

## **MEMORANDUM**

### **PROPOSED AMENDMENTS TO WASHINGTON GROWTH MANAGEMENT ACT**

**February 20, 2001**

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## SUMMARY OF REQUEST

NAR has requested our review of amendments (“Proposed Amendments”) to the Washington Growth Management Act (“Act”) that the Washington Association of Realtors® (“WAR”) have proposed for adoption in this year’s legislative session. The Proposed Amendments would incorporate into the Act clearer requirements pertaining to economic growth and the provision of sufficient housing. We have reviewed a version of the Proposed Amendments that was introduced in the Washington Legislature as House Bill 2056. NAR has requested that we provide comments on or suggestions for improvement to the language of the Proposed Amendments, as well as suggested talking points for use by WAR in explaining the Proposed Amendments to legislators.

## EXECUTIVE SUMMARY

Below we provide comments on the Proposed Amendments, consisting primarily of edits intended to clarify or strengthen certain points pertaining to the incorporation of economic development concerns into the Act, and the requirement that planning jurisdictions monitor plan implementation to ensure that projected housing and employment demand can be accommodated under applicable development regulations and zoning designations. We also provide talking points for WAR’s consideration in explaining the purpose of the Proposed Amendments to legislators and the public.

## ANALYSIS

In the following discussion, we address only those provisions of House Bill 2056 that are marked by underlining in the version of the bill. Our understanding is that the underlined language represents the new language to be added to the Act by the Proposed Amendments. Our comments are made in the order that the language in question appears in the proposed bill. We note that we are not Washington attorneys and to the extent that our analysis considers the meaning or effect of Washington law it does so based only on our familiarity with land use laws generally. NAR or its members should consult a local attorney if they require a legal opinion with respect to any of the matters discussed in this memorandum

### **SECTION 1 (Amending RCW 36.70A.020).**

This part of the Act establishes goals to guide the development and adoption of comprehensive plans and development regulations for counties and cities covered by the Act. The Proposed Amendments would add to the existing goal addressing economic development, a requirement that such plans and regulations “promote the retention and/or expansion of existing businesses, and recognize regional differences impacting economic development opportunities.”

***Comment:*** The proposed language appears adequate and appropriate, however we note that it does not include the concept of “recruitment of new businesses” introduced in Section 3 of the Proposed Amendments (proposed RCW 36.70A.070(7)).

### **SECTION 2 (Amending RCW 36.70A.030).**

This part of the Act establishes definitions used in connection with the Act. The Proposed Amendments would add definitions for “Land suitable for development”, “Performance measures” and “Rural Counties”.

***Comment:*** We address each of these definitions individually:

**Land suitable for development:** The intent should be to avoid a definition that will result in overstating the amount of land available for development to accommodate projected growth. The proposed definition appears satisfactory in that regard. We note that the phrase “limits development potential” in subsection (c) provides the ability to exclude from the definition parcels of land that may still be developable, although not to the full extent that they would be without the effect of the critical area. **In order to strengthen the definition in this regard, we recommend that the word “and” in subsection (c) be replaced by the word “or” so that the subsection reads: “(c) not constrained by critical areas in a way that limits development potential or makes new construction infeasible.”**

**Performance measures:** The definition could be condensed and clarified by eliminating the separate reference to and definition of “indicator” as follows: “. . . means a quantifiable measurement or index providing consistent and reliable information over time to help gauge how a jurisdiction is achieving specified performance results.” Note that we have additional comments concerning how this term is used in Section 4 of the Proposed Amendments.

**Rural Counties:** This definition references a provision of Washington tax law that defines rural counties as having less than 100 persons per square mile. This term appears to be introduced in connection with proposed new language in RCW 36.70A.070(5)(d)(iii) that would allow the expansion of small-scale businesses and the reuse of small-scale business sites in rural areas. **Realtors® should confirm that the proposed definition is inclusive enough to encompass the counties within which the particular concern for allowing the expansion of small businesses has been identified. In this regard, we also note that the term “small scale business” is not defined. That term was defined in an earlier draft version of the Proposed Amendments. We do not know why a definition was not carried forward to the bill stage. The earlier definition seems to us to be too broad, in that it would have excluded any business not “owned and operated independently from all other businesses” thereby potentially excluding many small businesses that would be perfectly appropriate for a rural area, yet might be owned in common with other small local businesses. Realtors® should consider proposing a more inclusive definition that would give an ascertainable meaning to the term “small-scale business.” However, as we note below, we are not sure that the amendment concerning small-scale business in rural counties is needed.**

### **SECTION 3 (Amending RCW 36.70A.070)**

This part of the Act addresses required elements of a comprehensive plan.

***Comment:*** The Proposed Amendments would make several changes to this part of the Act.

**Housing:** The Proposed Amendments would add a requirement in RCW 36.070A.070(2)(a) that the housing element specifically identify the number of housing units needed to accommodate projected growth. **This requirement seems appropriate and is well stated. We note, however, that the amendment does not address the *timing* of such housing needs. This**

**omission can be addressed by adding to the end of the clause so that it reads “(a) includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to accommodate projected growth, and the time frame by which such units shall be available.”**

Rural Development: The Proposed Amendments would add language to Section 36.070A.070(5)(d)(iii) that seems intended to allow only those counties defined as “rural counties” to permit the expansion of “small scale businesses” and also permit the redevelopment by such small-scale businesses of rural sites previously occupied by another business. **It is not clear to us why the existing language does not adequately address that issue. Under the existing statutory language, it would appear that any county could allow for limited areas of intensified development that include lots containing “isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses”.**

Economic Development: The Proposed Amendment would add a requirement, in a new RCW 36.070A.070(7), that there be an economic development element in a comprehensive plan. This requirement follows logically from the existing stated goal of the Act in RCW 36.70A.020 to “encourage economic development throughout the state that is consistent with adopted comprehensive plans, [and] promote economic opportunity for all citizens of this state . . . ” as well as from the enhancement of that goal included as part of the Proposed Amendments, as discussed above. **Two minor suggestions are: (i) to add the word “or city” after “county” in subsection (7)(b) and (ii) to reference housing in subpart (7)(d) as one of the potential future needs to foster economic development.**

#### **SECTION 4 (Amending RCW 36.70A.210)**

This part of the Act addresses the establishment of planning policies for counties, including the subjects to be addressed by such policies.

**Comment:** The Proposed Amendments would add several new types of policies to the list contained in the existing Act. The mandate that counties adopt new policies would require reopening of the process for joint adoption of policies by counties and cities, and soliciting participation and cooperation by federal agencies and Indian tribes in the policy adoption process. Below we provide comments on each of the proposed new policy types.

New subsection 36.70A.210. (3)(h) seems intended to require that counties allocate, among themselves and their constituent municipalities, where employment growth will take place and where needed housing will be located to serve that growth. This is an appropriate subject for a planning policy to address. **One suggested rewording of this provision that seems clearer than the proposed language is as follows: “Policies for allocating, among the jurisdictions within the county, future employment opportunities and future housing development required to accommodate projected urban and rural population growth.**

New subsection 36.70A.210(3)(i) would require counties to state, as a policy, the “appropriate densities” for urban and rural areas. This is a suitable subject for a policy statement, although it does not seem to be *necessary* that densities be set by policy. Also, the language of the Proposed Amendment does not expressly contemplate that desired urban and rural densities might vary at different locations within a county. Furthermore, it is not clear what standards would be used to

determine whether a proposed density is “appropriate,” making this provision a potential source of litigation.

New subsection 36.70A.210(3)(j) would require counties to address performance measures to review “progress towards accommodating the twenty-year population and employment growth projections” **This provision would be better placed, in somewhat different form, within RCW 36.70A.215, which addresses countywide planning policies for the review and evaluation of a plan’s implementation.**

New subsection 36.70A.210(3)(k) requires “policies that accommodate both jobs and housing.” As worded, this provision seems too vague to be effective, and can be viewed as redundant of subsections (3)(e), which addresses housing, and (3)(g) which addresses employment. **If the intent of this provision is that counties shall not adopt policies that would prohibit housing and job growth, that can and should be stated explicitly in a separately numbered section — for example: “Policies shall not serve to prohibit employment or housing needed to accommodate the county’s projected population and employment growth” [or alternatively — “. . . projected share of regional population and employment growth”].**

## **SECTION 5 (Amending RCW 36.70A.215)**

This part of the Act requires counties to adopt policies for the review and evaluation of a plan’s implementation. The Proposed Amendments include a number of intended changes to the existing language of the Act in this regard.

### Subsection 36.70A.215(1)(b)

The Proposed Amendments to this subsection would include a requirement that counties “adopt” reasonable measures to comply with the statute. While there is nothing objectionable about the sentiment of this proposed amendment, it does not seem well placed within a statutory section addressed solely to the establishing a review and evaluation program for measuring the effectiveness of implementation. Furthermore, the language of the current Act states that counties identify measures “that will be taken,” thereby accommodating the concept of adoption. The subject of accommodating residential and nonresidential growth seems better addressed elsewhere in the Proposed Amendments, so that it is not clear that the addition of that language in this provision is necessary. In general, the language proposed for addition to subsection 36.70A.215(4) does a better job of addressing the intent of these changes.

### Subsection 36.70A.215(2)(a)

The Proposed Amendments would enhance this subsection by requiring that data not only be collected but also *reported* to the county. This is a fine suggestion. We presume that by reporting to the county the data is considered available to the public at large, but if that is not the case, there should be specific language added to that effect.

### Subsection 36.70A.215(2)(d)

The Proposed Amendments would amend this subsection to require counties to provide for the amendment of *development regulations*, (in addition to policies and plans as under existing law) if needed to remedy an “inconsistency identified through the evaluation required by this section.”

Although the meaning of this subsection is not entirely clear, it seems appropriate that a county be required to adjust development regulations that are identified, for example, as preventing the county from maintaining a sufficient supply of housing to accommodate projected demand.

Subsection 36.70A.215(3)(a)

The Proposed Amendments would amend this subsection with respect to minimum requirements for a county's program of evaluating the effectiveness of its plan. The substance of this provision seems adequate, with a few suggested changes, but its presentation is somewhat confusing and contains grammatical/typographical glitches. Also, it seems more logical to put it at the end of subsection (3) as a new subsection (3)(d) rather than at the beginning (retaining as subsections (3)(a), (b) and (c) what the Proposed Amendments show as (3)(b), (c) and (d). Additionally, there is apparently nothing in the existing language or Proposed Amendments that would incorporate discussion of the extent to which shortcomings in investment in or timing of capital facilities are contributing to an inability to meet plan goals. A suggested rewording follows:

***“(d) require a joint report from each county and its cities addressing the considerations in (a), (b) and (c) of this subsection and including discussion of the following subjects:***

- (i) regional growth patterns and trends;***
- (ii) a comparison among the jurisdictions within the county as to growth rates and market conditions for employment and housing;***
- (iii) data on the amount, location, density and types of new residential and non residential development;***
- (iv) data on the square footage of new nonresidential development;***
- (v) whether there is sufficient land suitable for development to accommodate countywide projections of population and employment growth;***
- (vi) an evaluation of whether existing zoning and development regulations allow development at densities sufficient to accommodate residential and non-residential demands in accordance with population and employment projections;***
- (vii) an evaluation of whether existing and planned capital facilities are sufficient to accommodate residential and non-residential demands in accordance with population and employment projections;***
- (viii) any other reasons for any identified differences between planned assumptions and objectives, and actual performance, such as market and other factors affecting the achievement of planned outcome;***
- (ix) reasonable and appropriate measures that will be taken to accommodate residential and non-residential growth and a timetable for such measures.”***

Subsection 36.70A.215(3)(c)

The language included in the Proposed Amendments for this subsection is somewhat confusing in three respects: The first clause is incomplete, and could be revised to read “... ***the net number of new residential dwelling units of each type that has been constructed or received development permits***” The word “permitted” in the clause “the square footage of new nonresidential development permitted” could mean “allowed” (under current regulations) or it could be intended to signify those developments that have already been granted a permit. It would seem that the latter meaning is the more appropriate one, so we suggest changing the clause to “***the square footage of new nonresidential development that has been constructed or has received development permits***”.

In the same subsection, the clause pertaining to environmentally sensitive lands would be more meaningful if changed as follows: “***and the amount of any newly identified or designated environmentally sensitive land or lands that otherwise cannot be built upon . . .***”

#### Subsection 36.70A.215(4)

The changes made by the Proposed Amendments to this subsection lack clarity, and may as a result be less effective than they could be at reinforcing the Realtors’® concern that cities and counties implement their plans in a way that accommodates projected growth. For example, the existing Act refers to a jurisdiction taking “reasonable measures” to increase consistency between what has occurred since the adoption of a plan and what was envisioned in the plan. The Proposed Amendments introduce the term “actions” in some places but retain the term “measures” in other contexts, without making clear whether any distinction between the two is intended. We suggest retaining the existing statutory term “measures.”

The Proposed Amendments to this subsection also focus variously on satisfying residential demand, accommodating projected growth, and achieving certain development densities. There is a distinction, however, between (i) “accommodating growth” or “satisfying demand” through ensuring an adequate supply of housing and commercial space to meet the demands of a growing population, and (ii) “achieving” pre-determined densities, which may or may not, in fact, reflect actual growth rates, levels of demand, or market support. We assume that the former is a more important goal for local Realtors®. The Proposed Amendments also include, as subsection 36.70A.215(4)(b), language apparently intended to incorporate market considerations into the evaluation of whether development regulations are effective. However the wording of this section is also somewhat confusing. Below we suggest a reformulation of the proposed subsection intended to clarify its intent. Consistent with the apparent preference of the local Realtor® association, we have proposed *adding to* the existing language of the Act without deleting any of its existing substantive provisions.

***(4) If the evaluation required by subsection (3) of this section demonstrates an inconsistency between what has occurred since the adoption of the countywide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section or demonstrates that the county or any city is not achieving the land use designations and densities planned for the jurisdiction in its comprehensive plan based on the evaluation factors specified in subsection (3) of this section, the county or city shall identify and adopt reasonable measures in order to achieve consistency and accommodate the demand for residential units and nonresidential growth during the subsequent five-year period.***

(a) Such measures may include, but are not limited to, the following:  
(i) Changes in land use regulations and zoning designations for land within the boundaries of the jurisdiction so as to encourage development to occur at densities sufficient to accommodate projected residential and nonresidential growth;  
(ii) Incentives to encourage new development consistent with the local plan;  
(iii) Funding of infrastructure and amenities to attract development;  
(iv) Outreach programs to encourage developers to build the type of development sought in the jurisdiction's plan or development regulations; and  
(v) Improved procedures to reduce the time it takes the jurisdiction to issue permits.

(b) The county or city shall, within one year of conducting the evaluation under this section, adopt and implement appropriate measures that are reasonably likely to increase consistency and accommodate projected demand during the subsequent five-year period.

(c) In adopting changes in zoning designations and development regulations as measures to achieve consistency and accommodate projected demand, the city or county shall demonstrate that the proposed zoning designations and development regulations contemplate development types, patterns and densities that are reasonably likely to have market support in the jurisdiction;

*(d) If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to countywide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.*

## **TALKING POINTS**

### **1. The Continued Economic Health of Washington State Depends on Sound Planning For Economic Growth and Continued Employment Opportunities for Our Citizens.**

House Bill 2056 would add an economic development element to the existing list of subjects that must be included in a comprehensive plan adopted under the Growth Management Act. As a result of the Bill, planning jurisdictions will be asked to understand their existing economic base and to plan for the growth and health of their local economy as part of the same comprehensive planning process that requires them to consider land use, housing, transportation and other capital facilities presently. Planning for local economic health is good, sound policy. How can a jurisdiction ensure that its citizens and future citizens will have jobs, unless it plans for the retention and expansion of the existing local business base, and the recruitment of new businesses that are consistent with local needs? How can a jurisdiction really understand future infrastructure demands or whether it has sound land use plans, unless it has thought about how its economy will develop? How can a jurisdiction preserve its fiscal health without planning for its economic future?

### **2. An Effective Planning Process Requires Monitoring and Adjustment to Ensure That Plans and Projections are Grounded in Acceptable Real-World Outcomes**

House Bill 2056 would require that planning jurisdictions account for and correct discrepancies between their growth projections and the outcome of their development regulations. In particular, the Bill would enhance and clarify the existing provisions for review and evaluation of plan

outcomes to ensure that planning for growth does not mean simply stopping growth. Where development regulations and land use designations do not allow housing and commercial space to be constructed of a type and at a rate sufficient to accommodate the projected demand identified in the existing plan, the Bill would require the planning jurisdiction to make adjustments sufficient to allow the supply to meet demand. The result will be more affordable housing, less pressure on rents, and a healthier economy.