Washington State Department of Transportation

Memorandum

November 02, 2023

TO: WSDOT Project Development Engineers

FROM: Mark Gaines, Development Division Director, State Design Engineer MG

SUBJECT: Project Delivery Memo #23-05 – Department Franchise Authority on Developer-Led Projects

Purpose

The purpose of this Project Delivery Memo is to provide policy and instruction for WSDOT staff when utilities under franchise with WSDOT are impacted during Developer led projects within WSDOT right-of-way (ROW).

Background

WSDOT is authorized by chapter 47.44 RCW to issue permits and franchises to utilities seeking accommodation within WSDOT ROW.

Under state managed and limited highway access connections laws and policies, WSDOT has the authority to require mitigation when a developer project impacts the highway system. For more information on this, see the agency's Design Manual, Development Services Chapter.

Sundquist Homes, Inc. v. Snohomish County Public Utility District No. 1, Washington State Supreme Court, 2000, offers precedence for agency policy and guidance.

Direction

It is WSDOT's policy that a developer shall be responsible for utility relocation costs if the relocation is required for the developer to complete its project. Typical projects include driveways, deceleration and acceleration tapers, roundabouts, signalized intersections, auxiliary lanes and turning lanes associated with access to the development. For projects that benefit both the transportation system and a developer, region staff should consult with the Headquarters Highway Access & Hearings Office.

WSDOT Region Developer Services staff shall execute developer mitigation agreements directly reflecting the Department's policy with developers to address all necessary mitigation.

It is WSDOT's preference that a developer executes utility relocation agreements directly with utilities impacted by the developer project. However, WSDOT has discretion to execute utility relocation agreements directly with utilities impacted by the developer

project, utilizing developer mitigation funds. For projects where WSDOT executes utility relocation agreements, region staff should consult with the Headquarters Utilities Office.

The Development Division will revise all necessary Manuals, including, but not limited to, the Utilities Manual M 22-87, and the Design Manual M 22-01 to reflect the Department's policy.

Department Standard Form Agreement Owners shall ensure that all developer-related standard form agreements include language reflecting the Department's policy.

Department Agreement Writers shall ensure that all developer-related agreements between WSDOT and a developer include language reflecting the Department's policy.

Region Offices shall assign cost responsibility to a developer for all necessary mitigation to utilities occupying the Department's ROW under a WSDOT franchise in conflict with the developer's project.

MG: gg

cc: Regional Utility Managers
Regional Developer Service Managers
Regional Administrators
Project Development Engineers
Technical Services Business Manager