



KINGSGATE PARK AND RIDE

Transit Oriented Development Pilot

REPORT TO THE LEGISLATURE JANUARY 2020



PREPARED BY
WSDOT

IN COLLABORATION WITH
the City of Kirkland
Sound Transit
and King County Metro

Executive summary

As part of Section 214 of Engrossed Substitute House Bill 1160, the Washington State Department of Transportation (WSDOT) was directed to execute a transit oriented development (TOD) pilot project at the Kingsgate Park and Ride in Kirkland, Washington. As part of the pilot development, WSDOT was charged to report to the legislature on any legislative actions necessary to facilitate the pilot project and future transit oriented development projects. The legislative actions summarized below could be taken separately or in combination and address different types of barriers to TOD at WSDOT owned park and ride lots.

- Amend RCWs 47.12.080, .063, and .120 by removing the requirements that WSDOT must declare the property unused, no longer required for transportation purposes, or held for highway purposes, but not presently needed, prior to allowing the disposal or leasing of such property.
- Amend RCW 47.04.295 and RCWs 47.12.080, .063, and .120 to grant WSDOT discretion in whether or not to charge fair market value for the lease or disposal of park and ride real property when the lease or disposal is for the purpose of providing affordable housing or multimodal transportation infrastructure.
- Amend 47.04 RCW to authorize WSDOT and transit agencies operating WSDOT owned park and ride lots to charge a fee for parking and enforce parking rules, including issuing citations.
- Give WSDOT explicit discretion to enter into agreements that would enable use of park and ride stalls for other purposes at such times as there is excess capacity due to lack of demand for their primary purpose.
- Establish a fund in which the revenues from the sale or lease of park and ride facilities would be deposited. Authorize WSDOT to spend those funds on park and ride facility improvements, including those supportive of TOD. Create a mechanism by which WSDOT could harness a portion of increased property values due to development in order to pay for improvements on the site or for future transportation investments.
- Amend RCW 47.12.270 and 47.04.295 to authorize conversion of motor vehicle parking stalls to other multimodal transportation purposes, including entering into agreements with third party mobility providers if the conversion would help move more people or will aid in the conservation of energy resources.
- Amend Chapter 47.46 RCW to model it on the successful public-private partnership (P3) laws in other states.
- Dedicate more funding in the capital budget to support specific public benefits within TOD on public land, e.g., a new TOD set-aside in the State Housing Trust Fund that does not reduce or compete with other important set-asides.

The barriers created by current statutes and potential solutions are expanded upon in the full report that follows.

Background

A TOD facility can provide multiple community benefits such as affordable and market rate housing, commercial development, and institutional facilities in addition to transportation efficiency. Many stakeholders can benefit from TOD, including residents of all income-levels in the community, municipal and transportation agency partners, commuters, private retail and businesses, and private developers.

TOD supports Washington's transportation system policy goals as spelled out specifically in RCW 47.04.280, such as the stewardship of public dollars through an efficient use of state property; enhancement of Washington's quality of life through transportation investments that promote energy conservation, enhance healthy communities and protect the environment; and an economic reinvigoration of the state's prior investments in the transportation system. TOD also supports the Puget Sound region's goals. According to the Puget Sound Regional Council's (PSRC) Growing Transit Communities Strategy, TOD "is about building compact and walkable communities around high-capacity transit. TOD is a key strategy to achieve VISION 2040's goals for regional mobility, economic prosperity, and environmental sustainability." TOD supports some aspects of Kirkland's values and goals. Kirkland City Council's vision is to be an attractive, vibrant and inviting place to live, work and visit" and to "reduce reliance on single occupancy vehicles and improve connectivity and multi-modal mobility." Co-locating affordable housing near transit has also been shown to increase transit ridership.

The use of the Kingsgate property is constrained by the Washington Constitution, including the 18th Amendment (Art.2 § 40) and the prohibition on the gift of state funds (Art. VIII §§ 5 and 7). Additional constraints include state statutes and regulations. Some of these constraints stem from the acquisition of the property with state motor vehicle funds (MVF). These same constraints apply to most, if not all, state-owned park and ride lots. The effort to create a robust, efficient TOD at Kingsgate and other state park and ride facilities is hampered by legacy legislation and restrictive public policies. The planning work to date indicates that WSDOT faces certain, but not insurmountable, legal obstacles in developing and implementing a TOD program utilizing state-owned park and ride property.

This paper addresses only state law and legislative actions necessary to facilitate the pilot project and future transit oriented development projects. It does not address any overlaying federal law applicable to state park and rides that were acquired in whole or in part with federal aid highway funds.

The existing state legal and policy framework for highways flow from the adoption of the 1944 initiative that created the 18th Amendment to the Washington State Constitution (Art.2 § 40). The text of the 18th Amendment, subsequent legislation, judicial and legal interpretations adhere to the intent of the framers of the amendment to limit the use of MVF to those things that contribute towards the safety, administration, and operation of the highway system. This limitation, embedded in statute and policy, is an impediment to establishing





a robust TOD program using property that was acquired with funds from the motor vehicle fund account, which is needed for state park and rides, a highway purpose.

The transportation needs of 1944 are not the needs of today. Higher-capacity and more efficient modes of transportation are needed, such as carpooling, vanpooling, bus transit, light rail, bike- and scooter-sharing, walking, and bicycling. A 60' articulated bus, for example, can carry upwards of 80 people in the same area of space as just 4 standard parking spaces. As transit demand grows, personal vehicle storage becomes an increasingly inefficient use of premium space, and other mobility options must provide a larger role in access to transit.

The current legislative framework defines and limits state park and rides as primarily for the use of motorists, and lacks explicit support for access by other transportation options, and use by other entities serving community

needs (e.g. affordable housing), and commercial and residential developers, which provide a truly multimodal TOD.

There are several topic areas of the existing legislative framework that either prevent or don't explicitly allow the types of outcomes that community stakeholders and users hope to see in TOD. The discussion below elaborates on the barriers that have been identified at this time. Different barriers would present more or less of an impediment at different locations depending on market conditions and policy goals (such as provision of affordable housing, increased person throughput, maintenance or expansion of vehicle parking supply, or revenue generation for WSDOT and other public agencies). The more of these barriers are addressed, the greater the potential for TOD at more WSDOT owned park and ride locations to be both financially feasible for developers and responsive to state and local policy goals.

¹ <https://www.psrc.org/growing-transit-communities>

² https://www.kirklandwa.gov/depart/council/Mission___Values.htm; <https://www.kirklandwa.gov/Assets/CMO/CMO+PDFs/2016+Performance+Measures+City+Council+Goals.pdf>

³ The definition of "highway purpose" in the 18th Amendment includes the construction, reconstruction, maintenance, repair, and betterment of public highways, county roads, bridges and city streets, including: the cost and expense of acquisition of rights-of-way; installing, maintaining and operating traffic signs and signal lights; policing by the state of public highways; operation of movable span bridges; operation of ferries that are a part of any public highway, county road, or city street; and the necessary operating, engineering and legal expenses connected with the administration of public highways, county roads and city streets.

⁴ The motor vehicle fund account is established in RCW 46.68.070.

Use constraints

PSRC, cities, transit agencies and developers see properties like the Kingsgate Park and Ride as underdeveloped. Surface parking lots have little human activity outside of peak commute hours; on evenings and weekends they are largely empty of vehicles as well. Transit agencies would benefit from added ridership and safety that more users would provide to Kingsgate, and multiple agencies believe that developing the lot to a highest and best use would further policy goals and achieve greater return on investment.

The use of real property acquired with state MVF, however, is limited to highway purposes unless (1) WSDOT determines the property is not presently needed for a highway purpose and can be leased to a third party, or (2) WSDOT has determined the property is surplus to agency needs and can be disposed of.

WSDOT state statutes authorizing the disposal of real property under the jurisdiction of WSDOT require, as a condition precedent to disposal to either declare the property “unused” and “consistent with public interest” (RCW 47.12.080) or “no longer required for a transportation purpose and it is in the public interest to do so” (dispose of the property). RCWs 47.12.063 and .283. The recently enacted RCW 39.33.015 provides a discretionary alternative method to state agencies to dispose/lease surplus property for a public benefit purpose. “Surplus public property” is defined as “excess real property that is not required for the needs of or the discharge of the responsibilities of the state agency, municipality, or political subdivision.” RCW 39.33.015(8)(b).

Kingsgate and other park and rides suitable for TOD currently experience a high demand for vehicle parking and, therefore cannot be declared surplus, unused, or no longer required for a transportation purpose.

Likewise, prior to leasing property held for a highway purpose, WSDOT must make a determination that the property is not presently needed for a highway purpose (RCW 47.12.120) or not needed to discharge WSDOT’s responsibilities (RCW 39.33.015). Kingsgate and other park and rides suitable for TOD currently experience a high demand for vehicle parking and, therefore, cannot be declared not presently needed for a highway purpose or surplus.

RCW 39.33.010 provides an alternative method for specified governmental entities to sell, transfer, lease, or otherwise dispose of real property rights to other specified governmental entities. This is the authority under which WSDOT has conveyed park and ride lots to other public entities. The grantee is required to continue to serve the existing highway purpose (e.g. specified number of parking stalls, free of charge, and open to carpoolers). Additionally, in the event the grantee fails to continue to serve the highway purpose, the title of the property automatically reverts to WSDOT. These requirements ensure the continuation of the highway purpose use of the property and that the property remains in public ownership. These restrictions, however, are not conducive to TOD from a practical and investment standpoint.

Some park and rides were established as a condition of project approval through the environmental review process. These obligations are ongoing and must be assessed on a case-by-case basis prior to leasing or disposing of these properties.

Notwithstanding the above, if a TOD development provides, at its cost, a similar or better replacement park and ride facility that serves the same highway purpose (e.g. a parking garage), the remainder of the property may be declared no longer needed for a highway purpose and sold to the developer. TOD, however, must attract a critical mass of many different types of users in order to succeed – these include residents, commuters, retail customers, and employees. These types of users vary in their travel demand patterns, rates of vehicle ownership, and access to other transportation modes. Requirements to maintain a minimum number of highway purpose parking stalls limits the ability of a TOD to support the TOD users with an integrated multimodal environment.

Additionally, the requirement to either develop around or replace the highway purpose of the park and ride makes Kingsgate and other park and rides less attractive for investors and developers from a finance perspective. The types of land uses and development that would support TOD benefit from a supply of parking that is always available for users who need it, while

supporting other mobility options as alternatives to parking.

Conclusion: The state statutes mandating the declaration that the state park and ride property is declared unused, no longer required for transportation purposes, or held for highway purposes, but not presently needed, prior to allowing the disposal or leasing of such property is a barrier to developing a TOD program utilizing Kingsgate and other state park and ride property. Most of the uses contemplated by TOD are not currently defined as highway/transportation purposes and most state park and rides continue to serve a highway purpose. A TOD on state park and ride property would be required to maintain the existing park and ride facility or provide an alternative facility serving the same park and ride function. Specific to the Kingsgate Park and Ride, the goal is to “reconfigure” the site and actually increase parking capacity by several hundred spaces. The additional costs, and possibly less than optimal configuration of desirable TOD amenities, are disincentives to develop TOD.

Legislative Action: Amend RCWs 47.12.080, .063, and .120 by removing the requirements that WSDOT must declare the property unused, no longer required for transportation purposes, or held for highway purposes, but not presently needed, prior to allowing the disposal or leasing of such property.

⁵ For example, the State Environmental Policy Act (ch. 43.21C RCW) and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321, et seq.).

⁶ The developer could also replace the park and ride function on nearby property; provided it continues to serve the original commitment (same users and same segment of highway).

Fair market value constraints

With limited exceptions, state law requires WSDOT to receive fair market value compensation when it disposes or leases park and rides for non-highway purposes.

RCW 47.04.295 authorizes WSDOT to “enter into a lease with private entities allowing them to operate food or beverage retailers, restaurants, grocery and convenience stores, or other private enterprises that are of benefit to the traveling public at park and ride lots owned by” WSDOT. RCW 47.04.295(1). This statute requires rental payments for the lease to be “at fair market value and comparable to market rates in the area of the park and ride lot.” RCW 47.04.295(2).

RCW 47.12.120 authorizes WSDOT to rent or lease any lands, improvements, or air space above or below any lands that are held for highway purposes but are not presently needed. Consistent with legal interpretations, WAC 468-30-110 requires WSDOT to charge not less than economic rent.

The statutes authorizing WSDOT to dispose of real property expressly require or have been construed as requiring consideration to be no less than fair market value. RCWs 47.12.063, .080, and .283; RCW 39.33.010.

RCW 47.12.063 authorizes WSDOT to exchange surplus property “in full or part consideration for land or building improvements or for construction of highway improvements at fair market value to any person through the solicitation of written bids through public advertising.” Although this allows a developer to acquire WSDOT property unencumbered by highway purpose restrictions by replacing the land with other real property and constructing a replacement park and ride facility thereon, developers may not find this approach attractive given the additional costs and requirements. Additionally, WSDOT may not enter into equal value exchanges or property acquisitions for building improvements without first consulting with the office of financial management and the joint transportation committee.

RCW 39.33.015 provides a discretionary alternative method to state agencies to dispose/lease surplus property for a public benefit purpose. The definition of “public benefit” is defined as “affordable housing” and “related facilities that support the goals of affordable housing development in providing economic and social stability for low-income persons.” RCW 39.33.015(8)(a). Any such disposal/lease may be made to a public, private, or nongovernmental body at no cost.

⁷ Fair market value compensation may be monetary or consideration in the form of a highway benefit that is equivalent in value to the fair market value of the property. For example, the exchange of the surplus WSDOT property for property needed for a highway purpose.

⁸ Statutes that allow for the conveyance/leasing of property acquired with motor vehicle funds, but do not expressly state fair market value compensation is required, have been construed as requiring such consideration to avoid an unlawful diversion of motor vehicle funds.

RCW 39.33.015(1). This statute provides a potential avenue to address the acquisition of park and rides for the affordable housing function of TODs at no or a reduced cost.

The Washington Constitution prohibits state and local governments from giving or loaning public funds to individuals, companies, or associations. Article VIII, sections 5 and 7. A gift occurs if the purpose of the expenditure is for a proprietary governmental purpose as opposed to a fundamental governmental purpose. Additionally, a gift occurs if donative intent or a gross inadequacy of consideration is found.

Conclusion: The state statutes mandating that WSDOT obtain fair market value consideration for the lease or disposal of real property increases the costs to developers and

is a disincentives to develop TOD. Having the flexibility to exercise discretion in whether or not to charge fair market value for the lease or disposal of a property would allow WSDOT to factor the resulting sale or lease proceeds into calculations where it may be necessary for the department to fund elements of an associated project such as the case with the Kirkland park and ride.

Legislative Action: Amend RCW 47.04.295 and RCWs 47.12.080, .063, and .120 to grant WSDOT discretion in whether or not to charge fair market value for the lease or disposal of park and ride real property when the lease or disposal is for the purpose of providing affordable housing or multimodal transportation infrastructure.

Charging for parking

Charging for parking has been shown to be an effective tool for managing parking demand for both public agencies and private property owners, and is key to a developer's ability to accommodate access to a mix of complementary land uses in some TODs. Charging at hourly rates encourages turnover for retail and other short-term uses, while daily rates can ensure longer-term parking is available for commuter and residential needs. Variable-rate or "performance-based" parking can be used to help manage demand for parking so that parking stalls

are available when people want them. Charging for parking is one of a suite of "transportation demand management" tools that can help incentivize travelers to choose another means (carpool, feeder transit route, walking) to reach the park and ride/main transit corridor. Parking fees can be used to help offset the operating and maintenance costs (e.g., lighting, maintenance, capital repairs to pavement, security, landscaping, etc.) and/or capital costs (debt service, hard cost, soft costs) of providing parking.

⁹ RCW 47.12.063 requires an exchange of WSDOT surplus property for replacement land and the construction of the replacement park and ride facility to comply with public works competitive bidding and prevailing wages laws.

¹⁰ At a minimum, consideration must include appraisal costs, debt service, all closing costs, and any other liabilities to the agency. RCW 39.33.015(1).

¹¹ A fundamental governmental purpose is not the same as public interest or benefit; activities in which a public entity acts as a property owner or proprietor of a business enterprise are not fundamental governmental purposes.

The University of Washington is a state agency that has successfully used parking pricing to manage transportation demand for decades at its dense, urban campus in Seattle. Parking in central campus is priced at a higher rate, while remote off-campus lots are discounted. Rates vary by time of day to incentivize off-peak commuting, or commuting by transit, carpool, or active modes.

Similarly Sound Transit and King County Metro have both recently begun to issue paid parking permits at some of the park and ride lots they own as a way to manage parking demand at highly used park and ride facilities.

Fees cannot be assessed for the use of state property without legislative approval per RCW 43.135.055. Since the Legislature has not authorized WSDOT to charge a fee for parking at state-owned park and rides, WSDOT can neither charge for parking nor delegate that authority to other public or private entities. State-owned lots must therefore maintain a location specific minimum number of stalls that are available for free on a first come, first served basis, or use other tools that do not incur costs to users, as defined in WAC 468-603. RCW 46.61.577 gives WSDOT broad authority to adopt regulations governing the use and control of park and ride lots, including time limits for the parking of vehicles. However, it lacks authority to assess fees for parking or to issue citations for violations, which are the two most effective parking management tools.

Abundant free parking adjacent to TOD housing is a substantial disincentive to TOD developers. New construction often includes accessory off-street parking, the cost of which is typically recovered by charging tenants for those spaces. Without a parking management system that includes parking fees and enforcement, many residents would likely park for free in the park and ride stalls intended for park and ride users, undermining the utility of the park and ride and jeopardizing the ability of the TOD developer to recover the costs of parking construction.

While WSDOT does not have the authority to charge a fee for parking at park and ride lots, there is existing authorization in RCW 47.24.020 which cedes control to local jurisdictions to collect revenues from parking meters on state highways that are also city streets. In these circumstances, the city owns the real property by operation of law per RCW 47.24.020(15).

There is a strong analogue between charging for parking at state lots to tolling on state highways – both manage demand using different rates based on time of day and both charge fees for use of the highway system. The only major difference is that toll facilities are for moving vehicles and park and ride lots are for storing stationary vehicles.

Free parking encourages users to fill park and rides to capacity as early as possible, preventing consistent all-day activity that both developers and transit agencies depend on for successful TOD.

SB 5673, legislation introduced (but not passed) in the 2019 legislative session, proposed authorizing WSDOT to charge for vehicle and bicycle parking at state-owned park and rides and granting transit agencies the ability to have that authority delegated to them.

Conclusion: Without the ability to charge a fee for parking and issue citations to enforce parking rules, there is a high risk that residents and visitors to a TOD would park in the free, unrestricted park and ride stalls. If

Shared parking

Shared parking supports a mix of land uses with complementary peak period travel demand, such as a church offering commuter parking during weekdays, or an office parking lot providing parking for a nearby restaurant during evenings and weekends. Being able to restrict uses by time of day would be an appealing aspect of parking management for TOD for both developers and users.

State-owned park and rides require a minimum number of stalls to be available 24 hours a day (unrestricted) for the primary use of motorists transferring to or from urban public transportation vehicles or private carpool vehicles. This leads to significant unused capacity on evenings and weekends and would not support the mix of uses of a strong TOD. However, some local and regional transit agencies make parking available for other users on weekends, holidays, and on weekday evenings. Allowing shared use of state-owned park and ride spaces outside of periods of peak demand, would provide greater

this occurred, the park and rides stalls would not be available for the intended users of the park and ride and the TOD developer would be at risk of not being able to recoup the costs of the parking constructed for the TOD.

Legislative Action: Amend 47.04 RCW to authorize WSDOT and transit agencies operating WSDOT owned park and ride lots to charge a fee for parking and enforce parking rules, including issuing citations.

flexibility to support the development of and access to TOD, without impacting the parking facility's primary function to provide and maintain access for transit riders and carpoolers.

RCW 47.12.270 authorizes WSDOT to acquire property for park and ride lots to serve motorists transferring to or from transit and carpools, but does not include other potential uses that would support TOD, such as residential, office, or retail parking.

RCW 47.04.295, authorizes leasing of park and ride lots with third party vendors to operate food or beverage retailers, restaurants, grocery and convenience stores, or other private enterprises that are of benefit to the traveling public at park and ride lots. This statute limits the third party uses to enterprises that benefit the traveling public and is silent on leasing space only during specific times of day.

Conclusion: Restricting park and ride use to the 24-hour exclusive use of motorists transferring to or from urban public transportation vehicles

or private carpool vehicles, results in a significant underutilization of this public resource at times when there is limited or no demand for transferring to transit or carpools.

Legislative Action: Give WSDOT explicit discretion to enter into agreements that would enable use of park and ride stalls for other purposes at such times as there is excess capacity due to lack of demand for their primary purpose.

Sources and uses of revenue

RCWs 47.12.063, .080, and .283 state that revenue generated from the sale of real property under the jurisdiction of WSDOT shall be deposited in the MVF.

Moneys paid to WSDOT for the leasing of park and ride lots under RCW 47.04.295 must first be applied towards maintenance and operations of the applicable park and ride lot and the remainder must be deposited into the multimodal transportation account.

Moneys paid to WSDOT for the leasing of WSDOT property under RCW 47.12.120 must be deposited into WSDOT's advance right-of-way revolving fund, except monies that are subject to federal aid reimbursement or received from the rental of capital facilities properties are deposited into the motor vehicle fund. RCW 47.12.125.

It is unclear if funds generated through the sale or lease of TOD sites can be used to make necessary improvements at those TOD sites, such as structured parking, storm water treatment, transit station improvements, or access realignments. Reinvesting

sales and lease revenues into TOD site improvements would support transportation users who are looking for safe, comfortable, and well-maintained facilities. Reinvestment could retain and expand the existing park and ride function provided at this site, and would also reduce uncertainty for developers concerned with long-term returns on investment.

The States RCW's lack guidance on the possibility of value capture potential for TOD, which could leverage the increased tax revenues of the developed land to finance additional improvements and ongoing maintenance to transportation facilities. Value capture refers to the increased value of land after a transportation improvement project has been completed. According to the FHWA, transportation improvements increase accessibility and thereby make surrounding locations more desirable. Transportation improvements often increase the value of nearby land, benefitting land owners and developers. Value capture techniques harness a portion of the increased property values in order to pay for the improvement or for future

transportation investment. There are several different forms of value capture used in the United States. The most common include: air rights, impact fees, joint development, land value tax, negotiated exactions, sales tax districts, special assessments, tax increment finance, and transportation utility fees.

Conclusion: The financing of TOD would be viable at many more locations if WSDOT can reinvest revenue generated through the sale or lease of a park and ride facility into needed improvements on that site or other park and ride sites, such as the

construction of structured parking, reconfiguration of transit facilities, or other site access improvements.

Legislative Action: Establish a fund in which the revenues from the sale or lease of park and ride facilities would be deposited. Authorize WSDOT to spend those funds on park and ride facility improvements, including those supportive of TOD. Create a mechanism by which WSDOT could harness a portion of increased property values due to development in order to pay for improvements on the site or for future transportation investments.

Mobility hub - multimodal elements

Allowing additional modal options at park and rides would support TOD efforts by reducing reliance on automobile travel, freeing up additional parking spaces for those who need them. Reallocation of existing parking stall space to support travel by bike share, car share, ride hailing, and last-mile shuttles could provide significantly more person-throughput than unrestricted parking by private automobiles. Additionally, availability of these higher efficiency modes at the adjacent park and ride could allow developers to minimize the number of parking stalls built per unit, enabling developers to invest more in residential and economic activity generating uses.

RCW 47.12.270 authorizes WSDOT to acquire property for park and ride lots to serve motorists transferring to

or from private vehicles and private carpools or urban public transportation vehicles. The RCW lacks authorization for acquisition that would support other users making similar transfers, such as people accessing a park and ride by bicycle, walking, transit, or drop-off. RCW 47.12.270 has been interpreted to restrict any conversion of parking for private vehicles to support other forms of mobility that would serve more people within the same amount of space.

RCW 47.04.295, which authorizes leasing of space to third party vendors does not include transportation vendors such as bikeshare or carsharing, which typically seek dedicated spaces where vehicles could be available to users.

Conclusion: The mobility of more people can be served within existing park and ride sites if some parking stalls, which typically only serve one person per day, can be converted into facilities that support access by bicycle, walking, transit, bikesharing, carsharing, and other spatially efficient forms of transportation.

Legislative Action: Amend RCW 47.12.270 and 47.04.295 to authorize conversion of motor vehicle parking stalls to other multimodal transportation purposes, including entering into agreements with third party mobility providers if the conversion would help move more people or will aid in the conservation of energy resources.

Public-private partnerships

Public-private partnerships (P3) offer the potential to realize mutually beneficial goals while mitigating risk to the state and private investors. Successful public-private TOD projects have been implemented in many states for years, including:

Denver, CO

Denver Union Station is a major new downtown district, and hub of the regional transit system, delivered by a P3 for both TOD and transit. Value capture from Metro District property taxes, tax increment helped pay for transit capital and other infrastructure.

Chicago, IL

In a recent move to jumpstart more equitable investment on the city's South and West sides, City Hall voted to expand TOD zoning eligibility from sites located next to train lines to include more than 20 high-ridership bus corridors.

San Jose, CA

Diridon Station in San Jose has been a rail hub since it opened in 1935. The government currently plans to invest \$10 billion, turning it into a multimodal transit hub that would spur development, add as many as 25,000 jobs and forever change the character of downtown San Jose. If the development moves forward, Diridon would represent more than just a TOD project—it would be an entire Transit-Oriented Community, brought to life by a private sector investment.

A public-private partnership is a creative alliance between a government entity(s) & private developer(s) to achieve a common purpose. Many states have P3's embedded in their legislation, making it much easier for local governments and the private sector to enter into a P3. In Washington State, state prohibitions on the gift or lending of public funds can limit the flexibility of P3's compared to other states.

P3's are used locally and across the country to develop or redevelop an area or site, often blighted or underused. They are typically and proactively initiated by a municipality to achieve key public objectives:

- transit-oriented development
- downtown revitalization
- affordable housing
- industrial and commercial development

P3's often take the form of a long-term performance contract of infrastructure where a partnership in the form of a long-term performance based contract between the public sector (any level of government) & the private sector is created to deliver public infrastructure or facilities.

Public Asset P3's foster partnerships that leverage the existing monetary value found in public assets through:

- outright sale
- ground lease
- other transaction mechanism

All P3's start with a shared vision, just like any land use and development process. P3's and land use processes that begin from a shared vision have a far better chance of surviving economic downturns and changes in political leadership because they can

withstand a longer implementation schedule based on their community support.

Some key P3 points:

- Without a vision, the project will most likely fail.
- Far more extensive, expensive, & time-consuming than either private developers or many public officials would like.
- Emanates from a community planning or visioning process; a developer-generated vision; or a combination of both.
- Public participation & engagement are critical.
- Public Purpose is both a legal requirement and the *raison d'être* for a P3 project.

P3's also include some common principles. These have been published by the Urban Land Institute – a nonprofit research and education organization supported by its nearly 40,000 members comprised of private and public real estate and land use professionals engaged in the exchange of ideas and information dedicated to creating better places.

Ten principles for successful public-private partnerships:

1. Prepare properly for public/private partnerships
2. Create a shared vision
3. Understand your partners and key players
4. Be clear on the risks and rewards for all parties
5. Establish a clear and rational decision-making process
6. Make sure all parties do their homework
7. Secure consistent and coordinated leadership
8. Communicate early and often

9. Negotiate a fair deal structure
10. Build trust as a core value

Chapter 47.46 RCW (Public-private transportation initiatives) lacks specific authorization to use state funds to partner with private and nonprofit groups in support of TOD.

Conclusion: P3's are a nationally and locally proven method to implement TOD. However, the existing statute in Washington for state agencies is overly cumbersome and has not yet been used for the purpose of TOD.

Legislative Action: Amend Chapter 47.46 RCW to model it on the successful P3 laws in other states.

Capital funding availability and restrictions

Limitations on state and local capital funding for expansion of transportation infrastructure, affordable housing development, public open space and other public benefits and amenities that make up a successful TOD, are a significant barrier not only on WSDOT property, but most other properties that could be utilized for TOD. Particularly without changes to requirements around fair market value and sources and uses of revenue, direct capital funding becomes an even more significant component of a successful outcome at Kingsgate and other TOD locations.

As an example, building affordable housing comes at significant public cost, particularly for households below 30% AMI and 50% AMI, and all but a handful of jurisdictions in the state lack local approval for a dedicated funding source for housing. (Sales tax revenue authorized under House Bill

1406 is an exception, but revenue amounts will not be significant enough to fund construction projects without additional funding.) At the same time, while the State Housing Trust Fund was funded at its highest level in the most recent biennium, this resource has largely been unavailable to TOD projects due to set-asides and scoring systems that prioritize projects serving special needs populations.

Conclusion: State and local capital funding of affordable housing have had limited utility for TOD project construction, due to prioritization of other needs.

Legislative Action: Dedicate more funding in the capital budget to support specific public benefits within TOD on public land, e.g., a new TOD set-aside in the State Housing Trust Fund that does not reduce or compete with other important set-asides.

¹²AMI is the area median income, as calculated annually by the U.S. Department of Housing and Urban Development based on all known incomes in the area.

Current status and next steps

With monies allocated by the legislature (ESHB 1160 Section 214) the department procured the consulting services of a transaction advisor. WSDOT recently selected and is under contract with its Kingsgate TOD Transaction Advisor Consultant Team led by Stowe Development & Strategies, a Washington State firm with deep experience helping public agencies achieve successful public-private partnerships.

The Kingsgate TOD workgroup, with assistance from the transaction advisor, is in the process of analyzing the various ways the Kingsgate TOD facility can be fully constructed. This includes analyzing the current configuration of the land and understanding where certain aspects of the TOD facility will result in providing the greatest benefits to users and the state.

The full TOD facility is expected to be constructed in phases. Phase one will focus on the construction of a voter approved Sound Transit parking structure. Phase two will then focus on constructing the remaining portions of the TOD facility, these include housing and a potential expansion of the Sound Transit facility to accommodate those parking spaces left on the surface and owned by the department.

The workgroup anticipates issuing a RFP for developers to respond to in the late spring of 2020. At such time, with assistance from the transaction advisor, we anticipate providing additional information to the legislature as the Kingsgate TOD advances.