).
20. *RIDGE v. Kittitas County,* 00-1-0017, EWGMHB (April 10, 2002).
21. *Forster Woods Homeowners' Association and Friends and Neighbors of Forster Woods et al. v. King County,* 01-3-0008cm CPSGMHB (November 6, 2001).
22. RCW 36.70A.070(6)(a)
23. RCW 47.80.023
24. RCW 47.80.023(3)

between regional and local plans, the regional plan prevails if there has been a coordinated planning process.[25]

WSDOT coordinates the activities of the 14 RTPOs that cover 38 of the 39 counties in Washington. WSDOT participates in the regional planning process through the RTPOs in order to ensure statewide consistency.

The Growth Management Act requires WSDOT to:

1. establish minimum standards for development of a regional transportation plan in cooperation with the RTPOs,
2. facilitate coordination between regional transportation planning organizations, and
3. through the regional transportation planning process and through state planning efforts identify and jointly plan improvements and strategies within those corridors important to moving people and goods on a regional or statewide basis.[26]

25. *The City of Des Moines et al. v. The Puget Sound Regional Council, et al.,* 42306-1-I, Wn. App. 96-2-20357-2 (November 15, 1999).
26. RCW 47.80.070

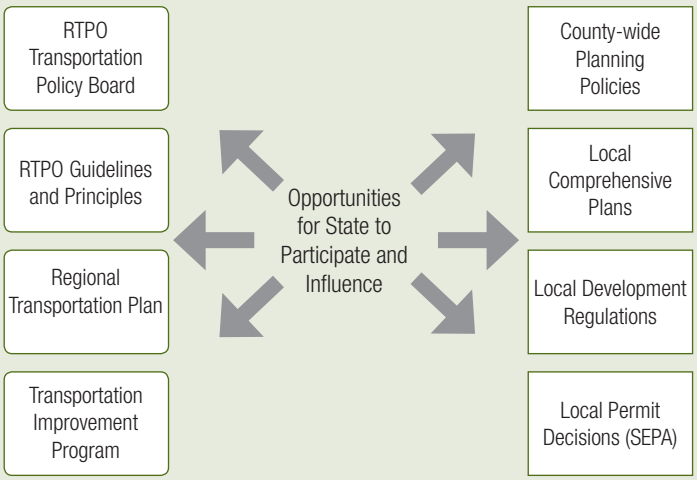
3. Current Practice: State, Regional and Local Roles in Planning and Concurrency

The state legislature provided a framework under the Growth Management Act (GMA) for cities, counties, Regional Transportation Planning Organizations (RTPOs), and the state to work together to plan for an integrated transportation network through a comprehensive process including land use, transportation, and capital facilities planning. Opportunities are built into the GMA framework for the state and the RTPOs to participate in the local land use process and influence decisions that might adversely impact state-owned highways and ferry routes.

The GMA directs state agencies like the Community, Trade and Economic Development Department (CTED) and the Washington State Department of Transportation (WSDOT) to participate in the local land use process by providing guidance to local governments, reviewing and commenting on local comprehensive plans and development regulations, providing conditional grant funding, and appealing local land use decisions when appropriate. In addition, the State Environmental Policy Act (SEPA) affords all state agencies the opportunity to review proposed comprehensive plan amendments, local regulatory changes, and local permit decisions and request mitigation or denial of the proposed government actions. Opportunities for state influence under SEPA will be discussed further in Chapter 4.

The GMA also provides the state with opportunities to participate in the RTPO planning process. RTPOs establish levels of service and jointly plan for regionally significant state-owned highways and ferry routes. The regional transportation plan is also used as the basis for certifying local comprehensive plans and county-wide planning policies for regional consistency.

Opportunities for the State to Participate and Influence



CTED's Role in Local Land Use Planning

CTED provides technical and financial assistance to local governments, coordinates state agency guidance on growth management issues, and facilitates state agency review of proposed changes to local plans and regulations. In general, CTED approaches local governments as a partner in planning and implementing the GMA. However, CTED also serves as a repository of GMA compliance records which may be used to determine eligibility for grant funds or as a basis for other enforcement actions.

Technical Assistance

CTED has found the most effective way to encourage good planning under the GMA is to focus its resources on technical assistance to local governments early in the land use planning process. The technical assistance program uses department staff and the staff of other state and local agencies to provide individualized assistance, develop model ordinances, offer regional education and training programs, and collect information for local and regional inventories. CTED planners are often called upon for input, guidance, and to give presentations on specialty topics.

Every city and county in the state is assigned to one of 11 CTED planners who are available to answer questions and provide assistance. CTED staff are in a unique position to connect local planners with other counties or cities working on similar issues or facing similar problems because they work with every community in the state. This allows local planners to use the knowledge and experience of other planners in the state to help in their own situations. CTED planners are expected to contact their assigned local jurisdictions at least quarterly. Typically, one of these contacts will be an on-site visit.

Additionally, CTED offers training programs like the Short Course on Local Planning, a three-hour overview of the legal basis of land use planning in Washington. The Short Course is provided free to local governments upon request. In 2006, CTED's Growth Management Services provided 47 short courses. CTED also offers specialized training programs, speakers for conferences and quarterly regional forums for local planners.

Financial Assistance

CTED provides financial assistance to counties and cities to encourage and facilitate the adoption and implementation of GMA comprehensive plans and development regulations. In the current biennium, the legislature funded approximately $5.5 million in grants passed through CTED to local governments engaged in planning activities under the GMA.

Under the GMA, local comprehensive plans are required to be updated every seven years.[1] Each year, CTED distributes grants to eligible jurisdictions scheduled to complete their plan updates. The grants range from $7,500 to $90,000 per jurisdiction, and are awarded based on a funding formula accounting for population growth. CTED also provides grant funds for newly incorporated jurisdictions and jurisdictions that have not met the initial adoption requirements of the GMA. CTED provides an incentive for regional collaboration by offering competitive grant funding for innovative regional collaboration among cities, counties, and school districts. Finally, CTED offers Emerging Issues Grants (typically $10,000

1. RCW 36.70A.130(4)

or less per jurisdiction) to help fund planning activities that occur outside normal grant cycles that further the goals and priorities of a local comprehensive plan.

Coordination of State Agency Guidance

CTED coordinates the production and distribution of GMA guidance documents including guidebooks, newsletters, email notifications, Web resources, good examples, and update checklists. During Fiscal Year 2005, Growth Management Services distributed approximately 15,000 publications.

CTED has prepared guidebooks on numerous topics, including transportation planning requirements and impact fees, generally in the early 1990s. In 1998, CTED and WSDOT jointly produced a guidebook on the implementation of House Bill 1487 (the "Level of Service Bill"), amending planning requirements for state-owned transportation facilities. Guidebooks are mailed free of charge upon request. Additionally, most CTED guidebooks are available to download from its Web site.

CTED also provides GMA requirements in a checklist format for local governments to use when updating their comprehensive plans and development regulations. The checklists provide links to other resources, suggestions for best practices, and notations of other applicable state and federal laws.

Facilitation of State Agency Review

The GMA requires local governments proposing adoption of any changes to their comprehensive plans or development regulations to notify CTED at least 60 days prior to final adoption.[2] This requirement allows state agencies to provide comments to the county or city on the proposed plan or regulation during the public review process prior to adoption. CTED maintains a database of the review materials submitted and provides other state agencies with a brief description of the materials received in a daily email.

EXPEDITED REVIEW
Some minor review items can be submitted under CTED's expedited review process. If the request for expedited review is approved, local governments can forgo the 60-day notice period and adopt the proposed amendments within 14 days.

RCW 36.70A.106(2)(b)

Review materials can be as large as a major comprehensive plan update for a metropolitan county or as small as a minor amendment to a city sign ordinance. The Planning Review Team Manager looks at the list of materials received daily and determines which items should be reviewed by a CTED planner. Items less likely to be reviewed include revisions to existing ordinances, housekeeping-type items, or other minor amendments.

The process used to review and comment on proposed changes to local comprehensive plans and development regulations is governed by the "Principles Governing State Agency Correspondence Under the Growth Management Act."[3] The principles were developed by CTED, the Washington State Association of Counties, the Association of Washington Cities, and six other state agencies, including WSDOT. The principles outline 11 ways to facilitate collaborative engagement between state and local government on local land use matters.

The review process at CTED begins when a planner is assigned a proposed local comprehensive plan or development regulation amendment. After reading the proposed changes, the planner may decide to take no action if the material meets GMA requirements. If the planner has any concerns or questions about the

2. RCW 36.70A.106
3. "Principles Governing State Agency Correspondence Under the Growth Management Act." January 27, 2005.

proposed changes, he or she will contact the local government to discuss them. If the planner's concerns are not resolved through that discussion, formal written comments may be provided.

2005 CTED REVIEW ACTIVITIES:

» 1,198 proposed amendments to local comprehensive plans and development regulations were received
» 540 were forwarded to a planner for review
» 84 comment letters were sent to local governments

When commenting on proposed comprehensive plans, CTED will generally comment on what they like about the plan, what the city or county may want to consider modifying to improve or strengthen the plan, and what the city or county should change and why. When commenting on development regulations, CTED will generally discuss any potential concerns, address how the proposal meets the GMA and applicable laws, and how it may be strengthened. When a formal comment letter is written, CTED staff will share it with the jurisdiction staff while it is in draft form. The city or county may suggest changes, ask for clarification, or provide additional background information. Once approved by the Planning Review Team Manager, the letter is sent to the city or county staff and included in the public record. Local jurisdictions consider comments from CTED, other agencies, and the public during the adoption process and may or may not make suggested changes prior to adoption.

PARTICIPANTS IN THE INTERAGENCY WORK GROUP:

Attorney General's Office
Department of Agriculture
Department of Community, Trade and Economic Development
Department of Ecology
Department of Fish and Wildlife
Department of Health
Department of Natural Resources
Department of Social and Health Services
Department of Transportation
Governor's Salmon Team
Interagency Committee for Outdoor Recreation
Puget Sound Action Team
Salmon Recovery Funding Board

In order to better coordinate state agency responses to proposed local plan and development regulation amendments, CTED also organizes monthly meetings of the Interagency Work Group. This group provides a forum for state agencies to share their technical assistance best practices as well as troubleshoot issues that arise in specific communities.

Enforcement

CTED views its role as helping local governments adopt the best versions of their locally developed plans and regulations while ensuring GMA requirements are satisfied. The potential consequences for local governments who do not meet the requirements of growth management may include appeals, grant ineligibility, or sanctions.

Appeals. In some cases, a state agency's mandate may require a challenge to a local government action under the GMA. Challenges are made by filing a petition for review with one of the three growth management hearings boards. State agency appeals are only brought when the challenge involves a matter of statewide significance, when the state agency has made every effort to resolve the issue through participating in the local planning process, and when the appeal is the best available way to address the need. Such appeals have involved issues such as expansion of urban growth boundaries, protection of natural resources or the siting of essential public facilities. State agency appeals can only be filed by the governor, or with the governor's consent the head of an agency, or by the commissioner of public lands for issues relating to the state trust lands. Authorization to file the appeal is often accompanied by a directive from the governor to seek settlement or mediation as an alternative to the legal challenge. As the coordinator of state agency actions under the GMA, CTED has served as gatekeeper in requests to the Governor to appeal a local agency action.

In addition to filing direct challenges, state agencies have filed as interveners or filed amicus briefs in other cases. These methods are used when cases raise issues that are of statewide significance and the agency believes its expertise would benefit the proceedings or if the issues have significant implications for the agency.

Grant Ineligibility. For a fully planning city or county to be eligible for financial assistance from the Public Works Trust Fund or Centennial Clean Water Fund, it must have adopted a comprehensive plan and implementing regulations. It must also have completed its seven-year comprehensive plan and development regulation update as required.[4] Additionally, many state and federal grant or loan programs require that any projects proposed for funding be included in the local comprehensive plan.

Sanctions. As a last resort, the governor is authorized to impose financial sanctions in order to achieve compliance with the requirements of the GMA. This is an extremely rare measure. Sanctions have only been imposed once in the history of the GMA. Imposition of sanctions must be preceded by the governor's written findings that the county or city is not proceeding in good faith to meet the requirements of the GMA or that the county or city has unreasonably delayed taking the required action. The governor must consult with and communicate these findings to the appropriate growth management hearings board prior to imposing the sanctions. For jurisdictions not fully planning under the GMA, the governor must consider the size of the jurisdiction relative to the requirements of the act and the degree of technical and financial assistance provided.[5] Sanctions may include revised allotments in appropriation levels, the withholding of a portion of the revenues to which the county or city is entitled under various state tax and trust accounts, and/or the temporary rescinding of the county's or city's authority to collect the real estate excise tax.

Resources

CTED's annual budget devotes 21.5 Full Time Equivalent (FTE) staff and $5.25 million, including $3.1 million in pass-through grant funds, to the Growth Management program. Each of the 11 planners are assigned approximately 39 jurisdictions.

WSDOT's Role in Local and Regional Transportation Planning

Like CTED, WSDOT provides technical assistance to local governments, reviews and comments on local comprehensive plans and development regulations, and has the ability to appeal local land use decisions when appropriate. In addition, WSDOT develops statewide transportation plans which influence local and regional planning decisions. WSDOT also provides administrative and financial support to RTPOs.

Planning

The Washington Transportation Commission is responsible for the development of a state transportation policy plan that:

1. establishes a vision and goals for the development of the statewide transportation system consistent with the state's growth management goals,
2. identifies significant statewide transportation policy issues, and
3. recommends statewide transportation policies and strategies to the legislature.[6]

4. RCW 36.70A.130
5. RCW 36.70A.345
6. RCW 47.06.030

WSDOT works with the Commission to coordinate the adoption of the Washington Transportation Plan, which meets these requirements. The policies defined in the Washington Transportation Plan guide WSDOT's statewide program plans including the aviation system plan, the bicycle transportation and pedestrian walkways plan, the freight and goods transportation system update, and the highway system plan. Projects supporting these program plans are then included in WSDOT's Ten-Year Capital Improvement and Preservation Program.

WSDOT's Capital Improvement and Preservation Program, the transportation elements of local comprehensive plans, and the six-year transportation improvement programs prepared by cities, counties and public transportation systems must be consistent.[7] Additionally, the regional transportation plans prepared by RTPOs must be consistent with countywide planning policies, local comprehensive plans, and state transportation plans.[8]

The Washington Transportation Plan

The Washington Transportation Plan (WTP) is a 20-year plan defining policy for the statewide transportation system and a data-driven guide to transportation investment decisions reflecting statewide input. The WTP also fulfills federal and state planning requirements.

THE WTP'S 20-YEAR TRANSPORTATION VISION:
Washington's transportation system should serve our citizens' safety and mobility, the state's economic productivity, our communities' livability, and our ecosystem's viability.

The WTP defines five prioritized guidelines for future investments:

1. **Preservation**—Preserve and extend prior investments in existing transportation facilities and the services they provide to people and commerce.

2. **Safety**—Target construction projects, enforcement, and education to save lives, reduce injuries, and protect property.

3. **Economic Vitality**—Improve freight movement and support economic sectors that rely on the transportation system, such as agriculture, tourism, and manufacturing.

4. **Mobility**—Facilitate movement of people and goods to contribute to a strong economy and a better quality of life for citizens.

5. **Environmental Quality and Health**—Bring benefits to the environment and our citizens' health by improving the existing transportation infrastructure.

The WTP also recommends numerous transportation policies. The following are the policy recommendations most closely related to this analysis:

Funding:

» Identify strategies and methods to provide sustainable revenue sources for transportation needs, including tolling and innovative approaches.

» Identify innovative financing approaches aimed at meeting the long-term capital investment needs of the ferry system.

Land Use and Transportation:

» Improve concurrency between transportation and land use decisions to ensure complementary development of land with transportation infrastructure.

» Clarify the state and local responsibility and options for addressing highway congestion that are driven by local permitting decisions.

Safety:

» Identify cost effective ways in which the state and local agencies responsible for safety on highways, streets and roads can coordinate their efforts to achieve statewide safety goals in a comprehensive manner.

The WTP is available on-line at:

http://www.wsdot.wa.gov/planning/wtp/

Additional WTP topics are linked to the data library:

http://www.wsdot.wa.gov/planning/wtp/datalibrary/default.htm

7. RCW 36.70A.070(6)(c)
8. RCW 47.80.023(2)

Despite these consistency requirements, state, regional and local transportation planning is not always effectively coordinated or consistent in practice. In a February, 2006 letter appointing Transportation Secretary Doug MacDonald, Governor Christine Gregoire emphasized that WSDOT must play a leadership role in transportation planning and interagency coordination to create a transportation system that will better meet public demands for the next 50 years.

FROM TRANSPORTATION SECRETARY DOUG MACDONALD'S 2006 APPOINTMENT LETTER:
"As we deliver on project construction we must also play a leadership role in the planning, coordination and integration of our transportation system on a regional and statewide basis. This is a very important role for you personally to play. Over the coming years I expect you to work closely, cooperatively, and aggressively with federal, and local governments and districts to create a transportation system that will better meet the demands our citizens, communities and businesses will place upon it for the next 50 years. This will require innovative planning, significant public education and unprecedented coordination between land use, public transit, and all other modes of transportation. The system must reduce congestion in the short term but must also build toward a vision that at least challenges the premises that have driven us to the conditions of today."
Governor Christine Gregoire

Guidance Documents

The most recent local government guidance document on transportation planning was produced by WSDOT in cooperation with CTED in 1998 and addressed the implementation of House Bill 1487 which changed the local planning requirements for state-owned facilities. WSDOT also produced the RTPO Transportation Planning Guidebook in 1998. This guidebook provided RTPOs with a set of recommended best planning practices developed in cooperation with regional agencies and local governments across the state.

In response to the Governor's policy direction, WSDOT is currently developing additional policy and implementation guidance on growth management, land use and development review. Additionally, WSDOT Headquarters Planning Office is working on a Transportation Planning Manual and local comprehensive plan review policies to guide the work of the WSDOT region planning offices. WSDOT also continues to participate in the Interagency Work Group coordinated by CTED to develop consistent statewide policies for implementing the GMA.

Local Comprehensive Plan and Development Regulation Review

Under the GMA, state agencies may provide comments to cities and counties on proposed comprehensive plan or development regulation amendments during the public review process.[9] WSDOT has reviewed and commented on local plans and development regulations as a good business practice since the early 1990s. However, because reviews are not required, minimal attention has been given to accomplishing this task. Statewide, WSDOT dedicates only 1.2 FTE to local comprehensive plan and development regulation review. This includes: 0.1 FTE in the WSDOT Headquarters Planning Office, 0.1 FTE in each of the six WSDOT Region Offices, and 0.5 FTE in the Urban Planning Office (covering King, Kitsap, Pierce and Snohomish counties).

WSDOT reviews and comments on local plans and regulations to assess the impacts of local land use decisions on the state system and to communicate them to local governments. Also, the GMA requires state agencies to comment during the public review process in order to have standing to appeal local land use decisions.

The review process begins when WSDOT receives a proposed comprehensive plan or development regulation amendment from a local government. While the GMA does not require local governments to submit proposed land use amendments directly to WSDOT; the requirements of the State Environmental Policy Act result in WSDOT directly receiving copies of proposed legislation when local governments perceive the agency might be impacted.

WSDOT also receives a daily email from CTED with a summary of each material that CTED received from local governments for state review. The Washington State Department of Ecology also publishes a list of all local government SEPA

9. RCW 36.70A.106

THE PRINCIPLES GOVERNING STATE AGENCY CORRESPONDENCE UNDER THE GMA:

The following principles were jointly adopted by seven state agencies, including WSDOT, in January, 2005:

1. Early notification and involvement is critical to effective participation
2. Local governments should seek early state agency participation and state agencies should respond promptly.
3. State agencies should contact local governments, preferably by phone, before drafting a comment letter.
4. State agencies will share drafts informally with local governments before sending formal written comments.
5. State agencies will ensure written correspondence reflects their official position.
6. State agencies will coordinate comments and resolve internal conflicts before finalizing comments to local governments.
7. State agency involvement is a technical assistance role, not a regulatory role.
8. State agencies may provide guidance that urges local governments to exceed the minimum requirements of law and may suggest ways to meet GMA requirements.
9. State agency correspondence will clearly distinguish legal requirements, best practices, matters of fact, and matters of opinion.
10. State agency comment letters are public records.
11. State agencies and local governments will review these principles as needed.

determinations. Theoretically, WSDOT could review this information to request plans and regulations that local governments did not directly submit to them. In practice, WSDOT has insufficient staff resources to review the materials directly submitted, so follow-up based on the CTED or Ecology information is rare.

Local governments may submit proposed plans or development regulations to WSDOT Headquarters or to one of the WSDOT region offices. The region planning offices have primary responsibility for reviewing and commenting on proposed amendments to local plans and regulations. During the review process, the region planning offices might circulate proposed amendments to other WSDOT staff members for input before preparing a response. In preparing their comments, the region planning staff are responsible for implementing the "Principles Governing State Agency Correspondence under the Growth Management Act," coordinating with Headquarters to ensure statewide consistency, and copying any written comments to Headquarters for tracking. The Planning Office at Headquarters is responsible for ensuring all WSDOT comments are consistent and comply with the "Principles Governing State Agency Correspondence under the Growth Management Act."

With the exception of the "Principles Governing State Agency Correspondence Under the Growth Management Act," no formal agency-wide policies for reviewing and commenting on local comprehensive plans and development regulations exist. Consequently, the review process varies widely with each regional office determining how to prioritize the local plans and regulations submitted for review, how to conduct the review, what the substance of the review and comments should be, and how to use the information submitted by local governments in WSDOT's planning processes.

The regional offices note that local agencies do not consistently submit their proposed plan and development regulations to WSDOT. Additionally, the WSDOT region offices do not have the staffing resources or policy guidance to optimally review local plans and regulations. Finally, WSDOT's influence is limited because local governments can choose to disregard its comments.

If WSDOT determines a local land use decision under the GMA substantially interferes with the state's interests, and if the agency has standing, it can request that the Governor file a petition for review of the local legislation with one of the three growth management hearings boards. In order to have standing, the state must have stated its objection to the proposed local policy or regulation on the record during the public review process.

Regional Transportation Planning Organization Support

In addition to its role in local comprehensive planning, WSDOT provides administrative, technical, and financial assistance for the RTPOs. These activities include: RTPO coordination, supporting the RTPOs' annual work programs, and assisting the RTPOs with the development of a Transportation Improvement Program. A Transportation Improvement Program is a financially-constrained list of regional transportation improvements anticipated to be completed within four years.

WSDOT is responsible for verifying that the processes local governments use to designate RTPOs meet state requirements. Then, WSDOT executes an agreement

with the RTPO's lead planning agency defining the work program and setting out conditions for the use of state planning grants.

WSDOT administers two state planning grant programs established by the legislature to fund the activities of the RTPOs. The formula grant program allocates funds to the RTPOs based on a legislatively defined formula providing a base amount per county, with the remaining funds allocated on a per capita basis. WSDOT also administers a discretionary grant program for special regional planning projects.

Under state statute, WSDOT establishes minimum standards for the development of regional transportation plans.[10] The minimum standards are defined in Chapter 468-86 of the Washington Administrative Code. During the regional planning process, WSDOT works with the RTPOs to ensure regional transportation plans are consistent with the Washington Transportation Plan. It also supports the RTPOs' efforts to identify gaps between the regional transportation plan and the transportation elements of local comprehensive plans, as well as between the regional transportation plan and county-wide planning policies.

In addition to providing administrative and technical support to RTPOs, WSDOT offers similar support to federally designated Metropolitan Planning Organizations (MPOs). While MPOs and RTPOs receive their funding from different sources, they serve similar basic transportation planning functions. These functions include developing a long-range plan, coordinating within an urban area or region, and preparing a transportation improvement program. MPOs and RTPOs that serve the same area are required by statute to have the same lead agency.

State funding totaling $4.4 million will pass through WSDOT in the 2005-07 biennium for RTPO activities, and federal funding totaling $15.3 million will pass through WSDOT in the 2005-07 biennium for MPO funding. Statewide, WSDOT devotes approximately 12 FTE to RTPO and MPO support activities including: 5 FTE at WSDOT Headquarters, 2.5 FTE in each of the two region offices located in the urban Puget Sound areas, and 0.5 FTE in each of the four other region offices.

The RTPO Certification Process in Regional Planning

Fourteen RTPOs encompass all the counties in the state, except San Juan County. RTPOs are required to prepare regional transportation plans, develop six-year regional transportation improvement programs, review local level of service methodologies to promote regional consistency, establish levels of service for regionally significant state-owned highways and ferry routes (jointly with WSDOT), and certify the transportation elements of local comprehensive plans and countywide planning policies.[11]

Minimal RTPO certification requirements exist in state law. RTPOs must certify that the transportation elements of local comprehensive plans reflect and are consistent with the adopted regional transportation plan, and conform with the transportation element requirements of the GMA.[12] RTPOs must also certify

10. RCW 47.80.070(1)
11. RCW 47.80.023
12. RCW 47.80.023(3)

that the county-wide planning policies and the regional transportation plans are consistent.[13]

WSDOT provides some additional recommendations for the certification process in its RTPO Transportation Planning Guidebook including the development of:

- a matrix to compare countywide planning policies with the adopted regional goals and planning policies, noting any inconsistencies,
- a uniform checklist to evaluate the consistency of the transportation elements of local comprehensive plans with the regional transportation plan, and
- a formal process for certifying consistency including written findings and recommendations adopted by the RTPO policy board[14]

In practice, the RTPO certification process varies widely. Four RTPOs do not currently certify local plans or countywide planning policies at all. The certification processes of the remaining 10 RTPOs vary widely from minimal review to rigorous evaluation. Several RTPOs provide the local jurisdictions within their boundaries with a checklist to evaluate their own plans and policies for consistency. RTPO staff then conduct a cursory review of the self-evaluation before certifying the document verbally or in writing. Other RTPOs review local comprehensive plans and countywide planning policies more thoroughly, with some that use checklists and some that do not.

A number of RTPOs noted that they work with local jurisdictions in the early stages of the planning process and that early interaction is more effective than after-the-fact certification checks. In fact, two of the RTPOs performing certification reviews felt they were not beneficial. The types of pre-planning assistance RTPOs offer vary but may include providing data, transportation modeling assistance, sample policies, and draft plan language to local governments.

Puget Sound Regional Council - A Robust Certification Process

The Puget Sound Regional Council (PSRC), the Regional Transportation Planning Organization (RTPO) that includes the most populous counties in the state, also has the most robust certification process.

PSRC reviews county-wide planning policies and local transportation elements using an in-depth questionnaire developed to ensure conformity with GMA requirements, consistency with the regional transportation plan, and compliance with federal and state clean air legislation.[1]

The certification includes a two-step review. First, PSRC performs a preliminary review on the draft planning document based on an in-depth questionnaire completed by PSRC staff. This allows jurisdictions to address inconsistencies prior to plan adoption. Once the final plan is adopted, PSRC reviews the transportation-related provisions a second time and prepares the final certification report. After the jurisdiction has had an opportunity to review the report and comment, PSRC presents a recommendation on certification to its Executive Board. An appeals process is provided.

PSRC has tied the certification process to eligibility for federal transportation funds administered by their organization.

1. Puget Sound Regional Council Adopted Policy and Plan Review Process. September, 2003.

13. RCW 47.80.023(4)
14. Washington State Department of Transportation, "RTPO Transportation Planning Guidebook," June, 1998, 1: 19-20.

The varied practices of RTPOs can be partially explained by the minimal legal requirements for the certification process. However, inconsistent certification practices also reflect certain RTPO structural issues. RTPOs are voluntarily formed by their member jurisdictions and so their ability to enforce consistency varies based on the local political climate. In addition, four of the RTPOs have very limited financial resources and consequently are unable to support a dedicated professional staff. The other 10 RTPOs are staffed by lead agencies that also serve as federally designated Metropolitan Planning Organizations (MPOs), resulting in a broader base of funding for planning activities.

Finally, six of the fourteen RTPOs encompass some jurisdictions fully planning under the GMA and some jurisdictions planning for critical areas and resource lands only. The different planning requirements make it challenging for these RTPOs to craft a regional plan that can serve as a basis for the certification. Only the fully planning GMA jurisdictions are required to develop and submit countywide planning policies and transportation elements for certification.

Local Planning and Concurrency Practices

Local government practices for implementing concurrency and planning for state-owned transportation facilities has varied as widely as the RTPO certification processes. In 2002-03, the Puget Sound Regional Council (PSRC) completed a study of the effectiveness of concurrency in Snohomish, King, Pierce, and Kitsap counties. The PSRC study comprised a three-phase work plan which surveyed, reviewed, analyzed, and developed recommendations for how concurrency could be improved.

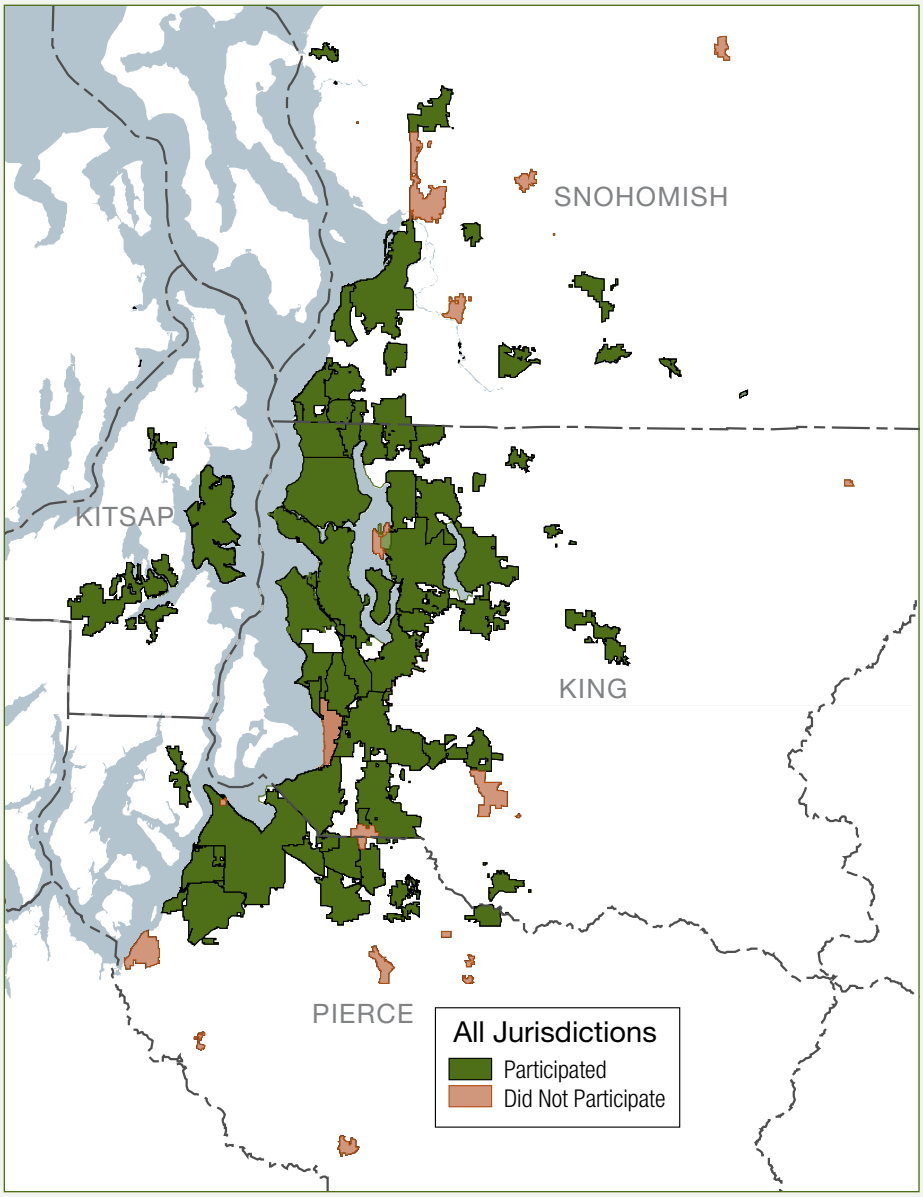
Recognizing the study results cannot be generalized for the entire state, a summary of this study provides a local government perspective on how concurrency is approached and practiced in the urban areas of the state. The results should also be framed within the political climate of the time. When this study was undertaken, local expectations were low for any state funding of transportation projects. Since then, the legislature has approved two major state transportation funding packages. A five-cent increase in the gas tax was approved in 2003 (the "Nickel") generating $4.7 billion in 10 years to fund 160 transportation projects statewide. A six-cent increase in the gas tax was approved in 2005 (the Transportation Partnership Act) generating $9 billion over 16 years to fund 274 transportation projects statewide, as well as some city and county road improvements. While these transportation funding packages were project-specific and addressed only existing state transportation deficiencies, their adoption and implementation might have impacted the local perspectives and practices described in the PSRC study.

PSRC Survey Results

The first phase of the PSRC Study involved a survey of 21 questions distributed to all jurisdictions in the four-county area. Sixty-eight of the 86 jurisdictions returned the survey. It is interesting that 11 years after the GMA was enacted, nearly half of the respondents (43 percent) indicated they did not have a transportation concurrency ordinance.[15] Additionally, 60 percent of the respondents

15. Assessing the Effectiveness of Concurrency: Phase 1 Report - Survey Results. Puget Sound Regional Council. January 2002: 5.

Puget Sound Area Jurisdictions Participating in the Survey



Source: Puget Sound Regional Council

indicated their concurrency system had no discernible impact on actual development projects.[16]

Many survey questions related to the mechanics of how concurrency was implemented. Concurrency practices varied widely with differences in whether multimodal options were addressed, what thresholds were used to trigger a concurrency assessment, under what circumstances exemptions or waivers were granted, and how levels of service were set. The diversity of concurrency approaches presents a challenge to expanding concurrency to a regional or statewide level.

Several of the survey questions addressed how local governments include state-owned transportation facilities in their concurrency practices. Fifty-nine percent

16. Assessing the Effectiveness of Concurrency: Phase 1 Report - Survey Results. Puget Sound Regional Council. January 2002: 18.

of jurisdictions that answered the question indicated they account for and incorporate state highway facilities in their concurrency programs.[17] The survey question was not specific enough to discern how state facilities were included.

Less than half of the jurisdictions answered the final question regarding changes they would like to see related to concurrency in state legislation.[18] Eight local governments suggested strengthening transportation funding, seven suggested the concurrency requirement conflicted with GMA objectives such as limiting sprawl and encouraging multimodal transportation, and five believed concurrency should address state facilities.[19]

PSRC SURVEYED JURISDICTIONS SUGGEST:

» state-owned facilities should not be exempt from concurrency requirements
» the state should have to mitigate impacts directly related to its facilities
» local jurisdictions have insufficient tools to address state system failures
» if the state sets LOS for state routes, then it should also be required to address how such standards are to be maintained

PSRC: Assessing the Effectiveness of Concurrency Phase 1 Report

PSRC Focus Group Results

The second phase of the PSRC study reviewed and analyzed the concurrency programs of 19 jurisdictions through case study analyses and eight focus group sessions. Transit agency and WSDOT staff were involved in this process, but not directly. The findings from this phase were summarized into seven common themes:

- No Two Programs Are The Same: PSRC found significant differences in the administrative details of implementing concurrency as well as the jurisdictions' objectives for their concurrency programs.[20] Jurisdictions alternately viewed concurrency as a tool for accommodating new development, attracting desired types of development while discouraging unwanted development, focusing growth in desired locations, requiring development to pay its "fair share," gauging performance across the system, and capital facilities planning.[21]
- The Tool is Being Used Cautiously: Concurrency may not be implemented to its full extent because local governments balance their concurrency program with other goals.[22]
- Innovations are Occurring: Jurisdictions apply innovative concepts to solve problems and meet their specific needs. For example, the City of Bellevue uses congestion allowances that permit a specified number of intersections in the zone to exceed the standard. The City of Seattle uses a "screenline" measurement, accounting for travel along a series of parallel roads instead of a single facility. King County uses a zonal system with different methodologies for commercial versus residential developments.
- The Choice of a Measurement System is Key: The details of the system used to measure the level of service greatly affect what mitigation is required and can even control what types of projects are funded.[23]

17. Assessing the Effectiveness of Concurrency: Phase 1 Report - Survey Results. Puget Sound Regional Council. January 2002: 21.
18. Assessing the Effectiveness of Concurrency: Phase 1 Report - Survey Results. Puget Sound Regional Council. January 2002: 30.
19 Ibid.
20. Assessing the Effectiveness of Concurrency: Final Report. July 2003: 9.
21. Assessing the Effectiveness of Concurrency: Phase 2 Report - Analysis of Practices. August 2002: 8
22. Assessing the Effectiveness of Concurrency: Final Report. July, 2003: 10
23. Ibid.

- Multimodal Approaches are Limited: Despite federal and state requirements, jurisdictions are not incorporating multimodal approaches into their concurrency programs to any great extent.[24]
- Limited Coordination is Occurring: While a few jurisdictions provide development information to other jurisdictions, largely through SEPA, most jurisdictions focus on local impacts of development and rarely account for neighboring development or regional pass-through traffic. Some jurisdictions are addressing cross-boundary issues by way of regional traffic models, multi-tiered measurement systems, and policy.
- State Facilities: For most jurisdictions, the traffic on state-owned facilities has not impacted development. However, congested state routes do lead to spillover traffic on local streets and local residents are strongly resistant to expanding local streets for this type of pass-through traffic. In some jurisdictions, locally maintained streets have no concurrency issues except in the proximity of state roadways. Several participants stated that even though state facilities are exempt from concurrency, their jurisdictions work with WSDOT to identify, collect mitigation for, and provide improvements needed on the state-owned transportation system because of new development.

PSRC Workshop Results

The third and final phase of the PSRC study recorded the small group discussions of 90 participants including local jurisdiction staff and other interested parties during a full-day workshop. The general themes include:

- No major changes need to be made to the law—concurrency practices should be allowed to mature.
- Concurrency should remain a local tool, but should better recognize interjurisdictional implications.
- Incentive-based approaches to changing local programs would be more effective and acceptable than regulatory approaches.
- Concurrency should be more multimodal.
- Concurrency programs should be easier to understand and decisions should be more fact-driven as opposed to negotiated.
- Concurrency exemptions can be useful and should be permitted in some fashion.
- Local governments are concerned about the state's inability to fund transportation projects, especially those providing relief from traffic impacts on local roads that access and intersect state facilities.
- Participants unanimously agreed the state should not have a role in local concurrency decisions.
- Local governments are interested in greater clarity regarding highways not of statewide significance, but the state's role in providing that clarity was not defined.[25]

24. Ibid.
25. Assessing the Effectiveness of Concurrency: Final Report. Puget Sound Regional Council. July 2003: 12-13.

Overall, the PSRC study reveals that not all local governments practice concurrency, and those that do implement it very differently to suit local goals and objectives. Additionally, local governments do not consistently incorporate state-owned transportation facilities into their local plans. These diverse practices imply a challenge to any state policy that attempts to define a coordinated regional or state concurrency program.

The study also highlighted local concerns regarding the state's inability to fund transportation projects that ease congestion. Local governments felt ill-equipped to address these state system failures, and they wanted to find better ways to address problems on regionally significant state-owned transportation facilities. While study participants did not support major changes to the concurrency law, they agreed limited concurrency exemptions could be useful, concurrency should be more multimodal, and concurrency should better account for inter-jurisdictional impacts.

PSRC staff notes that local opinions have shifted since the study was completed. More communities are indicating a willingness to change the concurrency law, but politically many institutional barriers exist.

4. Current Law: Tools for Mitigating Development Impacts

Concurrency requires local governments to deny proposed developments if they cause the level of service on local arterials to decrease below the minimum standard, unless a financial commitment is in place to accommodate the impacts of the developments within six years. One of the options local governments have to accommodate the impacts of development is to provide the transportation system improvements needed to maintain the level of service.

State law has numerous provisions for local governments to charge fees or assess mitigation to developers in order to fund the improvements needed for the development to meet concurrency requirements. These tools include: land dedication and voluntary agreements, mitigation under the State Environmental Policy Act (SEPA), Growth Management Act (GMA) impact fees, and Local Transportation Act impact fees which can be assessed by individual local governments or by a Transportation Benefit District. The Washington State Department of Transportation (WSDOT) can also mitigate land use impacts on the state transportation system by regulating access to its highways.

Land Dedication and Voluntary Agreements

The Washington State Constitution grants local governments the police powers that provide the basis for the regulation of the subdivision of land to promote public health, safety and general welfare.[1] Accordingly, state statute requires local governments to deny subdivision approval unless the proposed subdivision serves the public use and interest and makes appropriate provisions for public health, safety and general welfare.[2] Alternatively, cities and counties may impose conditions on subdivision permits that would address the deficiencies in the proposal that caused the denial. For example, local governments may require property owners to dedicate land or provide public improvements to serve the subdivision.[3] Local governments fully planning under the GMA are also allowed to condition subdivision approval on the payment of impact fees.[4]

POLICE AND SANITARY REGULATIONS: Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

Washington State Constitution, Article XI Section 11

The law requires local governments to demonstrate that land dedications, payments in lieu of land dedications, and other fees or public improvements are "reasonably necessary as a direct result of the proposed development or plat."[5] The "reasonably necessary as a direct result" standard has been addressed in numerous court cases. The courts have held that permit conditions cannot be determined based on a fixed percentage set aside or a per-unit assessment based on the cumulative impact of all developments collectively. Rather, permit conditions must be based on an assessment of the impacts caused by a particular develop-

1. RCW 58.17.010
2. RCW 58.17.110
3. RCW 58.17.110(2)(b)
4. Ibid.
5. RCW 82.02.020

ment.[6] Also, if local governments require road improvements, they must carefully demonstrate that the automobile trips generated by a development results in a quantifiable increase of traffic on the particular lane of the road or intersection where improvements are required. In addition, local governments must document the improvements are needed as a direct result of the development and not because of a preexisting deficiency.[7] Further, local governments must show their proposed conditions of approval tend to solve, or at least alleviate, the identified problem. Therefore, when imposing conditions or exactions for future improvements, local governments must provide a reasonable basis for inferring the improvement will actually occur in the foreseeable future.[8]

Washington statutes also define the parameters under which local governments can enter into voluntary agreements with developers to make payments in lieu of land dedications or otherwise mitigate the impacts of their developments. The word 'voluntary' in this context means "the developer has the choice of either paying for those reasonably necessary costs which are directly attributable to the developer's project or losing preliminary plat approval."[9] Voluntary agreements are subject to the following provisions:

1. they cannot be used for off-site transportation improvements within an area covered by an adopted transportation program authorized by the Local Transportation Act;
2. the payments must be expended only to fund the capital improvements agreed upon by the parties to mitigate the identified, direct impact;
3. the payment must be expended within five years of collection; and
4. any payment not so expended must be refunded with interest, unless the delay is attributable to the developer.[10]

Additionally, when assessing a payment in lieu of land dedication, a city or county must determine, in a site-specific manner, the value of the land the developer could have been required to dedicate as a basis for the payment.[11] This rule does not apply to mitigation fees, which may be required as a condition of approval and do not have be in lieu of anything as long as they will mitigate a direct impact of the proposed subdivision.[12]

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6. *Castle Homes and Development, Inc. v. The City of Brier, et al.,* 32243-5-I, Court of Appeals of Washington, Division One (August 22, 1994) and *Isla Verde International Holdings, Inc. et al. v. The City of Camas,* 69475-3, Supreme Court of Washington (July 11, 2002).
7. *Larry Cobb, et al. v. Snohomish County,* 24680-1-I, Court of Appeals of Washington, Division One (November 4, 1991), *The Benchmark Land Company v. The City of Battleground,* 70659-0, Supreme Court of Washington (July 11, 2002) and *E. Paul Detray and Land Ho, Inc. v. City of Lacey and North Thurston Public Schools,* 32498-9-II, Court of Appeals of Washington, Division Two (March 21, 2006).
8. *Unlimited v. Kitsap County, et al.,* 11308-2-II, Court of Appeals of Washington, Division II (March 4, 1998) and *Lance Burton v. Clark County,* 20372-3-II, Court of Appeals of Washington, Division Two (July 10, 1998).
9. *Larry Cobb, et al. v. Snohomish County,* 24680-1-I, Court of Appeals of Washington, Division One (November 4, 1991).
10. RCW 82.02.020
11. *Henderson Homes Inc., et al. v. The City of Bothell,* 59696-4, Supreme Court of Washington (July 21, 1994), *Trimen Development Company v. King County,* 59452-0, Supreme Court of Washington (July 21, 1994) and *Vintage Construction Company v. The City of Bothell,* 64773-9, Supreme Court of Washington (July 30, 1998).
12. *View Ridge Park Associates, et al. v. Mountlake Terrace,* 27951-3-I, Court of Appeals of Washington, Division One (October 19, 1992).

Beyond state statues and state court precedents, the authority of a local government to condition development approval is further restricted by the Fifth Amendment of the U.S. Constitution. The Fifth Amendment protects private property from being taken for public use without just compensation. In order to avoid a constitutional "takings" challenge, land use regulations, including development conditions, must substantially advance legitimate state interests and allow owners an economically viable use of their land.[13] Additionally, a permit condition issued in lieu of a building restriction or denial must demonstrate a nexus with the original purpose of the building restriction or denial.[14] Finally, permit conditions must be roughly proportional to the impact of the proposed development. Rough proportionality does not require a precise mathematical calculation, "but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." [15]

Summary of Key Washington Cases Related to Development Exactions for Traffic Impacts:

Larry Cobb, et al. v. Snohomish County (1991). The county required a developer to enter into a voluntary agreement to mitigate traffic impacts to an intersection bordering the development. The intersection as a whole operated at LOS D but the traffic movements the subdivision contributed to operated at LOS C. The court ruled the county could not require mitigation because the development contributed traffic only to the portion of the intersection that operated at LOS C and their development code did not require impacts to LOS C intersections to be mitigated.

Castle Homes & Development v. City of Brier (1994). The city assessed the cumulative impact of all developments collectively and applied a proportionate share of the costs to individual developments based on the number of lots. The court ruled this was not allowed because it did not take into account the direct impact of each separate subdivision location and the differing street distribution impacts of each. For example, based on a traffic study, only eight percent of the traffic from Castle Homes would stay in the City for more than two blocks before it entered a neighboring city.

Lance Burton v. Clark County (1998). The county required a developer to build a road that would eventually connect to another road. The court disallowed this condition, asserting it did not solve the identified public problem because the record did not furnish a basis for inferring whether the connection would occur in the foreseeable future.

E. Paul Detray and Land Ho, Inc. v. City of Lacey et al. (2006). The court ruled that it is the city's burden to show that improvements needed are not due to a pre-existing deficiency. While the city did document the number of trips added as a result of the development, this was not sufficient to demonstrate a quantifiable increase in traffic. The city should have documented whether the increase was nominal or significant and how the traffic would somehow increase the need for widening an already deficient road. The court did allow the city to require the development to provide a turning lane because this improvement would specifically facilitate movement in and out of the development.

State Environmental Policy Act

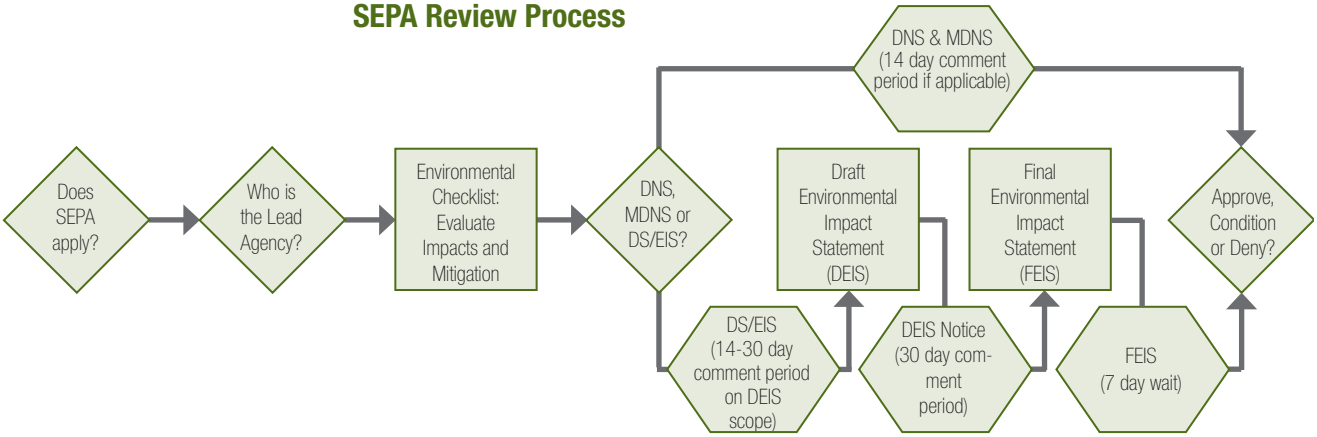
In the context of local land use planning and private development activity, the 1971 State Environmental Policy Act provides an additional mechanism for the mitigation of development impacts. It also gives the state an opportunity to voice concerns regarding the impact of local land use plans and regulations on state-owned transportation facilities.

The primary purpose of the SEPA process is to provide a venue for state and local governments to disclose and consider environmental impacts when making decisions. Additionally, SEPA gives state and local governments the substan-

13. *Agins V. Tiburon,* 447 U.S. 255, U.S. Supreme Court (June 10, 1980).
14. *Nollan v. California Coastal Commission,* 483 U.S. 825, U.S. Supreme Court, (June 26, 1987).
15. *Dolan v. City of Tigard,* 512 U.S. 374, U.S. Supreme Court (June 24, 1994).

tive authority to act on the basis of the impacts disclosed[16] by denying or imposing conditions on government actions.[17] The SEPA review process, as depicted below, seeks to determine through a series of informed decisions whether a proposed action would result in significant adverse environmental impacts, to identify reasonable measures to mitigate those impacts, and to determine whether those measures are sufficient.[18]

SEPA Review Process



The first step in the SEPA process is determining whether or not a review is required. The SEPA review process is required for all non-exempt government actions. Exempt government actions are described in the table below.

SEPA EXEMPTIONS	
Statutory RCW 43.21C	Specific exemptions defined by the legislature (e.g. annexations and incorporations).
Rule WAC 197-11-305	Exemptions (with some exceptions) of activities whose size or type are unlikely to cause a significant adverse impact (e.g. construction of less than four dwellings or commercial buildings with less than 4,000 ft^2 and less than 21 parking spaces).
Emergency RCW 43.21C.210	Exemptions granted when there is not time to complete an environmental review and the action is needed to avoid an imminent threat to public health or safety, public or private property, or to prevent serious environmental degradation.
Infill RCW 43.21C.229	Exemptions that can be established by cities and counties for new residential or mixed use development proposed to fill in an urban growth area whose density and intensity is lower than called for in the comprehensive plan.

SEPA applies to non-project actions such as the adoption of comprehensive plans and development regulations and project actions like new construction. Non-project SEPA review allows governments to consider the environmental impacts of "big picture" policy choices by conducting comprehensive analyses, address-

16. *The Polygon Corporation v. The City of Seattle, et al.*, 44536, Supreme Court of Washington (May 18, 1978).
17. RCW 43.21.C.060
18. RCW 58.17.110

ing cumulative impacts, and identifying possible alternatives and mitigation measures. SEPA review of project actions is intended to ensure that the action is consistent with local, state, and federal plans and regulations. SEPA review is also intended to address environmental impacts local land use laws could not anticipate.

The second step in reviewing a proposed action is identifying the SEPA-lead agency. The lead agency is responsible for complying with the review process, compiling and assessing environmental information, and making decisions. Local governments are typically the lead agency for their own legislative actions as well as permit decisions for private development projects within their boundaries. Therefore, the state's assessment of mitigation for most development projects is subject to the review and discretion of a local agency. The state can serve as the lead agency when a development project requires a state permit. Additionally, the state may assume lead agency status under some circumstances. For example, if a state agency with jurisdiction believes a proposed action requires more in-depth environmental analysis than the local agency has required, it can assume lead agency status and prepare an Environmental Impact Statement.[19]

The third step in the SEPA process is evaluation, which involves the completion of a standardized environmental checklist. The checklist solicits information about the proposal and its impact on a variety of environmental elements, including transportation. The transportation portion of the checklist requests information regarding:

- proposed accesses to public streets and highways
- available public transit services
- parking
- new public or private roads or streets planned
- use or location near water, rail, or air transportation
- number of vehicular trips per day generated by the completed project and timing of peak volumes
- proposed measures to reduce or control transportation impacts

Non-project actions are required to address how the proposal would be likely to increase demands on transportation and to propose measures to reduce or respond to such demands.

The potential impacts and mitigation measures identified in the environmental checklist are considered by the lead agency prior to taking the fourth step in the SEPA process, the issuance of a threshold determination. The threshold determination is a formal decision as to whether proposals are "major actions having a probable significant, adverse environmental impact."[20] The courts have interpreted this phrase to mean when "more than a moderate effect on the quality of the environment is a reasonable probability."[21] The lead agency should consider the physical setting of the action, the magnitude and duration of the impact, and cumulative impacts when making this decision.[22] The lead agency then issues a:

SEPA CHECKLIST ENVIRONMENTAL ELEMENTS:

» Earth
» Air
» Water
» Plants
» Animals
» Energy & Natural Resources
» Environmental Health
» Noise
» Land & Shoreline Use
» Housing
» Aesthetics
» Light & Glare
» Recreation
» Historic & Cultural Preservation
» Transportation
» Public Services

19. WAC 197-11-948
20. RCW 43.21C.031(1)
21. *Norway Hill Preservation and Protection Association v. King County Council, et al.*, 44015, Supreme Court of Washington (July 8, 1976).
22. WAC 197.11.330(3)

- DNS (Determination of Non-Significance) if the proposal has no probable significant adverse impacts[23],
- MDNS (Mitigated Determination of Non-Significance) if changes to the proposal or mitigation measures are agreed on that will reduce likely significant environmental impacts to a nonsignificant level[24], or
- DS/EIS (Determination of Significance/Environmental Impact Statement) if the proposal may have a probable significant adverse environmental impact that needs to be further evaluated in an Environmental Impact Statement.[25]

SEPA SUBSTANTIVE AUTHORITY: Any governmental action may be conditioned or denied pursuant to this chapter: PROVIDED, That such conditions or denials shall be based upon policies identified by the appropriate governmental authority and incorporated into regulations, plans, or codes which are formally designated by the agency (or appropriate legislative body, in the case of local government) as possible bases for the exercise of authority pursuant to this chapter...Such action may be conditioned only to mitigate specific adverse environmental impacts which are identified in the environmental documents prepared under this chapter. These conditions shall be stated in writing by the decision maker. Mitigation measures shall be reasonable and capable of being accomplished. In order to deny a proposal under this chapter, an agency must find that: (1) The proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact.

RCW 43.21C.060

If challenged in court, threshold determinations are only reversed if clearly erroneous.[26] This legal standard of review gives substantial weight to the decision of the lead agency while allowing the courts to consider both the public policy and environmental values of SEPA.[27]

The different threshold determinations trigger different requirements for public and agency comment. All MDNS decisions and some DNS decisions (including all those involving another agency) require a 14-day public comment period and circulation to other agencies affected by the proposal.[28] If the lead agency issues a DS/EIS, the Draft Environmental Impact Statement requires a 14-30 day comment period on its scope[29] and a 30-45 day comment period on its content. It also requires broader circulation than a DNS.[30] Following these comment periods, the lead agency prepares and circulates a Final Environmental Impact Statement, waiting seven days prior to adoption. Comment periods allow the state an opportunity to ask local governments to consider denying or conditioning a development permit to avoid or mitigate specific adverse impacts to state-owned transportation facilities. Likewise, the state can request that local governments abandon, alter, or mitigate their land use policies or regulations to reduce adverse impacts on state-owned transportation facilities.

Any conditions placed on government actions or denials through SEPA must be based on policies and regulations previously adopted by the lead agency. In addition, mitigation conditions must be:

- based on specific adverse environmental impacts identified in SEPA environmental documents,
- stated in writing by the decision-maker, and
- reasonable and capable of being accomplished.[31]

Unlike other mitigation tools, SEPA statutes do not define a time frame for the use of mitigation fees.

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23. WAC 197.11.340
24. WAC 197.11.350
25. WAC 197.11.360
26. *Norway Hill Preservation and Protection Association v. King County Council, et al.,* 44015, Supreme Court of Washington (July 8, 1976).
27. *James R. Sisley, et al. v. San Juan County, et al.,* 44592, Supreme Court of Washington (September 22, 1977).
28. WAC 197.11.340(2)
29. WAC 197.11.408-410
30. WAC 197.11.455
31. RCW 43.21C.060

Before denying a proposal on SEPA grounds, "an agency must (1) specifically set forth potential adverse impacts that would result from implementation of the proposal, and (2) specifically set forth reasonable mitigation measures to counteract these impacts, or, if such measures do not exist, (3) specifically state why the impacts are unavoidable and development should not be allowed."[32] The courts have also asserted that the adverse impacts used as a basis for conditioning or denying government action must be proven, not speculative,[33] although no particular quantum of supporting data is mandated.[34]

The policies and goals of SEPA are "supplementary to those set forth in existing authorizations of all branches of government of this state."[35] The courts have generally described SEPA as "overlaying" the requirements which existed prior to its adoption[36] and have affirmed that SEPA must be enforced even where a particular use is allowed by local law or policy.[37] The courts have also upheld the flexibility of SEPA as a discretionary tool that weighs various environmental policies on a case-by-case basis, noting that the results of its application are not required to be certain or predictable.[38]

Local Transportation Act and Transportation Benefit Districts

In 1988, the Local Transportation Act (LTA) provided another means of collecting funds from new development to pay for transportation infrastructure. It allowed local governments to singly or jointly impose impact fees to fund a portion of the off-site transportation improvements needed as a result of economic development and growth.[39] In the LTA, the legislature also directed the state to "encourage and give priority to the state funding of local and regional transportation improvements that are funded in part by local, public, and private funds."[40]

OFF-SITE TRANSPORTATION IMPROVEMENTS means those transportation capital improvements designated in the local plan adopted under this chapter that are authorized to be undertaken by local government and that serve the development needs of more than one development.

RCW 36.73.015(3)

State law requires local governments adopting LTA programs to define the geographic boundaries of the area generally benefited by the off-site transportation improvements it proposes to fund through impact fees. The proposed improvements must be based on adopted comprehensive, long-term transportation plans supported by six-year capital funding programs that are updated annually.[41]

The transportation impacts for which LTA fees are collected must be measured as a pro-rata share of the capacity of the off-site transportation improvements being funded under the program.[42] In addition, the impact fees:

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32. *Cougar Mountain Associates v. King County,* 53841-7, Supreme Court of Washington (December 15, 1988).
33. *Nagatani Brothers, Inc. v. Skagit County Board of Commissioners and Skagit County,* 53471-3 Supreme Court of Washington (July 16, 1987) and *Benjamin Levine v. Jefferson County,* 57059-I, Supreme Court of Washington (March 28, 1991).
34. *Lowell Cook v. Clallam County, et al.,* 3733-II, Court of Appeals of Washington, Division Two (October 9, 1980) and *Victoria Tower Partnership v. The City of Seattle,* 25459-6-I, Court of Appeals of Washington, Division One (November 13, 1990).
35. *The Polygon Corporation v. The City of Seattle, et al.*, 44536, Supreme Court of Washington (May 18, 1978).
36. *Id.*
37. WAC 197-11-198
38. *West Main Associates, et al. v. The City of Bellevue, et al.*, 19735-5-I, Court of Appeals of Washington, Division One (September 28, 1987).
39. RCW 39.92.010
40. *Id.*
41. RCW 39.92.030
42. RCW 39.92.030

- must be reasonably necessary as a direct result of the proposed development,
- must be used in substantial part to pay for the mitigating improvements within six years or refunded,
- may be pooled and expended on any one of the improvements mitigating the impact of the development,
- must give credit for the developer's participation in public transportation and ride-sharing improvements and services,
- may be imposed for improvements constructed since the commencement of the program including those not yet constructed,
- cannot be collected for any improvements incapable of being reasonably carried out due to lack of public funds or other foreseeable impediments, and
- cannot be imposed on a development when mitigation of the same off-site transportation impact is being required by another agency.[43]

A TRANSPORTATION BENEFIT DISTRICT TRANSPORTATION IMPROVEMENT means a project contained in the transportation plan of the state or a regional transportation planning organization. A project may include investment in new or existing highways of statewide significance, principal arterials of regional significance, high-capacity transportation, public transportation, and other transportation projects and programs of regional or statewide significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs.

RCW 36.73.015(3)

In 2005, the legislature extended the ability of local governments to impose transportation impact fees by allowing them to form Transportation Benefit Districts within one or more jurisdictions by popular vote. In addition to being an independent taxing authority, Transportation Benefit Districts can assess Local Transportation Act impact fees.[44] The fees must be used for transportation improvements constructed by the District that are identified in State or Regional Transportation Planning Organization plans and necessitated by existing or reasonably foreseeable congestion levels. A 2006 amendment removed the limitation that not more than 40% of the generated revenues be expended on city streets, county roads, existing highways other than highways of statewide significance, and the creation of new highways that intersect with a highway of statewide significance.[45] Developments of less than 20 residences must be exempted from the fees.[46] King, Pierce and Snohomish counties and the cities within them are not eligible to form Transportation Benefit Districts.[47] Instead, these counties are authorized to jointly establish a Regional Transportation Investment District through legislation and a popular vote.[48] While this entity could levy taxes, some types of fees, and tolls, it is not authorized to impose impact fees.[49]

Growth Management Act Impact Fees

The 1990 Growth Management Act allowed local governments fully planning under the GMA to collect impact fees to help them achieve the concurrency goal. GMA impact fees are payments required as a condition of development approval to pay for the public facilities needed to serve the development. Publicly owned or operated capital facilities including: streets and roads, school facilities, some fire protection facilities, and parks, open space, and recreational facilities are eligible to be financed in part by impact fees.

43. RCW 39.92.030-040
44. RCW 36.73.120
45. 2871-S.SL
46. RCW 36.73.040(3)(c)
47. RCW 36.73.020(6)
48. RCW 36.120
49. RCW 36.120.050

Local governments can impose impact fees on applicants seeking permission for construction, expansion, or land use changes that create additional demand for public facilities.[50] The legislature did not allow local governments to fully recover the cost of system improvements from new development. Instead, impact fees must be balanced by other sources of public funds. The legislature also specified impact fees can only be imposed for the proportionate share of the costs of system improvements reasonably related to and reasonably beneficial to the new development.[51]

GMA IMPACT FEES: Counties, cities, and towns that are required or choose to plan under RCW 36.70A.040 are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that the financing for system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

RCW 82.02.050(2)

GMA impact fees differ significantly from previously existing funding mechanisms to address development impacts. Unlike mitigation payments under the State Environmental Policy Act or transportation impact fees assessed under the Local Transportation Act, GMA impact fees are not required to be calculated "by making individualized assessments of the new development's direct impact on each improvement planned in a service area."[52] So instead of being limited to collecting funds for project improvements planned and designed to provide service for a particular development project,[53] local governments can assess fees for area-wide system improvements within the community at large.[54]

To prevent the imposition of arbitrary or duplicative fees, state statute requires local governments to establish procedures and criteria for their impact fee programs.[55] A framework for these procedures is provided within the statute. First, local governments must adopt capital facilities plans identifying:

- public facility deficiencies and addressing how they will be resolved,
- additional demands placed on existing public facilities by new development, and
- additional public facility improvements required to serve new development.[56]

Next, the city or county must adopt an ordinance defining an impact fee schedule based on a formula or some other method of calculation determining the proportionate share of the cost of public facility improvements. The impact fee ordinance must also:

- provide credits for developer dedications and improvements,
- allow for adjustments based on special circumstances,
- consider data submitted by the developer to adjust the fee amount,
- differentiate fee assessments based on established service areas and land use categories,[57] and
- provide for an administrative appeals process.[58]

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50. RCW 82.02.090(1)
51 RCW 82.02.050(3)
52 *The City of Olympia v. John Drebick et al.,* 75270-2, Supreme Court of Washington (January 19, 2006).
53 RCW 82.02.090(6)
54 RCW 82.02.090(9)
55 RCW 82.02.050(1)(c)
56 RCW 82.02.050(4)
57 RCW 82.02.060
58 RCW 82.02.070

The statute allows local governments to exempt development activities with broad public purposes if the city or county pays the development's proportionate share from public funds not collected as impact fees.[59] Local governments can also assess impact fees to reimburse previously incurred system improvement costs to the extent that new growth and development will be served by the previously constructed improvements. However, under no circumstances can impact fees be used to make up for system deficiencies, however.[60]

Impact fees are typically calculated and imposed when a developer submits an application for a building permit, which is when a proposed project begins to affect a local government's public facilities.[61] Once collected, impact fees must be specifically earmarked, retained in special interest-bearing accounts and expended or encumbered for projects listed in the capital facilities plan within six years.[62] If a city or county fails to expend or encumber the impact fees within the six-year time frame, the owner of the property is entitled to a refund.[63] A developer may also request and receive a refund, including interest earned on the impact fees, if the development activity does not proceed and no impact has resulted.[64]

Comparison of Different Tools for Mitigating Development Impacts

	Land Dedication & Voluntary Agreements	SEPA Substantive Authority	Growth Management Act (GMA) Impact Fees	Local Transportation Act (LTA) Impact Fees	Transportation Benefit Districts (TBD)
Exemptions	None	For statutory, infill, emergencies, minor construction, and minor land use decisions	Cannot be used by jurisdictions not fully planning under GMA	None	Developments of less than 20 residences are exempt
Type of Impact	Direct	Direct	Off-Site	Off-Site	Off-Site
Potential for State Highway Mitigation?	Yes	Yes	No	Yes	Yes
Mitigation Limitations	Must be reasonably necessary as a direct result of development Cannot result in a taking (Nollan/Dolan test required)	Must be related in purpose and extent to specific adverse impacts Must be reasonable and capable of being accomplished Intended to address gaps and overlaps	Can only be imposed for statutorily defined public facilities Can only be imposed for the proportionate share of the costs of improvements that are reasonably related to and reasonably beneficial to the new development Must be balanced by other public funds	Can only be used for major or minor arterials and intersection improvements designated in a local plan and undertaken by the local government Must be reasonably necessary as a direct results of the proposed development	All LTA limitations apply Can only be used for projects constructed by the TBD that are identified in State or RTPO plans Must be approved by popular vote Other impact fees paid by the development must be credited
Expenditure Restrictions	Must be expended within 5 years or refunded with interest	None	Must be expended or encumbered on projects in capital facilities plan within 6 years of collection	Must be expended or refunded within 5 years of collection	Must be expended or refunded within 6 years of collection

59 RCW 82.02.060(2)
60. RCW 82.02.020
61. *Dennis Pavlina and Gold Medal Group, LLC v. City of Vancouver, Washington,* 30829-1-II, Court of Appeals of Washington, Division Two (July 13, 2004).
62. *Henderson Homes Inc., et al. v. The City of Bothell*, 59696-4, Supreme Court of Washington (July 21, 1994), *Trimen Development Company v. King County*, 59452-0, Supreme Court of Washington (July 21, 1994), and *Vintage Construction Company v. The City of Bothell,* 64773-9, Supreme Court of Washington (July 30, 1998).
63. RCW 82.02.080(1)
64. RCW 82.02.080(3)

The growth management hearings boards have held they do not have jurisdiction to hear appeals of GMA impact fees.[65] Instead, the Washington Land Use Petition Act (LUPA)[66] provides the basis for judicial review of GMA impact fees, which are considered land use decisions.[67] In order to have standing to bring a land use petition under LUPA, the petitioner must have exhausted his or her administrative remedies to the extent required by law.[68] Land use petitions must be filed in superior court within 21 days of the issuance of the land use decision.[69]

Impact fees are exclusively tools of local governments fully planning under the GMA for development within their boundaries. The Court of Appeals has ruled that cities cannot assess impact fees on developments outside their municipal boundaries but within their urban growth boundaries. The court stated an "impact fee must be imposed by an entity with authority to approve or disapprove a change in the use of land on which the project will be built."[70] Also, impact fees do not have to be consistent across jurisdictions.[71]

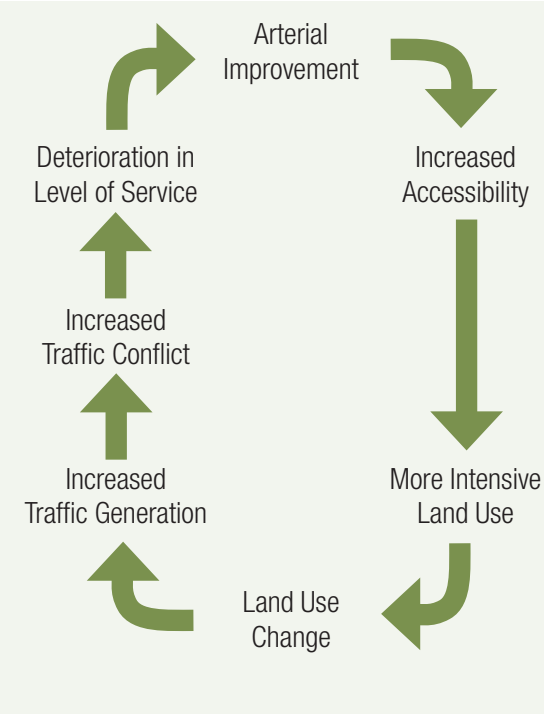
Access Control

Access is the ability to enter or leave a public street or highway from an abutting property or another public street or highway.[72] Washington manages vehicular access on state-owned highways to:

- increase the highway's capacity,
- reduce traffic accidents,
- mitigate environmental degradation,
- promote sound economic growth and the growth management goals of the state,
- reduce highway maintenance costs and the necessity for costly traffic operations measures,
- lengthen the effective life of the state's transportation facilities thus preserving the public investment in such facilities, and
- shorten response time for emergency vehicles.[73]

Improvements to state highways often result in more intensive land uses. While growth and development are usually good for the local economy, they often result in too many access points located too close together. This increases the likelihood of traffic congestion which reduces the level of service on the state highway. Reduced levels of service may then lead to demand for additional transportation system improvements. Access management

The Transportation Infrastructure-Land Use Cycle



65. *Robinson et al. v. City of Bainbridge Island, et al.*, 94-3-0025, CPSGMHB (February 24, 1995) and *Properties Four, Inc. v. City of Olympia,* 95-2-0069, WWGMHB (August 1995).
66. RCW 36.70C
67. *James T. James, et al. v. County of Kitsap, et al.*, 73747-9, Supreme Court of Washington (July 7, 2005).
68. RCW 36.70C.060(2)(d)
69. RCW 36.70C.040(3)
70. *David Nolte, et al. v. The City of Olympia,* 23756-3-II, Court of Appeals of Washington, Division Two (August 20, 1999).
71. *Wellington River Hollow, LLC v. King County et al.*, 47976-8-I, Court of Appeals of Washington, Division One (September 23, 2002).
72. "Regulating Access to Washington State Highways." WSDOT, 2006.
73. RCW 47.50.010(1)(c)

ACCESS CONTROL....

» Reduces crashes as much as 50%
» Increases roadway capacity by 23% to 45%
» Reduces travel time and delay as much as 40% to 60%
» Provides increased safety for all transportation system users

Access Regulation- A Balancing Act Between Access & Mobility. WSDOT. 2005.

tempers this cycle by managing the traffic movements onto and off of the state system in order to minimize conflict and increase traffic flow. This contributes to the longevity of the highway by preserving its capacity.

Typical access management techniques include:

- access spacing including spacing between signalized intersections and between driveways,
- turning lanes including dedicated left and right turn lanes, indirect left and right turns, and roundabouts,
- median treatments including two-way left turn lanes and raised medians

In Washington, state highways are classified as either limited access or managed access. The basic policy for limited access highways was established in 1951 in response to the congestion, peril, and slowing of traffic which resulted from unrestricted access.[74] Limited access rights must be obtained through the acquisition of access property rights from abutting property owners. Access rights may be acquired by gift, purchase, or condemnation.[75] There are three levels of control for limited access. The most restrictive is full limited access where access is permitted only through interchanges at select roads, rest areas, viewpoints, or weigh stations and all crossing and private approaches at grade are prohibited.[76] The least restrictive is modified limited access which allows at-grade intersections for select public roads and existing driveway approaches as well as some limited commercial approaches. However, no direct access is allowed if alternate public road access is available. Partial limited access control allows at-grade intersections and some driveways, but not for commercial uses.

Bridgeport Way in Tacoma after WSDOT access management project.

Access to Interstate Routes, which are full limited access control, must be approved by the Federal Highway Administration. Access to other limited access state routes must be approved by WSDOT; including access requests on highways segments within incorporated cities.

The second type of access regulation, managed access, was enacted in 1991 to address the portion of the state transportation system that was not limited access.[77] The legislation was intended to "control the proliferation of connections and other access approaches to and from the state highway system."[78] Managed access regulation is based upon the premise that the access rights of an owner of property abutting the state highway system are subordinate to the public's right and interest in a safe and efficient highway system. Additionally, an abutting property owner has a right to reasonable access to a state highway, but may not have the right of a particular means of access.[79] Therefore, access may be restricted if reasonable access can be provided to another public road which abuts the property.

SR 270 - Pullman to Idaho State Line. WSDOT plans to widen SR 270 from two lanes to four with a 14-foot wide median lane.

There are five levels of control for managed access highways with Class 1 being the most restrictive and Class 5 being the least restrictive. All connections in existence prior to July 1, 1990 are grandfathered in for managed access routes, as

74. RCW 47.52.001
75. RCW 47.52.050
76. RCW 47.52.070
77. RCW 47.50.010(2)
78. RCW 47.50.010(1)(b)
79. RCW 47.50.010(3)

long as there are no significant changes in use, design or traffic flow.[80] Managed-access highways in unincorporated areas require a state-issued access permit. However, cities are the permitting authority for managed access routes within their boundaries. City permitting standards must meet or exceed WSDOT's standards.[81]

Like mitigation and impact fee provisions, access control laws help protect the existing transportation system from being degraded by new development. Access control is a particularly important tool for the state because, with the exception of managed access highways within corporate boundaries, the state can use it to directly mitigate development impacts.

80. RCW 47.50.080(1)
81 RCW 47.50.030(3)

5. Current State and Local Mitigation Practices

State law provides numerous tools to mitigate the impacts of development. Some of these tools are available exclusively to local governments, some to state government, and some can be used by both. The state can protect the capacity of its transportation system by requesting local governments to require new developments to mitigate their impacts on the state highway through the State Environmental Policy Act. In addition, it can acquire or regulate access to its highway system.

The full range of mitigation and impact fee options are available to local governments for mitigating the impacts of development. For those local governments required to implement concurrency, this mitigation is an important way to accommodate new development in order to meet the transportation concurrency requirement.

However, neither the state nor local governments have taken full advantage of their abilities to fund transportation system improvements through developer mitigation and fees. Furthermore, access control enforcement is a growing problem for the state as development pressures outside urban growth areas impact rural roadways.

WSDOT Review of Development Proposals

The primary goal of the Washington State Department of Transportation's (WSDOT) development review process is to ensure the state highway system remains safe and has the capacity to move people and goods efficiently.[1] The basis for WSDOT's review of development proposals and mitigation requests is the State Environmental Policy Act (SEPA). WSDOT dedicates 25 Development Services staff located in six regional offices to conduct SEPA reviews. The details of each office's implementation practices vary somewhat; but generally, the review process is guided by the 2005 Development Services Manual.

The Review Process

Typically, the development review process begins when a local agency notifies WSDOT of a proposed development. This notification often takes the form of a short description of the proposal and the SEPA threshold determination made. The threshold determination may be a determination of non-significance, a mitigated determination of non-significance, or a determination of significance which requires an environmental impact statement. Some local governments may also attach the development proposal or a SEPA checklist.

SEPA requires local governments to provide notice to agencies that might be affected by a development proposal, but the law relies on local discretion to determine which agencies might be impacted. Consequently, WSDOT is not always notified of development proposals that might impact state transportation facili-

1. Development Services Manual. Washington State Department of Transportation. September, 2005.

DEVELOPMENT REVIEW THRESHOLDS: WSDOT only requests mitigation if a development proposal would have a probable significant adverse impact. For example, thresholds may include:

Safety: adding "10 or more peak-hour trips to any high-accident location"

Channelization: adding "25 or more peak-hour trips to an intersection or connection"

Vehicular Trips: "adding 10 or more peak-hour trips to any state highway programmed capacity improvement"

Level Of Service (LOS): reducing a pre-determined LOS

ties. This is especially an issue for development proposals that are not located immediately adjacent to a state transportation facility.

Development Services staff generally have 14 days to review and comment on threshold determinations and up to 45 days to review and comment on environmental impact statements. These relatively short time allowances for review require quick turnarounds for WSDOT's Development Services staff. The review times are further compressed when adequate notice is not received, limiting the ability of WSDOT to engage in the internal coordination and communication that helps effectively build good comments.

Some of the SEPA notices received by WSDOT do not involve developments that will impact the state transportation system. Based on previous experience, Development Services staff quickly cull these proposals in order to focus their time on reviewing projects that may have impacts. Of the proposals reviewed, most are determined to have no impact or insufficient impact to meet established WSDOT thresholds.

Mitigation Assessment

Development proposals that do have probable significant adverse impacts to state transportation facilities are further evaluated to determine whether or not the impacts can be sufficiently mitigated and, if mitigation is appropriate, what the form and level of that mitigation should be. While WSDOT does have clearly defined policies for assessing mitigation, it does not have clear standards for the substance of private traffic analyses. Nor does it have established methods for the tracking of development proposals, the documentation of review practices, and the reporting of results. WSDOT is currently developing a statewide development services database to provide better consistency and accountability.

2005 WSDOT DEVELOPMENT REVIEW ACTIVITIES:

» Regional staff reviewed over 3,200 development proposals with potential state transportation impacts

» Over 2,000 of the proposals were determined to have no probable significant adverse impacts

» Regional staff requested impact mitigation for about 560 of the proposals

» At year's end, WSDOT had received some level of impact mitigation—not necessarily all that was requested—for 340 of the proposals. (Additional impact mitigation for 2005 proposals may be received in 2006 and 2007).

SEPA mitigation must be based on the specific adverse environmental impacts of the development proposal and must be reasonable and capable of being accomplished.[2] Mitigation may be a monetary contribution by a developer to a programmed WSDOT project. Or it may involve developer-constructed transportation improvements or the dedication of developer-owned property for public rights-of-way.

WSDOT mitigation policies, based on SEPA, limit the state's ability to address the impacts of development on the state transportation system. WSDOT does not collect mitigation fees for projects that are already funded, correct pre-existing deficiencies, or consist of preservation and maintenance activities. Also, WSDOT does not request developer-constructed transportation improvements when the developer has to obtain additional right-of-way from a third party. Right-of-way donations must be based on an approved WSDOT right-of-way plan. Finally, most local agencies add more thresholds for collecting SEPA mitigation which further restricts the state's ability to use SEPA for the mitigation of development impacts.

Mitigation Enforcement

If a development requires a WSDOT access permit, WSDOT can deny permit approval based on SEPA-identified impacts or require developers to mitigate their impacts as a condition of approval for the permit. When a WSDOT access permit is not required, WSDOT can only request that local governments condition or

2. RCW 43.21C.060

deny developments based on the state's assessed impacts. Local governments consider WSDOT's mitigation requests and may choose to enforce it, reduce it, replace it, or disregard it. As a result, SEPA mitigation often becomes a time-consuming process of negotiation for WSDOT staff. The development of collaborative relationships and the negotiation of intergovernmental agreements with local governments increase the ability of the state to secure a predictable level of mitigation for development impacts to its transportation system. Development Services staff have found these agreements to be highly effective, but difficult to negotiate since local governments have little incentive for allowing their control over this process to be reduced. Development Services staff have also found pre-application meetings with local governments and developers help address the state's concerns early in the planning process.

If a local government SEPA decision substantially interferes with the state's interests, the state can appeal the determination. However, the appeals process is complex and politically sensitive, consuming a lot of time, energy and legal costs. As such, it is used sparingly. Over the last five years, WSDOT has appealed only two SEPA mitigation determinations.

WSDOT Access Control on State Highways

WSDOT controls access to Washington State highways in order to preserve the safety and efficiency of these highways as well as to preserve the public investment. All Washington state highways are classified as either limited access or managed access. Control of access is accomplished by either acquiring rights of access from abutting property owners (limited access control) or by regulating access connections to the highway (managed access control). Until WSDOT acquires limited access rights, the route is a managed access highway.

Limited Access Highways

Highways controlled by acquiring abutting property owners' access rights are termed limited access facilities. They are further distinguished as having full, partial or modified control.

Public at-grade intersections are only allowed on partial or modified control limited access highways. If the intersection will serve a local arterial that connects to the local transportation network, and is included in the local agency's comprehensive roadway plan, the local government is not required to compensate WSDOT for the access right. If the intersection serves only a limited area, or does not connect to the local transportation network, WSDOT requires compensation based on the fair market value of the access right. Additionally, new intersections must comply with WSDOT design and spacing criteria.

Private approaches are only allowed under restrictive WSDOT criteria on partial and modified control limited access highways. There are six different types of approaches allowed, ranging from residential to business to special use. For private approaches within limited access areas, WSDOT requires compensation at the fair market value of the access route.

Managed Access Highways

The WSDOT region offices have permit authority for managed access highways in unincorporated areas. Each WSDOT region office manages its permit process differently; although all processes comply with statutory and administrative re-

quirements. Managed access highways are classified into five categories, ranging from the most restrictive Class 1 to the least restrictive Class 5.[3] Accesses on managed access highways are conforming if they meet or exceed current department location, spacing and design criteria.[4] An access is nonconforming if it does not meet these criteria.[5] All approaches on Class 1 and Class 2 highways are nonconforming and must be removed when other reasonable access becomes available.[6] Nonconforming permits may be issued for nonconforming access when the property has no other reasonable access. Variance permits may be issued for nonconforming connections for highways in Class 2, 3, 4 or 5 based on WSDOT's discretion regarding whether the access will affect the safety, maintenance or operation of the highway.

Approaches to managed access highways that existed and were in active use prior to July 1, 1990 are exempt from permitting.[7] These grandfathered approaches do not require an access connection permit if the use, design and traffic flow remain the same as they were on July 1, 1990. However, the property owner must apply for an access permit if there is a significant change in the land use of the property, the physical configuration of the access, or the volume of traffic on the highway.[8] If the permit is not obtained, WSDOT may close the connection.

Cities or towns are the permitting authority for managed access highways within their boundaries. Under state law, they are required to adopt access standards that meet or exceed WSDOT standards.[9] However, in the experience of the WSDOT Access and Hearings Unit, local governments do not consistently adopt and enforce adequate access control standards on state highways within their boundaries.

Access Control Implementation Issues

The complexity of access control in Washington is a substantial barrier to its effective implementation. Washington is one of the few states in the nation with a split access control system, with one portion of the highway system controlled through the acquisition of access rights and the other portion controlled based on regulation. In addition, both limited access and managed access highways are further defined through sub-classifications. Access control opportunities are often missed because developers, local agencies, and even WSDOT staff have a limited understanding of the details of the access control system.

Access control opportunities are also sometimes missed when local governments fail to notify WSDOT when they receive a land use permit application that might require WSDOT access control. Access control works best when the state receives early notice of potential developments. WSDOT encourages developers to obtain state approval prior to local development approval in order to identify appropriate access or approach locations and types prior to development site layout. Some local jurisdictions take this a step further by requiring developers to secure a letter from WSDOT addressing state highway access prior to their own land use approval. If local land use approvals are given prior to securing state approval,

3. WAC 468-52-040
4. WAC 468-52-020
5. Ibid.
6. Memorandum. Access and Hearings Engineer. WSDOT. December 17, 1996.
7. RCW 47.50.080(1)
8. Ibid.
9. RCW 47.50.030(3)

the developer runs the risk of having the state deny the access or approach, resulting in the delay and expense of site plan revisions or appeals.

The enforcement of WSDOT's access control rights can also be challenging. Grandfathered accesses were not consistently inventoried and recorded when the managed access system was created. Consequently, illegal accesses can be difficult to identify and are often politically difficult to address after-the-fact. Once homes or businesses have been built relying on the illegal access, WSDOT's enforcement of its access rights could result in substantial expense and hardship for the property owner. While WSDOT is allowed to and does close illegal accesses, many illegal accesses are eventually allowed with the property owner paying WSDOT for the value of the access right. The compensation does not address the adverse impact of the illegal access because such payments are not used for mitigation. Rather, the monies are paid into the state's general fund.

Finally, because the state must provide reasonable access to properties abutting its highways if no other public roads serve them, some accesses are constructed that reduce the capacity and safety of the state highway system. While the state could close these state highway accesses once local roads are available, the timing of the provision of those roads are not within the state's control.

Better access control on Washington state highways is a priority for both the Federal Highway Administration and WSDOT. The WSDOT Access and Hearings Unit is in the process of developing a strategic plan for improving access management. They anticipate providing additional internal training, better documentation of permitted and grandfathered approaches, and local agency training.

Local Mitigation Practices

Local governments in Washington state use a variety of financial tools to collect at least a portion of the transportation infrastructure funds that may be needed from new developments in order to meet concurrency requirements. In its 2002-03 study of the effectiveness of concurrency in Snohomish, King, Pierce and Kitsap counties, the Puget Sound Regional Council (PSRC) asked local governments about their methods of financing the transportation infrastructure improvements needed because of new development. While the study results cannot be generalized to the entire state, they do indicate how local governments have approached financing transportation infrastructure to meet concurrency requirements in the urban areas of the state.

The first phase of the PSRC study surveyed the 86 jurisdictions within its boundaries. Sixty-eight jurisdictions participated in the survey. PSRC asked the jurisdictions what revenues were being generated through their concurrency programs. Twenty-two percent of those who responded to the question indicated no revenues were generated through their concurrency programs.[10] Fifty-nine percent of the jurisdictions that reported receiving revenues collected SEPA mitigation fees, 55 percent collected impact fees, 18 percent required developers to build infrastructure improvements, and 1 percent collected some other type of development fee.[11] Some jurisdictions had more than one revenue-generating program in place.

10. Assessing the Effectiveness of Concurrency: Phase 1 Report – Survey Results. Puget Sound Regional Council. January 2002: 23.
11. Assessing the Effectiveness of Concurrency: Phase 1 Report – Survey Results. Puget Sound Regional Council. January 2002: 23.

Surprisingly, most study participants reported that a relatively minor portion of their annual transportation improvement costs are covered by direct development related fees or assessments. Eighty percent of the responding jurisdictions covered less than one-tenth of their annual transportation improvement costs through development fees or assessments.[12] Local jurisdictions reported that local tax revenues pay for the greatest share of their transportation improvement costs.[13]

The focus groups that followed the survey led PSRC to conclude that "where impact fees are assessed, rates and approaches can vary significantly."[14] For example, participants reported transportation fees varying from $600 to $4,000 per new home.[15] Some focus group participants expressed a preference for assessing SEPA mitigation fees over impact fees because they can recover the full cost of the mitigation action and the results are more tailored to each individual development.[16] However, the group also noted the drawbacks of SEPA mitigation: it is restricted to site-specific impacts, it can be piecemeal in terms of implementing the comprehensive plan, and developers are less fond of SEPA because the results are less predictable.[17] The focus group acknowledged that when they negotiate with developers to mitigate transportation-related impacts, the outcomes are more reflective of the participants' negotiating skill than the actual need.[18] The group reported that the time frames for expending mitigation have occasionally required them to return the money they had collected.[19]

PSRC held further discussions on generating revenue to fund concurrency during a full-day workshop on concurrency attended by 90 participants. Participants agreed "they could be more aggressive in collecting funds and there was some support for working together to set funding levels higher."[20] They noted "there needs to be a clearer linkage between development fees and transportation projects (or programs), a need for better cost methodologies and better capital facilities planning, and more certainty in the process – especially if fees are set higher."[21]

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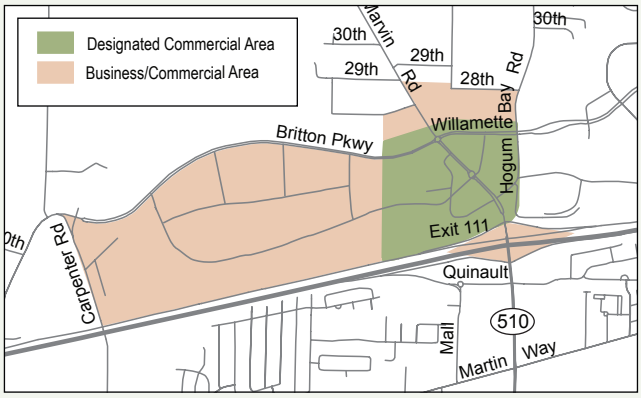
12. Assessing the Effectiveness of Concurrency: Phase 1 Report – Survey Results. Puget Sound Regional Council. January 2002: 24.
13. Assessing the Effectiveness of Concurrency: Phase 1 Report – Survey Results. Puget Sound Regional Council. January 2002: 25.
14. Assessing the Effectiveness of Concurrency: Phase 2 Report – Analysis of Practices. Puget Sound Regional Council. August 2002: 9.
15. Ibid.
16. Ibid.
17. Ibid.
18. Ibid.
19. Assessing the Effectiveness of Concurrency: Phase 2 Report – Analysis of Practices. Puget Sound Regional Council. August 2002: 14.
20. Assessing the Effectiveness of Concurrency Phase 3 Report – Workshop Results. Puget Sound Regional Council. January, 2003: 18.
21. Ibid.

Lacey Initiates Improvements to the State Transportation System

In the early 1980s, the City of Lacey and Thurston County began planning for significant residential, industrial, and commercial growth for the 3,600 acre northeast area of Lacey known as Hawks Prairie. The area was largely undeveloped with a few scattered single family homes and some light industrial uses. The area is located north of Interstate 5 (I-5) and is served by the Marvin Road/I-5 Interchange.

In 1995, the Marvin Road/I-5 Interchange failed to meet the City's adopted level of service, preventing Lacey from approving development applications in the Hawks Prairie area. In 1996, Lacey placed a six-month moratorium on the acceptance of development applications for the area and authorized a transportation study, a market analysis, and strategic plan for the area.



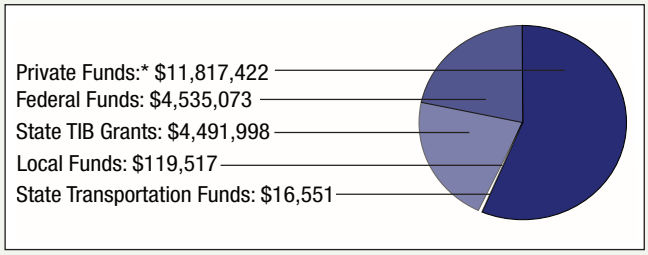
The Hawks Prairie Area in Lacey

The market analysis showed that even though Lacey's population was steadily increasing, the amount of money residents spent in Lacey was steadily decreasing. In order to capture some of that lost revenue, Lacey adopted new zoning regulations and design standards in 1997 for the 600-acre Hawks Prairie Business District. Lacey planned for the area to become a second commercial hub. The city lifted the temporary moratorium, but building was still restricted due to the transportation concurrency requirements triggered by the failing Interchange.

Because the Interchange was the intersection of a federal highway and a state route, Lacey officials initially hoped the state would fix the Interchange. But faced with fewer federal dollars coming to the state and the failure of the 1997 legislature to pass a gas tax increase, the expensive interchange project was not likely to be funded anytime soon.

Lacey could have adopted a failing level of service for the road network surrounding the Interchange, but the city engineer admitted, "It would be irresponsible to do that, especially there. We want to keep it functioning."[1]

So Lacey officials began assembling a comprehensive funding package to fix the problem. The solution would eventually include federal and state transportation funds, state grants from the Transportation Improvement Board (TIB), city funds, developer mitigation fees and right-of-way contributions, and the proceeds of a local improvement district. The coordination of these funding sources was challenging and required improvements not only to the Interchange, but also to the local road network to handle the traffic from the improved Interchange.



Who Paid for the Marvin Road Interchange and Supporting Local Street Network Improvements?

Hawks Prairie has been an economic success for the City of Lacey, and the city continues to proactively plan for the continued growth of the area. The city has been working with private developer Tri Vo to realize its vision for a vibrant community center in Hawks Prairie. The "Gateway" development has been identified in Lacey's comprehensive plan and implementation ordinances for almost 10 years. Gateway will transform 800 acres in the area into "a city center with a large open-air mall, high-rise buildings, and thousands of residences and offices."[2]

The potential location of Cabela's, a well-known outdoors outfitter and tourist attraction, in the Gateway development has catalyzed action by state and local officials. The State Community Economic Revitalization Board recommended the legislature award $9.9 million in state grant funding to Lacey for the construction of an additional lane on the southbound off-ramp of the Marvin Road/I-5 Interchange as well as other local road network and utility improvements. Lacey and private developers have committed $24.6 million to the project. The $32.6 million Cabela's store would bring in an estimated $5 million annually in sales-tax revenue and draw about 2 million visitors each year.[3]

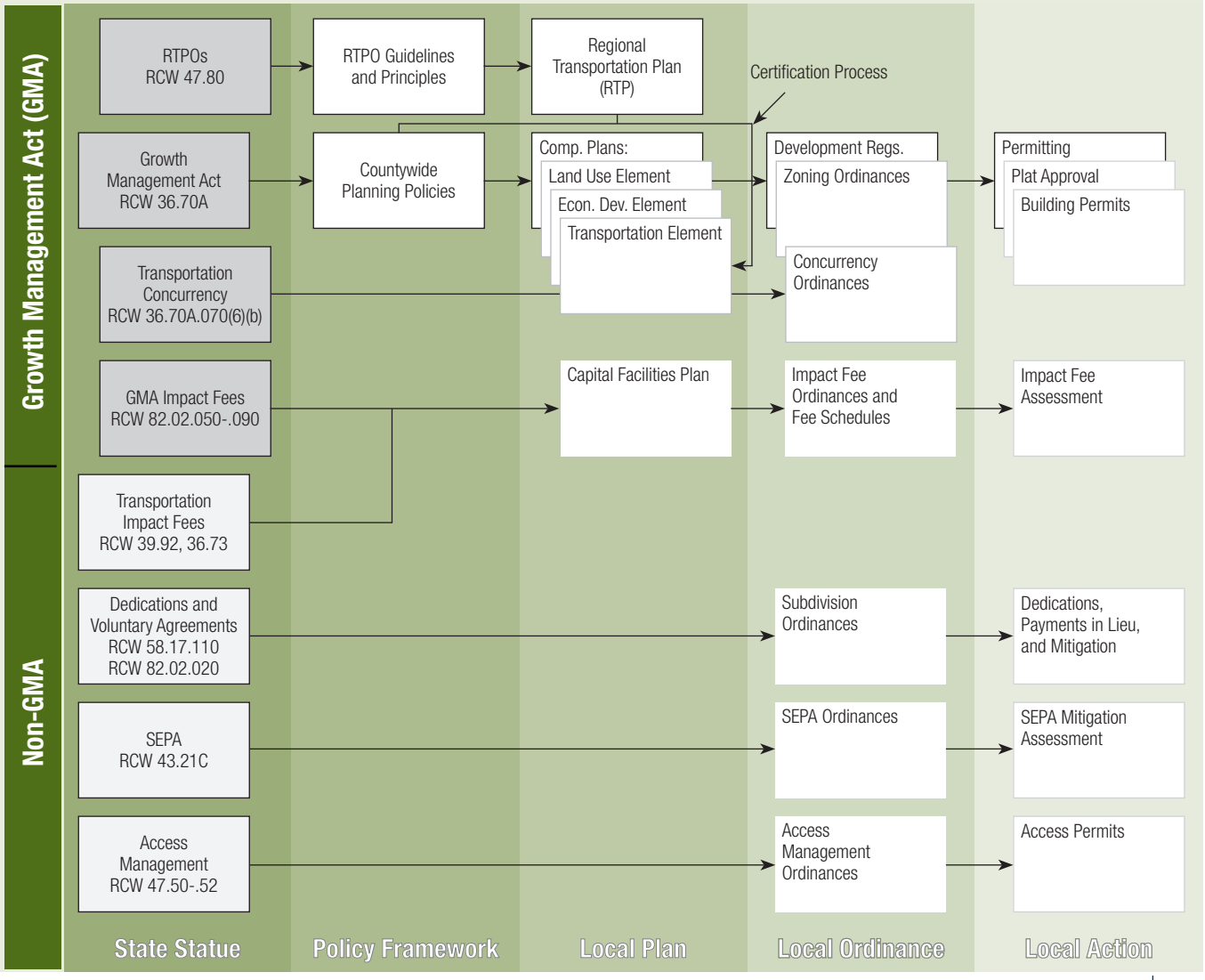
1. "Lacey Struggles to Expand Interchange." The Olympian. April 28, 1997: A2.
2. "Lacey, Landowner on Verge of Big Deal," The Olympian. September 22, 2006: A1.
3. "Lacey Closer to $9.9 million," The Olympian. May 20, 2006: A1.

6. Findings

The analysis assessed the current legal framework for state, regional and local transportation planning, concurrency regulations, and development mitigation and fees. It has also evaluated the implementation of these laws by state, regional, and local agencies through their plans, regulations, administrative policies, and actions. In the course of the analysis, WSDOT staff and the Oversight Committee identified a number of gaps in law and practice that impede the achievement of the Growth Management Act (GMA) concurrency goal. The analysis findings summarize these gaps and categorize them as gaps in planning, funding, or governance.

The coordination of state, regional and local transportation planning, sufficient funding, and adequate governance systems are three key factors in the effective provision of transportation system improvements in Washington. Planning, funding and governance can be conceptualized as the legs of a stool; if any leg is broken the whole stool (the transportation system) is thrown out of balance.

Legal Framework for State, Regional, and Local Transportation Planning, Concurrency, and Mitigation



Planning Gaps

The law is clear and specific on the planning requirements for state transportation facilities for fully planning GMA cities and counties: an inventory of state facilities within their boundaries (including the adopted level of service standard for state highways), an estimate of the traffic impacts to state facilities resulting from their land use assumptions, and a list of state transportation system improvements needed to meet demand. However, a number of gaps reduce the effectiveness of these planning requirements, including:

- The process often lacks the government-to-government communication, data-sharing, and transportation modeling coordination needed to make existing planning requirements meaningful.
- Smaller jurisdictions have insufficient resources for planning and analyzing the impacts of their land use plans on state-owned transportation facilities.
- Depending on the local political climate, some jurisdictions may choose not to minimize the impacts of their land use plans on state-owned transportation facilities.
- Inconsistent local access permitting practices as well as grandfathered, illegal, and mandatory "reasonable access" requirements exacerbate land use impacts on state highways.
- Local plans and regulations are not consistently submitted by local governments to the state for review.
- Cities with populations of more than 22,500 control the maintenance and operations of the state highways within their boundaries.

The laws and administrative rules for the preparation of regional transportation plans are clear and specific. However, significant gaps in the process for certifying local comprehensive plans and county-wide planning policies and in the structure of the Regional Transportation Planning Organizations (RTPOs) include:

- The minimum requirements for the regional certification of local comprehensive plans are not sufficiently detailed to be meaningful.
- RTPOs are voluntarily formed by their member jurisdictions. Their ability to regulate or mandate local government transportation planning policies to achieve regional goals is limited by the political reality that member jurisdictions may react by withdrawing their participation and/or funding from the RTPO.
- RTPO member jurisdictions may have different planning requirements depending on whether they fully plan under the GMA or plan for critical areas and resource lands only. The different planning requirements make it challenging for RTPOs to craft regional plans and implement effective certification processes.
- Some RTPOs have very minimal levels of funding and staffing resulting in a lower capacity for planning and certification.

The state's advisory role in the local and regional transportation planning processes is clearly defined in state law. Additionally, the Washington State Department of Transportation (WSDOT) has well-established responsibilities for state

transportation system planning. However, a number of gaps in practice limit the state's ability to effectively carry out its legislative mandates:

- General transportation planning guidance documents have not been updated since 1993. Guidance documents for state transportation facility planning requirements and regional transportation planning and certification have not been updated since 1998. The Washington Administrative Code is also out of date— the GMA section has not been updated since 2001 and the RTPO section has not been updated since 1997.
- Due to limited staff resources for local comprehensive plan and development regulation review, only the most important local plans and regulations are reviewed by the state and the review focuses on the most high-impact issues overall. This is particularly true at WSDOT, which budgets only 1.2 FTE statewide for the review of local plans and regulations.
- WSDOT lacks systematic policies and procedures for reviewing, commenting on, and tracking local comprehensive plans and development regulations. Similarly, it does not have systematic policies and procedures for incorporating the information from local plans into its own state planning process.
- The state shares equal responsibility with local and regional agencies to participate in the planning process in a meaningful way, yet the process often lacks the government-to-government communication, data-sharing, and transportation modeling coordination needed to make the existing planning requirements effective.

Funding Gaps

State law has numerous provisions for local governments to charge fees or assess mitigation to developers in order to fund improvements needed because of the impacts of new development. Gaps in local government's use of mitigation or impact fees to fund growth-related state transportation improvements include:

- Local mitigation and impact fee practices vary widely and tend not to be used to the full extent allowed.
- Assessing mitigation on a case-by-case basis for every project is costly for local governments and unpredictable for developers.
- Local governments do not consistently submit relevant plans, regulations and project information to WSDOT for review under the State Environmental Policy Act (SEPA) so the state is not always aware of local government actions that should be considered for mitigation.
- The implementing rules of all mitigation tools except impact fees tend to focus resources towards short-term and small-impact projects. The need for larger projects with longer time horizons is more difficult to attribute to new development.

The mitigation of development impacts on the state transportation system is complicated largely because these tools are designed for use by cities and coun-

ties. Funding gaps related specifically to the state's role in funding transportation improvements needed because of growth include:

- Insufficient state transportation funding has led to little new capacity in the state's highway and ferry systems, particularly in the secondary system of state routes.
- The legislature might not consistently direct transportation investments toward planned growth areas.
- GMA impact fees cannot be used for state-owned transportation facilities.
- The state cannot always collect mitigation or fees directly from the developer and so must rely on the willingness of local agencies to condition development approval and collect mitigation or fees on behalf of the state.
- Due to limited staff resources and short timelines for review, WSDOT often focuses on reviewing and requesting SEPA mitigation for the developments with the largest impacts.
- WSDOT lacks clear standards for the substance of private traffic analyses. Nor does WSDOT have systematic policies for the tracking of development proposals, the documentation of review processes, and the reporting of results.

Governance Gaps

The primary governance mechanism for ensuring that the GMA's goal for transportation concurrency is achieved is the requirement that local governments deny developments if they cause the levels of service on local arterials to decrease below the minimum standard, unless a financial commitment is in place to complete transportation improvements or strategies to accommodate the impacts of those developments within six years. This transportation concurrency requirement is subject to a number of gaps, including:

- Transportation concurrency requirements do not apply to state-owned transportation facilities of statewide significance, except in Island and San Juan counties.
- The law is silent on whether state-owned transportation facilities and services that are not of statewide significance should be included in local concurrency systems.
- The transportation concurrency requirement does not guarantee a uniform minimum level of service and local governments can adopt failing levels of service as their standard.
- Transportation concurrency requirements do not apply to jurisdictions not fully planning under the GMA, including 10 counties and 63 cities accounting for 5% of the state's population.
- Concurrency may trigger inefficient land uses such as sprawl because some local governments do not tailor concurrency requirements and targeted concurrency exemptions (e.g. for infill) are not allowed.

- The transportation concurrency requirement applies only to new development which does not address existing transportation infrastructure deficiencies.
- Local governments cannot respond to concurrency failures by saying "no" to more people because the GMA requires them to accommodate projected population growth.

The implementation of the planning requirements for state-owned transportation facilities is governed by the GMA, which favors local discretion over state control. This governance structure limits the ability of the state to influence local land use decisions that might adversely impact state highways and ferry routes. These limitations include:

- The state's influence over local land use plans and regulations that might adversely impact state facilities is limited because the presumption of validity means that local judgment prevails until appealed.
- Because the state's role in reviewing and commenting on local comprehensive plans and development regulations is advisory, local governments may choose to disregard state comments.
- Limited staff resources has minimized WSDOT's involvement in reviewing and commenting on local land use plans and regulations. However, in order to have standing to appeal a local land use decision, the state must have expressed its concerns during the comment period for a proposed plan or regulation.
- GMA appeals are costly to the state in addition to being adversarial and costly to local governments. Therefore, this enforcement mechanism is used infrequently for only the most egregious violations of state law.

Planning, funding and governance gaps limit the effectiveness of current laws to address the potential impacts of local land use decisions on state highways and ferry routes. Some of these gaps are statutory and would require legislative action to address; others are administrative and might require additional resources as well as changes in state, regional and local practices.

7. Comparison of Policy Options

The final step in the analysis is to identify and compare policy options for addressing the gaps in law and practice described in the previous chapter. In consultation with the Oversight Committee, WSDOT staff developed a list of potential policy options, defined pros and cons for each policy option, and applied criteria based on the analysis objectives.

Policy Options

The following menu of policy options address the analysis findings. Any policy option can be pursued singly or grouped with others to form a more comprehensive strategy for addressing the planning, funding and governance gaps existing in current law and practice. The policies identified include (not in priority order):

Planning

A. **Technical Assistance.** Increase technical assistance to cities and counties.

B. **WSDOT Review of Local Comprehensive Plans.** Increase WSDOT participation in local land use planning and processes.

Governance

C. **Local Incentives.** Provide incentives for local governments to adhere to best practices in planning, mitigation and access control.

D. **Mandatory Good Planning Practices.** Require local governments to adhere to best practices in planning and access control.

E. **Concurrency Expansion to State Highways and Ferry Routes.** Expand the GMA concurrency requirement to state highways and ferry routes.

Funding

F. **WSDOT Review of Development Proposals.** Improve WSDOT development review process.

G. **Mandatory Local Enforcement of State-Requested Mitigation.** Require local governments to condition development approvals on WSDOT mitigation requests.

H. **Mandatory Local Assessment of State Impact Fees.** Require local governments to assess impact fees for improvements to state-owned highways and ferry routes.

I. **State Assesses and Collects Mitigation.** Authorize WSDOT to independently assess and collect mitigation directly from the developer.

J. **System Charges.** Allow the state or regions to establish and collect regional system charges directly from the developer.

Concurrency Analysis Objective

The objective of the analysis is to determine how to ensure that jurisdictional divisions do not defeat the growth management act concurrency goals. [SSB 6241 Sec. 224]

GMA Concurrency Goal

Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing service levels below locally established minimum standards. [RCW 36.70A.020(12)]

Concurrency Objectives

- Encourage land use patterns that allow infrastructure to be provided in an efficient manner
- Prevent new development from degrading service standards for existing residents
- Provide appropriate infrastructure at the time of new development

Policy Comparison Criteria

1. To what extent will the policy concept meet the concurrency objectives?
   - More transportation efficient land use
   - Prevention of the degradation of state highway capacity and safety
   - Better provision of infrastructure through more effective state transportation funding
2. To what extent will the policy:
   - Increase intergovernmental collaboration?
   - Generate immediate results?
   - Proactively address land use impacts early in the process?
3. What is the governance structure of the policy? How does it balance the political trade-offs between:
   - State control versus local autonomy?
   - Statewide consistency and predictability versus local flexibility

Policy Comparison Approach

The criteria developed to compare the policy options are based on the objective of the analysis—to determine how to ensure that jurisdictional divisions do not defeat the Growth Management Act (GMA) concurrency goals. The goal of concurrency can be broken down into three primary objectives: encouraging land use patterns that allow infrastructure to be provided efficiently, preventing new development from degrading service standards for existing residents, and providing appropriate infrastructure at the time of new development.

The extent to which each policy option meets these three concurrency objectives forms the first criterion. The ability of each policy concept to increase intergovernmental collaboration, generate immediate results, and proactively address land use impacts provides additional bases for comparison. The last criterion addresses the governance structure of the policy options. The current planning approach of the GMA is a "bottom up" style with local jurisdictions bearing the ultimate responsibility for land use planning and implementation. Some of the policy options identified would modify this approach, trading some degree of local autonomy and flexibility for greater state consistency and control.

The first two criteria were evaluated using a sliding scale that reflects the relative effectiveness of a policy compared to the other policy concepts within the analysis. The sliding scales only have meaning within the context of this analysis. For example, a policy option providing for more effective state transportation system funding to a "maximum" extent means it is the most likely to provide effective state transportation system funding compared to the other nine policy options being considered. It is <u>not</u> the best solution for providing effective state transportation system funding in the broader realm of all possible funding options (e.g. gas taxes, tolls, etc.). The third criterion was evaluated based on a sliding scale reflecting the policy's governance approach on a continuum between state control and consistency versus local autonomy and flexibility.

It is important to note the relative importance of the criteria is not reflected by the sliding scales. In other words, you can't sum the ratings to pick the best policy. Also, the sliding scale ratings are subjective based on the best judgment of the analysis team.

In addition to the application of the criteria, the policy options are compared based on a description of their pros and cons and their relative resource requirements.

Planning Policy Options

The analysis found state, regional, and local planning processes for state transportation facilities often lack the government-to-government communication, data-sharing, and transportation modeling coordination needed to make the existing GMA planning requirements meaningful. Similarly, the coordination and education required to ensure adequate access control does not consistently occur. Limited staff resources at the local, regional, and state levels have contributed to these shortfalls.

The state could do a better job of facilitating and participating in local governments' land use planning and access control processes. State and local governments could also work together to better:

- Monitor the impacts of development on state highways and ferry routes,
- Incorporate state highway and ferry data in local traffic modeling and decisions,
- Coordinate transportation planning,
- Design policies and regulations that minimize the adverse impacts of growth on state transportation facilities and investments (e.g. the development of adequate local street networks),
- Ensure that local access controls meet or exceed WSDOT standards, and
- Take advantage of local funding opportunities for state transportation system improvements needed as a result of development.

The two policy options for improving planning are providing better technical assistance and providing better state review of local comprehensive plans and development regulations, particularly by WSDOT.

Planning: Technical Assistance

The state could provide technical assistance to local governments directly through WSDOT or the Washington State Department of Community, Trade and Economic Development (CTED) or indirectly through Regional Transportation Planning Organizations (RTPOs). Technical assistance could involve updating guidance documents and administrative rules, providing data and individually targeted advice and technical modeling assistance, and/or offering educational programs for groups of local governments. Before implementing a technical assistance program, the state needs to define what best practices are for planning for and controlling access to state transportation facilities. The state must also examine its own planning, access control, data collection, and traffic modeling processes to facilitate better intergovernmental collaboration. The substance of the guidance is key to its effectiveness—guidance should be consistent and sensitive to the local process and regional considerations.

Providing better technical assistance devotes more resources to doing a better job of implementing the existing GMA framework. It also addresses the desire expressed by some local governments' for greater clarity regarding how to address regionally significant state-owned highways in their transportation planning.[1] Technical assistance is relatively inexpensive compared to other policy concepts. For example, the cost of a guidebook could range from $50,000 to $150,000

1. Assessing the Effectiveness of Concurrency: Final Report, Puget Sound Regional Council, (July 2003), 12-13.

depending on the level of research and outreach required, and workshops cost approximately $3,000 each. For WSDOT to provide a level of staffing for technical assistance approximately equivalent to CTED's would require two additional FTEs costing approximately $234,000 (FY 08).

The primary disadvantage of increased technical assistance is that it does not address those jurisdictions that choose not to work collaboratively with the state to minimize their impact on state transportation facilities. Additionally, immediate results are unlikely because major comprehensive plan updates are only required every seven years under the GMA.

TECHNICAL ASSISTANCE

Who: CTED, WSDOT and/or RTPOs

What: Increase technical assistance to cities and counties

Why: To provide local governments with the information and resources they need to make land use decisions that minimize adverse impacts on state highways and ferry routes

How:
- Develop updated guidance documents and administrative rules for local planning, access control, and development review for state highways and ferry routes
- Devote additional staffing to provide individual and timely expert advice and analysis assistance to local governments
- Periodically offer workshops across the state on best practice planning, access control and development review for state highways and ferry routes

Pros:
- Relatively inexpensive
- Local governments are seeking information, guidance and modeling assistance
- Builds on existing GMA framework

Cons:
- Results not immediate due to seven-year comprehensive plan update cycles
- Local governments may disregard assistance
- Ensuring consistent guidance that is also sensitive to regional considerations is challenging

To what extent will the policy:

- Result in more transportation efficient land use?
- Prevent the degradation of state highway capacity and safety?
- Provide for more effective state transportation funding?
- Increase intergovernmental collaboration?
- Generate immediate results?
- Proactively address land use impacts early in the process?

How does the policy balance the trade-offs between:

Planning: WSDOT Review of Local Comprehensive Plans

The purpose of increasing WSDOT's participation in the local land use process is to more effectively communicate the state's interest in protecting the capacity and safety of the state highway and ferry system. At a minimum, this would ensure local planners, elected officials and the public are aware of how their land use choices impact state transportation facilities. Ideally, local awareness would result in decisions minimizing adverse impacts on the state transportation system. Additionally, participating in the land use process gives WSDOT standing to ap-

peal a local decision if all other avenues are exhausted and the state's interests are seriously compromised by the decision.

Improving WSDOT's review of local comprehensive plans builds on existing GMA planning approaches by devoting additional resources to reviewing and commenting on local comprehensive plans and development regulations and developing collaborative relationships with local planners and elected officials. To support this work, an internal policy manual should be developed and adhered to so WSDOT can consistently review and comment on local comprehensive plans and development regulations. Effective plan review would also involve the establishment of tracking systems to ensure timely and consistent comments as well as appropriate state responses to local government land use actions.

This policy option is more effective than technical assistance alone because comments would be tailored to a particular legislative proposal. Additionally,

WSDOT REVIEW OF LOCAL COMPREHENSIVE PLANS

Who: WSDOT

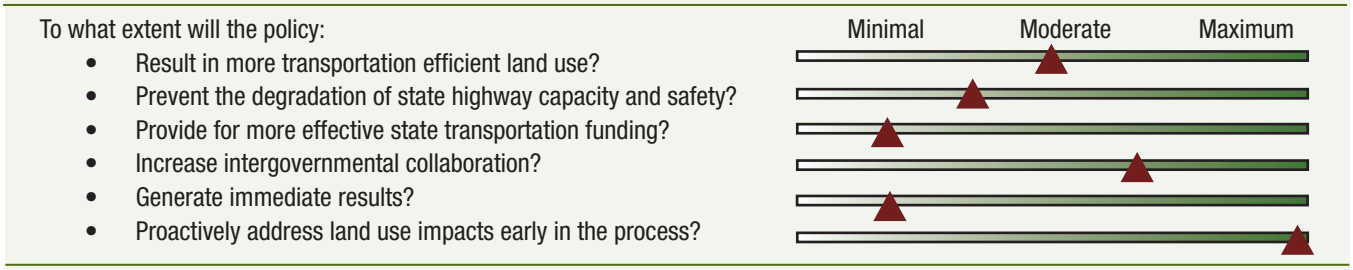
What: Increase WSDOT participation in local land use processes

Why: To more effectively communicate the state's interest in protecting the capacity and safety of the highway and ferry systems so that local governments and the public are aware of the consequences of their decisions and so that the state is on record if an appeal is appropriate

How:
- Devote additional staffing to comprehensive plan and development regulation review and comment
- Develop systematic policies and procedures for reviewing, commenting on, and tracking local comprehensive plans and development regulations and incorporating information from local plans into the state's transportation planning process
- Develop productive and collaborative relationships with local planners and elected officials
- More consistently track, report, and follow-up on local government responses to comments
- Coordinate state corridor planning with local subarea planning

Pros:
- Relatively inexpensive
- Builds on existing GMA framework
- More effective than technical assistance alone because comments address specific local proposals and receive wider exposure through the public involvement process
- Sets the stage for state appeals of local government decisions when needed

Cons:
- Results not immediate due to seven-year comprehensive plan update cycles
- Local governments may disregard comments
- May lead to more state appeals of local government decisions



the state's interests would receive wider public exposure through the local public involvement process. Like technical assistance, increased state participation in the local land use process is likely to be relatively inexpensive compared to other policy concepts. For example, for WSDOT to provide a level of staffing for comprehensive plan and development regulation review approximately equivalent to CTED's would require 3.5 additional FTEs costing approximately $409,500 (FY 08).

Governance Policy Options

The existing governance structure for planning and funding state highways and ferry routes limits the ability of the state to protect the capacity and safety of its transportation system. The governance structure favors local discretion over state control, resulting in an advisory-only role for the state. The appeal process is the state's only recourse if a local government makes a choice harming the state's interests and violating the Growth Management Act. Appeals are used infrequently because of their political and financial cost.

Three policy options examined in this analysis suggest possible changes to the governance structure that would provide the state with more influence over local land use decisions that impact the state transportation system. These options range from incentive-based to regulatory in nature.

Governance: Local Incentives

Local governments can secure state funding for transportation planning and infrastructure through a variety of sources including legislative earmarks, WSDOT, CTED, the Community Economic Revitalization Board (CERB), the County Road Administration Board (CRAB), the Transportation Improvement Board (TIB), the Public Works Board (PWB), and the Freight Mobility Strategic Investment Board (FMSIB). These funding sources independently implement their particular legislative mandates with little coordination. Local governments could be encouraged to make land use choices that protect the capacity and safety of the state highway and ferry systems by coordinating these funding programs to give higher priority to local governments who adhere to best practices in planning for, mitigating impacts to, and controlling access to the state transportation system.

In addition to using existing state infrastructure funds as incentives, the GMA could be amended to allow cities and counties to adopt limited concurrency exemptions (e.g. for infill) if they meet pre-defined performance standards for planning for, mitigating impacts to, and controlling access to state highways and ferry routes. If a community adheres to such standards, exempting infill from concurrency requirements might encourage denser urban development and discourage sprawl as well as rewarding local governments who adhere to best practices.

Local governments find incentive-based approaches more acceptable than regulatory models. Incentives could also be the first step in an incremental approach to implementing mandatory planning, mitigation or access control requirements. Best practices developed as standards for grant programs or concurrency exemption allowances could be tested for effectiveness for the cities choosing to participate in the incentive program. Once tested, the state could implement effective planning tools through a more regulatory approach.

The effectiveness of the financial incentive portion of this policy option is limited since the vast majority of resources for state transportation system improvements

have already been determined for the next 16 years through funding packages approved by the legislature. Another disadvantage of this policy concept is reprioritization of funds might result in the reduction of resources available to implement other state goals.

In order for this policy option to be effectively implemented, the state should convene local, regional, and state agency stakeholders to craft a set of well-researched, professionally sound, and locally acceptable best practice standards. This process could take up to one year and involve costs ranging from $100,000 to $150,000. Additionally, state agencies could incur additional costs for implementing changes to their funding programs or addressing concurrency exemptions in their GMA technical assistance programs.

LOCAL INCENTIVES

Who: Legislature, WSDOT, CTED, RTPOs, CERB, CRAB, TIB, PWB, FMSIB

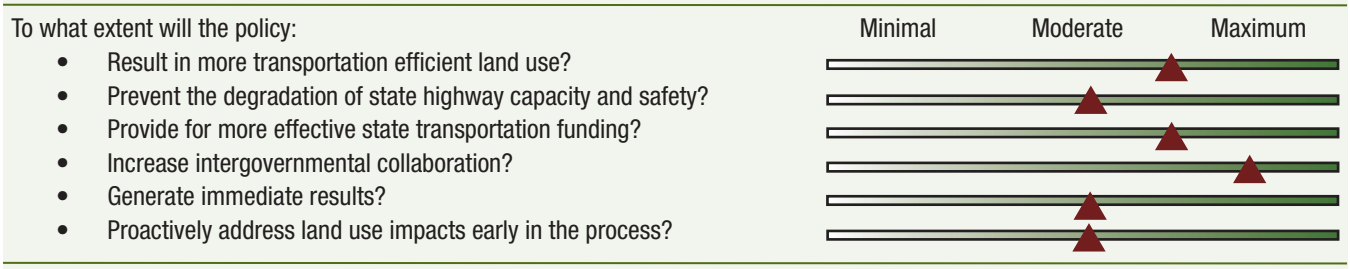
What: Provide incentives for local governments to adhere to best practices in planning, impact mitigation, and access control

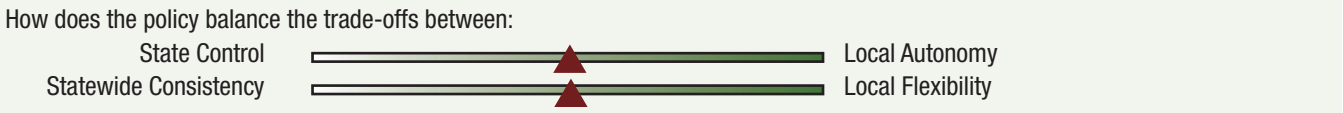
Why: To encourage local governments to make land use choices that will protect the capacity and safety of the state highway and ferry systems

How:
- Allow local governments who have adopted best practices to permit limited concurrency exemptions for urban infill
- Better coordinate state infrastructure funding programs to give higher priority to local governments that adhere to best practices

Pros:
- Limited infill concurrency exemptions may encourage denser urban development and discourage sprawl as well as reward local governments that adhere to best practices
- Local governments are more likely to adhere to best practices if incentives are provided
- Builds on existing planning and mitigation frameworks

Cons:
- Most state transportation funding has been determined for the next 16 years, minimizing the source and size of available financial incentives
- Reprioritizing state funding would reduce resources available for other needs
- Developing a set of well-researched, professional sound, and locally acceptable best practice standards would be challenging





Governance: Mandatory Good Planning Practices

CTED, RTPOs, local governments and WSDOT must all be involved in implementing any new transportation planning requirements under the GMA. Their level of involvement would vary depending on whether the policy is implemented through an addition to the existing GMA planning requirements, clarification of RTPO certification requirements, or addition of new WSDOT certification requirements. Each option implies a different level of state versus local involvement and control.

Like local incentives, mandatory planning practices require the same investment in stakeholder outreach to ensure a set of well-researched, professionally sound and locally acceptable planning and access control standards. This process could take up to one year and involve costs ranging from $100,000 to $150,000. This policy option, however, goes further than local incentives in ensuring state transportation resources are protected from local land use impacts because of its regulatory approach.

The disadvantage of this policy is its implementation cost to local governments. These costs are unknown but could be substantial. Depending on implementation, RTPOs and WSDOT might also incur substantial costs in implementing new certification guidelines.

MANDATORY GOOD PLANNING PRACTICES

Who: CTED, RTPOs, Local Governments, WSDOT

What: Require local governments to adhere to best practices in planning and access control

Why: To ensure the protection of the capacity and safety of the state highway and ferry systems

How: Require better planning for state-owned transportation facilities in local comprehensive plans (including the transportation, land use, and capital facilities elements) by:

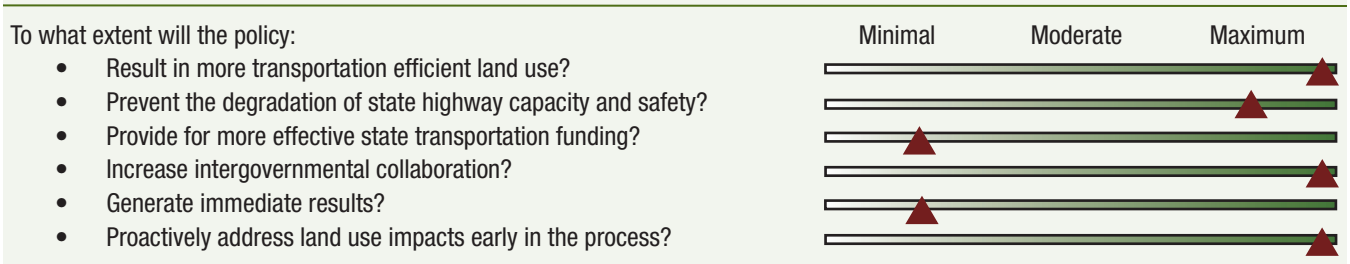
- Requiring confirmation from local agencies that they have adopted standards for access permitting on streets designated as state highways which meet or exceed WSDOT standards
- Amending the local planning requirements of the GMA
- Clarifying the Regional Transportation Planning Organization certification requirements, or
- Adding new WSDOT certification requirements

Pros:

- Ensures state transportation resources are protected

Cons:

- Reduces local flexibility and autonomy in land use planning and access management
- Existing enforcement mechanisms are weak
- Results not immediate due to seven-year comprehensive plan update cycles



Governance: Concurrency Expansion to State Highways and Ferry Routes

Expanding concurrency to state highways and ferry routes involves substantial changes to local, regional and state transportation planning and land use practices. The policy would ensure the adopted level of service (LOS) standards for state highways and ferry routes are maintained, while allowing local governments some flexibility in determining how to maintain them. Local governments could deny developments that cause the LOS to decrease below the standard, change the phasing or timing of new development, provide transportation improvements on the state highway or local street network to accommodate the development, or better manage demand for state highway trips through multimodal strategies.

Expanding the GMA concurrency requirement to state highways and ferry routes requires legislative action. A number of options for crafting a new concurrency policy exist and the impacts would vary based on the option selected. The GMA could be amended to require concurrency for all state highway and ferry routes, or for some state highways and ferry routes. Some highways and ferry routes are minimally impacted by local land use decisions because they are primarily used by through-traffic on long trips between regions or major population centers. As long as that function is maintained, there is a strong argument for exempting these facilities (classified as highways of statewide significance) from the concurrency requirement. Alternatively, the GMA could be amended to require local governments to participate in a regional concurrency system which would leave the decision of which state facilities to include a matter of regional discretion.

Another policy choice related to the expansion of concurrency to state transportation facilities is who would set the standard and control the funding resources for making capacity improvements. If concurrency is expanded to state highways and ferry routes, and local or regional governments do not have control over setting LOS standards, they would not have the option of accepting congestion by lowering or managing the standard. This distinction is important because improving transportation facilities is not always practical and accepting congestion by lowering or managing LOS standards is a common local practice, and can be an appropriate way to encourage the use of alternative transportation modes. Also, if concurrency is expanded to state transportation facilities and local or regional governments do not have access to adequate funding for capacity improvements, development moratoriums or sprawl may result. Interestingly, the 1995 study recommending exempting highways of statewide significance from the concurrency requirement actually suggested implementing concurrency for the balance of the state transportation system, provided new revenues were made available to regions for funding capacity improvements.[2]

The establishment of an equitable concurrency system that applies to state highways and ferry routes could be legally and technically challenging as well as expensive. Expanding concurrency to state highways and ferry routes would require

2. Berk & Associates, Inc., Henderson, Young & Company, JHK & Associates, Inc., Molyneaux Associates, Inc., and Porter & Associates, Inc. Study of the Relationship Between State-Owned Or Operated Transportation Facilities and Local Comprehensive Plans: Final Report. Prepared for the Washington State Legislature Legislative Transportation Committee. February, 1995.

the revision of existing traffic models at a substantial cost to local and regional governments. It would also require ongoing staff support. For example, the Spokane Regional Transportation Council recently estimated it would require five to eight full-time employees to implement a regional concurrency system.[3] Multiply this by the 14 RTPOs, add the cost of developer appeals, and it is clear this policy would involve significant expense.

The fact that some cities and counties have agreed to or are considering the implementation of regional concurrency systems despite these expenses demonstrates that expanding concurrency to address regional impacts does have value to some local governments. As an alternative to amending the law to require concurrency for state-owned facilities, the state could provide incentives for local governments to participate in regional concurrency systems by helping to fund their implementation.

CONCURRENCY EXPANSION TO STATE HIGHWAYS AND FERRY ROUTES

Who: WSDOT, RTPOs, Local Governments

What: Expand the GMA transportation concurrency requirement to state-owned highways and ferry routes

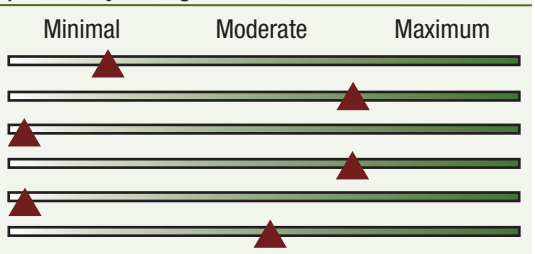
Why: To ensure that the state highways and ferry routes necessary to support development are adequate to serve the development at the time of occupancy and use without decreasing levels of service (LOS) below the adopted standards of the state or region

How:
- Amend the GMA to require local governments to deny development if it causes the LOS on state-owned highways or ferry routes to fall below the adopted standard (may apply to HSS and/or non-HSS)
- Amend the GMA to require local governments to participate in a regional concurrency system that includes state-owned highways and ferry routes (may apply to HSS and/or non-HSS)

Pros:
- Requires local governments to maintain LOS standards while allowing them some flexibility

Cons:
- Local governments may not have the option of reducing LOS standards (accepting congestion)
- May result in moratoriums due to limited transportation funding or sprawl to avoid congested corridors
- Adding an additional step for development approval may increase permit processing times
- Implementation would be expensive for local governments
- Penalizes communities with high levels of pass-through traffic beyond their control
- May lead to prioritization of avoiding traffic congestion above other state policy goals
- Very difficult to establish a fair concurrency system, costs of appeals may be high

To what extent will the policy:



- Result in more transportation efficient land use?
- Prevent the degradation of state highway capacity and safety?
- Provide for more effective state transportation funding?
- Increase intergovernmental collaboration?
- Generate immediate results?
- Proactively address land use impacts early in the process?

How does the policy balance the trade-offs between:

3 "Concurrency: How's That Working for You? A Regional Context," Ed Hayes, Power Point Presentation to the American Planning Association Fall Conference, Yakima, Washington, October, 2006.

Funding Policy Options

State law provides a number of tools for charging fees or assessing mitigation to developers in order to fund improvements needed because of the impacts of new development. These tools are tailored for the use of local governments whose implementation practices vary widely. Mitigation required through the State Environmental Policy Act, the mechanism most often used to mitigate development impacts on state facilities, can be costly to assess, tends to focus resources toward short-term and small-impact projects, and relies on local agencies to condition development approval on WSDOT mitigation requests. The other mitigation and impact fee tools available under state law either cannot be used for state facilities or are infrequently used for that purpose. These gaps diminish the ability of the state to secure sufficient funding for state highway and ferry route improvements needed because of growth.

Four of the five funding policy options considered by this analysis would alter existing mitigation practices through administrative policy or statutory amendment. The other funding policy option would create a new system for assessing and collecting developer charges to fund transportation capacity and safety improvements on state highways and ferry routes needed because of growth.

None of these policy options would by themselves provide sufficient funding to address the state's overall $37.68 billion unfunded transportation needs,[4] but combined with other transportation funding strategies, such as tolling or taxes, these five funding policies would provide at least a portion of the funding needed for growth-related transportation improvements.

Funding: WSDOT Review of Development Proposals

Improving WSDOT development review processes would build on the existing SEPA framework by devoting additional staffing to the review of development proposals and the establishment of intergovernmental agreements with local governments for the collection of state requested mitigation. To support this work, WSDOT could work with local government to identify and meet standards for the types of development proposals that should be submitted to WSDOT for review. In order to promote more consistent state review of development proposals and assessment of mitigation, WSDOT could also build on the existing development services manual by establishing more detailed standards for the review of proposals, including requirements for private traffic analyses. In the course of developing these standards, WSDOT should consider discounting its mitigation requests for developments in dense urban areas with adequate local street networks and good multimodal transportation options to discourage sprawl. WSDOT could also engage in more consistent tracking, reporting, and follow-up on local government responses to mitigation requests in order to more effectively understand and improve its business processes. WSDOT is taking steps to improve its data collection by developing software to track mitigation collection statewide.

Improving development review processes would allow the state to more effectively fund growth-related transportation capacity and safety improvements. Any improvement efforts should begin with a thorough assessment of current practices and the development of a strategy for improving review processes. The implementation strategy may involve the reprioritization of existing resources

4. The Washington Transportation Plan, 2007-2026. Washington State Transportation Commission and Washington State Department of Transportation. November 14, 2006.

and would also likely result in a recommendation for investing in additional staffing. The exact level of staffing should be determined as part of the implementation strategy. However, as an example, adding 13.5 development services staff statewide would cost approximately $1.7 million (FY 08). Costs for additional staffing could be alleviated by specifically authorizing WSDOT to recoup its review expenses through fees charged to developers.

Relying on better development review processes to more effectively fund growth-related transportation system improvements has some disadvantages. Under current law, local governments are the lead agencies for land use actions within their boundaries and hold sole responsibility for the conditioning of land use actions on development mitigation. Any agency, including WSDOT, can inform local governments of the impacts of a land use action and request mitigation, but cities and counties are the ultimate decision makers. Local governments may choose to reduce or disregard the mitigation requested by the state. Consequently, the SEPA mitigation process often becomes a process of negotiation with local governments and developers. Negotiating mitigation on a project-by-project basis can be very time consuming and is often cost effective only for larger developments.

WSDOT REVIEW OF DEVELOPMENT PROPOSALS

Who: WSDOT

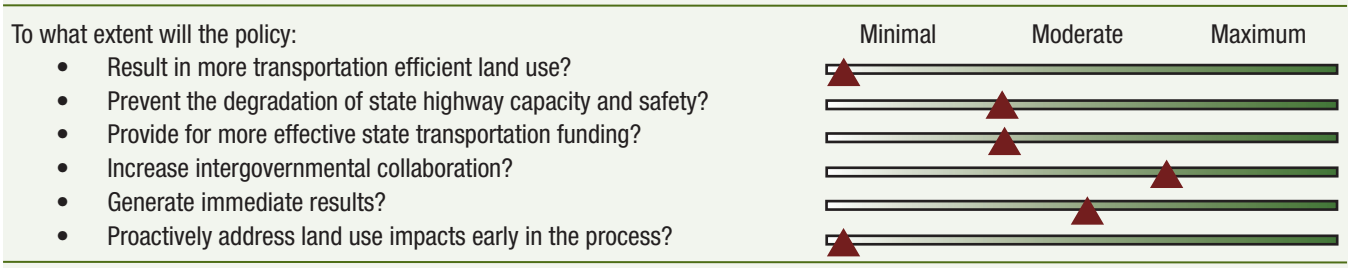
What: Improve WSDOT development review processes

Why: To more consistently and fairly assess developments for their impacts on state highways and ferry routes and more effectively fund transportation capacity and safety improvements needed because of growth

How:
- Devote additional staffing to the review of development proposals and to the development of intergovernmental agreements with local governments for mitigation collection
- Build on the existing development services manual by establishing more detailed standards for the review of development proposals (including requirements for private traffic analyses) and the assessment of appropriate mitigation
- Establish standards for when local governments should submit development proposals to WSDOT for review and work with local governments to ensure they are implemented
- More consistently track, report, and follow-up on local government responses to mitigation requests

Pros:
- Builds on existing SEPA framework

Cons:
- Local governments may disregard mitigation requests
- Only cost-effective to collect mitigation from larger developments
- Mitigation is generally less predictable for private sector than impact fees
- Transportation projects funded through mitigation tend to be smaller project-related fixes
- Total amount collected does not approach unfunded transportation system needs



Also, because local SEPA policies vary from jurisdiction to jurisdiction, SEPA mitigation is an unpredictable process for WSDOT and for private developers. Executing intergovernmental agreements with local jurisdictions could increase the predictability of the SEPA mitigation process.

Another disadvantage of relying on SEPA mitigation is that the types of state highway and ferry route improvements that can be funded is limited by statute. Mitigation conditions must be "reasonable" and "capable of being accomplished."[5] These standards are much easier to meet if the state requests mitigation for smaller project-related fixes instead of area-wide improvements and as a result, these are the types of projects that get funded. Because of all these limitations, even if WSDOT took maximum advantage of existing mitigation opportunities, the amount collected would not be sufficient to fund the transportation improvements needed because of growth.

Funding: Mandatory Local Enforcement of State-Requested Mitigation

This policy concept would address one of the weaknesses of relying on improved WSDOT development review by requiring local governments to condition development approvals on WSDOT mitigation requests. The requirement could be crafted to charge local governments with collecting and remitting mitigation fees to WSDOT or otherwise enforcing WSDOT mitigation requests. Or the policy could direct local governments to condition development approvals on WSDOT's mitigation request; requiring the developer to enter into an agreement with WSDOT to satisfy the condition of approval. Either way, this policy option would require an amendment to the State Environmental Policy Act.

While this policy concept would significantly improve WSDOT's ability to effectively fund transportation capacity and system improvements needed because of growth; many of the other limitations of SEPA would still exist. SEPA mitigation still tends to fund smaller project-related fixes instead of area-wide improvements, and mitigation funds would only provide a relatively small part of the transportation improvement funding actually needed. Again, in order to reduce the incentives for sprawl, WSDOT should consider discounting its mitigation requests for developments in dense urban areas with adequate local street networks and good multimodal transportation options.

Perhaps the biggest impact of requiring local governments to condition development approvals on WSDOT mitigation requests would be the fundamental alteration of the nature of the SEPA process. SEPA would no longer require the state's mitigation requests to be balanced with other SEPA-identified impacts. Also, the accountability structure of SEPA would change. It is unclear whether the state or local governments would bear the legal liability for appeals of the development conditions imposed to mitigate impacts on state facilities. And it is important to emphasize that this policy would give the state a much more direct role in local land use decisions and reduce local autonomy. This policy would, however, allow more local flexibility than the impact fee policy options described later because SEPA mitigation addresses impacts on a project-by-project basis.

In order to implement this policy effectively, WSDOT would likely require additional staffing due to a higher volume of development proposals to review and assess. This need may be somewhat alleviated by the increased certainty in the process which would reduce the time spent negotiating mitigation requests

5 RCW 43.21C.060

with local governments and developers. The exact level of staffing is unknown. However, as an example, increasing WSDOT Development Services staffing by 54% by adding 13.5 FTE would cost approximately $1.7 million (FY 08). The net cost of new staffing could be reduced by specifically authorizing WSDOT to recoup its review expenses through fees charged to developers. The resources required for this policy option should also include the substantial legal costs that should be anticipated at start-up to address developer appeals.

MANDATORY LOCAL ENFORCEMENT OF STATE-REQUESTED MITIGATION

Who: WSDOT, Local Governments

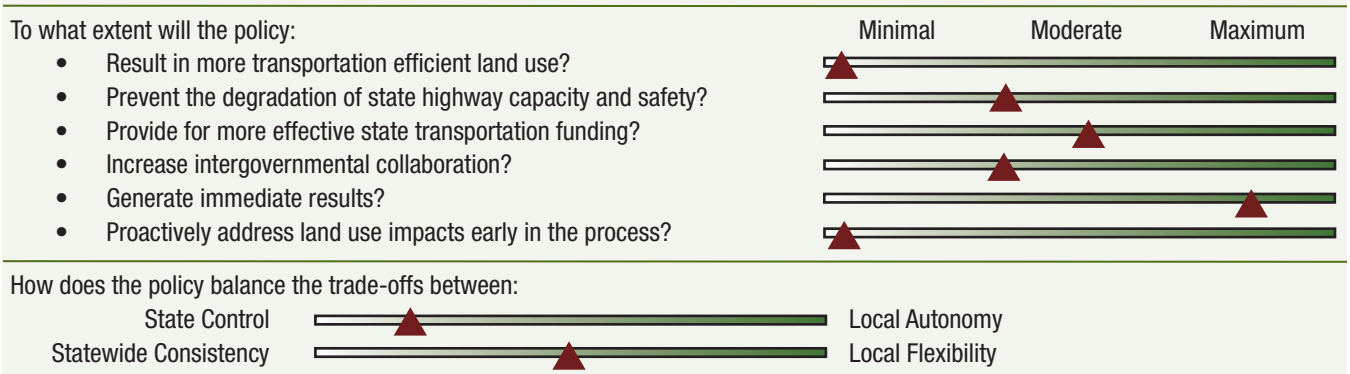
What: Require local governments to condition development approvals on WSDOT mitigation requests

Why: To more consistently and fairly collect development mitigation and more effectively fund transportation capacity and system improvements needed because of growth

How: Amend the State Environmental Policy Act

Pros:
- More consistent and predictable state mitigation collection for growth-related transportation needs

Cons:
- Local governments may be subject to more frequent appeals which are costly
- May not require the state's mitigation requests to be balanced with other SEPA identified impacts
- Only cost-effective to collect mitigation for larger developments
- Mitigation is generally less predictable for private sector than impact fees
- Transportation projects funded through mitigation tend to be smaller project-related fixes
- Total amount collected does not approach the unfunded transportation system needs



Funding: Mandatory Local Assessment of State Impact Fees

Compared to the mitigation policy options, requiring local governments to assess impact fees for improvements to state-owned highways and ferry routes would provide for a more predictable revenue stream for WSDOT and a more predictable fee structure for private developers. This policy option could be implemented through amendments to the GMA Impact Fee statutes, the Local Transportation Act (LTA), and/or the Transportation Benefit District Act. The requirement could be crafted to charge local governments with assessing, collecting and remitting impact fees to WSDOT, or local governments could be directed to condition development approvals on a state impact fee. The primary advantage of impact fees is their ability to be used for area-wide improvements.

The biggest disadvantage of collecting impact fees for state transportation facilities is the up-front cost of setting up a fair fee schedule. The technical difficulty of setting up an impact fee system cannot be understated. It would require

changes to the state's traffic modeling systems, the careful establishment of impact zones, and the programming of transportation improvements that meet the statutory requirements of the impact fee statutes. For example, transportation improvements funded by LTA impact fees must be reasonably necessary as a direct result of proposed developments and capable of being carried out. And transportation improvements funded by GMA impact fees must be reasonably related to and reasonably beneficial to new development. When establishing an impact fee schedule, careful attention should be given to the effect of the fees on developer location decisions. In order to encourage transportation efficient land use practices, fee waivers or discounts could be provided in dense urban areas with adequate local street networks and multimodal transportation options. The set-up costs of a state impact fee system would be substantial and the cost of developer appeals should be anticipated, especially upon the initial establishment of the system. However, the ongoing costs associated with implementing this policy option would likely be somewhat lower than the mitigation policy options because impact fees do not require individualized assessments of each development's direct impacts.

MANDATORY LOCAL ASSESSMENT OF STATE IMPACT FEES

Who: WSDOT, Local Governments

What: Require local governments to assess impact fees for improvements to state-owned highways and ferry routes

Why: To more predictably assess development for growth impacts and more effectively fund state highway and ferry route capacity and safety improvements needed because of growth

How: Amend the Growth Management Act section on impact fees, the Local Transportation Act (LTA), and/or the Transportation Benefit District Act (TBD)

Pros:
- Impact fees more predictable than mitigation
- Collecting impact fees for improvements to state-owned highways and ferry routes would create a more consistent revenue stream
- Impact fees are generally more useful for funding area-wide system improvements
- Unlike mitigation, impact fees do not require individualized assessments of a project's direct impact
- May be designed to incentivize transportation efficient land use practices through waivers or discounts

Cons:
- Setting up a fair impact fee system is technically challenging and may be costly if frequently appealed
- Existing time limitations for expenditure may preclude the use of impact fees for some state transportation projects
- Using existing impact fee tools may result in the inability to collect fees in some cities or counties that are ineligible for or have chosen not to use fees
- Total amount collected would not approach unfunded transportation system needs

To what extent will the policy:	Minimal	Moderate	Maximum
• Result in more transportation efficient land use?			
• Prevent the degradation of state highway capacity and safety?			
• Provide for more effective state transportation funding?			
• Increase intergovernmental collaboration?			
• Generate immediate results?			
• Proactively address land use impacts early in the process?			

How does the policy balance the trade-offs between:

State Control	Local Autonomy
Statewide Consistency	Local Flexibility

The difficulty of establishing state impact fees for transportation is illustrated by the recent experience of the State of Delaware. State transportation impact fees were authorized in 2001 as part of the Governor's "Livable Delaware" land use package; but were never implemented because the fees were complicated to assess and wouldn't raise sufficient revenues. Any legislative changes regarding state impact fees should be carefully studied for both legal and practical implications.

There are other potential disadvantages of requiring local governments to assess impact fees for state transportation facilities. Existing time limitations for the expenditure of funds might preclude the use of impact fees for longer-term state transportation projects. Also, the state may not be able to receive impact fees in cities or counties that are ineligible for or have chosen not to use impact fees. Like all the funding policy options, the collection of impact fees will only provide an incremental improvement in meeting the state's unfunded transportation needs.

Requiring local governments to assess impact fees for state transportation facilities would give the state a much more direct role in local land use decisions at the expense of local autonomy. Additionally, impact fees would not allow as much local flexibility as mitigation policies because fees are applied within zones instead of being assessed for each individual development project.

Funding: State Assesses and Collects Mitigation

Authorizing WSDOT to independently assess and collect mitigation directly from the developer would remove local governments from the mitigation collection process for state transportation facilities. This policy concept would relieve local governments from the responsibility and potential liability of imposing development conditions on behalf of the state. And because it allows more state control of the process, it would likely result in more consistent and predictable funding of state transportation improvements needed because of growth. State-collected mitigation would also provide more local flexibility than state impact fees because SEPA mitigation addresses impacts on a project-by-project basis.

However, the amendment of SEPA to allow WSDOT to enforce mitigation for development impacts on state transportation facilities would insert the state into the domain of local land use decisions and alter the nature of the SEPA process. State SEPA mitigation requests would no longer be considered in a broader context that considers and balances all the potential impacts of a government action.

In addition, all the other limitations of SEPA would still exist. SEPA mitigation still tends to fund smaller project-related fixes instead of area-wide improvements and mitigation funds would only provide a relatively small part of the transportation improvement funding actually needed. Also, because the impacts of a development are likely to be greater in dense urban areas resulting in the potential for more costly mitigation, developers might choose to locate in less urban areas which could result in sprawl. To avoid sprawl, mitigation fees could be discounted in dense urban areas with adequate local street networks and good multimodal transportation options.

To implement this policy effectively, WSDOT would require additional staffing due to a higher volume of development proposals to review and assess. The exact level of staffing would need to be determined and should account for the greater certainty in the mitigation process and the removal of local governments from the

mitigation process. However, as an example, increasing WSDOT Development Services staffing by 54% through the addition of 13.5 FTE would cost approximately $1.7 million (FY 08). Staffing costs could be recouped to some degree by specifically authorizing WSDOT to charge its review expenses to developers. The resources required for this policy should also include legal costs associated with developer appeals. This cost is unknown but could be significant.

STATE ASSESSES AND COLLECTS MITIGATION

Who: WSDOT

What: Authorize WSDOT to independently assess and collect mitigation directly from the developer

Why: To more consistently and fairly collect mitigation and more effectively fund transportation capacity and safety improvements needed because of growth

How: Amend the State Environmental Policy Act

Pros:
- Relieves local governments of the responsibility for assessing mitigation on behalf of the state
- More consistent and predictable state mitigation for growth-related transportation needs

Cons:
- State mitigation assessments would not be considered in the broader SEPA context that considers and balances all potential impacts
- Only cost-effective to collect mitigation for larger developments
- Mitigation is generally less predictable for private sector than impact fees
- Transportation projects funded through mitigation tend to be smaller project-related fixes
- Total amount collected does not approach the unfunded transportation system needs

To what extent will the policy:

- Result in more transportation efficient land use?
- Prevent the degradation of state highway capacity and safety?
- Provide for more effective state transportation funding?
- Increase intergovernmental collaboration?
- Generate immediate results?
- Proactively address land use impacts early in the process?

How does the policy balance the trade-offs between:

Funding: System Charges

To avoid the limitations of existing mitigation and impact fees rules, new legislation could be crafted to establish and collect regional system charges specifically for area-wide state highway and ferry route improvements needed because of growth. System charges could be implemented at the state or regional level. Regional implementation would allow more local flexibility. System charges would provide a more predictable and consistent statewide revenue stream for regional improvements. State or regional system charges would also relieve individual local governments of the responsibility and liability of imposing mitigation for transportation improvements that have regional and/or statewide benefits.

The imposition of system charges is a policy concept that requires careful study and planning. The technical difficulty and cost of setting up fair system charges are substantial. It would require changes to the state's traffic modeling systems,

the careful establishment of fee schedules, and the programming of transportation improvements that would be funded by system charges. To encourage transportation efficient land use practices, fee waivers or discounts should be considered for developments locating in dense urban areas with adequate local street networks and multimodal transportation options. Any proposed legislation should be carefully reviewed for both legal and practical implications. The cost of setting up a regional system charge is unknown but substantial.

Once established, the implementation of system charges would require ongoing staffing by either WSDOT or RTPOs. System charges would not require individualized assessments of each development's direct impacts, but it would require administrative staffing for the assessment and collection of fees as well as ongoing traffic analysis, planning and management to ensure the system charge fee structure is fairly assessing developments and accountability for providing the transportation improvements is funded by the charges.

System charges might reduce the need for state SEPA mitigation review and assessment to some extent. WSDOT would still require staffing to address specific development impacts that cannot be anticipated in the crafting of an impact fee. To prevent the payment of fees for the same impact, system charge legislation should prevent the collection of fees or mitigation for the same impact.

SYSTEM CHARGES

Who: WSDOT or RTPOs

What: Amend state law as appropriate to allow the state or regional transportation planning organizations to establish and collect regional system charges directly from the developer

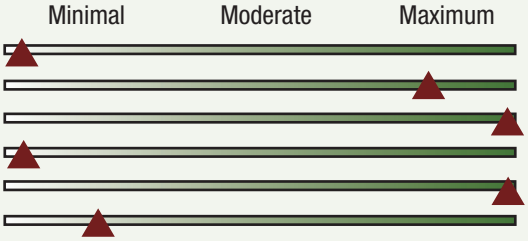
Why: To more predictably assess development for growth impacts and more effectively fund regional capacity and safety improvements on state-owned highways and ferry routes needed because of growth

How: Enact new legislation

Pros:
- More predictable than mitigation
- Would create a more consistent statewide revenue system for regional improvements
- Would not require individualized assessments of a project's direct impacts
- May be designed to incentivize transportation efficient land use practices through waivers or discounts
- Regional implementation would allow more local flexibility

Cons:
- Setting up a fair fee system is technically challenging and may be costly if frequently appealed
- Total amount collected would not approach unfunded transportation system needs

To what extent will the policy:



- Result in more transportation efficient land use?
- Prevent the degradation of state highway capacity and safety?
- Provide for more effective state transportation funding?
- Increase intergovernmental collaboration?
- Generate immediate results?
- Proactively address land use impacts early in the process?

How does the policy balance the trade-offs between:

System charges would improve the ability of the state to collect funds to mitigate the adverse impacts of local developments on the state transportation system, but they are not the final solution for funding growth-related state transportation improvements. To provide an effective solution to address the state's unfunded transportation system needs, the legislature should consider system charges as one piece in the funding puzzle that might also include the implementation of recent policy recommendations on tolling,[6] increased taxes, and more aggressive demand management.

Conclusions

Any one of the policy concepts described in this analysis could improve the ability of the state to address the adverse impacts of local land use decision on state transportation facilities. Alternatively, a number of planning, funding and governance policy options could be grouped to form a more comprehensive strategy for addressing the gaps that exist in current law and practice.

Several policy concepts, including Technical Assistance, WSDOT Review of Local Comprehensive Plans, and WSDOT Review of Development Proposals require minor administrative changes and a relatively small level of additional resources to implement. Local Incentives and Mandatory Good Planning Practices involve relatively minor amendments to state law and a relatively small level of additional resources to implement. The remaining funding policy concepts involve more significant changes to state law and a more substantial investment of resources. These policy options require additional legal and technical review.

The expansion of concurrency to state highways and ferry routes would involve a significant change to existing law and a substantial investment of mostly local and regional resources. While the policy has merit as an effective way to prevent the degradation of state highway capacity and safety, it might not be the most cost-effective method of achieving that goal. Concurrency works best when the government that makes the decision to allow or deny development also controls the establishment of the performance standard (level of service) and the resources to fund capacity improvements. A policy that divides these authorities between governments is not optimal because it divides accountability. Alternatively, the legislature could consider providing incentives for local governments to participate in regional concurrency systems that include state facilities and establishing funding mechanisms regional governments can use for growth-related transportation improvements.

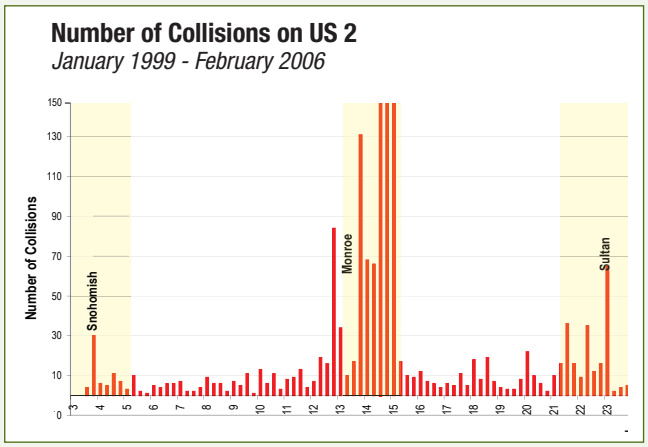
6. Cambridge Systematics, Inc. Washington State Comprehensive Tolling Study Final Report. Prepared for the Washington State Transportation Commission. September 11, 2006.

US 2 in Monroe

In November 2005, the Washington State Department of Transportation (WSDOT) initiated a $1.3 million Route Development Plan to address safety and mobility concerns on US 2 from Snohomish to Skykomish. US 2 is an east-west highway that provides one of three connections between Western and Eastern Washington open throughout the year.

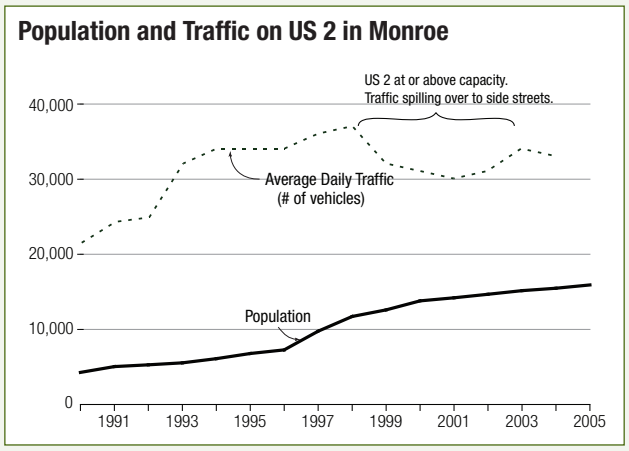
More than 2,500 collisions, including 34 fatalities, occurred within the study area between 1999 and March, 2006, despite WSDOT investments of $36 million in the maintenance and preservation of the roadway.

The number of collisions is especially dramatic in the City of Monroe, located at the intersection of US 2 and State Route 522 (a major commuting route to the Central Puget Sound urban area). From 1999 to 2005, 1,110 collisions, including five fatalities, occurred on US 2 in Monroe. The collision rate for this highway segment is four times higher than the statewide average (4.53 collisions per vehicle mile compared to 1.11 statewide average).



Source: WSDOT NW Region Traffic Office

US 2 travelers have also experienced increasing congestion. Since 1991, average daily traffic increased more than 54 percent, resulting in traffic diversion onto local roadways and even through parking lots to avoid congestion.

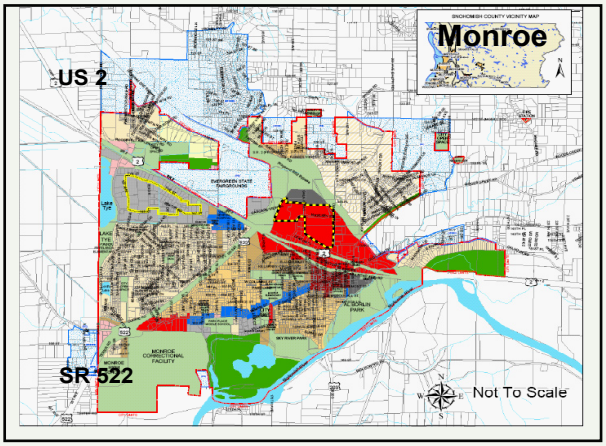


Source: WSDOT NW Region Traffic Office and Office of Financial Management

The Gaps

Many factors contributed to traffic problems on US 2 in Monroe. Monroe's population has grown rapidly, almost quadrupling from 4,200 in 1990 to 16,000 today.

The Monroe segment of US 2 is lined with urban development, including multiple stoplights and access points restricting traffic flow. Existing access points are only 50 feet apart in some areas east of SR 522, far less than the 660 feet minimum access spacing required under current standards.



Source: City of Monroe

Monroe's land use decisions, including the state's role in participating in those decisions, also may have contributed to problems on US 2. For example, Monroe completed its seven-year comprehensive plan update in 2005, proposing the expansion of its urban growth boundary to add 285 acres for residential development. Despite the evident

impact of US 2 traffic conditions on the function of the city's local street network and the safety and mobility of its citizens, Monroe did not address the effect of this expansion on US 2. Likewise, during the review process, neither WSDOT, nor the Community Trade and Economic Development Department, nor the Puget Sound Regional Council commented on the impact of expanding the urban growth boundary on US 2. Because US 2 in Monroe is statutorily exempt from concurrency, once the city's comprehensive plan allowing additional development was approved, there was no additional mechanism for stopping new development from continuing to degrade the function of US 2.

To the city's credit, Monroe has worked collaboratively with WSDOT to mitigate the impact of developments on US 2. Since 2000, WSDOT has collected $239 per average daily trip from developments that exceed the threshold requirements for a potential US 2 bypass. The $299,820 collected by WSDOT accounts for 31% of all traffic mitigation fees collected in Monroe, but amounts to only 0.2% of the $100 million estimated cost for a US 2 bypass.

The Policy Concepts Applied

Planning. WSDOT expert advice and analysis could have provided better information about the impact of an urban growth boundary expansion on US 2. Even if this did not result in a different outcome, at least the information would have been included in the record increasing public awareness and local accountability.

Funding. Better analytical methods for assessing development impacts and the ability to directly collect mitigation or impact fees might have resulted in better funding for incremental safety and mobility improvements to US 2. However, it is highly unlikely that it could have made a significant enough contribution to the cost of a potential US 2 bypass to make it a feasible project without additional funding sources.

Governance. Because Monroe is seeking funding for a US 2 bypass, funding or grant incentives would likely have been a strong motivator for adhering to best practice planning, mitigation, and access control standards. The expansion of concurrency to apply to US 2 might have slowed growth or spread development further out along the highway to avoid congested intersections.

Appendix A

The following section of Substitute Senate Bill 6241 called for the Concurrency Study to take place.

Proviso Language

Concurrency Study – State Owned Transportation Facilities

SSB 6241.PL p. 30

Sec. 224. 2005 c 313 s 223 (uncodified) as passed March 8, 2006:

FOR THE DEPARTMENT OF TRANSPORTATION

TRANSPORTATION PLANNING, DATA, AND RESEARCH--PROGRAM T

(10) $100,000 of the motor vehicle account--state appropriation is provided solely to the department in accordance with RCW 46.68.110(2) and 46.68.120(3) and shall be used by the department solely to conduct an analysis of expanding the transportation concurrency requirements prescribed under the growth management act, chapter 36.70A RCW, to include development impacts on level of service standards applicable to state-owned transportation facilities, including state highways and state ferry routes. The objective of the analysis is to determine how to ensure that jurisdictional divisions do not defeat growth management act concurrency goals. The department shall convene a committee to oversee the analysis, with the committee comprised of, at a minimum, four members of the transportation committees of the legislature, four members of the appropriate land use committees of the legislature, and one member each from the association of Washington cities and the Washington state association of counties, or a designee thereof. The completed study, including recommendations, must be submitted to the appropriate standing committees of the legislature, and to the office of financial management, by December 1, 2006.

Appendix B

The following three items are the official meeting minutes from the Oversight Committee which convened on July 11, August 23 and October 25.

Oversight Committee Meeting #1

Transportation Concurrency Analysis, State-Owned Facilities
Tuesday, July 11, 2006, 10:00 a.m. – 11:30 p.m.

WSDOT Headquarters, Commission Board Room (1D2), Olympia

Committee Members in Attendance:

Sen. Mary Margaret Haugen
Sen. Craig Pridemore
Sen. Joyce Mulliken
Jay Balasbas (representing Rep. Lynn Schindler),
Rep. Beverly Woods
Rep. Alex Wood (calling in)
Ashley Probart (AWC)
Eric Johnson (WSAC)

Staff:

Paula Hammond (WSDOT)
Brian Smith (WSDOT)
Elizabeth Robbins (WSDOT)
Eric Phillips (WSDOT)
Karena Houser (WSDOT)
Jason Beloso (WSDOT)
Joyce Phillips (CTED)
Kelly Simpson (Senate Transportation Committee)
David Bowman (House Transportation Committee)
Genevieve Pisarski (Senate Govt. Operations Committee)
Ethan Moreno (House Local Govt. Committee)
Joseph Backholm (Senate Republican Caucus)

Audience:

Julie Sexton (WSAC)
David Tanner (WSDOT)

Paula Hammond and Brian Smith made introductory remarks and Elizabeth Robbins began an overview of concurrency.

The committee members shared their thoughts on the reason for the proviso. The group discussed that in contrast to previous studies, the focus of this analysis is on state-owned transportation facility impacts. Paula Hammond framed the basic policy question for this study: whether to apply concurrency to state-owned transportation facilities. Mary Margaret Haugen stated concurrency has applied to Island County for a number of years but it hasn't made a difference because the levels of service just get lowered to accommodate increased congestion. She suggested this study should look at what is and what isn't acceptable in terms of level

of service. Joyce Mulliken indicated she would like the outcome of the study to be a four-caucus, bipartisan, WSDOT-supported legislative proposal.

The committee advised that potential solutions be flexible in recognition of the different transportation needs on the east and west sides of the state. The group stressed the importance of addressing impact fees in the analysis and one member suggested that Regional Transportation Planning Organizations could lay the groundwork for any proposed solutions. The group discussed the terminology of concurrency and suggested that clarification might be needed of the definitions of concurrency and levels of service for state-owned facilities. Paula Hammond noted WSDOT is moving away from traditional level of service terminology toward measures more easily understood by the public such as travel time and trip reliability. Brian Smith suggested the analysis look at what is working and what is not working with the concurrency process.

Elizabeth Robbins and Eric Phillips continued the overview.

The committee discussed transportation concurrency and state-owned facilities. The group noted communities include the required information about state-owned facilities in their comprehensive plans to different extents and WSDOT does not always use that information consistently. Another idea brought forward was that while the intent of House Bill 1487 (the Level of Service Bill of 1998), local jurisdictions and WSDOT would partner in addressing transportation facilities and services not of statewide significance. In practice this process does not seem to be working well.

Paula Hammond requested a map of the state highways indicating the levels of service established for different segments. [Note: study staff will prepare this for our next meeting.]

Eric Phillips continued the overview.

The committee discussed how local jurisdictions address state-owned transportation facilities in current practice. The committee discussed the State Environmental Policy Act (SEPA) and its relationship to the Growth Management Act (GMA) and state highways. Several members of the group noted that the extent of SEPA analysis varies widely depending on the local government, the size of the development, and even the location of the development. SEPA seems to work best for larger developments but does not account well for the cumulative effects of a number of smaller developments. Members of the group commented on some of the challenges of SEPA. For example, local governments are not required to collect SEPA mitigation for the state and SEPA does not address planning issues such as the impact of local zoning decisions and the encroachment of development on the cost of right-of-way acquisitions for state highways. The committee sought clarification of the relationship between SEPA and the GMA and the potential of SEPA as a tool for integrating local land use decisions with state highway function and investment.

The group talked about the participation of state agencies in the local comprehensive planning process and the Regional Transportation Planning Organization (RTPO) certification process. WSDOT staff noted that while there are a variety of opportunities for participation, limited resources have resulted in inconsistent WSDOT participation in the local and regional planning processes. The committee requested clarification of the role of state agencies in local land use planning.

The committee suggested the RTPOs might not be working effectively due to limited funding, lack of interest by elected officials, and the absence of clear requirements or guidelines for standards. The committee felt some RTPO meetings are attended mostly by public works staff and it is important for the planning staff to also be involved.

A question arose regarding which counties have transportation modeling capability for infrastructure planning and if they do, whether they input the impacts to state highways into their models. Ashley Probart replied that the larger governments do very sophisticated modeling while smaller governments might not do any modeling at all.

There was some discussion of the federal role in transportation concurrency. WSDOT staff clarified good deal of overlap between federal Metropolitan Planning Organizations (MPOs) and the RTPOs created by the Growth Management Act, but no federal level of service standards exist for highways.

The committee discussed some additional issues related to the current practice of concurrency. The group suggested adding to the list of issues: inadequate funding for concurrency, the difficulty of addressing the traffic impacts of neighboring jurisdictions, the fact that skill sets are not equal across communities, fear of sanctions, and because moratoriums are limited, communities are faced with the politically difficult choices of lowering levels of service standards or spending money they don't have on development-related transportation improvements. The committee also discussed expanding the list of concurrency issues to include the dilemma that concurrency discourages development in urban areas where development and density should be encouraged. Also, one member commented over-congested state highways can push traffic onto local streets.

The committee discussed US 2 as a potential case study. The group suggested analyzing the comprehensive plans of selected local jurisdictions, determining how the access management plan for US 2 is working in Monroe, and addressing how WSDOT has participated in the review of local plans and development regulations and the SEPA mitigation process.

The committee discussed potential analysis products. Members agreed the study should generate policy options, the pros and cons of those options, and the potential outcomes of those options. There was also consensus that both the Growth Management Act and its relationship with the State Environmental Policy Act should be analyzed in the study.

The committee requested that the meeting materials be available a few days in advance of future meetings.

SUMMARY:

Issues Identified for Additional Analysis

- What is and what isn't acceptable in terms of level of service?
- How might potential solutions apply differently in different geographic regions of the state?
- How might RTPOs be involved in potential solutions?
- Does the terminology associated with concurrency require clarification?

- What is the relationship between SEPA and the GMA?
- What is the potential of SEPA as a tool for integrating land use decisions with state highway function and investment?
- How do state agencies practice their roles in local land use planning?
- With respect to selected case studies, how have the local comprehensive plans, access management plans, and WSDOT's participation in the local land use process influenced the development of state highways?
- What are the policy options, the pros and cons of those options, and the potential outcomes of those options?

Additional Requests

- Map of state highways indicating the levels of service established for different segments
- Ensure meeting materials are distributed in a timely manner

Case Studies

- Consensus on using US 2 as a case study
- SR 410/Bonney Lake also mentioned

Oversight Committee Meeting #2

Transportation Concurrency Analysis, State-Owned Facilities
Wednesday, August 23, 2006, 12:00 a.m. – 2:00 p.m.

Puget Sound Regional Council, Conference Room, Seattle

Committee Members in Attendance:

Sen. Mary Margaret Haugen
Sen. Joyce Mulliken
Jay Balasbas (representing Rep. Lynn Schindler)
Rep. Alex Wood
Rep. Beverly Woods
Rep. Dean Takko
Ashley Probart (AWC)
Julie Murray (WSAC)

Staff:

Elizabeth Robbins (WSDOT)
Brian Smith (WSDOT)
Eric Phillips (WSDOT)
Karena Houser (WSDOT)
Jason Beloso (WSDOT)
Ralph Wilhelmi (WSDOT)
Joseph Backholm (Senate Republican Caucus)
Leonard Bauer (CTED)
Genevieve Pisarski (Senate Govt. Operations Committee) – Call in
David Bowman (House Transportation Committee)
Kelly Simpson (Senate Transportation Committee)
Michael Groesch, (Senate Transportation Committee)
Robin Rettew (OFM)

Audience:

Paul Parker (WSTC)
Kathleen Davis (WSDOT)
King Cushman (PSRC)
Jennifer Zeigler (OFM)

Brian Smith opened the meeting by welcoming everyone. Elizabeth Robbins summarized the results of the first meeting and introduced the day's discussion topics.

Eric Phillips continued by describing the tools available to mitigate local development impacts on state-owned transportation facilities. The group noted capital facilities planning is important because good planning results in less need to mitigate development impacts on a project-by-project basis. Also, limited time frames for the expenditure of mitigation payments define the types of mitigation projects. Eric Phillips summarized the state's access management policies and noted their importance for limiting the impacts of local land use decisions on state highways and preserving the safety of the system.

Next, the group reviewed the opportunities that currently exist for influencing local land use decisions. Elizabeth Robbins commented that the analysis will examine how well the state takes advantage of these opportunities. The committee indicated a desire to further discuss access management opportunities as well as conflicts under the transportation statutes.

Leonard Bauer provided an overview of CTED's role in the local land use process. He emphasized CTED has found it most effective to provide technical assistance at the earliest stages of local policy and regulation development. Any issues not resolved might result in formal written comments by CTED or other state agencies on proposed plans and development regulations. CTED may also appeal local decisions to the growth management hearings boards, although this process is not frequently used. CTED also coordinates state agency guidance and review, serves as a repository for compliance records, and provides training and mediation services for local governments and the tribes.

Elizabeth Robbins then described how WSDOT influences land use through the crafting of the Washington Transportation Plan and route development plans used by local agencies and regional transportation planning organizations as a basis for their own plans and studies. The group discussed the inclusion of transit districts in local, regional and state planning and one committee member suggested this might be a potential disconnect. Elizabeth Robbins continued by explaining how WSDOT reviews, comments, and requests mitigation through SEPA and noting staff resources available for this task are limited. She indicated that when WSDOT requests mitigation it in most cases gets something; but the amount received is small compared to the cost of improvements. The group discussed the cumulative impacts of small projects and because mitigation payments are paid at the time of development, a transportation deficiency will always exist. Mary Margaret Haugen stated she would like WSDOT to keep track and report when local governments do not collect the impact fees WSDOT requests; so when those local governments come to the legislature to ask for money, the legislature can see if the local governments have tried to fix the problem themselves.

Elizabeth Robbins reviewed how the certification processes of regional transportation planning organizations (RTPOs) influence local land use. She noted there are no minimum requirements for the certification process and a variety of practices exist. She also commented that because RTPOs are entities voluntarily created by their member jurisdictions, it is not easy for an RTPO to tell a local jurisdiction what they must do. Eric Phillips added some RTPOs include counties fully planning under the Growth Management Act (GMA) and counties only required to plan for critical areas and resource lands. Joyce Mulliken requested WSDOT to report which jurisdictions' plans have not yet been certified.

Ashley Probart presented the local government perspectives expressed in the Puget Sound Regional Council (PSRC) study on the effectiveness of concurrency. He noted local expectations were low for any state funding of transportation projects when the study was undertaken. Concurrency was being practiced differently based on local governments' different views on how their communities should look, and local governments were also starting to move away from traditional ways of measuring levels of service and looking for better ways to apply concurrency to result in more rational planning and investment decisions. King Cushman added that since the study was completed, there has been a shift in local opinion. More communities are now indicating changes to concurrency are needed because con-

currency is not solving the problem as expected. There is a willingness to change but politically there are a lot of institutional barriers.

Due to time constraints, the group skipped over the US 2 case study materials and focused on identifying gaps in concurrency law. King Cushman noted that concurrency only applies to new development while the state has other transportation infrastructure problems, such as a $60 billion shortfall in transportation infrastructure funding occurring largely on state-owned transportation facilities. He suggested concurrency might not be a big enough tool to address these problems, noting it is more effective as a planning tool than a financing tool.

Ashley Probart added local governments cannot respond to concurrency failures by saying "no" to more people because they are required by the GMA to accommodate projected population growth.

The group also discussed different funding mechanisms for transportation improvements and whether they might be more equitable than development fees. The committee noted smaller jurisdictions have more limited revenue options and the tax structure encourages communities to seek new development because that type of revenue growth is not subject to the 1% limitation. Also, the committee expressed concerns that mitigation only addresses new growth, not pre-existing deficiencies. King Cushman noted impact fees collected amount to less than 1% of the funds used to improve the transportation system. Leonard Bauer said although the committee has mostly discussed SEPA as a tool for mitigating the development impacts of projects, SEPA allows for the review and mitigation of the comprehensive plan itself. It may help it determine a more standardized fee structure to the extent WSDOT could pre-identify the possible impacts of a 20-year plan.

Next, the group addressed gaps in current practice including: requiring the state provide access to parcels abutting a state highway if they have no other access options, uncoordinated local and state planning, lack of a systematic process for WSDOT to review and respond to the information in local plans, and lack of criteria that could be used by local planners for red flagging land use decisions possibly impacting state-owned transportation facilities. Brian Smith cautioned that you can't legislate common sense and that it is tough to legislate responsibility, noting that a good share of the responsibility for land use planning resides at the local level. One committee member suggested looking at how cities and counties work together as a template for how the state should work with cities and counties.

The committee also noted whether because of lack of coordination or lack of political will, some local government land use decisions along state highways exacerbate traffic problems. Mary Margaret Haugen suggested if local governments make those decisions, their transportation projects proposed for state funding should go to the bottom of the list. Ashley Probart noted the state is so far behind on funding the transportation system improvements needed, Washingtonians may just need to accept and live with congestion. He also noted cities with populations of less than 22,500 do not control the maintenance of the state highways within their boundaries.

Elizabeth Robbins concluded the meeting by describing the next steps of the analysis that will lead into the discussion of the pros and cons of different policy options at the October meeting.

SUMMARY

Policy Options Identified for Further Analysis

- Identify ways to prioritize transportation funding based on whether local governments are working with the state to adopt planning practices that minimize impacts on state highways and mitigate the impacts that do occur
- Identify ways to encourage the state to provide earlier and more consistent input into the local planning process
- Identify changes that would allow existing mitigation tools such as SEPA or impact fees to be applied more effectively to state-owned transportation facilities
- Identify opportunities to mitigate land use impacts through better access management
- Identify ways to encourage local governments to do better land use and transportation planning as well as to more consistently red flag local land use decisions that might impact state-owned transportation facilities
- Reconsider time frames for transportation planning and the expenditure of mitigation funds

Additional Requests

- Consider conflicts under the transportation statutes
- Explore better ways to include transit districts in local, regional and state transportation planning
- Record and report when local governments do not collect the impact fees that WSDOT requests
- Report which jurisdictions' transportation elements have not yet been certified by an RTPO
- Consider looking at how cities and counties are working together as a template for how the state should work with cities and counties

Oversight Committee Meeting #3

Transportation Concurrency Analysis, State-Owned Facilities

Wednesday, October 25, 2006, 10:00 a.m. – 12:00 p.m.

Puget Sound Regional Council, Conference Room, Seattle

Committee Members in Attendance:

Sen. Mary Margaret Haugen
Sen. Craig Pridemore
Rep. Lynn Schindler (on phone)
Rep. Alex Wood
Rep. Beverly Woods
Rep. Dean Takko
Ashley Probart (AWC)

Staff:

Paula Hammond (WSDOT)
Brian Smith (WSDOT)
Elizabeth Robbins (WSDOT)
Eric Phillips (WSDOT)
Karena Houser (WSDOT)
Ralph Wilhelmi (WSDOT)

June Olah (WSDOT)
Leonard Bauer (CTED)
Kathryn Leathers (House Transportation Committee)
Kelly Simpson (Senate Transportation Committee)
Mike Groesch (Senate Transportation Committee)
Joseph Backholm (Senate Republican Caucus)
Jay Balasbas (House Republican Caucus)

Audience:

Paul Parker (WSTC)
Kathleen Davis (WSDOT)
King Cushman (PSRC)
Joyce Phillips (CTED)
Bob Drewel (PSRC)
Rick Olson (PSRC)

Brian Smith opened the meeting and requested that participants introduce themselves. He then opened the presentation by introducing the "three-legged stool" as discussion graphic that symbolizes the balance needed for growth management to work: infrastructure planning, funding, and governance.

Karena Houser continued the presentation with a review of the gaps discussed at the last meeting. She described grouping the gaps into three categories: planning gaps, funding gaps, and governance gaps. From this WSDOT had developed a preliminary list of policy concepts that address these gaps. Karena advised the group that the policy concepts were not a list of recommendations; rather, a list of possible approaches to achieve the objectives of the concurrency analysis proviso. The

group was asked to review the policy concepts and comment on what was missing as well as provide feedback on the relative importance of the policy concepts.

The committee discussed the coordination of transit planning and land use planning and suggested closely tracking the multimodal concurrency study that is also in progress.

Karena then reviewed the analysis objectives and identified the criteria used to evaluate the draft policy concepts. A few committee members had questions about the "sliding scales" and how they are used relative to each of the ten proposed policy options. Eric Phillips explained the scales are a tool for comparing the impacts of each policy concept based on the selected criteria. The scales are provided primarily to support today's discussion. Eric encouraged dialogue on "shifting the triangles" to better capture agreement on how each policy concept addresses the criteria.

Karena introduced the first planning concept, technical assistance. Discussion followed on the impact of individual plans for local government, assisting local governments before insisting on compliance, and the relative cost and effectiveness of planning solutions.

Next, Karena summarized the WSDOT plan review option as an exercise in "truth in planning," allowing local governments to make planning decisions based on good information about the impacts of those decisions on the state's transportation system. The group discussed that the state is required to be on record during the local hearings process in order to participate in a later appeal of a local decision. One committee member suggested that while planning is helpful, good communication between state, regional, and local agencies is critical.

Karena prefaced the discussion of the policy concepts for funding by stating that no one of the funding solutions appears by itself to be sufficient to solve the state's unfunded transportation infrastructure needs. The group then discussed the WSDOT Development Review policy concept. Brian Smith noted the state already reviews proposed developments through SEPA and this policy concept would devote more resources to doing a much better job at assessing mitigation and working through that process.

Karena continued the draft policy concept review and discussed redirecting state infrastructure funding to transportation improvements needed because of growth. The group again noted that transit resources should be added to the list of potential funding sources, that these funding programs act as "silos" and lack coordination, and that the divided funding results in local agencies dedicating a considerable amount of time to chasing money rather than focusing on and achieving a more comprehensive outcome. The group agreed that while infrastructure funding sources work well to achieve certain goals, overall they are not coordinated to achieve statewide planning and funding objectives.

Karena next summarized the pros and cons of authorizing the state to collect mitigation fees directly from a developer. The committee noted SEPA mitigation is a drop in the bucket in relation to how much funding is needed for state transportation infrastructure improvements, using US 2 as an example. Members of the group also commented that projects would move faster without SEPA and state mitigation collection might push "big box" businesses further away from congested community centers or result in chasing away developments and their potential

sales tax dollars. Several committee members noted that the impacts of the state collecting mitigation fees would be different in urban, suburban, and rural areas.

The policy concept authorizing the state to collect impact fees was then discussed. One committee member suggested the current impact fee system was the result of compromise and it may be time to look at policy alternatives.

Eric summarized the four governance-related draft policy options: local incentives, mandatory good planning practices, mandatory local enforcement of state mitigation, and the expansion of concurrency to state highways and ferries. He then invited committee members to continue the broader discussion of all of the draft policy concepts.

The group discussed the value of technical assistance. Some committee members felt the issue was not the availability of technical assistance but rather the reluctance of some local governments to implement good planning practices. Other members voiced strong support for better technical assistance noting that it is of particular value in smaller communities.

The consensus was there should be more emphasis on comprehensive plan review and proactive state participation in local planning processes. Some members commented the plan review process needs more "teeth." One committee member voiced concern that good planning practices, access management, and mitigation might result in incentives or requirements that are not sensitive to geographic differences.

The committee discussed subarea planning as an effective tool local governments are using to better manage the impacts of development. Several committee members voiced support of subarea planning and noted that perhaps in some situations development should be precluded if a subarea plan did not exist. Senator Haugen used Kennewick as an example of good subarea planning: the city identified preplanned access points from I-182 for future development which then went through environmental review as part of the comprehensive planning process. This provides more predictability for developers, local governments, and the state but requires a great deal of foresight.

Several committee members also agreed impact fees of some kind should be available to the state, but suggested that while collection of such fees should be mandatory, it should also remain locally driven. Other committee members did not support the idea of state impact fees, noting difficulties in deciding where fees should be spent and determining what to do if collected fees are insufficient to complete a project. One member suggested that instead of impact fees, system development charges should be considered that allow the state to establish and collect fees for regional transportation improvements needed. System development charges should be used not just for road improvements but for all system management investments, such as park-and-rides or bus stops. Brian suggested that sometimes the most cost-effective improvements to enhance the function of state transportation facilities are not necessarily on the state system. The transportation system as a whole should be evaluated and the most effective improvements should be selected without regard to the ownership of the facility. Several committee members suggested system development charges should be implemented at the regional level instead of at the state level.

The group agreed that redirecting state funding should be combined with the local incentives policy concept and should focus on better coordination of state funding sources. Several committee members commented that a good portion of these funds are already spent on state transportation infrastructure projects. The committee noted that caveats could be attached to these funding sources to ensure that local governments cooperate to protect the function of state-owned transportation facilities.

The committee also discussed alternative funding sources for transportation infrastructure needed to support growth and development. Local option gas taxes, user fees, and transportation benefit districts were mentioned as potential funding sources.

Paula Hammond wrapped up the meeting by asking what the committee's expectation is for the final analysis product. The committee agreed the pros and cons were helpful and requested that the analysis provide some gauge of the different resource levels necessary for each policy concept.

The committee agreed to continue communicating feedback and ideas with WSDOT via email. The committee requested that the results of the discussion today be circulated to the regional transportation planning organizations.

SUMMARY

Areas of General Agreement

- while infrastructure funding sources work well to achieve their particular mandates, they do not cooperate to further proactive and coordinated state-wide planning and funding objectives
- more emphasis should be placed on comprehensive plan reviews and emphasis on state participation in local planning processes (proactive)
- sub-area planning could be an effective tool for managing development impacts
- redirecting state funding should be combined with the local incentives policy concept and should focus on better coordination of state funding sources
- the analysis should provide some gauge of the different resource levels necessary for each policy concept

Requests

- continue to track the results of the multimodal concurrency study
- circulate the results of today's discussion to the regional transportation planning organizations
- draft of the revised policy concepts to the Oversight Committee by November 16th

Appendix C

The following maps are full-page versions of those used throughout the text of the study, included to provide additional background for the Concurrency Study.

Index of Maps:

Counties Mandated to Plan Under the Growth Management Act

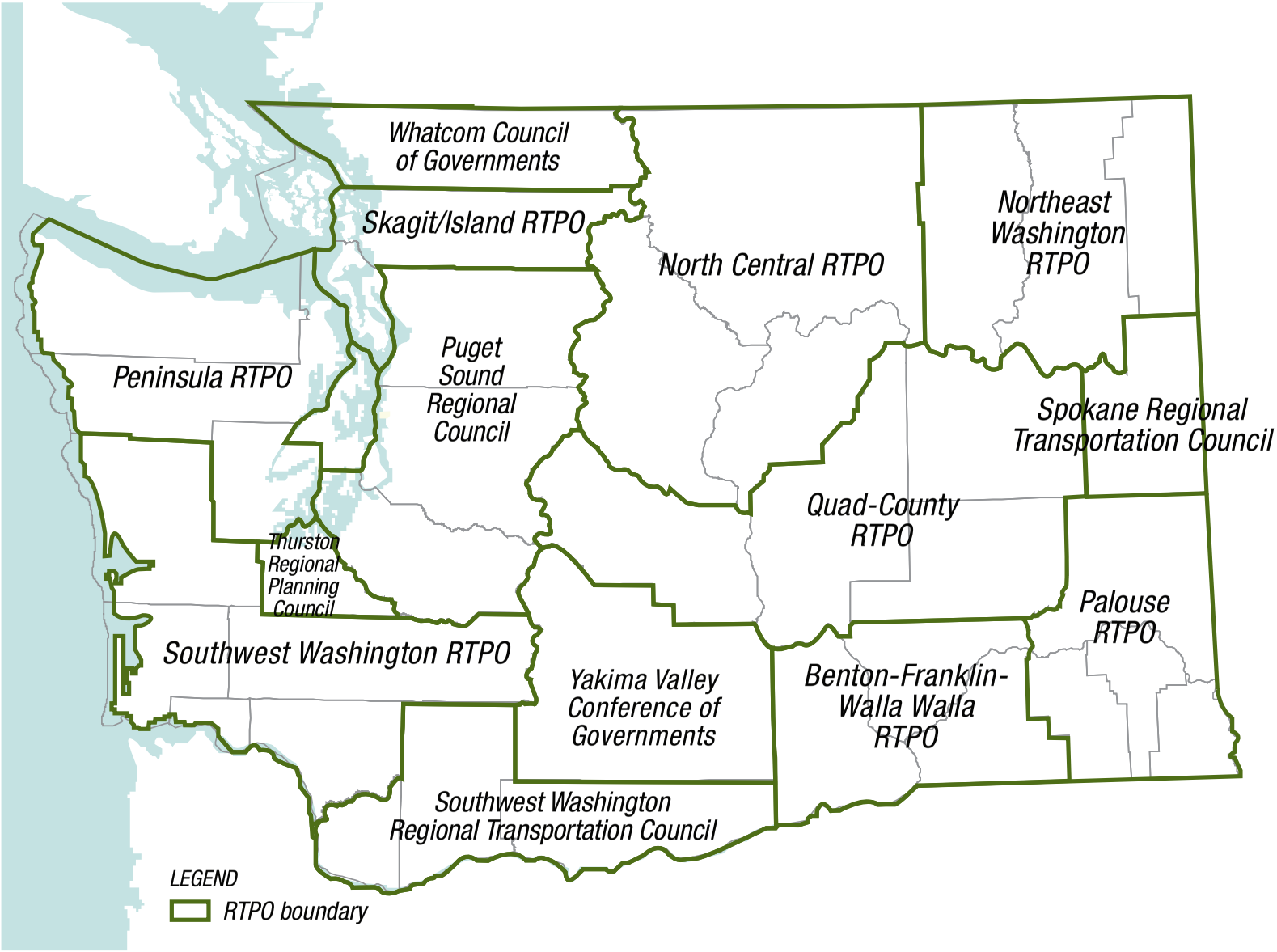
Regional Transportation Planning Organizations

Master Plan for Limited Access Highways Route Map

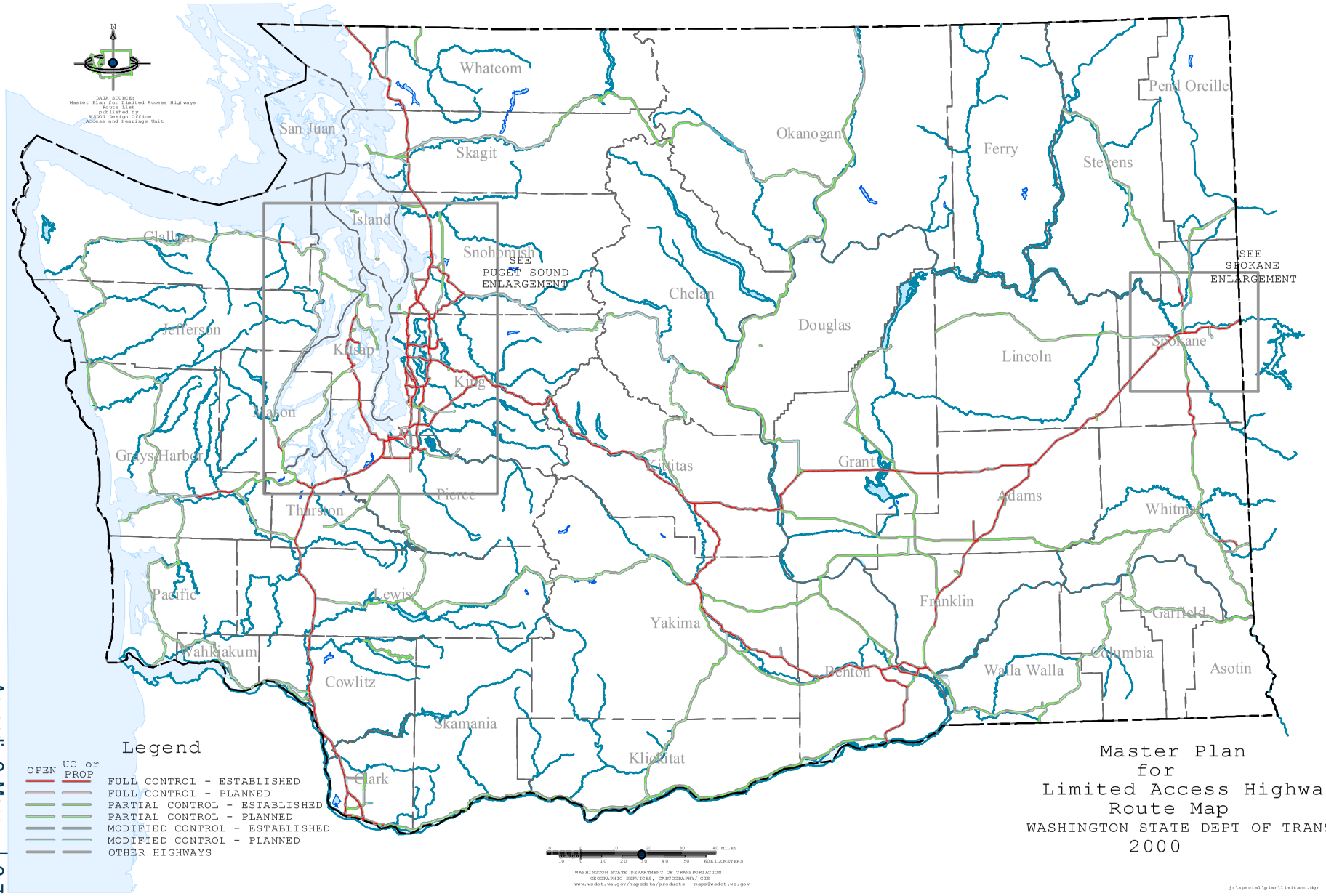
Highways of Statewide Significance

GMA Planning Counties

Regional Transportation Planning Organizations



Master Plan for Limited Access Highways Route Map



Highways of Statewide Significance

Appendix D

The following terms are defined in the Glossary, while acronyms and abbreviations are explained in the Explanation of Short Terms in Appendix E.

Glossary

Additional terms related to the transportation industry and technology can be referenced through the Transportation Research Thesaurus, of the Transportation Research Board.

A

Access	The ability to enter or leave a public street or highway from an abutting property or another public street or highway.
Access Control	The management of traffic movements onto and off of a public road in order to preserve the capacity of the roadway, minimize conflicts, and increase traffic flow. Access may be managed through the purchase of access property rights or by regulation.
Arterial	A major street carrying the traffic of local and collector streets to and from freeways and other major streets. Arterials generally have traffic signals at intersections and may have limits on driveway spacing and street intersection spacing.

C

Capital Facilities Plan Element	A required element of a comprehensive plan prepared under the Growth Management Act which consists of an inventory of existing public capital facilities, a forecast of future needs, the proposed locations and capacities of expanded or new capital facilities, a six-year finance plan, and a requirement to reassess the land use element if probable funding falls short of meeting existing needs.
Certification	A process undertaken by Regional Transportation Planning Organizations to ensure that county-wide planning policies and the transportation elements of local comprehensive plans reflect and are consistent with the adopted regional transportation plan and conform with Growth Management Act requirements.
Collision	When a vehicle impacts a person or object.
Comprehensive Plan	A generalized, coordinated and consistent land use policy statement of the governing body of a county or city. Cities or counties fully planning under the Growth Management Act must include the following elements in their comprehensive plans: land use, housing, capital facilities, utilities, rural, transportation, economic development, park and recreation.
Concurrency	The concept that public infrastructure should be adequate to serve development at the time of occupancy without decreasing service levels below a pre-established standard.

Concurrency Goal	One of the Growth Management Act's fourteen planning goals intended to guide the development of local comprehensive plans and development regulations that ensure the public facilities and services necessary to support development (such as sewer, water, roads, parks, and schools) are adequate to serve the development at the time of occupancy without decreasing service levels below locally established minimum standards.
Condition of Approval	A requirement imposed by a local government authority on a person or organization applying for a land use permit which must be met in order to secure the permit.
Congestion	Occurs when traffic demand is greater than the transportation system's capacity. Recurrent congestion is caused by constant excess volume compared with capacity. Non-recurring congestion is caused by actions such as special events and/or traffic incidents.
Corridor	A broad geographical band following the general directional flow of traffic or connecting major sources of trips. It may contain a number of streets, highways and transit routes.
County-wide Planning Policies	A framework of written policy statements agreed upon by counties and cities that provide procedural and substantive direction to the development and adoption of Growth Management Act comprehensive plans to ensure that city and county comprehensive plans are consistent.

D

Determination of Non-Significance (DNS)	The written decision by the responsible official of the State Environmental Policy Act lead agency that a proposed government action has no probable significant adverse impacts, and therefore an Environmental Impact Statement is not required.
Determination of Significance (DS)	The written decision by the responsible official of the State Environmental Policy Act lead agency that a proposed government action may have a probable significant adverse environmental impact that needs to be further evaluated in an Environmental Impact Statement.

E

Environmental Checklist	A standardized checklist prepared under the State Environmental Policy Act to provide information about a proposed government action and its impact on a variety of environmental elements.
Environmental Impact Statement (EIS)	A document prepared under the State Environmental Policy Act when a lead agency has determined that a proposed government action is likely to result in significant adverse environmental impacts. The EIS process identifies and analyzes probable adverse environmental impacts, reasonable alternatives, and possible mitigation.
Essential Public Facilities	Defined in RCW 36.70A.200 under the GMA to include airports, state or regional transportation facilities as defined in RCW 47.06.140, including improvements to facilities and services of statewide significance identified in the statewide transportation plan, and other public facilities difficult to site.
Environmental Impact Statement (EIS)	A written decision by the responsible official of the SEPA lead agency which is issued if a proposal might have a probable significant adverse environmental impact requiring further evaluation.

External Consistency — The Growth Management Act requirement that the comprehensive plans of local governments with common borders or related regional issues are coordinated, compatible, fit together, and do not thwart each other.

F

Fully Planning — Describes those cities and counties which are required or have opted to conform with all the requirements of the Growth Management Act. All other cities and counties are only required to plan for resource lands and critical areas in accordance with the Growth Management Act.

G

Growth Management Act (GMA) — Initially adopted by the 1990 Washington State Legislature, this legislation created a state framework for local comprehensive planning and land use regulation to address uncoordinated and unplanned growth and express common goals for the conservation and wise use of land.

H

Highways of Statewide Significance (HSS) — A state highway designation adopted by the legislature which applies to approximately half of the state's highway system, including interstate highways, interregional principal arterials, and major ferry routes.

I

Impact Fees — Payments imposed by local governments as a condition of development approval to pay for a proportionate share of the costs of public facilities needed to serve a new development.

Internal Consistency — The Growth Management Act requirement that the provisions of a local government's comprehensive plan and development regulations must be compatible, fit together, and not thwart each other.

L

Land Use Element — A required element of a comprehensive plan prepared under the Growth Management Act which designates the general distribution and general location and extent of the uses of land, accounting for population densities, building intensities, and estimates of future population growth.

Lead Agency — The state or local agency responsible for complying with the review process, compiling and assessing environmental information and making decision under the State Environmental Policy Act.

Level of Service Bill — House Bill 1487 adopted by the 1998 Washington State Legislature which created new local planning requirements for state-owned transportation facilities and services, implemented a new classification scheme for state-owned highways, and exempting transportation facilities and services of statewide significance from the transportation concurrency requirement, except in Island and San Juan counties.

Level of Service Standards (LOS)	Minimum benchmarks for the performance of the transportation system which may be based on the volume of traffic compared to the capacity of the facility, travel time, or a multi-variable performance indicator accounting for factors such as road conditions or safety hazards.
Limited Access Highways	Washington State highway facilities on which access is controlled by acquiring access property rights from abutting property owners. There are three levels of limited access control: full, partial, and modified.
Local Transportation Act (LTA)	Adopted in 1988, it allows local governments to singly or jointly impose impact fees to fund a portion of the off-site transportation improvements needed as a result of economic development and growth.

M

Managed Access Highways	Washington State highway facilities on which access is controlled by regulation. There are five levels of managed access control, with Class 1 being the most restrictive and Class 5 being the least restrictive.
Metropolitan Planning Organizations (MPOs)	Agencies designated by the governor to administer the federally required transportation planning process for metropolitan areas of 50,000 or more.
Mitigated Determination of Non-Significance (MDNS)	The written decision by the responsible official of the State Environmental Policy Act lead agency when mitigation measures or changes to a proposed government action are agreed on that will reduce likely significant environmental impacts to a nonsignificant level and therefore an Environmental Impact Statement is not required.
Mitigation	Measures taken to avoid, minimize, rectify, compensate, reduce, or eliminate adverse impacts on the environment. Monitoring and taking appropriate corrective measures is also mitigation.
Mitigation Fees	Reasonable payments imposed by local governments as a condition of development approval to mitigate the identified direct adverse impacts of a new development.
Multimodal Transportation Systems	Buses, ferries, cars, bicycles, and aviation are all examples of modes of travel. In a multimodal transportation system, each of these components is factored in so service can be delivered efficiently.

O

Off-Site Transportation Improvements	Those transportation capital improvements designated in the local plan adopted under the Local Transportation Act that are authorized to be undertaken by local government and serve the development needs of more than one development.

P

Peak Period	The time period during which the maximum amount of travel occurs. Generally, there is a morning and an afternoon peak period, and less frequently, a midday peak period. The peak period usually extends for at least two hours, encompassing the peak hour.

Principles Governing State Agency Correspondence Under the Growth Management Act	Guidelines developed and adopted by seven state agencies, the Washington State Association of Counties, and the Association of Washington Cities, which outline ways to facilitate collaborative engagement between state and local governments on local land use matters.

R

Regionally Significant State-Owned Transportation Facilities	State highways and ferry routes not designated as Highways of Statewide Significance, including collector routes, principal arterials that are not interregional, and minor ferry routes. Approximately half of the state's highway system is considered regionally significant.
Regional Transportation Plan	Developed by Regional Transportation Planning Organizations to set forth a regional transportation approach, including capital investments, service improvements, programs, and transportation demand management measures, to guide the development of an integrated, multimodal regional transportation system.
Regional Transportation Planning Organizations (RTPOs)	Voluntarily associations of local governments authorized by the Growth Management Act to coordinate transportation planning on a regional level.

S

State Environmental Policy Act (SEPA)	Adopted in 1971 as Washington State's basic environmental charter, it defines a process and minimum requirements for state and local agencies to disclose and consider environmental impacts when making decisions. Additionally, SEPA gives state and local agencies the substantive authority to act on the basis of the impacts disclosed by denying or imposing conditions on government actions.
Substantive Authority	The power given to any state or local lead agency by the State Environmental Policy Act to condition or deny any proposed government action based on its environmental analysis.

T

Threshold Determination	A formal decision made under the State Environmental Policy Act as to whether a proposed government action is a "major action having a probable, significant, adverse environmental impact."
Transportation Benefit District (TBD)	A governmental body created by popular vote within one or more eligible cities or counties with independent taxing authority and the ability to assess impact fees under the Local Transportation Act.
Transportation Concurrency Requirement	A provision of the Growth Management Act which requires cities and counties to deny developments that cause the level of service on a locally-owned transportation facility to decline below the adopted standard, unless transportation improvements or strategies to accommodate the impacts of that development are completed within six years of development approval.
Transportation Element	A required element of a comprehensive plan prepared under the Growth Management Act which includes, among other things, ten-year traffic forecasts and the location, timing and capacity needs of future growth, a multi-year finance plan, and demand-management strategies.

Transportation Improvement Program (TIP)
A schedule of intended transportation services and improvements prepared by local governments, regional transportation agencies, and the State Department of Transportation. Projects not included in the TIP are ineligible for federal funding.

Transportation System
Public and private infrastructure involved in moving people or goods.

U

Urban Growth Areas
Areas designated by counties under the Growth Management Act where growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces is encouraged and outside of which growth can occur only if it is not urban in nature.

W

Washington's Transportation Plan (WTP)
A policy document developed by the Washington State Department of Transportation and the Washington State Transportation Commission in coordination with local governments, regional agencies, and private transportation providers to establish a vision and goals for developing the statewide transportation system, identifies significant statewide transportation policy issues, and recommends statewide transportation policies and strategies to the legislature.

Appendix E

Explanation of Short Terms

The following acronyms and abbreviations are explained for ease of reference and use.

CERB	Community Economic Revitalization Board
CPSGMHB	Central Puget Sound Growth Management Hearings Board
CRAB	County Road Administration Board
CTED	Department of Community Trade & Economic Development
DS	Determination of Significance
DNS	Determination of Non-Significance
EIS	Environmental Impact Statement
ESSB	Engrossed Substitute Senate Bill
EWGMHB	Eastern Washington Growth Management Hearings Board
FMSIB	Freight Mobility Strategic Investment Board
FTE	Full Time Equivalent
GMA	Growth Management Act
HB	House Bill
HSS	Highway of Statewide Significance
LOS	Level Of Service
LTA	Local Transportation Act
LUPA	Land Use Petition Act
MDNS	Mitigated Determination of Non-Significance
MPO	Metropolitan Planning Organization
PSRC	Puget Sound Regional Council
PWB	Public Works Board
RCW	Revised Code of Washington
RTPO	Regional Transportation Planning Organization
SEPA	State Environmental Policy Act
SHB	Substitute House Bill
SR	State Route

SRTC	Spokane Regional Transportation Council
SSB	Substitute Senate Bill
TBD	Transportation Benefit District
TIB	Transportation Improvement Board
TIP	Transportation Improvement Plan
TRAC	Washington State Transportation Center
WAC	Washington Administrative Code
WSDOT	Washington State Department of Transportation
WTP	Washington Transportation Plan
WWGMHB	Western Washington Growth Management Hearing Board