

2.1.00 Overview

Proposed developments are looked at from a number of perspectives such as transportation planning, traffic operation, safety, etc. Type and location of the development influences how an individual project is evaluated. This chapter is divided into three parts: Part 1 discusses state and local long range plans affecting the development review process; Part 2 discusses how to evaluate a proposed development and respond to the local agency; and Part 3 discusses how to participate in the local agency's hearing process.

PART 1 Long Range Planning and the Development Review Process

2.1.01 Similarities Between Long Range Planning and Development Review

There are many similarities between the transportation planning and development review. Both processes concern the interaction between transportation and land use and require coordination and cooperation between WSDOT and local jurisdictions. Both analyze traffic conditions and compare these conditions with level of service standards or design criteria to determine if there will be mobility, safety, or environmental deficiencies. Both analyze and identify potential solutions to mitigate or remove these deficiencies. Both concern funding. The planning process prioritizes improvements and is the first step in programming funds for funding projects by the state legislature. Identified solutions in the development review process are used to determine the costs developers will be required to pay to mitigate adverse impacts from the development.

Because of these similarities there is a close relationship between long range planning and development review. For example, if a WSDOT improvement project has recently been completed on a state highway as a result of the planning and programming process, the additional traffic from a newly proposed development may not reduce the level of service below standard and no mitigation from the developer would be required. An identical new development in the vicinity of a different state highway that has not been improved may generate enough traffic to require developer mitigation. The below paragraphs briefly describe WSDOT's Highway System Plan (HSP), the Capital Improvement and Preservation Program (CIPP) and Route Development and Corridor Plans. All of these plans will identify if improvements are being planned on a state facility. The CIPP will also provide an estimate of when the improvements are programmed for funding. One reason to consult these plans concerns WSDOT right-of-way (ROW) needs. The developers should take WSDOT improvement projects into consideration in their final site development. If a proposed development borders on WSDOT's highway which is programmed in the CIPP for improvements within the next six years, part of the mitigation for the new development could be a right-of-way donation or a developer contribution to WSDOT's highway improvement project costs. Large developments that add significant traffic may also result in a need to develop a different project improvement in the next planning or programming cycle.

2.1.02 WSDOT Highway System Plan (HSP)

The Washington State HSP is the element of Washington's Transportation Plan (WTP) that addresses the state's highway system. The HSP is created in cooperation with Metropolitan/Regional Transportation Planning Organizations (MPOs/RPTOs). It includes a comprehensive assessment of existing and projected 20-year deficiencies on our state highway system. It also lists potential solutions that address these deficiencies. The HSP:

- Forecasts future transportation needs based on WSDOT maintenance, operation, preservation, mobility, safety, economic, and environmental programs.
- Specifies objectives and supporting action strategies for our state highway system.
- Serves as the basis for the capital investment goals and strategies and assessment of needs for each program.
- Assists local authorities and tribes in coordinating their comprehensive planning process with future highway needs.

2.1.03 Capital Improvement and Preservation Program (CIPP)

The CIPP, also known as the "10-year Implementation Plan," is the reference point for measuring biennial program delivery. The CIPP includes WSDOT's projected 10-year capital improvement projects and cost estimates. The CIPP also communicates WSDOT's plan to deliver projects funded during the legislative session.

CIPP is presented in CD format and can be found on WSDOT website:
<http://www.wsdot.wa.gov/Accountability/Budget/CIPP.htm>

2.1.04 Route Development Plans and Corridor Plans

Route Development Plans (RDPs) and Corridor Plans are planning studies on specific state highway facilities to determine future deficiencies and proposed solutions. These studies include analyses of operating conditions, environmental considerations, population, and land-use changes as well as right of way and other issues affecting the future of a state highway and its neighbors.

More information on Route Development Plans is available online at:
<http://www.wsdot.wa.gov/ppsc/hsp/RDPlans.htm>.

2.1.05 Local Agency Comprehensive Plans

Comprehensive Plans provide local agencies a legally recognizable framework for making decisions about land use, transportation, public facilities, parks and open space. The GMA defines a comprehensive plan as a generalized coordinated land use policy statement of the governing body of a county or city. A comprehensive plan must include land use, housing, capital facilities, utilities and transportation elements. It may include other elements relating to physical development within its boundaries. The plan also provides the basis for local agency development ordinances and capital improvement programs.

2.1.06 Local Decision-Making Authority

Under SEPA and GMA, a local government makes local land use decisions. The local decision-making authority is typically delegated to a hearings officer, planning commission, city council, board of commissioners or administrative body such as a Variance Committee or Design Commission. Each type of land use action has prescribed procedures. Different kinds of procedures are subject to different requirements regarding public notice, participation, approval criteria, hearings and appeal deadlines.

2.1.07 WSDOT's Role in Local Development Review

WSDOT is considered an agency with Environmental Expertise in the local development review process similar to local water, sewer, or fire protection agencies. As an agency that possesses special expertise in the state transportation system, WSDOT has established standards and policies for facility function and performance. These standards, policies and local approval criteria are applied to the applicant's development proposal to form WSDOT's mitigation recommendations to the local government. The responsibility for a local land use decision is with the local governing body. Like other interested parties, WSDOT has the opportunity to appeal the local land-use decision. (See Chapter 7 for additional information on appeals). WAC 197-11-920 specifies which agencies have expertise in various environmental categories.

PART 2 Responding to Land Use Proposals

2.2.00 WSDOT's Interest in the Proposal

When a development application or notice is first received by WSDOT, it is reviewed to determine if the proposal will impact state facilities. Region staff also uses their local knowledge about problematic sections of highway that may have high accident rates, substandard geometrics or other operational issues. Types of land use proposals that are generally of interest to WSDOT are:

1. Development site is adjacent to a state highway;
2. Development proposes access to a state highway;
3. Development site is not adjacent to the state highway but contributes a "significant"¹ number of trips to the highway.
4. Development site is located in the footprint of a future state highway alignment;
5. Land divisions or lot line adjustments for property with frontage on or proposed access to a state highway;
6. Proposed noise-sensitive land uses adjacent to state highways;
7. Development site is located adjacent to a railroad right of way or could affect a rail crossing;
8. Airport expansions;
9. Land use/development proposals that could affect state airport expansions, such as cell towers, or noise-sensitive land uses in the vicinity of public use airports;
10. Aggregate resource sites;
11. WSDOT surplus property sales;
12. WSDOT turn back agreements;
13. Motorist signing and off premise outdoor advertising signs (billboards);
14. Cellular or microwave towers;
15. Comprehensive plan amendments and zone changes, (including map and text amendments affecting transportation);

NOTE: Also see 3.1.07 under SEPA: "Which Environmental Impacts Should WSDOT Normally Review?"

¹ For definition of "significant", refer to Chapter 4, Section 4.1.03 and 4.1.05.

2.2.01 Evaluating a Land Use/Development Proposal

To assist in evaluating whether a proposed development will have the potential to impact state highways, a set of questions has been developed. Keep in mind, this is a first cut review, and Chapter 4 contains a detailed discussion of how to analyze a land-use/development proposal.

For proposed development projects:

1. Could the proposal significantly impact a state highway, i.e. trigger signal or left turn warrants; increase AM, PM peak hour trips or average daily traffic (ADT) on the highway; add traffic to an already dangerous intersection or an intersection where mobility standards are not met, or add more drainage into the state storm water system?
2. Does the proposal include a direct access onto a state highway?
3. Will the proposal result in a change to an existing site access that will affect a state highway?

For proposed comprehensive plan amendments or zone change:

Is there a proposed comprehensive plan amendment or zone change that could have a “significant impact” on a state transportation facility?

NO: If the answer is NO to ALL of the above questions, then there is probably no impact to a state facility and no further WSDOT analysis or response is required. The WSDOT may wish to submit a letter to the local agency stating: “WSDOT has no objection to the proposal.” This confirms to the local government that WSDOT received notification and conducted a review.

YES: If the answer is YES to ANY of the above questions, then further review is warranted, as follows:

Development Application Without Access to a State Highway

1. Has a Traffic Impact Analysis (TIA) been prepared and is it available? If a TIA has not yet been prepared, is there an opportunity to work with the local agency or developer on preparing a TIA?

Congestion and delay can be evaluated using two different methods:

- If using level of service (LOS): Are there segments of the highway that are below the LOS threshold or will fall below the LOS threshold as a result of the development?
 - If using volume/capacity (v/c) ratio: Are there segments of the highway that already exceed or will exceed the v/c ratio-threshold as a result of the development?
2. Will the development overwhelm the local street network, causing traffic to reroute to the state highway? Does the development anticipate future local streets connecting to the state highway? Will the development provide for new streets, particularly those that would offer a parallel, alternative route to the state highway?
 3. Will the development trigger turn-lane/signal warrants and require highway improvements.
 4. Are there sections of the state highway with safety issues that will be impacted by additional traffic generated by the development?

5. Are there any additional adverse environmental impacts (e.g., storm water, noise)?
6. Will there be any outdoor advertising visible from a state highway?

NOTE: See Sections 2.2.02, 2.2.03, 2.2.04 and Appendix 2 for response examples.

Development Application With Access to a State Highway

In addition to the questions above, also consider:

1. Access Management compliance: How does spacing of the proposed access connection conform to the highway classification set by the Access Management requirements of Chapters 468-51 WAC and 468-52 WAC?
2. Limited Access compliance: Is the proposed access connection within a limited access area? If it is, see Chapter 6, Part 2.
3. Access number and location: Can the development function with a single highway access or can the access be shared or be located along a property line, etc?
4. Access Connection permit: Does the property have an existing, legal access?
5. Alternative accesses: Are there other ways to access the property besides the state highway, such as using local streets or county roads?

2.2.02 Types of WSDOT Responses

WSDOT comments to local governments on land use/development applications are made in the form of recommendations. It is the local government decision-making body that makes the decision whether to require WSDOT requested mitigation measures. In written and oral comments to a local government, make clear whether the WSDOT recommendation(s) is simply a good practice being recommended or whether compliance is supported by planning documents, or is mandatory to be consistent with local code, state and federal law.

Different Types of Responses Will Include:

- Mandatory/required by law (local code, state statutes and rules, and/or federal law and case law).
- Supported by planning documents (HSP, CIPP, and/or Comprehensive Plan).
- Advisory (good practice).
- Informational only (potential future issue, permit coordination/contacts).

NOTE: See Appendix 2 for some examples of WSDOT response letters.

2.2.03 Potential WSDOT Recommendations

- No objection.
- Support proposal.
- Support proposal with certain conditions for approval.
- Object to the proposal, but if possible, recommend a course of action that would make the proposal acceptable to WSDOT. For example, the applicant may be responsible for installing a traffic signal, or work with the local government to amend its comprehensive plan, Local Improvement District or to identify a needed intersection improvement. Funding mechanisms and a timeline for the mitigation measure would be components of the recommendation.
- Object to proposal and recommend denial.

2.2.04 WSDOT Response Letters

In order for WSDOT's input to local governments to become part of the official decision record, WSDOT must submit response letters. The response letters should be formal and be written in terms of WSDOT requirements and applicable local codes, ordinances, etc. The letters should be written to help the local decision-makers understand how state law and WSDOT standards and practices relate to the local approval criteria. If WSDOT's authority is in doubt, see Section 1.1.06 - WSDOT Review Authority.

WSDOT's comments are based on the materials submitted by the applicant and relevant state laws, policies, practices and administrative rules. WSDOT comments include facts, conclusions and recommendations. Because the local government has the authority to interpret its own ordinance, WSDOT staff may want to state . . . "It is WSDOT's understanding that this requirement means that . . ." to help define certain local code provisions. Examples of WSDOT letters to local governments show how different types of recommendations may be conveyed. See Appendix 2.

WSDOT's most common response to the local land use proposal is approval with certain conditions. The conditions allow the applicant the opportunity to modify its plans to meet local and state standards. The most common condition of approval proposed by WSDOT is a requirement that the applicant obtain a state approach permit prior to final development approval (e.g., issuance of the building permit). This helps ensure that WSDOT-related conditions of approval pertaining to access are satisfied before the building permit is issued. In this manner, the local and state regulations are coordinated. Conversely, WSDOT may condition an access permit approval on demonstration of a locally approved site plan that is consistent with the Access Management laws.

Include the following information in WSDOT letters to local governments to help communicate and to establish a legally defensible position:

Local file number and project title.

Include a brief description of the proposal from the official land-use notice. Be clear whether the review is for a new proposal versus a re-submittal by the applicant. If brevity is appropriate, it may suffice to state the general nature of the development and add, "As described in the public notice."

Identify the applicable local approval criteria. The local planner can help provide this information. It is not always apparent or included in the public notice. Quote regulations as appropriate. The code or policy citation number may be adequate for a hearings officer who might have familiarity with the local regulations. It may be beneficial to specifically quote the code or policy language for a citizen commission.

Provide facts that pertain to the approval criteria. Example: "The applicable level of service threshold for this section of state highway is LOS D. Traffic generated by this development will impact a highway segment or an intersection and cause it to fall below the LOS threshold. The proposed number of new trips during the AM peak hour is 500. Build-out of the development is expected to occur in the year 2006." Note: These are all facts with no conclusion.

Provide conclusions that are clearly distinguished from the facts. You may wish to have a section in the letter titled "Conclusions," or you may wish to state the conclusion(s) in the opening paragraph followed by the facts that support the conclusion(s). In this way the decision-makers can more quickly understand the content of the letter. Example: "Based on our analysis the applicable LOS standards of Highway X can support the additional traffic that will be generated by the proposed zoning change. WSDOT has no objection to the proposal."

Attach the traffic analyst's comments if it is a contentious case. When this is done, the cover letter can focus the reader on the impacts of the traffic analysis and the recommended course of action. Attaching the traffic analyst's comments can support the conclusion(s) and recommendation(s) and demonstrates that professional analysis and considered judgment were involved.

Recommend a course of action. Offer options when appropriate. Example: "WSDOT recommends the city do one of the following:"

Provide WSDOT contacts as appropriate. Example: I can be reached at (phone number) should you have any questions. Preferably, there is a single WSDOT spokesperson. You may wish to include a list of WSDOT contacts as a standard part of comment letters as shown in Appendix 2.

If you intend to be present at the hearing, say so in the letter. Example: I intend to give oral testimony at the October 3rd hearing before the Planning Commission and look forward to helping answer transportation related questions.

Request that the WSDOT letter be included in the record.

Request a copy of the written decision.

Copy the applicant and others as appropriate. List internal distribution to minimize who the applicant should contact to resolve concerns. If this practice is not followed, the applicant may contact other WSDOT people without your knowledge.

2.2.05 **Mitigation in the Form of Conditions of Approval**

Local governments are required to adopt regulations that include: "*A process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities, corridors or sites...*" as a part of implementation of the SEPA.

Typically, either the applicant's Traffic Impact Analysis (TIA) includes recommended mitigation or WSDOT staff recommends mitigation. The state should secure the local government's concurrence on the proposed mitigation.

It is important to identify a mechanism to ensure the applicant is responsible for the identified mitigation. This is usually done through conditions of approval and proposed as part of the applicant's submittal and reflected in the record of decision. If the mitigation is substantial or exceeds the proportionate share of the applicant's impact and the applicant is not willing to make the improvements, other remedies or denial may be appropriate. Section 3.1.14 and Chapter 4 of the Manual discuss mitigation in more detail.

2.2.06 **Ways to Work Effectively with Local Partners**

The following strategies can help WSDOT work with local partners on land use/development reviews:

1. Work with local governments to notify WSDOT of major development proposals on a pre-application basis.
2. Attend pre-application meetings. Identify information that needs to be included in the land use application in order for the applicant to address the approval criteria. Provide written comments either brought to the meeting or following the meeting. Provide internal contacts and the best information available. Try to resolve conflicts.
3. Know the local approval criteria. This is essential because it forms the primary basis for the decision. The local approval criteria are the regulations in place at the time of the application submittal. Note that comments do not have to be limited to the criteria identified by the local planning department. Identify laws, policies, plans

Coordinating Review and Response

and standards that are applicable to WSDOT facilities which need to be included as part of WSDOT's analysis. The approval criteria may include previous conditions of approval that apply to the site. For example, the site may be part of a planned unit development (PUD) or Local Improvement District (LID) that has specific approval criteria that apply at the time of development.

4. Know the review process: timelines, decision-making body and appeal process.
5. Provide timely responses. Respond to the local government in time to get the WSDOT comments included in the staff report and recommendation. You may wish to provide the local staff with an electronic version of your letter so they can easily incorporate WSDOT's comments and recommendations into the staff report.
6. Provide the local staff with the actual condition of approval language versus merely an idea of what is needed. This provides clarity and helps the local staff. The condition language should address when the condition is to be performed. Stating that the condition is to be performed prior to the issuance of the primary building permit usually works well. It may be helpful to discuss the language of the condition with the local staff to see if there are ways the condition can be written to best fit with their development and/or building permit review process. The local staff is authorized to make their own recommendations and offer improved language following the receipt of the WSDOT comments. Having a uniform position with the local staff helps eliminate confusion and enhances WSDOT's chances of securing the decision-making body's approval.

2.2.07 Internal Coordination

For the agency to successfully participate in the local land use process, the responding WSDOT Development Services representative must ensure the agency speaks with one voice. This means contacting other units of WSDOT, as well as managers, prior to submitting a comment letter. The specifics of the development proposal will dictate which of the parties listed below should be brought into the review. Depending upon the impact a development may have, the WSDOT Development Services representative may need to inform the Region Planning Manager and Region staff for their input before submitting the agency's response.

2.2.08 Coordination with Other WSDOT Units

WSDOT is one of the most complex state agencies in terms of roles, responsibilities and regulations. Below are examples of units that may need to be contacted for input or just to discuss problems and possible solutions to a development application. It is preferable to begin with staff at the Regional level.

Traffic Section: The appropriate Regional Traffic Sections should handle all traffic related issues. Traffic Analysis, Channelization Plans, Electrical Design, Traffic Control and signing, both public and private, are the major responsibilities of this group. Regional Traffic is responsible for regulating signs on private property that are visible from the state highway, logo signs for gas, food and lodging, and tourist-oriented directional signs (motorist signing). In some Regions, motorist signing is the Maintenance Section's responsibility.

Hydraulics/Water Quality Section: The Hydraulics Section, a subgroup within the Environmental Section, has staff in both the Regions and Headquarters. This section can assist in assessing drainage and water quality compliance issues. WSDOT Drainage Permits, however, are handled through the Region Utilities Section.

Utilities Section: The Regional Utilities Section is responsible for coordinating with utility providers to locate or re-locate utilities for development projects. It is also responsible for electrical service agreements, permits for utility encroachment onto state highway property, and coordination with Headquarters Utilities Section. It may also be responsible for handling railroad grade crossings and coordinating with the railroads for affected private rail crossings.

Environmental Section: This section has staff both in the Regions and Headquarters. Environmental issues can range from threatened and endangered species to wetlands to historic buildings.

Long Range Planning: The Regions have long-range planners who should be familiar with local government comprehensive plans.

Access and Hearings Section: This section, based at Headquarters, is the approving authority for any encroachment within State limited access right of way.

Real Estate Services Section: This group handles air space leases, easements and real property transactions such as right of way donations and purchases. Most issues are dealt with at the Regional level.

Attorney General's Office: Attorney General's Office is available to assist WSDOT for all legal matters. This could include reviewing developer agreements, hearing preparation, consultation on real estate transactions, public correspondence, politically sensitive issues, etc.

2.2.09 Coordination with Other Groups

WSDOT has increased its commitment to work closely with local governments, other agencies and the general public. This can result in the WSDOT's development review responses extending beyond submitting letters to local government. Larger projects with sensitive issues can require WSDOT staff coordination and interaction with the groups following:

Local Planning and/or Public Works Departments: Local departments offer a wealth of information regarding local plans, policies, land use ordinances and street standards. WSDOT and local staff can work cooperatively to draft conditions of land use approval that meet the requirements of the state and local governments.

Community Groups: Proactive outreach and education of local community groups can provide WSDOT with critical support with regard to politically sensitive projects.

PART 3 Land Use Hearings

2.3.00 Ways to Participate Effectively in the Local Hearings Process

The following tips are intended to help WSDOT participate in the local land use hearings process:

1. To prepare for a hearing, become familiar with the following:
 - Traffic analysis, if any
 - Relevant statutes
 - Local comprehensive plan text and map
 - Relevant ordinance (development code)
 - All materials filed by the applicant

Coordinating Review and Response

- Staff reports
 - Previous proposals on the property
 - Other studies, plans and minutes relating to the proposal.
2. Discuss the proposal with the local staff. Try to get a feel for its position on the proposal. You can use this as an opportunity to reach a consensus.
 3. View the property.
 4. Be familiar with the procedural rules such as the order of presentation of written evidence and oral testimony, local jurisdiction's appeal requirements and review procedure.
 5. Know all deadlines for submission of written evidence.
 6. Know your audience. Try to find out the interests and inclinations of the local body hearing the development application.
 7. The WSDOT staff presentation can be either in writing or oral. You will have a better opportunity to persuade the local hearing body if you are present and can respond to questions. If an oral presentation is given, it should also be submitted in writing.
 8. Carefully listen and take notes on the other testimony presented in order to be prepared to rebut any evidence submitted by others that contradicts WSDOT's testimony, whether WSDOT is the proponent or opponent. (See discussion on Burden of Proof in Section 2.3.01).
 9. If WSDOT is the proponent of a land use action, listen carefully for any additional criteria raised by the opposition. If additional criteria are raised, staff may need to explain why they are not applicable or submit evidence to show why the proposed change complies with the criteria.
 10. If WSDOT is the opponent to the land use decision, do not rely on the local government to identify all applicable criteria. If you believe certain decision criteria apply, but have not been identified by the local jurisdiction, discuss the matter with the local government staff, and be prepared to identify that criteria in testimony.
 11. Identify if the development proposal will have a significant adverse impact(s) on transportation facilities per RCW 43.21C (SEPA), and clearly explain how and why.
 12. Identify if the development proposal amends a functional plan, acknowledged comprehensive plan or land use regulation, and clearly explain how and why.
 13. Use charts, maps and other graphics to explain your position.
 14. Identify, by reference to number and name, all applicable statutes, administrative rules, plan provisions and ordinances that are applicable to the land use decision.

2.3.01 Burden of Proof

The proponent of land use/development application has the burden of proof in demonstrating that the application meets all applicable legal standards and review criteria. This applies to the applicant initially and then to the local government whenever a decision approving the proposal is made in full or in part. Professionally prepared traffic impact analyses are often submitted as part of the land-use application to address the burden of proof.

2.3.02 Oral Testimony and Written Evidence

It is extremely important when providing either oral testimony or written evidence, during the local jurisdiction's hearing process, that WSDOT include all the facts, analyses, and conclusions and/or opinions in WSDOT's possession. The oral testimony or written evidence must be clear, accurate, and presented in a logical sequence. It must be complete, since WSDOT may not get a second opportunity to supplement the hearing record or submit additional information or analysis. WSDOT must clearly define what mitigation conditions it is seeking and describe why the conditions are necessary, giving the appropriate facts and analyses upon which WSDOT is basing its opinion. Providing complete information in an understandable manner will assist the hearing judge, panel, or commission in making a decision. In addition, making a clear and complete record will greatly assist should the matter be appealed.

2.3.03 Substantial Evidence

Substantial evidence that the proposed change complies with the applicable criteria must be contained in the record of decision. "Substantial evidence" is evidence a reasonable person would accept as adequate to support a conclusion. The proponent must provide evidence to show that the applicable criteria have been met. The burden then shifts to the opposition to show why this evidence is not substantial, i.e., it does not address the criteria, the person presenting the evidence is not qualified, etc. If the opposition provides evidence that detracts from the proponent's evidence, the burden shifts back to the proponent to bolster his or her evidence. The bottom line is, if you are the opponent, you cannot simply mention applicable criteria and rest. You need to see whether the proponent then provides evidence to show why those criteria are not applicable or have been met. If they do so, you should try to rebut their testimony. Opponents do not always get an opportunity to rebut.

The usual sequence for giving testimony at a land use hearing is:

- Applicant
- Other Proponents
- Opponent
- Applicant's Rebuttal

