

## Sound Transit/WSDOT Re-Alignment Issue Paper No. 30

<b>TOPIC:</b>	Public Hearing Requirements
<b>ACTION SPONSOR TEAM:</b>	Environmental Action Team
<b>PRIMARY AUTHOR(S)</b>	Steve Kennedy and Perry Weinberg, Sound Transit, and Ben Brown, WSDOT
<b>APPLICABLE PROJECTS:</b>	All Sound Transit Regional Express Projects which hold a public hearing. Other lines of ST business (Sounder and Link) may choose to follow this Issue Paper at the discretion of the project manager on a case-by-case basis
<b>DATE OF FIRST DRAFT:</b> <b>DATE OF FINAL DRAFT:</b>	September 28, 2001; Rev. November 1, 2001; Revised January 3, 2002
<b>ISSUE:</b>	What requirements will Sound Transit follow in public hearings such as Environmental, Design, Access, and Corridor hearings?
<b>CURRENT STATUS:</b>	Final
<b>DATE APPROVED:</b>	February 7, 2002

### BACKGROUND:

Many questions have arisen in the course of preparing for and holding public hearings for Sound Transit projects that involve WSDOT right of way. There are 4 types of hearings that could occur: Environmental Hearings; Design Hearings; Access Hearings; and Corridor Hearings. The Program Action Team has requested the EAT to address requirements for all of these hearings, even though EAT's expertise is on the environmental/design hearings, so that project managers can find all public hearing requirements in one issue paper.

NOTE: This paper focuses on hearing requirements. Related requirements such as distribution of the (who must get the actual document and who can just get a notice of availability, placement of EA in libraries, etc.) and internal review and coordination protocol are not addressed here. Sound Transit project managers are encouraged to review guidance information on these requirements provided on the Sound Transit Environmental Compliance Division internal website.

## Environmental Hearings

Questions have revolved around what specific requirements should be followed in advertising and conducting public hearings for Environmental Assessment documents. A hearing, or a notice of opportunity for a hearing, is required by federal and state law (23 CFR 771.111 and 771.119(e) and RCW 47.52). As reflected in EAT Issue Paper #38 (NEPA Scoping and Public Involvement), Sound Transit will hold a public hearing/open house following the issuance of an EA for Regional Express projects. This is consistent with WSDOT policy and procedures.

Public Notice requirements for Sound Transit under SEPA are contained in Section 7 of Sound Transit's SEPA Resolution (Resolution #7). Public hearing requirements for design and environmental hearings followed by WSDOT are contained in the WSDOT Design Manual, Section 210, "Public Involvement and Hearings."

## Design Hearings

Early coordination with appropriate agencies and the public aids in determining the type of environmental document an action requires, the scope of the document, the level of analysis, and related environmental requirements. It also helps ensure meaningful evaluation of alternatives and provides the public with an early and continuing opportunity during the project development in the identification of social, economic, and environmental impacts as well as impacts associated with the relocation of individuals, groups or institutions.

As such, design hearings should follow the requirements as set forth in 23 CFR 771.111(h)(2)(iii). That section deems them applicable when there will be any of the following:

- ✂✂ acquisition of significant amount of right of way resulting in relocation of individuals, groups, or institutions,
- ✂✂ substantial social, economic, or environmental impacts,
- ✂✂ substantial change in the layout or function of connecting roads or streets or of the facility being improved,
- ✂✂ substantial adverse impact on abutting property,
- ✂✂ significant social, economic, environmental or other effects for which FTA or FHWA determines that a public hearing is in the public interest.

The Sound Transit Project Manager should coordinate with the WSDOT Project Engineer to determine if a design hearing is required.

## Corridor Hearings

Corridor hearings are not required. WSDOT has held very few of these events. It is a WSDOT Regional Office decision whether one is required. They are an advanced planning tool by which WSDOT can document the potential support or resistance to a new highway corridor or major revisions to an existing corridor prior to programming project specific environmental and design funds. They are intended to inform the local agencies, businesses and public, as well as resource agencies, of an identified transportation need and allow early participation.

When a Corridor Hearing is held, follow same public notification process and timing as in Environmental/Design Hearing guidance.

## Access Hearings

Access Hearings are required for all changes in access control on state roads, such as limiting access from or providing access to abutting properties or roadways (RCW 47.52). Access Hearings are generally held after the NEPA and SEPA environmental determinations have been completed (e.g., FONSI, ROD, DNS, etc. has been signed). The Findings and Order (the final product of the access control process) will not be issued prior to completion of environmental determinations and design file approval.

When an Access Hearing is held, follow the same public notification process and as in Environmental/Design Hearing guidance, along with additional notification of affected property owners as required in the WSDOT Design Manual. Access Hearings will occur no sooner than 15 days after the issuance of the EA. Design Hearings or joint Design/Access Hearings will occur no sooner than 30 days after the issuance of the EA.

## Decisions

### ENVIRONMENTAL/DESIGN HEARINGS

- ?? For projects for which NEPA Environmental Assessments are prepared, Sound Transit will hold a public hearing/open house following the issuance of the EA (EAT Issue Paper # 38).
- ?? If required, Sound Transit/WSDOT will hold a Design Hearing and an Access Hearing as defined in Section 201.05 of the WSDOT Design Manual. The Design Hearing and Access Hearing may be held on the same night at the same location, separated by a brief recess. The Design Hearing may be combined with the Environmental Hearing, at the discretion of Sound Transit. As noted later in this issue paper under Access Hearings, WSDOT will take the lead in preparing for and administering the access hearing, with support from Sound Transit.
- ?? Notice of Availability (NOA): A NOA will be prepared which will briefly describe the project, inform the reader of the document's availability, explain how to get a copy of the document, state the duration of the comment period, explain how to submit comments, contact person and how to obtain information about the project, and include information about the public hearing. Include reference to CFR Title 23 Section 128 for design and environmental hearings. It does not apply to access hearings. Include the publication print date(s). **The NOA prepared for the Federal Way Transit Center/Parking Structure/Direct Access Project, which is appended to this Issue Paper, provides a good example of what should be included in an NOA prepared for an Environmental Assessment and public hearing (a combined environmental/design hearing in this case).**
- ?? Publication of NOA/Public Hearing Notice: The legal notice of the EA availability and public hearing (usually a condensed version of the NOA) should be published the date on which the EA is issued. This begins the 30 day comment period (public availability period) for the EA. The legal notice should be published in the legal notices section of the major area newspaper (such as the Seattle Times, PI, or the Daily Journal of Commerce) and in a second newspaper within the local jurisdiction (such as the Federal Way Mirror, Everett Herald, or Tacoma News Tribune, etc., as appropriate). The legal notice (or a display ad, as determined by the ST Project Manager) should also run a second time closer to the hearing (about 5-12 days before the public hearing) in the two newspapers chosen. The Sound Transit Project Manager may choose to publish in additional newspapers at their discretion.

?? Pre-Hearing Packet: Typically, Sound Transit will provide WSDOT with information about the public hearing, and WSDOT will prepare the formal “pre-hearing” packet as outlined in Section 210.05 of the WSDOT design manual. Sound Transit may choose to prepare the hearing packet if the Sound Transit and WSDOT project managers agree to take this approach for a particular project. Sound Transit will prepare the NOA and Legal Notice and provide those materials to WSDOT for the pre-hearing packet. Sound Transit will provide WSDOT with project information for the pre-hearing packet no later than 45 days prior to the public hearing.

?? Hearing Format and Timing Related to the EA: The public hearing cannot occur until at least 15 days after the EA is issued (environmental hearing only) or 30 days after the EA is issued (combined environmental/design hearing). Generally, the public hearing will be held about half way into the comment period. The hearing will generally be an open house or drop-in format, with displays depicting key elements and summarizing the environmental analyses. Staff will be available to answer questions on an individual one-on-one basis. There will be a sign-in sheet. There will also be a sheet for written comments, which can be submitted at the hearing or anytime before the end of the comment period. A court reporter will be present for anyone who wishes to provide verbal comments.

Explanation at the public hearing shall include the following information:

?? Project’s purpose, need and consistency with the goals and objectives of any local urban planning;

?? Project’s alternative and major design features;

?? Social, economic, environmental and other impacts;

?? Relocation assistance project and the right-of-way acquisition process; and

?? Applicable agency procedures for receiving both oral and written statements

?? FONSI: Section 23 CFR 771.119 also provides that comments may be submitted within 30-days of the environmental assessment issuance.

?? Transit Law – For all other projects not involving an environmental impact statement, an opportunity for a public hearing will be afforded with adequate proper notice pursuant to 49 USC Section s 1602(d), 1604(I) 1607a(f) and 1607 a-1(d) and such hearings will be held when anyone with a significant social economic or environmental interest in the matter requests it (23 CFR 771.111 (h)(4)(I).)

## CORRIDOR HEARINGS

The WSDOT Regional Office must provide enough design detail on the proposed alignments within the corridor so that an informed decision can be made at the hearing. There is no additional guidance on preparation or content of corridor hearing documents. It is strongly advised to hold an open house prior to the hearing. There is a 30-day comment period for the hearing.

After the hearing, the WSDOT Regional Office reviews the transcript, responds to all questions or proposals submitted at or subsequent to the hearing, compiles a hearing summary, and transmits three copies (four for Interstate) to WSDOT HQ Project Development Office. When appropriate, the FEIS substitutes for the hearing summary because it includes the hearing transcript (or summary) and comments and responses.

WSDOT HQ Project Development Office prepares an informational package and submits it to the Assistant Secretary of Transportation for Environmental and Engineering Services for adoption.

Federal approval is not required unless a substantial social, economic, or environmental impact is involved or the project substantially changes the function of connecting roads or streets.

The complete hearing summary should be submitted to WSDOT HQ Project Development Office within approximately two months following the hearing if it is not part of an EIS.

## ACCESS HEARINGS

The hearing process will be administered by WSDOT with support from Sound Transit. When an Access Hearing is held, follow same public notification process as an Environmental Hearing. The Access Hearing must be a formal hearing presided over by a hearing examiner and include public testimony. Access Hearings will occur no sooner than 15 days after the issuance of the EA. Design Hearings or joint Design/Access Hearings will occur no sooner than 30 days after the issuance of the EA.

The Secretary of Transportation or his designee will preside as examiner. Hearing examiners are assigned by the WSDOT HQ Project Development Office Hearings Coordinator. An Assistant Attorney General assists with presentation of testimony and evidence for WSDOT, and may question witnesses who present objections and counter proposals. Hearing testimony for WSDOT/Sound Transit is normally presented by Sound Transit and WSDOT project staff.

After the hearing, the court reporter will submit the original transcript to the examiner for certification, with copies to the Region. The original transcript will be submitted to WSDOT.

The Region will review the transcript, prepare a findings and order plan as it is modified from the access hearing plan, and transmit these documents to HQ Project Development. Care should be taken to ensure that no portion of the findings, order analysis or order plan considers, or is based on, material not properly made part of the hearing record.

Along with the draft findings and order and hearing exhibits, the Region shall submit to HQ Project Development one set of prints marked to show all plan revisions, in composite form, to be included in the findings and order. Any revisions not based on the hearing record cannot be included as part of the findings and order. There is a 30-day appeal period on the access hearing.

After completion of the appeal period, the Secretary of Transportation or his designee adopts the findings and order document. WSDOT HQ Project Development Office makes appropriate revisions to the access hearing plan, in accordance with the adopted findings and order. Region will mail reduced plans along with a copy of the findings and order to all parties filing a notice of appearance, including local government officials. Region will then prepare an "affidavit of service by mailing" and transmit it to HQ. A resume is published in local newspapers for two successive weeks.

On the mailing date of the findings and order documents, the Regions will notify the appropriate legislators of the Secretary's action with copies to Public Affairs and HQ Project Development.

Refer to WSDOT Design Manual Section 210 for details on the content of the various plans and submittals.

**ENVIRONMENTAL ACTION TEAM DECISION ON ISSUE PAPER NO. 30:  
HEARING REQUIREMENTS**

**AGREED TO ON FEBRUARY 7, 2002 BY:**



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