



A Short Course On Local Planning Resource Guide

Version 5.3 (2017)



Planning Association
of Washington



American Planning Association
Washington Chapter



Credits

Many people deserve recognition for making the 2006 edition (Version 5.1) of the Short Course on Local Planning a reality. The legal editor of this edition is Phil Olbrechts, a land use and municipal law specialist. Phil is a member of the Board of Directors of the Planning Association of Washington, and has generously volunteered hundreds of hours over the years as a speaker at Short Courses.

For more than 30 years, the Department of Commerce (Commerce) has collaborated with the Planning Association of Washington (PAW) in administering the Short Course throughout the state. The Board of Directors of the PAW, on behalf of the membership, supported and guided this new edition, and has provided ongoing financial support for the Short Course program.

Finally, many people in Department of Commerce's Growth Management Services Program contributed to this edition. Leonard Bauer and Dee Caputo both provided valuable comments on drafts of the growth management chapter. Thank you to everyone who helped make this edition a reality.

Editor's Note

Version 5.2, the "landscape version" that was available on the Short Course on Local Planning web page from 2009 – December of 2016 has been updated to this new format, but the text remains as in the 2006 version. Since 2006, many state laws have changed as has much case law. We recommend this version of the document be considered as general guidance, and consult state law and local legal counsel when addressing specific issues that may have changed.

We are grateful to the growing group of partners who continue to support the presentation of the Short Course on Local Planning in Washington.

Questions?

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Introduction

The Short Course on Local Planning has been a service of the Planning Association of Washington State (PAW) to the citizens of Washington State for more than 30 years. Over 25,000 people have attended PAW sponsored training sessions, and many have benefited from the Short Course training and materials. The Short Course has always been the work of dedicated volunteers. This edition of the Short Course mirrors the objectives originally identified 40 years ago to provide:

- An introduction to planning and the planning process, which will demystify planning and make the process more understandable and, therefore, more accessible to the public.
- A guide for planning commissioners and council members, who, in formulating their local plans and regulations, must confidently be able to follow established procedures for hearings and decision-making.
- A source of practical problem-solving information, giving insight as to how a commissioner, council member, or citizen participant can be successful in the planning arena.
- A resource guide that will aid in understanding technical planning issues and guide further research.
- A guide that may be used to teach planning issues, using selected chapters as teaching outlines.

This Short Course is dedicated to you, the devoted men and women who serve our communities as planning commissioners and city and county representatives, who give so much to make our communities a better place to live.

How This Manual is Organized

The Short Course on Local Planning provides a detailed overview of the planning process, its legal basis in Washington State, and specific legislation, tools, and techniques that can be used in local planning efforts. **It will answer many of your basic questions, but is not intended as legal advice.** For specific information on legal issues, you should consult the appropriate legal counsel in your jurisdiction.

Topics included in **Chapters 1-4** of this Short Course proceed from essential background on the legal and practical objectives of planning and the public process, to highlights of growth management legislation and constitutional rights and responsibilities. **Chapters 5-8** present specific information on development tools and techniques, environmental legislation, shoreline management, and county/tribal planning issues. **Chapter 9** provides information on transportation planning and **Chapter 10** reviews annexation procedures.

How to Attend a Short Course on Local Planning

Short Courses typically are three hours long and are held in the evening. Speakers usually include a land use attorney and two planning directors or senior planners. All are volunteers dedicated to improving the quality of local land use planning in Washington State.

Topics covered during the Short Course generally include the legal basis of planning in Washington State, comprehensive planning and citizen participation, and plan implementation and the role of the planning commission. Additional topics can be covered in response to your community needs. There is no charge for the course or the handout materials.

To attend please visit the Short Course on Local Planning web page to find out about courses already scheduled or contact work with your local planner to arrange one in your community.

Short Course on Local Planning web page

www.commerce.wa.gov/serving-communities/growth-management/short-course/

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New to the Planning Commission? FAQ's

Serving on the planning commission is one of the most rewarding ways you can serve your community. As a commissioner, you will help set the long-term direction or vision for your community's future. Although the planning commission is an advisory body which rarely makes final decisions, it is one of the most important groups in local government. In recent years, growth management and environmental legislation have emphasized the importance of land use issues.

You will be advising your community on these issues through adoption or amendment of the comprehensive plan, and will help implement its subdivision, zoning, and shoreline regulations. You may review applications for individual projects ranging from mobile home parks to shopping centers. New planning commissioners must get up to speed quickly on the structure of local government and the laws and procedures that govern their actions.

Following are the answers to 10 questions that are commonly asked; we suggest you read them before conducting your first public meeting.

1. Who are the key actors in the planning process and what do they do?

Four groups have key roles:

1) **City council or board of county commissioners**

Both are elected bodies which appoint planning commission members (or the board of adjustment, discussed below). The city council or board of county commissioners has ultimate decision-making authority for all land use planning issues.

2) **Planning commission**

The planning commission makes recommendations to the city council or board of county commissioners for changes and updates in the comprehensive plan and the zoning code. In most jurisdictions, the planning commission also reviews individual applications for variances, conditional use permits, site plans, subdivisions, shoreline permits, and rezones.

3) **Board of adjustment**

This body hears appeals on land use decisions. In some communities, the planning commission acts as the board of adjustment. In others, the city council or board of county commissioners assumes this role.

4) **Hearings examiner**

The decision to have a hearings examiner is a local option. When a community does

have one, this hired professional replaces the board of adjustment. The hearings examiner takes the place of the planning commission in hearing applications for land use permit applications, such as variances and conditional use permits. Having a hearings examiner frees up the planning commission to deal with policy issues and long-term concerns of the community.

2. Can you tell me more about the planning commission?

In Washington State, a planning commission is an advisory body appointed by the city council or board of county commissioners to provide advice and recommendations on land use issues at the local level.

Although the key word here is advisory and planning commissions don't normally make the final decision, it is probably one of the most important bodies in local government.

You'll spend lots of evenings in meetings. (Don't be fooled if those who invited you to serve on the planning commission gave you a sales pitch that sounded something like "You only meet twice a month for a couple of hours.") In a survey done for the City of Renton, it was found that the planning commission met more often than all other advisory boards combined, and more often than the city council itself. We're stating this up front so that you'll understand the amount of serious work that is expected of most planning commissions. Being a planning commissioner means making a serious time commitment for the required preparation and for the commission meetings.

3. What if our elected officials (city council/county commissioners) ignore a recommendation of the planning commission, but we all know it's a good one?

When it happens—and sooner or later it will—you have several choices:

First, you can swallow hard, accept the political decision, and continue to do your best to provide thorough and thoughtful recommendations. It's important to keep in mind that both the planning commission and the elected body which appointed you are working from the same set of policies and regulations. If there are differences in interpretation, then these differences need to be clarified. One strategy for keeping communication clear is presented below.

Second, you can resign in protest. Although this sometimes seems like the only ethical option, we encourage you to think very carefully before you exercise it. If you quit, it deprives the commission of your experience and expertise, and it always takes time for a new person to get up to speed once appointed.

Third, most effective planning commissioners have decided that they can increase the number of times their recommendations are accepted with minimal or no modification by actively working to maintain good communications with the city council or board of county commissioners.

There are a number of strategies that have been used successfully around the state over the years, and we encourage you to use one of them (or invent one of your own).

One of our favorites approaches is to have the planning commission and city council sit down together twice each year to discuss issues and concerns. Each session is followed by a bus tour of the City, so everyone can see first-hand the sites and locations which are the focus of local land use issues.

Another good option is to send out a newsletter, like the one distributed by the Thurston Regional Planning Council. In this concise and well-written newsletter, anyone who's interested can find out exactly where the county and all of its cities are in progress on key growth management planning elements.

4. If you were to identify the one factor which can spell success or failure for a planning commission, what would it be?

There are really two answers to this question.

First, the **initial appointments** made to the planning commission are crucial. Elected officials must appoint quality, committed individuals, who represent the community's diverse social and political interests, as well as its geographic diversity.

Second, the planning commission needs a **strong chairperson**. Regardless of whose "turn" it is to serve as Chair, if you pick a nice but unassertive person who can't control controversial meetings, and who isn't willing to put in the time necessary to get the agenda together and make reminder phone calls, then the commission as a whole will suffer. Your Chair needs to be a dedicated, no-nonsense, reasonably high-energy person-someone who can run a tight meeting with a sense of fairness.

5. When is an "executive session" appropriate? Under the "Open Public Meetings Act," does all business of the planning commission have to be conducted in public?

Our planning commission Chair called for an "executive session" during a meeting a few weeks ago, so we could discuss the qualifications of candidates who had applied for our City

Planner position. Someone in the audience stood up and said what we were doing was illegal, because of the “Open Public Meetings Act,” and that all business of the planning commission had to be conducted in public.

Your Chair was perfectly justified in calling an executive session, because you were evaluating qualifications of applicants for public office.

It should be stressed, however, that there are very few times when your planning commission will need to hold an executive session. (See Chapter 2 for more information on the Open Public Meetings Act.)

Had you been talking about the salary, wages, or general conditions of employment for the planner position, the discussion should have been public. But personnel matters, including performance reviews, can be conducted in executive session; as can discussions of litigation or potential litigation with your attorney, and real estate negotiations where publicity is likely to cause an increase in the price your city, town, or county will have to pay.

If you plan to hold an executive session, the planning commission Chair must take specific procedural steps (see Chapter 2).

Regular Meetings

The basic intention of the Open Public Meetings Act is that the public’s business be conducted in public; and that the planning commission must establish a time for its regular meetings.

Special Meetings

If you need to hold a special meeting, either your chairperson or a majority of the members can call for it. But you will need to notify all members of the planning commission, as well as media representatives who are on record as having requested notification (i.e., newspapers, local radio, and television stations). Your notice must be in writing, at least 24 hours prior to the special meeting, and state the place and nature of the business to be transacted. You will be limited in making final decisions to those announced business items at the special meeting.

6. I’ve been on the planning commission for a while now, and I’m still not clear on the difference between our “legislative” and “quasi-judicial” activities.

Everything you do as a planning commissioner will fall into one of these two categories. It’s important to be clear on the difference, because when you’re operating in a quasi-judicial mode, you’re subject to the Appearance of Fairness Act.

Some basic definitions:

First, a **legislative action** is one which will affect the entire community, not just an individual property owner or single piece of land. Examples include updating or revising your community's comprehensive plan and adopting zoning code text amendment ordinances. When you change the community's comprehensive plan or zoning code, the rules change for everyone. No one is seeking or being granted special consideration.

A **quasi-judicial action** is one in which you're sitting "like a judge," evaluating a specific case or proposal submitted to you by individual parties. Examples include applications for variances, special use permits, and subdivisions. In each case, you are being asked to make a decision that affects an individual (or family, partnership, or corporation), but not the entire community. You are acting like a judge, weighing the merits of an individual case before the court. Guilty or not guilty? Grant the variance or deny it?

When you're dealing with these individual applications and project proposals, you are held to very high levels of scrutiny. These are contained in the **Appearance of Fairness Doctrine** (see Chapter 2 for a detailed discussion). Basically, all of your actions when you are in your quasi-judicial role must not only be fair in fact, but must appear fair to the average person.

The question you must ask yourself is: Would a disinterested person, apprised of the totality of your personal interest or involvement in the matter which the planning commission is considering, be reasonably justified in thinking that your involvement might affect your judgment in reaching a decision?

The place where most planning commissioners get into trouble on this one is a direct result of their well-intentioned attempts to be open and accessible to their friends and neighbors. It's really difficult to cut someone off when they call you up at home, or approach you on the street or at the coffee shop and start to tell you what they think about a particular proposal which you're considering, or are about to consider, at the planning commission.

But when you listen to their thoughts outside a regular meeting of the planning commission, regardless of whether they are for or against the proposed project, you are engaging in what the law calls an "**ex parte**" communication. Ex parte communications are forbidden, because they violate the intent of the Appearance of Fairness Doctrine: Regardless of whether any single "off the record" conversation influenced your final vote on a proposed project or application, it just doesn't look right. The law says your actions must appear fair as well as be fair in fact.

So what do you do if you **get a letter at home**, and read it through before you realize it's an attempt to lobby you to approve a new 80-home subdivision? Or what if a **friend grabs your arm** at the post office and blurts out his deeply held thoughts that the thus-and-so project, if approved, is going to change forever the rural character of your town? (He knows this because he worked for years as a real estate appraiser in a very similar community in

California, and he can tell you as a real estate professional exactly what a proposal like this one did to that town and its tax base.)

When a situation like one of these occurs, you need to take immediate action at the next planning commission meeting. You'll need to announce and place on the record at the beginning of the discussion of that item the substance of any written or oral ex parte communication which you've received. If you feel that, regardless of this contact, you'll still be able to render a fair decision, you need to state that for the record as well.

At this point in the meeting, you've opened yourself up for a challenge from anyone who feels that you've been tainted by the ex parte communication. If you're challenged, and don't step down for the duration of the discussion and decision on the proposal under consideration, you've left yourself and the commission wide open for a legal challenge after you've rendered your recommendation.

Our advice if you're challenged? Consult with your city attorney or county prosecutor, if that person is available: You may be able to stay and participate. But in the absence of legal advice to the contrary, step down and leave the room. Don't take a seat in the audience, from where you can later be accused of sending "baseball signals" to the remaining members of the commission to influence their votes on the proposal. Instead, go home and take a well-deserved evening off.

After the Doctrine of Appearance of Fairness was first enacted, it didn't take long for clever applicants to figure out that if they could just taint those members of the commission who would probably oppose their application, they could then challenge them on the grounds of having received an ex parte communication. These planning commissioners would then be forced to step down and--bingo! an approved application.

The problem with this sneaky strategy is that if enough members are disqualified, the planning commission lacks a quorum, and can't do business. A clever legal solution called the **Doctrine of Necessity** was enacted to counter this lack of a quorum. Basically, if enough members of the planning commission are challenged to make it impossible to obtain either a quorum or a majority vote, then those challenged members can return to their seats and participate fully in the debate and the decision. All they have to do is disclose publicly the reason for their disqualification before they render their decision.

A simple three step ounce-of-prevention strategy is definitely worth a pound of cure on this one. We recommend that the Chair inquire at the beginning of the discussion of each agenda item if any member of the planning commission has any ex parte oral or written contacts to report for the record. The Chair should then ask if any member of the planning commission is aware of any appearance of fairness violations which would prevent his or her participation on the quasi-judicial matter before the commission. Once these have been reported, the Chair should solicit from members of the audience any challenges they

wish to pose to individual commissioners based on what the commissioners have just said. These three steps should take place before testimony on the project or proposal begins.

It's worth noting at this point that if no one in the audience raises any challenges right here, then they've waived their right to challenge the participation of any member of the commission later on. This is their one opportunity. If they're silent, they're agreeing to let all unchallenged members of the commission hear the testimony and render a decision.

Short Form of Procedures For Quasi-judicial Public Hearings

1. **Chairman declares the public hearing is open.**
2. **Chairman states that everyone present will be given an opportunity to be heard;** however, the commission or council does have a policy of closing meetings at 10:00 p.m. (or your own closing time). State that the hearing is being recorded and that prior to speaking, individuals should state their names and addresses.
3. **Appearance of Fairness.**
 - a. Chairman requests anyone who objects to the Chairman's participation, or any other commission or council member's participation, to please state so now and give the reasons for the objection.
 - b. Chairman asks the commission or council members if any have an interest in the property or issue. Chairman asks commission or council members if they can hear and consider this matter in a fair and objective manner.
 - c. Chairman requests any member of the commission or council to place on record the substance of any communication each has had outside of the hearing with opponents or proponents on the issue to be heard. After the communication is placed on the record, the Chairman should request whether any interested parties wish to rebut the substance of the communication.
4. **Chairman requests staff to make its presentation.**
5. **Applicant invited to comment.**
6. **Chairman invites comments from citizens in favor of the proposal.**
7. **Chairman invites comments from citizens against the proposal.**
8. **Chairman invites applicant to rebut the opposition.**
9. **Additional comments from those against and those for the proposal should be recognized, if needed.**
10. **Chairman requests whether the commission or council members have questions of the applicant, citizens, or staff.**
11. **Chairman declares the public hearing closed.**
12. **Commission or council deliberates on the record, discussing Findings of Fact and Conclusions.**

7. What should we be doing, as far as record keeping goes?

At our planning commission meetings, we do a pretty good job taking minutes of the major issues and decisions. But one of our members heard recently that having hand-written minutes may not be good enough. (Our secretary does type them up later so they're nice and neat.)

You really need to tape record all of your hearings. If one of your decisions is appealed, you must produce a word-for-word (“verbatim”) transcript of the hearing for the reviewing court. If you can’t provide this verbatim transcript, the court may order you to re-hear the issue.

It has been suggested—not entirely in jest—that every new planning commissioner should have to transcribe at least one hearing tape onto paper. Why? Because it proves **how difficult it is to make sense of a poorly done meeting tape**. All you need is a podium microphone which isn’t working well, a couple of commissioners conversing privately in front of a desk-top microphone, somebody else coughing or rustling a stack of papers, and you’ve got a real auditory mess. Add to this a series of exhibits (informally identified as “that big map,” “the other map,” and “the second site plan you showed us,”) and you’ll have a hearing tape which is nearly impossible to transcribe.

To produce accurate, word-for-word meeting tape transcripts that will stand up on appeal:

Have speakers **identify themselves each time** they speak.

The Chair must **control the testimony** and discussion: Allow only one speaker at a time.

Assign each exhibit a **letter or number designation**. Be sure speakers reference those designations in their testimony.

If the meeting is packed with a large group organized to support or oppose an application, the Chair should **limit redundant testimony** to save time. Members of the group should be instructed to state that they agree with the previous speakers’ testimony. You can further limit each participant’s testimony to a 5-to-10-minute summary. (Planning commission meetings shouldn’t run until 1:00 or 2:00 a.m. Adopt a reasonable cut-off time, such as 10:00 p.m., publicize it in your rules of procedure, and stick to it. If you need to continue after the cut-off time, do so another night.)

If any members of the public become unruly or obnoxious, the planning commission can expel them. If the meeting still cannot be controlled, it can be adjourned to a different place and time and can exclude the public, except the media.

Before closing a hearing to further testimony, be sure **both sides** of the issue have adequate time and opportunity to present their cases and arguments. Regardless of public sentiment in your community, the applicant is always entitled to a fair hearing.

8. After our commission has heard all the testimony and it's time to make a decision, our Chairperson likes to go around the group, kind of informally, and see what each of us thinks, before we actually vote. How do you feel about this as a procedure?

It's not a procedure we recommend. Although the Chair may ask if anyone has further questions or needs additional information, a planning commission meeting is not the place for informal "straw votes." Once testimony has ended, the Chair should call for a motion, facilitate a full and complete discussion, and call for a formal vote on the issue before the commission.

Always cite the conditions in your local ordinance or code which pertain to the application at hand.

The Chair should cite the relevant ordinance or code, and conditions to be satisfied. In the City of Brewster, for example, variance applications must satisfy three conditions. The Chair should restate them for the record. (See Appendices 1 and 2 of Chapter 5. Although it's intended primarily for city councils, the material is relevant for planning commissioners.)

Always cite the evidence presented which, in your judgment, supports granting or denying the application.

Each member should cite the convincing evidence in his/her vote to approve or deny the application. After citing the evidence, the person should state how he or she voted. The combined results, tallied in the vote, will provide the basis for formal collective findings and conclusions. (See Chapter 2.)

9. As a planning commissioner, can I be sued for the actions of our planning commission?

Yes. You owe it to yourself to check with your city or county to make sure the municipality you serve has **errors and omissions insurance**, or a self-insurance program which *specifically* covers you as a planning commissioner.

As a member of an advisory committee, your actions are normally not the cause of any decision which would result in damages. A different result could arise if a proponent (or opponent) of a project before the planning commission was able to demonstrate a hidden financial interest on your part or an intent on your part to hinder the project, independent of the applicable rules and regulations.

In those rare cases where liability is found, it normally runs to the municipality. The key to peace of mind is to assure yourself that an adequate insurance program is in place. An insurance program provides a defense whether or not there is liability and coverage for any

damages found.

The only exception to this general rule is a violation of the Open Public Meetings Act, for which you can personally be assessed a penalty of \$100. (Please see Chapter 2 for a detailed discussion.)

10. It seems to me that our planning commission wastes a lot of time at meetings. We're always waiting for a couple of commissioners to wade through their information packets before we can get on with the evening's business. Any suggestions?

In most communities, planning commissioners have a lot of reading to do. There are staff reports, draft planning documents, applications, zoning text amendments, training materials, and a host of other documents.

You really owe it to yourself--not to mention your fellow commissioners--to set aside the time necessary to read through all this stuff before the start of the meeting. You also need to attend the meetings. If you don't, there may not be a quorum, and no business can be transacted. A good chairperson can help motivate people. But it's really a matter of taking your personal obligation seriously. Many people, including the elected body which appointed you, are counting on your good work. And that means staying current on your reading. Please spend the time necessary to come to meetings prepared.

It's fair to say that your service on the planning commission will go through phases. There will probably come a time when you know in your heart of hearts that it's time for you to do something else. Perhaps you've accomplished everything you set out to do when you agreed to serve. Perhaps personal, family, or business obligations are demanding more time than they used to. Perhaps community service of another sort has caught your interest. You will leave a generous legacy to the commission and to your community if you recognize these symptoms, and step aside in a timely way so that someone else can serve in your place. This is perhaps the ultimate act of dedication.

Chapter 1.

Legal and Practical Objectives of Planning

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Chapter 1.

Legal and Practical Objectives of Planning

A. The Planning Model in Washington

Washington State does not define the term land use “planning” in any of its many planning statutes. Courts have described planning in the broad sense as,

the evolvement of an over-all program or design of the present and future physical development of the total area and services of the existing or contemplated municipality.¹

The planning process in a community exercises the police power of a municipal corporation, that is, the power of duly elected officials to regulate the health, safety, and other interests of a community.

Planning is normally accomplished through (1) a citizens’ advisory body known as a “planning commission;” (2) often one or more planning staff who assist the planning commission; and (3) the elected council or commission of the municipality. Citizen participation is encouraged through workshops, public meetings and special citizen committees.

Planning is a process in which community values, needs, goals, and objectives are expressed, typically through a comprehensive land use plan. The goals and objectives are then implemented through regulatory ordinances. These are known collectively as “official controls,” which include zoning codes, subdivision codes, building and health codes, environmental codes, and others that make up the regulating framework of the community.

Planning activity is divided into two categories: legislative and administrative actions.

“Legislative actions” articulate values and standards, designate rules, or create maps that are likely to affect all or a significant part of the population. Examples of legislative actions include comprehensive planning, functional plans such as for sewer or water, and development regulations, including zoning and critical areas ordinances.² Legislative actions are always taken by city councils or county commissions and must be expressed in documents officially adopted by the governing body of the particular jurisdiction. Legislative actions express the community’s plans and policies and create the rules by which the community is governed.

¹ Shelton v. Bellevue, 73 Wn.2d 28, 35, 435 P.2d 949 (1968).

² See e.g., Harris v. Pierce County, 84 Wn App. 222, 928 P.2d

“Administrative actions” enforce or administer the community’s plans, policies, and regulations on a case-by-case, site-specific basis. Administrative actions include decisions approving plats or site plans for buildings, issuing enforcement letters or actions, or rezoning specific parcels to further the objectives of adopted plans and ordinances. Administrative actions apply adopted rules or standards to particular properties or situations. They normally consider specific rights or requests of a particular property owner, or group of property owners or users. Administrative actions, typically made at the staff level, also include decisions to issue building permits or health permits, or to administer the non-hearing sections of the zoning code.

When an administrative action requires a hearing and a decision based on the record, it is considered to be “quasi-judicial.” Quasi-judicial actions include approving plats, shoreline permits, special use permits, and related actions. Quasi-judicial actions may be taken by hearing examiners, planning commissions, city councils, and county commissions.

This chapter presents an outline of the process, introduces the basic planning model in Washington, and places it into context.

B. The Constitutional Basis for Planning

The constitutional basis for planning is provided in the police power provisions of the Washington State Constitution:

Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.³

Courts in Washington have long acknowledged the validity of planning as a police power, in that

...zoning ordinances are constitutional in principle as a valid exercise of the police power, and will be upheld if there is a substantial relation to the public health, safety, morals, or general welfare.⁴

When a municipality acts with due regard for proper procedures and considerations, the courts will defer to the municipal actions taken. At the policy level, the actions are presumed to be correct.

³ The County Council’s adoption of a recreational trail plan was held to be a legislative function as opposed to a quasi-judicial function). 1111 (1996)

⁴ Washington State Constitution, Art. XI, Sec. 11.

PRACTICE TIP: The community should reference the statutory basis it uses for planning (e.g. the County of Whitehall adopts Chapter 36.70 RCW as the basis of County planning). This designation will help newcomers understand the rules governing the process, and remind “old hands” that they should check statutory details periodically to assure that proper procedures are followed.

If a county or city is adopting a comprehensive plan or development regulations under the GMA, the adopting ordinance should specifically reference Chapter 36.70A RCW. This will help the county or city establish GMA compliance.

C. The Statutory Basis for Planning

There are three statutory enabling acts for planning at the local level: the Planning Commission Acts⁵ (cities and counties); the Optional Municipal Code;⁶ and the Planning Enabling Act.⁷ Communities may also operate under a charter model, which provides a different planning structure. Each of these chapters in the Revised Code of Washington (RCW) imposes significant obligations on parties involved in land use planning. People involved in the process must understand the provisions of each and must know under which chapter a given municipality operates.⁸

The state’s Growth Management Act (GMA),⁹ and its implementing amendment,¹⁰ do not

⁵ *McNaughton v. Boeing*, 68 Wn.2d 659, 662, 414 P.2d 778 (1966). Planning through constitutional powers provides a basis for validating land use actions processed outside the specified statutory planning process. *Nelson v. Seattle*, 64 Wn.2d 862, 395 P.2d 82 (1964); *Barrie v. Kitsap County*, (1980).

⁶ Chapter 35A.63 RCW.

⁷ Chapter 36.70 RCW.

⁸ *Chrobuck v. Snohomish County*, 78 Wn.2d 858, 480 P.2d 489 (1971).

⁹ ESHB 2929 (1990) (principally Chapter 36.70A RCW). ¹⁰ RESHB 1025 (1991).

¹⁰ Chapter 35.63 RCW.

change the method or manner of planning in a local community. They merely specify the elements that must be planned and additional criteria to be followed, regardless of the local community's statutory model.

1. The Planning Commission Act¹¹

The Planning Commission Act permits a city or county to engage in planning by creating a city or county planning commission.¹² Once a planning commission has been appointed, it must recommend adoption of land use regulations and implement a “comprehensive plan” for the physical and generally advantageous development of the municipality.¹³ This means that before any regulatory land use rules are adopted, city and county councils must submit them to the planning commission. Not doing so could render the action or enactment void for failure to follow proper procedure.

The Growth Management Act¹⁴ adds this requirement: all counties and cities that are required to fully plan must adopt a comprehensive plan with more specified components.¹⁵ This reverses a long-standing policy that the “comprehensiveness” requirement could be satisfied merely by enacting a basic, community-wide plan.¹⁶

For counties not fully planning under the GMA, the Planning Commission Act¹⁷ is still the basic planning model. However, some jurisdictions not fully planning under the GMA have incorporated certain components of the GMA's requirements into their plans. For example, some cities have adopted a version of an urban growth area.

PRACTICE TIP: All communities choosing to or required to act through a comprehensive plan, should use the plan daily to reinforce all phases of community action. The best way to assure such consistency is to require any official action that enables or enforces the comprehensive plan to state why the action is consistent with the plan. Such expression will be given great, if not determinative, weight in subsequent reviews. More

¹¹ RCW 35.63.020.

¹² RCW 35.63.090.

¹³ Chapter 36.70A RCW.

¹⁴ RCW 36.70A.070.

¹⁵ *Shelton v. Bellevue*, 73 Wn.2d at 39.

¹⁶ Chapter 35.63 RCW.

¹⁷ Chapter 35A.63 RCW.

importantly, this pattern of conduct will give life to the comprehensive plan and weave the document into the fabric of daily life in the community.

2. The Optional Municipal Code¹⁸

The Optional Municipal Code provides the same general authority to engage in planning as the Planning Commission Act. However, it does require greater detail in the elements and format of the comprehensive plan. To engage in planning and zoning under the Optional Municipal Code, a city which governs under this code may create a planning agency (a planning commission together with a planning staff) to prepare:

a comprehensive plan for anticipating and influencing the orderly and coordinated development of land and building uses of the code city and its environs. The comprehensive plan may be prepared as a whole or in successive parts.¹⁹

The city council must then specifically consider and adopt or reject the comprehensive plan.²⁰ From and after the date of approval by the city council,

the comprehensive plan, its parts and modifications thereof, shall serve as a basic source of reference for future legislative and administrative action;²¹

Finally, after adopting a comprehensive plan, the legislative body,

...may implement or give effect to the comprehensive plan or parts thereof by ordinance or other action to such extent as the legislative body deems necessary or appropriate ²²

With the advent of growth management legislation, all implementing development regulations must be consistent with comprehensive plans.²³ This means that all official controls must be measured against the comprehensive plan to assure consistency; and all land use approvals, plats, site plans, and other development permits must be measured (either directly or through

¹⁸ RCW 35A.63.060.

¹⁹ RCW 35A.63.072.

²⁰ RCW 35A.63.080.

²¹ RCW 35A.63. 100.

²² RCW 36.70A.120

²³ RCW 36.70B.040

environmental review under the State Environmental Policy Act) for consistency with the adopted development regulations, or in the absence of applicable development regulations, the adopted comprehensive plan.²⁴

3. The Planning Enabling Act²⁵

The Planning Enabling Act, directed specifically at counties, is the most detailed of the planning enabling statutes. The Planning Enabling Act is more specific, procedurally detailed, and complex than the Planning Commission Act. It provides a specific statutory framework that integrates planning with zoning, platting, and other specific land use regulations.

While the Planning Enabling Act is an option for community planning, it requires a more detailed comprehensive plan. Once a county elects to create a planning agency under this Act, the agency must prepare a comprehensive plan for the

orderly physical development of the county... [including] any land outside its boundaries which, in the judgment of the planning agency, relates to planning for the county.²⁶

The Supreme Court has left no doubt that under the Planning Enabling Act, the comprehensive plan is a document to be reckoned with.²⁷ The court said

preparation of a comprehensive plan is the beginning and indispensable precursor to a county zoning law... There is nothing casual, or perfunctory, about a certified comprehensive plan as the statutes require it to set forth a number of specific elements..., and it serves as a guide to the later development and adoption of official zoning controls.²⁸

As the indispensable precursor to a valid local planning program, a well-ordered comprehensive plan is now incorporated by statute into all planning dictated by the Growth Management Act (GMA).²⁹ It applies to all cities and counties, whether they have elected or are required to develop a comprehensive plan under the GMA.

²⁴ Chapter 36.70 RCW.

²⁵ RCW 36.70.320.

²⁶ Smith v. Skagit County, 75 Wn.2d 715, 453 P.2d 832 (1969).

²⁷ Smith, 75 Wn.2d at 738-739 (emphasis added).

²⁸ RCW 37.70A.010, .020, and .120.

²⁹ RCW 36.70A.010.

4. The Growth Management Act

The Legislature adopted the Growth Management Act in 1990 in response to concerns that:

uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by the residents of this state.³⁰

The GMA provides the tools to counties and cities to manage and direct growth to urban areas where public facilities and services can be provided most efficiently, to protect rural character, to protect critical areas and to conserve natural resource lands. The GMA is the Legislature's expression of a statewide interest in local planning decisions. It provides a more detailed policy framework than the Planning Enabling Act. The GMA includes 14 goals and a number of requirements for local comprehensive plans and development regulations.

All counties and all cities of the state are required to designate and protect critical areas and to designate natural resource lands.³¹ Faster growing counties and cities are required to fully plan under the GMA by meeting all of the goals and requirements. Currently 29 counties and their cities have been mandated or have chosen to fully plan under the GMA. (See Chapter 3 for the goals and requirements of the GMA.)

Regional coordination between counties and cities is emphasized in the GMA. Counties fully planning under the GMA are required to adopt county-wide planning policies to guide comprehensive plan development. The policies must include guidance for designation of urban growth areas (UGAs) outside of which urban development will not occur. Counties work collaboratively with cities to allocate projected population for the next 20 years. UGAs are designated based upon the need to accommodate population projections.

County and city comprehensive plans are required to include specific elements, or chapters, to address land use, housing, capital facilities, utilities, transportation, rural lands (for counties), and shorelines.³² Development regulations must be consistent with and implement the comprehensive plan.³³

The state's interest is expressed in the goals and requirements of the GMA, but local jurisdictions must determine how they will meet those goals and requirements through the local planning process:

³⁰ RCW 36.70A.060 and 170.

³¹ RCW 36.70A.070 and 36.70A.480.

³² RCW 36.70A.040(3).

³³ RCW 58.17.010.

5. The Shoreline Management Act

Washington established itself as a leader in managing development of shorelines by enacting the Shoreline Management Act of 1971 (SMA). The SMA regulates development of shorelines of the state and shorelands associated with these shorelines. Shorelines of the state include all waters of the state (including marine waters) and their underlying lands, except streams with a mean annual flow of less than 20 cubic feet per second and lakes less than 20 acres in area. Shorelands are those areas landward for 200 feet from the ordinary high water mark, floodways, and contiguous floodplains within 200 feet, and all associated wetlands. The SMA places an emphasis on protecting shoreline ecology and preserving the public access to and use of shorelines. The SMA prohibits development that is inconsistent with the Act's policies or with local shoreline master programs (SMPs).

The SMA requires that local governments adopt SMPs, which tailor the state policies to their particular circumstances, enunciate local policy goals, designate the different shoreline environments within the jurisdiction, and spell out specific uses for those environments (like zoning codes).

In effect, the SMA is a land use statute for shorelines and their associated shorelands. In 1995, the Legislature required local jurisdictions to integrate their SMPs with their comprehensive plans and development regulations. The goals and policies of the SMA are now the 14th goal of the GMA. SMP policies are an element of the comprehensive plan and the implementing regulations are part of the jurisdiction's development regulations. The SMA and its integration with the GMA will be discussed further in chapters 3 and 7.

6. The Subdivision Act

As far back as 1969, the Legislature found that division of land:

is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state.³⁴

The requirements of Chapter 58.17 RCW were enacted to govern platting and subdivisions. Local governments must adopt subdivision regulations that provide procedures and standards for approval of land divisions.

The importance of subdivision regulations to planning, including implementation of comprehensive plans, is recognized in the GMA. Subdivision ordinances are included in the definition of development regulations under the GMA.³⁵ Accordingly, an additional section was added to the subdivision statute when the GMA was adopted in 1990. In deciding whether to

³⁴ RCW 36.70A.020(7).

³⁵ RCW 58.17.110.

approve a subdivision application, local governments are required to make written findings determining:

(a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.³⁶

7. The State Environmental Policy Act

The State Environmental Policy Act (SEPA) was enacted in 1971 to provide state and local agencies with the authority to consider and mitigate the environmental impacts of their decisions. Although SEPA was adopted prior to other planning laws, it is still an important aspect of land use planning because it applies to all agency decisions unless they are categorically exempt. SEPA is intended to provide information to agencies, applicants, and the public to encourage the development of environmentally sound proposals. The environmental review process involves the identification and evaluation of probable environmental impacts, the exploration of reasonable alternatives that would mitigate adverse impacts, and the development of mitigation measures to reduce those impacts.

Every step of the planning process from adoption of countywide planning policies, comprehensive plans, and development regulations to project review requires environmental analysis. Whether a county or city is fully planning under GMA or not, it should be examining the environmental impacts of its planning decisions. Environmental information is essential to making good planning decisions.

Recent amendments to the GMA and SEPA now require that the environmental review and permit review processes be better integrated at the project level. This will be discussed further in chapters 3 and 6. However, it is important to note that the Legislature has expressly stated that the primary role of SEPA review is to focus on the gaps and overlaps that may exist in applicable laws and requirements related to a proposed action. SEPA is not intended to act as a substitute for other land use planning and environmental requirements.³⁷

³⁶ RCW 43.21C.240 and WAC 197-11-158.

³⁷ Washington State Constitution, Art. XI, Sec.

8. Charter Form of Government

State laws allow cities and counties to adopt “home rule,” using a charter to specify the offices and processes for making governmental decisions.³⁸ A detailed review of charters is beyond the scope of this manual; therefore, no specific model is identified. However, several points should be noted for any community contemplating or using a charter form of government:

- i. Broad legislative actions are vested with the policy-making body of the community.
- ii. Administrative actions typically are vested with the executive body of the community.

The charter should discuss the planning process sufficiently so that enabling legislation will mirror the responsibilities for creating, modifying, and administering the community’s planning activities.

³⁸ Washington State Constitution, Art. XI, Sec. 4

Chapter 2.

Citizen Participation and the Public Process

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Chapter 2.

Citizen Participation and the Public Process

Growth management challenges Washington communities to deal effectively with difficult issues. Addressing these issues requires a thorough understanding of citizen participation and the legal requirements of the public process.

The first part of this chapter, **Citizen Participation**, focuses on the role of community residents in land use planning. It also introduces the most popular public involvement techniques local governments can use to encourage citizen participation, and guidelines for planning successful public meetings and work sessions.

The Public Process, which follows, provides an overview of the legal requirements for public involvement, meetings, and access to records. It also outlines how to introduce properly, deliberate, and adopt municipal codes and ordinances, including the Appearance of Fairness doctrine.

Part A: Citizen Participation

1. What is Citizen Participation?

Citizen participation in community affairs is as old as democracy; yet any attempt to define citizen participation is difficult. Citizen participation means different things to different people. Some view it as the task of electing representatives and voting on specific issues. Others define it as having an active voice in influencing local government decisions.

In land use activities, for example, citizens can testify at a public hearing; attend a workshop to create goals for the community comprehensive plan; serve a term on the planning commission; or answer a public opinion survey to identify community planning priorities. In other words, citizen participation in local government involves the people, in some fashion, in land use decisions. The traditional roots of contemporary participation are found in the town hall form of direct democracy. The fundamental justification for citizen participation is the premise that people have a right to participate in decisions that affect them.

Citizen participation is an established part of the land use planning and regulatory process in Washington State. All state planning laws require citizen participation - through public hearings - before plans or regulations are adopted, or before granting land development permits.

Emphasis on citizen participation in Washington has increased significantly following the Growth Management Act of 1990. The goals of the Act include, "Encourage the involvement of citizens in the planning process."¹ Although the Act does not further define citizen participation,

¹ RCW 36.70A.020(11).

the procedural criteria for adopting comprehensive plans and development regulations stress “that the process should be a ‘bottom up’ effort, involving early and continuous public participation, with the central locus of decision-making at the local level.”² RCW365.195.010

The Growth Management Act also states:

“Each county and city...shall establish... procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.”³

This requirement provides overall guidance, but leaves local governments free to tailor a more detailed definition of citizen participation to fit community needs.

2. Who Should Be Involved?

State planning laws and local ordinances spell out the need to involve elected and appointed officials closely in local land use planning. A broad range of citizen groups and committed individuals (generally referred to as “citizens” or “the public”) must also be involved. A brief overview of these participants includes:

City councils and boards of county commissioners set policy, make final decisions on plans and land development permits, adopt ordinances, approve budgets for planning, and appoint members of the planning commission.

Planning commissioners are volunteer citizens with legal responsibility to review plans and projects. They do not make final decisions, but must make recommendations before elected officials can adopt comprehensive plans. Planning commissioners are non-partisan appointed officials who represent the general values of the community in land use decision making. They also serve as a sounding board for new ideas, promote community interest in planning, and furnish leadership in formal citizen participation programs.

Most larger cities in Washington state and its 39 counties have a **professional planning staff**, who bring technical expertise and knowledge to the land use planning process. Historically, the planning staff serves as advisers to elected officials and planning commissions. They conduct studies, administer planning regulations (such as zoning and subdivision ordinances), and are a resource for the public on land use planning activities. In smaller communities without professional staff, consultants sometimes are hired on a limited basis to provide technical assistance.

² WAC 365-195-010(3).

³ RCW 36.70A. 140.

Typically, nearly everyone outside this formal structure who could be involved in the land use planning process is termed “**the citizens**” or “**the public**”- neither entirely appropriate. Citizens in a community are not a single homogeneous entity. They represent a broad spectrum of ideas and opinions, often with conflicting goals and values. The “citizens” are a diverse collection of individuals and groups: neighborhood associations; public interest groups, such as the local chapter of the Sierra Club; or special interest groups like the local chamber of commerce. Many are individuals intensely interested in planning issues, while there are citizens who pay little or no attention to the community’s land use planning activities.

What these diverse groups share is a willingness to volunteer some of their free time for community planning activities. Motivations to participate range from believing that citizens must be involved in community affairs to maintain the rights and privileges of a free democratic society; to reasons of self-interest, prestige, professional recognition, or an increase in business contacts.

Not everyone is interested in a formal citizen participation program. However, all citizens in the community must be given an opportunity to express their views and concerns, and have them considered as decisions are made. Local government must make opportunities for citizen participation in land use planning accessible to everyone. It is up to the citizens to take full advantage of these opportunities.

3. Citizen Involvement: A Matter of Timing

No matter when officials invite or recruit citizen participation in land use planning, it will not be soon enough for some interest groups. Others will complain that participation is starting too early. Controversy over the topic of when to invite or recruit citizen involvement can only be settled by local officials. Citizens can be involved from the beginning, or at selected steps in the process.

Citizen mistrust, or lack of support for plans and projects, often has more to do with a lack of opportunity to participate early in the project than on its merits. **Citizen participation in the earliest stages of land use planning will save time and agony for officials and planners in the long run.** The longer participation is put off, especially in major planning or development issues, the more likely that rumor and misinformation will spread. When this happens, officials spend more time explaining what is not true than reviewing the pros and cons of the project.

Another good reason for early participation is to identify disagreements or conflicts. Conflicts are abundant in land use planning. A healthy airing of conflicting views early on encourages creative problem solving and productive conflict management. Delaying citizen participation does not reduce or avoid conflicts. Conflict can cause poor utilization of resources, delay important planning efforts, and, on occasion, result in the loss of desirable development projects.

Citizen participation efforts will fail if the deciding officials have not defined their expectations and responsibilities at the beginning. Elected and appointed officials must make a strong public

commitment to announced citizen participation activities. They must define clearly what the purpose of any formally announced participation program will be; and there should be a written document that clearly states how officials will invite, review, and process citizens' information. People are more likely to devote time and energy to local planning activities if they know their officials are accountable.

4. Methods for Encouraging Citizen Participation

Citizen participation must be carefully planned and organized. Activities should be simple, straight-forward, and manageable by officials, planning commissioners and staff; and designed to fit local values and available resources.

The extent and intensity of any participation activity should match the importance of the issue. Widespread participation is desirable when comprehensive plans or land development ordinances are being created or updated. Participation efforts can be on a smaller scale if the issue mainly interests a particular neighborhood or area.

The best that can be done in any community is to see that citizen participation activities are open and accessible to anyone who wishes to be involved; that they do not require citizens to have special technical knowledge; and that there are clear lines of responsibility and accountability.

Two methods are key to successful citizen participation: **public information and interaction.** Public information methods are a time-honored way to inform citizens about land use plans and projects. Interactive methods create a dialog between citizens, elected and appointed officials, and professionals.

a.) Public Information

Citizens need to be informed about land development plans and projects, and armed with the facts they need to participate constructively. Citizens must also be informed of specific opportunities for involvement and how their participation will influence land use decisions. Public information methods reach large audiences, stimulate interest in community planning, announce citizen participation activities and events, provide notice of public hearings, and inform the public of actions and decisions.

Following are just a few examples of traditional public information methods:

Newspaper, Television, and Radio	
Feature Story Legal Notice Editorial	Press Conference Insert Talk Show
Other	
Direct Mail Hotline Speakers Bureau	Newsletter Displays & Exhibits Telephone Tree

Public Information Methods

The best way to select public information tools is to identify the objective and audience to be informed, and choose the methods based on skills and available budget. Cooperation from the local media is one key to maintaining a solid public information program. Local planning agencies should include funding for public information activities in their yearly budgets.

b.) Citizen Interaction

If citizen participation is to be effective and not simply “window-dressing”, people need opportunities to:

- Clarify values and attitudes
- Express their opinions and priorities create proposals for plans and projects develop alternative approaches
- Resolve conflict

Interactive methods encourage two-way communication and innovative solutions. All of these methods create a dialog among decision makers, professionals, and citizens who will be affected by those decisions. Some interactive methods, such as workshops, are effective throughout a planning process. Others, like surveys, are best limited to specific steps. Interactive methods most frequently used in Washington State are **public hearings, public meetings, community workshops, citizen advisory committees** and **community surveys**.

c.) Public Hearings

A public hearing is a special meeting which allows the public to comment on proposed plans and projects before officials make a final decision. Operating under a set of laws and formal procedures, it is an open public meeting. All citizens must be permitted to present their views for the official record, verbally and in writing, before the hearing body makes its decision.

Public hearings are conducted by city councils, boards of county commissioners, planning commissions, and, for certain designated zoning issues, the board of zoning adjustment. Some

jurisdictions in Washington have hearings examiners who conduct quasi-judicial public hearings related to land development permits.

It is in the community's best interest to see that public hearings are carefully planned. In addition to the legal aspects of conducting a hearing, the points listed below can significantly increase the productivity of public hearings.

Before a hearing takes place:

- The responsible agency should carefully examine the proposal or application to see that it is complete, and that all procedures and regulations have been followed.
- All interested parties should receive ample notice of the hearing.⁴
- Members of the hearing body should visit the site of all specific development proposals.
- At least several working days prior to the hearing, staff reports, environmental assessments, economic analysis, and any other documents relevant to the hearing should be available for members of the hearing body and the general public.
- Printed copies of the hearing body's rules and procedures should be on hand.

How To Conduct A Public Hearing

- The Chair calls the hearing to order, explains the purpose of the hearing and the procedures to be followed.
- The Chair is responsible for conducting the hearing in a fair, evenhanded manner, and should request that all questions and comments be addressed through him/her.
- A brief summary description of the proposal or plan is given by the Chair or a member of the planning staff. A lengthy description of the proposal is not necessary, as the subject of the hearing needs to be announced sometime before the hearing.
- All visual aids, such as maps and slides showing specific sites or development proposals, must be visible to everyone in the hearing room.
- The Chair opens the hearing for public testimony when the description of the proposal or plan is completed.
- Typically, proponents will be heard first, followed by opponents and a short rebuttal by proponents; however, some hearing bodies ask people to sign up if they wish to testify and then call for testimony based on the order of the sign-in sheet.
- The Chair closes the hearing after all testimony is presented; however, it may be necessary to continue the hearing to a future date if there is a great deal of testimony.
- The Chair thanks all citizens in attendance for their testimony. The hearing body will either debate, deliberate, and make a decision; or take all the information under advisement and

⁴ RCW 36.70B.110(11) requires a public comment period and sets forth specific requirements for providing notice of a land use project hearing.

make a decision at the next meeting, or announce a specific date when the decision will be made.

Members of the hearing body need to keep fair and open minds until all testimony is presented. Citizens should be adequately prepared to testify, know the hearing rules and procedures, have clear statements of purpose for their testimony, and back up their statements with solid information. It is also helpful to the hearing body if citizens prepare written testimony and present only summary remarks at the hearing.

Public hearings are required both for legislative and quasi-judicial decisions. Legislative hearings are conducted to seek citizen views on general land use plans and ordinances. Quasi-judicial hearings deal with individual property. Quasi-judicial hearings (such as rezoning a property from residential to commercial or subdividing several acres in a rural area) are frequently surrounded by conflict. These conflicts often make front page news and are sometimes resolved in the courts, rather than the community.

The standard public hearing provides proponents and opponents of land development projects an opportunity to comment, **but it does not work very well as a technique to solve problems or resolve conflicts**. For this reason, many private developers are initiating their own citizen participation sessions. They are meeting and consulting with neighborhood groups in the design stages of project development. These private initiatives have been successful across the state.

Legally required public hearings offer only a limited opportunity for two-way communication. They are most effective if used in combination with other citizen participation methods. Public hearings are not a very expedient method for resolving conflict and can be counter-productive if used as a method to rubber-stamp plans or projects. The advantage of public hearings is that they guarantee citizens' comments on land use issues will be heard.

d.) Public Meetings

Designed to inform, educate, or facilitate extensive interaction and dialogue, public meetings are a widely used form of citizen participation. Informational and educational meetings are a valid first step in any citizen participation process. Technical information can be distributed, along with an orientation to citizen participation opportunities and general or detailed descriptions of plans and projects.

Problems, however, can occur when the purpose of a public meeting is not clearly stated.

Citizens become frustrated and angry if they attend a meeting believing they will be able to express their views, only to discover that the meeting was designed to educate or inform them about plans or projects. The purpose of a public meeting must be announced openly and honestly in pre-meeting publicity.

⁵ RCW 36.70B.020(5).

e.) Community Workshops

One of the most popular citizen participation methods is the community workshop. Encouraging extensive interaction, workshops offer a structure that divides many people into small work groups of six to nine individuals. The value in this method is the data citizens develop in the work groups.

Each small group prepares a written report, communicated at the end of the workshop to all attendees. Data developed at community workshops can be used throughout the planning process. When people see the goals, priorities, and ideas they have developed in community workshops reflected in land use decisions, they are more likely to support local government plans and projects. Other advantages of this method are:

- Everyone can participate at meetings;
- It is an excellent means of developing community consensus; and
- It is relatively inexpensive.

To be successful, workshop managers must have good group facilitation and data management skills.

Keys to Planning and Conducting Successful Public Meetings and Community Workshops

Tell people the purpose of the meeting and have a written agenda.

- Make sure that the meeting date and time is convenient for the people who are being asked to attend.
- Notify people well in advance, approximately one to two weeks before the meeting date.
- The meeting site should be easy to get to, serviced by public transportation, and have ample parking.
- Select a meeting room that is appropriate for the size of the expected audience. Avoid rooms with pillars, other structural supports, and fixed seats.
- Make certain there is adequate lighting, ventilation, and a comfortable room temperature. Assure that people will be able to hear speakers and converse in small groups.

A few words on meeting formats: Informational and educational meetings are usually set up in a formal manner with a podium and chairs set in rows. Informal arrangements with chairs and tables for small groups are appropriate for workshops. Meeting sponsors often serve coffee, tea, or juice as a way to make people comfortable and help them become acquainted during meeting breaks. Having materials for people to look at and study prior to a meeting, and setting up audio visual equipment well in advance of the starting time are other simple ways to make

meetings less stressful for organizers and participants.

PRACTICE TIP: People appreciate having the announced starting and ending times observed. One note of warning: speak in English, not planning jargon, at public meetings. Using technical terms that people do not understand has been the downfall of many carefully planned public meetings. Paying attention to details can reduce problems and make public meetings more enjoyable for everyone involved.

f.) Citizen Advisory Committees

Citizen advisory committees, which give advice to local officials on a particular plan, project, or program, are very popular for citizen participation. Community or neighborhood committees range in size from small, select groups of individuals appointed by local officials, to large groups of 50-100 volunteers. Advisory committees assure that community values and attitudes are represented in the planning process. They can also underscore obstacles to plans and projects, generate interest in land use planning, and help resolve conflicts among interest groups.

Appointed advisory committees are most efficient when they represent a cross-section of community interests. Volunteer advisory committees are best suited to educate and inform, create interest in community planning issues, and to get feedback on plans and projects. They generally do not represent all viewpoints in the community and may be strongly biased.

In all cases, whether an advisory committee is appointed by local government officials or composed of volunteers, staff support must be supplied to deal with technical and organizational tasks.

g.) Citizen Surveys

A citizen survey is often used to gather information about citizen attitudes, values, and priorities. It can also gather data about a community's residents, such as age, income, and employment. Surveys are not a truly interactive participation method; citizens do not communicate directly with decision-makers in a survey, but they can express their opinions on land use issues.

Several types of surveys are used in land use planning. The **formal scientific survey** systematically measures community attitudes, values, and priorities. Data collected by scientific surveys can statistically represent all citizens' views in a quantifiable manner. Crucial elements in a formal scientific survey are properly designed questionnaires, careful tabulation of results, and a written analysis and interpretation of the data. Survey results must be reported in a straight-forward manner and be widely distributed throughout the community. If the local government staff is not experienced in survey design and analysis, they should seek assistance.

The **community self-survey** is popular in smaller communities. This method makes extensive use of community volunteers with a minimum of outside assistance. Citizens organize and conduct all aspects of the survey, from developing and distributing questionnaires to tabulating and distributing results to the community. The advantages of this type of survey are that it encourages broad citizen participation and it collects information about community attitudes and priorities. Conducting a community self-survey is a large undertaking. This method should be chosen only if enough volunteers are available and when the survey results are not needed immediately.

Informal methods to survey public opinion include questionnaires printed in the local newspaper, or call-in answers on a talk show. Such surveys will not represent all community views, but can help focus on or uncover land use planning issues. They should not be relied on to develop community plans.

Many other methods have been used successfully in communities across the state. **Mediation techniques**, for example, can help disputing parties resolve conflicts over land use plans and projects. New methods, such as **interactive computer simulations** and **cable television**, are being introduced in citizen participation activities. In selecting among these, communities should be open to new and innovative techniques. However, they must carefully evaluate their ability to execute a particular method. Guiding factors in making a selection are 1) match the appropriate method to each citizen participation objective; and 2) have the skills and resources to carry out the method properly.

A Seven Step Guide to Creating An Effective Citizen Participation Program

Step 1

Determine Objective(s) of the participation program. Write them down, in plain English, so everyone can understand the purpose of the program.

Step 2

Identify Who should be involved by identifying who will be impacted by the plan, ordinance, or project. These are the citizens who need an invitation to participate.

Step 3

Decide When to invite/recruit citizen involvement. This step must be consistent with Step 1. For example, if the objective is to have citizens develop initial ideas for plans, people must be involved at the beginning of the process. If the objective is to have people review and comment, it will not be necessary to plan for involvement until draft proposals are available.

Step 4

Identify and Evaluate a Variety Of Methods that are appropriate to carry out the program objective(s). Typical evaluation criteria are: the cost of the method; the ability of staff (volunteer and professional) to administer the method; the amount of time needed by citizens; the amount of time needed by staff to process data generated; and the quality of that data.

Step 5

Select the Best Method(s) to achieve each program objective. Be sure they are within the resource capabilities, both financial and human, of the community.

Step 6

Carry Out the citizen participation program.

Step 7

Evaluate the Program when it has been completed. Decide if objectives have been met, list what went well and what could be changed or improved for the next time.

Part B: The Public Process

Public involvement in local planning and land use decisions in Washington communities takes place within a formal structure established by law. Procedures governing how public meetings are conducted relate to the general statutes and case law governing the conduct of public officials. Some of these requirements apply specifically to planning commissions; all of them, however, are important in conducting public agency business.⁶

1. Public Meetings/Executive Sessions

a.) Open Public Meetings-In General

Planning commissions, hearings examiners, and city and county governing bodies operate under the umbrella of the state's public meeting and public document laws.

With a few exceptions, the Open Public Meetings Act⁷ requires the governing bodies of public agencies to keep all meetings at which action is taken open and accessible to the public. Multi-member planning commissions are considered governing bodies of public agencies under the Act.⁸

"Action," as used here, includes substantive deliberations or the receipt of evidence, as well as formulating findings or taking final votes.⁹ Thus, if a quorum of a governing body meets at any time or place and engages in any discussion or deliberation about agency business, the result is a meeting that must comply with open meetings requirements. Subcommittees of a governing body also are considered governing bodies if they exercise delegated powers, hold hearings, or take testimony or public comment.¹⁰

⁶ For a more detailed analysis of this subject, readers should consult *Knowing the Territory*, published and periodically updated by the Municipal Research & Services Center of Washington, November, 1991.

⁷ Chapter 42.30 RCW.

⁸ RCW 42.30.020(1)(c).

⁹ RCW 42.30.020(3).

¹⁰ RCW 42.30.020(2).

Open meeting requirements of the Act (including proper procedures for notice and conduct) apply to all regular or special meetings, even when they are called “work sessions” or “study sessions.” There are times, however, when the public does not have a right to participate in all activities of an “open” meeting. While agendas, staff input, commission deliberations, work sessions and briefings are all activities proper at public meetings, the commission or council may permit or exclude public participation, as appropriate to the circumstance. Only at specific public hearings is the commission or council required to solicit and listen to public input on a specific subject.¹¹

Planning commissions and city or county legislative bodies hold two types of meetings:

i.) Regular Meetings

A regular meeting is held at a fixed time established by ordinance, resolution, or similar rule. Once properly established, regular meetings require no separate public notice. A regular meeting normally follows an agenda; but all business of the body may be transacted at such a meeting, including matters raised at the meeting but not listed on the agenda.¹²

ii.) Special Meetings

Any meeting not set by resolution for general meeting purposes is a special meeting.¹³ To hold special meetings, public agencies must comply with additional rules. First, written notice of the meeting identifying the time, place, purpose, and agenda items to be discussed must be delivered to each member of the body at least 24 hours in advance, either by mail or personal delivery. This requirement is waived by attending the meeting, and may be waived in writing either before or after the meeting, by any person entitled to notice.

Written notice of special meetings, including the agenda, must be sent to every newspaper, radio station, or other organization or person that has requested in writing to be notified of special meetings.

Board action at special meetings is limited to matters identified on the agenda and published in the special notice. Thus, matters not on the special notice cannot come before the board for action. While technically permitted, it is best to avoid “discussion” of non-agenda items. This often leads to de facto decisions, which violate the Act and may invalidate later formal action.

b.) Closed Meetings “Executive Sessions”

Meetings at which the public may be excluded from deliberations (“executive sessions”) are narrowly defined. These include matters pertaining to certain personnel matters, real estate acquisition, selling or leasing property, and, under certain circumstances, consultations with the

¹¹ RCW 42.30.030 requires meetings be open and all persons be permitted to attend any meeting; it does not require that persons be permitted to participate.

¹² RCW 42.30.070 &.075.

¹³ RCW 42.30.080.

agency's legal counsel.¹⁴

“Executive sessions” commonly involve sensitive personnel matters (such as evaluations of individual employees) and sensitive legal consultations. Closed discussions of agency enforcement actions and “litigation or potential litigation” which may involve the agency or its officials are permitted by statute when public knowledge of the discussions would harm the agency.¹⁵ The exemption generally includes discussions of legal alternatives, where the agency's decision could result in litigation. Most other legal discussions pertaining to non-controversial agency business must take place in open meetings.

Note: The statute generally allows only “discussion” or “consideration” of specified matters in executive session. Any final action must be taken in the subsequent open session.

Notice rules that apply to public meetings also apply to executive sessions. Before the executive session begins, the public meeting is convened and the presiding officer announces:

- The board is going into executive session.
- The purpose of the session and the reason it is exempt.
- The length of time the session will last.¹⁶

When the session ends, the presiding officer returns the meeting to public session and discloses the nature of the meeting for the record. He or she may adjourn the meeting if there is no other business before the board, or proceed to other agenda items.

c.) Conduct of Meetings

The Open Public Meetings Act encourages public attendance at meetings.¹⁷ Any conduct that could discourage attendance (such as requiring all attendees to sign up for the meeting) is prohibited.¹⁸ Sign-up sheets for those who wish to speak at a public hearing, however, are appropriate and recommended. When large crowds are expected, sign-in sheets should be numbered so testimony can be taken in order. If attendees behave in a disorderly manner, the body may expel the offenders or relocate the meeting.¹⁹ For an accurate record of the proceedings, persons who want to speak may be required to identify themselves.

By law, minutes must be taken and recorded promptly for all public meetings, except executive sessions.²⁰ Stenographic notes and tapes are not considered minutes unless they are officially adopted as such. If a public agency does not produce written minutes, the adoption of tapes or notes of previous meetings as the “official meeting record” should be an agenda item at every

¹⁴ RCW 43.30.110.

¹⁵ RCW 42.30.110(1)(i).

¹⁶ RCW 42.30.110(2).

¹⁷ See RCW 42.30.010 &.030.

¹⁸ RCW 42.30.040.

¹⁹ RCW 42.30.050.

²⁰ RCW 42.32.030.

meeting. Under the public records law, these documents may be subject to public inspection.

If proper notice or procedures for open meetings are not followed, any action taken will be invalidated.²¹ Persons who violate the Open Public Meetings Act are also subject to a \$500 penalty for the first violation, and a \$1,000 fine for each subsequent violation, so responsibility rests with the deliberative body (and usually the presiding officer) to check for procedural compliance before taking action.²²

While state law does not prescribe any specific meeting protocol, communities are encouraged to adopt, publish, and follow an agenda format. A consistent agenda format will make it easier to follow community business. Some communities publish upcoming subjects for future meetings in the agenda package. Advance notice allows everyone interested in the topics to prepare and spread the word, increasing public participation.

Written staff reports should be available several days in advance. This will give the commissioners or council members and other participants time to understand the case and prepare their comments. A staff or committee presentation of matters to be decided is common at public hearings. Where projects are involved, the applicant usually has the opportunity to address the proposal and its consistency with local codes and ordinances.

At large hearings, testimony should be organized so everyone is heard and the evidence is presented in a logical fashion. Acceptable alternatives for large hearings include (a) testimony taken in order of sign up, (b) all testimony in favor, then all opposed, or (c) alternating favorable and opposition testimony. Time limits may be imposed, although written comments should be solicited when the subject cannot be covered in a brief public comment. Finally, groups should be given more time to organize joint comments or presentations, reducing the number of comments needed.

If a meeting runs overtime or needs to be continued, the presiding officer must adjourn the meeting to a stated time and place.²³ A notice of adjournment is then posted promptly on the door where the meeting was held. If the adjourned meeting was a special meeting, written notice of adjournment must be mailed to all who are given notices of special meetings. Once reconvened, the meeting may continue as if there was no adjournment. There is no limit to the number of times a meeting may be continued.²⁴ However, one must bear in mind that certain actions of the deliberative body are to be taken within independently established deadlines. For instance, a preliminary plat application must be either approved, denied, or returned for modifications within ninety days from filing and a final plat application within thirty days, unless either time period is extended.²⁵ Other deadlines may apply as well, either by state law²⁶ or local ordinance. The governing body must therefore be careful when it repeatedly continues matters to subsequent meetings.

²¹ RCW 42.30.060.

²² RCW 42.30.120(1).

²³ RCW 42.30.090.

²⁴ RCW 42.30.100.

²⁵ RCW 58.17.140.

²⁶ See, e.g., RCW 36.70B.070 & .090.

2. Public Documents/Confidential Documents

a.) Public Records or Freedom of Information

Washington's open public records provisions,²⁷ modeled after the federal Freedom of Information Act,²⁸ are sometimes called the state's Freedom of Information Act. Washington adopted its Public Records Act by initiative in 1972.²⁹

The public purpose of the Freedom of Information Act is stated boldly in broad, sweeping language.³⁰ The definition of records, for instance, is so broad that it suggests members of the public can inspect and copy any transcription of thought or speech in the agency's possession related to agency business.³¹ There are exceptions, of course, designed to protect the public interest as well as privacy rights of individuals in some cases.³²

b.) Duty of Public Agency to Facilitate Access to Records

An agency must establish procedures for providing access to its records. Indexes should be created and published.³³

All records must be available for public inspection and copying during customary office hours. If an agency has no regular office hours, the hours are set by statute.³⁴

The agency must make its facilities available for the public to make copies of its records, or must make the copies itself upon request. The agency may charge for the cost of making copies, but only at the actual cost. The agency may not charge for making record searches or allowing inspections.³⁵

c.) What Records May Be Withheld

The Public Records Act provides a variety of specific, narrowly construed exemptions. One exemption from disclosure that might be involved during the planning process is for "Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss."³⁶ Note the requirement of "public loss."

²⁷ RCW 42.17.250 -.348.

²⁸ 5 U.S.C. § 552.

²⁹ Initiative Measure No. 276, approved November 7, 1972, eff. January 1, 1973.

³⁰ RCW 42.17.290.

³¹ RCW 42.17.250 & .260.

³² RCW 42.17.310&.315.

³³ RCW 42.17.260 & .290.

³⁴ RCW 42.17.280.

³⁵ RCW 42.17.300.

³⁶ RCW 42.17.310(1)(h) (emphasis added); *Servais v. Port of Bellingham*, 127 Wn.2d 820, 904 P.2d 1124 (1995). But see *Lindberg v. Kitsap County*, 82 Wn. App. 566, 919 P.2d 89, review granted, 130 Wn.2d 1025, 930 P.2d 1229 (1996) (site and drainage plans for proposed residential development were not exempt from copying under The Public Records Act).

There is an exemption for records of archaeological sites and for certain business records protected under other statutes.³⁷ Washington appellate courts have held on several occasions that agencies cannot simply create confidentiality for records - for instance, by agreement with a private party - without statutory authority. For example, an agency or public official cannot accept an employment application with the understanding that the applicant's business records submitted with it will be confidential. An exemption for this purpose was sought during several legislative sessions, but has yet to be enacted. An agency may apply to a court for an exemption for a particular record when disclosure would harm "vital governmental functions."³⁸ However, this standard is difficult and uncertain to meet.

e.) Procedures for Access-Remedies

An agency must make its records available promptly on request. It must provide a reason for denying access and must establish procedures for reviewing requests. The law establishes schedules for prompt action by the agency. Municipalities should adopt ordinances or resolutions identifying the method and manner for requesting public documents, the person or persons responsible, and the time within which answers should be provided.³⁹

A person whose request for inspection or copying is wrongfully denied has the right to sue the agency and force it to produce the record. If successful, the requesting person might be entitled to reimbursement for legal costs and may be awarded up to \$100 per day for each day the request was denied. Generally, the agency has the burden of proving its denial was justified.⁴⁰

f.) Conflicts of Interest

The law strictly forbids public officials, including planning commissions, to have personal financial interests in contractual matters they are supervising. No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.⁴¹

These rules rarely apply in planning cases; they are usually limited to situations where the municipality is contracting for consultants to review a project or proposal, or make studies for the community.

g.) Non-financial Conflicts

The rule of incompatible offices is a non-financial conflict which may arise. Courts generally hold that a public official may not hold two offices simultaneously that are incompatible with

³⁷ RCW 42.17.310(1)(k) & (m)(o)(r)(z)(bb) & (ff).

³⁸ RCW 42.17.330.

³⁹ RCW 42.17.250 & .320.

⁴⁰ RCW 42.17.340.

⁴¹ RCW 42.23.030.

each other,⁴² unless expressly permitted by statute. Examples include two offices in which one has supervision over the other, or offices that at times may hold opposing duties, such as the simultaneous appointment of one person as (a) mayor and planning director; or (b) council member and planning commissioner; or (c) boundary review board member and elected official involved in annexations.

3. Appearance of Fairness

Appearance of fairness is a judicial doctrine that may arise when (1) public hearings are required, (2) a decision must be made based on evidence in the record, and (3) the decision is based on applying policy to a specific situation, rather than creating a new policy for the community.⁴³ The appearance of fairness doctrine arises from the judicial perspective that certain actions of local officials must not only be fair in fact, but conducted in a manner that is fair in appearance.⁴⁴

The courts divide zoning and planning actions into two functions. Actions that involve the public as a whole (rather than a particular project or proposal) are called “legislative actions.” Examples include area-wide zoning actions or comprehensive plan modifications. But when a project or proposal is at issue, especially if policy is applied to a specific parcel or small group of parcels, the action is termed “quasi-judicial.”⁴⁵

The distinction between the two is that broad public policy declarations are legislative actions; applying that policy to a particular situation through a hearing, findings, and creating a record is a quasi-judicial proceeding.⁴⁶

In the quasi-judicial setting, the appearance of fairness doctrine holds that the decision-maker must not have conflicting interests or preconceived views on a project. This ensures that: (1) the decision is made on the record; (2) the decision-maker has no entangling alliances that would make it appear that he or she might favor one side over the other; and (3) the proceedings are conducted in a manner that appears fair.

As stated by the Supreme Court when the doctrine was first articulated:

It is axiomatic that, whenever the law requires a hearing of any sort as a condition precedent to the power to proceed, it means a fair hearing, a hearing not only fair in substance, but fair in appearance as well.⁴⁷

⁴² Kenneth v. Levine, 50 Wn.2d 212, 310 P.2d 244(1957).

⁴³ Smith v. Skagit County, 75 Wn.2d 715, 739, 453 P.2d 32 (1969); but cf. Polygon Corp. v. Seattle, 90 Wn.2d 59, 67-68, 578 P.2d 1309 (1978) (holding that the appearance of fairness doctrine does not apply to administrative actions, such as the issuance of a building permit, except where a public hearing is required by statute).

⁴⁴ Id.

⁴⁵ Raynes v Teavenwot r h, 118 Ill- 2d 237, 821 D 2d 1204 (1992).

⁴⁶ Zehring v. Bellevue, 99 Wn.2d 488, 663 P.2d 823 (1983).

⁴⁷ Smith, 75 Wn.2d at 739.

The reasoning behind the appearance of fairness doctrine is twofold:

The first applies if the community establishes a policy applicable to a certain situation. Each participant in the proceeding has the right to have a matter judged on its merits by unbiased officials who are not influenced by financial or personal interests.

Second, because any quasi-judicial decision is open to court review, all factors in a decision must be on record for the court's evaluation. Where one or more of the decision-makers have interests or contacts outside the record that influence the decision, the rights of all parties to have the matter decided on the record may be compromised. This is why the court articulated the appearance of fairness doctrine.

The doctrine has now been codified and clarified by statute ⁴⁸ **Key points to keep in mind include:**

Doctrine of Fairness

The doctrine applies only to actions that determine the legal rights of specific parties in a hearing or contested case proceeding.

Contact with a constituent by a decision-maker will not result in an appearance of fairness claim if the contact is during the course of the official's business and does not involve issues in a contested hearing.⁴⁹

Where ex parte contacts occur (i.e., between an official and only one of the interested persons in a case), the official must disclose the contact and substance of the contact on the hearing record.⁵⁰ Disqualification may still follow if the contact could prevent the official from fairly deciding the case on the record.⁵¹

Persons will not be disqualified for comments they made before declaring for public office, or while campaigning for public office.⁵²

Persons may not be disqualified on the basis of campaign contributions, if they follow campaign disclosure laws.⁵³

⁴⁸ Chapter 42.36 RCW.

⁴⁹ RCW 42.36.020; See *Organization to Preserve Agricultural Lands v. Adams Cy.*, 128 Wn.2d 869, 913 P.2d 793 (1996) ("OPAL") (an ex parte communication between a member of an administrative quasi-judicial decision making body and an interested party that occurs before a matter is set to be heard by the body does not render the subsequent decision invalid if all parties have been given extensive opportunity for input on the issues or if the party challenging the appearance of fairness is unable to demonstrate that the communication concerned the proposal which is the subject of the quasi-judicial proceeding).

⁵⁰ An administrative decision maker's failure to disclose an ex parte communication does not render the administrative decision invalid if the communication has, in fact, been rebutted in the course of the administrative proceeding. *OPAL*, 128 Wn.2d at 889.

⁵¹ RCW 42.36.060.

⁵² RCW 42.36.040.

⁵³ RCW 42.36.050.

Planning commission members, having made a recommendation to county or city officials, are not barred from participating in further proceedings.⁵⁴

The appearance of fairness doctrine cannot be used to defeat a quorum if the member or members first disclose the basis for their disqualification.⁵⁵

None of the exceptions to the doctrine apply if the result is a hearing that is actually unfair (due process violation), as opposed to simply appearing unfair.⁵⁶

Here are three keys to a successful quasi-judicial proceeding:

- **Keep an accurate record of the hearing.** All applications, exhibits, reports, letters, and written and oral comments on the project should be part of the record.
- **All decision-makers should disclose special interests they may have in any matter before the particular body.** When a decision-maker has a vested interest or predisposition to a specific outcome (such as a financial or other personal interest that would prevent an unbiased decision, or a personal relationship with the applicant or the opponent), that decision-maker should withdraw from consideration and voting on the matter.
- **The decision should be written and on the record** (see discussion below).

4. Public Decisions and Creation of Records

a.) Conduct of the Initial Hearing

The manner in which hearings and meetings are conducted is important in two respects. 1) Meetings must be conducted so they are fair, both in fact and appearance, to persons affected by their outcome. 2) Planning agency action or non-action involving factual questions must be defended effectively on appeal through the case record.

b.) The Requirements for an Adequate Record

Washington courts make it clear that an adequate record is the key to successful land use decisions.⁵⁷ When any decision is to be made on the record, the municipality must maintain an adequate record of all proceedings.

⁵⁴ RCW 42.36.070.

⁵⁵ RCW 42.36.090.

⁵⁶ RCW 42.36.110.

⁵⁷ *Bennett v. Board of Adjustment*, 29 Wn. App. 753, 755 n.2, 631 P.2d 3 (1981).

The record should contain the following elements:

- The application and supporting documentation.
- The environmental determination and any supporting documentation.
- Any staff report and pre-hearing correspondence pertaining to the case, including all agency or department comments and letters from interested citizens.
- A verbatim record (usually taped) of any hearing in the case.
- Any exhibits offered during the hearing should be numbered and kept as part of the record.

Nothing is part of the record unless it appears on the tapes or in exhibits offered as evidence in those proceedings. Comments must appear on the record before they can be considered in evaluating an application. All oral comments to be considered should be made into a microphone provided for that purpose. This will ensure they appear on the record. The Chair should instruct persons offering comments or testimony to speak into the microphone and identify themselves. Otherwise, the Chair should ask them to repeat the remarks into the microphone for the benefit of the record. This same requirement applies to testimony by staff and officials. Comments not so recorded may not be considered in making the final decision.

If a tape ends, the Chair should stop the proceeding and forbid any further testimony until a new tape is inserted and playing. Using the microphone, the Chair should announce that the tape has just been changed. Anyone whose testimony was made after the previous tape had run out, should be invited to repeat his or her comments for the record, with a warning that comments not on the tape will be disregarded.

No map, drawing, or sketch should be discussed unless the document is offered, marked or labeled, identified on tape, and kept as a part of the record. When a document is accepted as an exhibit, the secretary should affix an exhibit designation to it. In some instances (as with an exhibit of substantial value to the owner) an exact copy of the document is acceptable for the record. The name and nature of the document should be noted on the tape; and in whose possession the original document will remain, if it is needed for evidence. The exhibit should be photographed or copied for the record.

Hearings should be closed formally by motion. When a hearing ends, deliberations should be initiated promptly, and no other testimony or evidence considered by the hearing body.

The decision-making body may begin deliberation or may continue the proceeding to a new work session or meeting. If new evidence is to be received, the commission or council must take steps to reopen the record and properly receive the new materials.

Failing to maintain an accurate record when using tape recordings will cause problems for a municipality.

The Court of Appeals gave the following admonition in a case where an inadequate record caused significant problems:

We strongly urge that where proceedings are electronically recorded great care be taken to ensure usable recordings. To that end, we suggest:

If possible, high quality multi-track recording equipment with multiple microphones should be used. This would enable the transcriber to play back one track-hence one voice-at a time.

Proceedings must be organized to facilitate recording. Thus, speakers must be required, and reminded if necessary, to speak into the microphones; to identify themselves before speaking, spelling out their names; to stay at the microphones while speaking; and to talk rather than rely upon bodily gestures to convey meaning.

The person operating the recorder should monitor the recording, check the tape after periods of increased background noise to determine whether testimony was recorded, and ask the speaker to repeat the testimony if it is inaudible.⁵⁸

c.) The Need for Findings and Conclusions

Written findings of fact and conclusions state the principal factual and legal basis for a decision. A finding does not recite the evidence, but rather demonstrates that the criteria for a decision have been met. (Take, for example, a plat in a 4 dwelling units per acre minimum zone. Finding: The plat has a density of 4.25 dwelling units per acre. Conclusion: The density requirements of the code have been met.) If the record does not support the findings, or the findings do not support the conclusions, or if neither support the decision, a reviewing court may reverse the decision.

Statutes governing the actions of quasi-judicial officials require adequate findings:

Both the board of adjustment and the zoning adjuster shall, in making and order, requirement, decision or determination, include in a written record of the case the findings of fact upon which the action is based.⁵⁹

Written findings and conclusions are also required when any jurisdiction decides to use a hearings examiner;⁶⁰ or, when subdivision actions are taken.⁶¹

The requirement for adequate records and findings applies to more than quasi-judicial project approvals. Under the Planning Enabling Act,⁶² planning commissions must act by a majority of the whole, not simply of the quorum, and must produce adequate findings.

The recommendation to the board of any official control or amendments thereto by the planning agency shall be by the affirmative vote of not less than

⁵⁸ Bennett, 29 Wn. App. at 755 n.2 (emphasis in original).

⁵⁹ RCW 36.70.900.

⁶⁰ RCW 36.70.970(3).

⁶¹ RCW 58.17.110.

⁶² Chapter 36.70 RCW.

a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action....⁶³

The Planning Enabling Act also requires that the commission's recommendations be accompanied by the motion and a statement of factors considered at the hearing, with an analysis of controlling findings.⁶⁴

d.) The Administrative Appeal

Local governments are no longer required to provide for administrative appeals.⁶⁵ If no administrative appeal is provided, then a challenge to a local land use decision is directly to superior court.

If an administrative appeal is provided, the legislative body has appellate jurisdiction. When operating by appellate jurisdiction, the decision is based only on the record made before the hearing official. Under this system, the legislative body does not conduct a second hearing,⁶⁶ and will not take testimony for its record.

The only questions needed in an appellate model are: (a) are the decision-makers' findings supported by evidence in the record, and (b) did the decision-makers correctly apply adopted county/city policy? The legislative body may not adopt new findings based on the evidence before the decision-maker, or hold hearings to elicit new evidence. The record above is the sole basis for the decision on appeal.

e.) Superior Court Appeal

Once local officials make a final decision, further appeal is by a petition to superior court under the Land Use Petition Act ("LUPA").⁶⁷ The reviewing court generally considers only the record created at the local level. This is why an accurate record of all proceedings must be maintained. If the only record available is inaccurate or incomplete, the court will usually void the local action and remand the case for a new (de novo) hearing. A verbatim (word-for-word) transcript of the proceedings is usually required.

Reviewing courts have identified. these prerequisites for adequate judicial review:

- A well-defined record, identifying the nature of the decision and its basis.

⁶³ Chapter 36.70 RCW.

⁶⁴ RCW 36.70.610.

⁶⁵ RCW 36.70B.110(9).

⁶⁶ In fact, only one hearing at which testimony is heard and evidence is taken can be conducted on any project permit application. RCW36.70B.060(6).

⁶⁷ Chapter 36.70C RCW.

- Findings that identify the standards considered and the factual basis for action.
- A clear expression of action taken by the decision-making body, the persons or entities affected by the action, and the extent of such effects.
- Communities can take comfort in the fact that few cases are ever appealed to court, and only a small percentage of them rule against the city or county. Accuracy and clarity of the record is a community's first line of defense in such cases.

An appeal under LUPA must be filed within 21 days of the issuance of a land use decision.⁶⁸ The 21-day limitations period contained in LUPA, together with the Act's service requirements, must be adhered to carefully. In a recent court of appeals case, the dismissal of a petition was upheld where service of the petition occurred 20 minutes after normal office hours on the last day of the 21-day period.⁶⁹ An appeal period may begin to run on the date of an oral decision at a public meeting where the decision rendered is final and conclusive.⁷⁰ The appeal period for written decisions, including "decision documents" prepared in advance of a vote, begins to run three days after the written decision is mailed.⁷¹

To obtain judicial review under LUPA, the petitioner must first exhaust all of his or her administrative remedies.⁷² If the only administrative remedy available to a project opponent is participation in a public hearing process, the remedy may be exhausted by writing and speaking against the proposed decision.⁷³ A number of other recent opinions have further clarified what constitutes the exhaustion of administrative remedies for purposes of LUPA.⁷⁴

LUPA requires courts to accord due deference to a local jurisdiction's construction of a statute or ordinance. Where a municipal ordinance is unambiguous, the court will look to the plain meaning of the language used in the statute. Where a legislative enactment, or ordinance, is ambiguous, the court may seek the expertise of the agency when construing its meaning.⁷⁵

The doctrine of *res judicata* bars the retrial of the same claim in a subsequent action. The doctrine applies in the quasi-judicial administrative context and stands for the general

⁶⁸ RCW 36.70C.040.

⁶⁹ *San Juan Fidalgo Holding Co. v. Skagit County*, 87 Wn. App. 703, 943 P.2d 341 (1997).

⁷⁰ *Kilpatrick v. City of Anacortes*, 84 Wn. App. 327, 927 P.2d 227 (1996).

⁷¹ *Hale v. Island County*, 88 Wn. App. 764, 946 P.2d 1192 (1997).

⁷² RCW 36.70C.060(2).

⁷³ *Citizens for Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 947 P.2d 1208 (1997) (citizens for Mount Vernon also rejected the argument that a city council's approval of a land use project must be appealed to the Growth Management Hearings Board in order to comply with LUPA's exhaustion requirement).

⁷⁴ *Smoke v. Seattle*, 132 Wn.2d 214, 937 P.2d 186 (1997) (an applicant was not required to seek a code interpretation by the Director in order to exhaust its remedies); *Phillips v. King County*, 87 Wn. App. 468, 943 P.2d 306 (1997) (the court rejected King County's argument that the landowner was required to challenge the County's approval of a development by filing a writ action before he could pursue other courses of action); *Ward v. Board of Skagit County Commissioners*, (the court of appeals affirmed that the exhaustion requirement contained in LUPA applies to all who seek judicial review.)

⁷⁵ *McTavish v. City of Bellevue*, 89 Wn. App. 561, 949 P.2d 837 (1998).

proposition that “a controversy should be resolved once, not more than once.”⁷⁶ Res judicata will bar a claim when a prior final resolution is similar in four respects to a subsequent proceeding: There must be a common identity of (1) subject matter; (2) cause of action; (3) persons or parties; and (4) the quality of the persons for or against whom the claim is made. Thus, under LUPA, where an agency has previously rendered a final decision on a landowner’s application, that landowner may not retry the same claim at a later date unless there has been a substantial change in circumstance or conditions relevant to the application, or a substantial change in the application itself.⁷⁷

Finally, the superior courts have inherent authority under the Constitution to review agency action by writ of certiorari to determine if the action is arbitrary and capricious or contrary to law.⁷⁸ Agency action is considered arbitrary and capricious if it is willful and unreasoning, taken without consideration and in disregard of the facts and circumstances.⁷⁹

⁷⁶ Davidson v. Kitsap County, 86 Wn. App. 673, 937 P.2d 1309 (1997).

⁷⁷ Davidson, 86 Wn. App. at 681.

⁷⁸ Washington State Constitution, Article IV § 6.

⁷⁹ Saldin Sec. v. Snohomish County, 134 Wn.2d 288, 949 P.2d 370 (1998); Crosby v. City of Spokane, 87 Wn. App. 247, 941 P.2d 687 (1997); Department of Corrections v. Kennewick, 86 Wn. App. 521, 931 P.2d 1119 (1997).

CHAPTER 3.

The Growth Management Act

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CHAPTER 3.

The Growth Management Act

As the name indicates, the Growth Management Act, Chapter 36.70A RCW (hereinafter referred to as “GMA”) represents the modern day effort of Washington State to manage its growth. Washington State’s tremendous population growth has often exceeded the capacity of public infrastructure and resulted in serious damage to sensitive environmental resources. The GMA addresses these growth problems and others by requiring local communities most affected by growth to engage in twenty-year land use planning and to concentrate development in urbanized areas to efficiently use infrastructure. The GMA requires all cities and counties to adopt development regulations that protect environmental and natural resources. Most local communities have had these laws on their books now for at least a decade. This chapter will give you a basic understanding of the GMA and what it requires of your community.

A. Origins of Growth Management

Before the mid-1980's, "growth management" had only generic meaning for Washington planners. But with passage of the GMA by the Washington Legislature in 1990,¹ the term has acquired special significance. A landmark report, "***A Growth Strategy for Washington State***," issued by the Growth Strategies Commission in September 1990, captured much of the early thinking on the topic. Today, the GMA is codified in many chapters, but primarily in Chapter 36.70A RCW.

The GMA actually provides a new vocabulary for an old process. Terms such as classification, designation, conservation, protection, participation, consistency, conformance, and concurrency are now commonly used to describe progress in meeting growth management goals. Another term not to be forgotten is "opportunity." By opening the process to those who have not participated before, the GMA provides an opportunity to help balance the demands that shape our communities. Through this program, a community can mobilize its energy and address critical issues through the public process. Most importantly, and beyond the opportunity to create a community vision, the GMA provides the tools a community needs to bring that vision to reality.

The GMA: The Origins of Legislative Control of Substantive Planning in Washington

By the late 1980's, three forces in the community merged into a strong legislative force, propelling growth management: 1) increased growth in the metropolitan areas of Puget Sound;

¹ Chapter 36.70A RCW.

2) recognition statewide that resource and critical areas needed greater protection; and 3) the need for economic development and public services in Washington's economically depressed areas. In the mid to late 1980's, a strong regional economy generated rapid growth in the central Puget Sound basin. Populations gradually moved farther from employment centers, straining infrastructure and the ability of local government to provide adequate public services. As increasing growth occurred in rural areas, farm and forest land was being converted into suburban strips faster than the infrastructure could keep up. One of the forces behind growth management was awareness that urban sprawl can be expensive (over-taxing limited public facilities), and destructive to rural and resource lands.

Municipalities and state agencies had wrestled for nearly 20 years (with mixed results) with wetland, wildlife and aquifer protection issues, and with conservation of agricultural, mineral, and timber lands. Communities experimented with resource and critical area management guidelines often as overlays or additions to traditional zoning tools, but regional efforts, for the most part, were uncoordinated. In the end, they were largely viewed as too little, too late.

By the late 1980's, "growth" in some areas seemed out of control. Urban sprawl appeared to threaten critical areas and resource lands, while local governments seemed unable or unwilling to deal directly with the resulting conflicts. In this climate, the state's Growth Strategies Commission was appointed.

Resource management and critical area protection was the second force that converged on the growth management movement, beginning with two state planning mandates of the 1970's: the State Environmental Policy Act (SEPA)² and the Shoreline Management Act (SMA).³ These provided models for state regulation of local planning in matters where an overriding state interest was perceived.

While the Puget Sound regional economy was solid and growing, parts of western and eastern Washington were economically depressed or stagnant due to a decline in resource-based industries. The Growth Strategies Commission determined that land use planning and funding for infrastructure repairs and additions were needed to revitalize these areas. Its September 1990 report presented 10 recommendations for action, highlighting a need to share and encourage economic growth in all regions of the state.⁴

² Chapter 43.21C RCW.

³ Chapter 90.58 RCW.

⁴ Letter to Governor Gardner from Dick Ford at the beginning of Growth Strategies report and p. 9 of the report.

GROWTH STRATEGIES COMMISSION—10 RECOMMENDATIONS FOR ACTION

- 1 All local governments must protect environmentally sensitive areas and address identified environmental problems. Immediate action should be taken to protect threatened resources and areas.
- 2 The state, regional, and all local governments should identify open space and link it in networks to permanently separate cities, protect and enhance the environment, provide for recreation, and secure a strong resource base for agriculture and forestry.
- 3 All local governments should prevent development from encroaching on commercially viable agricultural and forest lands.
- 4 The state should establish a process to identify and protect lands and resources of value to all citizens of the state.
- 5 The state should focus its spending to build a network of strong regional economies that seek to spread growth across the state.
- 6 Local governments should seek to concentrate employment centers and housing, using urban design to preserve community character and open space.
- 7 Urban growth should be contained to protect the environment and to make more efficient use of public facilities. Cities are the preferred places for urban growth.
- 8 Required housing and land use plans must include sufficient developable land for a range of housing types. Each community within a region should be required to accept its fair share of low-income housing. The state should increase funding for housing programs for low-income people, special needs populations, and moderate- and middle-income home buyers.
- 9 Funding for transit should favor communities with supportive land use plans. Comprehensive plans should link land use and all types of public facilities, parks, schools, sewers, storm water drainage, fire, and transportation.
- 10 A process must be developed by which all communities within a region fairly share the burden of public facilities.

Public pressure to address growth management was intense during the 1990 legislative session. Using the preliminary findings of the Growth Strategies Commission, the Legislature enacted and Governor Gardner signed into law ESHB 2929, the GMA. The GMA emphasizes a "bottom up" approach to planning, in which counties and cities use state guidelines to shape their own comprehensive plans to manage growth. Although deadlines for meeting the requirements were established, there was originally no penalty if local governments did not meet them.

At the end of the session, representatives of several environmental groups determined that the GMA lacked teeth, having few incentives to meet its requirements. These groups circulated an initiative to create a more centralized system with stricter, state-mandated guidelines for local

governments. Sanctions would be imposed for not meeting deadlines or requirements.⁵

The initiative was narrowly defeated, but the Governor and Legislature proceeded to implement the recommendations of the Growth Strategies Commission in the next legislative session. This legislation resulted in the 1991 amendments that provided for administration and enforcement of the GMA.⁶

The Legislature left to the Washington State Department of Community, Trade and Economic Development (CTED, now Commerce) the task of defining the details and creating the explanatory resources for implementing the GMA.

Two principal sets of guidelines have been adopted as part of the Washington Administrative Code:

- Minimum guidelines for classifying and designating agricultural, forest, mineral lands, and critical areas.⁷
- Procedural criteria for adopting comprehensive plans and development regulations, including a detailed section adopted in 2000 addressing the use of best available science in critical area regulation.⁸

GMA amendments in 1993 set deadlines for adopting interim urban growth areas for counties initially required to plan under the GMA and those opting in. The Governor was given authority to impose sanctions for not meeting GMA deadlines.

In 1995, the Washington State Legislature enacted and the Governor signed a broad land use and environmental regulatory reform law recommended by the Governor's Task Force on Regulatory Reform (ESHB 1724). ESHB 1724 made significant changes to three of the state's core land use laws: the GMA; the State Environmental Policy Act (SEPA); and the Shoreline Management Act (SMA). The primary goal of the regulatory reform was to establish comprehensive plans and development regulations as the foundation from which subsequent land use decisions are made. ESHB 1724 also introduced new state requirements for more coordinated and streamlined project review and decisions, which most notably requires all cities and counties to provide for not more than one open record hearing and one closed record appeal for project applications. Municipalities fully planning under the GMA were required to issue a final decision on a project application within 120 days of a complete application. At the project level, integration of environmental review and the permit process is required in all jurisdictions. Jurisdictions fully planning under the GMA have more specific requirements for integrated project review. Finally, ESHB 1724 created the Land Use Study Commission, whose primary goal was to make recommendations on the integration and consolidation of the state's land use and environmental laws into a single, manageable statute.

⁵ Initiative 547, 1990.

⁶ Washington Laws, 1991, 1st Ex. Sess., Chapter 32 (S.H.B. 1025), amending Chapter 36.70A RCW and others.

⁷ Chapter 365-190 WAC.

⁸ Chapter 365-196 WAC. Best available science guidelines are located at 365-195-900-25.

In 1997, the Washington State Legislature enacted and the Governor signed a bill implementing a number of recommendations of the Land Use Study Commission. The commission examined the consolidation of state land use and environmental laws, and completed a report and recommendations with respect to the GMA and related state laws.⁹ The Land Use Study Commission submitted a final report to the Legislature in December 1998. The state legislature adopted many of the Commission's recommendations in 1998 in ESB 6094.

Although the basic structure and requirements of the GMA have remained intact over the years, the state legislature amends the GMA just about every year. A summary of these amendments is posted by Commerce on their GMA Laws and Rules web page

<http://www.commerce.wa.gov/about-us/rulemaking/gma-laws-rules/>

Some of the more significant amendments are summarized as follows:

- 1995, 1996, 2002 and 2003 amendments authorize intense development of some rural areas, such as in-fill development for areas already containing intense development and industrial development through mechanisms such as industrial land banks.
- 1995 and 2003 amendments provide that Shoreline Management Act (Chapter 90.58 RCW) policies and regulations are to be considered part of a community's complement of GMA policies regulations. The shoreline regulations must be consistent with the community's GMA regulations and must provide a level of protection to environmentally sensitive areas (critical areas) at least equal to that provided by GMA regulations protecting the same type of areas.
- A 1995 amendment requires that GMA regulations that protect critical areas, which include wetlands, frequently flooded areas, geo-hazard areas, such as steep slopes, fish and wildlife habitat conservation areas and aquifer recharge areas used for potable water must now be supported by best available science (BAS). "Best available science" basically means credible scientific evidence.
- A 1997 amendment created what's commonly known as the "Buildable Lands Program." This program requires some of the state's largest counties and their cities to evaluate and monitor the effectiveness of local GMA regulations and to address shortcomings.
- 1996 and 1998 amendments require cities and counties to address general aviation airports and state-owned transportation facilities in their comprehensive plans.
- 2004 amendments included a provision allowing the state to expedite review of local GMA policies and regulations; new restrictions on industrial land banks; and an exemption from GMA urban density requirements for national historic reserves.

⁹ Washington Laws, 1997, Chapter 429 (S.B. 6094).

As you will find from the rest of this chapter, the amendments above relating to rural development are significant because the GMA changes how local governments address the development of rural areas. The other amendments are significant because they leave many communities with the task of incorporating new information and requirements into GMA plans and regulations. That task is currently a work in progress for many communities through GMA update requirements, identified below.

In 2002, the state legislature enacted one of its more pressing amendments to GMA by imposing deadlines on cities and counties to update their GMA policies and regulations. The deadlines vary depending upon the location of the city or county, starting with December 1, 2004 for some Puget Sound jurisdictions and ending on December 1, 2007 for some eastern Washington jurisdictions, and every eight years thereafter. Delays in 2012 pushed the schedule to 2015 -2018 and every eight years thereafter. City and county planning commissions and boards facing these deadlines will spend much time making recommendations on the updates. A large portion of this Chapter (starting at Section E(1)) identifies what communities must do to comply with this update requirement.

B. The Primacy of the Comprehensive Plan

Adopting a comprehensive plan is the starting point for any planning process. The comprehensive plan expresses a community's vision of itself, the community it would like to become, its hopes and dreams, and the philosophical underpinning for any planning activity. It is an expression of the "public interest," in the sense of exercising the public authority of a municipality. Since the GMA was enacted, it has become an enforceable blueprint or framework for all subsequent land use regulation activity.

Although the county-wide planning policies (discussed later in this chapter) set the direction for comprehensive planning on a regional level, the comprehensive plan is the starting point for any discussion of the local land use process. It is also the touchstone for measuring community actions, and the policy framework by which all community planning enactments will be judged.

The comprehensive plan is formulated initially by a planning commission (appointed residents with an interest in planning), with technical assistance from the planning staff. Ultimately, the elected public officials (city councils or county commissions) adopt it. Comprehensive plans typically are processed through a series of public hearings. These give the public an opportunity to express their views on community plans. Growth management legislation stresses early and continuous public involvement to validate these planning efforts.¹⁰

¹⁰ RCW 36.70A.035 established public participation requirements that include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, and organizations of proposed amendments to comprehensive plans and

Comprehensive planning identifies community or "public" interest through a public and political process. The resulting plans reflect the political compromises needed to forge consensus for a community plan. While not everyone will be satisfied with the end result, the comprehensive plan as adopted should deal with the many conflicting forces that shape a community. It is not the purpose of a comprehensive plan to eliminate conflict. Rather, it provides the framework for considering and resolving conflicting issues in the community.

The comprehensive plan is now the centerpiece of local planning. The growth management movement of the late 1980's led to several changes in philosophy, including a state-directed mandate that all cities and counties accomplish certain objectives.

C. The Goals of Growth Management Planning¹¹

Growth management, as a legislative policy, is expressed in 14 goals¹², as follows:

- **Urban Growth** - Encourage urban growth where facilities are adequate to meet service needs.
- **Reduce Sprawl** - Eliminate sprawling, low-density development that is expensive to deliver services to and is destructive to critical areas, rural areas, and resource values.
- **Transportation** - Encourage efficient, multimodal transportation.
- **Housing** - Encourage a variety of affordable housing for all economic segments of the population.
- **Economic Development** - Encourage economic development consistent with resources and facilities throughout the state.
- **Property Rights** - Protect property from arbitrary decisions or discriminatory actions.
- **Permits** – Issue permits in a timely manner and administer them fairly.
- **Natural Resources Industries** - Maintain and enhance resource-based industries.
- **Open Space and Recreation** - Encourage retention of open space and recreational areas.
- **Environment** - Protect the environment and enhance the quality of life.
- **Citizen Participation** - Encourage citizen involvement in the planning process.
- **Public Facilities and Services** - Ensure that adequate public facilities and services are

development regulations.

¹¹ RCW 36.70A.020.

¹² Id.; 36.70A.480.

provided in a timely and affordable manner.

- **Historic Preservation** - Identify and encourage preservation of historic sites.
- **Shoreline Management** - The goals and policies of the SMA are added as one of the goals of GMA.

The Legislature did not prioritize these 14 goals, recognizing that each community would emphasize them differently when conflicts arise. The 14 goals are an important part of the GMA, because a Growth Management Hearings Board or court can invalidate city or county GMA policies and regulations if those provisions fail to implement the goals.¹³ In order to maximize the defensibility of any such legislation, the legislative record should always contain a detailed answer to the question: how does this legislative act further the goals of the GMA? A detailed and documented application of the goals helps avoid invalidation by (1) assuring that the goals are properly considered, and (2) expressing policy choices that must be given deference by the courts and Hearing Boards.

In 1997, the Legislature amended the GMA to recognize the deference the GMA Hearing Boards should give to cities and counties when balancing the goals in the adoption of their comprehensive plans and development regulations:

In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards [GMA Hearing Boards] to grant deference to the counties and cities in how they plan for growth. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rest with that community.¹⁴

The deference given by the Legislature is not unlimited. A good example is the inclusion of best available science (BAS) in critical area ordinances, where some municipalities may find that protecting environmental resources as required by GMA BAS requirements may not be consistent with GMA goals promoting economic development, preventing sprawl or protecting private property rights. In response to arguments that BAS only has to be considered (as opposed to followed) for critical area ordinances because of these competing goals, the Court had this to say:

While the balancing of the many factors and goals could mean the scientific evidence does not play a major role in the final policy in some GMA contexts, it

¹³ RCW 36.70A.280(1) provides that the Growth Management Hearing Boards have jurisdiction to consider whether state agency, city or county planning is in compliance with the requirements of the GMA.

¹⁴ RCW 36.70A.3201.

is hard to imagine in the context of critical areas. The policies at issue here deal with critical areas, which are deemed 'critical' because they may be more susceptible to damage from development. The nature and extent of this susceptibility is a uniquely scientific inquiry. It is one in which the best available science is essential to an accurate decision about what policies and regulations are necessary to mitigate and will in fact mitigate the environmental effects of new development.¹⁵

In short, the Growth Management Hearings Boards and the courts will give deference to how GMA goals are applied to a specific community, allowing that community to adopt plans and regulations that suit its unique circumstances. In order to take full advantage of the deference afforded, cities and counties should state in writing how they have balanced the goals and how their plans and regulations further those goals. This planning board or commission should initiate this analysis for final adoption by the municipality's legislative body. In carrying out this planning exercise, cities and counties should consult with planning professionals and attorneys to ensure that the application of the goals is consistent with GMA Hearing Board and court decisions.

D. Who Must Plan?

Only the state's fastest growing counties and cities are required to fully plan under GMA. Counties and cities fully planning under the GMA are required to meet all of the Act's goals and requirements. Fully planning under the GMA is optional for all other cities and counties, triggered only by a majority vote of the county commissioners. However, the Act does establish some mandatory requirements for all counties and cities, whether required to fully plan or not.

Counties required to fully plan are:

- 1) Those counties with a population of 50,000 or more, and that either grew more than 10 percent in the 10 years preceding May 16, 1995, or after that date are growing by more than 17 percent in the preceding 10 years;
- 2) Any county that has grown more than 20 percent in 10 years; and
- 3) Any community which voluntarily elects to plan under the Act (collectively referred to as "planning communities").¹⁶

A map of Washington counties, required or opting to fully plan under the GMA, is shown below.

¹⁵ *Honesty in Environmental Analysis v. Central Puget Sound Growth Management Hearings Board*, 96 Wn. App. 522, 532, 979 P.2d 864 (1999).

¹⁶ RCW 36.70A.040.

Counties Planning under Growth Management Act



Next, the Legislature required all counties in the state to "designate and classify" resource lands and critical areas. Fully planning communities were also required to adopt regulations to "conserve" resource lands and to "protect" critical areas. This was a first step toward implementing comprehensive planning under the GMA. Counties and cities not fully planning under the GMA must also adopt regulations to protect critical areas.

E. Building On Your Community's Growth Management Legacy: Past Accomplishments and Current Challenges.

The GMA demands much of Washington counties and cities. Your community has probably made some significant accomplishments under the GMA. Your planning commission or board and legislative body probably put in long hours and may have endured significant public controversy to put together the many planning documents and development regulations

required by the GMA. In more recent years, your community has probably focused upon implementing these plans and regulations. The impacts have been far reaching, from increasing densities within urban growth areas to protecting natural resource areas and environmentally sensitive areas. The GMA also requires your community to periodically revisit its GMA accomplishments to incorporate new statutory requirements and to ensure your community's development plans and policies reflect and adapt to changes in your community. As your community grows and expands, your plans and development regulations must grow and expand along with them.

When the legislature adopted the GMA in 1990, it required all cities and counties in Washington State to initiate significant planning efforts, particularly those communities subject to the full set of GMA objectives. With a healthy dose of financial assistance from the state, most communities completed those planning requirements in the middle to late 1990's. Although the GMA can result in changes to potentially all of your community's plans and regulations, your community's primary GMA accomplishments are embodied in the following documents:

All Communities:

All communities, including those that are not subject to the full planning requirements of the GMA have to adopt development regulations that protect critical areas and natural resource areas.

Fully Planning Communities:

- **County-wide Planning Policies:** Adopted by the county, this document lays the general framework for coordinated land use planning between the county and its cities to ensure that county and city comprehensive plans are consistent with each other. A more detailed discussion of these policies is located at Section E(2)(b)(ii) of this chapter.
- **Comprehensive Plans:** A policy document plans for the development of your community over the next twenty years. A more detailed discussion of the Comprehensive Plan is located at Section 3(E)(c) of this chapter.
- **Development Regulations:** The regulations that implement your community's comprehensive plan. The GMA does not dictate where a community has to place these regulations in their municipal codes, so the locations vary. GMA regulations are typically divided into separate municipal code titles including Zoning, Subdivision, Critical Areas (sometimes called Sensitive Areas) and Shoreline Management, or they may be consolidated in a unified development code. Chapters 5(A) and (B) and Chapter 7 contain more information on development regulations.

1. The Periodic Update

The GMA requires cities and counties to update their comprehensive plans and development regulations on a periodic basis every eight years.¹⁷ This is called the periodic update which ensures that plans and regulations are in step with state law, regional policies, new population projections, and other aspects of planning which can change over time.. Cities and counties are required to:

...take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plans and regulations comply with the requirements of [Growth Management]...

The periodic update has three basic components: Review, Revise if needed and take legislative action.

a. Review and Revise if Necessary

The first step will be a detailed review of your existing plan. Few counties and cities will be able to adopt a finding of GMA consistency without first making at least some revisions to their plans and regulations. This is because ensuring consistency requires (1) a consideration of updated population projections; (2) amendments to GMA statutes (3) Growth Management Hearing Board and court interpretations of GMA regulations; and (4) changes in the community.

The impacts these four factors can have include the following:

Updated Population Projections: Fully planning communities must analyze the most recent ten-year population forecast by the Washington State Office of Financial Management and incorporate it into their updated plans and regulations. Urban growth areas, which by definition include all cities, must allow development densities sufficient to accommodate the next 20 years of projected growth. If your community's zoning regulations don't authorize the densities to accommodate this growth, your community will have to increase the allowed densities. Increases in population also trigger the need for more infrastructure, which can lead to changes in capital facility planning.

Growth Management Amendments: The state legislature has frequently amended the GMA. One of the most significant amendments involves the best available science requirement of RCW 36.70A.172. This requirement is not limited to fully planning communities, but applies to every city and county in the State of Washington. The legislature did not adopt RCW 36.70A.172 until 1995, after most communities had adopted their GMA plans and regulations. Best available science requires a detailed legislative justification of every regulation submitted by the community as fulfilling its GMA obligation to protect critical areas. The community must establish that credible scientific evidence supports the proposition that its critical area regulations sufficiently protect critical areas. The scientific evidence will rely on scientific

¹⁷ RCW 36.70A.130

studies or testimony provided by qualified scientific experts.

The integration of state-owned transportation facilities and general aviation airports into local comprehensive plans was also a new GMA requirement for the 2004-2007 update cycle. Under another set of amendments the state legislature provided Counties with the option of facilitating development in rural areas. RCW 36.70A.070(5)(d), for example, allows for the in-fill of relatively dense development outside urban growth areas if several requirements are met. Certain types of recreation and tourist uses are also allowed, as well as isolated cottage industries and isolated small scale businesses. The areas allowed by RCW 36.70A.070(5)(d) are commonly referred to as “limited areas of more intense ruled development” or LAMIRDs. The legislature has also adopted other regulations for rural areas that facilitate industrial development and add further restrictions to the designation of master planned resorts, as detailed in RCW 36.70A.360-.367.

Growth Management Hearing Board Interpretations: In addition to changes in GMA statutes, the interpretation of those statutes evolves as well. Communities that may have thought they were complying with GMA regulations in the 1990’s may now find that their plans and regulations are not consistent with some of the Hearing Board and court decisions issued since that date. Hearing Board cases are sometimes appealed to the state’s courts as well. The resulting court opinions can also necessitate changes to local plans and regulations.

Changes in the Community: Community changes can certainly render parts of GMA plans and regulations obsolete. The comprehensive plan must have an accurate inventory of capital facilities, utilities and housing. Major new development can also change traffic and land use patterns identified in a comprehensive plan. Large annexations can have a profound impact on all parts of the comprehensive plan.

b. Legislative Action

The legislative action required of cities and counties means the adoption of an ordinance or resolution finding that the municipality’s GMA plans and regulations are consistent with GMA requirements.

This update requirement subjects all local GMA policies and regulations to legal challenge. When a fully planning community adopts some legislation pursuant to the GMA, the consistency of that legislation with the GMA can only be challenged if a petition for review is filed with a Growth Management Hearings Board within 60 days of adoption. Once that 60-day period expires, there is no longer any right of review and the adopted plans and regulations are essentially immunized from any legal challenge pertaining to consistency with the GMA. The ordinance or resolution required for the GMA updates creates an entirely new opportunity for challenge of any part of the GMA policies and regulations previously adopted.¹⁸ To properly

¹⁸ One exception would be policies and regulations that have already been subject to review by the Growth Management Hearings Board or a court of law. If circumstances have not changed since the last review, it is unlikely that a court or the Hearings Board would allow a second review of the same issues.

update its GMA plans and policies, a community must ensure that all of its plans and regulations comply with the GMA.

Recommendations for completing the update and creating a clear record.

2. What the GMA Has Already Required of Your Community.

As indicated previously, the GMA update requirement doesn't just require communities to incorporate changes in GMA laws since the initial adoption of Growth Management policies and regulations. The update also requires a city or county to ensure that its GMA policies and regulations are consistent with all currently existing requirements of the GMA, including those provisions (that have not been amended) that regulated the initial adoption of GMA policies and regulations. If GMA comprehensive plan policies and development regulations fell short of GMA regulations when they were first adopted, those shortcomings will have to be addressed in the update unless a GMA amendment has removed the shortcoming. Changes in factors such as population and traffic patterns can also require a reevaluation of the GMA requirements that applied at initial adoption. Consequently, a good understanding of the initial adoption process is essential to a successful update of your community's plans and regulations.

In your community's initial adoption of GMA plans and policies, the legislative and policy directives of GMA may have seemed like a huge task at first. **But these requirements become manageable when divided into five unique tasks:**

GMA: Key Regulatory Requirements

- a. Classification, designation, conservation, and protection - the steps in resource lands conservation and critical areas protection.
- b. Population, urban growth boundaries, county-wide policies, regional plans - regionalizing the local planning process.
- c. Comprehensive plans - the heart of the redefined planning process under growth management.
- d. Zoning, platting, and official controls - the coordination of local development regulations and requirements of "consistency" with comprehensive plans.
- e. Project review - the requirements of "consistency" and environmental review in planning and development: Land use designations, levels of development, infrastructure, characteristics of development, and identification of probable adverse environmental impacts.

Following are guidelines for each task, focusing on key points to keep in mind as you go through

the process.

c. Classification, Designation, Conservation, and Protection: Steps in Resource Lands Conservation and Critical Areas Protection

Resource lands and critical area planning statewide is a primary mandate of the GMA. Each city and county in the state had to designate where appropriate:

- Agricultural lands not already characterized by urban growth and that had long-term significance for commercial production of food or other agricultural products;
- Forest lands not already characterized by urban growth and that had long-term significance for the commercial production of timber;
- Mineral lands not already characterized by urban growth and that had long-term significance for the extraction of minerals; and
- Critical areas.¹⁹

The Legislature chose to define wetlands and geologically sensitive areas in the GMA,²⁰ but left frequently flooded areas, fish and wildlife habitat conservation areas, and critical aquifer recharge areas undefined. Definitions for these areas are found in minimum guidelines published by the Washington State Department of Commerce.²¹

i. Classification and Designation

All communities had to complete the "classification and designation" of their important resource lands. Guidelines, developed by the Department of Commerce and published as part of the Washington Administrative Code, explain the purpose of this statewide mandate and define "classification" and "designation."

Classification means defining categories to which natural resource lands and critical areas will be assigned. Designation establishes for planning purposes: the classification scheme, the general distribution, location, and extent of [resource lands and critical areas]. Designation means, at least, formal adoption of a policy statement, and may include further legislative action.²²

Various state agencies, including the departments of Ecology and Fish and Wildlife, have published detailed guidance documents for local communities on critical area issues such as wetlands and fish and wildlife habitat. These include model ordinances and lists of recommended habitats and species for protection.²³

¹⁹ RCW 36.70A.170(1) (emphasis added).

²⁰ RCW 36.70A.030(9) and (20).

²¹ WAC 365-190-030.

²² WAC 265-190-040(1).

²³ Department of Ecology, Model Wetlands Protection Ordinance, September 1990; Department of Wildlife, Non-Game Data, Priority Habitats & Species, 1991.

The GMA requires that best available science (BAS) be included in developing policies and development regulations to protect the functions and values of critical areas.²⁴ Local governments must also give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Commerce provides guidance to local governments in how to identify what constitutes BAS for critical areas protection and how local governments should include science in their policies and development regulations.

The Commerce *Minimum Guidelines for Agricultural, Mineral, Forest, Resource Lands, and other Critical Areas* provide specific guidance for each of the critical areas.²⁵ Some of these guidelines are mandatory (expressed as "shall") and many are suggested (expressed as "should"). In 1994, the Legislature added several criteria to be used in designating forest land. The designation of forest land shall take into account the proximity to human settlement, the size of the parcel, the long-term economic conditions, and the ease of conversion from forest use to more intense uses.²⁶

Examples include:

- With respect to wetlands, communities "shall" use the wetlands definition identified in the statute.²⁷
- Communities are "encouraged" to make their policies consistent with Executive Orders 89-10 and 90-04, which provide no net loss policies statewide for state agencies.
- Communities "should consider" wetlands protection guidance provided in the Department of Ecology (DOE) model wetland ordinance.
- Communities "should consider" the state's four-tier wetlands rating system.²⁸
- Counties and cities not fully planning under the GMA will satisfy their obligation by classifying and designating resource lands and critical areas (with attendant policy statements and regulations, if desired). However, they are then required to adopt development regulations to protect designated critical areas.²⁹

The mandate to protect critical areas has assumed central importance to most local planning efforts across the state. In 1995 the Legislature adopted RCW 36.70A.172, which requires cities and counties to use "best available science" to justify its regulations. Since the Legislature didn't adopt this mandate until after most cities and counties had adopted their GMA plans and regulations, the mandate did not have to be addressed until the GMA updates become due. In essence, best available science requires cities and counties to document that credible scientific evidence supports every critical area regulation. For example, if a county adopts a regulation

²⁴ RCW 36.70A.172(1).

²⁵ WAC 365-190-080(1).

²⁶ WAC 365-190-060.

²⁷ WAC 365-190-080(1).

²⁸ WAC 365-190-080(1).

²⁹ RCW 36.70A.060(2).

that prohibits development within one hundred feet of its wetlands, it will need a credible scientific study or other reliable scientific evidence that establishes that one hundred feet is sufficient to protect wetland functions and values. Commerce's website offers technical assistance on incorporating best available science at www.commerce.wa.gov/serving-communities/growth-management/growth-management-topics/critical-areas/.

d. Resource Lands and Critical Areas Regulations

One of the first actions GMA required of cities and counties was the adoption regulations that conserve mineral resource lands and protect critical areas.

RCW 36.70A.060 required fully planning communities to adopt regulations to conserve resource lands on or before September 1, 1991 to accomplish the following:

[T]o assure the conservation of agricultural, forest and mineral lands [and] assure that use of lands adjacent to [resource lands] shall not interfere with the continued use, in the accustomed manner, of these designated lands for the production of food, agricultural products or timber, or for the extraction of minerals[.]

RCW 36.70A.060 required all cities and counties to adopt regulations that protect critical areas by September 1, 1991 for fully planning cities and counties, and by March 1, 1992 for all other cities and counties. "Critical areas" are defined in RCW 36.70A.030(A) to include wetlands, aquifer recharge areas, fish and wildlife conservation areas, frequently flooded areas and geologically hazardous areas.

The requirement to "conserve" resource lands and "protect" critical areas was the first step for counties and cities under the GMA. Communities had to take this step two or three years before the adoption of GMA comprehensive plans and development regulations. The purpose was to conserve and protect these lands early in the planning process. **As stated by the Central Puget Sound Growth Management Hearings Board:**

Two of the Act's most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (see RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (see RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands and to identify and protect critical areas before the date that IUGAs had to be adopted. This sequence illustrates a fundamental axiom of growth management: "the land speaks first." Only after a county's agricultural, forestry and mineral resource lands have been identified and actions taken to conserve them, and its critical areas, including aquifers, are identified and protected, is it then possible and appropriate to determine

where, on the remaining land, urban growth should be directed pursuant to RCW 36.70A.110.30

e. Population, County-Wide Planning Policies, Urban Growth Boundaries, and Regional Plans: Regionalizing the Local Planning Process

The Growth Strategies Commission recognized that local control of planning is not always possible since much of a community's growth and development is shaped by forces outside the community.³¹ These include the rate of population growth, location of regional facilities, transportation patterns, resource use or conversion, and local preferences for or against growth in surrounding communities.

These concerns led the Legislature to mandate "regional," i.e. county planning. Previous efforts to require regional planning through state regulations were, for the most part, discretionary. The Shoreline Management Act³² was one of the first efforts at state-mandated regional land use planning. Courts have also held that a "regional" inquiry is necessary under SEPA³³ when considering projects with impacts beyond a community boundary.³⁴ Such inquiries, however, were sporadic, uncoordinated, and often ineffective against regional growth pressures in rapidly growing areas.

Under GMA, the Legislature directed a regional approach to planning. Four specific requirements aid in accomplishing that model.

i.) Population

The first step in developing the initial local plans was to analyze regional population figures. Each county and city had to plan for a 20-year population growth based on figures supplied by the Office of Financial Management (OFM).³⁵ Projected population growth was provided to each county by OFM as a reasonable range developed within a standard state high and low projection.³⁶ Each county had to work collaboratively with the cities within the county to allocate the population, but it is important to note that the County had the final authority on city allocations, subject to appeal to the Growth Management Hearing Boards.³⁷ RCW

³⁰ *Bremerton v. Kitsap County*, CPSGMHB No. 95-3-0039, pp. 31-32 (1995).

³¹ "A Growth Strategy for Washington," September 1990, by the Growth Strategy Commission.

³² Chapter 90.48 RCW.

³³ Chapter 43.21C RCW.

³⁴ *SAVE v. Bothell*, 89 Wn.2d 862, 576 P.2d 401 (1978).

³⁵ RCW 36.70A.110(2).

³⁶ RCW 43.62.035.

³⁷ WAC 365-195-335. See also *Assoc. of Rural Residents v. Kitsap County*, CPSGMHB, Case No. 93-3-0010 (1993).

When allocating population to cities, the Central Board has held that a city may plan for more than the minimum county population allocation, as long as it can provide the necessary capital facilities and services, and as long as a specific policy in the Countywide Planning Policies does not prohibit it, but it cannot plan for less. *Aagaard, et al. v. City of Bothell*, CPSGMHB, Case No. 9-3-0011 (1995); *West Seattle Defense Fund v. City of Seattle*, CPSGMHB, Case No. 94-3-0016 (1995); *Benaroya, et al. v. City of Redmond*, CPSGMHB, Case No. 95-3-0072 (1996).

36.70A.130(3) requires cities and counties to update their population projections every ten years.

All incorporated cities and towns within a planning county were also required to plan, regardless of size or financial capability. Many small communities with similar interests reduced the cost of participation by banding together and developing models or guidelines that fit common needs and administrative abilities.

For fully planning communities, the GMA update requirement includes an analysis of the most recent ten-year population forecast by the office of financial management.³⁸ Changes in population allocation can lead to substantial changes in the rest of the comprehensive plan, since population allocation affects fundamental plan elements such as allowed densities and infrastructure needs.

ii.) County-Wide Planning Policies

Counties, in conjunction with cities and towns, were required to develop a series of county-wide planning policies. This provision, added in 1991 as part of the RESHB 1025 amendments,³⁹ were a necessary prerequisite for coordinating a county's local planning programs. The county-wide planning policies serve as a framework for local comprehensive plans and development regulations. The policies may not, however, alter the land use powers of cities. The purpose of the county-wide planning policies is to ensure consistency between county and city comprehensive plans, not to authorize counties to usurp the land use authority of cities and towns.

Countywide Planning Policies are Designed to:

- **Implement urban growth boundaries⁴⁰**
- **Promote an orderly provision of urban services to urban development areas**
- **Site public capital facilities of a county-wide or statewide nature**
- **Provide county-wide transportation**
- **Assure adequate, affordable housing**
- **Enable joint city/county planning within urban growth areas**
- **Encourage county-wide economic development**
- **Analyze fiscal impact**

This legislation set up a program for regional cooperation; it makes the counties responsible for overall policy coordination within the planning framework set forth by the Legislature.⁴¹

³⁸ RCW 36.70A.130(1).

³⁹ Now codified as RCW 36.70A.210.

⁴⁰ RCW 36.70A.110.

⁴¹ But cf *Postema v. Snohomish County*, 83 Wn. App. 574, 922 P.2d 176 (1996), rev. denied, 131 Wn.2d 1019 (1997)

The Central Puget Sound Growth Management Hearings Board has made it clear that in its jurisdiction a county may not alter the fundamental tenets of growth management planning through its planning policies. This includes the requirement that cities must be urban service providers within urban service boundaries.⁴²

iii.) Designation of Urban Growth Areas

Once counties adopted the county-wide planning policies, the next step was to designate urban growth areas. One cornerstone of GMA is that new development that requires urban services should occur within defined urban growth area boundaries. "Urban growth areas" are defined as,

areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.⁴³

The rules for urban growth areas are:

- **All cities shall be in urban growth areas.**
- **Urban growth areas shall permit the "urban growth" projected to occur in the county within the next 20 years, based on urban densities, predicted rate of growth, and greenbelt and open space areas.**
- **Urban growth shall occur first in areas already characterized by urban growth with existing public facilities and services, and, second, in areas already characterized by urban growth that are not yet served by public facilities and services, but that will be served by such facilities and services.⁴⁴**

Establishing urban growth areas (UGAs) was a major step local communities took in managing their growth. Fully planning communities had to design UGAs to include "areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding 20-year period."⁴⁵ To provide for growth, local communities needed a thorough understanding of what land was realistically developable, available, and suitable for growth within their communities. Each community had to complete an inventory of available land for development. Based upon that information, and on proposed densities within the UGA, the community calculated how much land was needed to accommodate the projected population

(statute requiring county's legislative authority to adopt county-wide planning policy in cooperation with cities located therein did not create a regional government that violated the principle of one person, one vote).

⁴² City of Poulsbo, et al. v. Kitsap County, CPSGMHB, Case No. 92-3-0009, p. 124 (Code Publishing, ed. Sept. 1993).

⁴³ RCW 36.70A.110(1).

⁴⁴ RCW 36.70A.110(3); but RCW 36.70A.360 permits master planned resorts outside of urban growth areas to make use of capital facilities, utilities and services provided by outside service providers, including municipalities, provided that all costs associated with service extensions are borne by the resort.

⁴⁵ RCW 36.70A.110(2).

before designating their UGA.⁴⁶

Fully planning communities must review, at least every 10 years, their designated UGAs and the densities permitted within both the incorporated and unincorporated portions of each UGA. The UGAs and densities will then be revised to accommodate the projected growth for the succeeding 20-year period.⁴⁷ As noted previously, cities and counties must also update their comprehensive plans and development every eight years to ensure on-going consistency with evolving GMA requirements. Part of this update also involves an update of population forecasts. Because of this overlap in population forecasting between the eight and ten year updates, some communities combine both update process to avoid duplicative efforts.

One of the more challenging issues in designating urban growth areas is determining the densities allowed within and outside them. Densities within urban growth areas must be urban, and rural outside in order to provide for the efficient use of public infrastructure and services and to avoid the problems associated with urban sprawl. Maximum densities of one dwelling unit per five or ten acres are generally required by the Board for areas outside of urban growth areas. The Eastern and Western Growth Management Hearings Boards focus more on a case by case analysis. The Western Board has ruled that zoning designations allowing two to four dwelling units per acre does not constitute urban densities. It also indicated that one dwelling unit per five acres can qualify as a rural density if other rural zoning districts require lower densities to off-set the density. The Eastern Board has ruled that a rural density of one unit per five acres is difficult to justify and that it is skeptical of any rural density designations more dense than one dwelling unit per ten acres.

iv.) The Requirements for Regional Planning⁴⁸

The Legislature has determined that Washington's transportation system⁴⁹ should function as "one interconnected and coordinated system."⁵⁰ At all jurisdictional levels, it mandated, transportation planning **should be coordinated with local comprehensive plans**.⁵¹

1. Regional Transportation Planning

Regional Transportation Planning Organizations, authorized by the Legislature, were created to facilitate this cooperation. **They are required to:**

- Encompass at least one complete county.
- Have a population of 100,000 or a minimum of three counties.

⁴⁶ For more information, see the CTED publications *Issues in Designating Urban Growth Areas: Part I, Providing Adequate Urban Land Area Supply* (1992); *The Art and Science of Designating Urban Growth Areas: Part II, Some Suggestions for Criteria and Densities* (1992); and *Buildable Lands Program Guidelines*.

⁴⁷ RCW 36.70A.130(3).

⁴⁸ For a more in-depth discussion of transportation planning, see Chapter 9.

⁴⁹ In 1996, the legislature added general aviation airports to the list of items that all local governments must include in their transportation elements of their comprehensive plans. RCW 36.70A.070(6); 36.70A.510; 36.70.547.

⁵⁰ RCW 47.80.010.

⁵¹ Id.

- Have as members all counties in the region and at least 60% of the cities and towns in the region representing a minimum of 75% of the population of the cities and towns.⁵²

A Regional Transportation Planning Organization is charged with the following tasks:

- Identify a lead agency to carry out organizational tasks.
- Develop and adopt a regional transportation plan.
- Review the plan biennially to make sure it is current.
- Provide the plan to the state Department of Transportation.
- Participate in policy decisions.
- Create a Regional Transportation Policy Board to permit local employers, transit agencies, ports, and the like to participate in policy decisions.⁵³
- Establish level of service standards for state transportation facilities that are not of statewide significance.
- Include highways of statewide significance. (WSDOT has the responsibility for setting the level of service standards on these facilities.)
- Develop guidelines and principles for the development and evaluation of transportation elements of local comprehensive plans. Certify that local transportation elements are consistent with the adopted regional plan.
- Prepare transportation strategy to guide the preparation of the regional transportation plan.⁵⁴

The teeth of the Regional Transportation Planning Organization is found in several provisions:

- The organization must certify that within its jurisdiction the comprehensive plan of each locality planning under the GMA is consistent with the regional transportation plan and county-wide policies, and that the regional plan is consistent with the county-wide policies.⁵⁵
- The regional plan shall specifically address existing or anticipated planning projects which affect more than one jurisdiction; or in which the impacts could be mitigated by adhering to the regional plan.⁵⁶
- All transportation projects within the region, which affect regional facilities, "must be consistent" with the plan.⁵⁷

⁵² RCW 47.80.020.

⁵³ RCW 47.80.030(1)(a).

⁵⁴ RCW 47.80.023; 47.80.026; 47.80.030.

⁵⁵ RCW 47.80.030(1)(b).

⁵⁶ RCW 47.80.030(2).

⁵⁷ RCW 36.81.121; 35.77.010; 35.58.2795.

- The regional plan must be based on "least-cost planning" and identify the most cost-effective facilities, services, and programs. The plan must identify facilities and programs aimed toward an integrated regional transportation system. The plan must include a financial plan that demonstrates how the plan can be implemented. And the plan must make assessments necessary to preserve and use efficiently the existing regional transportation system.⁵⁸
- All six-year transportation programs and transit development programs must be consistent with the county's or city's adopted comprehensive plan. (This applies to all counties and cities.)

2. Local Agency Coordination with GMA Plans

Original GMA legislation required all "special districts" (except ports and municipal airports) to conform with state policy in their land use activities, including capital budget decisions. These special districts also had to comply with the comprehensive land use plan of the county or city having jurisdiction in the area where the activities occur. The Governor vetoed this requirement, however, because the exemptions for port districts and municipal airports were unacceptable.⁵⁹

Despite the lack of required consistency under the GMA, special districts may find their large scale, regional projects approved more swiftly if the projects are identified in local community plans. This is done through the process of identifying essential public facilities. The courts have emphasized the need for certainty and adequate standards for measuring a project against a plan.⁶⁰ Communities may want to consider specifically designating facilities critical to special district or state agency operation during the comprehensive planning process. At the very least, the community should identify some locational or objective criteria for measuring conformance.

In 1991, the Legislature added state agencies to those required to plan in conformance with local comprehensive plans.⁶¹ This requirement has led to some litigation, as local jurisdictions and state agencies attempt to resolve differences in planning efforts on facilities such as ferry terminals and state highways.

3. Essential Public Facilities

Each fully planning community is required to create a process for identifying and siting essential public facilities.⁶² Such facilities include those facilities that are typically difficult to site, such as:

⁵⁸ RCW 47.80.030.

⁵⁹ Washington Laws, 1990, 1st Ex. Sess., Chapter 17, § 18 (S.H.B. 2929), veto message, April 24, 1990.

⁶⁰ Anderson v. Issaquah, 70 Wn. App. 64, 851 P.2d 744 (1993); Indian Trail Property Owner's Association v. City of Spokane, 76 Wn. App. 430, 437, 886 P.2d 209 (1994).

⁶¹ RCW 36.70A.013.

⁶² RCW 36.70A.200

- Airports
- State educational facilities
- State and regional transportation facilities
- State and local correctional facilities
- Solid waste handling facilities
- Inpatient facilities, including substance abuse, mental health, and group homes.⁶³

The requirement to site "essential" public facilities raises the question of what obligation a county or city has to provide for the needs of smaller, special purpose districts. The issue is whether a city or county, within its own jurisdiction, may bar or substantially limit a project planned by a special purpose government or state agency.

Courts have ruled that special districts must conform to the requirements of the locality in which they are developing.⁶⁴ Further, a community may preclude incompatible uses from certain zones, so long as it makes "reasonable provision" within the larger community for the facilities necessary to operate the special district.

Thus, a city or county could require sewer and water districts to locate essential facilities within areas of appropriate zoning, such as commercial or industrial, rather than residential areas.⁶⁵ At the very least, a community may place reasonable restrictions on a project to assure compatibility or to mitigate impacts. The community may be limited in its actions, however, because a special district must be allowed to provide its statutorily mandated services reasonably within the district boundaries. If a sewer district needs a sewer plant in a residential area to meet statutory obligations to its constituency, for example, the community may not use zoning or its comprehensive plan to frustrate that purpose.⁶⁶

The Supreme Court uses the language of due process and reasonableness in reviewing such cases. When a subordinate jurisdiction requires a particular facility to accomplish its tasks, a municipal ordinance that forbids (rather than reasonably conditions) such uses, would be examined closely to determine whether the prohibition is, in fact, "reasonable."⁶⁷

Courts have also ruled that unsubstantiated, generalized community fear is an irrelevant

⁶³ RCW 36.70A.200(1).

⁶⁴ *Edmonds School Dist. v. Mountlake Terrace*, 77 Wn.2d 609, 465 P.2d 177 (1970).

⁶⁵ *Everett v. Snohomish County*, 112 Wn.2d 433, 722 P.2d 992 (1989), *Edmonds*, supra.

⁶⁶ *South Hill Sewer District v. Pierce County*, 22 Wn. App. 738, 591 P.2d 877 (1979), but see *Everett*, supra; *Edmonds*, supra.

⁶⁷ *Everett*, supra.

consideration when deciding where to site essential public facilities.⁶⁸ The Legislature recognized that the location of essential public facilities might encounter local opposition. It therefore enacted RCW 37.70A.200(2), which provides that no local comprehensive plan or development regulation may preclude the siting of such facilities.⁶⁹ The Central Puget Sound Growth Management Hearings Board has also ruled that a local government plan may not, through policies or strategy directives, effectively preclude the siting or expansion of an essential public facility, including its necessary support activities.⁷⁰ However, the Board has found that precluding a facility means to render its siting “impossible or impractical.”⁷¹ This still leaves relatively wide discretion to regulate essential public facilities, such as limiting them to specified zoning districts, imposing separation requirements and requiring conditional use permits.⁷²

The GMA does not define all essential public facilities. The statute states that they are “facilities that are typically difficult to site.”⁷³ The Procedural Criteria further assist local governments with the process for siting essential public facilities.⁷⁴

All special purpose government agencies should identify which facilities are “essential” to their legislative purpose. Working with cities or counties, as appropriate, these junior districts can assure that these facilities will be integrated into the city and county comprehensive plans, and will fit in the larger community planning program.

One type of essential public facility that has received significant attention from both the state legislature and local communities are secured community transition facilities (SCTF), which are basically transition homes for sexually violent predators.⁷⁵ The Washington State Department of Social and Health Services interpreted applicable state legislation as requiring cities and counties to incorporate limited zoning restrictions on SCTF’s by September 1, 2002 or to be preempted from providing any zoning regulation. Some cities and counties chose to be voluntarily pre-empted from adopting any zoning regulation, because preemption gave those cities and counties an opportunity to participate in a mediation process on the location of the SCTF’s not available to communities that are not preempted. The range of authority non-preempted cities and counties had to regulate SCTF’s was extremely limited, giving further incentive for communities to choose preemption.

4. Regional Service Delivery Agreements

Sometimes providing various government services extends over jurisdictional boundaries. In order to establish which jurisdiction should provide the government service, counties, cities and

⁶⁸ Department of Corrections v. Kennewick, 86 Wn. App. 521, 937 P.2d 732 (1997).

⁶⁹ Id. at 533.

⁷⁰ Port of Seattle v. City of Des Moines, CPSGMHB No. 97-3-0014 (1997).

⁷¹ See, DSHS and DOC v. Tacoma, CPSGMHB Case No. 00-3-007, Finding of Compliance (May 22, 2001), at 6.

⁷² Id.

⁷³ RCW 36.70A.200; WAC 365-195-070(4).

⁷⁴ WAC 365-195-340.

⁷⁵ See RCW 71.09.020.

special districts are encouraged to develop local service agreements.⁷⁶ In addition to specifying the jurisdiction responsible for providing the service, the local governments can transfer certain revenues among them.⁷⁷ These delivery agreements prove to be especially useful in urban growth areas, where properties are transitioning from county to city jurisdiction.

Some of the types of issues addressed in such agreements are as follows:

Should the County be reimbursed for any infrastructure it constructs that is subsequently annexed into a city?

- What development standards and level of service standards should be required of new developments?
- Under what situations should a city as opposed to a special district provide utility service?
- Who will continue to process development permits that are annexed into a city during permit review?
- What role should the city play in the review of development permits in unincorporated UGA's, since these properties will soon annex into the city?

f. Comprehensive Plans: The Heart of the Redefined Planning Process Under GMA

A community's comprehensive plan addresses the central issue of how it will balance and resolve competing demands on its public facilities and resources, as well as locally competing goals and objectives. Comprehensive plans are detailed later in this chapter, but the key priorities in comprehensive planning are as follows:

Key Priorities in Comprehensive Planning

- All comprehensive plans are to be measured against the goals and requirements of the GMA.
- All comprehensive plans must comply with county-wide planning policies.
- All official controls and developmental and environmental regulations must be consistent with comprehensive plans.
- All comprehensive plans must be internally consistent.

⁷⁶ Chapter 36.115 RCW.

⁷⁷ Revenues that can be transferred are the motor vehicle licensing fee (Chapter 46.68 RCW), the liquor tax and profits (Chapter 66.08 RCW), the sales and use tax (Chapter 82.14 RCW), and the motor vehicle excise tax (Chapter 82.44 RCW).

- All comprehensive plans must be coordinated and consistent with the comprehensive plans of adjacent jurisdictions.
- All developments, including private and public, at every level of state, local, general purpose, and local special purpose, must be measured for consistency with the comprehensive plan.
- All comprehensive plans must ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.
- Any community which cannot demonstrate the financial ability to accommodate its planned growth patterns must reexamine its land use patterns or its financing plans.

A comprehensive planning program (with its conforming implementing regulations) must constantly weigh the community's financial ability to support development against its minimum population obligations and need for environmental protection.

Comprehensive planning is the cornerstone of the GMA planning process. Past comprehensive plans tended to be visionary guides to community desires, but were usually not reflected in the regulations and facilities that drove the community's day-to-day development. In some communities, there was no requirement for a plan beyond a map that conveyed a sense of orderly development.⁷⁸

The centerpiece of the new GMA comprehensive plan is the "future land use map." All of the elements of the plan must be internally consistent and consistent with the vision expressed by the future land use map.⁷⁹

Achieving internal consistency in the comprehensive plan is especially challenging. Communities are now required to include elements that often involve competing goals, while balancing other considerations in the final document. Following is a summary of a community's mandatory planning elements, including key points to be considered.

g. Mandatory Comprehensive Planning: Elements for Growth Management

i. Land Use

A land use element includes land uses and densities, resource protection, population projections, and public facilities. In addition, the land use element is required to consider protection of public water supplies, storm water (both in the community and in adjacent

⁷⁸ *Shelton v. Bellevue*, 73 Wn.2d 28, 435 P.2d 949 (1968).

⁷⁹ RCW 36.70A.070.

communities), and "provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state."⁸⁰

The land use element is a guide for orderly development of the community (the purpose of the old plans). This element, more than any other, describes the "big picture" how a community chooses to balance the competing goals of the GMA. Key components of the land use plan are maps showing the future shape of the community and how its essential components will be distributed. Resource lands, critical areas (where known), open space corridors, residential, commercial, industrial, and major public and private facilities should all be addressed.

The land use element is also at the forefront of community clean water regulation, including surface water and storm water from point and non-point discharge sources. The clean water component overlaps with state and federal regulations, including the National Pollution Discharge Elimination System (NPDES) authorized by the Federal Clean Water Act and administered by the state Department of Ecology; Hydraulic Project Approvals (HPAs) issued by the Washington State Department of Fish and Wildlife; and other water quality regulations. (See also Chapter 6, "Planning and Environmental Legislation.")

Clean water requirements have been mandatory in the comprehensive plan since 1984 and 1985, when the Legislature adopted two mandates.

The first specifies ground water protection:

The land use element [of a comprehensive plan] shall also provide for the protection of the quality and quantity of the ground water used for public water supplies.⁸¹

The second specifically controls runoff to Puget Sound:

The land use element shall review drainage, flooding, and storm water runoff in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound.⁸²

Because municipal storm systems and roadways are major sources of point and non-point runoff in urban areas (both for surface and ground water), the comprehensive plan becomes a self-examining and policing mechanism. Potential pollution sources must be identified and targeted for control through the comprehensive planning process, and coordinated with the community's existing programs.

⁸⁰ RCW 36.70A.090(1).

⁸¹ Washington Laws, 1984, Chapter 253, pp. 1938-41, amending RCW 35.63.090, 35A.63.061 and 36.70.330.

⁸² Washington Laws, 1985, Chapter 126, pp. 533-35, amending RCW 35.63.090, 35A.63.061 and 36.70.330 (emphasis added).

ii. Housing

A housing element addresses the "vitality and character of established residential neighborhoods." It inventories existing and projected housing needs, creates a policy base for encouraging housing, and identifies "sufficient land" for all types of housing, including low income, manufactured, multifamily, group homes, and foster care facilities, while making adequate provisions for all of the economic segments of the community.⁸³

Housing development is one of the greatest challenges facing our communities.

COMMUNITY CHALLENGE:

How does a community protect the vitality and integrity of existing residential neighborhoods, while providing for greater densities? Higher density is needed to meet transit objectives, to meet affordable housing demands, and to provide services in a cost-effective orderly manner. The challenge becomes difficult when existing low-density, single-family neighborhoods occupy much of the community's prime and easily developed land. Available land remaining to meet these goals is often subject to competition from other important goals, such as wildlife and wetland protection, given equal emphasis under the GMA. Early community involvement and neighborhood-friendly design can help to integrate new higher density housing into existing neighborhoods.

Under the GMA, local governments are required to provide for "group homes" in the housing element of their comprehensive plans.⁸⁴ The term "group home" applies to many types of residences. Usually the term is used for homes where the residents live and receive care or supervision.

The state has preempted local jurisdictions from including prohibitions against adult family homes, facilities for four to six developmentally disabled adults or senior adults in areas zoned for single-family residences.⁸⁵ The definition of adult family homes includes homes that are operated by non-resident providers.⁸⁶

In 1993, the state Legislature passed the Washington Housing Policy Act (WHPA).⁸⁷ WHPA, now part of the planning process, fosters safe and affordable housing. It requires local governments to incorporate recommendations for accessory apartments if they are a county planning under the GMA, if they are a city with a population that exceeds 20,000, or if they are a county with a

⁸³ RCW 36.70A.070(2).

⁸⁴ RCW 36.70A.070(a)(1)(c).

⁸⁵ RCW 70.128.140.

⁸⁶ RCW 70.128.010.

⁸⁷ Chapter 43.185B RCW.

population exceeding 125,000. These recommendations, developed by Commerce and the Affordable Housing Advisory Board,⁸⁸ encourage development and placement of accessory apartments in areas zoned for single-family residential use.⁸⁹

The WHPA also prohibits including in ordinances, development regulations, zoning regulations, or other official controls any provision that treats residential property housing the handicapped differently than similar structures housing a family or other unrelated individuals.⁹⁰ It mirrors language from the federal Fair Housing Act that prohibits discrimination because of race, color, religion, sex, handicap, familial status, and national origin. All group homes, because they are used as residences, count as a dwelling under these federal and state laws. This means that the prohibition against discrimination applies. These protections apply against discriminatory zoning, land use restrictions, or restrictive covenants.⁹¹

Another new piece of legislation prohibits cities and counties from discriminating against manufactured housing in their development regulations.⁹² Cities and counties can no longer treat manufactured homes differently from stick-built homes, including in which zoning districts they are allowed. However, the legislation does grant cities and counties some limited zoning authority to regulate design specifications such as roof pitch, siding and foundation.

iii. Capital Facilities Planning

A capital facilities plan including inventories of existing facilities showing both "location" and "capacity," a forecast of future needs, the proposed location and capacity of new facilities, and a six-year plan to finance such facilities from identified funding sources. Where "probable funding" falls short of meeting "existing needs" the land use element is to be reassessed to "ensure that the land use element, the capital facilities plan element, and the financing plan within the capital facilities plan element are coordinated and consistent."⁹³

The link between a community's financing capability, adequate capital facilities, and the ability of these facilities to meet "existing needs" based on the land use plan is at the heart of growth management planning. Finding the appropriate balance among these competing factors poses one of the greatest challenges to planning communities.

COMMUNITY CHALLENGE:

The challenge in capital facilities planning is to identify affordable and appropriate levels of service for the community. Levels of service measure the quality and

⁸⁸ RCW 35.63.210; 35A.63.230; 36.70.677; 36.70A.400.

⁸⁹ RCW 43.63A.215.

⁹⁰ RCW 35.63.220; 35A.63.240; 36.70.990; 36.70A.410.

⁹¹ CTED, Group Homes in Washington State: Questions and Answers, 1998.

⁹² RCW 35.63.160; 35A.21.312; 36.01.225; 35.21.684.

⁹³ RCW 36.70A.070(3).

quantity of services that will be delivered in a community. If service levels are too high, a community cannot afford to make needed improvements to substandard facilities. If the city or county prohibits development for an unreasonable amount of time due to unattainable level of service standards, it could be held liable to property owners for a taking of their property without compensation.⁹⁴ If service levels are set too low, the quality of life in the community could deteriorate. Levels of service reflect a community's values and willingness to pay for public facilities. That is why it is important to involve the community in setting levels of service in a meaningful way and for the public to have good information on what the effects of setting certain levels of service will be.

If population trends exceed a community's ability to provide capital facilities, it must reexamine land use plans to reestablish a reasonable balance. Adequate and timely availability of capital facilities is one component of the concurrency doctrine covered later in this chapter.

iv. Utilities

A utilities element includes an inventory and "general" location, "proposed location," and capacity of existing and proposed utilities, including natural gas, electricity, and telecommunications.⁹⁵

The utilities section requires a community to provide adequate utility capacity to support its planned growth. Effective comprehensive planning depends on how well the community has done its local utility planning; and on planning by private and public utilities, which may or may not be synchronized with local community plans.

COMMUNITY CHALLENGE:

The utility planning requirement raises an important issue in identifying future "general locations" of such facilities. If a property is zoned for a utility corridor (be it streets or other facilities), courts may impose an obligation to acquire or forego the designated facility sites. A community may not identify a private site for public use in planning documents, and later refuse to permit development for other uses without acquiring the site. (See the discussion of appropriation for public purpose in the "taking" section, Chapter 4.)

Further, utility companies and communities must coordinate local utility planning to reflect population shifts and allocations. This will assure that planned utilities can accommodate future growth. Without coordination, a community may be unable to demonstrate that its facilities are "adequate" to meet projected growth. Such a finding would mandate revisions of the land use plans to bring the plans, facilities, and finances into line.

⁹⁴ See *Lake Tahoe v. Tahoe Regional Planning Agency*, 122 S. Ct. 1465 (2002) (development moratorium can serve as a takings without just compensation).

⁹⁵ RCW 36.70A.070(4).

v. Rural Areas

A rural element includes lands that are not designated for urban growth, agriculture, forest, and mineral resources.⁹⁶ The rural element of the comprehensive plan is required only for counties. It is intended to aid in regulating lands outside urban growth areas that are not already protected under the long-term commercial agricultural, mineral, and forest lands designation. Even with large lot and other regulatory zoning measures in rural areas, the cost of development in urban areas (plus attendant urban facilities costs) could drive lower-income housing into rural areas where counties can least afford to provide adequate services.

Starting in 1994, a number of changes have been made to the rural provisions contained in the GMA.⁹⁷ Each county must now document in writing how the rural element of its comprehensive plan harmonizes the planning goals of the GMA and meets the planning requirements of the GMA. Counties must provide for a variety of rural densities, uses, essential public facilities, and rural governmental services. However, they must protect rural character by containing or controlling development, assuring visual compatibility, reducing sprawl, protecting critical areas, and protecting against conflicts with the use of natural resource lands.⁹⁸

Limited areas of more intensive rural development (LAMIRDs) are permitted in rural areas, including necessary public facilities and public services, if they are based on existing development and are not provided in a manner that permits low-density sprawl. Small-scale recreation or tourist uses, cottage industries, and small-scale businesses that provide jobs for rural residents are allowed.⁹⁹ Logical outer boundaries must be drawn to minimize and contain more intense development. The boundaries are delineated predominantly by the built environment. These limited areas of more intense development must have been in existence as of July 1, 1990, or on the date the county opted to, or was required to, plan under the GMA. RCW 36.70A.365 allows counties to establish, in consultation with cities, a process for reviewing and approving proposals to authorize the siting of specific major industrial developments outside urban growth areas. Major industrial developments must require a parcel of land so large that no suitable parcels are available within the UGA or must be a natural resource-based industry that requires a location near the resource lands on which it is dependent. Upon approval, the development will be designated as a UGA.

At a minimum, a major industrial development must meet the following statutory criteria:

- New infrastructure is provided for and/or applicable impacts fees are paid;
- Transit-oriented site planning and traffic demand management programs are implemented;

⁹⁶ RCW 36.70A.070(5).

⁹⁷ Washington Laws, 1997, Chapter 429 (S.B. 6094), amending various sections of Chapter 36.70A RCW.

⁹⁸ RCW 36.70A.070(5)(c).

⁹⁹ RCW 36.70A.070(5)(d).

- Buffers are provided between the major industrial development and adjacent non-urban areas;
- Environmental protection including air and water quality has been addressed and provided for;
- Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;
- Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;
- The plan for the major industrial development is consistent with the county's development regulations established for protection of critical areas; and
- An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the UGA. Priority shall be given to applications for sites that are adjacent to or in close proximity to the UGA.

The process established by RCW 36.70A.365 is triggered by an application for a major industrial development. The legislature recognized that going through this process, which includes the amendment of a comprehensive plan, could be a lengthy process that could make it difficult for counties to attract new industrial development. In light of this the legislature has authorized some counties to designate “industrial land banks” through RCW 36.70A.367, which allows specified counties to designate areas for major industrial development within its comprehensive plan without the application of any specific development application for major industrial development. The criteria for designating these land banks in the comprehensive plan and approving specific industrial developments within the banks at the permitting level are similar to the standards involved in the approval of major industrial developments under RCW 36.70A.365. The counties that can currently designate industrial land banks are Whatcom, Clallam, Jefferson, Mason, Grays Harbor, Lewis, Clark, Klickitat, Benton, Yakima, Walla Walla, Columbia, Garfield and Asotin. An amendment in 2004 to RCW 36.70A.367 clarified which land bank standards apply to the comprehensive plan process and which applied to development review. The amendments also limited industrial land banks to two master planned locations.

Another 2004 GMA amendment authorizes accessory uses for agricultural lands of long term significance. These accessory uses are defined as accessory uses that support, promote, or sustain agricultural operations and production. With specified limitations, these accessory uses can include storage and refrigeration of regional agricultural products; production, sales, and marketing of value-added agricultural products derived from regional resources; supplemental sources of on-farm income that support and sustain on-farm agricultural operations and production; support services that facilitate the production, marketing, and distribution of agricultural products; and off-farm and on-farm sales and marketing of predominantly regional agricultural products and experiences, locally made art and arts and crafts, and ancillary retail

sales and service activities.

COMMUNITY CHALLENGE:

While it may appear that housing is more affordable in rural areas, the actual cost to the homeowner in commute time to employment and urban services can increase the cost of living in a rural area. Also, the cost to the county of providing adequate services should be considered in determining whether housing in the rural area is really affordable. For example, an increased number of people in rural areas will require more roads for commuting, as well as increasing the demand for adequate fire and police protection.

vi. Transportation

A transportation element includes:

- Land use assumptions used in estimating travel, facilities and service needs, including inventory of existing facilities and capacity;
- Level of service standards for all locally-owned arterials and transit routes;
- Corrective actions for all local facilities below established standards;
- A 10-year traffic forecast;
- Identification of expansion needed to meet present and future demand;
- Financial resources and needs assessments, including analysis of capacity to judge need against ability of a multi-year funding plan; if funding plans are inadequate, a discussion of new funding sources or a reassessment of the land use plans;
- Impact analysis of new plans on adjacent communities to assure coordination demand;
- Management strategies to reduce travel impact for existing and new development; and
- A requirement for concurrency or adoption of codes that prohibit development that will cause facilities to fall below established levels of service, unless new facilities are provided or strategies are in place to avoid degradation below established service levels.¹⁰⁰

The transportation requirements of the comprehensive plan are all encompassing. The level of detail implied in the GMA creates an especially complex task for communities planning under growth management.

Transportation service levels are often measured by efficiency of traffic flow. An "A" level of

¹⁰⁰ RCW 36.70A.070(6).

service equates to a smooth, uninterrupted flow; an "F" level is a traffic network overcrowded to the point of failure. Other measures also are used, such as volume/capacity ratio.

COMMUNITY CHALLENGE

Establishing the appropriate level of service is key. If a community establishes a service level exceeding its actual needs, it must fund the deficit to make up existing deficiencies. Local taxpayers, in effect, will shoulder the burden of funding years of neglect to older facilities. If a community adopts existing levels of service, new development will be permitted to build to these existing levels whether or not this is the level ultimately desired or actually experienced by the community. If existing levels cannot be maintained, or if new levels are not obtained within a reasonable period of time achieving the GMA's required "concurrency" new construction can be prohibited until the problems are solved. Communities must find level of service strategies which the public and private sectors can financially sustain. Transportation levels of service/concurrency requirements must be carefully weighed and measured. These will be a significant hurdle to redeveloping older areas and increasing the urbanization and densities of lower density areas. If transportation systems and concurrency requirements are not programmed adequately, a real risk of a limited moratorium exists in many communities until a successful pattern for dealing with transportation issues emerges.

FURTHER COMMUNITY CHALLENGES:

1. The most difficult challenge will be to fund transportation improvements without placing an unacceptable burden on the elderly, first-time urban home buyers, and others who are least able to pay. The conflict between existing demands on older transportation networks, the high cost of upgrades, and the burden on affordable housing will not be easy to manage.
2. The perception or reality that existing roads cannot handle present traffic, and that they would be overtaxed by significant new levels of use, would be a barrier to increasing densities in existing urban and suburban areas. To encourage the use of transit, many communities accept lower levels of service for automobiles (i.e., increased congestion). They increase density and actively discourage single-occupancy vehicles. Other communities have developed a level of service designation for a grid or group of facilities, recognizing that constant upgrades to a single, overcrowded intersection does little to aid overall transit and transportation.
3. Strategies to integrate new, higher density projects into existing transportation networks may allow reduced levels of service (increased congestion), but require improvements to other transit services, bicycle lanes, and sidewalks. This helps

reduce dependency on auto-based transportation.

vii. Urban Growth Area

The designation of urban growth areas is addressed in Section E(2)(b)(iii) of this manual.

COMMUNITY CHALLENGE:

Designation of urban growth areas will challenge communities that face increasing growth (as projected by the Office of Financial Management), but whose current tax base can only marginally provide existing services. While a city in this situation should proceed to design the urban growth area to reflect its ability to pay for services that will meet future growth, financing techniques are available to help meet service requirements. These include latecomers' agreements, developer extensions, local improvement districts, impact fees, authorized increased excise taxes, and state and federal grant programs.

viii. The Buildable Lands Program

In addition to the basic GMA review and evaluation requirements, the six larger counties and the cities within their boundaries in Western Washington have to meet special requirements for monitoring land supply and urban densities under 1997 amendments to the GMA.¹⁰¹ This GMA review and evaluation program is often referred to as the Buildable Lands Program. Snohomish, King, Pierce, Kitsap, Thurston, and Clark counties and all their cities are required to collect data and monitor development within their UGAs. They must use this information to determine whether the county and cities are achieving urban densities by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred. The first evaluations were due for completion by September 1, 2002, with subsequent evaluations every five years after that.

ix. Public Participation

The adoption of all plans, amendments, and regulations requires a concerted effort to involve large segments of the affected populations.¹⁰² While techniques for disseminating information and soliciting and considering public comment will vary, communities must address their outreach obligation. Local governments should develop a plan for public participation. (See Chapter 2 of this manual.)

x. Lands for Public Purpose and Open Space Corridors

The GMA requires all planning communities to designate lands for public purposes, such as schools, solid waste sites, sewage treatment facilities, and other public uses. The region is to come up with a coordinated plan for the acquisition of such facilities.¹⁰³

¹⁰¹ RCW 36.70A.215.

¹⁰² RCW 36.70A.140.

¹⁰³ RCW 36.70A.150.

Communities must also designate "open space" corridors within and between urban growth areas. Open space areas are to be used for "recreation, wildlife habitat, trails, and connection of critical areas."¹⁰⁴

In designating and acquiring land for public purposes and open space, care must of course be taken that local government does not violate the constitutional property rights of property owners. As discussed in Chapter 4, if property uses are limited beyond constitutional limits of reasonableness or property rights are taken without just compensation, the local government may owe the property owner compensation.

xi. Essential Public Facilities

The GMA requires cities and counties fully planning under the GMA to include in their comprehensive plan a process for identifying and siting essential public facilities. This topic was addressed in Section 3(E)(2)(b)(iv)(3).

e. Zoning and Official Controls: The Coordination of Local Development Regulations and the Requirements for "Consistency" with Comprehensive Plans

IMPORTANT NOTE:

In 1997, the Washington Supreme Court ruled that where there is inconsistency between a specific zoning regulation and the comprehensive plan, the zoning regulation prevails.¹⁰⁵ Referring to pre-GMA cases, the court ruled a comprehensive plan is not a document designed for making specific land use decisions, although the court noted that proposed land use decisions must "generally conform" to the comprehensive plan.

This ruling does not mean that cities and counties do not have to worry about consistency between comprehensive plans and development regulations. If someone files a challenge to a Growth Management Hearings Board within the requisite 60 days of adoption, the Hearings Board can still invalidate a regulation if it is inconsistent with a comprehensive plan designation. However, if the regulation is not challenged within the 60 days, the regulation's validity in relation to the GMA can no longer be challenged and the courts will construe development regulations as controlling whenever they conflict with comprehensive plans.

The comprehensive plan provides the policy framework for future development in the community. The development regulations implement the plan policies with specific standards and requirements for development. Each county and city fully planning under the

¹⁰⁴ RCW 36.70A.160.

¹⁰⁵ Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 947 P.2d 1208 (1997).

GMA must adopt development regulations that are consistent with and implement the comprehensive plan.¹⁰⁶

The Planning Enabling Act uses the term "official controls" to describe implementing regulations:

"Official controls" means legislatively defined and enacted policies, standards, precise detailed maps and other criteria, all of which control the physical development of a county or any part thereof or any detail thereof, and are the means of translating into regulations and ordinances all or any part of the general objectives of the comprehensive plan. Such official controls may include, but are not limited to, ordinances establishing zoning, subdivision control, platting, and adoption of detailed maps.

The GMA uses the term development regulation" which includes:

... the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.¹⁰⁷

The GMA legislatively mandated a statewide consistency doctrine by stating that all development regulations, as defined, must be consistent with adopted comprehensive plans. The deadline for the consistency requirement for counties and cities not fully planning was July 1, 1992.¹⁰⁸

All counties and cities fully planning under the GMA shall enact:

- **development regulations which are consistent with and implement the comprehensive plan.¹⁰⁹**

Each county and city fully planning under the GMA:

- **shall perform its activities and make capital budget decisions in conformity with its comprehensive plan.¹¹⁰**

A county or city's development regulations should include any other regulations that are required to be adopted per the comprehensive plan. Development regulations should also include transportation concurrency provisions under RCW 36.70A.070(6)(b).

¹⁰⁶ RCW 36.70A.040(4).

¹⁰⁷ RCW 36.70A.030(7).

¹⁰⁸ RCW 35.63.125, RCW 35A.63.105, RCW 36.70A.040(3).

¹⁰⁹ RCW 36.70A.040(4).

¹¹⁰ RCW 36.70A.120 as amended 1993 (emphasis added).

The initial 12 counties with populations of more than 50,000 and their cities required to fully plan under the GMA had a deadline of July 1, 1994, to complete their comprehensive plans. Three smaller counties and their cities also fully planning had a deadline of January 1, 1995. Counties and their cities required later to fully plan and those counties and their cities choosing to plan under the GMA have four years to complete their plans.¹¹¹ The zoning ordinance is essential to implement the land use element of the comprehensive plan. The zoning map should be consistent with the future land use map in the comprehensive plan. It may be more detailed than the comprehensive plan map, but it should reflect the densities and uses designated in the comprehensive plan.

As previously noted, the Shoreline Master Program regulations are considered development regulations. The shoreline designations should be reviewed for consistency with comprehensive plan and zoning designations. In 2003, however, the legislature clarified that except for internal consistency between Shoreline and GMA regulations and policies, the Shoreline regulations are to be consistent with the requirements of the Shoreline Management Act ("SMA"), not the GMA.¹¹² If critical areas are subject to a shoreline master program (which would be within 200 feet of shorelines and their associated wetlands), they also would only be subject to requirements of the SMA. Notably, best available science requirements do not apply to SMA regulations or critical areas subject to the SMA, but the SMA must protect critical areas at a level at least equal to that required by the GMA.

As previously noted, the GMA requires cities and counties to ensure that public services and facilities necessary for development are adequate to serve development. Transportation facilities, however, are singled out for more rigorous treatment for fully planning communities. Such counties and cities are required to:

[A]dopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.¹¹³

All regulations affecting development, and amendments to those regulations, should go

¹¹¹ RCW 36.70A.040(3).

¹¹² RCW 36.70A.480.

¹¹³ RCW 36.70A.070(6)(b).

through the public participation process required by the GMA and other state planning laws. They are also subject to 60-day notice requirements to the state. When adopted, these regulations need to be submitted to the state within ten days of adoption, as is required for all comprehensive plans and plan amendments.¹¹⁴

PRACTICE TIP: Communities will achieve the required "conformity" between plans and action more readily if they can express their priorities (or ways to set priorities among conflicting goals) in their comprehensive plan. The plan should not seek to be all things to all people. Long recitations of competing and inconsistent goals do little to guide the resulting regulatory or administrative framework. Courts have said that regulations forcing decision-makers to "guess" the desired result, or substitute their own values for objective measurement, may be constitutionally defective due to vagueness.¹¹⁵

Consistency between plans and regulations, and plans and capital facilities, establishes the comprehensive plan as the standard by which all subsequent actions will be judged. For the required consistency and conformity, comprehensive plans must be written with enough specificity so decision-makers can choose between competing values and set priorities for community action. (See discussion of the vagueness inquiry in Chapter 4.)

As difficult as it may be, communities must try to express the balance they desire or will emphasize to meet community goals. An appropriate example might be a guiding policy that accepts higher levels of congestion to meet goals of urban intensification and affordability.

A community that clearly identifies trade-offs (or how to determine trade-offs between competing objectives), potentially can allow appropriate consumption of buildable land while protecting community values, e.g., neighborhood integrity and environmental values. But the community must state the tradeoffs, and identify how to decide the proper balance, when the inevitable conflict occurs.

f. Concurrency Requirements

During the growth management debate of the late 1980's, a common complaint was that development would outstrip the ability of communities to provide adequate municipal facilities.

The GMA deals with this problem at two levels: =At the **regulatory level**, a community must be able to demonstrate its ability to finance the capital facilities it needs to meet its planned land use. If the community does not have the financial ability to serve its planned loads or facility needs, it must reexamine its land use assumptions.¹¹⁶ The key issue here is "concurrency" at the planning or development regulation level.

¹¹⁴ RCW 36.70A.106. However, it should be noted that regulations adopted as part of the Shoreline Master Program are still subject to approval by the Department of Ecology.

¹¹⁵ Anderson, *supra*.

¹¹⁶ RCW 36.70A.070(3)(e).

Concurrency **at the project level** is more complex. Community development patterns are often "out of sync" with a community's capital facility plans. Historic use and maintenance patterns may create overcrowding or limited use, with little additional capacity for new growth and development.

At the project level, the GMA requires cities and counties to prohibit development approval if the development causes the level of service on locally owned transportation facilities to decline below the standards adopted in the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. Concurrent with development means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.¹¹⁷ Cities and counties have the option, but are not mandated, to adopt similar "concurrency" ordinances requiring adequate services at the project level for other types of public facilities as well. In making development contingent upon meeting concurrency requirements, cities and counties need to make sure that property owners are not precluded from developing their properties for unreasonable periods of time because meeting level of service standards is not possible without the owners paying for more than their proportionate share of public improvements. Under these circumstances, the unreasonable delay could be construed as a de facto development moratorium, entitling the property owner to damages for a constitutional taking of property without compensation.¹¹⁸

The concurrency requirement is mentioned at several points in the GMA, including its goals:

Public Facilities and Services. Ensure that those public facilities and services necessary to support development shall be adequate to serve development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.¹¹⁹

"**Public facilities**" include, streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.¹²⁰

"**Public services**" include, fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.¹²¹

Thus, at the planning level, "concurrency" runs the full range of governmental responsibility.¹²²

¹¹⁷ RCW 36.70A.070(6)(b).

¹¹⁸ Lake Tahoe, *supra*.

¹¹⁹ RCW 36.70A.020(12).

¹²⁰ RCW 36.70A.030(12).

¹²¹ RCW 36.70A.030(13).

¹²² See also RCW 19.27.097, 58.17.110.

Concurrency at the regulatory level is specified in the capital facility element of the comprehensive plan. Local communities are to:

- Inventory existing facilities;
- Forecast future needs;
- Locate and size future facilities;
- Project funding capabilities;
- Reassess land use plans if funding capabilities are inadequate.¹²³

To accomplish this task, a municipality must 1) establish level of service standards; 2) measure the degree to which the community does not meet the level of service under present conditions; and 3) measure the cost to the community of paying for existing service deficiencies, and the cost of extending or upgrading facilities to meet new demands.

Concurrency for transportation planning: The transportation element of the comprehensive plan must assess specific levels of service and needed facilities, as well as funding sources to assure coordination:

If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met.¹²⁴

The GMA's mandate for concurrency demands that communities face reality. Communities that cannot or will not provide adequate financing will not meet this test. They must identify appropriate levels of service to meet lower budgets or reassess their land use plans to find ways to decrease demands for public facilities.

COMMUNITY CHALLENGE:

Elected officials, planning commissions, and citizens must struggle to balance existing and desired levels of service with the ability to finance upgrades of possible deficiencies and future expansion. One longstanding concurrency requirement, modified a little by GMA legislation, has been in place since the adoption of the subdivision code in 1889. Under the state subdivision code, no plat or short plat may be approved unless the approving authority makes written findings that appropriate provisions are made for open spaces, drainage ways, streets or roads, alleys, and other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts.¹²⁵

¹²³ "Probable funding" falls short of meeting existing needs and to ensure that the land use element, the capital facilities plan element, and the financing plan are coordinated and consistent. RCW 36.70A.070(3).

¹²⁴ RCW 36.70A.070(6)(a)(iv)(C).

¹²⁵ RCW 58.17.110(2).

F. Growth Management Hearings Boards¹²⁶

Regional planning and coordination, concurrency between services and development, and consistency between official controls and adopted plans are now mandatory for communities which are required or have chosen to plan under growth management. Mandatory planning and mandated planning procedures, however, have not shifted away from the basic elements of the planning process. Local planning commissions will continue to make the primary planning recommendations and local elected officials will be the principal arbiters of local issues, visions, and standards.

The Growth Management Hearings Boards provide a less costly and expedited review of county and city comprehensive plans and development regulations. Three Growth Management Hearings Boards resolve disputes as to whether local officials have met regional and statewide objectives.¹²⁷ The Central Puget Sound, Western Washington, and Eastern Washington Hearings Boards were created to review the petitions of the state, citizens, other local governments, or other affected parties and determine the consistency of local comprehensive planning decisions with the goals and requirements of the GMA and SEPA.

The Boards have jurisdiction over appeals of comprehensive plans and development regulations, including shoreline master programs and their amendments. The boards do not have jurisdiction over appeals of project permit applications, including site specific rezones. These boards have limited jurisdiction and authority, and are not intended to serve as super state land use bodies.¹²⁸

Appeals to the Hearings Boards must be made within 60 days of the adoption of a plan or regulation. The Board's decisions must be made 180 days after a petition is filed with the Board. If a city or county is found out of compliance with the Growth Management Act, they may not be eligible for certain state grants and loans.

¹²⁶ RCW 36.70A.260 through RCW 36.70A.330.

¹²⁷ RCW 36.70A.280. Washington Laws, 1997, Chapter 429 (S.B. 6094) expanded or modified a number of Board procedures. A board may certify a case directly to superior court for review if all parties to the case agree in writing to direct review to superior court (RCW 36.70A.295). A board may now extend the 180-day period for issuing a decision to enable parties to settle if additional time is necessary to achieve a settlement (RCW 36.70A.300(2)(b)). The Board may extend the compliance period in cases of unusual scope or complexity (RCW 36.70A.300(3)(b)). Boards may not issue advisory opinions (RCW 36.70A.290(1)).

¹²⁸ Pursuant to RCW 36.70A.3201, boards are to apply a more deferential standard of review to actions of counties and cities than the preponderance of evidence standard. A board may determine that all or part of a comprehensive plan or development regulation is invalid (RCW 36.70A.302)). Amendments made to the GMA by Washington Laws, 1997, Chapter 429 (S.B. 6094) allows a local government to adopt interim measures pending adoption of a comprehensive plan. Washington Laws, 1997, Chapter 429 (S.B. 6094) also changed the standard for lifting an order of invalidity to require only that the local government no longer be substantially interfering with the GMA.

Growth Management Hearings Boards

PO Box 40953, Olympia, WA 98504-0903

1111 Israel Rd. SW, Suite 301, Tumwater, WA 98501

TELEPHONE: (360) 664-9170

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Now, more than ever, effective participation in local planning begins with an understanding of the comprehensive plan and the comprehensive planning process. The information in this manual is not legal advice. Its purpose is to help you understand growth management planning (i.e., comprehensive planning as prescribed by the GMA) and facilitate development of local plans and regulations. Any legal questions should be referred to your legal counsel.

G. Integrated Project Review

1. The Local Project Review Act

One of the GMA's fundamental principles is that stronger planning results in more timely permitting. The Local Project Review Act (RCW 36.70B) codified into state law a series of best practices in the local land use permit process. The goal is to better enable citizens and developers to know what to expect from the local permit process and to provide for more timely and efficient issuance of permits.

All local governments must do the following:

- Combine environmental review with project permit review.
- Except for the appeal of a determination of significance, allow not more than one open record hearing and not more than one closed record appeal hearing on both the permit and environmental review.¹²⁹ An open record hearing creates local government's record through testimony and information that is submitted. A closed record appeal is an administrative appeal to a local government body or officer after an open record hearing on a project permit application. No new evidence or only limited new evidence may be submitted.

Fully planning local governments must also include the following procedures:

¹²⁹ RCW 36.70B.050.

- Notify the applicant within 28 days of receiving a project permit application that the application is complete or specify information needed to make it complete.¹³⁰
- Notify the public and other departments and agencies with jurisdiction that an application has been received within 14 days after it is determined the application is complete.¹³¹
- Issue notice of final decision on a permit application within a time period generally not to exceed 120 days after notifying the applicant that an application is complete.¹³²
- Offer a consolidated permit process to allow applicants to apply for a variety of permits simultaneously with an applicant right to one single open record hearing and one closed record appeal for a development project no matter how many permits are involved.¹³³

2. Local Project Review Act

Integration of Permit and SEPA Environmental Review

The Local Project Review Act is part of the Land Use Regulatory Reform Act signed in to law in 1995 (ESHB 1724, codified, in part, in Chapter 36.70B RCW). It requires all counties and cities to combine permit review and environmental review and to consolidate administrative appeals of permit and SEPA decisions. Integrated project review provides a more streamlined permit and environmental review process by reducing duplication and paperwork. This section will explain the requirements for project review under Chapter 36.70B RCW, and how the SEPA requirements are integrated into project review. (For more information on the specifics of the SEPA process, see Chapter 6 of this manual.)

Counties and cities rely on the comprehensive plans and development regulations as the building block for land use regulatory reform. Land use planning decisions made during the GMA planning process should not be revisited at the project level. Equally, environmental impacts that were studied as part of the GMA planning process should not be reanalyzed at the project level. GMA planning decisions provide “the means to effectively combine certainty for development decisions, reasonable environmental protection, long-range planning for cost-effective infrastructure, and orderly growth and development.”¹³⁴

3. Procedural Requirements for Project Review

¹³⁰ RCW 36.70B.070(1).

¹³¹ RCW 36.70B.110(2).

¹³² RCW 36.70B.080(1).

¹³³ RCW 36.70B.120.

¹³⁴ RCW 36.70A.470.

a. Requirements for All Counties and Cities.

All counties and cities are required to develop an integrated project review process that:¹³⁵

- Combines both procedural and substantive environmental review with permit review; and
- Except for the appeal of a SEPA determination of significance, provides for no more than one open record hearing and one closed record appeal for a development project, no matter how many local development permit applications are involved.

Chapter 36.70B RCW has no specific requirements for how non-GMA counties and cities are to integrate their processes, except for administrative appeals.

b. Requirements for GMA Counties and Cities

Counties and cities fully planning under the GMA have additional requirements that must be adopted by ordinance or resolution. The following steps must be included in their project review process:

- Determination of completeness
- Notice of application
- Notice of decision—generally issued within 120 days of the determination of completeness
- Combined permit and SEPA administrative appeals

Non-fully planning cities and counties may choose to follow this process for integrating their permit and environmental review procedures.

A 2004 amendment to RCW 36.70A.080 now requires cities and counties subject to the buildable lands reports of RCW 36.70A.215 to also prepare yearly reports on permit processing times.

c. Steps in the Project Review Process Required for GMA Counties and Cities

¹³⁵ RCW 36.70B.050.

i. Submitting a Project Application–Initial Project Review

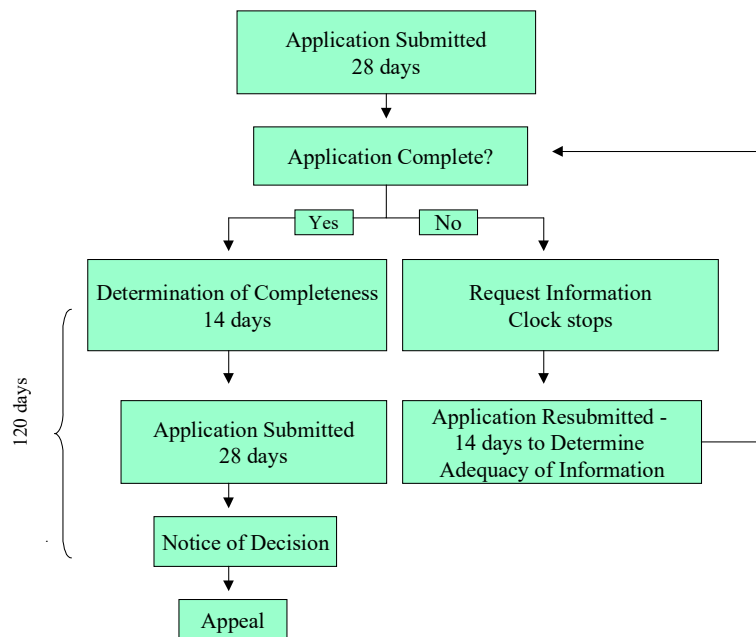
Project review normally begins when an applicant submits a permit application (usually accompanied by a SEPA environmental checklist). However, project review can begin earlier if a preapplication process is offered or required by the local jurisdiction. Counties and cities are not required to provide a preapplication process, but many do so.

A preapplication process can be beneficial to the applicant and reviewing agencies for complicated proposals. It usually involves a meeting between the applicant, various county or city departments, and other agencies that issue permits. A preapplication meeting allows the applicant to discuss the project and gather information on what studies and mitigation may be required. The county or city will have the opportunity to inform the applicant as to whether the project appears to be consistent with the development regulations and/or comprehensive plan (land use designations, building densities or intensities, and development standards) and any environmental studies or mitigation that may be required.

ii. Determination of Completeness

Counties and cities planning under the GMA are required to determine whether an application is complete enough to begin processing within 28 days of submittal.¹³⁶ If the application is determined complete, it is documented in a “determination of completeness” and sent to the applicant. If the application is not complete, the county or city may request additional information from the applicant. Once this information is submitted, the agency has 14 days to

Overview of the Integrated Project Review Process



determine whether the application is now complete and to notify the applicant in writing. Even

¹³⁶ RCW 36.70B.070.

though a county or city has determined an application complete, it is not precluded from later requesting additional information or studies. The county or city may request more information or studies if new information is required or there are substantial changes in the application.

The issuance of the determination of completeness also starts the “120-day clock.” Once the determination of completeness is issued, the county or city has 120 days to issue the notice of decision.

The determination of completeness may include the following optional information:

- A preliminary determination of those development regulations that apply to the proposal and will be used for project mitigation;
- A preliminary determination of consistency with applicable development regulations (see Analyzing Consistency below); or
- Other information the local government chooses to include.

SEPA steps at this stage of project review:

Is SEPA review required? If this is the first permit application submitted for a proposal, the county or city will also determine whether the proposal is categorically exempt.¹³⁷ If the proposal is exempt and SEPA review is not required, the county or city must still follow the steps for integrated project review; determination of completeness, notice of application, and notice of decision.

What if the county or city is not the lead agency? In most instances, the county or city will be the lead agency. However, the county or city will not be the lead agency when a local permit is not required, another agency is the proponent, or another agency is designated under the SEPA Rules as lead for a specific type of proposal.¹³⁸ If the county or city is not the lead agency, it will still analyze the consistency of the project with applicable development regulations and/or comprehensive plan policies. That information should be provided to the lead agency for notation in the SEPA documents. In this situation, counties and cities will also address consistency issues when they review the permit application.

What if the lead agency is also the project proponent? When there is a public proposal, such as a road project or sewer system, the proponent is often also the lead agency. Public proposals often take several years to plan and implement. The public agency proponent usually does its environmental review under SEPA months or years prior to submitting a permit application to the county or city. Thus, it is not possible to conduct environmental review or to combine hearings on procedural SEPA with permit hearings. The Local Project Review Act and SEPA were amended in 1997 to resolve this problem. A public agency that is funding or implementing a

¹³⁷ WAC 197-11-305.

¹³⁸ WAC 197-11-938.

proposal may conduct its review and hold procedural appeals under SEPA prior to submitting a permit application.¹³⁹

What else should the reviewer be thinking about at this step? Issues that should be considered during initial project review by GMA counties or cities include the following:

- Is the project description complete? Is the project properly defined? Have all interdependent pieces of the project been identified?¹⁴⁰
- Is the project consistent with the development regulations, or in the absence of applicable development regulations, the comprehensive plan? (See the section on Analyzing Consistency.)
- Are specific studies required under the development regulations and/or SEPA environmental review, or by other local, state, or federal regulations (e.g., a wetland study or transportation study)?
- What are the environmental impacts of the proposal? Have they been addressed by existing environmental documents (an EIS on the comprehensive plan or an EIS on a similar project or similar geographic area)?
- Will mitigation/conditions be required by the development regulations or other local, state, or federal regulations? Are there environmental impacts, which have not been addressed by the regulations?

It may not be possible to answer all of these questions during the initial review phase, but it is important to consider them as early in the process as possible.

iii. Notice of Application

GMA counties and cities are required to issue a notice of application (NOA) within 14 days after determining the permit application is complete.¹⁴¹

The notice of application must include the following information:

- The date of application, date of determination of completeness, and date of the notice of application;
- Notice of the public comment period, which must be between 14 and 30 days;
- Notice of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and appeal;
- The date, time, and place of any public hearing (if known);
- A project description, which should include sufficient detail to allow an

¹³⁹ RCW 36.70B.110(1) and to SEPA 43.21C.075(3)(b)(iii).

¹⁴⁰ WAC 197-11-060(3).

¹⁴¹ RCW 36.70B.110.

understanding of what is proposed;

- A list of the project permits included in the application, and any other permits the county or city knows will be needed from other agencies;
- A list of studies that will be requested, if any;
- A list of existing environmental documents that evaluate the proposed project;
- A preliminary determination of the development regulations that apply to and will be used to mitigate the project (if known); and
- A preliminary determination of the project's consistency with the development regulations and/or comprehensive plan (if known).

Counties and cities are required to use reasonable methods to distribute the NOA to the public and other agencies. The county or city may use its existing notice procedures and may use different types of notice for different types of permits. The notice requirements are similar to those required under SEPA and are found in RCW 36.70B.110(4).

Counties and cities must designate a comment period on the notice of application of not less than 14 and not more than 30 days following the date of the notice of application. The county or city may accept public comments at any time prior to the closing of the record of an open record predecision hearing. If the county or city does not provide an open record predecision hearing, public comments may be accepted prior to the final decision on the project permit.

SEPA steps at this stage of project review:

The determination of significance (DS/scoping notice) is combined with the NOA if a county or city is also lead agency under SEPA and has determined an EIS is needed at the time it issues the notice of application. The county or city may also issue the DS and scoping notice prior to issuing the NOA, or they may wait to consider comments received on the NOA before making a threshold determination.¹⁴²

An ambiguity in the law makes it unclear whether a determination of nonsignificance ("DNS") can be issued with the NOA.¹⁴³ Although Ecology recommends that agencies wait to issue a DNS until after the close of the comment period on the NOA, new legislation may be needed to resolve the conflict. In the meantime, when the county or city is also the SEPA lead agency, they may choose to use the "optional DNS process."¹⁴⁴

¹⁴² RCW 36.70B.110(1).

¹⁴³ The 1997 Legislature passed two bills amending RCW 36.70B.110 in relation to the timing of the threshold determination and the notice of application:

- Washington Laws, 1997, Chapter 396 (S.S.B. 5462) allows the threshold determination to be issued with the notice of application with a combined comment period.
- Washington Laws, 1997, Chapter 429 (S.B. 6094) amended the same section, but still prohibits a determination of nonsignificance from being issued prior to the close of the comment period on the notice of application.

¹⁴⁴ WAC 197-11-355.

The optional DNS process is available only to counties and cities fully planning under the GMA. As previously discussed, counties and cities may not issue a DNS before the close of the public comment period on an NOA (14 to 30 days) under RCW 36.70B.110(6). Counties and cities are not always required to provide a comment period on a DNS. However, if a comment period is required or provided for a DNS, this restriction results in two separate public comment periods. Under certain circumstances, WAC 197-11-355 allows the use of the comment period for the NOA to obtain comments on the environmental impacts of a project. The NOA will state that it is likely that the county or city will be issuing a DNS. The agency then takes comments and decides whether to actually issue the DNS subsequent to the close of the comment period on the NOA. When the DNS is formally issued, no additional comment period will be required. (For more information, see the Department of Ecology's *SEPA Handbook*.)

iv. Notice of Final Decision

Once the public comment period on the notice of application ends, the agency will review the comments and complete the project review process, including environmental analysis. At the end of the review, fully planning communities are required to issue a notice of final decision.¹⁴⁵ The county or city may include permit conditions on the development based on the development regulations or on the jurisdiction's SEPA substantive authority.

A county or city must complete project review and issue the notice of decision within 120 days after the determination of completeness.¹⁴⁶ The 120 days is calculated by counting calendar days. However, most local ordinances exclude certain periods of time, based upon state legislation that has since been repealed. These local ordinances typically provide that the 120 day clock stops when the city or county:

- Requires the applicant to correct plans, perform required studies, or provide additional required information;
- Requires the preparation of an environmental impact statement;
- Provides for any period for administrative appeals; or
- Agrees with the applicant to any extension of time.

The time limits only apply to project permit applications, which are essentially development permit applications excluding legislative actions such as amending comprehensive plans, adopting area-wide rezones or amending or adopting development regulations.¹⁴⁷

v. Analytical Requirements for Project Review: Consistency and Environmental Impacts

¹⁴⁵ RCW 36.70B.130.

¹⁴⁶ RCW 36.70B.080(1).

¹⁴⁷ RCW 36.70B.020(4).

The Local Project Review Act encourages GMA counties and cities to rely on applicable development regulations and/or comprehensive plan policies to analyze and address environmental impacts. Environmental analysis and mitigation required under SEPA should not duplicate other local, state, and federal requirements. Environmental review of projects should focus on environmental impacts and possible mitigation measures not previously addressed in the planning process or in local, state, and federal laws and regulations. GMA counties and cities should only require studies or use their SEPA substantive authority to condition a project's impacts when existing laws cannot adequately address the impacts.

The Legislature intended that proposed projects continue to receive environmental review, but the review would be integrated with and not be duplicative of other local, state and federal requirements.

- Project review should not reconsider planning decisions already made. In the past, review of proposed projects had been used to reopen land use planning decisions made through the comprehensive planning process. Since extensive work has been done on comprehensive plans and development regulations, the decisions made in the plans and regulations should be the starting point for project review.
- GMA counties and cities often incorporate considerable environmental analysis and mitigation measures during the development of comprehensive plans and development regulations. Project review should focus on environmental impacts and mitigation measures not previously addressed in the plan and regulations. This analysis should be used as the starting point for project review.

d. Analyzing Consistency

The Local Project Review Act requires counties and cities fully planning under the GMA to analyze the consistency of a proposed project with the applicable development regulations or, in the absence of applicable regulations, the adopted comprehensive plan. Conducting a consistency analysis and making a determination of whether environmental impacts have been addressed under SEPA involves asking many of the same questions and, thus, referring to many of the same studies and analyses.¹⁴⁸ For example, both SEPA and a critical areas ordinance could require an analysis of a development's impacts to a wetland's ability to provide stormwater detention and retention functions.

All local jurisdictions routinely review projects for consistency with applicable regulations. However, RCW 36.70B.040 requires that, at a minimum, counties and cities fully planning under the GMA must consider four factors found in their development regulations, or in the absence of applicable development regulations, the comprehensive plan:

1. The type of land use allowed, such as the land use designation;

¹⁴⁸ RCW 36.70B.030 and 040, and RCW 43.21C.240.

2. The level of development allowed, such as units per acre or other measures of density;
3. Infrastructure, such as the adequacy of public facilities and services to serve the proposed project; and
4. The characteristics of the proposed development as measured by the degree to which the project conforms to specific development regulations or standards.

This uniform approach is based on existing project review practices and should not place an additional burden on applicants or local government. Consistency analysis is largely a matter of code checking for most projects, which are simple or routine. More complex projects may require more analysis of these factors, including any required studies. (see Department of Commerce's Consistency Rules for more information on consistency criteria and analysis. WAC 365-197)

Project review focuses on the project's compliance with the development regulations (e.g. critical area ordinances, building codes, street development standards). If the project is not consistent with the development regulations and comprehensive plan, the project can be conditioned to make it consistent, or it can be denied.¹⁴⁹

Certain aspects of the four factors of consistency that have been determined in the comprehensive plan and development regulations cannot be reconsidered at the project level. More specifically, if the project is found to be consistent with the type of land use, the density of residential development in urban growth areas, and the availability and adequacy of public facilities, the county or city cannot reexamine alternatives to or hear appeals in these decisions.¹⁵⁰ This limitation also applies to any subsequent reviewing body, such as the court. Once these planning decisions have been made, they cannot be reconsidered during project review. They can only be reconsidered in an amendment to the comprehensive plan and/or development regulations.

However, the three factors that cannot be reconsidered during project review are more narrowly defined than the four factors listed above. The three factors do not include level of development measures other than residential density within the urban growth area. For example, residential densities outside the urban growth area or commercial building intensity are not included. The characteristics of development are also not included. This implies that residential densities outside the urban growth area could be revisited at the project level.

Chapter 36.70B RCW does not dictate an agency's procedures for considering consistency, require documentation of consistency, or limit an agency from asking more specific or related questions about the four categories of consistency.¹⁵¹ However, agencies are strongly encouraged to begin analyzing a project for consistency early in the project review process and

¹⁴⁹ RCW 36.70B.030 and 040.

¹⁵⁰ RCW 36.70B.030(3) and 36.70B.040(2).

¹⁵¹ RCW 36.70B.040(4).

to document such analysis, as they deem appropriate. Documentation provides support for the final permit decision issued by the county or city.

e. **Analyzing the Environmental Impacts of a Project—Relying on Laws and Regulations to Address Environmental Impacts**

The same law that created the Local Project Review Act added a new section to SEPA to emphasize that a county or city should rely on other applicable laws before requiring more studies under SEPA or invoking its SEPA substantive authority. This section allows a county or city fully planning under the GMA to determine that some or all of a project’s environmental impacts have been “adequately addressed” by its development regulations, comprehensive plan, or other local, state, or federal laws or rules.¹⁵²

The primary role of SEPA in GMA project review is to focus on those environmental impacts that have not been addressed by the county’s or city’s development regulations and/or comprehensive plan, or other local, state, and federal laws and regulations. SEPA substantive authority should only be used when existing laws cannot adequately address a project’s environmental impacts.

During project review, a county or city may determine that some or all of the environmental impacts of the project have been “adequately addressed” in the course of environmental review and making a threshold determination.¹⁵³

“Adequately addressed” is defined as having identified the impacts and avoided, otherwise mitigated, or designated as acceptable the impacts associated with certain levels of service, land use designations, development standards, or other land use planning decisions required or allowed under the GMA.¹⁵⁴ Examples include:¹⁵⁵

- **“Avoided the impacts”:** A county adopts a critical areas ordinance that prohibits filling or building within 250 feet of a certain class of wetlands. SEPA substantive authority would not be needed to address any impacts of filling or building within 250 feet of the wetland as the direct impacts have been avoided by prohibiting the activity.
- **“Otherwise mitigated”:** A city identifies a sole source aquifer that is their primary source of potable water. To mitigate the impacts of dense development on recharge of the aquifer, the city minimizes the amount of impervious surface over the aquifer by designating a lower density of residential development and

¹⁵² RCW 43.21C.240 and WAC 197-11-158.

¹⁵³ WAC 197-11-158(1).

¹⁵⁴ RCW 43.21C.240(4).

¹⁵⁵ These examples are greatly simplified and are intended to be illustrative only and should not be applied to a more specific project application. The facts of an individual application and the applicable regulations will govern the outcome of any determination by the county or city.

limiting the width of residential streets. When a subdivision is proposed that is consistent with the designated low density and narrow streets, the city can determine that the project's impacts on the aquifer's ability to recharge have been addressed with respect to building density.

- ***“Designated as acceptable the impacts associated with certain levels of service”:*** The GMA requires that counties and cities set levels of service for their transportation systems. Inside the urban growth area, a county decides that it will accept a certain level of traffic congestion (level of service standard) in the transportation element of its comprehensive plan. When an application for a grocery store is submitted, the county determines that the system-wide transportation impacts of the proposal have been addressed because the amount of traffic generated by the store will not cause the transportation level of service to fall below the standards established in the comprehensive plan. The transportation impacts associated with the established level of service were designated as acceptable in the comprehensive plan pursuant to GMA.

Once a determination has been made that an impact has been adequately addressed, the jurisdiction should not require additional mitigation for that particular impact under its SEPA substantive authority. However, the jurisdiction may find that its development regulations address some, but not all, of a project's impacts. In the grocery store example, the jurisdiction would probably still need to rely on SEPA substantive authority to address transportation site-specific impacts such as safety, on-site traffic circulation, and direct access to the site if the development regulations did not address them and the transportation element only dealt with impacts to the transportation system. SEPA substantive authority may still be used to address those impacts not addressed by other laws and regulations.

In the example described above of project impacts on a wetland, the critical areas ordinance may prohibit filling the wetland, but not address the stormwater run-off impacts of the proposed development's parking lot on the wetland's water quality. SEPA substantive authority could still be used to avoid or mitigate the stormwater impacts.

f. How Consistency Analysis and Analysis of Environmental Impacts Work Together

Integration of permit review and environmental review is intended to eliminate duplicative processes and requirements. Consistency analysis and GMA project review involve many of the same studies and analyses.

Thus, through the project review process:

- If the applicable regulations require studies that adequately analyze all of the project's specific probable adverse environmental impacts, additional studies

under SEPA will not be necessary on those impacts;

- If the applicable regulations require measures that adequately address such environmental impacts, additional measures would likewise not be required under SEPA; and
- If the applicable regulations do not adequately analyze or address a proposal's specific probable adverse environmental impacts, SEPA provides the authority and procedures for additional review.¹⁵⁶

For example, a proposed project has a wetland on site. The city critical areas ordinance would require that a wetlands study be done for the project so the city would not need to use its SEPA authority to require one. Based upon the study, the city determines that stormwater runoff from the development will impact the wetland. However, the critical areas or stormwater ordinance address the stormwater impacts by requiring that the developer reduce the amount of impervious surface and create a swale to filter runoff going into the wetland. Again SEPA substantive authority would not be used to address this impact. The city would only need to use its SEPA authority if there were other impacts to the wetland that were not addressed by the critical areas ordinance (or other laws). In complying with the requirements of the critical areas ordinance (project consistency), some or all of the project's impacts to the wetland may be determined to have been addressed by the development regulations.

g. Where and How Early Environmental Review Can Result in Reductions in Project Review

All of the examples described in the previous section illustrate how good environmental analysis in the GMA planning process can streamline project review. If anticipated impacts of projects can be analyzed and addressed early in the planning process, SEPA substantive authority will not be needed to address those impacts. Since land use planning is an iterative process, the impacts may be addressed on a regional basis in the county-wide planning policies, on a county or city basis in the comprehensive plan, or on a neighborhood basis in a subarea plan. SEPA need only be used to fill gaps in requirements for studies and mitigation requirements not previously addressed in the planning process.

Good environmental analysis in plans and regulations will streamline later project review, but it will not eliminate the need for environmental review at the project level. Environmental review under SEPA at the plan and regulation level should focus on system-wide cumulative impacts. Counties and cities must seek a balance in their plans and regulations between trying to address system-wide cumulative impacts and site-specific impacts. Some site-specific impacts can still only be addressed through SEPA at the project level. SEPA is the safety net for those impacts that cannot be easily anticipated in plans and regulations. SEPA also provides the flexibility to address those site-specific impacts that are better dealt with on a project-by-project basis.

¹⁵⁶ Note to RCW 43.21C.240.

h. Docketing Deficiencies in the Comprehensive Plan and Development Regulations for Future Amendments

During project review, a county or city may identify a deficiency in the applicable development regulations or, in the absence of applicable regulations, policies in the comprehensive plan. For example, the reviewer may note that there is not enough information in the regulations or plan to determine whether the project is consistent. The project proponent should not be penalized for this deficiency by delaying project review. Project review may continue under SEPA and other applicable laws, but the identified deficiency must be docketed for possible future development regulation or plan amendments.¹⁵⁷

A deficiency in a development regulation or comprehensive plan refers to the absence of required or potentially desirable contents of a comprehensive plan or development regulation. A reviewer may note during project review that a specific GMA requirement has not been adequately addressed in the plan or regulations. They might also note based upon review of several projects that a certain policy or development standard may be desirable to address a recurring issue. A deficiency does not refer to whether a development regulation adequately addresses a project's probable specific adverse environmental impacts, which the permitting agency could mitigate in the normal project review process.

Docketing is intended to allow and encourage counties and cities to improve their plans and regulations as a result of experience in reviewing projects, but without stopping review of the project that may have disclosed the deficiency.

4. Processing Local Permits

Public Hearings:

Some local governments have held a public hearing on a proposed project before the planning commission and another public hearing before the council or commission. Now cities and counties are deciding which body will be having the open record hearing or whether a hearing examiner will hold it.

Under the GMA and Local Project Review Act (Chapter 36.70B RCW), project review for a new development starts with the decisions a local government has already made in its comprehensive plan and development regulations. Certain issues need consistency discussion and cannot be reexamined during the permit or appeals processes for a project.¹⁵⁸

Consolidated Permits:

¹⁵⁷ RCW 36.70A.470.

¹⁵⁸ RCW 43.21C.240 and WAC 197-11-158.

A land use applicant may choose to get multiple permits processed at the same time.¹⁵⁹ For example, if a conditional use permit for a project is needed, it could be processed with the permit application. (Conditional uses are proposed projects that require special approval to be allowed in a zone. For example, a school may need a conditional use permit to locate in a residential zone.)

Critical Area Protection Clarified:

Critical areas as defined by the GMA include wetlands, geologically hazardous areas, fish and wildlife habitat conservation areas, aquifer recharge areas, and frequently flooded areas.

- **In designating and protecting critical areas, all counties and cities are required to include best available science in developing policies and development regulations.¹⁶⁰**
- **Growth management hearing boards may use scientific experts to assist in reviewing a petition that involves critical areas.¹⁶¹**

5. Key Issues

Early Assessment of Project Impacts:

Limiting the number of hearings and requiring a final decision within 120 days means that early assessment of project impacts will be more important than ever. Preapplication meetings are encouraged under the land use reform law. This gives the applicant, staff, and affected parties an opportunity to share information and resolve issues early in the process.

Costs:

Currently, applicants often pay for environmental review costs connected with development activity. Local governments will bear the initial costs of detailed environmental review when it is done at the comprehensive planning level, as is encouraged by this law. The advantage is that environmental issues and infrastructure impacts are identified up-front, so they can be dealt with more easily as permits are issued. This way developers and the public will know what to expect when further projects are approved for an area. The disadvantage is that local governments often do not have the resources to pay for detailed environmental review.

H. Where to Go For Further Information

Further resources are available to local planners from the Washington State Department of Commerce

¹⁵⁹ RCW 36.70B.120.

¹⁶⁰ RCW 36.70A.172(1).

¹⁶¹ RCW 36.70A.172(2).

Growth Management Program
1011 Plum Street , P.O. Box 42525
Olympia, Washington 98504-2525
www.commerce.wa.gov/serving-communities/growth-management/

The Municipal Research and Services Center (MRSC) is a nonprofit organization that helps local governments across Washington State better serve their citizens by providing legal and policy guidance on many topics.

Municipal Research and Service Center (MRSC)
2601 4th Avenue, Suite 800, Seattle, WA 98121
(206) 625-1300, (800) 933-6772
www.mrsc.org mrsc@mrsc.org

In addition, local planners may contact the Washington State Bar Association's Environmental and Land Use Law Section to obtain copies of materials from its midyear meetings:

Washington State Bar Association
Environmental and Land Use Law Section
500 Westin Building, 2001 Sixth Avenue, Seattle, Washington 98121-2599
206-727-8200
www.wsbar.org/

Chapter 4.

Constitutional Rights and Responsibilities in Planning

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Chapter 4.

Constitutional Rights and Responsibilities in Planning

Community planning must balance many issues and countervailing forces while creating an outline or model for growth. A framework of rules and regulations, designed to limit and shape the authority of the planning process, covers constitutional rights, duties and obligations of municipalities as a whole (and the citizens they represent generally), and property owners and citizens directly involved in the planning process.

Constitutional rights and responsibilities must be met and balanced in the heat of the moment, in cases that can tear at a community.¹ Citizens will cry for action before a lay group that is not always trained, or even specifically advised, on legal issues. This chapter will help public agencies identify the two constitutional issues most directly affected by planning - **due process and the taking issue** - and suggests when additional guidance may be needed.

“Due process” has two components: 1) “Procedural,” which says that a rule or action was properly adopted after proper notice and opportunity to be heard; and 2) “Substantive,” which means the rule or action gives adequate notice of what is intended or regulated, and is reasonably related to a matter appropriate for government regulation.

“Taking” is the right not to be deprived of property without just compensation.

A. Due Process

Due process is the primary constitutional issue dealt with in planning. Due process arises under the Washington State Constitution, Article I § 3, and Article V of the U.S. Constitution, as applied to state action through the Fourteenth Amendment to the Constitution.

As applied to planning, due process most commonly takes these forms:

- **Procedural Due Process** - a right to have certain rules followed before significant changes occur to one’s rights, responsibilities, or property.
- **Substantive Due Process**-the right to have rules adopted that are reasonable in aim and scope, and that are targeted to objectives appropriate for municipal action.

Washington State is fortunate to have several decisions in which the courts have gone out of their way to articulate due process guidelines and principles. These are helpful in evaluating situations and making decisions.

¹ See *Munns v. Martin*, 131 Wn.2d 192, 930 P.2d 318 (1997) (the Washington Supreme Court grappled with the question of whether Walla Walla’s historic preservation ordinance violated the Constitution when applied to a church structure. The court held that the city’s ordinance mandating up to a 14 month waiting period before such facilities could be demolished was unconstitutional).

1. Procedural Due Process

Adequate notice is the prerequisite of any lawful municipal action. State law requires municipal agencies to establish regular meeting times and places, and to publish special notices for meetings held at other than regularly scheduled times. Failure to give proper notice of a meeting will invalidate any action taken at that meeting.

PRACTICE TIP: Communities are encouraged to adopt notice policies reasonably calculated to notify interested or affected parties. Major changes may require extra notice, such as large signs on affected property or direct mail to owners of record and residents.

Planning cases require special, rather than general, notice. It is not sufficient merely to give notice that a meeting usually will occur. Courts have held:

Procedural due process requires notice which is reasonably calculated under the circumstances to apprise affected parties of the pending action and to afford them an opportunity to present their objections.²

When a county enacts or amends a zoning ordinance, it is required by statute to give notice of the time, place, and purpose of the meeting.³ Where the board is to consider amendments to the proposed ordinance, the text of the amendments must be available for review in advance of the hearing.

Finally, if an action of a council deprives a property owner of a right previously enjoyed, personal notice and hearing are required. This would apply, for example, to a zoning ordinance that seeks to terminate existing practices (eliminate vested rights), rather than merely regulate or prevent new uses from occurring in the future. Personal notice and hearing would be required before taking effect.

Notices to “owners of record” may be inadequate in some cases with substantial effect on tenants, or when county records lag weeks or months behind local real estate transactions. (Addresses on record at the county often are mortgage companies more interested in having taxes paid on time than forwarding official notices to owners or tenants possibly affected by planning activities.)⁵

² Pease Hill v. County of Spokane, 62 Wn. App. 800, 806, 816 P.2d 37 (1991); Bass Partnership v. King County, 79 Wn. App. 276, 281, 902 P.2d 668 (1995).

³ Glaspey & Sons v. Conrad, 83 Wn.2d 707, 711, 521 P.2d 1173 (1974); Responsible Urban Growth v. Kent, 123 Wn.2d 376, 386, 868 P.2d 861 (1994).

⁴ Wenatchee Reclamation District v. Mustell, 102 Wn.2d 721, 725-726, 684 P.2d 1275 (1984); Sheep Mt. Cattle Co. v. Department of Ecology, 45 Wn. App. 427, 726 P.2d 55 (1986), review denied, 107 Wn.2d 1036 (1987).

⁵ Under the Land Use Petition Act, a challenge to a land use decision brought in superior court must name the owner of the property at issue. If the owner is not known, the person identified as the taxpayer in the records of the county assessor must be named. RCW 36.70C.040(2)(c).

2. Substantive Due Process - Proper Exercise of the Police Power

Substantive due process is divided into cases that concern:

- The overall propriety of the action taken, or the limits of the “police power” in general;
- The clarity with which the action is taken, known as the “vagueness” inquiry; and,
- The connection between the action taken and the problem created by a project or proposal, known as the “nexus” inquiry.

Two separate and distinct inquiries must be made:

- The nature and purpose of the decision to use regulation, rather than acquisition, to secure the municipal rights in question.
- The nature of the municipal rights secured, and the reasonableness of the use remaining after the regulation is imposed.

Both of these inquiries are considered part of the “taking issue.”

To analyze a municipal regulation under a substantive due process challenge, courts will make a three-part substantive inquiry.⁶ To understand the nature of the inquiry, planning commissions and their respective boards and councils should consider and address the following issues:

Does the regulation seek to achieve a “legitimate public purpose”?

In most cases, planning enactments seek to protect stated community values; the “object” or “purpose” of the planning effort will be deemed legitimate. For example, regulations aimed at protecting public health and water quality seek to achieve a legitimate public purpose.⁷ On occasion, a community may want to adopt planning rules that give one constituency a competitive advantage over another. Courts would certainly scrutinize this legislation closely. If improper purpose is shown, the presumption of validity may be overcome.

Are the means used to accomplish the lawful purpose “reasonably necessary” to achieve that purpose?

Even when a stated aim is proper, courts will examine whether the means chosen are appropriate.⁸

⁶ *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 330-331, 787 P.2d 907, cert. denied, 498 U.S. 911 (1990); *Sintra, Inc. v. City of Seattle*, 119 Wn.2d 1, 829 P.2d 765 (1992); *Robinson v. City of Seattle*, 119 Wn.2d 34, 830 P.2d 318 (1992); *Christianson v. Snohomish Health District*, 133 Wn.2d 647, 946 P.2d 768 (1997); *Guimont v. Seattle*, 77 Wn. App. 74, 896 P.2d 70 (1995); *Brutsche v. Kent*, 78 Wn. App. 370, 898 P.2d 319 (1995).

⁷ *Christianson v. Snohomish Health District*, 133 Wn.2d at 661.

⁸ See *Mission Springs v. City of Spokane*, 134 Wn.2d 947, 954 P.2d 250 (1998) (city council’s withholding for two months of grading permit for which developer had already satisfied statutory and ordinance criteria, so that additional traffic impact studies could be completed, constituted deprivation of property right without due process); *Lester v. Town of Winthrop*, 87 Wn. App. 17, 939 P.2d 1237 (1997) (a slight delay in the issuance of a permit to consider a condition of approval that is ultimately determined to be unlawful was not a violation of due process); *Thurston County Rental Owners Ass’n v. Thurston County*, 85 Wn. App. 171, 931 P.2d 208 (1997) (septic system regulations found to be reasonably related to protecting health and safety of County residents).

In protecting neighborhood values, for example, a municipality might require modern construction techniques and adequate storage before permitting modular housing in a community. The municipality could be challenged, however, if it assumes that modular housing is always inferior (a demonstrably false assumption), and seeks to ban modular housing or “mobile homes” to “protect the quality of single- family neighborhoods.”

Is the chosen regulation “unduly burdensome” on the land owner?

This inquiry aims at balancing the municipality’s interests with those of the regulated property owner. The greater the public harm, up to a point, the greater the public intrusion warranted in solving the harm. The greater the intrusion on the use of the property, the closer the scrutiny required- based on whether a less intrusive alternative would have accomplished the same result; or whether it is fair to make the property owner bear the burden of solving a community problem.

In making the “unduly burdensome” inquiry, courts and commentators have developed a list of inquiries to help evaluate the issues involved:⁹

- The nature of the harm to be avoided;
- Whether less drastic protective measures are available and effective; and,
- The economic loss suffered by the property owner.

Another formulation asks these relevant questions:¹⁰

- **On the public side:** the seriousness of the public problem, the extent to which the owner’s land contributes to the problem, the degree to which the proposed regulation solves the problem, and the feasibility of less oppressive solutions; and,
- **On the owner’s side:** the amount and percentage of value lost, the extent of remaining uses (past, present, and future), the temporary or permanent nature of the regulation, the extent to which the owner should have anticipated the regulation, and how feasible it is for the owner to alter present or currently planned uses.

When a regulation fails to pass the balancing test, or where it goes too far (either on its face or as applied to a single parcel), the remedy is to invalidate the ordinance.¹¹

⁹ Presbytery, 114 Wn.2d at 320; Christianson, 133 Wn.2d at 665. See also Weden v. San Juan County, 135 Wn.2d 678, 706-07, P.2d(1998) (“It defies logic to suggest an ordinance is unduly oppressive when it only regulates the activity which is directly responsible for the harm.”).

¹⁰ Christianson v. Snohomish Health District, 133 Wn.2d at 665; Guimont v. Clarke, 121 Wn.2d 586, 610, 854 P.2d 1 (1993), cert. denied, 114 S. Ct. 1216 (1994) (quoting Presbytery, 114 Wn.2d at 331); accord Sintra v. Seattle, 119 Wn.2d at 22.

¹¹ Robinson v. City of Seattle, 119 Wn.2d 34, 521, 830 P.2d 318 (1992).

3. Substantive Due Process - The Vagueness Inquiry

If a municipal regulation is to be enforceable, it cannot be unconstitutionally vague. People enforcing the regulation, and those affected by it, must have a sense of the nature and extent of the regulation and the conduct it permits or prohibits.

Courts have held ordinances unconstitutionally vague in the following context:

An ordinance is unconstitutional when it forbids conduct in terms so vague that persons of common intelligence must guess at its meaning and differ as to its application... Such an ordinance violates the essential element of due process of law - fair warning.¹²

In the cited case, a zoning ordinance permitted a “limited degree” of manufacturing in a commercial zone. The question was whether certain machinery fell inside or outside the permitted uses.

As stated by the court:

In the area of land use a court does not look solely at the face of the ordinance; the language of the ordinance is also tested in its application to the person alleged to have violated it....The purpose of the void for vagueness doctrine is to limit arbitrary and discretionary enforcement of the law.¹³

The court invalidated the ordinance’s proscription of “limited use” because, as applied to the machine in question, no one could know or understand the reasonable limitations intended. A similar situation existed in a city where a design review ordinance called for buildings to be “in good relationship” with the surrounding views, have “appropriate proportions” and “harmonious colors,” and be “interesting.”¹⁴ In the transition between the old town and a nearby development area, the court found the design review commission could not express the code requirements in other than personal preferences. As such, the code as applied to the building in question was unenforceable.¹⁵

While aesthetic issues can be difficult to articulate, communities may want to use a combination of words and designs to express the range of options in which a project should operate.

If a city wishes to enforce a “statement” or a “policy,” it must first pass some ordinance or regulation that gives standing to the policy or statement. Mere expressions of preference, without more, cannot be a basis for denying land use decisions. As noted by the Court,

The commissioners’ individual concepts [of ‘policy’] were as vague and undefined as those written in the code. This is the very epitome of discretionary, arbitrary

¹² *Burien Bark Supply v. King County*, 106 Wn.2d 868, 871, 725 P.2d 994 (1986) (citations omitted).

¹³ *Id.* at 871 (citations omitted).

¹⁴ *Anderson v. City of Issaquah*, 70 Wn. App. 64, 75-76, 851 P.2d 744 (1993).

¹⁵ See also *Western Homes v. Issaquah*, 1998 WL 184900 (Wn. App. Div. 1, April 20, 1998) (the court found the City’s bonus point award system to be unconstitutionally vague. The ordinance allowed a range of densities, but contained largely subjective and arbitrary standards for awarding higher densities).

enforcement of the law.16

If a municipality is to avoid a claim of vagueness, it must create a standard (in words and pictures, if needed) that permits those involved in the process to understand what is expected or required.¹⁷ Alternatively, the Legislature must set up a process for creating a standard that can be fairly and uniformly applied, and reviewed in subsequent cases.

4. Substantive Due Process – The Nexus Issue

The “nexus” issue involves the extent to which a municipality can impose a requirement on a particular individual to solve a specific problem, or respond to a community need. There must be a logical connection between the problem the community is trying to solve and the limitation, regulation or exaction sought by municipal action.

The earliest example of the “nexus” doctrine arises in a United States Supreme Court case known as *Nollan*.¹⁸ In the *Nollan* case, the California Coastal Commission sought to require a property owner to dedicate a beach front public walkway as a condition to a request to remodel a home.

The court noted that a municipality could acquire a beach front walkway at any time by condemnation. The question in the case is whether the municipality could require the owner to dedicate the walkway without compensation, since the owner was seeking a permit to remodel the house on the lot. The court’s answer was “no,” a beach front walkway was beyond the authority of the community in this case.

In deciding the case, the court said **there must exist some logical connection between the problem identified, the municipal interest, and the solution proposed**. Thus, a municipality could require setbacks from side yards for safety or aesthetic reasons, because construction of a house raises both issues. But appropriation of a walkway across a back yard for public use did not solve a problem created by construction of the house. It only contributed to solving a public need - a linear park along the waterfront. **Since there was no connection between the impacts caused by the project and the exaction sought by the municipality, the exaction could not be required, no matter how important the improvement was to the community.** The question is not the importance of the public need, but the fairness of imposing the solution of that need on the builder of a nearby project.

The “nexus” requirement received additional attention in the recent case known as *Dolan*.¹⁹ In *Dolan*, the municipality imposed conditions on a building permit requiring the applicant to permanently dedicate a portion of its land for storm drainage and as a pedestrian/bicycle path. The

¹⁶ Andersen, 70 Wn. App. at 78.

¹⁷ More recently, however, the Washington Supreme Court has stated that specific standards are not necessary; general standards are sufficient. See *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 796-797, 903 P.2d 986 (1995).

¹⁸ *Nollan v. California Coastal Comm.*, 483 U.S. 825, 97 L. Ed. 2d 677, 107 S. Ct. 3141 (1987).

¹⁹ *Dolan v. City of Tigard*, 512 U.S. 374, 129 L. Ed. 2d 304, 114 S. Ct. 2309 (1994).

applicant argued that the city failed to adequately justify the conditions with the required “nexus.”²⁰

The United States Supreme Court agreed with the applicant/property owner. The court reaffirmed its decision in **Nollan**, and added that the “nexus” test asks whether there is a “rough proportionality” between the condition imposed and the impact intended to be mitigated by that condition.²¹ The most important feature of **Dolan**, however, for the local planner is that the court in **Dolan** turned the “burden ‘of proof’ in these cases on its head. Prior to **Dolan**, courts had required applicants to bear the burden of proving that the conditions were unconstitutional. The Dolan court reversed the burden and required local governments to prove that they had justified the condition with the necessary “nexus.”²² This represents a fundamental shift for local governments.

Planning staffs must now begin at the review stage of an application and not wait until the applicant has appealed the decision or filed a lawsuit. Planners are encouraged to explain in detail the reasons for imposing any exaction, the connection to the anticipated impact, and the desired result of the exaction.

Municipal actions that appropriate private property for public use (rather than regulate activity on the site), will usually be examined closely.²³ The appropriation must be warranted to solve a particular impact, not merely to meet a community need.

PRACTICE TIP: When commissioners and council members are drafting an ordinance that requires improvements as a condition of seeking a permit, they must assure a stated connection between the approval given, a particular on-site or off-site improvement or dedication, and the impact to be mitigated.

Where project-specific approvals are concerned, the decision maker should make specific findings on the issue of impacts and the fairness of imposing specific improvements that respond to these impacts.

In a similar case in Washington State, a city could not require a developer to complete an adjoining roadway near a project under construction, where the construction did not cause the need for the roadway.²⁴ (See Chapter 5 for further discussion on the limitations of development conditions.)

A. The Takings Issue

²⁰ Id. 129 L. Ed. 2d at 315

²¹ Id. at 320.

²² TA 320 8

²³ See Snider v. Board of County Commissioners, 85 Wn. App. 371, 932 P.2d 704 (1997) (because the county had conditioned a developer's subdivision approval on obtaining rights-of-way from third parties, but had not required the developer to dedicate any of his own property, the court distinguished the case from Dolan, reasoning that the county had not physically taken any of his property). But see Benchmark v. City of Battle Ground, Wn. App. P.2d (Div. II 1999) (“We decline to follow Snider . . .”)

²⁴ Unlimited v. Kitsap County, 50 Wn. App. 723, 750 P.2d 651, review denied, 111 Wn.2d 1008 (1988).

The United States Constitution states that property shall not be taken without just compensation. Similarly, the Washington State Constitution states that property should not be damaged or taken without just compensation.²⁵ Of all the challenges to land use regulations, the one most frequently heard is that property has been “taken” through the regulatory process.

Commissioners and council members involved in regulating land frequently face the question of unjust taking. People who see substantial reductions in property value, or significant limitations on the uses of property, will feel that government should pay for the devaluation. All of these claims are analyzed under the taking issue doctrine.

Takings claims arise in three circumstances: (1) when property has been physically invaded or appropriated; (2) when land-use regulations deprive an owner of a reasonable use of his or her property; and, (3) when conditions are imposed on land-use permits.

1. Physical Invasion or Appropriation

Historically, a physical invasion of property had to occur before a court would find that property had been “taken” in violation of the constitution. Today, the appropriation of property by government continues to be a common ground for a takings challenge, such as the Nollan and Dolan cases discussed above. A right of public access or use, or across private property, may be for people, utilities, or storm water, and usually requires compensation - unless the municipality can show that the facility need was generated by the project requiring the appropriation.

2. Regulations Affecting Reasonable Use

If the municipality is not acquiring a public right in the property (and is merely limiting the owner’s use), the only “taking issue” question is whether the regulation leaves the owner a reasonable use of the property.²⁶

While “reasonable use” limitations are based on individual cases, courts routinely uphold planning or other land use regulations designed to create a well - ordered community. These include zoning patterns²⁷ and regulations that protect public health and safety, or environmental concerns, such as wetland regulations,²⁸ even when these actions substantially reduce the property’s fair market value.

The rationale for this is based on Washington’s broad vesting rules. Each individual is entitled to use property according to the laws on the books at the time an application is made. A property owner who wants to take advantage of a particular zone or right can do so, simply by filing and processing an application.

²⁵ Washington State Constitution, Article I § 16.

²⁶ The U.S. Supreme Court in *Suitum v. Tahoe Reg. Plan. Agency*, 137 L Ed 2d 980 (1997) held that where a landowner received a final decision from an agency denying the right to construct a house on her undeveloped lot, even though she had not yet attempted to sell her transferable development rights, her regulatory taking claim was ripe.

²⁷ *Carlson v. Bellevue*, 73 Wn.2d 41, 435 P.2d 957 (1968).

²⁸ *Presbytery*, 114 Wn.2d at 329.

However, no law requires a community to hold a zone available forever. If a community decides to change zoning to serve the needs of the larger community, it may do so, even if this limits or takes away previously authorized rights to use property.

In looking at a “taking” claim based on regulatory enactments, the court will look at several factors:

...The “threshold inquiry”...is whether the challenged regulation safeguards the public interest in health, safety, the environment or the fiscal integrity of an area. A regulation which does that is to be contrasted with one which goes beyond preventing a public harm and actually enhances a publicly - owned right in property. Secondly, the court should ask whether the regulation destroys one or more of the fundamental attributes of ownership - the right to possess, to exclude others, and to dispose of property. If a regulation does not infringe on a fundamental attribute of ownership, and if it protects the public from one of the foregoing listed harms, then no constitutional “taking” requiring just compensation exists.²⁹

If a regulation enhances a publicly-owned right in property, or violates one of the fundamental rights of ownership, then further inquiry is needed to determine if a compensable taking has occurred.³⁰

First, if the regulation does not advance a legitimate state interest, then a taking has occurred for which compensation is required. The “legitimate state interest” analysis requires the community to state the nexus it is using to validate a limitation or exaction.

Second, if, on its face, the regulation deprives the owner of all economically viable use of a property, a compensable taking has occurred.³¹

To decide whether all reasonable use has been eliminated, the court must determine the property interest limited, and its effect on using the remainder of the property.

The reasonable use inquiry calls for a look at the entire parcel. Thus, if a wetland regulation deprives the owner of using one-third of the property, but the other two-thirds is available for use, the court most likely would find that a taking has not occurred.³² Alternatively, if the regulation limited the use of the property solely to picnicking when surrounding lots were developed as housing, the court may find a taking - unless a strong case is made for undue hazard in the area, as in a flood way or storm surge area.³³

²⁹ Id. at 329-330.

³⁰ See Ventures Northwest v. State, 81 Wn. App. 342, 914 P.2d 756 (1996) (a claim that enforcement of a land use regulation has resulted in an unconstitutional taking is not established unless the property owner establishes that the regulation proximately caused the loss).

³¹ Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1016, 120 L.Ed 2d 798, 112 S. Ct. 2886 (1992); See Sintra v. City of Seattle, 131 Wn.2d 640, 935 P.2d 555 (1997) (where a property owner in a temporary regulatory taking loses use of the monetary value of property from time of taking until payment is made, payment of interest is required as part of just compensation).

³² Presbytery, 114 Wn.2d at 334.

³³ Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 120 L. Ed. 2d 798, 112 S. Ct. 2886(1992).

Where a regulation does in fact materially interfere with use of a specific property, the courts look at several factors:

3. The Economic Impact of the Regulation on the Property³⁴

If the cost of developing the property exceeds the return to be made from its sale, then the regulation is considered to have deprived the property of all economic benefit (even though some use may be made). The question is the “economic use” of the remaining property.

4. The Extent of the Regulation’s Interference with Investment-Backed Expectations

Courts will look differently upon owners who have owned property for some time, and are caught in a world of changing regulations; and owners who purchased property at a substantially diminished price - reflecting a severe limitation and then seek advantage under the taking clause to avoid the limitation.

5. The Character of the Government’s Actions

This doctrine takes us back to the question of whether the limitation is to mitigate a problem caused by use or development of the property (which is lawful); or to advance a public interest not directly related to the use and development of the property (which is unlawful without compensation).³⁵

First, when the government conditions a land-use permit, it must identify a public problem or problems that the condition is designed to address...

Second, the government must show that the development for which a permit is sought will create or exacerbate the identified public problem...

Third, the government must show that its proposed condition or exaction (which in plain terms is just the government’s proposed solution to the identified public problem) tends to solve, or at least to alleviate, the identified public problem...

Fourth, the government must show that its proposed solution to the identified public problem is “roughly proportional” to that part of the problem that is created or exacerbated by the landowner’s development.³⁶

³⁴ Ventures Northwest Limited Partnership v. State, 81 Wn. App. 353, 363, 914 P.2d 1180(1996) (an owner claiming loss of the economically viable use of property must show that the challenged government regulation proximately caused the loss of all such use).

³⁵ See Manufactured Housing v. State, 90 Wn. App. 257, 270, 951 P.2d 1142 (1998). (the court held that the Mobile Home Parks-Resident Ownership Act, by offering tenants a right of first refusal, did not destroy a fundamental attribute of property ownership enjoyed by the owner or constitute a taking by physical invasion by a new owner after a sale).

³⁶ Burton v. Clark County, 91 Wn. App. 505, 520-23, 958 P.2d 353 (1998).

6. Conditions on Land-Use Permits

When the court analyzes a claim that a condition imposed on a land use permit is a “taking,” the court will consider four factors:

PRACTICE TIP: Councils and commissions should take several actions to assure that legislation, as written and applied, meets constitutional scrutiny:

- **Identify the public purpose to be accomplished.**
- **Identify the connection between the harm to be avoided and the regulation or limitation on action the ordinance requires.**
- **When limiting use of a property (either by use limitations or prohibitions), make sure that the limitation or prohibition still permits a reasonable use of the remainder of the property.**

The first two factors seek to establish a relationship between the land-use project and the identified public problem.³⁷ The last two factors seek to establish a relationship between the identified public problem and the proposed solution to that problem. If the proposed condition or exaction is reasonably related to all or part of an identified public problem that is created or exacerbated by the development project, the courts will uphold the condition.

“Taking” cases and due process limitations on regulations are among the most complex and least understood of all guidelines for regulatory actions. According to one commentator on land use law, “[r]egulatory taking doctrine is the most perplexing area of American land use law.”³⁸

This information is not intended to be a definitive analysis of constitutional issues affecting municipal regulation. However, municipal officials can take heart: the courts recognize that planning a community is a difficult task, and there is a need to give due deference to local planning actions.

As one Superior Court Judge commented (paraphrased), “I do not get paid to sit in hearings to one o’clock in the morning or to choose between conflicting and competing needs of the community. That is the job of your elected officials. I do not rule on the wisdom of the rule adopted, only that the rules of adoption were properly followed.”³⁹

If municipal officials are careful to identify these central themes of constitutionality, the courts will most likely uphold their enactments.

For further information, commissions may wish to review the Attorney General’s memorandum on the taking issue, created as part of the growth management planning process.⁴⁰ It provides important additional information on constitutional rights and responsibilities of planning.

³⁷ Id. at 524.

³⁸ *Presbytery*, 114 Wn.2d at 323.

³⁹ Hewett Henry, J., Thurston County, in response to a request by an appellant that a city had made the wrong choice in ruling on a hotly contested case.

⁴⁰ Attorney General Memorandum entitled “*Avoiding Unconstitutional Takings of Private Property*,” December 2015.

Chapter 5.

Development Tools and Techniques

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A.Community Development Regulations and Official Controls

1. Introduction

Two categories of development regulations and official controls are commonly found in communities:

- Zoning - texts and maps that define permitted uses of property and the bulk, density coverage, and setback limitations for any property.
- Development and subdivision - regulations dealing with the development and division of land. These include plats, short plats, binding site plans, and building, grading and utility permits. All deal with physical development of the ground, or the division of land for sale or lease.

Zoning controls are placed throughout the community. They apply whether or not a property owner seeks to use or modify the land in a particular fashion. Development and subdivision regulations come into play when a property is proposed for change or “development.”

2. Zoning

Zoning is defined as “...the legislative division of a community into areas in which are permitted only certain designated uses of land or structures.”¹

Courts have elaborated on the concept as follows:

...a part of and an end result or product of effective municipal “planning,” for it is through the medium of enacted and enforceable zoning regulations that the aims and objectives of the land-use-classification facet of over-all municipal “planning” may be carried to fruition.²

A zoning ordinance is one of many “official controls” a community can adopt to carry out the objectives of its comprehensive plan. Like the comprehensive plan, zoning ordinances are adopted by elected public officials after a recommendation by the planning commission. The planning staff again plays a central role in developing models and alternatives, and in providing the technical frame of reference for making informed decisions.

a. The Objectives of Zoning

The general objectives of zoning, as identified in the enabling statutes, are to regulate and restrict land use:

In such measure as is deemed reasonably necessary or requisite in the interest of health, safety, morals and the general welfare.³

¹ McQuillin, Municipal Corporation, §25.07, 21 (3d ed. 1983).

² Shelton, *supr*, at 35.

³ RCW 35.63.080.

All regulations shall be worked out as parts of a comprehensive plan which each commission shall prepare for the physically and other generally advantageous development of the municipality and shall be designed, among other things, to encourage the most appropriate use of land throughout the municipality⁴

The Washington Supreme Court has had numerous opportunities to comment on the proper objectives of zoning:

[The general purpose of zoning is to stabilize the use, conserve the value of the property, and to preserve the character of neighborhoods; but we insist that the emphasis be placed on the words “general purpose.”⁵

More recently, a court upheld the prohibition of mobile homes in a traditional residential single-family zone, noting:

...that the purpose of zoning is not to increase or decrease the value of any particular lot or tract. Rather it is to benefit the community generally by the intelligent planning of land uses without unreasonable discrimination.⁶

The courts also have reflected that preserving the community’s civic and social values is a proper objective of zoning:

Zoning stabilizes the uses of land and furnishes a protection to residential neighborhoods which will cause them to maintain themselves in a decent and sanitary way and protects the civic and social values of the American home.⁷

Finally, the courts have touched on aesthetics as a valid zoning objective:

Aesthetic considerations alone may not support invocation of the police powers, ... [T]he fact that aesthetics play a part in adoption of zoning ordinances does not affect its validity if the regulation finds reasonable justification in...police power.⁸

Nevertheless, on the value of aesthetics to the planning process, a Washington court quoted Justice Douglas:

The concept of the public welfare is broad and inclusive. ...The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.⁹

The opinion of Justice Douglas was not lost on the Washington court, which said:

⁴ RCW 35.63.090.

⁵ McNaughton v. Boeing, 68 Wn.2d 659, 661, 414 P.2d 778 (1966).

⁶ n-c kh B w o r t V. Bonney Lake, 91W n. 2d 19 , 2728 - , S 86 P2d 860 . (197

⁷ Duckworth, supra (quoting Rhyne, Municipal Law, 943 (1957)).

⁸ Duckworth, supr, at 30.8) (emphasis in original).

⁹ Berman v. Parker, 348 U.S. 26, 99 L. Ed.3d. 27, 75 S. Ct. 98 (1954). Duckworth, 91 Wn.2d at 31.

If zoning regulations stabilize the value of property, promote the permanency of home surroundings, and add to the happiness and comfort of the citizens, they most certainly promote the general welfare.¹⁰

Washington courts have specifically recognized that preserving traditional residential neighborhoods from commercial expansion,¹¹ or creating commercial centers to meet the demand of growing neighborhoods are valid zoning objectives.¹² Courts have recognized as proper such varied issues as historic preservation,¹³ protecting the quality of the environment,¹⁴ and providing adequate housing to meet regional needs.¹⁵

In addition, the courts have upheld ordinances which look to the quality of buildings constructed, rather than to the use or number of buildings.

In this regard, it is generally recognized that the exterior architectural appeal and functional plan of a structure should not be so at variance with either the exterior architectural appeal or functional plan of the structures already constructed or in the course of construction, in the immediate neighborhood, as to cause substantial depreciation of the property value of the neighborhood.... (Citations omitted.) The difference in appearance and [a] recognized potential effect upon an existing neighborhood of conventional homes is a legitimate and significant factor to consider in enacting zoning laws.¹⁶

Strict regulations of signs or advertising material have likewise been upheld under limited circumstances.¹⁷

The basic purpose of zoning enactments is to promote the general development of the community and to put into practice the goals and policies of a community's comprehensive plan. The courts have recognized that a community does not require specific enabling legislation to adopt regulations that meet community needs.¹⁸ **The principal test is whether the action bears "a substantial relation to the public health, safety, morals or general welfare,"**¹⁹ a traditional police power formulation.

As broad as zoning authority has become, the courts continue to remind us that planning may certainly affect the use of property. Such regulations will be strictly scrutinized to assure a balance between public health, safety, and private interests. The Supreme Court has stated,

The basic rule in land use law is still that, absent more, an individual should be able to utilize his own land as he sees fit...Although zoning is, in general, a proper exercise of

¹⁰ Duckworth, *supra*, at 31.

¹¹ Carlson v. Bellevue, 73 Wn.2d 41, 435 P.2d 957 (1968).

¹² McNaughton v. Boeing, 68 Wn.2d 659, 414 P.2d 778 (1966).

¹³ State v. Seattle, 94 Wn.2d 162, 615 P.2d 461 (1980).

¹⁴ SAVE, *supra*.

¹⁵ Southern Burlington County NAACP v. Mt. Laurel, 67 N.J. 151, 336 A.2d 713, cert. denied, 423 U.S. 808 (1975), cited with approval in SAVE, *supra*, at 871.

¹⁶ Duckworth, *supra*, at 29 (citing American Law of Zoning §1401, at 548).

¹⁷ Ackerley Communications v. City of Seattle, 92 Wn.2d 905, 602 P.2d 1177 (1979), cert. denied, 449 U.S. 804 (1980).

¹⁸ Lutz v. Longview, 83 Wn.2d 566, 520 P.2d 1374 (1974).

¹⁹ Lutz, *supra*, at 574.

police power which can permissibly limit an individual's property rights, it goes without saying that the use of police power cannot be unreasonable... While local governments exist to provide necessary public services to those living within their borders and to avoid harms in their protection of the public's health, safety, and general welfare, exercise of this authority must be reasonable, and rationally related to a legitimate purpose of government such as avoiding harm or protecting health, safety and general, not local or parochially conceived, welfare.²⁰

A community's zoning powers also will be limited by the statutory mandate that communities must use inclusionary techniques to accommodate group homes and other facilities in the community, as required by state law.²¹

b. Traditional Zoning Tools

The adoption of zoning in a community typically involves two activities: 1) adopting a text, and 2) adopting the zoning map. The text defines the categories, uses, and standards of development to be permitted within a particular land use designation. The zoning map applies the adopted land use designations to the community. Zoning controls frequently involve more than designating land uses on maps.

In addition to basic use districts and maps, the more significant zoning tools are:

i. Conditional Uses

Many uses are appropriate for a particular use district, but require special consideration to integrate them into the neighborhood. Conditional uses are permitted only where certain conditions exist. Historically, schools, churches, utilities and similar uses have been allowed as conditional uses.²² More recently, many communities have tried to integrate small commercial, multi-family, and single-family uses by applying conditional uses and performance standards. The legal presumption is that conditional uses are appropriate in the specified district. Site specific limitations may offset or minimize the traffic, noise, or other special characteristics of the conditional use.

The significance of a conditional use is that objection to it must be based on some particular feature of a project unique to the site, not inherent in the use (such as traffic on Sundays at church). The community has already determined that the inherent characteristics are to be permitted. It will tolerate them, with some additional protection, by establishing the conditional use approval.

ii.) Limited Uses

Some uses are difficult to site²³ almost anywhere in a community, but must be provided to serve its needs. Gravel pits, rock quarries, and sanitary landfills, for example, are site dependent uses which

²⁰ Norco Construction v. King County, 97 Wn.2d 680, 684, amend. V, XIV), emphasis added.

²¹ RCW 36.70A.200. 649 P.2d 103 (1982) (citing U.S. Const.

²² See, e.g., Pierce v. Northeast Lake Washington Sewer & Water District, 123 Wn.2d 550, 870 P.2d 305 (1994).

²³ Norco Construction v. King County, 97 Wn.2d 680, 684, 649 P.2d 103 (1982) (citing U.S. Const. amend. V, XIV).

may have a large impact on surrounding communities.²⁴ **Unlike conditional uses, which are presumed to be appropriate, no such presumption exists with limited uses.** A limited use may have to demonstrate community need before a permit is granted.

i) Special Uses

Some communities have abandoned the conditional use/limited use dichotomy, designating all uses requiring special review as “special uses.”²⁵ **In this case, the limited use/conditional use presumptions do not apply.** Similarly, an applicant would only have to prove “community need” if this was determined to be an important factor; and if the issue were included specifically in criteria for the approval process.

ii) Variances

A variance is nothing more than a waiver of one or more specific physical (rather than use) standards, such as bulk, yard, or site coverage contained in an ordinance.²⁶ The variance is used to waive a condition that creates a particular hardship. **Variances are to be narrowly construed and used only in extreme circumstances** since, by nature, they are at odds with the fundamental doctrine that entitles all persons to equal protection and enforcement of the laws.

The Planning Enabling Act details several prerequisites which must be met before a variance can be granted:

- Due to special circumstances of the subject property (including its size, shape, or surroundings), strict application of the zoning ordinance would deprive it of rights and privileges enjoyed by other properties in the vicinity and under identical zone classifications.
- That the granting of the variance will not be materially detrimental to the public welfare; or injurious to the property or improvements in the vicinity and zone in which the subject property is located.
- The situation does not arise from actions of the applicant or the predecessor in interest after the zoning ordinance was adopted.²⁷

In addition, some variance requests require the review and approval of another agency or governmental body before the variance can be granted²⁸

A “use” variance permits a use that is otherwise prohibited in the neighborhood. **A use variance does not meet traditional variance tests, and is not considered lawful.** It is the de facto equivalent of a spot zone, without the formality of trying to amend the ordinance to justify the public interest. If a certain situation produces frequent variance requests, a community should amend its codes to accommodate it.

²⁴ See, e.g., *Organization to Preserve Agricultural Lands v. Adams County*, 128 Wn.2d 869, 913 P.2d 793 (1996), *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 801 P.2d 985 (1990).

²⁵ See, e.g., *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 903 P.2d 986 (1995), *State ex rel. Standard Mining & Dev. Corp. v. City of Auburn*, 82 Wn.2d 321, 510 P.2d 647 (1973).

²⁶ See, e.g., *Orion Corp. v. State*, 103 Wn.2d 441, 693 P.2d 1369 (1985).

²⁷ RCW 36.70.810(2).

²⁸ *Buechel v. DOE*, 125 Wn.2d 196, 884 P.2d 910 (1994) (shoreline variance requires DOE’s approval in addition to the City’s).

PRACTICE TIP: All too often, variances are approved because a board believes certain zoning requirements may be unfair or unreasonable. While fairness and reasonableness may be grounds for amending a statute, they cannot be substituted for the required findings if an ordinance is to have any integrity or validity.²⁹ If a common occurrence leads to multiple variance requests, the community's ordinance and its comprehensive plan, if inconsistent, should be amended to address the situation.

iii) Planned Unit Developments/Planned Residential Development

One of the tools appearing frequently in zoning ordinances is enabling legislation for planned unit developments (PUDs). **A PUD is an authorized “floating zone,”** which may or may not be specifically located when the zoning text and map are adopted.³⁰ The zone may then be adapted to any qualifying parcel under the PUD ordinance.

The PUD may eliminate (or reduce) many of the bulk or density requirements of the underlying zoning district. Through a mix of residential and/or commercial types of development, it can create an entirely unique district.

PUDs should be authorized in three ways:

- 1) Through broad policy goals in the comprehensive plan;
- 2) Through enabling language in the zoning ordinance (often with suitable areas designated on maps); and
- 3) Through a site plan review and binding site plan for the overall development.

PUDs also need mechanisms to assure continuity and the ability to meet community changes over time. Planned unit developments have been approved by the courts even though no state-authorizing legislation exists.³¹

A planned residential development (PRD) mirrors the PUD, but is more strongly oriented to a project's residential nature. The PRD is more flexible than traditional subdivision, platting, and site plan approaches.

The GMA also specifically authorizes new, fully-contained communities outside urban growth

²⁹ In *Sherwood v. Grant County*, 40 Wn. App. 496, 699 P.2d 243 (1985), a divided court of appeals recently discussed the criteria to be used to evaluate a variance. In *Sherwood*, the majority upheld a variance to permit a mobile home in a traditional single family neighborhood. Under the ordinance in effect, mobile homes were not permitted in traditional single family neighborhoods. The Sherwoods owned a mobile home and requested a variance to permit them to keep the unit. The testimony was overwhelming in favor of keeping the unit and that the unit did not depreciate the neighborhood. Nevertheless, the site could easily have been used for a traditional single family home. The court approved the variance to avoid the hardship to removing the home. While the analysis is legally questionable since the site did have permissible alternatives, the case is evidence of the lengths even courts may go to avoid altering the status quo. Nevertheless, the case must be read for the analysis and not the result. The opposite result would be equally, if not more easily defensible.

³⁰ See *Lutz v. Longview*, 83 Wn.2d 566, 520 P.2d 1374 (1974) for general discussion of planned unit developments.

³¹ *Lutz, supra*; see also *Barrie v. Kitsap County*, 84 Wn.2d 579, 585, 527 P.2d 1377 (1974).

areas.³² A PUD form of zoning will likely be required to allow the design and location of such communities with suitable standards and controls.

iv) Contract Rezones

Unlike development approvals, rezones involve amending an ordinance. When a legislative body wants to approve a rezone but impose conditions to mitigate impacts of the change, it may do so. However, this requires a two-step determination: (1) Is the rezone in the public interest (that is, consistent with the comprehensive plan)? (2) Are the conditions imposed attributable to new use categories approved for the property? If these two tests are met, the courts will uphold a contract rezone.³³ A community should make specific factual findings on both issues as part of the contract rezone approval process.

The rezone process is limited by the requirement that all changes requiring an amendment to the comprehensive plan, be made only once a year so cumulative impacts will be considered.³⁴ Although the development regulations can be amended at any time, they must be consistent with the comprehensive plan. If the rezone is inconsistent with the comprehensive plan, the rezone must await an amendment to the plan during the annual amendment process.

v) Spot Zoning

Spot zoning is an action,

by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan. Spot zoning is a zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole.³⁵

Spot zoning is prohibited because it denies equal protection and enforcement of the laws to the benefit of a small group or individual. When a zoning change is inconsistent with the comprehensive plan, the change is presumed to be a “spot zone.”³⁶ Conversely, when a change in zoning is consistent with the comprehensive plan, the plan - not the spot zone - will be presumed in the public interest. This is true even if the rezone affects just one parcel.

PRACTICE TIP: All conditions of the contract should be met before final action is taken to create an amended zone. In addition, completion of these required conditions should be tied to utility hookup, certificates of occupancy, or other steps in construction development.

PRACTICE TIP: The key question in any nonconforming use case involves enlargement

³² RCW 36.70A.350.

³³ State ex. rel. Myhre v. Spokane, 70 Wn.2d 207, 422 P.2d 790 (1967).

³⁴ RCW 36.70A. 130.

³⁵ Smith v. Skagit County, 75 Wn.2d 715, 743, 453 P.2d 832 (1969), overruled on other grounds, Harris v. Hornbaker, 98 Wn.2d 650, 658 P.2d 1219 (1983). See also Chrobuck v. Snohomish County, 78 Wn.2d 858, 872, 480 P.2d 489 (1971).

³⁶ See Smith, supra; Chrobuck, supra

vs. intensification. Enlargement expands the area in which a nonconforming use takes place, while intensification expands the activity within an existing area. Enlargement is prohibited without specific legislative authorization, but intensification within an existing structure is allowed.³⁷

vi) Nonconforming Uses

Nonconforming uses lawfully exist at the time a zoning ordinance is adopted, but become inconsistent when there is a rezone.³⁸ The presumption is that the community eventually wants to eliminate the nonconforming use, but allows it to continue to avoid extreme hardship.³⁹ Communities may continue, intensify, and modify nonconforming uses through appropriate provisions in the ordinance.

Unless authorized by statute, nonconforming uses traditionally cannot be expanded or enlarged;⁴⁰ once abandoned, they may not be reinstated. Abandonment, however, is an intentional act. The courts have refused to accept statutory limitations (e.g., six months), as any more than presumptions of intentional abandonment.⁴¹ This is particularly true of intermittent uses, such as gravel pits.

vii) Rezones/Down Zones

The term “rezone” is undefined in Washington law. Using the “I know it when I see it” approach, the Supreme Court has taken the following position: **A rezone authorizes uses on property that differ substantially from terms of the prior zoning designation.** Thus, a city may not use a PUD to approve multi-family housing in a single-family zone without amending the zoning map through a formal rezone⁴²

The Court of Appeals has reaffirmed that consideration of a PUD is the equivalent of a rezone,⁴³ meaning that an applicant has no vested rights to have a PUD approved. Since most communities have zoning in effect, requests for land use changes will involve a rezone request to the city.

Rezones differ from zoning actions in several respects:

- Parcel-specific rezones do not enjoy the presumptions of validity legislative activities have (as in area-wide rezones); the property owner/applicant must prove that a parcel-specific rezone is valid⁴⁴
- Rezones must be based on a change of circumstances or community needs, or implement the

³⁷ Keller v. Bellingham, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979).

³⁸ Summit-Waller Ass’n v. Pierce County, 77 Wn. App. 384, 895 P.2d 405, rev. denied, 127 Wn.2d 1018(1995).

³⁹ Andrew v. King County, 21 Wn. App. 566, 586 P.2d 509 (1978).

⁴⁰ Anderson v. Island County, 81 Wn.2d 312, 324, 501 P.2d 594 (1972), rev. denied, 91 Wn.2d 1023(1979).

⁴¹ Andrew, supra. See also State ex rel. Lige & Wm. B. Dickson Co. v. Pierce County, 65 Wn. App. 614, 829 P.2d 217, rev. denied, 120 Wn.3d 1008 (1992).

⁴² Lutz, supra.

⁴³ Johnson v. City of Mt. Vernon, 37 Wn. App. 214, 679 P.2d 405 (1984).

⁴⁴ Hayden v. Port Townsend, 93 Wn.2d 870, 613 P.2d 1164 (1980), overruled on other grounds, SANE v. Seattle, 101 Wn.2d 288, 676 P.2d 1006 (1984).

policies of an adopted comprehensive plan.⁴⁵ They cannot be based exclusively on the desires of public interest groups.⁴⁶

- The burden of proof required to downzone a property against the wishes of an owner is higher than the burden on an owner who seeks a zoning change.⁴⁷
- Rezones contrary to the comprehensive plan are generally considered to be spot zones. These are unlawful because they benefit private interests rather than the public.⁴⁸
- Downzones are subject to the same consideration as upzones. A downzone must be consistent with the comprehensive plan, and not merely the desires of a neighborhood. The primary limitation on downzones is that the community action must meet a public objective. It must also permit reasonable use of the property after the downzone.⁴⁹

PRACTICE TIP: Rezones and down zones are more difficult to obtain as a result of the GMA. Zoning ordinances must be consistent with the comprehensive plan, and the plan can only be amended once a year.

X) Vested Rights

The Washington Supreme Court has acknowledged that development rights are a “valuable right in property.”⁵⁰ The vested rights doctrine in Washington was adopted to protect development rights. Under this doctrine, developers who file a timely and complete permit application obtain a vested right to have their application processed according to the zoning and building ordinances in effect at the time of the application.

At what point does a person have a right to retain a use or structure authorized by a zoning code, after that code is changed? Nonconforming use is one attribute of the vested rights doctrine. The use or structure is “grandfathered,” or vested, because it is already present. But what about cases in which an applicant has applied for a use at the same time local ordinances are changing? Washington has a straightforward test for vesting:

- Building permits are vested as of the date a complete application is filed.⁵¹
- Plats (formal plats and short plats) are vested when a fully completed application is filed.⁵²

⁴⁵ *Parkridge v. Seattle*, 89 Wn.2d 454, 573 P.2d 359 (1978) (when a rezone implements policies of an adopted comprehensive plan, changed circumstances are not necessary to justify a rezone). See also *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 844-46, 899 P.2d 1290 (1995); *Save Our Rural Environment v. Snohomish County*, 99 Wn.2d 363, 370-71, 662 P.2d 816 (1983).

⁴⁶ *Parkridge v. Seattle*, 89 Wn.2d 454, 573 P.2d 359 (1978). For example, a neighborhood’s desire is not sufficient per se to warrant a downzone. This is the flip side of the old spot zoning problem.

⁴⁷ Hayden, *supra*.

⁴⁸ Smith, *supra*; Chrobuck, *supra*.

⁴⁹ *Parkridge*, *supra*; Carlson, *supra*.

⁵⁰ *West Main Assoc. v. Bellevue*, 106 Wn.2d 47, 720 P.2d 782 (1986).

⁵¹ RCW 19.27.095(1).

- Communities shall define the requirements of a fully completed application by local ordinance.⁵³
- Communities may not artificially delay the vesting time to permit changes.⁵⁴

Washington courts have applied the vested rights doctrine to other types of development permits, such as conditional use permits,⁵⁵ shoreline permits,⁵⁶ grading permits,⁵⁷ septic tank permits,⁵⁸ and phased development under a binding site plan.⁵⁹

A vested project means that the project is measured against the rules in place at the time of vesting - even if those rules have changed by the time construction starts.

xi) “Innovative Techniques”

The Growth Management Act specifically identifies **density bonuses, design guidelines, conservation easements, cluster housing, planned unit developments, and transfer of development rights** as “innovative techniques” to accomplish growth management goals.⁶⁰

“Innovative techniques” can be used to balance competing needs in a community. A regulation may try, for example, to protect a critical area by prohibiting its use for development, requiring certain buffers, or excluding it from density calculations. This scenario leaves little incentive to identify critical areas or nurture marginal critical lands. The result, particularly in urban areas, could limit land available for infill, affordable housing, or other competing needs.

Innovative techniques can offer incentives and help create or protect critical areas and buffers. If wetland and buffer areas are set aside for open space, a landowner might receive density bonuses in return. Owners can then build at higher densities or use smaller lots, allowing cities to meet densification and urbanization objectives while retaining and protecting critical areas.

3. Moratoriums and Interim Controls

Moratoriums and interim zoning controls are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development.⁶¹ Notice and public hearing is not necessary prior to enactment of a moratorium or emergency zoning measure, but a public hearing must be held within 60 days of its adoption. If such requirements were applied to interim zoning decisions, developers could frustrate effective long-term planning by

⁵² RCW 58.17.033(1). See also *Noble Manor v. Pierce County*, 81 Wn. App. 141, 913 P.2d 417, *aff’d*, Wn.2d 269 (1997) (under RCW 58.17.033, the submission of a completed short plat application vests the right to develop, not merely divide the land under the regulations in effect at the time of the submission).

⁵³ RCW 58.17.033(2) & .140.

⁵⁴ *Norco*, *supr.*

⁵⁵ *Beach v. Board of Adjustment*, 73 Wn.2d 343, 438 P.2d 617 (1968).

⁵⁶ *Talbot v. Gray*, 11 Wn. App. 807, 525 P. 2d 801 (1974), *rev. denied*, 85 Wn.2d 1001 (1975).

⁵⁷ *Juanita Bay Vly. Comm’ty Ass’n v. Kirkland*, 9 Wn. App. 59, 510 P.2d 1140, *review denied*, 83 Wn.2d 1002 (1973).

⁵⁸ *Juanita Bay Vly. Comm’ty Ass’n v. Kirkland*, 9 Wn. App. 59, 510 P.2d 1140, *review denied*, 83 Wn.2d 1002 (1973).

⁵⁹ *Mercer Enterprises v. Bremerton*, 93 Wn.2d 624, 611 P.2d 1237 (1980), *Valley View Industrial Park v. Redmond*, 107 Wn.2d 621, 733 P.2d 182 (1987).

⁶⁰ RCW 36.70A.090; 070(5)(b).

⁶¹ RCW 36.70A.390, 35.63.200.

obtaining vested rights to develop their property, thereby rendering the emergency plans moot. Nevertheless, local government may not change the rules applicable to an already submitted application.⁶²

B. Platting and Permits: The Development Process

1. The Platting Process

A plat is a map filed with the county auditor's office. It describes a particular parcel of property, typically small divisions or "subdivisions" within the larger parcel.

Washington State has always had a law that requires persons selling lots from within a plat to file the plat with the county auditor.⁶³ A plat dedicates property within the plat, such as roads and parks,⁶⁴ and provides a convenient way to describe individual lots for sale purposes. The filing requirement also assures that back taxes and assessments have been paid on the larger parcel prior to sale of the smaller lots.⁶⁵

Washington adopted its first modern subdivision statute⁶⁶ in 1936. It required the local approving authority to approve the plats prior to filing, and to inquire into,

the public use and interest proposed to be served by the establishment of the plat, subdivision or dedication.⁶⁷

The approving authority also was required to look into the streets, playgrounds, public ways, and all other relevant facts to determine (a) that the development made appropriate provision for physical improvements; and (b) "that the public use and interest... be served by the platting and subdivision."⁶⁸ If these criteria were not met, the plat could be denied. In deciding whether to approve or deny plats when the public interest was not served, the approving authority was to consider the impact of the plats on the entire community, as well as physical improvements within the plat.⁶⁹

The present Subdivision Act,⁷⁰ in force since 1969, presents the following definitions:

"Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in [the definition of "short subdivision" below].

"Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites or

⁶² Matson v. Clark County, 79 Wn. App. 641, 904 P.2d 317 (199).

⁶³ Chapter 58.08 RCW.

⁶⁴ RCW 58.08.050 & 58.17.020(3).

⁶⁵ RCW 58.08.030 & .040.

⁶⁶ Law 1937, ch. 186, §§ 1 to 11.

⁶⁷ RCW 58.16.060. since repealed).

⁶⁸ RCW 58.16.110 (since repealed).

⁶⁹ Jones v. Town of Woodway, 70 Wn.2d 977, 425 P.2d 904 (1967) Jones involved a plat in an unzoned area which was denied because the density was inconsistent with surrounding properties.)

⁷⁰ Chapter 58.17 RCW.

divisions for the purpose of sale, lease, or transfer of ownership: Provided, that the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine.

“Binding site plan” means a drawing to a scale specified by local ordinance which: (a) identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

“Short Plat” is the map or representation of a short subdivision.⁷¹

The statute contains seven exemptions from formal platting requirements:

1. Cemeteries;
2. Land divisions creating parcels over five acres in size (as measured to the center of the road);
3. Land divisions made by wills or the laws of descent;
4. Industrial parks when such parks are covered by a binding site plan review process;
5. Mobile home parks when such parks are covered by a binding site plan review process;
6. Boundary line adjustments creating no new lots; and
7. Condominiums if a binding site plan has been approved.⁷²

Many communities implement some form of control over “large lots,” or parcels over five acres in size. These large lot ordinances remove the exemption from the Subdivision Act, and may invoke the same rules that apply to other subdivisions.⁷³

Criteria for approving a subdivision include a determination by the approving body that the plat provides appropriately for public improvements and amenities and that it serves the public interest.⁷⁴ If the plat is deficient, or does not serve the public interest, it may be denied.⁷⁵

The platting statute specifically provides for plat disapproval in flood or swamp conditions. Permission of the Department of Ecology is required to approve a plat in any state-designated flood control zone.⁷⁶ Limitations are also placed on plats in irrigation districts.⁷⁷

A plat is processed in two phases: preliminary plat and final plat.⁷⁸

⁷¹ RCW 58.17.020(1), (6)-(8).

⁷² RCW 58.17.040.

⁷³ RCW 58.17.040(2).

⁷⁴ RCW 58.17.110.

⁷⁵ RCW 58.17.110; *Loveless v. Yantis*, 82 Wn.2d 754, 513 P.2d 1023(1973)

⁷⁶ RCW 86.16.041 & RCW 58.17.120.

⁷⁷ RCW 57.17.1 10(l).

⁷⁸ RCW 58.17.140.

a. Preliminary Plat Approval Process

A preliminary plat is the conceptual approval plan. It shows the proposed development and amenities, and is subject to a public hearing before a planning commission⁷⁹ authority or a hearings examiner⁸⁰ and the approving authority. **The hearing is to determine:**

(a) If appropriate provisions have been made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students...; and (b) whether the public interest will be served.⁸¹

The planning commission's recommendation is advisory.⁸² The hearings examiner's recommendation may be advisory or final, depending on the option selected.⁸³ Under regulatory reform, only one public hearing may be conducted. (See Chapter 3.)

The power of legislative officials to approve or condition plats is as broad as the perceived public interest. However, the approving authority must act in a timely fashion, and according to adopted policies in effect when the application is filed.

The approving authority may make construction of necessary public facilities a condition of plat approval.⁸⁴ If warranted, it may change conditions in successive divisions to meet increasing public standards.⁸⁵ However, the legislature has expressly limited the local government's authority to impose fees in lieu of an improvement, except as provided by statute.⁸⁶

Approval of preliminary plats is a "quasi-judicial" responsibility of local authorities. As such, all hearings and decisions must be made on the record, with all parties given an opportunity to appear and be heard.⁸⁷ The approving authority must state, in writing, findings and reasons to support the approval or denial.⁸⁸ **This requirement is now codified:**

⁷⁹ RCW 58.17.100.

⁸⁰ RCW 58.17.330.

⁸¹ RCW 57.17.1 10(l).

⁸² RCW 58.17.100.

⁸³ RCW 58.17.330(1) & (2).

⁸⁴ *Breuer v. Fourre*, 76 Wn.2d 582, 458 P.2d 168 (1969); See also *Snider v. Board of County Commissioners*, 85 Wn. App. 371, 932 P.2d 704 (1997) (the court of appeals held that a plat condition requiring developer to acquire rights-of-way over third party property was not arbitrary and capricious, and the superior court had no authority to modify the plat condition to require the board to exercise its power of eminent domain to acquire rights-of-way over third party property since the power of eminent domain is a core function of the legislative branch).

⁸⁵ *Pacific County v. Sherwood Properties*, 17 Wn. App. 790, 567 P.2d 642 (1977), rev. denied, 89 Wn.2d 1013 (1978).

⁸⁶ RCW 82.02.020, .050-.090; *Vintage Constr. Co. v. Bothell*, 83 Wn. App. 605, 922 P.2d 828 (1996), aff'd, 135 Wn.2d 833 (1998).

⁸⁷ RCW 58.17.100 & .330; see, *Smith v. Skagit County*, 75 Wn.2d 715, 453 P.2d 832 (1969), overruled on other grounds, *Harris v. Hornbaker*, 98 Wn.2d 650, 658 P.2d 1219 (1983).

⁸⁸ *Parkridge v. Seattle*, 89 Wn.2d 454, 573 P.2d 359 (1978).

No plat or short plat may be approved unless the city, town, or county makes a formal written finding of fact that the proposed subdivision or proposed short subdivision is in conformity with any applicable zoning ordinance or other land use controls which may exist.⁸⁹

IMPORTANT NOTE:

In 1997, the Washington Supreme Court ruled that where there is inconsistency between a specific zoning regulation and the comprehensive plan, the zoning regulation prevails.⁹⁰ Referring to pre-GMA cases, the court ruled a comprehensive plan is not a document designed for making specific land use decisions, although the court noted that proposed land use decisions must “generally conform” to the comprehensive plan.

The court’s decision is consistent with the GMA, which requires a local government subject to the GMA to adopt specific development regulations that implement and are consistent with the adopted comprehensive plan. Accordingly, to give full legal effect to the policies, goals, and substance of adopted comprehensive plans - and the time, talent, and money expended in their adoption - local governments should take care to ensure their development regulations adequately implement and are consistent with their adopted comprehensive plans.

Courts have ruled that failing to prepare findings is “arbitrary and capricious.”⁹¹ The standard of review for overturning land use decisions is no longer based on arbitrary and capricious conduct.⁹² Failure to prepare findings is now reversible error based on the local government’s failure to follow prescribed process.

The time for filing an appeal begins to run from the date on which the land use decision is issued.⁹³ The approving authority must consider the environmental consequences of a proposal, and may condition or deny a plat for environmental reasons.⁹⁴

The plat must be reviewed and considered, based on plans in effect at the date of filing a complete application and development plans.⁹⁵ It is inappropriate to consider a pending, proposed, or possible change in zoning or other changes in land use regulations as a basis for approving or denying a project.⁹⁶

Consistency with the comprehensive plan is one measure of the public interest served by a plat.⁹⁷

⁸⁹ RCW 58.17.195.

⁹⁰ Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 947 P.2d 1208 (1997).

⁹¹ Johnson v. City of Mt. Vernon, 37 Wn. App. 214, 679 P.2d 405 (1984).

⁹² RCW 36.70C.130.

⁹³ RCW 36.70C.040(3), (4).

⁹⁴ Loveless v. Yantis, 82 Wn.2d 754, 513 P.2d 1023 (1973); DNR v. Thurston County, 92 Wn.2d 656, 601 P.2d 494 (1979), cert. denied, 449 U.S. 830 (1980).

⁹⁵ Norco Construction v. King County, 97 Wn.2d 680, 649 P.2d 103 (1982).

⁹⁶ Adams v. Thurston County, 70 Wn. App. 471, 855 P.2d 284 (1993).

⁹⁷ Norco Construction, at 688.

Because “consistency” is now a prerequisite for project approval, a project can be denied if it is inconsistent with the comprehensive plan.⁹⁸

Through interim zoning, municipalities have ample authority to protect themselves in an emergency. The court has approved interim zoning on an emergency basis without lengthy notice and hearing requirements:

We believe the better-reasoned view recognizes that if notice and hearing requirements were applied to interim zoning decisions, developers could frustrate effective long-term planning by obtaining vested rights to develop their property. This is especially true in Washington where an owner’s right to use his property under existing zoning vests upon the application for a building permit. We, therefore, hold that the act’s notice and hearing requirements do not apply to emergency ordinances enacted pursuant to RCW 36 70.790.99.

A county has 90 days to act on a preliminary plat application, not including time limits imposed by SEPA.¹⁰⁰ The 90-day limit is mandatory. Failure to “approve, disapprove or return to the applicant for modification” any plat within 90 days of filing is grounds for a mandamus action requiring hearings.¹⁰¹ Further, by statute, such failure may constitute grounds for municipal liability.¹⁰²

Once a preliminary plat is approved, the applicant has five years to file a final plat.¹⁰³ Before the preliminary plat expires, there can be no changes to the plat approval conditions. When the local government adopts additional provisions for extensions, however, it can modify the approval conditions during those extension periods.

b) Final Plat Approval Process

To file a final plat, a developer must construct or bond all required improvements of the preliminary plat, and submit a final plat for approval before filing with the county auditor.¹⁰⁴

Bonding is authorized in pertinent part:

(1) Local regulations shall provide that in lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat, the city, town, or county legislative body may accept a bond, in an amount and with surety and conditions satisfactory to it, or other secure method, providing for and securing to the municipality the actual construction and installation of such improvements within a period specified by the city, town, or county legislative body and expressed in the

⁹⁸ RCW 36.70B.030 & .040.

⁹⁹ Jablinske v. Snohomish County, 28 Wn. App. 848, 851, 626 P.2d 543 (1981) (citation omitted) (emphasis added).

¹⁰⁰ RCW 58.17.140.

¹⁰¹ Norco Construction, at 690.

¹⁰² Chapter 64.40 RCW. 103

¹⁰³ RCW 58.17.170.

¹⁰⁴ RCW 58.17.130.

bonds.

(2) In addition, local regulations may provide for methods of security, including the posting of a bond securing to the municipality the successful operation of improvements for an appropriate period of time up to two years after final approval.¹⁰⁵

PRACTICE TIP:

Communities should eliminate ambiguity by suggesting that the same provisions apply to short plats, large lots, and binding site plans.

Final plats are “as-built” drawings of the plat as constructed. They must conform to the approved preliminary plat, showing lots, streets, easements, and all other elements required as conditions of preliminary plat approval. The local administrative offices must verify that the final plat meets all conditions and statutory requirements. Once necessary signatures have been obtained, the approving authority approves the plat. The plat may then be filed with the county auditor, and the developer may offer the lots for sale.¹⁰⁶

One significant advantage of a final plat is that it provides a five-year protection against zoning changes.¹⁰⁷ Enforcement of the platting requirements includes injunctive relief,¹⁰⁸ withholding development permits,¹⁰⁹ and criminal penalties.¹¹⁰

On illegally platted lots, a community can only issue permits to innocent purchasers. All others may be required to make plat improvements before obtaining any development permits. The lot purchasers have a statutory cause of action against the illegal subdivider, and may rescind the sale if necessary improvements cannot be made.¹¹¹

c.) Short Plats

The local legislative agency has the same authority over short plats that it has over plats. The procedure is greatly simplified, however (usually without any hearings), and may contain requirements that are the same or wholly different than those governing preliminary plats.¹¹² Short plats must be processed within 30 days.¹¹³

Short plats typically contain a map identifying the lots to be created and a declaration dedicating right-of-way or other required approval conditions. Short plats may not be divided again for five

¹⁰⁵ RCW 58.17.130 (emphasis and enumeration added).

¹⁰⁶ RCW 58.17.200.

¹⁰⁷ RCW 58.17.170.

¹⁰⁸ RCW 58.17.200.

¹⁰⁹ RCW 58.17.210.

¹¹⁰ RCW 58.17.300.

¹¹¹ RCW 58.17.210. *Crown Cascade, Inc. v. O’Neal*, 100 Wn.2d 256, 668 P.2d 585 (1983)

¹¹² RCW 58.17.060.

¹¹³ RCW 58.17.140.

years without processing a long plat.¹¹⁴ Short plats must be filed with the county auditor to be effective.¹¹⁵

2. Site Plan Review

A binding site plan is defined as:

a drawing to a scale specified by local ordinance which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.¹¹⁶

The Legislature has created three exemptions from the subdivision law for parcels developed through binding site plan review. These exemptions apply when the city, town or county has approved a binding site plan for use of the land according to local regulations:

1. Divisions of land into lots or tracts classified for industrial or commercial use;
2. A division for the purpose of lease, when no residential structures other than mobile homes or travel trailers are permitted on the land; and
3. A division as a result of subjecting the property to the Washington Condominium Act.¹¹⁷

Mobile home parks, industrial site plan programs and condominiums require the local jurisdiction to adopt site plan review ordinances.¹¹⁸ These can create more problems than they solve.

The exemption was created to avoid the two-phased approval process (preliminary and final). But unless a community adopts some form of conditional/final approval mechanism, it may lose control over the improvements needed for final development.

Further, while mobile home site plans are typically used for lease-only operations, most industrial site plans specifically contemplate lease or sale. Title insurance companies and financial institutions do not accept “binding site plans.” Without platting, they may be reluctant to insure or finance lots created in such a fashion.

¹¹⁴ RCW 58.17.060.

¹¹⁵ RCW 58.17.065.

¹¹⁶ RCW 58.17.020(7).

¹¹⁷ RCW 58.17.040(4), (5) & (7).

¹¹⁸ In *Strauss v. City of Sedro Woolley*, 88 Wn. App. 376, 944 P.2d 1088 (1997), rev. denied, 35 Wn.2d 1002 (1998) the court held that the condominium statute may not be used as a mechanism to avoid the requirements of the subdivision statute. Requiring a condominium developer to comply with the subdivision statute or file a binding site plan does not violate the Condominium Act, which prohibits zoning laws and other requirements which impose requirements on condominiums which do not apply to other forms of property ownership.

3. Common Platting Problems

a.) Findings: The Basis for Approval or Denial

The courts require written findings to deny a preliminary plat, and failure to enter such findings will result in a court reversing a land use decision. The Growth Management Act now specifically requires “written findings” to show that adequate provisions for amenities, schools, and utilities have been made; and has made public use and interest a prerequisite for approval. Furthermore, approving authorities cannot merely deliver a boilerplate recitation of impact on schools, roads, and the bucolic “rural way of life” to support denial. They must show why such facts are true, and how they relate to the area being developed.¹¹⁹ Once properly identified, however, both existing and potential future impacts can be the basis for properly denying a plat.¹²⁰

b.) Old Plats

Old plats fall into three categories: (1) those filed before 1909; (2) those filed before 1937;¹²¹ and, (3) those filed before 1969.¹²²

The 1937 Platting Act was the first Act in which plats were reviewed for adequacy of public improvements and facilities. Some communities use the 1937 law as the date by which they will recognize “existing lots of record.” Prior to 1937, most lots were paper plats. Many communities do not recognize the individual lots as separate building parcels, but look instead to an individual’s total ownership. An additional problem, arising with plats filed before 1909, is that streets may have been vacated by operation of law. Under state law, if county streets platted before 1909 were not opened to public travel within five years of dedication, those streets are vacated.¹²³ Many plats filed before 1909 have no public roads, due to this vacating process. This can be a trap for the unwary because the plat filed in the county auditor’s office or recorder’s records will not show the automatic street vacation.

c.) Short Plats Within Plats

A common practice in Washington has been to permit short plats within previously platted areas. This practice is questionable under the present statute, which defines the term “subdivision” as “any redivisions” of land.¹²⁴ At least one superior court,¹²⁵ has declared the practice illegal. In 1980, an Attorney General’s opinion¹²⁶ said that division of lots within an existing plat into four or fewer lots constitutes “resubdivision,” and may not be accomplished by a short subdivision. Further, such action

¹¹⁹ Kenart & Associates v. Skagit County, 37 Wn. App. 295, 680 P.2d 439, rev. denied, 101 Wn.2d 1021(1984);

Buchsieb/Danard Inc. v. Skagit County, 99 Wn.2d 577, 663 P.2d 487 (1983)

¹²⁰ Buchsieb/Danard Inc. v. Skagit County, 99 Wn.2d 577, 663 P.2d 487 (1983).

¹²¹ Adoption of Chapter 58.16 RCW (now repealed).

¹²² Adoption of Chapter 58.17 RCW.

¹²³ §32, Chapter XIX, Laws of 1890 p. 603; Howell v. King County, 16 Wn.2d 557, 134 P.2d 80 (1943).

¹²⁴ RCW 58.17.020(1).

¹²⁵ Spokane County Superior Court, Cause No. 247305(1978).

¹²⁶ Ops. Atty. Gen. 1980, No. 5.

does not require vacating the underlying plats,¹²⁷ but may require action if a street is to be vacated or relocated.¹²⁸ In 1981, the Legislature redefined short plat to include redivisions, authorizing short plats within plats.

PRACTICE TIP: The best solution to this problem is for the jurisdiction to adopt an ordinance defining its policy. It would appear that if separate parcels are owned by the same individual, no basis exists to declare them as separate parcels outside of plats. Thus, all contiguous property owned by any individual outside a plat is “property” subject to “subdivision” or “short subdivision,” regardless of how many lots the subdivider may own within old plats (pre-1937 plats), assessor parcels,¹²⁹ or lots in a recorded survey.¹³⁰

d.) Short Plats and Contiguous Property

Ownership of several contiguous parcels can cause confusion when determining whether four or more lots are created. In some jurisdictions, each separate parcel may be divided as provided by law, allowing short plats in each parcel. Others hold that, for development purposes, the entire ownership must be considered in determining the number of lots.

e.) Boundary Line Adjustments

Boundary line adjustment is a change to a lot that moves a boundary line recognized in the local code (as in a “platted lot” or “tax lot of record”). A boundary line adjustment normally will not be permitted if it creates a building lot smaller than zoning minimums. A boundary line adjustment cannot be used to create a new building lot that did not exist before (that would be a subdivision). The Attorney General has ruled that a boundary line adjustment cannot be used to divide an existing lot in half- add to adjoining properties - because this would change the number of lots.¹³¹

Communities should set simple, understandable administrative rules for boundary line adjustments, which are often used to allow minor adjustments accommodating driveways, garages, setbacks, and other details.

In 1996, the Legislature added a new process for boundary line adjustments, allowing private parties to resolve boundary disputes without filing a lawsuit or requesting government approval.¹³²

f.) Sale of Lots Prior to Recording of Plat

Lots cannot be sold within a preliminary plat or subdivision before the plat is recorded. State law makes all such sales illegal and subject to restraint by the prosecuting attorney.¹³³ **In 1981, the Legislature passed an amendment which provides:**

¹²⁷ Chapters 58.11 & 58.22 RCW (now repealed).

¹²⁸ RCW 58.17.212; Chapters 36.87 & 35.79 RCW.

¹²⁹ Chapter 58.18 RCW.

¹³⁰ Chapter 58.09 RCW.

¹³¹ Ops. Atty. Gen. 1980, No. 5.

¹³² RCW 58.04.020.

¹³³ RCW 58.17.200.

If performance of an offer or agreement to sell, lease, or otherwise transfer a lot, tract, or parcel of land following preliminary plat approval is expressly conditioned on the recording of the final plat containing the lot, tract, or parcel... the offer or agreement is not subject to [injunctive action or penalties] and does not violate any provision of this [statute]. All payments on account of an offer or agreement conditioned as provided in this section shall be deposited in an escrow or other regulated trust account and no disbursement to sellers shall be permitted until the final plat is recorded.¹³⁴

NOTE: The amendment applies only to subdivisions, not short subdivisions. It is still common practice to sell lots in a short plat subject to short plat approval.

g.) Roads, Parks, and Open Space

The primary purpose of plats is to clearly define public and private rights with respect to roads, parks, and open space. Dedications to public use must be spelled out clearly on the final plat, although any ambiguity with respect to roads will favor public roads.¹³⁵ The opposite appears to be true with respect to parks and open space. The presumption appears to be that a park identified on a plat is private (for the benefit of the lot owners only), unless a clear intent is expressed to dedicate the park to public use.¹³⁶

If the hearings examiner is to rule on adequacy of open space, the city must establish proper criteria and a nexus to the expected impact, particularly before “public” open space may be acquired.

h.) Dedications and Vacations

Dedications and vacations are the means of creating or eliminating interests within a plat. Dedication grants a fee title or an easement for public use. Vacation eliminates the public’s rights to or over a parcel of property, or to terminate a plat. Problems often arise in this context because the enabling legislation lacks sufficient clarity.

i) Dedications

The primary purpose of a plat is to secure the “dedication” of roads, parks, and other public spaces within the plat. This concept was embodied in the original platting act.¹³⁷

The concept has continued through to present law, which requires a certificate of dedication to create public versus private streets.¹³⁸ The interest in any dedication for road or highway purposes is an easement for public travel. The fee title remains with abutting land owners.¹³⁹

Courts have indicated, however, that merely filing a plat does not automatically create a binding

¹³⁴ RCW 58.17.205.

¹³⁵ RCW 58.17.165.

¹³⁶ Knudsen v. Patton, 26 Wn. App. 134, 611 P.2d 1354, rev. denied, 94 Wn.2d 1008 (1980).

¹³⁷ RCW 58.08.050.

¹³⁸ RCW 58.17.165.

¹³⁹ Rainier Ave. Corp. v. Seattle, 80 Wn.2d 362, 494 P.2d 966, cert. denied, 409 U.S. 983 (1972)

dedication.¹⁴⁰ **Areas other than public ways could be dedicated to public use by a plat, but three conditions must be met:**

1. An affirmative act of donation or grant by the donor or grantor, noted as such on the plat or expressed in some other instrument;
2. The donee or grantee must be named or specifically indicated; and
3. The specific use to which the donated or granted property is to be devoted, according to the intention of the donor or grantor, must be expressed or provable in some way.¹⁴¹

In addition to dedication, public roads may be acquired prescriptively.¹⁴²

Once dedicated or acquired by the municipal agency, public rights over property may only be terminated by vacation or a conscious act of abandonment. Except in extreme circumstances, public rights cannot be lost by adverse possession.

ii) Vacations

Any study of the law of vacations of public rights proves that it is easier to give than to retrieve. While dedications require little more than a donative intent and acceptance by the public, vacations require a complicated public process.

Vacations within a plat are initiated by unanimous petition of all parties having ownership interest in that portion of the subdivision to be vacated.¹⁴³ A subdivision or any portion of a subdivision (or any area designated or dedicated for public use within the subdivision) is subject to vacation.

Before the vacation can be approved, the approving authority must conduct a public hearing to determine if the vacation serves the public use and interest.

If the vacation involves a public road or street, particular statutes must be followed.¹⁴⁴

Title to vacated property - other than a street or road-may vest adjoining owners, as determined by the approving authority. Vacated streets wholly within a plat may vest in the subdivision owners.

Vacations of public roads may occur by operation of law. County roads that remain closed to public travel for five years will lose the right of public access and will be vacated by operation of law.¹⁴⁵ The law was amended in 1909 to exempt roads within subdivisions. As a result, many plats that were recorded before 1909 have no public roads, due to this automatic vacation.

¹⁴⁰ See, e.g., *Pacific County v. Sherwood*, 17 Wn. App. 790, 796, 567 P.2d 642 (1977) (acceptance requires an affirmative act)

¹⁴¹ *Hanford v. Seattle*, 92 Wash. 257, 260, 159 Pac. 987 (1916)(paragraph emphasis added).

¹⁴² RCW 36.75.070 & .080.

¹⁴³ RCW 58.17.212.

¹⁴⁴ Chapter 36.87 RCW (county roads) or Chapter 35.79 RCW (city streets).

¹⁴⁵ RCW 36.87.090.

One important exception to the road vacation statute limits the rights of cities to vacate roads abutting water:

A city or town shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or salt water unless: (a) The vacation is sought to enable the city or town to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses; (b) The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes: Port, beach or water access, boat moorage, launching sites, park, public view, recreation, or education; or (c) The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area to which the streets or alleys sought to be vacated abut, had the properties included in the plan not been vacated.¹⁴⁶

In 1982, the Legislature required the Department of Natural Resources (DNR) to plat all first class tidelands and waterways. It included express provisions about maintaining the waterways and vacating streets or access points.¹⁴⁷

4. On-Site Development Conditions

A municipality's authority to specifically condition a project based on identified on-site needs is well established in case law and by statute. **Building permits may be conditioned.**

"The county's authority to attach conditions to a building permit is not contested. Indeed, [McQuillin] suggests that "reasonable conditions and requirements may be contained in, or attached to, a permit and compliance therewith after its issuance made essential to its continued force, effect and validity."¹⁴⁸

Plats may be specifically reviewed for adequate access to and within the proposed subdivision; and conditions may be imposed that regulate or limit access.¹⁴⁹ For example, as a condition of plat approval, the approving authority may require construction of on-site facilities, such as roads or utilities, to approved county standards.¹⁵⁰ However, the Legislature has limited local government's authority to impose fees to pay for a pro rata share of improvements to public facilities.¹⁵¹

In a case decided by the Court of Appeals prior to the Legislature's enactment of the restrictions on imposing impact fees provided in Chapter 82.02 RCW, the Court said:

¹⁴⁶ RCW 35.79.035(1).

¹⁴⁷ RCW 79.93.010-070.

¹⁴⁸ Toandos Peninsula Ass'n. v. Jefferson County, 32 Wn. App. 473, 481, 648 P.2d 448 (1982) (citations omitted).

¹⁴⁹ Lechelt v. Seattle, 32 Wn. App. 831, 835, 650 P.2d 240 (1982), rev. denied, 99 Wn.2d 1005 (1983); see also RCW 58.17.165.

¹⁵⁰ Breuer v. Fourre, 76 Wn.2d 582, 458 P.2d 168 (1969).

¹⁵¹ RCW 82.02.020 & .050-.090.

Under RCW 58.17.100, before approving a subdivision a local government is required to make sure that appropriate provisions have been made for the public health, safety and general welfare. It must consider the adequacy of access to and within the proposed subdivision, and it is empowered to condition approval of the plat upon adequate access. The information collected in the environmental review process indicated that the roads which would receive most of the traffic from the subdivision simply were not adequate to handle it.... A need for the improvements was clearly demonstrated, directly related to the traffic which would be generated by the development. The City acted reasonably to meet that need. The conditions were not arbitrary and capricious.¹⁵²

The court then responded to the argument that requiring the developer to finance his share of impacts is an unconstitutional tax:

Not all requirements for payment by a government body are taxes. Where the fees are intended primarily to regulate the development of a specific subdivision and not simply to raise revenue, they will not be considered taxes. Widening streets and installing controls for the safety of pedestrians and vehicle traffic are regulatory measures within the proper exercise of the City's police power, and it can require that the cost of these measures be borne by those who created the need.

On these facts, we fail to see how the City acted unfairly in carrying out its responsibilities under RCW 58.17.100.¹⁵³

This case is quoted at length for two reasons: it provides the court's justification for upholding the street widening and fund contributions; and it demonstrates the value of environmental documents in identifying the need for and scope of improvements.

Road and intersection improvements have been upheld as a condition to a concomitant agreement.¹⁵⁴

5. Off-Site Development Conditions

Project environmental impacts may require consideration and (by implication) mitigation of off-site impacts, including those outside jurisdictional boundaries.¹⁵⁵ **In the case quoted below, the Court of Appeals specifically upheld an action requiring improvements in another jurisdiction:**

The Millers next contend that even if such conditions could be imposed under proper circumstances, they cannot involve property outside the local government's jurisdiction. We disagree. The City was required to consider effects of the development outside its

¹⁵² Miller v. Port Angeles, 38 Wn. App. 904, 909-910, 691 P.2d 229 (1984), rev. denied, 103 Wn.2d 1024 (1985) (citations omitted).

¹⁵³ Miller, at 910-911 (citations omitted).

¹⁵⁴ State ex rel. Myhre v. Spokane, 70 Wn.2d 207, 422 P.2d 790 (1967).

¹⁵⁵ SAVE v. Bothell, 89 Wn.2d 862, 576 P.2d 401 (1978).

territory and mitigate them if possible. Under the rule established by these cases, Port Angeles had only two alternatives. It had to find a way to mitigate the effects on the two roads, or it had to deny the Millers' application. It is more sensible to permit a municipality to deal positively with problems like these than to require it to avoid the problems by denying the developments. Therefore, we hold that a city may properly require an improvement outside of its territorial jurisdiction if it conditions that requirement on annexation or the consent of the government having jurisdiction.¹⁵⁶

Courts have identified two tests in connection with required off-site improvements. Referring to the leading case for the conservative view, the Illinois Supreme Court stated:

If the requirement is within the statutory grant of power to the municipality and if the burden cast upon the subdivider is specifically and uniquely attributable to his activity then the requirement is permissible.¹⁵⁷

Referring to the leading case for the more liberal view, the California Supreme Court stated:

In a growing metropolitan area each additional subdivision adds to the traffic burden. It is no defense to the conditions imposed in a subdivision map proceeding that their benefit will incidentally also benefit the city as a whole.¹⁵⁸

In two recent cases from the Washington Supreme Court, the court considered whether ordinances requiring the dedication of park and open space land violate the prohibition on development taxes.¹⁵⁹ The court carefully scrutinized two park and open space ordinances, with special attention on the sections in those ordinances that allow payments in lieu of dedications. **The court concluded that these ordinances do not violate the prohibition on development taxes if the following criteria are met:**

1. The ordinance must allow the developer to choose between dedication and payment;
2. The dedication/payment must be "voluntary," that is, a choice between dedication/payment or no approval;
3. Any payment in lieu of dedication must be spent on specifically identified capital improvements within the same geographic area of the development; and,
4. The dedication/payment must be reasonably necessary as a direct result of the development.¹⁶⁰

¹⁵⁶ Miller, at 912-913 (citations omitted).

¹⁵⁷ Pioneer Trust & Savings Bank v. Village of Mt. Prospect, 176 N.E. 2d 799,802 (Illinois 1969) (emphasis added).

¹⁵⁸ Ayres v. Los Angeles, 207 P.2d 1 (Cal. 1949): See also Stanley R. Schultz, Subdivision and Platting, "Zoning: Land Use By Permit," The Environmental and Land Use Law Section, Washington State Bar Association (1978).

¹⁵⁹ Henderson Homes v. Bothell, 124 Wn.2d 240 (1994); Trimen Development v. King County, 124 Wn.2d 261 (1994). Both cases considered the prohibition on development taxes set forth at RCW 82.02.020.

¹⁶⁰ Trimen, at 271-75.

In support of this last criteria, the Court implied that local governments must provide the detailed support for a “nexus” between the dedication/payment and the impact of the development, and must prove a “rough proportionality” between the two.¹⁶¹

By its actions, the Washington Legislature has indicated that, in most cases, the “uniquely attributable” theory should prevail. The state preempted municipality development fee authority and provided:

...no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat...

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.¹⁶²

Thus, it would appear that so long as improvements are required on-site or directly adjacent to it, and they are “roughly proportional” to impacts caused by the project, such conditions will be upheld.¹⁶³

¹⁶¹ Dolan v. City of Tigard, 512 U.S. 374, 129 L. Ed. 2d 304, 114 S. Ct. 2309(1994).

¹⁶² RCW 82.02.020. (emphasis added).

¹⁶³ Compare Snider v. Board of County Commissioners, 85 Wn. App. 351, 932 P.2d 704 (1997), with Benchmark v. City of Battle Ground, Wn. App., P.2d (Div. II 1999).

6. Limitations On Development Conditions

If jurisdictions impose conditions beyond the standards authorized by city codes or regulations (or if no adequate codes and regulations exist), courts will strike down the conditions.

- Where a project conforms to existing plans or zoning ordinances, it is erroneous to deny or condition the project on policy plans yet to be developed.¹⁶⁴
- Where a project is consistent with applicable codes, it is error to deny a permit on grounds not established by adequate standards, or supported by specific reasons¹⁶⁵
- Where an ordinance seeks to grant administrative discretion without providing adequate standards upon which to exercise the discretion, the ordinance is void.¹⁶⁶

Outside the platting context, courts have held that access to a public thoroughfare is one of the attributes of property ownership. Unreasonable limitation of such rights requires compensation.¹⁶⁷

C. Vested Rights

In Washington, a vested right to subdivide is established as of the date a “fully completed application for preliminary plat approval...has been submitted...”¹⁶⁸ In one case, a county ordinance stated that vesting was applicable only after completing a final environmental impact statement. The implication of the ordinance was that new development regulations not yet adopted could be attached to the development before the SEPA process had been completed.

Local government may impose restrictions on development through SEPA, even though the vested rights doctrine would prohibit imposing those restrictions directly through other land use control ordinances. However, restrictions imposed under SEPA must be based on local SEPA policies that were in effect when the affected development vested its rights. **Victoria Tower v. Seattle**. Fluctuating policy would be quite possible. The court invalidated the county’s ordinance because it conflicted with state platting laws.¹⁶⁹

Property development rights vest upon filing a complete application for a building permit, or for a preliminary plat. However, the decision in **Erickson v. McClerran** makes clear that local governments may adopt a local vesting ordinance which vests use permits after permit application, as long as the

¹⁶⁴ Adams, at 475.

¹⁶⁵ *Pentegram v. Seattle*, 28 Wn. App. 219, 229, 622 P.2d 892 (1981) (decision of local body is arbitrary and capricious absent written findings and conclusions).

¹⁶⁶ *Lund v. Tumwater*, 2 Wn. App. 750, 472 P.2d 550 (1970) (no standards to control permits for multi-family housing not authorized by underlying zoning); *Pentegram v. Seattle*, (may not go beyond building code for “special reasons” without specific authority); but see, *State ex rel. Standard Mining v. Auburn*, 82 Wn.2d 321, 510 P.2d 649 (1973) (to “protect the public interest” is an adequate standard in the context of a special use permit for a gravel pit where public interest is further identified in a comprehensive plan); *Anderson v. Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993).

¹⁶⁷ *Lenci v. Seattle*, 63 Wn.2d 664, 388 P.2d 926 (1964).

¹⁶⁸ RCW 58.17.033(1).

¹⁶⁹ Adams, at 482.

developer could vest the project at any time by applying for a building permit.

The courts have addressed vesting rights in a number of recent decisions. *In Western Homes v. Issaquah*,¹⁷⁰ the grant of a variance created a vested right in the property for the owner to develop property in accordance with the conditions of the variance. The fact that the property owner had voluntarily worked with City of Issaquah staff to attempt to comply with the new ordinances and regulations did not permit the city to revoke the variance.

In *Hale v. Island County*, a landowner sought judicial review of the county's decision to grant preliminary use approval of a rezone application under a two-step rezone process. In the first step, the county granted preliminary use approval. The second step required approval of a specific site plan. After the county granted preliminary use approval, and the landowner submitted its application for final approval, the zoning provision on which the preliminary approval was based was invalidated by the Growth Management Hearings Board. The court held that upon issuance of preliminary use approval, an applicant obtains a vested right to have its final site plan application processed under the code provisions then in effect.¹⁷¹

In *Noble Manor v. Pierce County*,¹⁷² the Washington Supreme Court confirmed that the vesting rights doctrine gives a party the right to have its entire application considered under the land use laws in effect at the time of application. In this case, the developer submitted an application for a short plat on which it could build three duplexes. The Court rejected the County's argument that the only right that vested was the right to subdivide the property in accordance with existing regulations, holding that both the request to subdivide and the request to develop or use the property vested at the time of application. The question of whether a subdivision application vests the proposal under all land use controls then in effect is currently before the state appellate courts.

Finally, once a municipality approves a planned unit development, the developer has a vested right to build out the improvements within five years from the date of approval, unless the legislative body finds that a change in conditions has created a serious threat to the public health and safety. A city must issue all ministerial permits necessary to complete the project without delay, assuming all zoning and building code regulations are met.¹⁷³

¹⁷⁰ 1998 WL 184900 (Wn. App. Div. 1)

¹⁷¹ *Hale v. Island County*, 88 Wn. App. 764, 946 P.2d 1192 (1997).

¹⁷² 133 Wn.2d 269, 943 P.2d 1378 (1997); See also *Schneider v. City of Kent*, 87 Wn. App. 774, 942 P.2d 1096 (1997), rev. denied, 134 Wn.2d 1021 (1998) (upon submittal of preliminary plat application, developer is entitled to have both that application and its companion PUD application considered under ordinances then in effect).

¹⁷³ *Mission Springs v. City of Spokane*, 134 Wn.2d 947, 954 P.2d 250 (1998).

D. Development Fees/Impact Fees

1. 1990 Impact Fee Legislation¹⁷⁴

The Legislature created an exception to the general ban on impact fees in 1990, by specifically authorizing impact fees that make growth pay for growth. The statutory prerequisites are that impact fees:

- Shall only be imposed for system improvements that are reasonably related to the new development;
- Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and
- Shall be used for system improvements that will reasonably benefit the new development.¹⁷⁵

The Legislature also limited impact fees to those expended for public facilities [public streets and roads; public parks, open space, and recreation facilities; schools; and fire protection facilities not in a fire district] which are addressed by a capital facilities plan element of a comprehensive land use plan...[The] continued authorization to collect and expend impact fees shall be contingent on... adopting or revising a comprehensive plan...and on the capital facilities plan...¹⁷⁶

The legislation identifies key prerequisites for a valid impact fee, whether interim or permanent. To determine the “proportionate” share to be charged as an impact fee, the local ordinance shall include:

- The costs of public facilities necessitated by new development;
- An adjustment...for past or future payments made...by new development...;
- The availability of other means of funding public facility improvements;
- The cost of existing public facilities improvements; and
- The methods by which public facilities improvements were financed.¹⁷⁷

The definition of impact fee is very specific:

“Impact fee” means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the

¹⁷⁴ RCW 82.02.050-100.

¹⁷⁵ RCW 82.02.050(3)(a)-(c).

¹⁷⁶ RCW 82.02.050(4).

¹⁷⁷ RCW 82.02.060(1).

new development. “Impact fee” does not include a reasonable permit or application fee.¹⁷⁸

The statutory criteria follow well-established prerequisites for a valid impact fee, recognized by courts across the country. In form and scope the enabling legislation is traditional, following well defined guidelines.

In a recent development fee case the court of appeals held that Bothell’s development fee, payable in lieu of dedication of park land, was invalid.¹⁷⁹ Bothell attempted to justify the fee as five percent of land value in an average development, claiming the fee was lower than if it had been calculated using actual land values for the development. The court held that the fee was invalid because it was not calculated on a site specific basis.

2. Land Use Regulation - The Theoretical Base For Impact Fees

By using the term “impact fee,” and specifying the traditional impact fee analysis, the Legislature acted to preclude charging developers a special tax for new facilities. Instead, they looked to municipal regulation as the basis for financial exactions that provide a proper share of needed facilities. This focus on regulatory power limits the scope and range of potential impact fees to those items which are the proper subject of municipal development regulations.

E. Development Limitations - The Final Word

In viewing a prospective development, limitations on a municipality to impose off-site improvements or development fees is a mixed blessing. In the final analysis, the community’s only alternative may be to say “no!” For example, in one case the county commissioners made the following findings in denying a project, all of which (and probably any of which) would have been adequate to justify denial:

- Adverse impact on local traffic patterns;
- Incompatibility with current land use in nearby areas;
- No specific commitment for handling drainage;
- Proximity to Bayview Airport, creating potential environmental problems;
- Removal of secondary agricultural land;
- Failure to establish need for additional new housing on the scale proposed;
- No specific certain commitment for sewer lines beyond a 2-year period;
- Incompatibility with planned growth management in an agricultural area; and
- Inadequacy of county revenues to provide urban services for a community of the proposed size.¹⁸⁰

¹⁷⁸ RCW 82.02.090(3).

¹⁷⁹ Vintage Construction Co., Inc. v. City of Bothell, 83 Wn. App. 605, 922 P.2d 828 (1996), aff’d, 135 Wn.2d 833, 959 P.2d 1090 (1998).

¹⁸⁰ Buchsieb/Danard, at 579 (enumeration deleted) (emphasis added).

Written findings of conformance and concurrency is an inherent requirement of growth management legislation. The solution to many real-world development problems is to identify reasonable levels of service and public expectations, and to create public/private partnerships to solve them. Such partnerships permit a developer to be charged for costs of impacts directly attributable to the project; and to contribute a pro rata share of the costs of solving regional problems. This will help the community fund and provide necessary facilities to meet regional needs.

F. Financing Public Improvements

Municipalities have encountered funding problems in the last several years, hindering their ability to finance public facility improvements. This has encouraged them to consider joint venture, off-site improvements with developers through a variety of devices.

1. Local Improvement Districts

Local Improvement Districts (LIDs) can be formed to share the cost of all or a portion of public improvements to properties that will benefit. An LID can include property inside or outside urban boundaries, and may be formed to install almost any public improvement, including streets, sewer, water, lighting, parks and playgrounds, and underground utility lines.¹⁸¹

Two mechanisms exist for creating LIDs: (1) municipal resolution, or (2) petition for improvement, followed by adopting an ordinance approved by a majority of city council members.¹⁸²

An LID may not be formed if the cost of all local improvement assessments exceeds the value of the property benefited within the entire district. An LID formed by resolution may not be formed if, within 30 days of adopting the LID ordinance, a notice of protest is filed by “...the owners of the property within the proposed local improvement district... subject to sixty percent or more of the total cost of the improvement ...”¹⁸³

The key limitation on LIDs is that the cost of any improvements must be charged to the entire project area.¹⁸⁴ Cities will often contribute a “public share” to local improvements when oversizing (e.g., adding a third lane to an arterial) meets regional through-traffic needs, or the general upgrade of a two-lane road meets local needs.

¹⁸¹ RCW 35.43.040-042.

¹⁸² RCW 35.43.070.

¹⁸³ RCW 35.43.180. *Sterling Realty v. Bellevue*, 68 Wn.2d 760, 415 P.2d 627 (1966) (the city could not charge the cost of acquiring a right-of-way along one side of a street to only a portion of the district even though the needed right-of-way on the other side of the street had already been obtained).

¹⁸⁴ *Sterling Realty v. Bellevue*, 68 Wn.2d 760, 415 P.2d 627 (1966) (the city could not charge the cost of acquiring a right-of-way along one side of a street to only a portion of the district even though the needed right-of-way on the other side of the street had already been obtained).

2. Road Improvement Districts

A little-used provision of Washington law is the authority for counties to create road improvement districts. A road improvement district can be used to acquire rights-of-way or improve county roads, and to levy the cost against benefited owners.¹⁸⁵

Districts are formed by petition (supported by owners of a majority of the lineal footage) or by resolution and election (a majority of the votes cast must support the district).¹⁸⁶

Until 1965, a major disadvantage of road improvement districts was the requirement that “the average number of units per one thousand feet of property fronting upon the portion of the road to be improved shall be at least six...”¹⁸⁷ This requirement has been eliminated.

3. Latecomer Agreements - Water or Sewer Facilities

A latecomer agreement can be used to reimburse developers for the cost of installing water and/or sewer facilities. These agreements allow a municipality to collect reimbursement for facilities over a 15-year period. **The statute allowing such facilities reads in pertinent part:**

The governing body of any city, town, county, sewer district, water district, or drainage district, hereinafter referred to as a “municipality” may contract with owners of real estate for the construction of storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances, hereinafter called “water or sewer facilities,” within their boundaries or (except for counties) within ten miles from their corporate limits connecting with the public water or sewerage system to serve the area in which the real estate of such owners is located, and to provide for a period of not to exceed fifteen years for the reimbursement of such owners and their assigns by any owner of real estate who did not contribute to the original cost of such water or sewer facilities and who subsequently tap onto or use the same of a fair pro rata share of the cost of the construction of said water or sewer facilities, including not only those directly connected thereto...¹⁸⁸

One important limitation is that the agreement must be recorded.

The provisions of such contract shall not be effective as to any owner of real estate not a party thereto unless such contract has been recorded in the office of the county auditor of the county in which the real estate of such owner is located prior to the time such owner taps into or connects to said water or sewer facilities.¹⁸⁹

¹⁸⁵ Chapter 36.88 RCW.

¹⁸⁶ RCW 36.88.020

¹⁸⁷ Former RCW 36.88.010 (amended by Washington Laws, 1965, Chapter 60, §1).

¹⁸⁸ RCW 35.91.020

¹⁸⁹ RCW 35.91.020

The courts have specifically upheld such agreements as a reasonable means of acquiring water and sewer facilities, even though significant private benefit is also provided.¹⁹⁰

4. Contracts for Street Projects

A separate statutory procedure applies to contracts between cities, towns and counties for construction of streets by property owners.¹⁹¹ Contracting property owners are to be reimbursed by other property owners who benefit from the improvements. Reimbursement is for a pro rata share of construction costs and contract administration, based upon benefit received.¹⁹² To uphold the contract, an ordinance must be enacted requiring the street improvements as a condition of development. The Court of Appeals invalidated one such contract, adopted by the City of Puyallup, because the improvements were installed before the ordinance was adopted. Strict compliance with the prerequisite to the contract is absolutely necessary.¹⁹³

5. Special Sewer, Water, or Public Benefit Districts

Most public improvements and area needs can be authorized and funded under recent legislation authorizing bond issues or special assessment districts.¹⁹⁴

Legislation for public benefit districts is broad, granting specific powers to municipalities to fund “high- ways,” “open space, park, recreation and community facilities,” “public health and safety facilities,” or “storm water control facilities.”¹⁹⁵

The legislation for sewer, water, and drainage systems is more focused and detailed, emphasizing the creation of storm water and sewage disposal districts. The legislation requires adopting a sewer and water comprehensive plan, and creating a special review committee representing cities, counties, and the public at large.¹⁹⁶

Once founded, however, counties have broad authority to create storm water control or sewage districts without the archaic procedures of the old diking and drainage or other special purpose districts.

6. Economic Development Corporations

Ports or municipalities may create economic development corporations (“public corporations”) to facilitate local economic development and employment opportunities.¹⁹⁷ Such corporations can issue nonrecourse industrial development revenue bonds for projects that will promote higher employment, encourage new jobs, protect existing employment, increase capital investment in industrial endeavors, promote the production and conservation of energy, and protect the quality of natural resources and

¹⁹⁰ Steilacoom v. Thompson, 69 Wn.2d 705, 419 P.2d 989 (1966).

¹⁹¹ Chapter 35.72 RCW.

¹⁹² RCW 35.72.020.

¹⁹³ Woodcreek Partnerships v. Puyallup, 69 Wn. App. 1, 847 P.2d 501 (1993).

¹⁹⁴ Chapter 36.89 RCW and Chapter 36.94 RCW.

¹⁹⁵ RCW 36.89.010.

¹⁹⁶ RCW 36.94.030-.050.

¹⁹⁷ Chartered under Washington Constitution Article XXXII, Section (1) and Chapter 39.84 RCW (the Local Economic Development Act of 1981).

the environment.¹⁹⁸

The public corporation may also consider issuing industrial development bonds for manufacturing, processing, production, assembly, warehousing, transportation, pollution control, solid waste disposal, and energy facilities.¹⁹⁹

If a public corporation wants to issue industrial development bonds for a proposed project, it will generally adopt guidelines to determine whether the project is eligible (and otherwise appropriate) for tax-exempt financing under federal tax laws and regulations.

Typically, a project must involve one or more of the following activities or facilities:

Guidelines For Tax-exempt Financing

- Manufacturing, processing, production, assembly or warehousing of materials, manufactured or agricultural products, fisheries, or other natural resources and subordinate and ancillary utilities and administrative facilities;
- Warehousing and transportation facilities for storage and transport of products and materials and subordinate and ancillary utilities and administrative facilities;
- Transportation facilities such as airports, docks, wharves, mass commuting facilities, public parking facilities, public terminals, and related storage or training facilities;
- Pollution control facilities;
- Solid waste disposal facilities; and
- Energy facilities such as facilities for the local furnishing of electric energy or gas or qualified hydroelectric generating facilities.²⁰⁰

The project must increase or be essential to maintaining employment opportunities and economic development in the county. The project must also be located wholly within the district boundaries of a port or municipality, which is congruent with the county - except that energy facilities which provide energy for port district residents, or solid waste disposal facilities which dispose of the district's solid waste, may be located outside the boundaries of the district.²⁰¹

The project must be consistent with federal tax laws and regulations, permitting issuance of tax-exempt bonds for industrial development facilities.

The project should be consistent with applicable land use planning requirements.

The applicant must demonstrate to the public corporation that the project is financially feasible.

¹⁹⁸ RCW 43.163.090 & .130.

¹⁹⁹ Chapter 39.84 RCW & RCW 43.160.050(11).

²⁰⁰ RCW 43.160.060(2) & .070(1)(b).

²⁰¹ RCW 39.84.080(3).

Chapter 6.: Planning and Environmental Legislation

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Chapter 6.: Planning and Environmental Legislation

A. State Environmental Policy Act

1. Background

The State Environmental Policy Act of 1971 (SEPA) is Washington's fundamental environmental law. SEPA mandates environmental analyses of many actions and policies by all agencies of state and local government. SEPA was designed to make environmental consciousness a major component in all government decisions.

The State Environmental Policy Act of 1971 (SEPA) provided Washington state's basic environmental charter. Prior to its adoption, there were concerns that government decisions did not reflect environmental considerations. State and local agencies had responded that there was no authority for them to address environmental issues. SEPA, modeled after the National Environmental Policy Act (1969), was enacted to fill this need. It gives agencies the tools to both consider and mitigate for the environmental impacts of proposals. Provisions were also included to ensure the involvement of the public, tribes, and interested agencies in decisions with environmental impacts.

SEPA applies to all state and local government decisions, unless they are categorically exempt. This includes land use decisions made in the comprehensive plan, development regulations, and during project review.

The Land Use Regulatory Reform Act of 1995 required local governments to better integrate environmental analysis into their land use decision-making process. It recognized that the GMA is a fundamental building block for regulatory reform. By combining good environmental analysis with land use decisions in the comprehensive plan and regulations, projects consistent with those decisions should be more easily processed and approved. (See Chapter 3, Section F, for a discussion of integrated project review.)

Principles Of SEPA/GMA Integration

1. GMA is the building block for regulatory reform.
2. Use the same processes and often the same documents to make land use decisions and analyze the environmental impacts of those decisions.
3. Do not revisit or revise land use decisions made in the comprehensive plan and development regulations at the project level.
4. Determine consistency between a proposed project and applicable regulations or plan through a project review process that integrates land use and environmental impact analysis, so that governmental and public review under development regulations and the environmental process runs concurrently and not separately.

5. Do not duplicate requirements for environmental analysis and studies, and for mitigation of environmental impacts of a proposed project, that exist in different land use and environmental laws. Supplemental authority under SEPA should only be used to the extent existing requirements do not adequately address specific probable adverse environmental impacts.
6. Identify early in the project review process the existing environmental documents that evaluate the impacts of the proposed project. The primary role of project environmental review is to focus on gaps and overlaps that may exist in applicable laws and requirements related to a proposed action.

While detailing all SEPA rules is beyond the scope of this chapter, the following guidelines should aid in understanding SEPA. (For a more detailed review, see Chapter 43.21C RCW, Chapter 197-11 WAC, and the SEPA Handbook)

2. The Environmental Review Process

The environmental review process involves a number of steps that are briefly described below.

a.) Provide a pre-application conference for project proposals (optional)

Although not included in the SEPA rules for project review, the Department of Ecology recommends that agencies offer a process for the applicant to discuss a project proposal with staff prior to submitting a permit application or environmental checklist. The applicant and agency can discuss existing regulations that would affect the proposal, the steps and possible timeline for project review, and other information that may help the applicant submit a complete application.

b.) Determine whether SEPA review is required

Once a proposal is made, the agency must determine whether environmental review is required for the proposal by: (1) defining the entire proposal;¹ (2) identifying any agency actions (plans, permits, licenses, etc.);² and (3) deciding if the proposal is categorically exempt. Certain types of proposals have been found to be categorically exempt from environmental review in the statute and SEPA Rules.³ If the proposal does not involve an agency action, or there is an action but the proposal is categorically exempt, environmental review is not required.

c.) Determine lead agency

If environmental review is required, the “lead agency” is identified.⁴ This is the agency responsible for the environmental analysis and procedural steps under SEPA. In land use decisions, both at the comprehensive plan and project level, the lead agency is usually the county or city with jurisdiction. However, the county or city will not be the lead agency when a local permit is not required, another agency is the proponent, or another agency is designated under the SEPA rules as lead for a specific

¹ WAC 197-11-060(3).

² WAC 197-11-060(3)(b).

³ RCW 43.21C.035, 036, 037, 038, 0381, 0382, 039; WAC 197-11-305 and Part Nine.

⁴ WAC 197-11-050.

type of proposal.⁵

d.) Evaluate the proposal

An environmental checklist must be filled out detailing the impacts of the proposal to the various elements of the built and natural environment.⁶ In the case of a permit for a project, the checklist would be submitted with the permit application. The lead agency must review the environmental checklist and other information available on the proposal and evaluate the proposal's likely environmental impacts. The lead agency and applicant may work together to reduce the probable impacts by either revising the proposal or identifying mitigation measures that will be included as conditions.

e.) Assess significance and issue a threshold determination

After evaluating the proposal and identifying mitigation measures, the lead agency must determine whether a proposal would still have any likely significant adverse environmental impacts. The lead agency issues a threshold determination.⁷ This is either a determination of nonsignificance (DNS), which may include mitigation conditions, or a determination of significance (DS) and scoping if the proposal is determined to have a likely significant impact.

If the environmental review officer finds more than a moderate risk of significant environmental impact by the proposal, a DS will be issued.⁸ The issuance of a DS requires the preparation of an environmental impact statement (EIS). A scoping document is issued with the DS to determine the scope of the environmental impacts that will be analyzed in the EIS.

Until recently, direct judicial review of an agency's threshold determination was unavailable until final action was taken on the proposal. There is an express legislative prohibition against orphan SEPA appeals that has been upheld by the courts.⁹ In other words, SEPA does not create a cause of action unrelated to a specific governmental action. The intent was to avoid piecemeal adjudication of SEPA compliance.¹⁰ In 1998, the Washington Supreme Court granted a developer's request for a writ of certiorari based on a decision by Snohomish County requiring an EIS for a residential development.¹¹ The court reasoned that application of the SEPA rules,¹² which call for interlocutory review coupled only with review of a final action, might "improperly increase environmental analysis burdens and project delay."¹³

⁵ WAC 197-11-938.

⁶ WAC 197-11-315.

⁷ WAC 197-11-330.

⁸ WAC 197-11-360.

⁹ RCW 43.21C.075(3)(a); 43.21C.075(6)(c); *Saldin Sec., Inc. v. Snohomish County*, 80 Wn. App. 522, 910 P.2d 513, review granted, 129 Wn.2d 1022 (1996).

¹⁰ *Foster v. King County*, 83 Wn. App. 339, 343- 346, 921 P.2d 552 (1996) (statutory writ of review under ch. 7.16 RCW is not available to obtain judicial review of threshold determinations). See also R. Settle, *The Washington State Environmental Policy Act: A Legal and Policy Analysis*, § 20, at 244 (1995).

¹¹ *Saldin Securities, Inc., v. Snohomish County*, 134 Wn.2d 288, 949 P.2d 370 (1998) (a constitutional writ is available if the project proponent alleges facts that, if verified, indicate the threshold determination was il legal or arbitrary and capricious).

¹² RCW 43.21C.075(6)(c).

¹³ *Saldin*, 134 Wn.2d at 292. 14WAC 197-11-405(1)-(3).

f) The EIS

The EIS will analyze the probable environmental impacts of the proposal and reasonable alternatives to the proposal, including possible mitigation measures to reduce the environmental impacts of the proposal. A reasonable alternative is a feasible course of action that meets the proposal's objectives but at a lower environmental cost.

An EIS is processed in two phases.¹⁴ First, a draft EIS is prepared by the applicant or the reviewing government, as provided in the ordinance. The EIS describes the project, a no-action alternative, and reasonable alternatives¹⁵ that would permit the applicant to achieve the desired objective in ways that may have different impacts. Once the draft is complete, it is circulated to agencies, tribes, and the community at large for a 30-day comment period. A hearing on the issue may be held, but is not mandatory.

Once comments on the draft EIS are received, corrections made, and questions answered, a "final EIS" is published.¹⁶ The final EIS must be published for seven days before an agency may take final action on a project or proposal.¹⁷

The final EIS may recommend conditions, based on written SEPA policies, which can be used to mitigate environmental impacts.¹⁸ Agencies have the authority under SEPA to condition or deny a land use action based on environmental impacts even where the proposal complies with local zoning and building codes.¹⁹ The courts have recently confirmed the authority of agencies to impose mitigation conditions as part of a mitigated determination of nonsignificance (MDNS) to bring a project below the threshold for preparation of an EIS.²⁰ With an MDNS, promulgation of an EIS and intense public participation are rendered unnecessary because the mitigated project will no longer cause significant environmental impacts.

A supplemental EIS (SEIS) shall be prepared if there are substantial changes to a proposal, or if there is significant new information relating to adverse environmental impacts of the project.²¹

To be adequate, an EIS must present decision makers with a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" of the agency's decision. That is, an EIS must provide sufficient information to allow officials to make a reasoned choice among alternatives.²²

¹⁴ WAC 197-11-405(1)-(3).

¹⁵ WAC 197-11-440(5).

¹⁶ WAC 197-11-455.

¹⁷ WAC 197-11-460.

¹⁸ WAC 197-11-660(1).

¹⁹ *Donwood, Inc. v. Spokane County* 1998 WL 209416 (Wn. App. Div. 3).

²⁰ *Anderson v. Pierce County*, 86 Wn. App. 290, 302-305, 936 P.2d 432 (1997).

²¹ WAC 197-11-405(4).

²² The courts have reviewed the adequacy of EISs in three recent decisions, *CTO v. Department Of Transp.*, 90 Wn. App. 225, 951 P.2d 812 (1998); *King County v. Friends of the Law*, 90 Wn. App. 257, 951 P.2d 1142 (1998); *Kiewit Constr. Group v. Clark County*, 83 Wn. App. 133, 920 P.2d 1207 (1996).

g.) Use of SEPA in decision making

The agency decision-maker must consider the environmental information in deciding whether to approve a proposal. Decision-makers may use their authority under SEPA to condition or deny the proposal. However, they must have adopted substantive policies in their SEPA rule or ordinance to provide this authority and the decision must be based upon information in a SEPA document.²³

If a project is to be denied on environmental grounds, the grounds must be identified in environmental documents, and conditions identified in written SEPA policies. A project may be denied if reasonable alternatives do not exist to mitigate a substantial impact.²⁴

All decision-makers making a final recommendation or decision on a project must review the environmental documents for the project.

h.) Appeals under SEPA

Appeals under SEPA may be procedural or substantive.²⁵ Procedural appeals include the appeal of a threshold determination or the adequacy of an EIS. A substantive appeal is a challenge to an agency's use of or failure to use its SEPA substantive authority. A county or city may or may not choose to provide administrative appeals under SEPA. If appeals of project decisions under SEPA are provided, they must be combined with the permit decision appeal in not more than one open record hearing and one closed record appeal. If no administrative appeal is provided for projects, then appeals go directly to superior court. (See project review discussion in Chapter 3.)

The growth management hearings boards have jurisdiction over SEPA appeals of growth management planning decisions such as comprehensive plan or development regulation adoptions and amendments.²⁶

PRACTICE TIP: It is a good practice to make a specific finding of adequacy. Inherent in this review is the right to send the SEPA documents back to the environmental review officer if an environmental issue is not adequately addressed in the decision-maker's mind.

The SEPA appeals process is confusing, even to those who practice daily in the field. SEPA need not be intimidating if the following guidelines are kept in mind:

SEPA GUIDELINES

All land use decisions by the community should be accompanied by SEPA documents (DNS, DS, or EIS), unless a specific exemption is spelled out in writing.

All SEPA-based mitigation must be based on written adopted policies, with written findings as to how

²³ WAC 197-11-660

²⁴ WAC 197-11-660.

²⁵ RCW 43.21C.075 and WAC 197-11-680

²⁶ RCW 36.70A.280

the project creates the need for the condition (the nexus); and how the condition properly mitigates the impact (reasonableness).

Environmental policies should be specific and consistent with comprehensive plan policies. (Example: Since one effect of a desired increase in density is increased congestion in urban areas, there should not be a SEPA policy requiring mitigation or denial of a project that creates congestion. Defining acceptable levels of service for all public facilities and services in SEPA policies will do much to achieve this result.)

B. Water Quality Protection

1. Key Issues in Water Quality Protection

We live in an interdependent ecosystem in which water quality plays a vital role. Cutting across political boundaries, long term water quality protection depends on cooperation among local communities and jurisdictions. Effective water quality protection begins with watershed management.²⁷ Reducing the volume of toxic pollutants that enters our watersheds - and responsible land uses - are key to improving water quality throughout our region. Many cities and counties in Washington state are working together to develop cooperative or comprehensive water quality programs. Structuring a successful water quality program at the local level is essential.

a.) Water Quality Protection Must Begin at the Local Level

Just as water systems cross and extend beyond political boundaries, successful water quality protection must be cooperative, consistent, and coordinated at all levels. Pollution from one city or county, for example, will degrade water quality in neighboring jurisdictions. The problem is shared by all: “We are all living downstream.”

b.) Responsible Water Management, Not “Quick Fix” Solutions

Recognizing the interdependency of our actions and their cumulative effects on groundwater, wildlife habitats, fisheries, and other resources is the first step toward responsible water quality protection. Short term, “quick fix” solutions that merely shunt pollutants from one jurisdiction to another is not the answer. Effective water quality protection depends on comprehensive action plans, in which local jurisdictions work together and pool resources to reduce or eliminate adverse impacts on water quality.

c.) Key Concepts in Water Quality Protection

- 1) Systems Approach: Considers relationships and dependencies among components, as in food chains and ecosystems.

²⁷ ESHB 2514, effective June 11, 1998, established a watershed management process to develop in-stream flow levels, water quality and habitat plans. A primary purpose of watershed planning under this bill is to address the decline of salmon stocks listed under the Federal Endangered Species Act.

- 2) Cumulative Effects: A single activity may not cause a problem, but adding more activities to an area over time may produce negative effects.
- 3) Source: Addressing negative impacts at their source, and preventing them before they occur (i.e., in place and time) is much less expensive than rehabilitation or dealing with effects on water quality “further down the pipe.”
- 4) Long Term Planning: Water quality protection requires long term planning to cope with 10, 20, and 50-year impacts. Local governments need to consider the legacy they are leaving for future generations
- 5) Cooperation and Coordination: Local decision-makers, staff of local government departments and citizens need to address water quality issues cooperatively.²⁸ Neighboring cities and counties, local jurisdictions, regional, tribal, state and federal agency staff all have mutually dependent concerns.

2. A Brief Overview of Water Quality Legislation

Key pieces of federal and state legislation related to water quality are listed below. Rules and regulations adopted by state agencies generate advisory standards and minimum guidelines for local jurisdictions. These are incorporated into the Washington Administrative Code.

Water Quality Legislation

General Water Quality

National Environmental Policy Act (NEPA)

State Environmental Policy Act (SEPA)

Federal Clean Water Act (Water Pollution Control Act), 1972

Amended to Water Quality Act of 1987:

Section 208 Plans

Section 301, National Pollution Discharge Elimination System Permits (NPDES)

Section 303, Stream Classification

Section 320, Estuary Management

Section 401 Certification

Section 404 Permits

Section 505, Legal Actions

Federal River and Harbor Act (Section 10 Permit)

Washington Centennial Clean Water Bill

Puget Sound Water Quality Act

Washington Water Pollution Control Act

Washington Water Resources Act Washington Forest Practices Act

Water Quality Standards - Chapter 173.201

WAC Revised Standards - Chapter 173.203

²⁸ E2SHB 2339, effective, June 11, 1998, establishes a coordinated wetland mitigation bank program at the State level to increase the success of wetland mitigation projects. Local governments and citizen groups are working together to identify wetland mitigation sites that provide a net improvement in wetland functions and values over smaller, site specific mitigation requirements.

Shorelines and Coastal Zones

Federal Coastal Zone Management Act (CZMA) of 1972

Washington Shoreline Management Act (SMA)

Habitat Protection

Federal Endangered Species Act²⁹

Federal Fish and Wildlife Coordination Act

Washington State Hydraulic Code³⁰

Groundwater

Federal Safe Drinking Water Act

Washington Groundwater Protection Act

Groundwater Management Guidelines - Chapter 173-100 WAC

Groundwater Quality Standards - Chapter 173-200 WAC

Nonpoint Pollution

Washington State Nonpoint Rule - Chapter 400.12 WAC
Septic Systems - Chapter 248.96 WAC

3. Water Quality Protection Programs

1. Puget Sound Partnership (PSP) works to align work of multiple partners to protect Puget Sound.
2. Ongoing programs initiated through the federal Clean Water Act, such as Section 208 plans and National Pollution Discharge Elimination System (NPDES) permits, administered by the Washington State Department of Ecology³¹; and Section 404 permits administered by the U.S. Army Corps of Engineers.
3. Specific Storm water Management and Wetlands Protection programs, which have evolved from implementing the PSAT Management Plan.
4. Programs stemming from specific legislation, such as the Washington Shoreline Management Act, which called for Shoreline Master Plans; the State Hydraulic Code, which requires a Hydraulic Project Approval permit administered by the Washington Department of Wildlife and Department of Fisheries; and the Washington Groundwater Protection Acts, which provide guidelines for developing Groundwater Management Areas.
5. Comprehensive plan elements required by the Washington State Growth Management

²⁹ ESHB 2496, effective June 11, 1998, set out a coordinated framework for responding to the salmon crisis. The legislation includes the creation of a Salmon Recovery Office in the Governor's Office to provide overall coordination of salmon recovery efforts.

³⁰ S2HB 2879, effective April 1, 1998, facilitates the review and approval of fish habitat enhancement projects. The bill also addresses fish passage barriers and establishes a system to inventory and prioritize barriers on a state wide basis.

³¹ SSB 6161 modified Ecology's dairy waste management program by requiring that every dairy be inspected by Ecology every two years. Ecology may conduct additional inspections as necessary to ensure compliance with state and federal water quality requirements.

Legislation, specifically, provisions:

- To cleanse water before it enters Puget Sound;
- To protect of critical aquifer recharge areas; and
- To require protection of potable water supplies.

Chapter 7.

Shoreline Management Act (SMA)

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Chapter 7.

Shoreline Management Act (SMA)

A. Overview

Public concern in the early 1970's focused on the future of Washington's shorelines in the face of increasing development. The Legislature responded with passage of the Shoreline Management Act (SMA)¹ in 1971, finding "a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the State's shorelines." Intended to protect and restore the valuable natural resources of the shoreline, the SMA fosters all "reasonable and appropriate uses."²

The SMA applies to over 230 cities and counties having "**shorelines of the state**"³ within their jurisdictional boundaries. "Shorelines of the state" comprise "shorelines" and "shorelines of statewide significance."⁴ These include all waters of the state (including marine waters) and their underlying lands, except streams with a mean annual flow of less than 20 cubic feet per second and lakes less than 20 acres in area,⁵ together with their "shorelands"⁶ which are those areas landward for 200 feet from the ordinary high water mark (OHWM), floodways, and contiguous floodplains within 200 feet, and all associated wetlands.

"**Shorelines of statewide significance**" (SSWS) are specifically designated shorelines⁷ that are major resources benefiting all people in the state. In their management of SSWS, local governments and the state are required to provide for "optimum implementation"⁸ of the policies of the SMA, giving preference (in order) to shoreline uses which recognize and protect statewide interests over local, preserve the natural character of the shoreline, result in long term over short term benefit, protect the resources and ecology of the shoreline, and increase public access and recreational opportunities for the public in the shoreline.⁹

The term "wetlands," as used in the SMA, has a specific meaning. It includes:

areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

¹ Chapter 90.58 RCW.

² Nisqually Delta Ass'n v. DuPont, 103 Wn.2d 720, 726, 696 P.2d 1222 (1985) ("The SMA does not prohibit development of the State's shorelines, but calls instead for "coordinated planning ... recognizing and protecting private property rights consistent with the public interest.").

³ See RCW 90.58.030(2).

⁴ RCW 90.58.030(2)(c).

⁵ RCW 90.58.030(2)(d).

⁶ RCW 90.58.030(2)(f).

⁷ RCW 90.58.030(2)(e).

⁸ RCW 90.58.090(4).

⁹ A county ordinance banning motorized personal watercraft use on all marine waters and one lake in the County is consistent with SMA because (1) SMA allows "limited reduction of rights;" and, (2) the ordinance favors "the resources and ecology of the shoreline" over recreational interests as required by RCW 90.58.020. Weden v. San Juan County, 135 Wn.2d 678, 696-97- 958 P.2d 273 (1998).

Wetlands generally include swamps, marshes, bogs, and similar areas...Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.¹⁰

The language “swamps, marshes, bogs, and similar areas” refers to true biological wetlands, considered a subcategory of the much broader SMA term “wetlands.”

To determine the extent of an upland area covered by the SMA (shoreline jurisdiction), the OHWM often needs to be located. The Department of Ecology (DOE) has developed guidelines for making OHWM determinations in different situations, and offers field assistance in identifying the mark. Specific criteria are to be used in determining shoreline jurisdiction,¹¹ and will prevail over any other lists, maps, or inventories.

The SMA has three basic policy areas: 1) shoreline preferred uses, 2) environmental protection, and 3) public trust. The SMA places emphasis on providing a shoreline location for a defined set of shoreline preferred (i.e. water dependent) uses; on accommodating reasonable and appropriate uses; protecting shoreline ecology and natural resources; and, preserving the public’s right of access to and use of the shorelines.¹²

A fourth policy element of the SMA, though not explicitly stated, is public involvement. The SMA specifically requires public notice and opportunities to comment on state and local actions under the Act.¹³

The SMA incorporates a planning and regulatory permit program to carry out its policies.¹⁴ This program is initiated locally under state guidance.

In the first 25 years of its existence the SMA stood largely independent of other local planning and regulatory systems. In 1995, the passage of ESHB 1724 changed that, initiating the merger of shorelands and growth management planning and regulatory functions. ESHB 1724 for example, added a new fourteenth goal to the GMA.¹⁵ The goals and policies of the SMA are now added to the existing 13 goals of the GMA.

The integration of the SMA and GMA involves melding of the GMA’s emphasis on planning procedures with the SMA’s specific policy mandates. While the GMA-based comprehensive plan is founded on a local communities’ values and objectives, the SMA requires that local governments in managing shorelines address specific statewide goals, balancing statewide and local interests.

¹⁰ RCW 90.58.030(2)(h).

¹¹ RCW 90.58.030 and Chapter 173-22 WAC (wetland designations).

¹² RCW 90.58.020.

¹³ See, e.g., RCW 90.58.120; RCW 90.58.130; RCW 90.58.140.

¹⁴ RCW 90.58.140.

¹⁵ RCW 36.70A.480(1).

In 2003 the Department of Ecology adopted a new rule that provides a comprehensive update to state guidelines on how local governments manage shorelines.¹⁶ One of the chief goals of the new rule is to bring state guidelines up-to-date with current science. The proposed rule is also intended to make it easier for local governments to integrate shoreline plans with local Growth Management plans and regulations. Finally, the rule seeks to find a workable balance of responsibility between state and local governments by setting performance criteria that local governments should achieve and then allowing local governments to decide how to meet those goals.

B. Shoreline Master Programs

As part of the state/local partnership which is the basis of the SMA, local governments must prepare a detailed shoreline inventory¹⁷ and a shoreline master program¹⁸ (SMP) for managing shoreline resources and development. Local SMPs must be prepared consistent with the policy of the SMA (RCW 90.58.020) and the applicable guidelines.¹⁹ Based on this inventory, a system of categorizing various shoreline segments is created by applying shoreline environment designations. Goals, policy statements, and regulations are developed to establish appropriate uses and activities within each shoreline environment designation.

For local governments fully planning under the GMA, **SMP goals and policies are now considered an element of the local comprehensive plan. SMP use regulations are now considered a part of the local development regulations** required by growth management.²⁰

The GMA requires that all local comprehensive plan policies be “internally consistent”,²¹ which now include those policies contained in the local SMP. This also means that shoreline environment designations described and mapped in the local master program must be compatible with local comprehensive plan land use designations. Comprehensive plan land use designations should be reviewed to ensure they do not preclude reasonable and preferred (water-dependent) shoreline development and that allowed uses and densities are mutually compatible.

Local governments are responsible for maintaining and implementing local SMPs. The procedure for adopting or amending an SMP involves both a local and state review and approval process. Both processes emphasize public participation. Ecology is the lead agency in coordinating such actions, with 60-day notification required to Department of Commerce and other state agencies. A master program or amendment takes effect only when and in such form as it is ultimately approved by Ecology.²²

¹⁶ WAC 173-26, Part III.

¹⁷ Most local governments conducted inventories of their shorelines in the mid-1970's, when they adopted their first master programs. Most of those inventories have never been updated.

¹⁸ SMA provides that where appropriate, a master plan shall include an historic or cultural element for the protection and restoration of sites and areas having historic or cultural value. RCW 90.58.100(2)(g); Swinomish Indian Tribal Community v. Island County, 87 Wn.2d 552, 563 fn5, 942 P.2d 1034 (1997).

¹⁹ RCW 90.58.080.

²⁰ RCW 36.70A.480(1).

²¹ RCW 36.70A.070.

²² RCW 90.58.090(6)

A new option available to jurisdictions fully planning under the GMA involves “pre-designating” shorelines within adopted urban growth areas but outside existing city boundaries. Environment pre-designation is allowed after the local government secures public input and completes the SMP amendment process, obtaining Ecology approval. Such pre-designations then take effect concurrent with annexation of the subject area.²³

Recent changes to the SMA now allow any interested citizen to appeal a locally prepared SMP either on the basis of inconsistency with SMA policy or the local comprehensive plan. For jurisdictions fully planning under the GMA, master program appeals will be decided by the growth management hearings board with jurisdiction, no longer the shorelines hearings board. For jurisdictions not fully planning under the GMA, master programs will continue to be appealed to the state shorelines hearings board.

C. Permits and Decisions

All “developments” and uses within the shorelines of the state must be consistent with SMA policies and local SMP requirements.²⁴ However, only “substantial developments” require a substantial development permit.²⁵ Although a proposed development may be exempt from substantial development permit requirements, it may still require a variance or conditional use permit and must comply with the local SMP.²⁶

1. Substantial Development Permits

All developments with a fair market value in excess of \$5,000²⁷ (unless specifically exempted), or any development that materially interferes with normal public use of the water or shorelines of the state, requires a substantial development permit.²⁸

2. Exemptions

Under the SMA, certain types of developments are exempt from substantial development permit requirements.²⁹ The exemption, however, is only from the permit requirement; an exempt development must still comply with all development standards, i.e., setbacks and other regulations. Many jurisdictions require a written exemption prior to construction. The local government can then assess whether the project proposal is consistent with SMA policy and the local SMP.

3. Conditional Use Permits

The SMA allows local governments to authorize uses and developments that may be permitted (under special circumstances or conditions) by conditional use permits. Conditional use permits allow greater flexibility to vary how SMP use regulations are applied. Granting of a conditional use permit must

²³ WAC 173-26-150.

²⁴ RCW 90.58.140(1).

²⁵ RCW 90.58.140(2).

²⁶ WAC 173-27-040.

²⁷ The exemption from substantial development status for recreational docks in fresh water was expanded to \$10,000. See RCW 90.58.030(3)(e)(vii).

²⁸ RCW 90.58.030(e).

²⁹ RCW 90.58.030(3)(e)(vii); WAC 173-27-040.

conform with SMA policies and cannot authorize a use that the local SMP specifically prohibits. Criteria for SMA conditional uses have been established.³⁰

4. Variances

The SMA also authorizes deviation from specific bulk, dimensional, or performance standards in the SMP through the granting of shoreline variances. Variances can only be granted when there are “extraordinary or unique circumstances relating to the property such that the strict implementation of the master pro- gram will impose unnecessary hardships on the applicant or thwart the policies of the SMA....”³¹ A variance cannot be granted for a use prohibited by the SMA or SMP; and the cumulative effects over time of granting additional permits for like actions in a given shoreline area must be considered. Criteria for SMA variances have been established.³²

Shoreline substantial development permits, as well as conditional use permits and variances, are processed by local governments. All permit applications are sent to Ecology for review, following the local government’s decision. For conditional use permits and variances, Ecology must either approve, approve with conditions, or disapprove each permit.³³ Permit decisions can be appealed at the local level, and subsequently before the Shorelines Hearings Board and/or Superior Court.³⁴

5. Appeals

A local government or Ecology decision on a shoreline permit may be appealed to the shorelines hearings board by any person aggrieved by the granting, denying or rescinding of a shoreline permit. This does not include decisions by local government to approve a permit exemption.

The shorelines hearings board conducts a “de novo” review of the permit and may uphold, reverse or modify the permit decision or remand the permit for further consideration at the local level.

³⁰ WAC 173-27-160.

³¹ See, e.g., *Buechel v. State Department of Ecology*, 125 Wn.2d 196, 884 P.2d 910 (1994).

³² WAC 173-27-170.

³³ RCW 90.58.140(12).

³⁴ See *Overlake Fund v. Shoreline Hearings Bd.*, 90 Wn. App. 746, 954 P.2d 304 (1998) (the court overturned a superior court decision finding that the Shorelines Hearing Board acted in an arbitrary and capricious manner when it imposed conditions on a shoreline substantial development permit that were not supported by substantial evidence).

Chapter 8.

County/Tribal Planning Issues

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A. Coordinating With Tribal Governments

There are 27 federally recognized tribal governments within Washington. These include the following, described in greater detail in Part B, “Indian Tribes of Washington State.”

Indian Tribes of Washington State

Western Washington

Confederated Tribes of the Chehalis Reservation
 The Lummi Nation
 Muckleshoot Tribe
 The Nisqually Indian Community Nooksack
 Indian Tribe
 Suquamish Tribe of the Port Madison Reservation
 The Puyallup Tribe
 Samish Indian Nation
 Sauk-Suiattle Tribe
 Shoalwater Bay Tribe
 Skokomish Tribe
 The Stillaguamish Tribe
 Swinomish Indian Tribal Community Tulalip
 Tribes
 Upper Skagit Tribe

Olympic Peninsula

The Hoh Indian Tribe
 Jamestown S Klallam Indian
 Tribe The Lower Elwah Tribal
 Community Makah
 Reservation, Makah Tribe The
 Quileute Tribe
 Quinault Indian Nation
 Port Gamble S Klallam Indian Community
 Squaxin Island Tribe

Eastern Washington

Confederated Tribes of the Colville Reservation
 Kalispell Indian Community
 Spokane Tribe
 Confederated Tribes of the Yakima Indian
 Reservation

These governments are not subdivisions of the state, but political entities, predating the U.S. Constitution and the colonization of this continent. Determined through early case law to be “domestic

dependent nations,” subject to the plenary powers of Congress, tribes have retained inherent sovereign powers and are recognized as distinct, independent, political communities.

There are 25 Indian reservations within Washington State. Many were formed following a series of treaties in the mid-1850’s, known as the “Stevens Treaties” after the Territorial Governor Isaac Stevens. Subsequent to these treaties, reservations of a number of treaty tribes were modified or enlarged by statute or executive order.

Together, the reservations comprise more than eight percent of Washington’s land base. The tribes also reserve certain rights to natural resources - specifically, the right to fish, to hunt, and to gather shellfish, roots, berries and other foods. These are treaty-protected rights under the U.S. Constitution.

1. Sources of Tribal Government Authority

The source of tribal government authority is different from that of state and local governments, which derive their power from the Constitution, state enabling legislation and administrative codes. In the case of tribes, each tribe derives its authority from its own internal laws. Virtually every one of these is the subject of one or more federal treaties or statutes that deal with it in individualized terms. Some tribes operate under their own constitutions, which are adopted by their membership and approved by the federal government pursuant to the Indian Reorganization Act of 1934. Other tribes operate under constitutions not related to the Act, and still others have no constitution at all.

2. Functions of Tribal Governments

Not only do tribal governments differ from state and local governments with regard to their source of power, they also differ with regard to their purpose. In addition to such standard governmental functions as regulating, taxing and delivering services, tribal governments act to preserve and protect tribal culture, the tribal community and off-reservation treaty rights. As major landowners, tribal governments are responsible for the development, management and operation of tribal economic enterprises.

Functions of tribal governments include:

- **Executive Actions** similar to those taken by the governor of a state or the president of the United States
- **Legislative Actions** similar to those taken by the state legislature or the U.S. Congress
- **General Government Administration** personnel management, budgeting, capital programming, intergovernmental affairs
- **Public Safety** police protection, tribal courts and prosecution, other legal services, fire suppression, emergency, medical response
- **Health Care:** mental health counseling, medical services, dental services, environmental health
- **Public Works/Engineering/Infrastructure Development:** roads, sewers, water, cable television, facilities management, etc.

- **Planning and Community Development¹** : comprehensive planning, zoning and land development regulation, environmental protection
- **Education: Headstart**, K-12 schooling, remedial schooling and GED testing, vocational schooling, college schooling, scholarship support
- **Social Service Provision**: daycare services, recreation services, youth and elderly services, child welfare and protective services

Historically, tribal and local governments have not interacted extensively with one another, notwithstanding their interwoven interests and neighbor status. As a result, they find themselves today with little experience in intergovernmental dealings, few lines of communication and limited understanding of how each functions. These factors often prove to be major obstacles to intergovernmental cooperation and coordination, and generally inhibit collaborative ventures.

B. Indian Tribes of Washington State

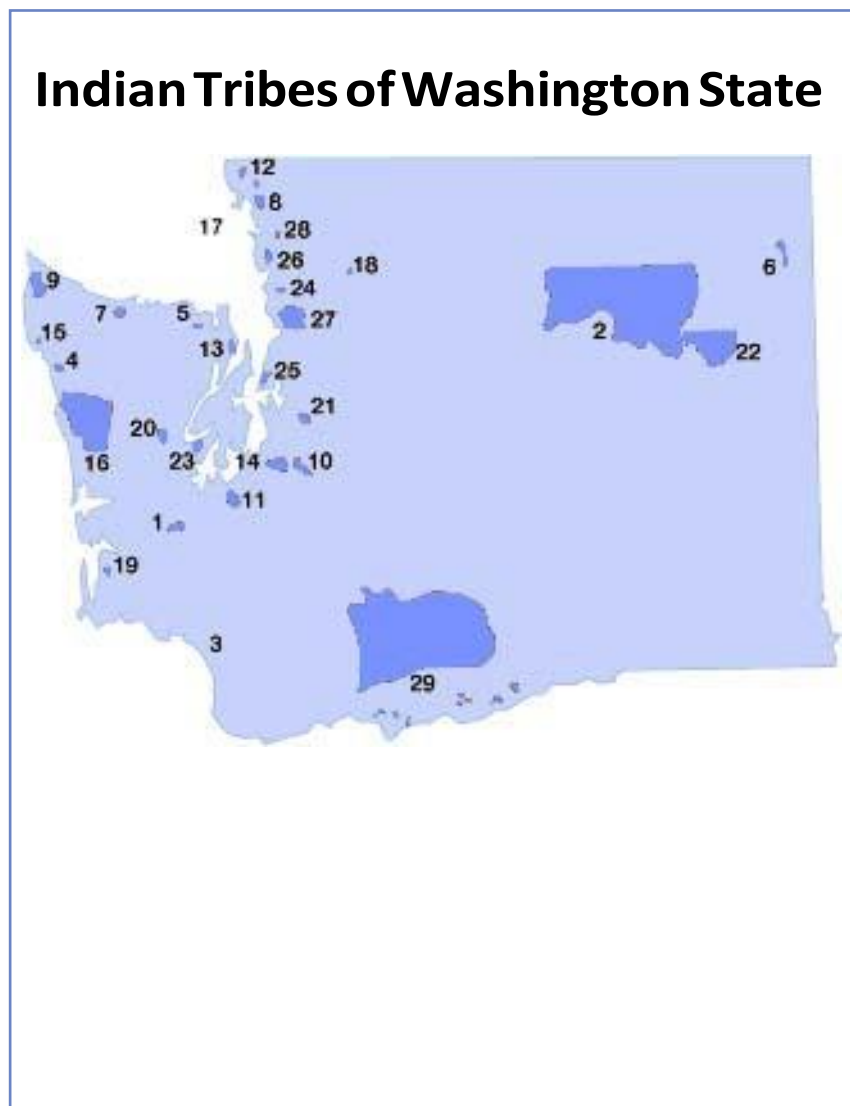
Key information about Washington state's tribal governments and their reservations can be found at:

Governor's office of Indian affairs: www.goia.wa.gov/

Affiliated Tribes of Northwest Indians (ATNI): www.atntribes.org/

Facts for each may include the location of the reservation by county; address and telephone/fax numbers of the tribal headquarters; number of enrolled members; reservation population, including the number of Indian and non-Indian residents; reservation size in acres; the date established; a brief history of the reservation; and an overview of the structure and function of the tribal government.

1. Confederated Tribes of the Chehalis Reservation
2. Colville Confederated Tribes
3. Cowlitz
4. Hoh Tribe
5. Jamestown S'Klallam Indian Tribe
6. Kalispel Tribe
7. Lower Elwha Klallam Tribe
8. Lummi Nation
9. Makah Tribe
10. Muckleshoot Tribe
11. Nisqually Tribe
12. Nooksack Tribe
13. Port Gamble S'Klallam Tribe
14. Puyallup Tribe
15. Quileute Tribe
16. Quinault Nation
17. Samish Nation
18. Sauk-Suiattle Tribe
19. Shoalwater Bay Tribe
20. Skokomish Tribe
21. Snoqualmie Tribe
22. Spokane Tribe
23. Squaxin Island Tribe
24. Stillaguamish Tribe
25. Suquamish Tribe
26. Swinomish Tribe
27. Tulalip Tribe
28. Upper Skagit Tribe
29. Confederated Tribes of the Yakama Indian Reservation



Chapter 9.

Transportation Planning in Washington

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Chapter 9

Transportation Planning in Washington

A. Introduction

Community-based planning and decision-making is a long standing tradition in Washington. The people that make up the diverse rural areas, cities towns and tribal areas throughout the state have made their own decisions on community development and land-use. There are several common threads that bind communities together throughout the state, transportation is one of those. Transportation facilities are owned and operated by numerous jurisdictions. Like most public services and facilities, planning has traditionally been done at the local level. Transportation, however, connects people from their own community to other places, close and far away, making it essential that the transportation system function as one interconnected and coordinated system.

Transportation planning is done to solve important problems - problems we do not solve will mean that our economy and quality of life will suffer. Transportation planning should be done proactively to take advantage of opportunities that will shape our future, create the transportation system, and preserve the quality of life we all desire. Transportation planning helps us to invest our transportation resources wisely. Transportation facility and service investments are expensive, take a long time to deliver, and provide service for many years. Because we have limited revenue available, transportation planning helps decision-makers target investments that best serve the transportation customer's needs and meet our social, economic and environmental goals. While transportation plans usually have a future component, the purpose is not to limit future decisions, but to lay out the future implications of today's decisions. Since decision making is an ongoing process, transportation planning also needs to be ongoing, reflecting the changing values and conditions of our state and world.

B. Fundamentals of Transportation Planning

1. Getting Started - Defining Your Community's Vision for the Future

To plan a comprehensive transportation system, communities must first define their values. Values related to livability, safety, mobility, and stewardship of the land could have a major influence on the transportation system that is best suited to a particular jurisdiction. For example, if a community wants to create a vibrant, pedestrian-oriented downtown, improvements to mobility for pedestrians, bicyclists, and transit riders should take precedence over moving cars rapidly through the downtown area.

Issues related to transportation and community character are complex, with many differing viewpoints. By visualizing the future of your community and drawing broad goals from this view, you will be able to make informed decisions about the individual choices your community faces.

How do you begin to plan for the transportation improvements that will help to achieve your vision for the future? First, take a fresh look at your comprehensive plan. We have become accustomed to viewing the comprehensive plan as simply a land use map that designates where to put the elements of our community, e.g., homes, businesses, schools, parks, etc.; but, from a different perspective, consider how the plan relates to mobility. If you begin with the big picture, the issues related to mobility become clearer.

Sample questions include:

- How will your community move freight and people about from place to place?
- What destinations will people be attracted to?
- How will people get to and from these areas?
- Are there alternative ways of moving people?
- Which destinations require good truck access?
- Are there alternative ways of moving freight?
- How will your plan fit with regional plans?

There are several common elements of most transportation plans. In this chapter, these elements will be explored and explained. The transportation planning process described in this chapter is similar to processes that many local and regional governments are using as they prepare their transportation plans under the state's Growth Management Act and TEA21.

The level and types of transportation needs of a community are directly tied to its land use patterns and level of development. To develop a long-range transportation plan, current and future land use patterns and densities need to be described and projected. Next, level of service (LOS) standards which define the quality of your transportation system should be agreed to by the community. Together, the land-use assumptions and LOS standards provide the needed information to identify current and future transportation system needs. Improvements, concepts, and financing strategies to meet these needs can then be analyzed. Ordinances can be adopted which will maintain the adopted standards.

In transportation planning, concurrency and intergovernmental coordination concepts that are requirements under the Growth Management Act are also important. In this chapter, these two concepts are defined and strategies to achieve concurrency and the importance of coordination of community transportation planning are discussed.

2. Key Steps in Developing the Transportation Plan

The development of a transportation plan has eight key steps:

- Agreeing on land use assumptions.
- Adopting level of service standards.
- Inventorying existing services and facilities.
- Determining current and future deficiencies.
- Analyzing financing to meet deficiencies.

- Planning for concurrency.
- Developing an action strategy.
- Coordinating with neighboring governments.

Land Use Assumptions

Existing and proposed land uses are an integral component of transportation planning. Determination of existing and future transportation needs requires an inventory of existing land uses to determine current demand for travel and whether such demand can be met by existing transportation facilities. Land use activities proposed to take place during the planning time frame should be analyzed and mapped to determine future transportation demands on existing facilities. Future land use also determines the need for siting of new facilities.

Land use assumptions for developing a transportation plan would include:

- Analysis of the location of present land uses, i.e., various residential densities, retail, highway strip commercial, office, warehouse, etc.;
- Analysis of population, employment, and trips per day generated in each land use area;
- 10- to 20-year projections of anticipated population growth for each of these areas;
- Desired location of future land uses; and,
- Location of future transportation facilities not only to relieve current transportation pressures, but also to guide the location of future growth and the type of development occurring around the facility.

Level of Service Standards (LOS)

LOS standards establish a gauge for evaluating the performance of the existing transportation system and planning for the system to meet future needs. Essentially, level of service is defined as a qualitative measure describing operational conditions within the traffic stream or on the transit system, and the perception by motorists and/or passengers. Level of service standards and measures generally describe these conditions in terms of such factors as speed and travel times, freedom to maneuver, traffic interruptions, comfort and convenience, and safety.

One way of establishing LOS is described in roadway LOS. The Transportation Research Board's Highway Capacity Manual follows a grading scheme similar to a school report card. These measures are A through F, with A describing a safe, uncongested roadway, and F describing gridlock.

Other methods of measuring LOS are available to transportation planners and traffic engineers. These standards by transportation planners and traffic engineers can serve as the basis for

establishing road and highway LOS, but should not be used in the absence of land use considerations.¹ For instance, in order to concentrate development into a community center or downtown area, it may be desirable for the local community to establish a method for measuring LOS that considers all roads within the area together rather than separately. This could involve the use of different measuring technologies appropriate for the size of the community.

Once existing LOS are determined, a plan for eliminating current deficiencies can be established. LOS standards are also used as a measure to ensure transportation facilities meet future demands. Future facilities can be designed to ensure that demand on facilities does not exceed agreed-to LOS standards. To achieve the vision of a long-range plan, provision of future transportation improvements can be based upon maintaining accepted LOS standards.

Inventorying Existing Services and Facilities

Preparing an inventory of existing transportation services and facilities is the first step in determining the existing LOS standard for each part of the transportation system.

An inventory of air, water, and land transportation facilities and services, including transit routes, is required to define existing capital facilities, transportation services, and travel levels as a basis for future planning. An assessment of existing conditions should include analysis of the current capacity and demand on each system. An inventory might include current average daily trips for roadways, and routes, schedule and ridership information for transit services. Typically, an inventory includes a map showing where existing roads are located, the number of lanes, plus a discussion of deficiencies or problems.

Determining Current and Future Deficiencies

After the inventory of existing services and facilities is completed, the degree to which the existing level of service of each facility meets the locally established LOS standard can be determined. This is through comparison of the actual use of the system with the community's level of service goals. The determination of the LOS for each facility or service indicates whether each system can accommodate current demand. Where existing facilities cannot meet current demand, a plan for eliminating those deficiencies can then be developed.

Using population projections and the proposed future land use map, forecasts of traffic for at least 10 years should be undertaken to determine location, timing, and capacity needs of future growth. The plan for improvements to existing systems should consist of a variety of system improvements (adding road lanes, pedestrian facilities, or public transportation services) and transportation system management (traffic control devices) needs to meet current and future demand in accordance with established LOS standards.

¹ HB 1487 defines and requires planning for "transportation facilities of statewide significance." In particular, the Washington State Department of Transportation (WSDOT), in consultation with local governments, is authorized to set LOS standards for state highways and ferry routes of statewide significance. Setting LOS standards for all other state-owned transportation facilities continues to be performed by regional transportation planning organizations working jointly with WSDOT. It also deems "transportation facilities of statewide significance" to be essential public facilities under GMA.

Analyzing Financing to Meet Deficiencies

After current and future needs to meet system deficiencies are determined, analysis of the funding capabilities should be undertaken to compare needed improvements against probable funding resources. Analysis of financing capabilities must include a multi-year financing plan based on the needs identified earlier in the planning process. If probable funding falls short of meeting identified needs, the plan should include a discussion of the means for raising additional funding or a reassessment of land uses (which may result in fewer future transportation needs as transportation and land - use assumptions are interrelated).

Reassessing for Concurrency

At this point in the planning process, the community has reached an important milestone which requires action. Cities or counties planning under the GMA are required to adopt and enforce ordinances which prohibit development approval if the development causes the LOS on a transportation facility to decline below the standard adopted in the plan, unless transportation improvements or strategies to accommodate impacts of development are made concurrent with development. This is a prudent course of action for all communities to ensure facilities keep pace with growth.

Concurrency means that improvements and strategies must be in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within an agreed amount of time. Strategies to ensure concurrency may include: increased public transportation services, ridesharing programs, demand management, and other transportation systems management strategies. Where financial commitments cannot meet identified needs for transportation improvements, reassessment of land uses and revisions to the transportation plan should be made. The future land use plan must be revised to ensure that location, intensity and density of proposed future land uses will not cause demand on transportation facilities and services to exceed established LOS standards.

Other options to revise the transportation plan include:

- Reassessing standards or reconsidering what is an appropriate level of service for the given system;
- Reassessing financing or other budgetary priorities; or,
- Reassessing transportation service, i.e., is the proposed facility appropriate for the economy in the region.

Developing an Action Strategy

The transportation plan should include an action strategy for bringing into compliance any existing facilities or services that are below established LOS standards, and provide for expansion of facilities and services to meet future needs at established LOS standards. The strategy should be financially sound and planned actions should be financially feasible. The future land use plan should be consistent with this action plan and future growth should not cause facilities to fall below the

established LOS standards.

Providing Intergovernmental Coordination

Coordination with adjacent communities often is necessary throughout the planning process. The plan of each community should be coordinated and consistent with the plans of other communities that share common borders or related regional issues.

Where possible, communities should mutually define LOS standards for shared transportation facilities and services. The transportation plan should also include an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent communities. Land use assumptions of one community may impact the transportation needs of another. It is therefore essential that communities coordinate their planning, particularly during the analysis of current and future deficiencies, reassessment and concurrency, and development of the action strategy. Further, coordination is often necessary during development of the future land use assumptions. Future land use patterns need to be coordinated on a regional basis to increase the efficiency of the region-wide transportation system.

3. Land Uses and Transportation Linkages

Land use decisions should not be made without consideration of transportation needs and impacts. Both the location of land use and the type of land use itself affect transportation demand. Different types of land use generate different traffic volumes; for example, commercial activities generate more travel trips than residential activities. Further, locating shopping and work opportunities in close proximity to residential development increases the likelihood of bicycling and pedestrian travel. A longer travel distance between home and work generally increases reliance on the automobile rather than the use of other alternatives, thus increasing demand on roadway networks.

Transportation decisions also require consideration of impacts on land use. Transportation access allows the development of land that was previously inaccessible; such lands become subject to increased market demand for highway-oriented and other types of urban development. A primary consideration in deciding on the location of a new home or business is access to the transportation system. When access to outlying areas is improved, development pressure in the surrounding area is increased. There is a direct relationship between improved highway access and the development pressures.

The transportation planning process involves guiding, directing, and regulating growth to meet local planning objectives. Therefore, development of future land use plans requires consideration for enhancing the efficiency of the transportation system.

Strategies to increase efficiency include:

- Increased employment density.
- Provision of employment and housing balance.
- Development caps.
- Regionally consistent site designs.

Employment Density

Mixed-use centers can make transit and other rideshare alternatives both economically viable and attractive to the user, thus reducing automobile traffic. It is extremely difficult to accommodate commuter trips if they are generated by low-density, scattered office developments. The single-occupant vehicle is the only mode of transportation which can effectively be utilized in such areas. Therefore, low-density office development in outlying areas will aggravate a community's transportation problem.

Promotion and protection of land uses which reduce the commute distance between home and place of employment, and between home and public transportation services and facilities should be emphasized. It is important to recognize the linkage between land use and transportation, and to establish land use policies that will be effective in helping to solve urban/suburban transportation problems.

Employment and Housing Balance

The employment and housing balance refers to the availability of an adequate supply of housing close to employment centers, and also the potential for reducing automobile traffic. From a transportation planning perspective, lack of housing opportunities in a community and surrounding areas creates a major problem. For example, as a community's employment opportunity base increases, a shortage of housing opportunities in the area will force those people working in the community center to choose a house outside of the area. This situation will increase the commuter's travel distance, and therefore increase potential transportation, energy, and air quality problems.

Regionally Consistent Design

Regionally consistent design refers to the development and implementation of community standards which promote transit and pedestrian accessibility, rather than automobile accessibility. In order to be effective, these policies need to be consistent within specified transit corridors in which transit service is identified as the priority.

The following site design policies would promote transit use in suburban employment centers. Paved, covered walkways and adequate lighting should be provided between buildings and nearest transit stops, and paved covered passenger standing areas with good visibility should be provided at all transit stop locations. Development should be sited to invite pedestrian access among and between buildings and transit service. This can be done through narrowing of setbacks and orientation of buildings toward bus stops and approaches rather than parking lots. Office developments should provide a central focus for surrounding development that promotes people-oriented activities such as restaurants and shops. Routing of transit should be through the center of the development to provide short walking distances to transit stops to as many people as possible. The number of parking spaces should be reduced and located peripherally to the center. Transit pullouts or parking of ride-shared vehicles should be given preferential location.

These site design policies would also be appropriate for residential development, with the following additions:

provisions of sidewalks and a safe, attractive pedestrian environment; minimizing the area devoted to streets; and locating higher density housing along streets serviced by transit or near transit stations.

Applications to Link Land Use and Transportation

Current approaches interface transportation and land use in the following three ways:

- (1) zoning policies,
- (2) transportation policies related to development decisions, and
- (3) Transportation Demand Management.

a.) Zoning Policies

Examples: high-density residential zones located on arterials, the routing of through traffic around residential areas, and buffers between residential zones and arterials.

b.) Transportation Policies Related to Development Decisions

One of the primary considerations in deciding on the location of a new home or business is access to the transportation system. Decisions to widen a road, add a stoplight to improve traffic flow, or build new roads in outlying areas, improve the access and increase the development pressure in the surrounding area. The relationship between improved highway access and development pressure is direct and profound. Therefore, one consideration in recommending transportation access improvements is the desirability of increasing development pressure.

c.) Implementation Conditions Imposed on Development

Transportation Demand Management (TMD) and Transportation System Management (TSM) are used more frequently in communities with large population densities. A variety of implementation conditions can be imposed on development. Examples of administrative TDM measures are: bus pass subsidies, ride match, and flex time. Examples of constructed TSM measures are bus pullouts and shelters.

4. Environmental Considerations

The role of communities in meeting environmental considerations in transportation planning is important.

Threats that are jeopardizing the sustainability of our environment and our quality of life have been identified by many. Comprehensive action agendas have been aimed at protecting our environment and natural resources.

The following list should be considered in the transportation planning process:

- Protect natural resource lands and critical areas. Improve air quality.
- Improve water quality.

- Reduce noise conflicts.
- Manage open space and scenic views.

Protecting Natural Resource Lands and Critical Areas

Natural resource lands are agricultural, forest and mineral resource lands which have long-term commercial significance. Protection of natural resource lands can be accomplished by developing access primarily for movement of products and goods, discouraging increased public access to natural resource lands, and avoiding decision, for separation of resource lands that presently operate as an ecological community or unit.

As a key part in transportation planning, communities classify and designate critical areas. After classifying and designating these areas, communities should adopt and enforce regulations to protect these areas and preclude incompatible land uses.

Critical areas include:

- Wetlands.
- Areas of critical recharging effect on aquifers used for potable water.
- Fish and wildlife habitat conservation areas.
- Frequently flooded areas.
- Geologically hazardous areas.

Wetlands - Wetlands provide valuable functions necessary for maintaining a good quality of life, such as flood storage, wildlife habitat, water quality improvement, fish breeding and spawning areas for commercial and recreational fisheries, and recreational opportunities. Transportation design and construction practices must consider protection of wetlands.² New transportation corridors and ferry facilities should avoid disturbing and dividing wetlands. Where incidental damage is unavoidable, mitigation efforts should restore the wetlands or provide replacement wetlands. Constructed natural drainage corridors should not be altered by development or highway construction. Highway water runoff should be treated to remove sediments and other pollutants prior to discharge onto water bodies or wetlands.

Critical Aquifer Recharge Areas - Aquifers are major sources of drinking water for many communities. Aquifer recharge areas should be protected to replenish water supplies and maintain surface water levels. Protection should include: avoiding transportation construction in critical aquifer recharge areas, wherever possible; avoiding penetration of aquifers with support structures; providing spill containment measures, where necessary; and routing stormwater to aquifer recharge areas only when it has been adequately filtered or treated.

Fish and Wildlife Habitat Conservation Areas - Fish and wildlife are important natural resources. Fish

² SHB 3110 now requires WSDOT to give consideration to activities related to wetlands, fish passage, fish habitat, and flood management when conducting advanced environmental mitigation. Source: Washington State Department of Transportation.

and wildlife habitat conservation areas are extremely sensitive to human encroachment. The listing of a variety of species under the Endangered Species Act is federal recognition of the impact of human activities on our natural resources. Therefore, planning of transportation facilities should consider: preserving wildlife movement corridors; avoiding breeding, nesting, and feeding sites; preserving stream flows and water quality for fish runs; and preserving riparian habitat areas supporting rare and endangered wildlife and plant species.

Frequently Flooded Areas - Floodplains generally provide storage capacity during major storm events. Flood storage capacity should be maintained to prevent flooding of adjacent developed areas. Transportation facilities should be located outside floodplains, or if that is unavoidable, above floodplains, and designed for closure during major floods; consider high water in design; discourage new development in frequently flooded areas by limiting access; and ensure adequate design and maintenance of pipes and storm water management devices.

Geologically Hazardous Areas - Geologically hazardous areas include steep slopes, landslide areas, seismic areas, and areas of high erosion potential. In addition to public safety, the location and design of transportation facilities in these areas should consider impacts on water quality and the deposition of sediments into water bodies and wetlands. Public access and inappropriate land uses should be discouraged.

Improve Air Quality

Research has found that vehicle traffic is a major source of air contaminants, which affect public health and urban vegetation. Transportation sources contribute to total air pollution as shown in the following table.³

Air Contaminant	State	National
CO	49%	66%
TSP	43%	21%
PM10	NN	25%
SO2	6%	5%
NOx	50%	40%
VOC	36%	35%
Pb	NN	31%

Two major considerations for improving air quality and vehicle related pollution include: reducing driving and reducing driving - related pollution.

To reduce driving, transportation planning should consider establishment of employer-based incentive/disincentive programs that discourage, rather than encourage, employees commuting to work alone.

³ Source: Washington State Department of Transportation

Other considerations include:

- Expanding of efforts to develop transit opportunities and other alternatives to single occupancy vehicles;
- Planning mixed use zones that increase housing near employment centers and reduce the need for transportation; and
- Increasing public education/awareness of the effect of personal driving habits on the environment.

To reduce driving-related pollution, the following considerations are recommended:

- Control gasoline vapors at the fueling source;
- Encourage transitions to cleaner fuels and more fuel-efficient vehicles;
- Expand the vehicle emission inspection and maintenance program; and
- Promote federal initiatives to explore and develop approaches for controlling emissions from diesel-powered vehicles.

Improve Water Quality

Stormwater runoff contaminants constitute a significant percentage of the water pollution. Contributors include: runoff from urban streets and parking lots; increased erosion from construction activities; and air contaminants dissolved by rainwater. Transportation considerations for controlling these sources include establishing local storm water management programs, in accordance with programs being developed by the Department of Ecology. These may include filtration devices, buffers, and reduction of impermeable surfaces.

Improved water quality can also be accomplished by fitting new vehicles with oil drip and leak collection devices. This and other methods can reduce incidental contamination deposits on the roadways.

Reduce Noise Conflicts**A three-tier approach for reducing noise conflicts involves:**

- Establishing design and location standards for transportation facilities to ensure compatibility with adjacent land uses;
- Controlling land uses adjacent to transportation facilities to guide the future use of vacant or undeveloped lands and reduce the impact of noise on existing land use activities; and,
- Reducing noise source emissions through establishment and enforcement of noise ordinances. A noise reduction program includes both physical and administrative techniques.

Administrative techniques to reduce noise conflicts in sensitive areas may include zoning to exclude incompatible uses, building height limits, and requiring construction of buffer strips, noise barriers, and sound-insulating construction. Other legal restrictions, such as subdivision laws and building and health codes, could require acoustical site planning or insulating berms and barriers; specify acoustic insulation and sealed windows; and establish certain indoor noise limits to be achieved through various physical techniques.

Public ownership or control of the land is another technique for reducing noise conflicts and could include municipal land acquisition or easements, and conservation trusts. Other techniques include tax incentives for compatible use, and educational and advisory services.

Open Space and Scenic Views

Transportation has a major impact on the appearance, as well as the accessibility, to diverse natural and scenic elements which characterize a region. The challenge is to preserve these elements while supporting the needs of the growing population.

The views from Washington's transportation facilities are a catalyst for the state's fourth largest industry, tourism. Preserving scenic, recreational, and cultural resources should be an interactive process between the state, tribes, local agencies, and local land owners, to identify these resources and develop management practices to enhance the view from the road, as well as from the scenic area. Federal, state, and local governments should consider acquiring or regulating adjacent land use or using other controls such as scenic easements and tax incentives to allow visually-compatible land uses to continue. The goals of the transportation plan should reflect the community vision with respect to scenic view preservation.

5. Making the Transportation System More Effective

Historically, increases in traffic congestion have resulted in expansion of the transportation system. Problems include:

- Travel demand grows faster than the system can be expanded;
- Construction of new strategies to address congested roadways have become more difficult to sustain due to the increased cost of new construction and the increased cost of maintenance on existing roads; and
- Social and environmental impacts prevent construction.

Following are three approaches to making the transportation system more effective:

1. **Use Transportation Demand Management (TDM):** The art of modifying travel behavior, usually to avoid the more costly expansion of transportation system.
2. **Use Transportation System Management (TSM):** Encompasses an array of actions that can be taken to increase the carrying capacity of roadways.
3. **Develop Land Use Strategies:** Address the relationship between land uses to reduce the number of vehicle trips generated and/or reduce the length of trips.

Transportation Demand Management

Transportation Demand Management addresses traffic congestion by focusing on reducing travel demand rather than increasing transportation supply to increase transportation efficiency. Travel demand is reduced by measures which either eliminate trip making or accommodate person trips in fewer vehicles. These techniques generally address the commuter. Implementation of TDM alternatives

therefore requires employer/public agency cooperation.

Transportation Demand Management alternatives include:

- Ridesharing.
- Transit service improvements.
- Parking subsidy removal/pricing.
- Parking supply limits.
- Transit/rideshare incentives.
- Ride home guarantees.
- Telecommuting.
- Flextime.
- Compressed work week to reduce driving days.
- Walking/bicycling.
- Road pricing.

Ridesharing: Ridesharing includes carpooling and vanpooling. A carpool is any passenger vehicle with a minimum of two people who commute on a regular basis. A vanpool is a passenger van used by seven to fifteen commuters. Programs to encourage ridesharing include carpool matching; preferential parking for carpools and vanpools; distribution or posting of information on ridesharing and transit services and other activities designed to introduce commuters to prospective carpool partners; and fleetpool programs which allow employees to use the employer's automobile fleet during non-work periods for employee-operated carpools.

Transit Service Improvements - Transit service levels are measured by the accessibility and distribution of transit. Strategies to improve service levels focus on reducing the time between transit vehicles, extending the hours of service, increasing the geographical area providing service, and increasing the accessibility of transit to all residents.

Parking Subsidy Removal/Pricing - This strategy has two related components: the removal of employer-based parking subsidies at employment sites where parking charges currently exist (typically central city areas) and/or instituting employee-paid parking charges at employment sites where parking charges do not currently exist (typically suburban areas). Growing evidence suggests instituting paid parking and/or removal of employer-subsidized parking has been most effective in converting automobile commuters to transit or carpools. This approach is acceptable, however, only if other approaches without a monetary impact on the employee are not sufficient.

Parking Supply Limits - Parking supply can be limited through development controls or land use codes. Parking supply is typically limited through the use of maximum limits on the overall supply in an area. The technique is most applicable to big city centers. Some cities allow a reduction in parking in exchange for a developer's commitment to conduct an on-site transportation demand management program. Another technique for parking reduction for new development is to require a portion of a site to be set aside and held in reserve in case future additional parking is needed. Limiting the parking supply will generally result in increased parking cost.

Transit/Rideshare Incentives - As an incentive to use transit or rideshare, the employer may subsidize partially or fully, the out-of-pocket cost of an employee work trip. Subsidy options can include transit passes, carpooling parking fees, vanpool fares and guaranteed rides home in an emergency or after normal transit hours.

Ride Home Guarantees - Ride home guarantees can also be provided by a public agency. A guaranteed ride home program provides subsidized rides home, usually by taxi, for those commuters who are not able to use their normal transit and rideshare commute mode due to a personal emergency or work obligation. For some commuters, a ride home guarantee is necessary to encourage the use of ridesharing or transit.

Telecommuting -Telecommuting refers to the use of telecommunications technology for certain employees to work from a remote site or their home. Telecommuting can be an effective TDM strategy by shortening or eliminating peak period commute trips to primary office sites. However, telecommuting from a remote office site does not eliminate the entire commute trip and will add traffic to the road system near the remote site.

Flextime - Generally, any system that gives employees some control over their own starting and ending times is considered flextime. Flextime does not necessarily change the number of days in the work week. Flextime can reduce traffic congestion at peak hours and facilitate use of ridesharing or transit. The range of possible hours within which an employee may choose to work is extended beyond the usual starting and quitting times. Employees are usually required to be at work during core time (e.g., 9:30 a.m. to 3:00 p.m.) and have a choice as to when to begin and end the day, provided they work the necessary eight hours.

Compressed Work Week - This technique “compresses” the typical five-day, 40-hour work week into a fewer number of days. The most typical schedule is four, ten-hour days resulting in a reduction of driving days and commute miles per week.

Walking/Bicycling - Measures which give equal consideration or priority to pedestrian or bicycle access over vehicular access are also TDM measures. Examples range from individual building design review to assuring that doors are near transit routes, to regional plans for safe bicycle routes.

Road Pricing - This strategy includes a range of pricing alternatives which might be applied to congested bridges, freeways, or arterial streets. It could include tolls for single occupant vehicles or for highway users during peak periods.

There is no experience in the United States with pricing on a regional network of highways and arterials for purposes of reducing trips. There is some experience with price changes on tunnels and bridges and the potential effect of road pricing. The results suggest an increase of \$2 to \$3 on peak-period highway users may reduce peak travel by 15 to 25 percent. Issues would include concerns about impacts on placing tolls on federally funded facilities.

Implementation of TDM measures which are a constraint (such as road pricing) must be concurrent with viable options. If they are not, the desired result may not occur, i.e., extra cost will be absorbed or avoided by relocating the business. The traffic problem could then become worse.

Implementation of TDM Techniques

Gaining acceptance and use of TDM requires marketing to both the business community and the user. The active support of employers, businesses, and developers is needed. The program must trigger business enlightened self-interest and may involve negotiated public private agreements. The commuting public may perceive TDM alternatives as requiring significant adjustment in personal comfort, preference, and habits. People need to be told the benefits to them personally as well as the benefits to the community.

It is important to understand that each TDM measure is applicable to a different segment of the population. Unlike roads which are intended to serve the entire traveling public, TDM measures are tailored to specific segments of the travel market. There are different alternatives to the automobile for different people, and different TDM strategies for different employers. Establishing a successful TDM program requires as much marketing data and market understanding about the companies and commuters as possible. The personal automobile is a strong competitor.

Each person, department, and employment site is unique. What works well for some may not work well for others. Locally, measured effectiveness should be used to determine local actions.

National experience identifies these examples of TDM application options:

Walking works well for those who live close to work where the climate is mild (or there is weather protection) and the area is well-lighted, is fairly secure, and has sidewalks.

Bicycling works best for those who live within five miles of work where the terrain is fairly flat and the climate is mild.

Public Transit works best for those who live within 20 miles of work and work in concentrated areas. Transit must stop near work site and home, and schedules and work shifts must be compatible. Alternatively, park and ride lots and express service to work site needs to be provided.

Carpools work well for those who commute ten miles or more and spend 40 minutes or more commuting, particularly in suburban work sites without transit where there are convenient employment groups

Vanpools work well for those who commute 15 miles or more and spend one hour or more commuting. Needs to be large group of employees who have same work schedule and live in same area.

Compressed Work Week: Changing work schedules to ten hour days, four days per week or nine days every two weeks can help reduce trip and vehicle miles traveled (VMT), but involves changing production and coverage schedules.

Telecommuting eliminates or shortens trips. Works for some employees but not production employees.

Flextime does not eliminate car usage but helps employees match bus schedules, vanpools and carpools, or to miss peak congestion times.

Transportation Demand Management in Rural Communities

In rural communities, the need for implementing transportation demand management techniques is based upon different reasons than those initiating urban application. Rural communities are characterized by limited or no traffic congestion, widely - spaced commercial and employment centers, and widely distributed residents. Road quality and maintenance may be a problem, but congestion is of little significance. What congestion exists may be experienced for a very short duration, denoting a peak five minutes as opposed to a peak hour period. Modes of travel other than personal automobile are generally not available or not economically viable.

Transportation demand management techniques should still be considered but for different reasons. Providing increased access to employment sites from the surrounding area through transit and ridesharing programs, or facilitating second job employment of agricultural workers through flextime, are demand management approaches that could have rural application. Also, many rural areas have tourist travel peaks that could lend themselves to parking controls combined with tourist transit service, or to traffic operational improvements.

Transportation System Management

Transportation System Management formally refers to an array of actions that coordinate transportation services and facilities to increase the carrying capacity of existing transportation systems and facilities; for example, the use of high occupancy vehicles (HOV).

These actions include:

- Management of traffic operations and traffic control systems to maximize utilization of available roadways.⁴
- New transit or highway facilities that maximize the people-carrying capacity of the transportation roadway, as compared to vehicular capacity.
- Implementation of TDM strategies.

Traffic Operations and Traffic Control Systems: Traffic operational analysis and the installation of state of the art control systems can increase the capacity of existing roadways. Examples include:

- Synchronized traffic control on major arterials.
- Ramp metering on freeways.
- Traffic surveillance and incident control on both major arterials and freeways.

⁴ ESHB 2615 created a Freight Mobility Strategic Investment Board to administer grants targeted at improving freight mobility on state highways and railways.

- Increased length for turn lanes.
- Express lanes.
- Truck climbing lanes.

Access Control: Access control refers to the control of vehicular access to major roadways. A free-way represents complete access control as access is limited to interchanges and the freeway ramp design allows vehicles to enter the traffic stream without stopping. Where ramp metering is in place, stopping does occur. Partial access control on major arterials or state highways can also be provided by eliminating or prohibiting driveway access, by limiting or prohibiting left turn movements, and by limiting or prohibiting cross traffic at intersections. These actions increase the capacity of the major arterial to carry through traffic without requiring additional lane construction.

High Occupancy Vehicle (HOV) HOV priority refers to measures which create priority-based access and or exclusive access to freeways, arterials, ferries, and parking systems based on the number of occupants in the vehicle. HOV priority is an attempt to maximize the number of people (rather than vehicles) accommodated by the transportation system. For example, designating diamond lanes for exclusive use by carpools, vanpools, and transit vehicles is one means for providing HOV priority. Another example of HOV priority is a queue jump lane which allows carpools, etc. to move to the front of the line in getting on a crowded facility such as a ferry boat. Implementation of TSM measures is usually the responsibility of the state or local government. Large developments can be required to provide some TSM measures as a condition of development for those facilities that the development impacts.

Land Use Strategies

The number and arrangement of homes and businesses on land determines the number and length of trips and often determines whether the trip is made by automobile, transit, carpool, or walking.

Land use strategies to manage transportation demand include:

- Employment concentration.
- Employment/housing balance.
- Development cap.
- Site design.
- Mixed use.

Employment Concentration: Concentrating jobs in mixed-use centers (similar to a traditional downtown) makes transit and ride sharing attractive.

Employment/Housing Balance: Providing an adequate supply of affordable housing near employment centers shortens trips, thereby reducing miles of automobile traffic. Bicycling and walking are also more attractive.

Development Cap: Shifting growth away from highly congested areas may prevent degradation of highway levels of service, but not always. Travelers may still pass through the cap area on their way to the alternate growth area.

Site Design: Promoting transit, bicycle, and pedestrian accessibility in new development design can reduce auto trips. Examples of this are permitting on-site services (i.e., day care, pharmacy, dry cleaners, etc.) at park-and-ride lots and employment centers, and encouraging interaction between the streets and buildings at the street level.

Mixed-Use: Mixing a variety of land uses in an area that is attractive for walking promotes use of walking for some trips. For example, providing restaurants near offices. Other approaches to mixed use may include: creating a neighborhood commercial district or allowing compatible convenience retail uses to locate within residential areas, allowing mixed compatible land uses, and increasing employment and housing densities in activity centers.

Land use strategies can be incorporated into the development review process as conditions of approval. This action should be one part of a broader transportation and land use strategy that includes growth management policies and revisions to general plans, subdivision regulation, and zoning to provide for community development patterns that help reduce overall auto use and vehicle miles traveled.

Trip Reduction Ordinance: A trip reduction ordinance is a council regulation requiring developer or employer participation in providing incentives for building occupants or employees to use TDM alternatives. The ordinance would require that a transportation management plan be prepared for each new development site or employment site. Program components might include shuttle service to transit stations, residential and commercial park-and-ride lots, guaranteed ride-home programs, pedestrian walkways, commuter rail easements, rent reductions for commuters who walk to work, subsidies for users of transit and vanpools, and mandatory parking - providing strategies combined with significant parking supply limitations, etc. Generally, the ordinance would involve laying out requirements for projects in certain land use categories that meet minimum size thresholds. Flexibility can be provided within categories of actions required, or by permitting developers to submit their own Transportation Management Program as an alternative to the program required by the ordinance.

Administrative Guides: Guidelines are a means of providing staff with policy backing to impose TDM, TSM, or land use strategy requirements. This ensures some consistency for case-by-case negotiation.

Interim Ordinances: Interim ordinances can be adopted for a temporary period until the community governing body decides on the terms of a permanent ordinance.

Zoning Techniques: The following are examples of presently available zoning techniques that can be used to implement TDM, TSM, or land use strategies:

- 1) **Bonus or Incentive Zoning:** Increased development rights (usually in the form of higher densities) given to a developer when amenities deemed to be in the public interest are provided in the development (i.e., day care, retail, social services, etc.).

- 2) **Overlay Zone:** A zoning ordinance overlays conventional zoning and covers specific parcels or a large area of land.
- 3) **Planned Unit Development Zoning:** Encourages coordinated development of large tracts of land.
- 4) **Special District Zoning:** Requires specific things to maintain a particular quality in the district (i.e., Pioneer Square, Pike Place Market).

Measuring Effectiveness

The overall goal of TDM, and the land use strategies discussed in this section is to increase the effectiveness of the total transportation system by reducing demand or maximizing existing capacity. Measuring effectiveness requires identifying factors that will measure changes in demand or capacity resulting from implementing the alternatives. This change in demand is projected in measurable terms. Then, baseline and periodic measurements are made to define change.

For example, for a carpool program in a target service area, the number of single person cars versus carpool commuters is determined by a survey at the beginning of the program. The amount of change is determined by periodic surveys. The measure of effectiveness is actual change versus projected change. Corrective action is taken if the stated goal is not met.

Both the local transportation plan and the regional transportation plan need to include identification of ways in which effectiveness will be measured. There is still a very small amount of actual data available by which to judge the actual effectiveness of TDM, TSM, or land use strategies.

C. Statewide Transportation Planning

Transportation planning helps to identify the important transportation issues facing us now, as well as those that we think will face us in the future. It identifies what services transportation customers (citizens and business) want, balances competing demands, and creates a common vision for the entire transportation system. The process identifies current and future investment needs to achieve the vision, and makes trade-offs between needs to produce a plan that is financially feasible. It is a process that supports investment decisions.

Transportation planning in Washington State reflects the decentralized and diverse ownership of the transportation system. A key mission of these various transportation planning efforts is coordination between jurisdictions so that the transportation facilities and services, although under separate ownership, operate as a total system. Transportation users do not particularly care whose system they are using, only that they can get to their destination safely and efficiently.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) has changed the way states and local agencies do transportation planning in a revolutionary way. Rather than providing a specific list of regulations, the Act delineates a list of “guidelines” that must be followed, but without specifics as

to what compliance “looks like” and how compliance with the guidelines is to be achieved. ISTEAs provides new flexibility and decision making at the lowest level. This is a major shift from previous ways of doing business. States are now required to implement and impart this new concept of decentralized participation. The state and the Metropolitan Planning Organizations are putting in place a planning process that takes into account a wide range of data and analysis, involves the public early, and creates close linkages among the required management systems, the 20-year transportation plan, and the annual transportation improvement program.

RCW 47.06, enacted by the 1993 Legislature as ESHB 1007, requires the WSDOT to prepare a Statewide Multi-modal Transportation Systems Plan for the Transportation Commission. The legislature recognized that the ownership and operation of Washington’s transportation system is spread among federal, state, and local government agencies, regional transit agencies, port districts, and the private sector. Transportation planning authority is shared on the local, regional and state levels, and must be coordinated and comprehensive in nature.

The Growth Management Act⁵ (discussed in detail in Chapter 3) requires cities and counties with significant population growth to prepare Comprehensive Plans composed of six elements, including a Transportation Element. The Transportation Element must document how the 20-year transportation infrastructure needs are consistent with other plan elements. The jurisdiction must also show how it will meet concurrency requirements. By December 31, 2000, cities and counties planning under the Growth Management Act are required to include state-owned transportation facilities in the transportation element of their comprehensive plans.⁶

The Clean Air Act of 1990 and the Clear Air Washington Act of 1991 also influence the Washington State Department of Transportation’s planning process. The Clean Air Act is a federal regulation that directs Washington to outline State Implementation Plans (SIPs). These plans will assist jurisdictions to attain air quality goals regarding carbon monoxide, ozone, and particle matter. In an effort to meet air quality goals, Washington state adopted the Clear Air Washington Act of 1991. The Act created programs to enhance Washington’s air quality as mandated by the Clean Air Act.

Transportation plans being developed at the local, regional, and state levels include the following:

1. Local Comprehensive Plans

Local Comprehensive Plans, under the state’s Growth Management Act, serve as basic building blocks for transportation planning by defining land uses and the transportation system needed to support those land uses. Local comprehensive plans must include six elements as stated earlier. The transportation element of the plan should integrate land use assumptions by identifying and developing the following:

⁵ Ch. 36.70A RCW.

⁶ HB 1487 (1998).

- An inventory of land, water, and air transportation facilities⁷;
- Analysis of impacts on other jurisdictions, and a feedback loop to reassess land uses that cannot be served with available funding;
- Service level standards;
- Current and future transportation needs; and
- Realistic funding analysis.

Another key component are plans developed by special transportation districts, such as transit agencies and port districts. These plans define the needs and services to carry out these special purpose governments' missions.

2. Regional Transportation Plans

Regional transportation plans (also known as metropolitan transportation plans in eight urbanized areas for federal purposes), are developed by Regional Transportation Planning Organizations (RTPOs). An RTPO is created through the voluntary association of local governments within a region. Member jurisdictions within an RTPO determine their own structure to ensure equitable representation among local governments and to allow flexibility across the state.

RTPO Membership and Designation Membership in each RTPO must include a minimum of one county, and a population of at least 100,000. Regions may be formed in areas with less than 100,000 population if a minimum of three geographically contiguous counties are linked. Member jurisdictions of an RTPO must include all counties in the region, and at least 60 percent of the cities and towns representing at least 75 percent of the population of the city and towns.

In areas where there are Metropolitan Planning Organizations (MPOs) as required by the federal government, the RTPO and MPO must be the same organization. The Department of Transportation verifies the designation of each RTPO to ensure that all state requirements are met.

Each RTPO must establish a Transportation Policy Board whose membership includes, but is not limited to: representatives from the member counties, cities and towns; major employers; the WSDOT; transit providers; and port districts within the region. Technical Advisory Committees are encouraged in RTPOs.

Lead Planning Agency - The RTPO is required to designate a lead planning agency which may be a regional council, county, city, town agency, or a WSDOT regional office. Of the fourteen RTPOs that have formed or are in the process of forming, eight of the lead planning agencies are regional councils, two are economic development councils/districts, three are Department of Transportation regional offices, and one is a county public works department. The key role of the lead planning agency is to provide staff support to the RTPO and to coordinate the development of the Regional Transportation

⁷ HB 1487 required cities and counties planning under the GMA to include state-owned transportation facilities in the transportation element of their comprehensive plans by December 31, 2000. The transportation element must include estimated impacts to state-owned transportation facilities.

Plan.

Developing the Regional Transportation Plan - The RTPO is a formal mechanism used by local governments and the State to coordinate the planning of regional transportation facilities and services. A key function of the RTPO is to develop a Regional Transportation Strategy which addresses alternative transportation modes, and transportation demand management in regional corridors, and recommended preferred transportation policies to implement growth strategies. The Regional Transportation Strategy serves as a guide, along with county-wide planning policies, guidelines and principles, for the development of the Regional Transportation Plan, also a responsibility of the RTPO. RTPOs are also required to develop in cooperation with WSDOT, public transit operators, and local jurisdictions, regional transportation improvement programs based on the plan. Improvement programs are to propose regionally-significant transportation projects and programs and transportation demand management measures.

3. Statewide Multi-modal Transportation Plan

While the state role in transportation planning was previously limited to state-owned transportation facilities and services (highways, ferries, and state-owned airports), the state has broader interests in all types of transportation modes. This broader interest is reflected in both state and federal law. In 1993, the state legislature expanded the state's concern to include transportation facilities and services that the state does not own, but are critical to the economic and social well-being of the state. These state interests include aviation, public transportation, intercity passenger rail, freight rail, marine ports and navigation, and bicycle and pedestrian transportation. The Statewide Multi-modal Transportation Plan⁸ defines objectives for these state-owned and state-interest facilities and services including intermodal connections, determines current and future deficiencies, and proposes programs, strategies and specific solutions that should be pursued to protect the state interest, consistently and in cooperation with regional and local transportation plans.⁹

D. Transportation Improvement Program and State Transportation Improvement Program

Programming and project selection under ISTEA have changed significantly from previous practice. This section highlights important issues related to programming and project selection.

1. Transportation Improvement Programs (TIPs)

ISTEA requires Transportation Improvement Programs (TIPs) to be prepared by the Washington State Department of Transportation (WSDOT) and the Metropolitan Planning Organizations. The Statewide Transportation Improvement Program encompasses all projects in Washington funded with ISTEA funds.

TIPs prepared by transportation management areas or metropolitan planning organizations include all

⁸ Transportation in monitoring the performance of state facilities, and to assess the impact of land-use decisions on state-owned transportation facilities.

federally funded projects in the region (including projects on native lands). Projects for the TIPs are selected based on the long - range plan, need, priority rating and availability of funds. TIPs are usually prepared annually and include a three-year list of projects at both the regional and the statewide levels. TIPs must be updated at least every two years.

In air quality nonattainment areas, projects funded with state or local funds must be included in the Transportation Improvement Program as well. This is to ensure that Washington's Transportation Improvement Programs reflect all important changes to the transportation system with potential air quality impacts.

The most important issues related to the preparation of a Transportation Improvement Program are listed in the following.

2. Project Selection Authority

Under ISTEA, Transportation Management Areas (Metropolitan Planning Organizations for metropolitan areas with populations over 200,000) for the first time have not only planning, but programming authority. In Washington, there are three Transportation Management Areas: Seattle/Tacoma, Spokane, and Vancouver. In smaller urban areas Metropolitan Planning Organizations select projects in cooperation with WS- DOT. In rural areas county lead agencies or Regional Transportation Planning Organizations select projects in cooperation with WSDOT. This means that WSDOT and regional and local officials jointly decide on the projects that will become part of the Transportation Improvement Program and prioritize them together. Tribal governments are invited to participate in this process.

Washington State has gone one step further in its implementation of ISTEA. In addition to Transportation Management Areas, it gives Metropolitan and Regional Transportation Planning Organizations, or designated county area lead agencies, the responsibility for project selection for some funds under the Surface Transportation Program. The intent of this provision is to facilitate an integrated, regional approach to planning and programming of transportation facilities. The project selection process at the regional level provides opportunities for projects from all transportation modes and tribal governments to be considered on the basis of regional needs and priorities.

3. Prioritizing Projects

In Washington, all regional planning organizations and WSDOT are given maximum flexibility to create the prioritization criteria that best address regional needs. They are also charged with developing prioritization methods to carry out the process. The only exceptions are projects competing on a statewide basis (for example, in the Enhancements Program). Here, consistent statewide project selection criteria and priorities are established by advisory committees.

4. Regional Transportation Planning Organizations

Key information about Washington State's Regional Transportation Planning can be found at: <http://www.wsdot.wa.gov/planning/Regional/Default.htm>

E. Implementation of Programs and Projects

Under the federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) each state must assemble a Statewide Transportation Improvement Program (STIP). Metropolitan Planning Organizations in the country's most highly urbanized areas must assemble a similar program known as a Transportation Improvement Program (TIP).

1. Transportation Improvement Programs

ISTEA provides an opportunity for the MPOs to focus and direct transportation funding in a way that will enhance communities throughout the MPO area. The federal act provided a new strengthened regional planning role for local governments to coordinate transportation and growth management strategies through MPOs, and each MPO has lead responsibility for the TIP process in their area.

ISTEA builds on past statutes to require stronger decision-making partnerships among local governments, transit agencies, MPOs, WSDOT, and other affected public and private interests. The legislation requires MPOs to develop a program that identifies, prioritizes, and makes decisions regarding funding of transportation projects that are consistent with the Metropolitan Transportation Plan.

Federal guidance requires that all transportation projects in the region requesting federal transportation funding under Title 23 CER or the Federal Transit Act include a regionally adopted TIP.

Before such projects can be including the final TIP, the region must ensure that all projects have met the following conditions:

- The projects must be evaluated and found to be consistent with the Metropolitan Transportation Plan;
- The projects must be prioritized by year and listed in a financially feasible TIP that shows how reasonable expectations of specific financial resources will be available to implement the projects;
- The projects that could affect air quality must be evaluated and found to demonstrate conformity with national air quality standards. The program projects collectively must show overall improved air quality and support the regions ability to achieve national air quality standards by the dates established by Congress;
- The list of projects included in the TIP must be developed in cooperation with tribal governments, local governments, transit agencies, and the WSDOT; and
- The projects can be included in the final, adopted TIP only if reasonable notice is given to the public and an opportunity is provided for the public to comment on the list of proposed TIP projects. Specifically, ISTEA requires that the public involvement process be an early, continuous, and meaningful one.

2. State Transportation Improvement Program

The State Transportation Improvement Program (STIP) is the result of the statewide and regional planning and selection processes. At a minimum, it includes all federally funded (Title 23) transportation projects for a three-year period.

ISTEA states: The process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems. The STIP development process in Washington has some regional variation based on complexity.

In developing the STIP local agencies, Regional Transportation Planning Organizations (RTPOs) and Metropolitan Planning Organizations (MPOs), transit agencies, the Governor's Office, and the tribes should all be involved.

With a federal requirement for a STIP, a state process to assure its timely completion is very important. If it is delayed, the programming process for the local agencies and the state are delayed. The result could mean more than delay, a project could be terminated or prevented from proceeding.

The STIP is a summary list of the selected transportation projects throughout the state.

It is reviewed by the Federal Highway Administration and the Federal Transit Administration to assure the following:

- It identifies all proposed highway and transit projects in the state, funded under title 23 USC and the Federal Transit Act, including Federal Lands projects;
- It is consistent with the long-range, statewide transportation plan;
- It is consistent with the metropolitan transportation programs (TIPs) approved by the MPOs;
- In CO ozone or PM-JO nonattainment areas, it includes projects that conform with the State Implementation Plan (SIP) for air quality (also required by the federal government);
- It is consistent with expected available funding; and
- It identifies project selection priorities developed with appropriate consultation and/or coordination with local jurisdictions, metropolitan planning organizations, and federal land agencies.

ISTEA requires an update of the STIP at least on a biennial basis. Washington has chosen to update the TIP annually. The vast majority of agencies involved in the process use a calendar year budgeting process. In addition, the premise of planning under ISTEA, coupled with the desirability for air quality conformity, is that projects be delivered on the time schedule planned.

While programs generally proceed in an orderly fashion, program delivery is subject to factors that simply cannot be planned to the desired level. Disputed right of way acquisitions, environmental

issues, and emergency situations often delay or redirect projects. This redirection requires continuous updating of the plan and changes in delivery of that plan.

Finally, WSDOT programming is subject to legislative review and approval with biennial budgets. The combination of influences on the process leads us to the conclusion that an annual update will not only better serve the requirements of ISTEA and the public, but will provide for a smoother flow of necessary planning and programming adjustments.

3. Implementing Projects

In May 1994, an update of the Local Agency Guidelines (LAG) was issued. This updated LAG manual was revised to reflect the ISTEA, Federal Highway Administration procedures, and suggestions by the Local Agency Guidelines Committee.

The LAG manual was produced to provide Washington's local agencies with statewide standards and procedures to follow when using federal funds for transportation projects. The manual is also a source book with references given for those seeking additional information and assistance. The guide has been structured in the same order as the development of a project. Through the LAG manual the Regional TransAid Engineers and their staff can assist local agencies and Indian tribes in developing, funding, and implementing transportation projects. The guide provides numerous checklists which help to ensure that items are not forgotten during a project's development. Local agencies and tribal governments, through use of the LAG manual, a handbook, can follow the necessary steps for implementing their transportation projects.

The reader should refer to the LAG manual for the details in developing projects. An overview of the project development process as outlined in LAG follows.

4. An Overview of Developing Projects Using the Local Agency Guidelines

Once a transportation improvement proposal has been through the planning process and included in the Transportation Improvement Program (TIP) for the regional planning organization (MPO or RTP), the next step is to start the actions necessary to implement the proposal.

As outlined in the Local Agency Guidelines (LAG), requests for funds are made along with appropriate initial paperwork for federal participation. Upon approval of funding and authorization to proceed, design work begins including necessary environmental documentations. Following local, state, and federal laws, contract plans are prepared. About the same time, monies are requested for various activities, e.g., right of way purchases and construction of the facility. Contracts are advertised and awarded. Construction begins with directions and oversight by the responsible agency or tribe. Upon completion of work to the satisfaction of the contracting agency, the final paperwork, including final payments and awards, are completed and the facility is opened to traffic.

The LAG manual includes all the details and the key forms needed to process local federally funded projects. In addition, Regional TransAid Engineers and their staff are available to assist local agencies and tribes with their federal-aided projects.

Contact names and phone numbers are listed in the front of this guidebook for the Regional TransAid Engineers as well as the various tribal planners.

Chapter 10.

Annexation Procedures

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Chapter 10.

Annexation Procedures

A. Why Annex?

Proper annexation of areas adjacent to cities and towns is often crucial to establishing and maintaining urban order and effective government. Rapid development and population growth frequently occur just out- side city boundaries where property is cheaper, zoning laws less restrictive or nonexistent, and subdivision requirements less demanding. Small and large cities alike are surrounded by ‘fringe’ areas. With the development of fringe communities come the problems that concentrations of people create: the failure of septic systems, increased traffic congestion on inadequate roads, the need for improved police and fire protection, and inadequate planning of land use that results in disorderly growth.

These problems, unfortunately, cross boundary lines and become a city’s problem, too. The growth of separate fringe areas may produce a complex pattern of government by multiple jurisdictions-city, county, and many special districts, which can lead to administrative chaos, inefficiency, duplication, and excessive costs.

At the same time, economic and social ties between cities and their fringe areas can be strong. Outlying areas benefit in many ways from city parks and recreational facilities, streets, utilities, and other facilities and programs, often without contributing a proportionate share of the cost to the city. Moreover, suburban people may request services equivalent to those provided within the city and may recognize that their taxes and other costs (including utility costs and fire insurance premiums) in an unincorporated area are not necessarily lower and are often

equal to, or greater than, those within the city.

A logical solution may be annexation. Properly used, annexation preserves a growing urban area as a unified whole. It enables urbanized and urbanizing areas to unite with the core city to which the fringe is socially and economically related. It facilitates the full utilization of distinct, municipal resources. City administrative and technical personnel are able to address the fringe area's municipal needs, and do this in a manner consistent with policies of the annexing city. Annexation is often preferable to the incorporation of new cities, since new incorporation in urban areas may cause conflicts of authority, the absence of cooperation, duplication of facilities, and an imbalance between taxable resources and municipal needs.

Annexation, therefore, may be appropriate when a city is surrounded by a growing area, when the need for orderly planning and governmental services in fringe areas increases, and when needed services can best be supplied by the city. In general, annexation is a solution in instances when a city is able to address emerging fringe area concerns.

Annexation has become more commonplace since the adoption of the Growth Management Act and the requirement for the designation of Urban Growth Boundaries.

B. The Evaluation of Annexation Proposals

It may be useful for a city or town to undertake various planning efforts prior to embarking upon a general program of annexation and certainly before its officials are asked to consider a specific annexation proposal. Advance planning helps place a focus on the abilities of a city or town to expand its borders and on the demands and benefits associated with a particular proposal. Advance planning also allows the public a better understanding as to what must be proved to annex territory and on how officials are likely to react to an annexation request.

1. The Statement of Annexation Goals and Policies

It is desirable for cities to prepare written guidelines as to their logical direction of future growth, and how actual annexation proposals will be evaluated. Annexation policies should be considered by a city apart from specific annexation requests. They should be developed after a city has considered its goals for growth in light of its ability to provide municipal services to additional areas of land. A statement of annexation goals and policies should seek to delineate what the city considers to be its "sphere of influence," and under what conditions it will be interested in pursuing particular annexation proposals.

2. Guidelines for Evaluating Proposed Annexations

Whether or not a city has formally adopted (or reviewed and updated) a statement of annexation goals and policies, it is important to establish criteria for evaluating specific annexation proposals. City policy-makers should be consistent in dealing with annexation interests, and apply uniform standards when making decisions regarding annexation.

3. The Annexation Study

After the general guidelines for a municipality's annexation policy have been established, a city will be in a better position to evaluate individual annexation requests. When residents of a fringe area indicate an interest in annexing to a city, or the city itself considers the area part of its natural growth pattern and desires to guide its development, a careful and thorough study of the area should be made, including the development of statistical data, maps, and information on the area's existing public services, urban services needs, service requirement costs, estimate of revenues, social and economic characteristics, and other special problems.

4. The Plan of Service

An Annexation Study should serve as a basis for preparing a Plan of Service. Such a plan should identify those municipal services proposed to be extended, and establish a time schedule for the extensions. People in an annexed area are to be treated in all respects like other residents of the city as soon as is reasonably possible.

The first step in the development of the plan is to consider the cost of extending all services being provided in the city. If the full package of services exceeds the city's financial capability, relative priorities should be established and each service should be extended when it is financially possible. The Plan of Service should advise people in the annexation area, who must approve the annexation, when they can expect to receive the new or improved services they desire and point out when the city will require direct payments from property owners to receive the services desired. Another matter which should be clearly stated in the Plan of Service is whether, or the extent to which, the city will subsidize the introduction of a new service or the improvement of an existing one in the annexed area.

C. Consequences of Annexation¹

An annexation, if approved, may have a substantial impact on the annexing city or town, the

¹ Additional information helpful to analyzing the consequences of an annexation on several of the major special districts is set out in the Annexation Handbook, Report No. 19, Municipal Resource Services.

county from which territory is ‘removed,’ and on other governmental agencies serving the area in question. Consideration of the various impacts can be very useful.

1. Special Districts

Anticipating the consequences of annexations on special districts requires careful analysis on a district by district basis, since there are few general rules which apply to all districts. Some districts are not affected by annexations, others continue exercising jurisdiction only over areas not annexed, and still others may go out of existence altogether when all or parts of their territory are absorbed by municipalities.

Early in an annexation it is helpful for city officials to meet with administrators of any potentially affected district to resolve as many issues as possible and to reach an understanding, consistent with law, as to how the transfer of jurisdiction, if required, will occur. Remaining issues may be appropriate to bring before a boundary review board, if review is required.

2. Franchises

As of the effective date of an annexation, a franchise or permit within the annexed territory authorizing or permitting the operation of any public transportation, garbage collection and/or disposal, or other similar public service, business, or facility is canceled. However, the holder of a canceled franchise or permit is to be granted another franchise by the annexing city to continue the business within the annexed territory for at least five years from the date of issuance.² The annexing city is not to extend or permit the extension of similar or competing services to the annexed territory unless it makes a proper showing that the pre-existing franchise or permit holder is unable or has refused to adequately service the annexed territory at a reasonable price.³

The law on franchises in annexed areas is not intended to preclude the purchase of a franchise, business, or facility at an agreed price, or to prohibit the condemnation of the franchise, business, or facility if damages (including an amount for the loss of the franchise or permit) are paid. However, the law provides that if any person, firm, or corporation whose franchise or permit is canceled suffers any measurable damages as a result of an annexation, that person or company has a right of action against the city that caused the damages.⁴

3. Revenue

Annexations may impact the financial health of cities and towns. Whether this impact is favorable or detrimental to a particular municipality depends largely on whether the short-term and long-term revenues accruing as a result of an annexation exceed the additional

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³ RCW 35.13.280 and RCW 35A.14.900.

⁴ *Id.*; *Metropolitan Services, Inc. v. Spokane*, 32 Wn. App. 714, 649 P.2d 642 (1982).

costs of providing the necessary facilities and services to the annexed area.

The primary revenue sources of most cities and towns in Washington state may be categorized into five broad classifications:

a.) Property Tax

On the average, throughout the state, property taxes are roughly comparable in cities and counties. Total property taxes collected vary somewhat with the number and types of special districts in each area, and with the excess levies approved by the voters of the various jurisdictions.

Pending the levy and collection of an annexing municipality's own property tax, the dollar amount of property taxes which a city or town will receive after annexation varies with the circumstances of each annexation. Since tax boundaries are established as of March 1, when an annexation becomes effective will determine when property taxes are paid to the annexing city or town. Although there is always a delay, annexations effective after March 1 will result in an additional one year delay before property tax monies are first received.

b.) State Collected, Locally Shared Revenue

With respect to the state collected, locally shared revenues, RCW 35.13.260 (first, second, third, and fourth class municipalities) and RCW 35A.14.700 (code cities) provide that each annexing city must submit a form to the state's Office of Financial Management (OFM) within 30 days of the effective date of an annexation. OFM attempts to approve annexation certificates in the same quarter in which they are received, if the annexing city has properly forwarded the required information to it.

If the certificate is forwarded more than 30 days before the commencement of the next quarterly period, the revised population is to be used in the allocation and payment of the state funds beginning with the next quarter. Quarterly periods begin on January 1, April 1, July 1, and October 1 of each year. If the revised certificate is forwarded 30 days or less before the start of the next quarter, the increased population is not considered until the beginning of the following quarter.

The gasoline taxes are distributed monthly; and the liquor board profits, liquor tax, and the automobile excise tax are distributed quarterly, all on the basis of population. Thus, there will be a lag of about one to five months from the effective date of an annexation until each state office making distributions is able to use the increased population statistics in its revenue distribution.

c.) Local Sales/Use Tax

The sales and use tax which comes to cities and towns is locally imposed. However, for ease of administration, the local tax is collected by the state department of revenue along with the

state sales tax, and returned to the municipalities on a bimonthly basis.⁵ There is normally a slight delay in the distribution of this tax to the cities. For example, a December distribution represents September-October sales and use tax accruals.

d.) Local Business Charges

Whether increased revenue may be forecast from the imposition of local business taxes in an annexed area depends, of course, on whether there are businesses located in the area, and on the nature of the local taxes and charges, if any. This is a matter of local concern, as practices vary substantially among the cities.

e.) Miscellaneous Revenues

Likewise, whether appreciable revenue may be expected from any of the possible miscellaneous revenue sources depends upon the character of the area annexed and of the local taxes imposed. Annexations of property to which a local leasehold excise tax is applicable, or of a theater or a gambling center, may increase revenues; whereas annexations of sparsely developed or residential properties may not yield noticeable income to the city from the miscellaneous sources.

4. Cost to the Annexing City

Analyzing annexation costs to a municipality is, at best, difficult. There are no magic formulas to arrive at an accurate prediction for all annexations of what the cost to the municipality will be - either in the short term or the long term. Each annexation has unique characteristics. Short term costs vary with the immediate need for services, such as the anticipated cost of police, fire, planning, utility, and street maintenance. Long term costs may include the capital improvement obligations a city may assume after an annexation. The current status of land development has substantial bearing on the cost element, together with size, character of the population, and unique municipal concerns, if any, of the area to be annexed.

5. Liability

Annexation results in the transfer of liability for unsafe conditions in roads. "Where a municipality annexes a roadway from another municipality, the annexed municipality's potential liability for any unsafe conditions in the roadway ends after the annexing municipality has been afforded a reasonable opportunity to discover and remedy the unsafe condition."⁶

⁵ RCW 82.14.060

⁶ Olson v. City of Bellevue, 93 Wn. App. 154, 968 P.2d 894 (1998).

D. Preliminary Matters

Prior to proceeding with a proposed annexation, a city or town must consider the application of the State Environmental Policy Act to the proposed annexation and may wish to consider the area's zoning, whether some of the city's or town's present indebtedness should be assumed, whether provision should be made for the creation of a community municipal corporation, and what or how information should be supplied to persons living in the proposed annexation area.

1. Environmental Disclosure Requirements

The State Environmental Policy Act, (SEPA), Ch. 43.21C RCW, requires environmental factors to be considered before "major actions significantly affecting the quality of the environment" are undertaken. The State of Washington Council on Environmental Policy developed the SEPA Rules, Ch. 197-11 of the Washington Administrative Code, to help define what a "major action" is, and to establish procedures for impact statement preparation. Annexations are included in the definition of "nonproject actions" in these rules.⁷

Some annexations will require preparation of a complete environmental impact statement, but others will not be major actions significantly affecting the environment, and a negative declaration will suffice.

2. Comprehensive Planning/Zoning

Cities and towns are authorized under RCW 35.13.177 and 35.13.178 (RCW 35A.14.330 and 35A.14.340 for code cities) to prepare a comprehensive land use plan or zoning regulation for areas which might reasonably be expected to be annexed to the city or town at any future time. Preparation of the comprehensive plan or regulation is essential in a city or town which will want to adopt meaningful zoning measures for its new territory simultaneously with annexation. If appropriate zoning provisions are not adopted at the time of annexation, it is possible that uses of land may become established in a newly annexed territory, which are incompatible with neighboring uses and with sound land use management.

Questions frequently arise as to how the zoning procedures may be coordinated with the annexation laws. While each situation must be individually analyzed, there is a time, fairly soon after an annexation is initiated, when the annexation procedures are too far advanced to allow for a "time-out" during which a comprehensive plan/zoning regulation for the area proposed for annexation can be prepared.

Many cities avoid this timing problem by preplanning and prezoning for all area surrounding their boundaries that are logical growth directions of the city. The statutes on preplanning and prezoning permit the utilization of the procedures outlined above for "any area which might

⁷ See WAC 197-11-704.

reasonably be expected to be annexed by the city or town at any future time.”⁸ There is no requirement that an annexation proposal be imminent before consideration is given to planning and zoning. The most satisfactory use of the pre-zoning authority permits completing orderly planning and zoning before specific annexation proposals are presented.

Cities and towns now take several approaches to zoning newly annexed areas that have not been preplanned and prezoned. Some cities and towns provide, by ordinance, that all newly annexed territory that is not otherwise zoned shall be automatically zoned into the city’s least dense residential zone, or into a general “holding” zone. This approach avoids having property within the city or town which has no zoning designation.

Another approach is to provide, by ordinance, that the zoning regulations of the county shall remain applicable pending further review and rezoning in due course by the city or town. A third approach would be to automatically zone newly annexed territory into the city or town zone which is most similar to the prior county zone.

Pending statutory or judicial guidance, any of the foregoing temporary methods may be more desirable than the complete absence of a zoning provision when territory is annexed to a city or town.

3. Assumption of Indebtedness

Statutes authorizing annexation through the election method, initiated either by petition resolution, the 75 percent petition method, and the method of annexing unincorporated islands (applicable to code cities), all authorize the legislative body of the annexing city or town to require property in an area being annexed to assume, as a condition of annexation, a pro rata share of the annexing city’s then outstanding indebtedness which had been approved by the voters, contracted, or incurred prior to, or existing at, the date of annexation.⁹

In each city there will be different factors which should be considered in deciding whether to require debt assumption. Most cities do require the assumption of indebtedness as a condition of annexation unless in a particular circumstance this would not be equitable. This issue may be included in a city’s statement of annexation goals and policies, so that the city is consistent in its requirements, and all potential areas are aware of them.

4. Community Municipal Corporations

State statutes authorize the formation of community municipal corporations in annexations in which the unincorporated territory being annexed:

- Would have been eligible for incorporation as a city or town, or

⁸ RCW 35.13.177; see also RCW 35A.14.330.

⁹ RCW 35.13.090, RCW 35.13.095, and RCW 35.13.100

- Has at least 300 population, and is at least 10 percent of the population of the annexing city, or
- Has a minimum population of 1000 inhabitants.¹⁰

The general purpose of community municipal corporations is to provide a formal mechanism to communities which are uniting with larger governments whereby their community identity can be maintained, advice can be forwarded to the legislative authority, and localized decisions on planning, zoning, and subdivision matters can be made. They have been formed in several areas within the state, such as in the cities of Bellevue and Kirkland.

5. The Annexation Information Program

The success of an annexation program is often directly dependent on public attitudes. Accordingly, it is important that members of the public are fully informed on the issues and elements involved in order that the final decision truly reflects the general will. An annexation information program will help to form correct public attitudes, and to dispel false rumors, misunderstandings, and incorrect information so that annexations can be more readily judged on their own merits.

A carefully planned public relations program is essential in communicating annexation facts to the public. However, when an election is involved, caution must be exercised not to use public facilities for promoting the ballot proposition, contrary to law.¹¹ One way to provide needed information is through the development of a fact sheet.

A fact sheet or pamphlet will typically describe various aspects of the proposed annexation. It should include at least a map of the area, a list of the benefits and improvements that will result from annexation, and a clear statement of the financial implications of the proposal.

Community organizations, such as improvement clubs, service clubs, garden clubs and social clubs may also be valuable in informing residents of annexation issues. Such organizations often promote community spirit and provide arenas for involvement in local issues and affairs. The support or opposition of such organizations can be very important to a city's annexation program.

¹⁰ RCW 35.14.010.

¹¹ See RCW 42.17.130.

E. Methods of Annexation in First, Second, Third, and Fourth Class Municipalities

There are five main methods by which areas can be annexed to first, second, third, and fourth class municipalities; in addition, since 1989, there is a means by which city and town boundaries can be adjusted.

1. Election Method, Initiated by 20 Percent Petition

a.) Initiation

The annexation of contiguous, unincorporated territory may be initiated by a petition signed by 20 percent of the number of voters living in the area to be annexed who voted in the last election.¹²

b.) Review by Prosecuting Attorney

The petition is first submitted to the county prosecuting attorney for review. The prosecuting attorney has 21 days after submission to certify or refuse to certify the petition as required by RCW 35.13.025.¹³

c.) Approval of City or Town

i) Prior Approval Required

Once the petition has been certified by the prosecuting attorney, it is to be filed with the legislative body of the city or town to which annexation is proposed.¹⁴ That body, within 60 days of the date it was filed, must either approve or reject the proposed annexation by resolution and notify the petitioners of its action, either by mail or by publishing notice once each week for at least two weeks in a newspaper of general circulation in the area proposed to be annexed. The approval of the legislative body is required for any annexation.

ii.) Additional Conditions to Annexation

The legislative body of a city or town to which annexation is proposed, in approving the proposed annexation, may also require assumption of indebtedness and the filing of a comprehensive plan for the area.¹⁵

¹² Under the Growth Management Act (Ch. 17, Laws of 1990, 1st Ex. Sess., (ESHB 2929) (RCW35.13.005) only those areas which are in an urban growth area may be annexed. The Act, however, does not apply in all areas of the state.

¹³ RCW 35.13.020 continues to refer to RCW 35.13.025, even though RCW 35.13.025 was repealed by section 10, Ch. 351, Laws of 1989. Chapter 351 would have significantly amended RCW 35.13.020; however, the section that would have made the amendments (section 1) was vetoed by the governor.

¹⁴ RCW 35.13.020, RCW 35.13.040.

¹⁵ RCW 35.13.020.

d.) Petition Filed with County Governing Body and Review Board

After approval by the legislative body of the city or town, the petition is to be filed in the office of the county governing body. Notice of the proposed annexation must also be given to the county boundary review board, if one has been established in the county.¹⁶ Otherwise, an ad hoc annexation review board is to be convened by the mayor within 30 days after the filing of the petition with the county.¹⁷

e.) County Governing Body-Hearing on Petition

The county governing body is to conduct the hearing on the annexation petition. If the petition complies with legal requirements and has been approved by the review board, the petition for an annexation election is to be granted. The county governing body may continue the hearing from time to time for an aggregate period not exceeding two weeks.¹⁸

f.) Election on Annexation¹⁹

If the petition is granted and is certified as sufficient, RCW 35.13.060 requires that the city or town legislative body indicate its preference for an election date on the annexation to the county auditor. The date must be one of the special election dates provided for by RCW 29.13.020 and is to be held 60 or more days after the date the preference is indicated. The county auditor shall call the special election on the date indicated by the city or town.

Notice of the election must be posted for at least two weeks prior to the date of election in four public places within the area proposed to be annexed, and published in accordance with the notice required in RCW 29.27.080.

If either of the propositions (annexation, assumption of debt) are approved by the electors, the county governing body is required to:

- Enter in its minutes a finding to that effect, and
- Transmit and file a certified copy of its minutes with the clerk of the city or town to which annexation is proposed, and
- Transmit a certified abstract of the vote.²⁰

The city or town clerk is to transmit the certified copy of the finding of the county governing body to the legislative body of the city or town at the next regular meeting or as soon thereafter as practicable.

¹⁶ RCW 36.93.090.

¹⁷ RCW 35.13.171.

¹⁸ “The [county has] no alternative but to grant the petition if the board of review has approved the annexation and the petition complies with the statutes.” *Meek v. Thurston County*, 60 Wn.2d 461, 467, 374 P. 2d 558 (1962); Accord, AGO 57-58 No. 19.

¹⁹ At any time before the date is set for the annexation election, all proceedings to annex may be terminated if a sufficient petition is submitted pursuant to RCW 35.13.165. The ability to terminate the process by petition, however, is only available to cities with a population greater than 400,000.

²⁰ RCW 35.13.090.

The legislative body is to adopt ordinances providing for annexation and adoption of the comprehensive plan, and/or the creation of a community municipal corporation, as is appropriate. If a proposition calling for the assumption of all or any portion of the outstanding indebtedness of the city or town was submitted and approved, this provision is to be included in the annexing ordinance. If this proposition did not receive the necessary vote, then the legislative body must decide whether to enact an annexation ordinance, or to decline to annex the territory.²¹ The area annexed becomes a part of a city or town upon the date fixed in the ordinance of annexation.²²

2. Election Method, Initiated by Resolution

The annexation of contiguous, unincorporated territory may also be initiated by resolution of the legislative body of the city or town which desires to annex the territory, with the exception of the first governing body of the county in which the territory is located. Notice of the proposed annexation must also be given to the county boundary review board, if one has been established in the county.²³ Otherwise, an ad hoc annexation review board is to be convened by the mayor.²⁴

3. The 75 Percent Petition Method

The most frequently used method of annexing territory is by petition of the owners of at least 75 percent of the property value in an area, computed according to the assessed valuation of the property in the proposed annexation area for general taxation purposes.

a.) Initiation of the 75 Percent Petition Annexation

The annexation may be initiated by either:

- Signatures of not less than 10 percent of the residents of the area proposed to be annexed, or
- Signatures of the owners of not less than 10 percent of the value of the property for which annexation is petitioned, according to the assessed valuation for general taxation purposes, or
- The board of directors of a school district.²⁵

After the annexation has begun but before circulating an annexation petition under the 75 percent petition method, the initiating party or parties must give notice of their intention to commence annexation proceedings to the legislative body of the city or town to which they propose to annex.²⁶

²¹ RCW 35.13.100.

²² RCW 35.13.110.

²³ RCW 36.93.090.

²⁴ RCW 35.13.171.

²⁵ See RCW 28A.335.110.

²⁶ See RCW 35.13.125.

The legislative body is to set a date (within 60 days after the filing of the request) for a meeting with the initiating parties to determine:

- Whether the city or town will accept, reject, or geographically modify the proposed annexation;
- Whether it will require the simultaneous adoption of the comprehensive plan, if such a plan has been prepared and filed as provided for in RCW 35.13.177 and 35.13.178, and
- Whether it will require the assumption of all or any portion of the existing city or town indebtedness by the area to be annexed²⁷

If the legislative body requires any of the foregoing provisions to be included as conditions to annexation, it is to record this action in its minutes. There is no appeal from the decision of the legislative body.

If the legislative body approves the initial annexation proposal, the petition may be drafted and circulated.²⁸

When a legally sufficient petition is filed with a city or town legislative body, that body may entertain it, fix a date for a public hearing, and provide notice of the hearing.²⁹

Following the hearing, the legislative body must enact an ordinance annexing or declining to annex the property. It may annex all or any portion of the area proposed for annexation, but may not include any property not described in the annexation petition.³⁰

b.) Review by Boundary Review Board

If a boundary review board has been established within the county, a notice of intent to annex must be filed with it.³¹

The board may assume jurisdiction over the annexation if, within 45 days of filing the notice of intent, a request for review is made by a sufficient number of board members of a governmental unit affected by the proposal, or by petition of registered voters or property owners. If jurisdiction is not invoked within 45 days, the proposed annexation is deemed approved. The board must act within 120 days of the review request, unless the parties agree to an extension. If no finding is made within 120 days and no extension is granted, the proposal is deemed approved.³²

Whether review is required by an ad hoc annexation review board in counties which do not have a boundary review board is uncertain. If the proposal is filed with the ad hoc board, the

²⁷ RCW 35.13.125.

²⁸ See RCW 35.13.130.

²⁹ See RCW 35.13.140.

³⁰ RCW 35.13.150.

³¹ RCW 36.93.090.

³² RCW 36.93.100.

decision of the ad hoc annexation review board would be only advisory to the city legislative body.

c. Effective Date

The annexation, together with any provisions for the assumption of indebtedness or adoption of comprehensive plan, is to take effect on the date set in the ordinance.³³

4. Annexation for Municipal Purposes

Second and third class cities and towns³⁴ are authorized to annex territory outside the city or town limits for municipal purposes, regardless of whether the territory is contiguous or noncontiguous to the annexing city or town. Either the area must be owned by the city or town or all of the owners of the real property in the area must give their written consent to the annexation. The annexation requires enactment of an ordinance by majority vote of the city or town council.

Annexations of areas owned by a city or town for municipal purposes are exempt from boundary review board review.³⁵ Review by the ad hoc annexation review board likewise is not necessary in counties without a Boundary Review Board.

5. Annexation of Federally Owned Areas

a.) First Class Cities

A first class city may annex any contiguous unincorporated area by ordinance accepting a gift, grant, lease or cession of jurisdiction from the federal government of the right to occupy or control it.³⁶

b.) Second and Third Class Cities, Towns

A second or third class city or town may annex by ordinance any contiguous unincorporated area within four miles of its corporate limits by accepting a gift, grant, or lease from the federal government of the right to occupy, control, improve, or sublet it for commercial, manufacturing, or industrial purposes.³⁷

When a boundary review board has been established in the county, notice of intent to annex must be filed with it. Review by the ad hoc annexation review board is not necessary in counties without a Boundary Review Board.

³³ RCW 35.13.160.

³⁴ First class cities probably may also utilize this annexation method under the omnibus grant of powers to first class cities by RCW 35.22.570.

³⁵ See RCW 36.93.090.

³⁶ RCW 35.13.185.

³⁷ RCW 35.13.190.

6. Boundary Line Adjustments

Legislation was enacted in 1989³⁸ to establish a process for the adjustment of existing or proposed city boundary lines to avoid a situation where a common boundary line is or would be located within a right-of-way of a public street, road, or highway. The process also applies to the situation where two cities are separated or would be separated by only the right-of-way of a public street, road, or highway, other than where a boundary line runs from one edge to the other edge of the right-of-way.³⁹ The process is available to all cities and towns, including code cities.⁴⁰ A process was also established to provide for boundary adjustments where a parcel of land is located partially within and partially without the city boundaries⁴¹

7. Urban Growth Area Boundaries

Cities and Counties required to plan under the Growth Management Act are required to designate Urban Growth Area Boundaries (“UGA”).⁴² An UGA may extend beyond cities’ boundaries and shall include areas sufficient to permit the urban growth that is projected to occur within that city for the succeeding 20-year period. No city may annex territory beyond an Urban Growth Area⁴³

F. Methods of Annexation in Code Cities

Six methods of annexation are available to code cities⁴⁴ Procedures for each annexation method are reviewed below:

1. Election Method, Initiated by 10 Percent Petition

The annexation of contiguous, unincorporated territory may be initiated by a petition which is signed by voters equal to 10 percent of the votes cast at the last state general election living in the area to be annexed.⁴⁵ The petition is to be filed with the county auditor, with a copy filed with the city’s legislative body. The county auditor certifies the sufficiency of the petition to the legislative body of the code city.

If there are sufficient valid signatures, the legislative body must, within 60 days, notify the

³⁸ See Ch. 84, Laws of 1989 (SSB 5127) and RCW 35.13.300 et seq.

³⁹ RCW 35.13.300.

⁴⁰ Id.

⁴¹ RCW 35.13.340.

⁴² RCW 36.70A.110.

⁴³ RCW 35.13.005.

⁴⁴ Under the Growth Management Act (ch. 17, Laws of 1990, 1st Ex. Sess., (ESHB 2929) (RCW35.13.005) only those areas which are in an “urban growth area” may be annexed. The Act, however, does not apply to all areas of the state.

⁴⁵ See RCW 35A.14.020.

petitioners of its approval or rejection, either by mail or by published notice. The approval of the legislative body is a condition precedent to further proceedings on the petition. A formal public hearing is optional.⁴⁶ The legislative body may require, as part of the annexation approval, that the area seeking annexation be subject to then - outstanding indebtedness and/or zoning regulations.

After approval by the legislative body of the city to which annexation is proposed, the petition is to be filed with the legislative authority of the county in which the territory is located, together with a statement of the provisions on assumption of debt and/or the simultaneous adoption of a proposed zoning regulation.

A copy of the petition and statement, if any, is also to be filed with the boundary review board, if one has been established, or otherwise with the county annexation review board for code cities, unless the annexation is exempt from review. An annexation of less than fifty acres or less than \$2 million in assessed valuation is not subject to review, except in counties in which the boundary review board has been established.⁴⁷

If the review board disapproves the proposal, no further action may be taken on the proposal and no other proposal for annexation of the same or substantially the same territory (as determined by the board) may be initiated or considered for twelve months.

Upon approval of the proposal by the review board (with or without modifications), the city legislative body is to indicate to the county auditor its preference for a special election date for submission of the proposal (with any modifications made by the review board) to the voters of the territory proposed to be annexed. The county legislative authority must set the election date on the date indicated by the city.

The annexation question is to be submitted at a special election on one of the dates provided under RCW 29.13.020 that is 60 or more days after the preference is indicated.⁴⁸ The statute provides that only registered voters who have resided in the area proposed to be annexed for at least 90 days before the election, shall be allowed to vote; this statutory requirement may be unconstitutional.⁴⁹ On the Monday after the annexation election, the county canvassing board must canvass the returns and submit a statement of canvass to the county legislative authority.⁵⁰ If any of the propositions are approved by the electors, the county legislative authority is required to enter in its minutes a finding to that effect, transmit and file a certified copy of its minutes to the clerk of the city to which annexation is proposed, and transmit to the city clerk a certified abstract of the vote.

⁴⁶ See RCW 35A.14.020.

⁴⁷ An area of less than ten acres and less than \$2 million in assessed valuation need not be reviewed by a county boundary review board, if the chair of the board by written statement declares that review is not necessary. See RCW 36.93.110.

⁴⁸ See RCW 35A.14.050.

⁴⁹ See *Moen v. Erlandson*, 80 Wn.2d 755, 498 P.2d 849 (1972).

⁵⁰ RCW 35A.14.080.

The city clerk is to transmit the certified copy of the finding of the county legislative authority to the city legislative body at its next regular meeting, or as soon thereafter as practicable.

The city legislative body is to adopt ordinances providing for annexation, the proposed zoning regulation, and/or the assumption of all or any portion of indebtedness, as is appropriate. If a proposition calling for the assumption of indebtedness of the city was disapproved, the legislative body may refuse to annex the territory.⁵¹

A certificate must be submitted in triplicate to the state Office of Financial Management within 30 days of the effective date of annexation.⁵²

2. Election Method, Initiated by Resolution

The annexation of contiguous, unincorporated territory may also be initiated by resolution of the legislative body of the code city desiring to annex the territory. After the annexation is properly initiated, the election procedures under this method are identical to those used in the election method initiated by the 10 percent petition. The resolution may also provide for the assumption of indebtedness, the simultaneous adoption of zoning, and for the creation of community municipal corporation.⁵³

A certified copy of the resolution is to be filed with the legislative authority of the county in which the proposed annexation is located and with the appropriate review board, if any. The remaining procedures are the same as those applicable to annexation elections initiated by petition.

3. The 60 Percent Petition Annexation Method

The most frequently used method of annexing unincorporated territory is by petition of the owners of at least 60 percent of the property value in the area, computed according to the assessed valuation of the property in the proposed annexation area for general taxation purposes.⁵⁴

Prior to circulating a petition for annexation, the initiating party or parties (the owners of not less than 10 percent in value, according to the assessed valuation for general taxation of the property for which annexation is sought) must give written notice of their intention to commence annexation proceedings to the legislative body of the code city to which they seek annexation.⁵⁵

⁵¹ RCW 35A.14.050.

⁵² RCW 35A.14.700.

⁵³ RCW 35A.14.015.

⁵⁴ Prior to the passage of ch. 351, Laws of 1989, signatures representing were required.

⁵⁵ RCW 35A.14.120.

The city legislative body is to set a date, not later than 60 days after the filing of the request, for a meeting with the initiating parties to determine whether the code city will accept, reject, or geographically modify the proposed annexation; whether it will require the simultaneous adoption of a proposed zoning regulation; and whether it will require the assumption of all or any portion of existing city indebtedness by the area to be annexed.

Approval by the legislative body is a condition precedent to circulation of the petition. There is no appeal of the decision of the legislative body. If the legislative body approves the initial annexation proposal, the petition may be drafted and circulated.⁵⁶ After circulation, the petition is filed with the legislative body of the municipality and should be certified as sufficient.⁵⁷

If the petition is sufficient, the legislative body may entertain it and fix a date for a public hearing, provide notice, and invite interested persons to appear.

Following the hearing, if a legislative body determines to effect the annexation, it shall do so by ordinance. It may annex all or any portion of the area proposed for annexation, but may not include any property not described in the annexation petition.⁵⁸

If a boundary review board has been established within the county, a notice of intent to annex must be filed with it. Most boundary review boards will accept and process the notice of intent on the 10 percent petition or after favorable action has been taken on the completed 60 percent petition. Since statutes are silent on when review is to take place under this annexation method, procedures can vary between counties. The county annexation review board for code cities does not review annexations under the 60 per- cent petition method.⁵⁹

Upon the date fixed in the ordinance of annexation, the area annexed becomes a part of the city.⁶⁰

4. Annexation for Municipal Purposes

Code cities may, by majority vote of the legislative body, annex territory outside of the limits of the city for any municipal purpose if the territory is owned by the city. This may be done regardless of whether the territory is contiguous or noncontiguous.

Review by the boundary review board or by the county annexation review board for code cities is not necessary.⁶¹

⁵⁶ RCW 35A.14.120.

⁵⁷ RCW 35A.01.040(4).

⁵⁸ RCW 35A.14.140.

⁵⁹ RCW 35A.14.220.

⁶⁰ RCW 35A.14.150.

⁶¹ RCW 35A.14.220 and RCW 36.93.090.

5. Annexation of Federally Owned Areas

A code city may annex any contiguous, unincorporated area within four miles of its corporate limits by an ordinance accepting a gift, grant or lease from the U.S. government of the right to occupy, control, improve, or sublet it for commercial, manufacturing, or industrial purposes.⁶²

6. Annexation of Unincorporated Islands

When there is an unincorporated territory containing less than 100 acres of which at least 80 per- cent of the boundaries are contiguous to a code city, a code city may initiate annexation proceedings by resolution.

Residents and property owners of the area described in the resolution are to be afforded notice and an opportunity to be heard.⁶³ After the hearing, the legislative body may provide by ordinance for the annexation of the territory described in the resolution.⁶⁴

Notice of intent to annex must also be filed with the boundary review board, if one has been established in the county. Review by the county annexation review board for code cities is not necessary in counties without a boundary review board.⁶⁵

The annexation ordinance is subject to referendum for 45 days after passage. The referendum petition must be signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general state election in the area to be annexed. If a timely and sufficient referendum petition is filed with the legislative body, the question of annexation is to be submitted to the voters.⁶⁶

If clearance is received from the boundary review board and no timely and sufficient referendum petition is filed after 45 days, the annexation shall be effective upon the date fixed in the ordinance. If a suitable petition is filed and an election held, the annexation shall be deemed approved unless a majority of the votes cast on the proposition oppose it. As of the effective date of the annexation, the area annexed becomes a part of the city, and if the annexation ordinance so provided, the property annexed is subject to the proposed zoning regulation and/or shall be assessed and taxed at the same rate and on the same basis as property within the annexing city.⁶⁷

⁶² RCW 35A.14.310.

⁶³ See RCW 35A.14.295 and 35A.14.297.

⁶⁴ RCW 35A.14.297.

⁶⁵ See RCW 35A.14.220.

⁶⁶ See RCW 35A.14.297 and 35A.14.299.

⁶⁷ See RCW 35A.14.297 and 35A.14.299.

7. Boundary Line Adjustments

Legislation adopted in 1989 provides a process whereby a code city's boundaries may be adjusted to include (or exclude) area located within a public street, road or highway, or where one parcel is located both within and without the city's limits.⁶⁸ The process applicable to code cities is the same as that applicable to other cities and towns.⁶⁹

G. Review Boards

The legislature, according to stated legislative purposes, has created review boards to ease the problems which may arise from the "rapid proliferation of municipalities and haphazard extension of and competition to extend municipal boundaries."⁷⁰ The boards are to promote the logical growth of local governments, reduce municipal competition for unincorporated territory, and preserve property values and consistent land use planning. There are three different types of review boards which review annexations. The appropriate review board for a particular annexation depends upon (1) the county in which the annexing city is located, (2) the class of the annexing city, and (3) the method of annexation. See Table A.

Table A	Subject to Review By		
Method of Annexation	Boundary Review Board ¹	Ad Hoc Annexation Review Board ²	County Annexation Review Board for Code Cities ³
Election method, initiated by petition	yes ⁴	yes ⁷	yes ⁶
Election method, initiated by resolution	yes ⁴	yes ⁷	yes ⁶
Direct petition method (60 or 75 percent)	yes ⁵	unclear ⁸	no
Annexation for municipal purposes	no	no	no
Annexation of federally-owned areas	yes	no	no
Boundary line adjustments	no	no	no
Annexation of unincorporated islands	yes	no	no

- 1 Boundary review boards currently exist in 19 counties. If a boundary review board has been created, any required review would be by that board; no other board would be created in the county.**

⁶⁸ See Ch. 84, Laws of 1989 (SSB 5127) and RCW 35.13.300 et seq.

⁶⁹ See RCW 35.13.300 and 35.13.340.

⁷⁰ See RCW 36.93.010.

- 2 **An ad hoc annexation review board is created in these counties which do not have boundary review boards; the ad hoc board reviews annexation requests involving first, second, third class cities and towns.**
- 3 **A county annexation review board for code cities would only be created in those counties not having a boundary review board; the code city board would only consider annexation requests involving code cities.**
- 4 **Review may be dispensed with if the proposed annexation is for an area of less than 10 acres and \$2 million assessed valuation, if the board chair declares in writing that review is not necessary.**
- 5 **Review only required if request made by board members, affected government, or by petition of voters or property owners.**
- 6 **Review is not required if proposed annexation is for area less than 50 acres, or less than \$2 million in assessed valuation.**
- 7 **Review is not required if proposed annexation is for area less than 10 acres and less than \$800,000 in assessed valuation.**
- 8 **Whether review is required is statutorily unclear. If review is sought, the board's decision would be advisory only.⁷¹**

All annexations by cities and towns located in counties in which boundary review boards have been established are subject to review by the boundary review board, and not by either of the other two boards. Boundary review boards have been established in nineteen counties.

Annexations by cities in other counties may be subject to review by an ad hoc annexation review board (first, second, third, and fourth class municipalities only) or by the county annexation review board for code cities (code cities only). The ad hoc review board reviews only annexations under the election method, and in some instances the 75% petition method, which are not exempt from review by reason of their small size. The county annexation review board for code cities reviews annexations by code cities under the election method, unless they are exempted.

⁷¹ See State ex rel. Thigpen v. Kent, 64 Wn.2d 823, 394 P.2d 686 (1964)

Chapter 11

Community Sustainability and Livability

Short Course on Local Planning Resource Guide Supplement

This supplement to the Short Course Resource Guide was developed to share information about community sustainability and livability with all local governments. It is based on presentations by nine speakers¹ presented at a special Short Course on Local Planning presented on November 13, 2013, at the Lacey City Council Chambers. The special Short Course and this chapter were developed by Heather Ballash of Growth Management Services under an award from the U.S. Department of Housing and Urban Development. Videos of the presentations are on the Growth Management Services web site at www.commerce.wa.gov/serving-communities/growth-management/short-course/

Disclaimer

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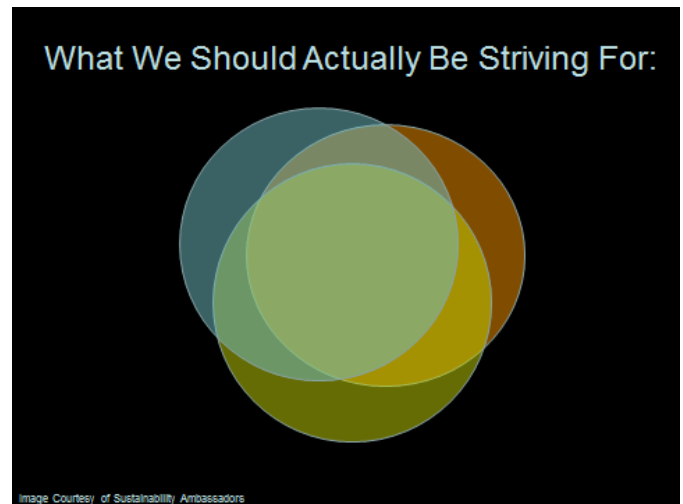
Why Plan for Sustainability?

There are many reasons to plan for sustainability, including the need for resilient natural systems, jobs that provide economic prosperity, and socially equitable communities. Self-sustaining systems are more stable, keep more money in the local economy, and address the tension between increasing populations and dwindling resources. Another reason to plan for sustainable, resilient systems is to mitigate the impacts of climate change, such as sea level rise, more frequent and severe storm events, droughts, and wildfires.

The first photo of Earth taken from space by astronaut Bill Anders on Apollo 8 in 1968 demonstrated the fragility and finite nature of our “pale, blue dot”. With regard to sustainability, our major challenge is that we are currently using more resources than can be regenerated by our one planet.

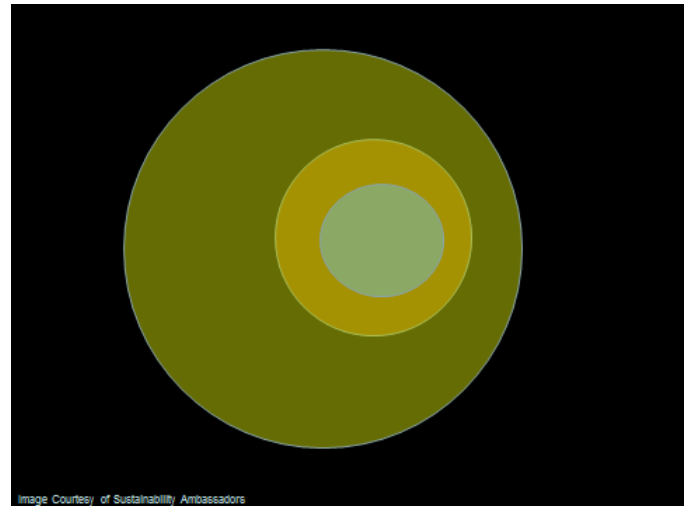
1. Models for Sustainability

Commonly referred to as the Three E's, economic, social equity and ecological/environmental systems, are key to sustainability. The standard 3E diagram shows the three systems with some overlap that is referred to as “true sustainability”.

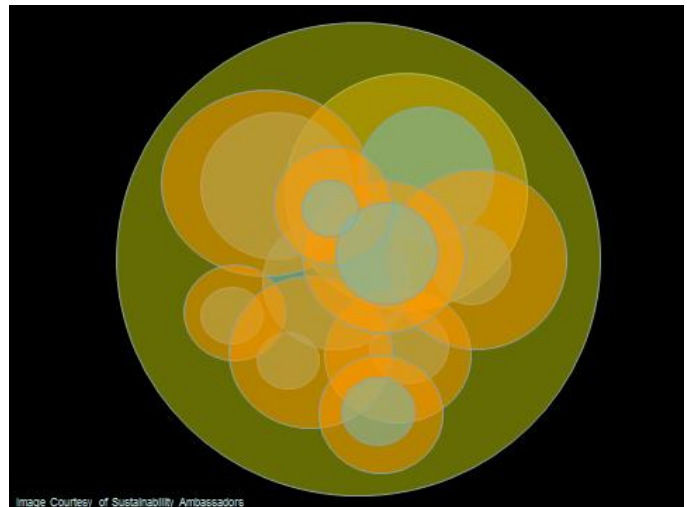


However, what we should actually be striving for is almost a complete overlap of the three systems. If we are to resolve resource and other issues (like climate change), the overlap that represents true sustainability needs to be much larger than outlying areas that only satisfy one aspect.

Some have said that a Venn diagram is not the correct way to represent concepts of sustainability, because it is actually more like a nesting doll.



Another diagram illustrates how many of these systems could develop in different areas of the world (or Washington State) based on their unique cultural histories and values, resources, etc.



2. Some Terminology

The Housing and Urban Development/Department of Transportation/Environmental Protection Agency (HUD-DOT-EPA) Partnership for Sustainable Communities defines sustainable communities as:

... places that have a variety of housing and transportation choices, with destinations close to home. As a result, they tend to have lower transportation costs, reduce air pollution and stormwater runoff, decrease infrastructure costs, preserve historic properties and sensitive lands, save people time in traffic, be more economically resilient and meet market demand for different types of housing at different price points. Rural, suburban, and urban communities can all use these strategies and techniques to invest in healthy, safe and walkable neighborhoods, but these strategies will look different in each place depending on the community's character, context, and needs.

The Sustainable Thurston Task Force adopted the following summary definition of community sustainability for the Thurston County Region through the development of its flagship document **Creating Places – Preserving Spaces: A Sustainable Development Plan for the Thurston Region**.

A sustainable community will enhance quality of life, foster economic vitality, and protect the environment while balancing our needs today with those of future residents.



As a community has discussions about sustainability with elected and appointed officials and with citizens, it is important to understand the overlap and distinctions between several other key terms:

- **Sustainability and Climate Action** Climate Action is a subset of initiatives that a local government could undertake to promote sustainability, which deal specifically with reducing greenhouse gas emissions. Municipalities can often best reduce their carbon footprint by focusing on energy and water; materials and waste; transportation and land use; and trees and other natural resources.

- **Resilient systems** Resiliency is the ability to bounce back in the face of disasters. For example, local food sources that are less dependent upon transportation infrastructure are more likely to be available following a disaster. In areas that flood regularly, strategies such as raising buildings above flood level can minimize damage while accommodating natural processes.
- **Global Warming, Climate Change, and Weather** Global warming is the result of greenhouse gases in the Earth's troposphere trapping heat. This causes climate change, which in turn affects weather patterns. While no one storm or heat wave can be attributed directly to global warming or climate change, long-term trends show there is a correlation between more heat energy in the system and more frequent and severe storms.
- **Adaptation and Mitigation** Adaptation refers to adjustments that must be made to accommodate predicted future conditions based on impacts of climate change that can no longer be avoided. An example is that when building new structures near coastlines, it is wise to consider how much the sea level is anticipated to rise during the life cycle of the building. Mitigation involves changing current behavioral paradigms so that continued global warming does not create conditions to which we would be unable to adapt.

Both adaptation and mitigation rely heavily on design solutions that are smarter and greener. Traditionally, the United States has been proud of our major engineering solutions to “fix” the natural environment to suit our needs. Now, we understand that the better solution is the one that works with nature, rather than controlling it. For example, porous paving for stormwater infiltration, or bioswales to treat stormwater, that are linked to parks and greenways.

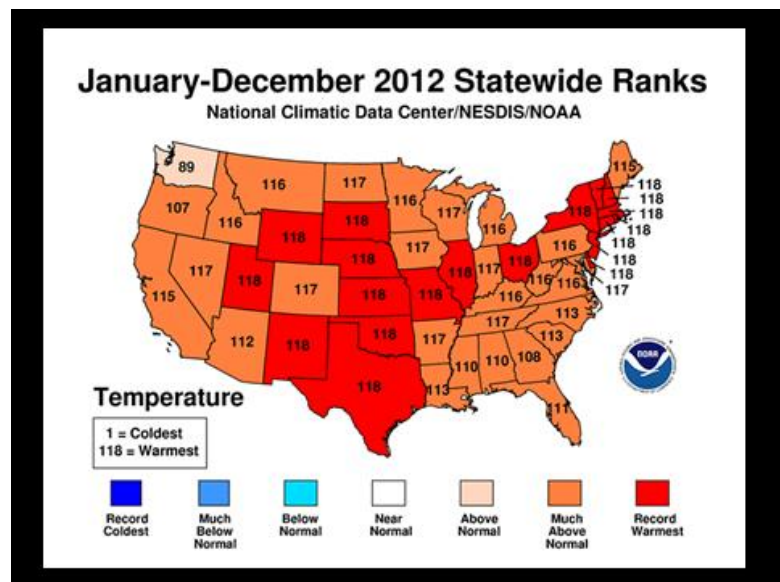
3. Impacts of Climate Change – What Are We Planning For?

It is important to understand the conditions to which future generations may have to adapt. One example of how norms are changing is evident in daily heat records in June and July of 2012. During that time period, the National Climatic Data Center found 1,875 records were tied and 4,694 were broken. Many locations set records more than once. Summer temperatures have already shifted significantly. The “extreme” temperature events that used to cover 0.1% of the earth now cover 10%. Closer to home, large wildfires occurred in much of the west in August 2012.

The drought conditions experienced in the first decade of this century are predicted to increase dramatically by the end of the century. But even in the short term, it is becoming clear that conditions are changing. For the year 2012, Washington was the only state in the country that experienced merely “above normal” temperatures. The rest of the country achieved “much above normal” or “record” warm temperatures. In addition to growth predicted by state forecasters based on Washington’s robust economy and high quality of life, climate refugees from areas that become less hospitable may further increase our population, and planners and localities may need to account for this additional demand.

Modeling of potential impacts of climate change shows us we must plan to adjust to a “new normal” that is already inevitable, and we must also plan to prevent warming to a level which humans and other species would be unable to adapt. There are several effects that the Puget Sound region is already experiencing, which may become more impactful over time:

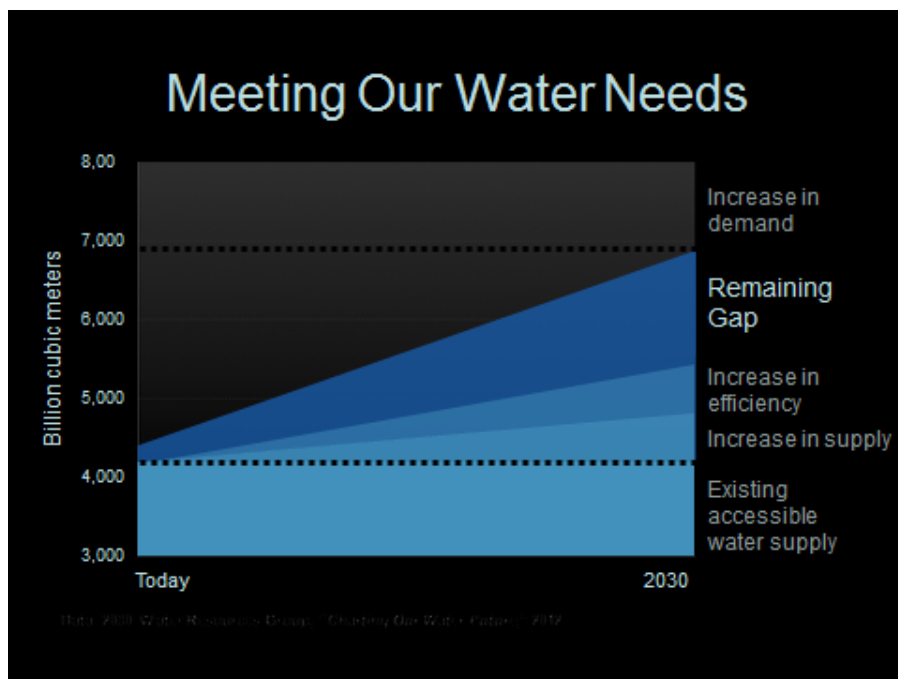
- Rising temperatures - the average Pacific Northwest temperatures rose 1.5°F over the last century.
- Extreme droughts, floods, and storms – King County river volumes in summer have decreased steadily since 1962, while late fall severe storms and floods have increased.
- Increasing sea level – sea levels around Seattle have risen 0.68 feet in the past century, and that rate is increasing.
- Acidifying oceans – ocean acidification already threatens local shellfish and fish resources.



It should be noted that when degrees of potential warming are discussed, it is usually measured in Celsius, yet in the United States we measure temperature in Fahrenheit. If we talked about the worst-case scenario increase of six degrees Centigrade as 10.8 degrees Fahrenheit, it may be easier for more people to understand that this is a huge divergence from conditions in which many plant and animal systems evolved and to which they will not be able to adapt quickly enough to survive.

Key systems that are imperative to human health and survival that could be impacted by these dramatic shifts in temperature include food, water, and global health. If these systems are disrupted by climate change, it could create instability in affected regions and beyond.

This wedge analysis demonstrates that even with increases in water supply and efficiency, there is likely a gap between our available water supply and our ability to meet the needs of a growing population.



Data: 2030 Water Resources Group, "Charting Our Water Future," 2012

4. What Can We Do?

It may seem overwhelming to confront these global and entrenched patterns of energy use and politically protected paradigms. However, planners and local leaders are actually in a position to shift land use and transportation patterns that can make a significant impact. The Comprehensive Plan represents an important opportunity for counties and cities to identify areas where local government can have the most impact through capital investments and efficient management of natural resources. They can adopt policies and implementing regulations to promote compact development and green building, including use of low impact development techniques. They can articulate ambitious objectives and implement innovative solutions, starting with identifying and picking the low-hanging fruit.

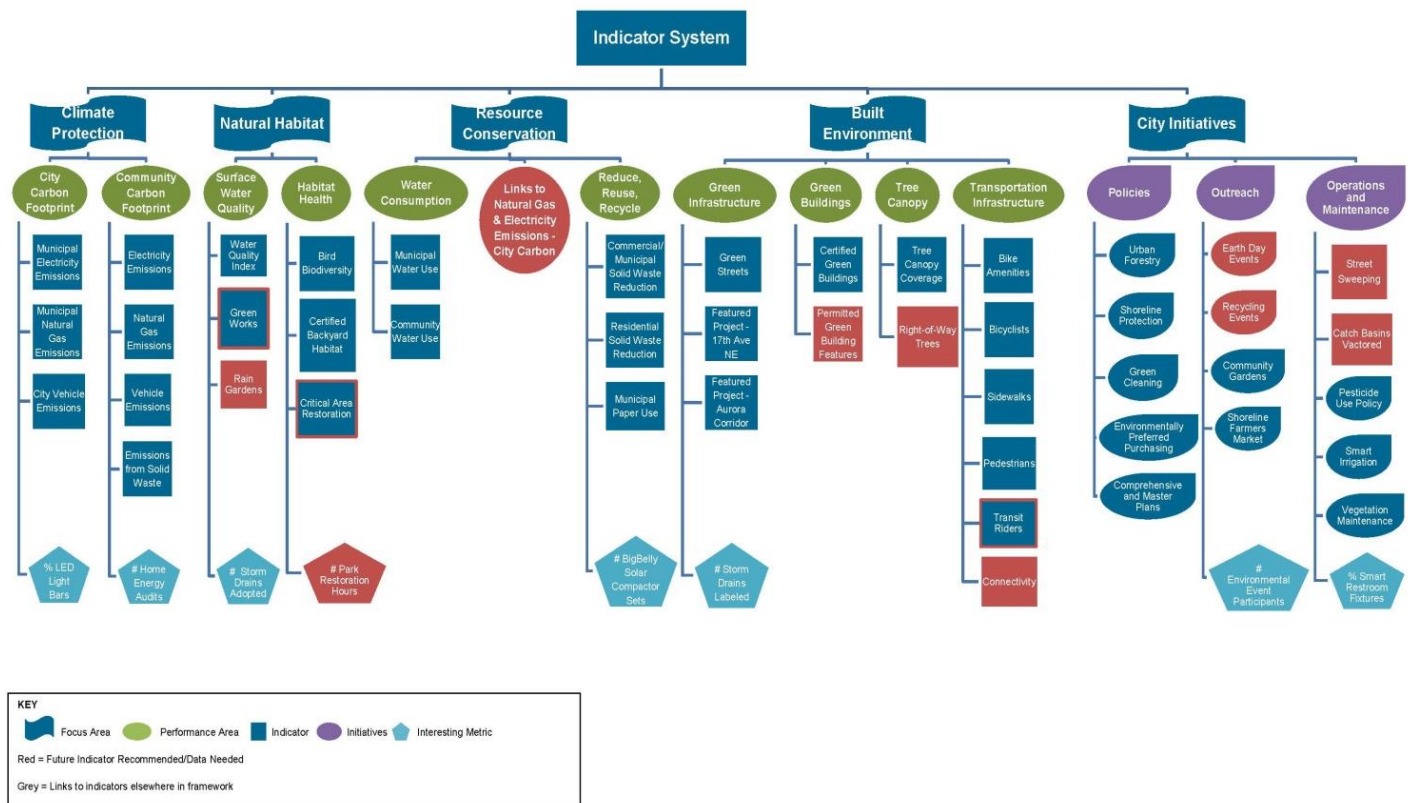
Because government resources are often non-proprietary, good ideas can be borrowed from other jurisdictions. For example, the City of Shoreline's Climate Action Plan objectives are potentially adaptable, and could be adapted to any governmental entity or even household.

Shoreline Climate Action Plan Objectives

- a. Reduce energy consumption.
- b. Increase renewable energy production and use.
- c. Reduce water consumption.
- d. Increase recycling and reuse to reduce solid waste sent to the landfill.
- e. Reduce greenhouse gas emissions embodied in materials and food consumed.
- f. Reduce fossil fuel consumption by vehicles.
- g. Reduce use of single occupancy vehicles.
- h. Increase convenience and safety of alternative transportation.
- i. Concentrate new growth in proximity of services and transit.
- j. Prevent tree canopy loss and improve tree health.
- k. Maintain and improve parks and open space.

Local government can identify targets, set baselines, track progress over time, and communicate the benefits of doing so to the communities they serve. The City of Shoreline has adopted an indicator system that is posted on the City’s “forever green” web page.

<http://forevergreen.shorelinewa.gov/>



A community may not be able to install a large wind farm or a solar facility, but in every jurisdiction, urban or rural, there are tools that could be implemented to become more self-sustaining and resilient. This will result in many economic and social benefits that enhance the quality of life, in addition to preserving natural systems for future generations.

Often these come in the form of capital projects and municipal investment, such as transportation infrastructure, civic facilities, fleet vehicles, and or other purchasing decisions such as cleaning products. Local government can also promote a variety of choice and affordability with regard to housing, and support community gardens and farmers' markets. They can install green infrastructure – the use of natural versus built systems - to protect water quality, restore critical areas, and promote waste reduction and diversion.

Local government can do all of these things, but it is also important to include the community in these efforts. No matter how much a governmental entity can accomplish with regard to sustainability and climate action, its carbon footprint is a small subset of overall community greenhouse gas emissions. Household decision-making is critical to achieving significant reductions.

Each community needs to consider what they can do to plan for and implement truly sustainable solutions. Each place needs to be creative and bold as they populate the space where environmental, economic, and socially equitable solutions intersect.

A. A Regional Approach to Planning for Sustainable Development: Sustainable Thurston³

The Sustainable Thurston project began in early 2011 with a simple question for the Thurston Region's quarter-million residents:

How do you want your community to look, function, and feel in 2035? Online and in person, thousands of people considered the challenges and opportunities of growth from an economic, environmental, and social sustainability perspective. Just as important, these engaged residents helped the Sustainable Thurston Task Force craft a regional vision of sustainable development that encompasses land use, housing, energy, transportation, food, health, and other interconnected issues.

Creating Places – Preserving Spaces: A Sustainable Development Plan for the Thurston Region establishes a definition of sustainability and a dozen foundational principles around six elements – Leadership & Participation, Community, Investment, Economy, Opportunities & Choices, and Environment.

A sustainable community will enhance quality of life, foster economic vitality, and protect the environment while balancing our needs today with those of future residents. (*Summary Definition of Sustainability for the Thurston Region*)

A bold vision statement provides a clear direction for the region:

In one generation – through innovation and leadership – the Thurston Region will become a model for sustainability and livability. We will consume less energy, water, and land, produce less waste, and achieve carbon neutrality. We will lead in doing more while consuming less. Through efficiency, coupled with strategic investments, we will support a robust economy. Our actions will enhance an excellent education and foster an

inclusive and equitable social environment that remains affordable and livable. We will view every decision at the local and regional level through the sustainability lens. We will think in generations, not years. The region will work together toward common goals, putting people in the center of our thinking, and inspire individual responsibility and leadership in our residents.

The Sustainable Thurston Task Force is made up of representatives from local government, the housing authority, transportation policy board, state government, Intercity Transit, and the chairs of the ten panels that examined quality of life issues and opportunities. The panels developed white papers that provided critical information about challenges and opportunities. This information and additional data were used throughout the plan outreach and plan development process.

1. Why a Regional Plan?

The Task Force found that the direction the region is currently heading is not sustainable for cities, towns, or the county. Under existing land use plans adopted by Thurston County and the cities under the Washington State Growth Management Act (GMA), the land use forecast for 2035 predicts:

- Losing 32 percent of farmlands to urbanization— some 15,600 acres;
- Losing 10 percent of forest lands to urbanization – around 19,300 acres;
- Sending 13 percent of growth into the rural areas, contributing to the loss of forest, farmlands, and prairies;
- Low-density growth patterns (urban and rural) that are difficult to serve with infrastructure and services, putting strain on already limited resources;
- Difficulty attracting enough growth to city centers to create vibrant places that attract innovators and foster a strong economy;
- Difficulty conserving and protecting water to sustain people and the environment; and
- Concerns over increased energy use, and difficulty meeting the state’s vehicle miles traveled and greenhouse gas reduction targets.

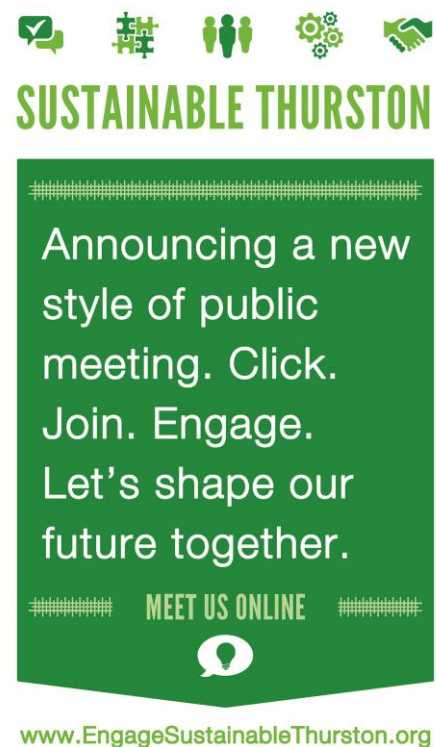
The forecast highlighted a disconnect between the vision and the reality likely to occur.

To achieve the region’s definition of sustainability, the region needs a more compact form of land use, an emphasis on place making and job creation, and efficient use of resources such as water and energy. The task force found that land use and transportation patterns form the backbones of the region’s communities. If the region can get land use and transportation right, everything else relating to sustainability would become easier.

2. The Process: Connect-Create-Communicate

Phase One of the process for developing the Plan was an extensive outreach process that resulted in the definition of sustainability for the Thurston Region. Citizens were engaged through participation in topic panels that addressed economic development, health and human services, housing, local food systems, public outreach and education, public safety, schools, water and energy. The panels developed a series of white papers that were used to inform community discussions at workshops, and on-line, as well as surveys done at different stages of the process.

In Phase Two the panels and Task Force identified goals and actions. They explored future land use outcomes under existing plans and looked at three alternative scenarios. New tools were added to traditional public outreach to reach a broader and more diverse public.



Based on public comments and ideas, the Task Force developed the bold vision, priority goals and targets, a preferred land use scenario and roughly 300 actions to take over time. In addition, leads, partners, and timelines were identified for each of the actions identified.

3. The Path Forward

The preferred land use scenario presents an alternative future to existing land use plans. Major elements of this scenario include:

1. Focus on creating or enhancing walkable city and town centers in Bucoda, Grand Mound, Lacey, Olympia, Rainier, Rochester, Tenino, Tumwater, and Yelm. These activity centers can become more vital places over time by focusing additional development there and will



foster economic development, an innovative culture, and offer places to live, work, shop, and play.

2. Transition auto-oriented major transit corridors into a more walkable urban form and seek opportunities for housing and a mix of services and amenities. These “nodes” of activity along the corridor include the city centers and smaller clusters of activity at regular intervals.
3. Increase sustainable economic development activities. Focus on attracting “innovative” and “creative” sector jobs, and jobs in locations that support strong centers.
4. Increase the range and choice of housing, especially in areas with access to goods and services such as transit. In existing neighborhoods focus on adding moderate, or “gentle,” density and accessible housing choices to meet the needs of increasing numbers of younger and older residents.
5. Rethink low density residential-only zoning districts in the urban areas. Low density development can’t support any nearby services including transit service, and creates large neighborhoods with very few transportation options, often located far away from jobs, goods, and services.
6. Use remaining urban land supply more efficiently. Make sure that infill and new development fully uses existing or new infrastructure that is expensive to build and to maintain over time.
7. Increase opportunities for urban agriculture while accommodating growth.
8. Take into account property rights, vesting, and reasonable use of property. Jurisdictions will continue to follow federal and state law to protect private property rights.
9. Take steps such as supporting farm and rural economics, providing economic incentives, re-examining rural zoning, and purchasing or transferring development rights to protect the rural character of Thurston County.

What will be achieved by 2035 under the Sustainable Thurston preferred land use scenario (the difference between existing plans and the preferred Sustainable Thurston plan)?

- \$1.6 billion in savings for roads, water, sewer, and other related infrastructure because focused growth will need less new infrastructure;
- 16 percent reduction of 1990 levels of vehicle miles traveled based on land use changes alone;
- 33 percent reduction in land consumption;
- 21 percent decrease in total residential water consumption;
- 11 percent decrease in total residential energy consumption;
- No net loss of forest lands;
- No net loss of rural farmlands; and

- 34 percent reduction in new impervious area in protected stream basins.

4. Priority Goals

To change course and realize the vision, the Task Force adopted 12 priority goals and targets, and recommends approximately 300 discrete actions to meet those goals and targets. Tracking the following priority goals will be a good indication of progress being made toward a more sustainable future.

- Create vibrant centers, corridors, and neighborhoods while accommodating growth.
- Preserve environmentally sensitive lands, farmlands, forest lands, prairies, and rural lands and develop compact urban areas.
- Create a robust economy through sustainable practices.
- Protect and improve water quality, including groundwater, rivers, lakes, streams, and the Puget Sound.
- Plan and act toward zero waste in the region.
- Ensure that residents have the resources to meet their daily needs.
- Support local food systems to increase community resilience, health, and economic prosperity.
- Ensure that the region's water supply sustains people in perpetuity while protecting the environment.
- Move toward a carbon-neutral community.
- Maintain air quality standards.
- Provide opportunities for everyone in the Thurston Region to learn about and practice sustainability.
- Make strategic decisions and investments to advance sustainability regionally.

B. Implementing the Regional Plan

Making the vision a reality will require tough decisions and significant time and resources over the long term. The Plan is a menu of things that a jurisdiction may do for sustainability, and is not binding or regulatory in nature. Local government partners in the *Creating Spaces – Preserving Places* Sustainable Thurston Plan will be thinking about how they can integrate sustainability actions into their comprehensive plan and coordinate regionally to bring about greater change.

Each entity that participated in the Plan faces different opportunities and challenges in implementing the Plan.

1. Implementation by a Smaller City⁴

The things that a small city or town may accomplish can differ greatly from what a large jurisdiction might do. It is dependent upon need, ability and financing. For example the City of Rainier is already considering or doing a number of things.

The City is revising their zoning and building codes to support sustainability. They have added a provision in their subdivision code that new subdivisions must cluster homes at one edge of the development with septic systems in the open space to allow for infill at higher densities when sewer is constructed. They have increased allowable densities throughout the City in expectation of sewers, including the allowance of accessory dwelling units, for infill.

Rainier continues to work toward a safer and more walkable city center with emphasis on safe routes to schools and businesses with the help of senior engineering students from Saint Martin's University. They are updating plans to add connectivity between neighborhoods and streets. This is sometimes problematic when the City's main street is a state highway.

The City entered into an agreement with Thurston County to construct youth athletic fields, particularly soccer fields, on County trail property that runs across the entire city. The City thinks active young people are healthy people that contribute to a sustainable life style.

Rainier is an active participant in the South Thurston Economic Development Initiative – a fledgling effort that seeks to promote community and economic development in the southern portion of Thurston County. The effort was initiated by six small south county cities and Thurston Economic Development Council, Thurston Regional Planning Council (TRPC), Washington State University Cooperative Extension, and the Olympia-Lacey-Tumwater Visitor & Convention Bureau, as a means to promote additional economic opportunities and quality-of-life enhancements for area residents. Key initiatives include tourism promotion, resources for area businesses, and use of new media by businesses. The City also supports the Highway 507 corridor study, in partnership with TRPC and four other cities, to enhance economic development in the area.

The City supports the Rainier Community Garden, sponsored by the Rainier School District and local community organizations, to provide fresh local produce to the food bank and residents. Other organizations and individuals are encouraged to grow produce.

Rainier is working to conserve its water, use it wisely, and to protect its aquifer. They will be promulgating regulations on the use of reclaimed water in anticipation of sewers. The City is

working to reduce electrical and natural gas usage through residential retrofits and use of solar panels on homes and businesses. And the City is working with residents and businesses to reduce the waste stream. As time and opportunity permit, the City of Rainier will look for new and innovative ways to enhance the City's sustainability in support of the Thurston region goals.

2. Implementation for a Sustainable Economy⁵

The Thurston Sustainable Economy Task Force identified twelve components that directly influence a healthy and sustainable economy. This Blue Ribbon Economic Development Panel then identified activities or actions that can and should occur within the sphere of influence.

The Task Force also identified actions that directly impact other spheres of influence. For example, a strong municipal revenue base is predicated upon a diverse economy. A diverse economy is dependent upon a local culture that promotes innovation within the private sector. Such innovation cannot occur without a healthy workforce/industry balance. The notion of sustainability comes from using social/economic/environment as the starting point.

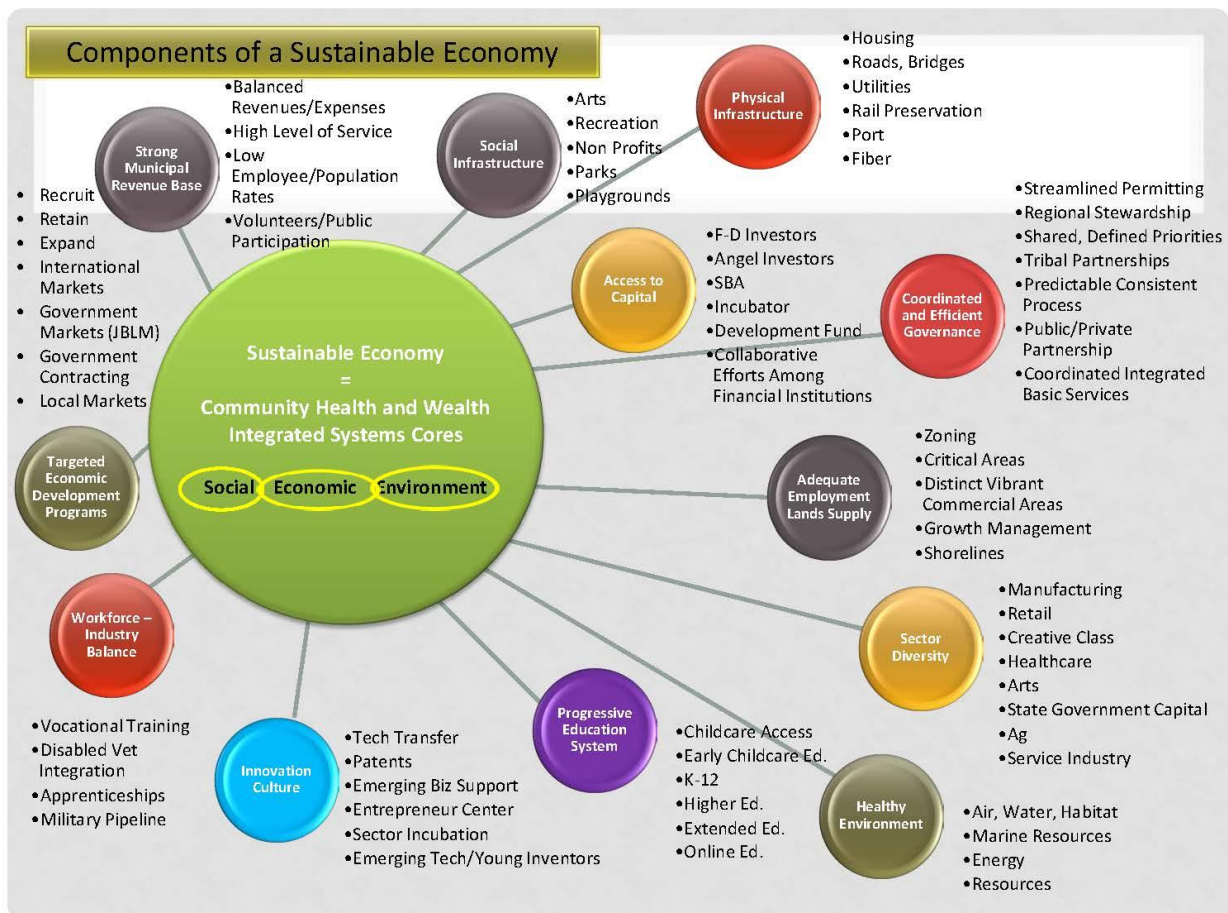
The Task Force reviewed and identified elements that must be present for a sustainable economy. Recognizing that a local economy is a function of regional success, regional partnerships were identified as key to implementation of any of the spheres of influence. Regional economic development actions that build capacity and assets, such as workforce and education, support a sustainable economy. Local capacity is enhanced with the identification of major regional employment and commercial clusters. Without regional partnerships, implementation becomes ineffective as the economy flows across many sectors.

An example of local communities capitalizing on strengths of neighbors and partner agencies is the South Thurston Economic Development Initiative. As previously noted, this partnership of six cities and various agencies is identifying and implementing strategic efforts that could meet south Thurston County's economic and community development goals. "From the combined minds and passion of this group, a very effective work program for retaining and creating appropriate investment activities in our local communities will be created."

Another example of an innovative regional partnership for sustainable economic development is the effort to establish a south Puget Sound entrepreneurial center at the Lacey campus of the South Puget Sound Community College. The vision for this center is to catalyze the development and growth of high-wage, high value, private sector companies which are generated by the local economy and workforce. The emerging entrepreneur center combines the resources of higher education with the support network created by the Economic Development Council, and Chamber of Commerce. It represents a starting point for fledgling business that are seeking inputs and

traction for business models. The goal of the center is to ensure an entrepreneurial environment that promotes high probability of success for the region's business that will promote a positive impact upon the economy.

The region has conducted an analysis of the region's commercial and industry cluster data that identified the five major economic drivers, or commercial/industrial economic clusters⁶. This analysis provides information on critical economic relationships within the supply chain. For example, we now know through cluster analysis that if a chain link is removed what the downstream impacts will be to employment, municipal revenues, and other elements of a healthy economy.



A sustainable economy requires collaboration, commitment, and agreement among local government and private partners, and attention. A balanced approach is needed based upon the goal of win/win/win. The partners know that the regional economy has changed historically and

will do so again. When done correctly, the region can produce the future it plans for, and not the one it will get without the planning.

3. Implementation by the County⁷

Under the Growth Management Act, counties and cities are required to review, and if needed, revise their comprehensive plans and regulations every eight years. Thurston County and the cities within the county must complete their review and update by June 30, 2016. This update requirement provides an opportunity to implement the regional sustainability plan by incorporating guidance from the Sustainable Thurston Plan into local plans and regulations where appropriate. However, given a shortage of planning funds, completing even a basic update will require creativity. The County is already using federal and other funds for some of its update work. For example:

- Thurston County is designing a Habitat Conservation Plan under the federal Endangered Species Act to protect prairie species and habitat in perpetuity. They are using federal habitat conservation plan funds to update their buildable lands model to determine where the zoning and development codes may be incompatible with protection of sensitive prairie habitats and species. In those areas where the codes are not conducive to long term protection, they will seek to adjust the codes as appropriate. This will allow the County to maintain local control over land use decisions, and provide certainty for land use and economic development.
- Using a U.S. Environmental Protection Agency National Estuary Program grant, the County is examining at-risk basins in the Deschutes watershed. Again, where existing land use codes are likely to lead to degraded water quality and threaten aquatic life, they will seek to adjust the codes.
- The County is conducting a septic system management project on the Scatter Creek aquifer to ensure the water is safe to drink now and into the future. They are monitoring and modeling groundwater, and gathering input from a citizens' advisory committee. Given the sensitivity of the aquifer, the County may have to amend zoning and land use policies.
- The Washington State Conservation Commission has awarded a grant to the County to participate in the Voluntary Stewardship Program. The County will attempt to tailor critical area regulations to both protect salmon habitat and enable sustainable agricultural practices.

The Growth Management Act requires counties and cities to coordinate their plans. Given resource constraints, the County will have to work even more closely with its jurisdictional partners.

Another implementation challenge for the County is public perception. Sustainable planning efforts should include considerable time and energy toward public outreach and stakeholder strategies. Citizens need clear and factual information to put issues in context and to provide informed input. Local governments should consider carefully how they are going to communicate with local media and the public around these issues.

4. Implementation within a City's Priorities and Responsibilities⁸

The City of Tumwater will consider how implementation of the plan can help them to address local priorities and responsibilities. The City has developed strategic priorities that focus on goals such as targeted development opportunities, a community recognized for quality, and an improved transportation system.

The 2016 comprehensive plan review will look at land use, transportation, economic development, environment, and housing. The Sustainable Thurston Plan recommends action on all of these issues. The comprehensive plan update and the Sustainable Thurston Plan also hold the opportunity for integrating individual plans.

For example, the City's corridor plan for Capitol Boulevard is designed to promote redevelopment along the corridor; improve the aesthetic appeal of the street; and improve transportation options and safety for walkers, cyclists, and motorists. The transformation of the corridor was identified as a priority item in the City's Economic Development Strategy.

Challenges the City and other jurisdictions will have to meet to implement the Sustainable Thurston Plan include:

- Resources – providing an ongoing source of funding without becoming dependent upon grants.
- Momentum – providing a champion who can report and celebrate the accomplishments, and keeping the Plan updated in response to problems.
- Leadership Continuity – training for new leaders that stresses the driving problems and the progress that has been made, and engaging those new leaders in reviews and updates.
- Political Support – keeping outside stakeholders informed and involved.
- Changing External Factors – monitoring the outside influences and regularly revisiting the Plan.
- New Priorities – keeping the Plan and the problems in front of people, and seeing how the Plan can be adapted to address new community issues.
- Vision/Reality Disconnect – being willing to adjust to the new reality.

C. Sustainability in Action

Other communities around Washington State have engaged in planning for sustainable development. This section focuses on Mountlake Terrace and Redmond; two cities that are planning for sustainability and have achieved some success.

1. Mountlake Terrace⁹

The City of Mountlake Terrace has planned for sustainability using basic plans and public processes. They have used their comprehensive plan and subarea plans, but they also developed a sustainability strategy and an economic vitality strategy with a clean technology appendix.

Mountlake Terrace has focused on ways to be an example for and encourage others to do the right thing, and has adopted key performance measures. The City has set an example through management of its own facilities and practices. Existing city buildings are being retrofitted for energy efficiency, and all new city buildings have met Leadership in Energy and Environmental Design (LEED) standards of silver or higher. Sustainable features and practices are incorporated into infrastructure, management of public properties, procurements, and disposal processes.

The City encourages others through adopted plans and strategies, and updates to its codes and standards. It uses public information and education to encourage citizens to make sustainable personal choices, including the promotion of energy and water efficiency for homes and businesses.

Key land use strategies that have been incorporated into the comprehensive plan and subarea plan include:

- Compact development
- Walkability and support for bicycling
- Town Center revitalization
- Provision of a range of housing choices
- Transit- oriented development
- Mixed uses
- Attractive amenities such as parks

Implementation of the City's Sustainability Strategy has been both internal and external. The City developed a matrix of responsibilities for the short term, mid-term and long term. Performance measures are tracked and reported annually for:

- Education
- Mobility
- Green Spaces
- Energy Use
- Water Use
- Resources and Material Use

The City has a Green Team of representatives from the different departments that meet on a regular basis to track progress on these performance measures.

Sustainability has been incorporated into a variety of studies and planning, such as comprehensive plan updates, a transportation master plan, transit service strategy, recreation parks and open space plan, transportation demand management study, and Shoreline Management Plan update. Code updates have addressed electric vehicle infrastructure, complete streets, transfer of development rights, stormwater management, and environmental review. The City adopted a Form-Based Code for the Town Center, and for all commercial districts, housing choices, and design standards. Other tools and incentives for sustainability include a transportation benefit district, multi-family property tax abatement, planned action ordinances to streamline environmental review, and customer-friendly permitting information.

The City is currently exploring an urban forestry program to increase the use of street trees for cooling and stormwater management. They are working regionally on code collaboration to reasonably align neighboring cities' standards, a district energy system, and planning for light rail. The City has developed a plan for its Town Center and Main Street that incorporate sustainable compact development and transportation options.

The challenges and opportunities of planning for sustainable development have been:

- Staff resources (i.e. time)
- Cross-department coordination
- Selection of performance measures
- Funding
- Leadership
- Communication
- Continuity

When planning for sustainability, the City has found that it is important to obtain broad commitment. Communication within the jurisdiction and the community should be frequent and through multiple methods. Implementation needs to be comprehensive, crossing all lines of city business. Key is reporting on performance and celebrating the successes! For more information

about the City of Mountlake Terrace Sustainability Strategy and implementation, go to City of Mountlake Terrace [Sustainability Strategy](#)

2. City of Redmond¹⁰

The City of Redmond began a major comprehensive plan update in early 2010. At that time, there was significant interest in sustainability from elected officials, staff and community members. While the definition of sustainability - meeting the needs of the present without compromising the ability of future generations to meet their needs - had been used, there was not a common understanding of what sustainability means in Redmond. Most of the City's sustainability initiatives to date had advanced the environmental side of sustainability, but the economic and social equity aspects of sustainability were not as explicit.

To better define what sustainability means in Redmond, the City undertook two important actions early in the process of the plan update. First, the City Council and Planning Commission held a joint meeting to begin to discuss what sustainability means and how it could be applied within Redmond as part of the Comprehensive Plan update. Their discussion set the direction for Redmond's comprehensive plan update and included confirmation that Redmond would use sustainability as the overall framework for this update. The Council and Planning Commission expressed that it was important to:

Integrate sustainability throughout the Comprehensive Plan rather than develop a separate chapter. Both Council and Commission believed that sustainability was too integral to many aspects of the plan - such as land use, transportation, environment, housing, and economic - to cover in a separate chapter.

Approaches included:

- Emphasize policy goals and alternatives over methods that are too prescriptive.
- Consider decisions in the context of how Redmond fits into and positively contributes to the region.
- Lead by example – such as by reducing the carbon footprint for City operations .

While this guidance provided a general framework, it was clear that a better understanding of what sustainability means in Redmond was needed, especially for the equity component. In late 2010, the City undertook a major community conversation to answer that question. People who live, work, shop or recreate in Redmond were asked to provide their ideas regarding:

What is sustainability in Redmond?

What are the priorities?

Why are these priorities important? What are the benefits to the community?

The purpose of this discussion was to provide guidance for Redmond's Comprehensive Plan Update, Transportation Master Plan update, and sustainability initiatives as a whole. Based on the results of the community discussion, City Council adopted the following sustainability principles for Redmond.

In Redmond a sustainable community means:

- Having a shared community identity that is special and unique, based on Redmond's beautiful natural environment, its vibrant employment areas and diverse community of residents;
- Having equitable access to goods, services and employment;
- Having housing choices that are accessible to residents with various incomes, ages and abilities;
- Valuing environmental quality and supporting choices that minimize impacts to the environment;
- Recognizing the importance of community awareness, education and engagement; and
- Having a strong local economy.

These principles guided amendments to each element of the City's Comprehensive Plan and are included in the updated Plan, which the City Council adopted at the end of 2011.

Between now and 2030, Redmond plans to grow from a population of 56,000 and nearly 80,000 jobs to a population of 78,000 and nearly 120,000 jobs. Of the City's growth through 2030, the Plan calls for approximately three quarters of new dwellings and two thirds of new commercial (nonresidential) floor space to be located in Redmond's two designated regional growth centers, Overlake and Downtown. This approach carries out the community's vision for Redmond to focus most of growth close to services and within easy access to existing transit, future light rail, and a connected system for bicycling and walking so that more people can travel without a car and have easier access to housing, jobs and services.

Redmond is implementing a variety of strategies at a citywide level and neighborhood level to implement the Comprehensive Plan and grow in a sustainable manner. For housing, Redmond's approach is to use a full menu of strategies to increase housing supply and choice so that the community is a place where people of all incomes, ages and family sizes, and those with special needs, can live. This includes direct assistance in the form of funding and some surplussing of city property for housing, and demonstration programs. It also includes a variety of zoning approaches, such as allowances for cottage homes, duplexes, accessory dwelling units, and inclusionary housing requirements.

To support a diversity of businesses, the City is using a program called Think Redmond. This program encourages buying local in order to:

- Support local businesses, and create and sustain local jobs
- Decrease the need to drive
- Reinvest in Redmond – money spent in a local economy is more likely to be spent in the same community

A third sustainability strategy relates to capital planning and investment. While the Growth Management Act requires that local jurisdictions forecast needs and funding for six years – the City wanted a longer term

picture. This was important to provide a better understanding of when to expect a project and to have a more comprehensive picture of long term project and revenue needs. To begin to address that, the City assembled a multi-departmental team to develop a long range capital investment strategy which integrates proposed investments through 2030 across various functional areas – transportation, parks, stormwater, utilities – as part of one plan.

The team developed principles that are based on the City’s Comprehensive Plan to guide the sequencing of projects over near-, mid-, and long –term periods. This process also helped to identify partnership opportunities within the City and with other partners on capital projects, enabled the City to understand the long term revenue to cost picture, and guided their next six year capital improvement program. It also led the City to develop a new framework for functional plan updates.

Examples of strategies to grow more sustainably on a neighborhood basis include the following for the Overlake portion of Redmond:

- Adoption of street design guidelines as the basis for evolving from super blocks to a street grid in order to improve access and connectivity within Overlake Village, and between Overlake Village and other destinations. Some streets will be primarily for retail; others for residential front doors, and others are the access streets that will accommodate loading. In addition, some streets will include rain gardens to treat run-off from adjacent street areas and provide landscaping.
- In the absence of stormwater controls or parks in the Overlake District, undertaking the planning, design and initial investment and construction activities for three underground stormwater facilities, two of which will be co-located with future parks. Property owners won’t need to construct their own detention facilities; instead, they will buy into the system that the City is building.
- As part of a HUD funded Growing Transit Community partnership in the central Puget Sound region, completion of a pre-feasibility study of a district energy approach for Overlake Village – both to gain a basic evaluation of potential value as well as a better understanding of how the approach might work. The City found that there could be savings in energy demand and cost, and carbon emissions, of at least 10% and more if the system included use of geothermal energy. As a next step, the City is looking at options to undertake a detailed district energy evaluation – including system approach, costs, and savings.
- Adding housing using several tools and strategies. Such as, zoning that requires all new development include a minimum amount of residential floor area. The minimum varies between 25 and 50% of total proposed floor area for project and can be provided in mixed use or fully residential structures

Among the challenges in implementing strategies for sustainable growth in Overlake are:

Creating an urban neighborhood that is attractive for people of all ages, and family sizes;

Overall housing affordability ;

Funding the infrastructure that is needed to evolve from suburban to urban neighborhoods; and

Keeping community members and other stakeholders involved and aware as the planning, design and construction continue.

For more information about the City of Redmond’s Overlake plan, go to [Overlake Village Plan](#).

D. Other Resources for Planning for Sustainable Development

Regional Resources

1. Sustainable Thurston [web site and plan](#) – Creating Places, Preserving Spaces: A Sustainable Development Plan for the Thurston Region
2. [King County – Cities Climate Collaboration and Pledge](#)
3. [City of Shoreline Sustainability Reporting](#)
4. City of Mountlake Terrace [Sustainability Strategy](#)
5. City of Redmond [Overlake Village Plan](#).
6. City of Tacoma [Climate Action Plan](#)

Washington State Resources

- a. Washington State Department of Commerce, Growth Management Services, [Climate Change Web page](#)
- b. Washington State Department of Ecology, [Climate Change Web page](#) See *Preparing for a Changing Climate: Washington State Integrated Climate Change Response Strategy*. See [Chapter 10 for Infrastructure and the Build Environment](#)
- c. Washington State Department of Archaeology and Historic Preservation - [Historic Preservation and Sustainability](#)
- d. [Municipal Research and Services Center of Washington](#)
 - i. [Climate Change](#)
 - ii. [Green Communities and Building Design](#)

- iii. [Smart Growth and Sustainable Development](#)

Federal Resources

- a. HUD-DOT-EPA [Partnership for Sustainable Communities](#)
- b. U.S. Environmental Protection Agency [Smart Growth](#)
- c. U.S. Department of Transportation [Livability](#)
- d. Sustainability Tools for Assessing and Rating Communities ([STAR](#) Community Rating System)
- e. [Smart Location Database](#) is a consistent nationwide GIS data resource for measuring location efficiency.

Other Resources

- a. American Planning Association, [Green Communities Research Center](#)
- b. [Smart Growth America](#)
- c. [Energy Aware Planning Guide](#), California Energy Commission
- d. California Air Pollution Control Offices Association, [Model Policies for Greenhouse Gas Emissions in General Plans](#)

Publications

- a. [Cool Planning: A Handbook on Local Strategies to Slow Climate Change](#), Oregon Environmental Council
- b. [Growing Cooler: The Evidence on Urban Development and Climate Change](#), Urban Land Institute
- c. *The Natural Step for Communities*, Sarah James and Torbjörn Lahti, New Society Publishers, 2004.

Endnotes for Chapter 11

1. The Short Course on Planning for Sustainable Development was presented on November 13, 2013, at the Lacey City Council Chambers. This special Short Course can be viewed on the Commerce web site at www.commerce.wa.gov/serving-communities/growth-management/short-course/. The presentations upon which this chapter is based are as follows:
 - a. Why Plan for Sustainability?
 - Miranda Redinger, Senior Planner, City of Shoreline
 - b. Sustainable Thurston Regional Plan
 - Jeff Gadman, Lacey City Council
 - Kathy McCormick, Senior Planner, Thurston Regional Planning Council
 - Dennis McVey, Sustainable Thurston Task Force Chair, Rainier City Council
 - Michael Cade, Executive Director, Thurston Economic Development Council
 - Scott Clark, Planning Director, Thurston County
 - John Doan, City Administrator, City of Tumwater
 - c. Sustainability in Action
 - Shane Hope, Community and Economic Development Director, City of Mountlake Terrace
 - Lori Peckol, Policy Planning Manager, City of Redmond

The Department of Commerce and Thurston Regional Council would like to thank each of these speakers for their presentations and contributions to the Short Course Manual.

2. This section of the chapter, and part of the introduction, is based on the presentation by Miranda Redinger, Senior Planner, City of Shoreline.
3. This section of chapter is based on the presentations by Jeff Gadman, Lacey City Council, and Kathy McCormick, Senior Planner, Thurston Regional Planning Council.
4. This section of the chapter is based on the presentation by Dennis McVey, Sustainable Thurston Task Force Chair, Rainier City Council.
5. This section of the chapter is based on the presentation by Michael Cade, Executive Director, Thurston Economic Development Council.
6. Commercial/industrial economic clusters are concentrations of businesses or industries that export goods and services that drive job creation and import wealth into the region. Clusters can enhance the competitiveness of a region in particular business sectors by improving economic efficiencies of member firms (e.g., supply chains and technology transfer).
7. This section of the chapter is based on the presentation by Scott Clark, Planning Director, Thurston County.
8. This section of the chapter is based on the presentation by John Doan, City Administrator, City of Tumwater.
9. This section of the chapter is based on the presentation by Shane Hope, Community and Economic Development Director, City of Mountlake Terrace.
10. This section of the chapter is based on the presentation by Lori Peckol, Policy Planning Manager, City of Redmond.

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Chapter 12

Infill Development for Small Cities

Short Course on Local Planning Resource Guide Supplement

This supplement to the Short Course Resource Guide was developed to share information about infill development with all local governments. It is based on eight presentations at a special Short Course on Local Planning presented on May 28, 2014, at the Tumwater City Council Chambers. The special Short Course and this chapter were developed by Heather Ballash of Growth Management Services under an award from the U.S. Department of Housing and Urban Development. Videos of the Short Course are on the Growth Management Services web site at www.commerce.wa.gov/serving-communities/growth-management/short-course/

Disclaimer

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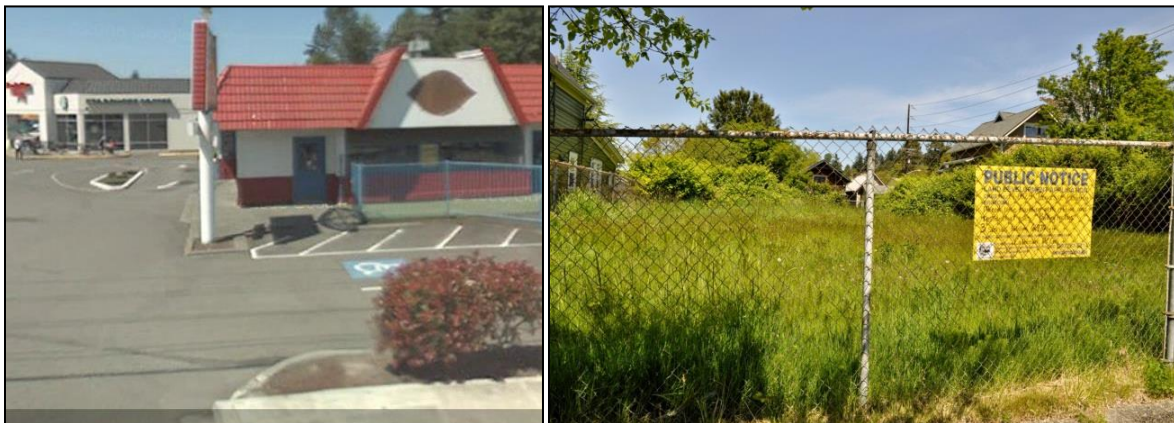
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A. Infill and the Big Picture

1. What is Infill Development?

Infill development is construction occurring in areas that are already built out. Instead of building in greenfields (areas with no existing development) infill redevelops land and repurposes existing buildings in established urban areas. Infill development happens incrementally, changing the fabric of an existing community over time, unlike creating a new greenfield community that appears all at once.

Infill accommodates growth efficiently by building on vacant or under-utilized land within built-up areas of existing communities where services and infrastructure are already in place. It includes new building or additional unit(s) on a lot and re-use and repurposing of vacant or obsolete buildings. Successful infill energizes and strengthens the existing community. Infill can transform under-performing spaces into vibrant and people-oriented urban places.



Development opportunities exist on large lots, such as aging shopping malls, or on small lots that are more challenging.



Repurposed old buildings can breathe new life to the adjacent businesses and neighborhoods.



Infill development creates a mix of uses where transit, walking and bicycling are real options.

2. Why Do We Need to Plan for Infill?

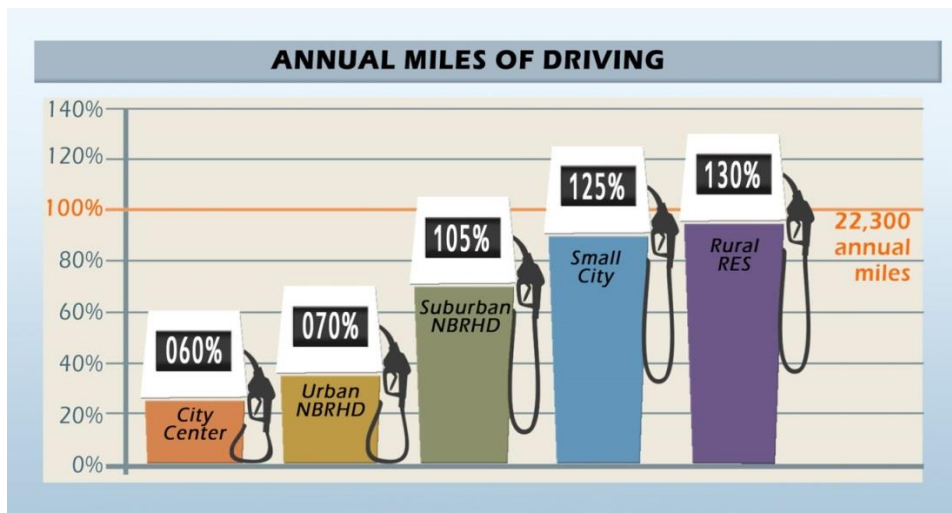
Infill is the type of development that most exemplifies contiguous and orderly development. The Washington State Growth Management Act¹ (GMA) requires communities to accommodate population growth through the efficient use of land, infrastructure and resources. Infill is a tool to accommodate future projected population growth² while:

- Encouraging development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner;³
- Using infrastructure and services efficiently;⁴
- Reducing pressure on rural and resource lands;⁵
- Minimizing auto-oriented sprawl;⁶ and
- Providing more housing with a range of affordable travel choices.⁷

Infill is a valuable tool for any community that wants to be sustainable, even without the guidance of the GMA goals. Infill development reduces a community's per capita environmental footprint and supports broader sustainability goals. It contributes to a mix of land use activities where transit, walking and biking are real options and provide convenient access to services and basic daily needs.

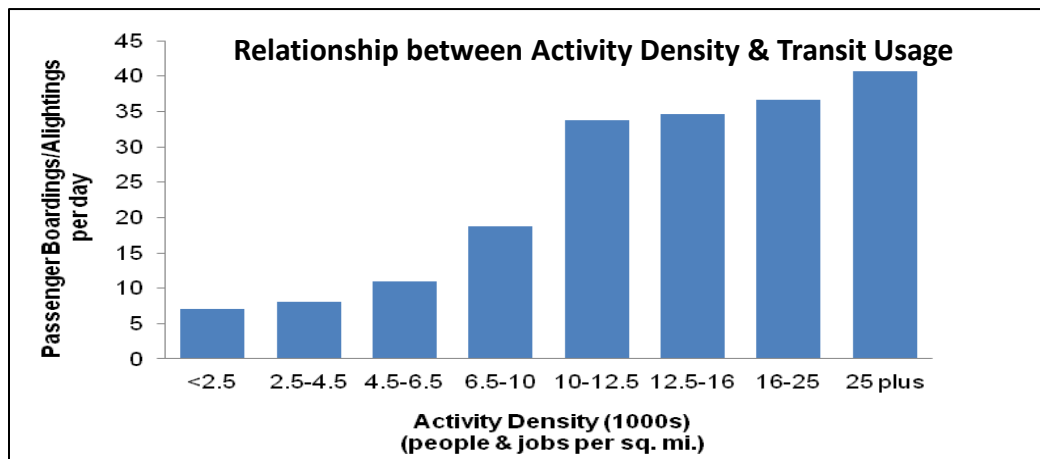
Infill can be a tool for transforming old strip malls into “hip malls” that serve as incubators for small businesses and provide neighborhood-serving commercial opportunities in underperforming spaces.

Horizontal mixed use can create a mix of uses at ground level, residential, commercial and employment uses next to each other in a single development. Vertical mixed-use can include different uses in a single building, such as apartments over ground floor commercial. Where vertical mixed use may too expensive to develop, horizontal mixed uses can provide the intensity and diversity of uses for a cost-effective development.



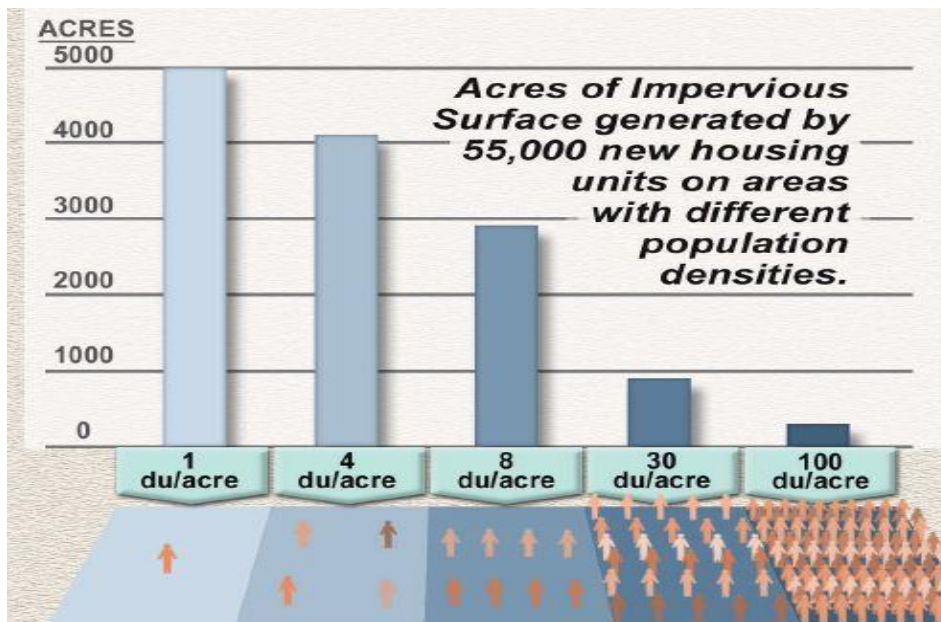
Source: Sustainable Thurston

Greater density of activities generates the highest transit use. Transit works best when it serves established areas of activity instead of extending out to new subdivisions separated from commercial areas and employment centers. Urban infill creates concentrations of activities within a contiguous geographic area. This pattern supports efficient transit service and high ridership. Infill also stimulates increased walking when it results in a diversity of activities located close to each other.



Source: Sustainable Thurston

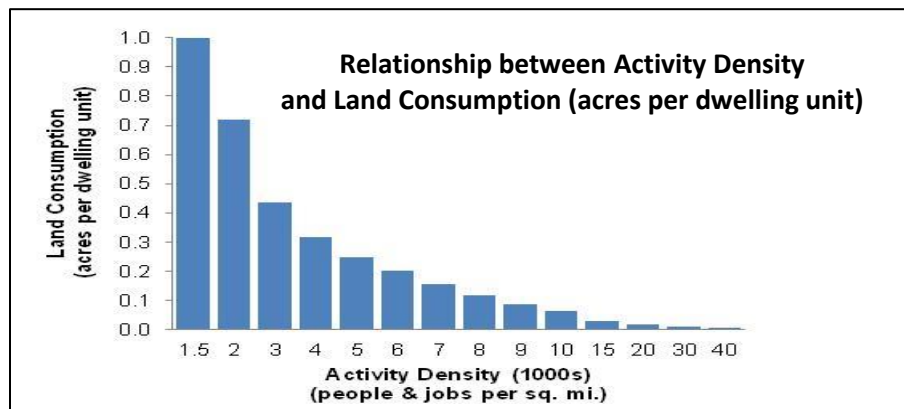
Urban infill benefits regional water quality by generating less impervious surface area per capita than any other type of development. Often, infill creates no new impervious surface area. Thurston County is expecting 55,000 more housing units over the next 20 to 30 years. Where these units are located determines how much impervious surface and stormwater runoff will be generated.



Source: Sustainable Thurston

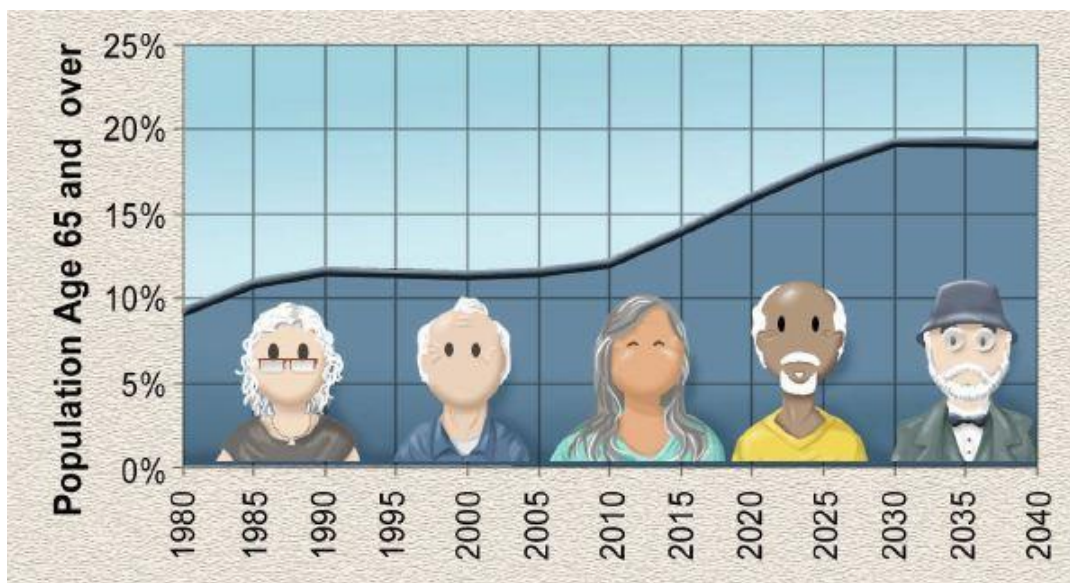
Urban infill uses land efficiently, filling in voids and renewing the urban fabric in the natural evolution of cities. Focusing development into existing urban areas instead of creating new

expanses of urban fabric at the periphery takes pressure off rural lands and minimizes conversion of farmland to housing.



Source: Sustainable Thurston

Housing opportunities and choices are expanded beyond conventional single family detached homes with infill development. Infill creates new attached housing in urban places that meet the needs of empty nesters and baby boomers looking to downsize. It also creates the kind of urban lifestyle opportunities that millennials (the demographic cohort born anywhere from the early 1980's to 2000) are seeking. Despite the focus on the baby boomer generation, the millennials are now the largest segment of our population and demonstrate a strong preference for urban lifestyles over auto-oriented suburban lifestyles.



Source: Sustainable Thurston

3. Challenges to Infill Development

Communities that are successful in promoting infill development must overcome a number of barriers and challenges. Some of the common issues that confound infill are small parcels of land or the need to assemble several parcels for a project; obtaining financing; funding upgrades to outdated infrastructure; inflexible development regulations; building codes best suited to traditional suburban development; clean-up of contaminated soils; and community resistance. Each of these can undermine the financial feasibility of any infill project. Strategic thinking on the part of the developer and the community is needed to overcome these hurdles.

Land Assembly

Infill development occurs where the lay of the land has already been set. The land has already been divided into parcels, which in urban areas may be quite small. Assembling a large enough parcel of land from numerous small lots can be a challenge. Larger parcels are not always necessary, but small parcels of land reduce economies of scale, resulting in higher costs per unit that may render a proposal infeasible. Larger parcels will have a higher cost of land aggregation that may or may not be offset by the resulting economies of scale.

Construction Financing

The collapse of the savings and loan industry in the late 1980s resulted in changes to real estate financing that tends to favor suburban development more so than infill development. This is further complicated when a developer must obtain both commercial and residential financing – each with specific lending terms and risk factors – to build a mixed-use project. Small communities, especially those outside of major metropolitan regions, may not have a demonstrated market for urban infill. Lack of a proven market increases financial risk and uncertainty for the investor and makes it harder for developers to obtain financing to build an infill project.

Upgrading Infrastructure

Established urban areas with the potential for infill usually have some outdated and aging infrastructure. Communities often require developers to shoulder the cost of required retrofits and upgrades to current standards as a condition of development approval. For example, developers may be asked to upgrade old water and wastewater systems to meet new discharge requirements, or to rebuild the street edge to comply with modern standards. Retrofitting outdated infrastructure is costly, and can defeat an otherwise desirable infill project. The ability of local governments to participate in cost-sharing arrangements to accomplish these retrofits

is limited due to decreasing availability of grant and loan funds from the state, or from the federal government.

Regulatory Barriers

Often the zoning and building codes used to regulate development are well suited to traditional, greenfield suburban development but they are a barrier to infill and redevelopment. Other times, communities have updated the codes to better accommodate infill but they were done without input from market analyses, and the resulting requirements undermine the financial feasibility of projects in small markets. Many small cities lack experience with innovative urban development products. This results in delays in the review and permitting process that increase costs and create regulatory unpredictability for developers. Also, existing parking standards are generally suited for auto-oriented uses and can kill infill projects that may need much less parking in an area with good transit service and a variety of uses.

Environmental Compliance

Environmental laws can make it more difficult for development and redevelopment in urban areas. Many developers find it increasingly difficult to comply with new stormwater requirements of the Clean Water Act, which is easier to comply with in undeveloped areas. Stormwater retrofits in an urban area can add significant cost to a project and reduce the amount of developable land on a site, rendering the overall project financially infeasible. Also, many redevelopment sites are brownfields that require contaminated soils cleanup. Sometimes the extent of the contamination is not known until work gets underway. Demolition or retrofit of old buildings may require special disposal of waste containing asbestos and lead paint.

Community Resistance

Opposition to change in existing neighborhoods and established places is nearly universal. Communities find it easier to come together around a vision of compact, walkable places with a range of travel choices and a lighter environmental impact than to actually carry out what is needed to achieve that vision. It is challenging to get the kind of widespread political commitment needed to implement the “urban” component of adopted visions in the face of neighborhood opposition. When confronted with the inevitable opposition, elected officials and staff in small cities often don’t have the familiarity and experience with urban design principles and market analytics to adequately explain how proposed infill projects can enhance an area. Often, in an effort to control what is built and protect existing neighborhoods from any change that may occur with infill, cities will over-prescribe details that undercut financial feasibility.

With these types of restraints, can plans for infill development be realized? The following sections address what recourse and tools are available to increase the attractiveness of infill investments to developers and create vibrant compact communities.

B. Regulatory Tools

A GMA Framework for Infill Development

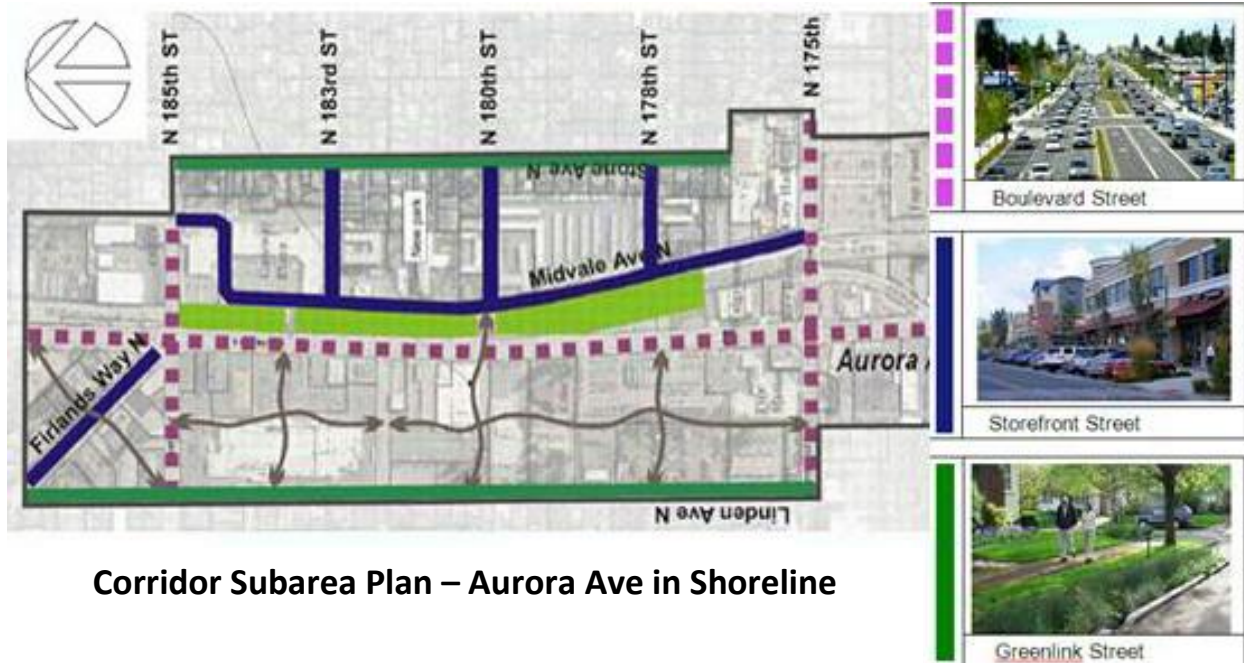
As with any planning effort, a community must first define its future. A plan must start with a vision – an articulation of the community’s values, preferences and priorities for its desired future. Visions are described with words and images, and embodied in comprehensive plans and subarea plans, the policy foundation for regulatory tools.

Under the Growth Management Act (GMA), regulations government development must carry out the policies of the comprehensive plan or sub-area plans. Each project permitted under the regulations is an incremental implementation of that vision put forth by the community, driven by policies and regulations. Many projects are shaped by regulations and informed by capital facilities budgets. But the driver behind those projects is the community vision articulated at the beginning of the planning process.

There are a number of GMA provisions pertaining to regulatory tools that can support infill development. The GMA states that “[a] comprehensive plan should provide for innovative land use management techniques.”⁸ Regulatory tools like form-based codes, hybrid codes, and design review processes are encouraged as a way to help implement the vision and plan.

“Reasonable Measures” are required in six of the fastest growing counties in Western Washington to assure that growth targets are met.⁹ The six counties and their associated cities must identify reasonable measures, other than adjusting urban growth areas that will be taken to comply with the GMA requirement to accommodate future population growth. The City of Everett adopted a [*Potential Residential Infill Measures Report*](#). Building on research of urban infill best practices, the City identified 20 potential infill measures that could directly or indirectly support the City in achieving increased density urban infill development.

Local governments are authorized by the GMA to adopt subarea plans as an optional plan element.¹⁰ Subarea plans are a key link between a city’s vision, the city-wide policies to implement that vision, and what happens in a specific part of the community. Subarea plans can be for a corridor or a district – providing context for what is important and tailoring the vision and regulatory tools to the specific needs of that place.



Corridor Subarea Plan – Aurora Ave in Shoreline

Sub-area plans get into details such as how land use in that area relates to the right-of-way. For example, different public rights of way play different roles depending on the context of the sub-area. Some areas may focus on how bus rapid transit services and local streets provide access to storefronts and residential neighborhoods. Other plans may focus on controlling access to high capacity streets, and assuring safe and manageable crossings.

The Legal Basis for Urban Design

Design requirements are key to ensuring that redevelopment in urban areas is attractive and fits with the character of the existing neighborhood. Design review requirements must comply with constitutional and state legal requirements. Effective design requirements and review process also provide certainty to the developer.

All land use plans and regulations must meet requirements for constitutional due process, including procedural and substantive due process. Procedural due process is the right to know about proposed changes and the opportunity to be heard before they are adopted. Substantive due process requires that the rules are reasonable and appropriate, not vague, and have a reasonable connection to the project's impact on the built and natural environment.

The legal basis for urban design regulations in Washington State is in case law. In the case of *Anderson v. Issaquah*¹¹, a developer could not tell from reviewing the City's design standards whether his project could be approved by the design review board. The Washington Court of Appeals ruled that aesthetic considerations are "an appropriate component of land use governance." However, it found Issaquah's design review process unconstitutional because it relied on subjective and vague terms like "harmonious" and "attractive". This vagueness was found to violate the developer's due process rights.

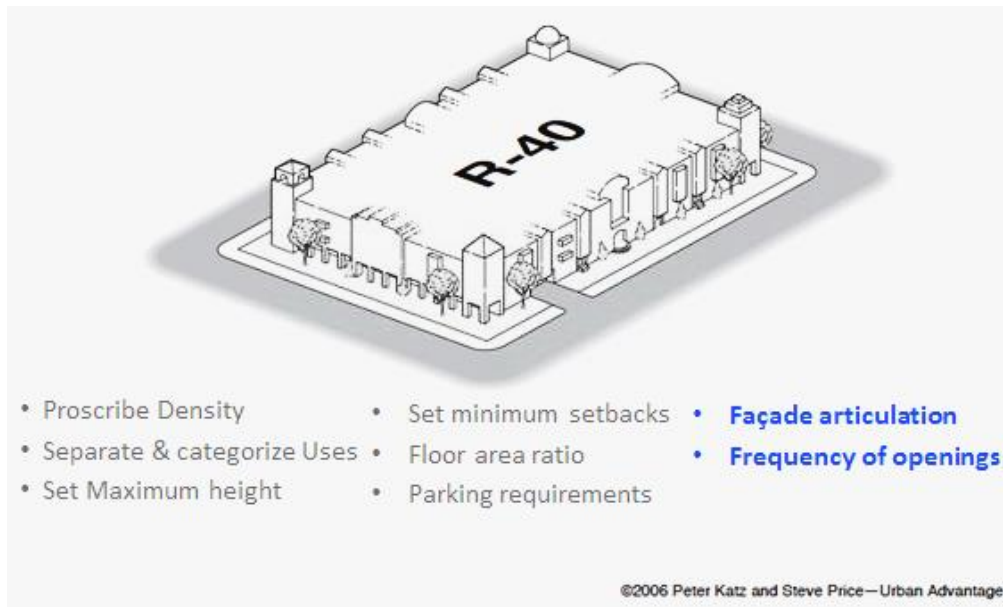
To avoid this problem a city's design standards and review processes must be clear and unambiguous. Wherever possible, use photographs, diagrams, or sketches to clearly illustrate design standards.

Urban Design Tools and Regulations

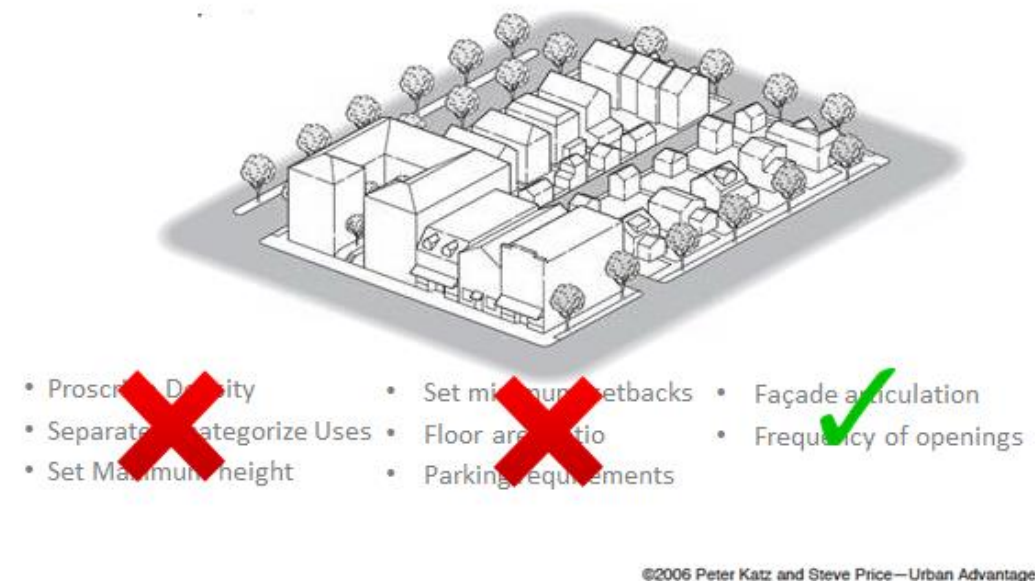
Traditional zoning in the United States is based on the Euclid decision¹² – zoning is constitutional within limits. Traditional "Euclidean" zoning focuses on the separation of unlike uses, height and lot area. Euclid separates and categorizes uses but it falls short when someone comes in and wants to build a use not listed on the chart. Euclidean zoning regulates by:

- Proscribing density
- Separating and categorizing uses
- Setting maximum height
- Setting minimum Setbacks
- Providing for floor area ratio (optional)
- Setting minimum parking requirements

Many jurisdictions overlay zoning with design guidelines, such as façade articulation and frequency of doors and windows.



Form-based code and hybrid form-based code (combination of form based and traditional zoning) are different than traditional zoning in that they promote desired community character by focusing on design and scale more so than uses. They emphasize the intersection of the public and private realms, a key element in place making.



Form-based codes don't prescribe density or categorize uses, but do address urban form, street types, and building types. They are very detailed and prescriptive. A regulating plan for a block typically defines the allowed building orientation, shape and mass. A form based code

addresses the relationship between the street and the buildings, rather than treating them separately under traditional zoning codes.

Subzones may vary in their prescription of size, scale and setback. A number of hybrid form-based codes have been adopted in Washington. Hybrid form-based codes are more prescriptive than traditional Euclidian zoning codes but not as prescriptive as a pure form based code. They provide design standards with options tailored to the specific needs of the area.

The City of Shoreline's code makes it certain and easy for a developer to make an investment. The City adopted a subarea plan to implement its vision. The development regulations address form and character; the market decides the details of use, density and timing. The City developed a single land use chart clearly identifying what is permitted and what is prohibited. This approach helps to balance certainty and flexibility to attract investment.

Shoreline Town Center Hybrid Form-based Land Use Code

General Land Use Category	Specific uses listed in Table	TC-1 Aurora SW	TC-2 Aurora	TC-3 Midvale /Firlands	TC-4 Stone Ave Res
Detached Single Family	20.40.120				
Duplex, Apt, Single Family Attached	20.40.120				
Group Residences	20.40.120				
Lodging	20.40.120	PERMITTED USES			
Health Facility	20.40.140				
Government Facility	20.40.140				
Automotive fueling and service Stations	20.40.130				
Retail, Eating, and Drinking	20.40.130				
Personal and Business Services	20.40.130				
Vehicle Sales, Leasing, and Service(2)	20.40.130				
Gambling Uses					
Wrecking Yards		PROHIBITED USES			
Industrial Uses					
Adult Use Facility					

The City of Shoreline's code provides clear and graphic illustrations of building and site requirements.

Planning for Parking

Parking for mixed-use development should be right-sized. New buildings often require significant parking. This can be difficult in established areas because a parking lot tends to take up much of the land, and building structured parking is very expensive. Reduced parking standards for mixed use development may be possible when opportunities for walking, biking and transit reduce the need for driving. On-street parking can create a “safety zone” between moving lanes and sidewalks and calms through traffic. Where wide right of ways allow, angle parking can be used on storefront and mixed use frontages.



Communities may be able to replace site-based parking requirements with sector-based parking that takes advantage of adjacent or shared parking opportunities. This creates a more contiguous pattern of buildings and pedestrian traffic on the street frontage by reducing the area devoted to surface parking. District parking can also provide economies of scale for structured parking. For example, the City of Kirkland built a city parking garage under the library financed in part with fee-in-lieu funds from developers.



City of Kirkland Library and Public Garage

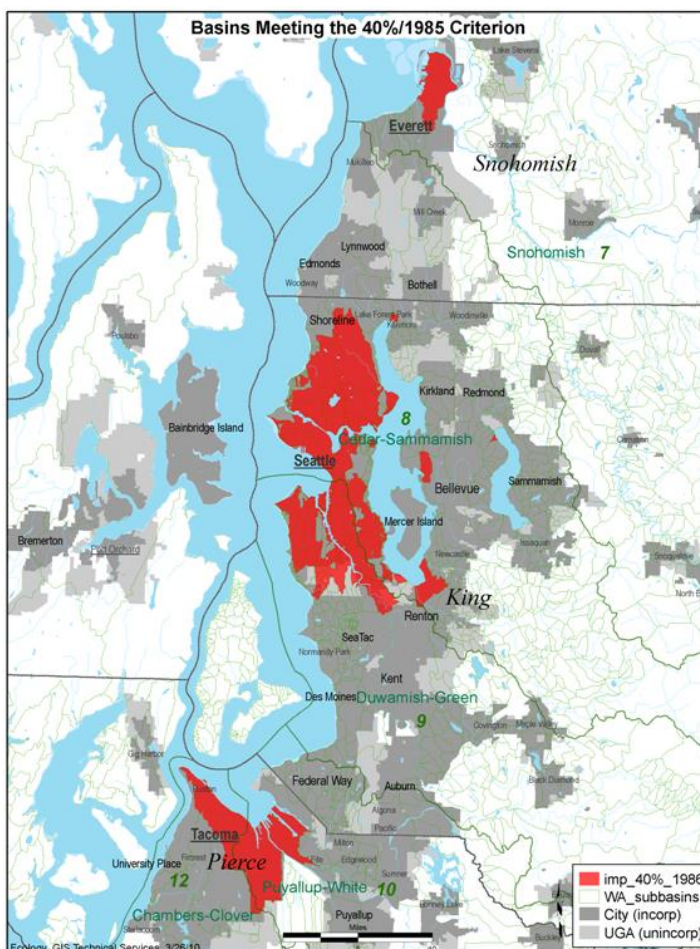
Managing Stormwater

The GMA and the Clean Water Act are broadly compatible. Reducing our dependence on cars, roads and parking areas also reduces stormwater impacts. “Compact-style development, with a smaller footprint, reduced impervious surfaces, natural areas within the urban core, and improved water detention can help local communities meet the Growth Management Act’s goals of accommodating growth while protecting the environment.”¹³

Managing stormwater in urban areas is a challenge in western Washington. The municipal stormwater permit for western Washington requires that new development and redevelopment release water at the same rate as under forested conditions in most areas. As you can imagine, it is difficult for a city meet both the GMA duty to accommodate compact urban development and meet these flow requirements for new development and redevelopment.

There are some exceptions to the flow control standard for certain urban areas in western Washington. Certain areas that were largely developed (defined as more than forty percent of the area was impervious) by 1985 have a modified standard. In these areas, (identified in dark or red in the map) stormwater high flow durations after re-development must match 1985 durations.

Some cities in basins that do not qualify for the 40% standard have addressed flow control requirements by building regional facilities in urban centers that manage stormwater for the development downstream and off site, allowing more efficient use of land in the urban core for development.

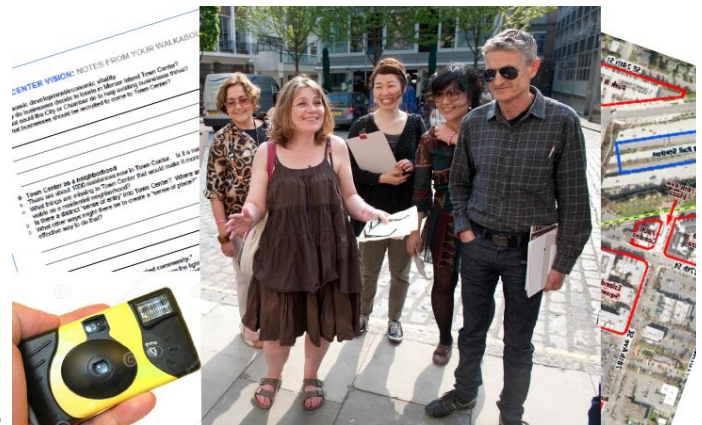
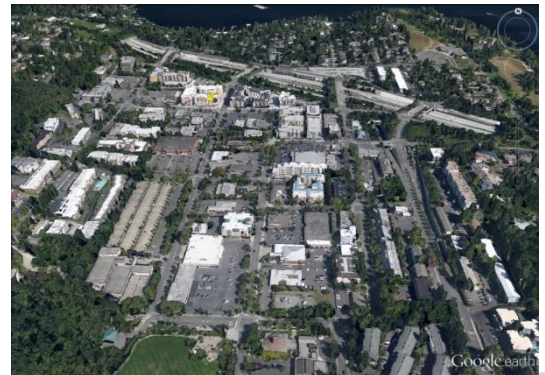


The City of Redmond developed and adopted a watershed management plan¹⁴ that allows the City to build stormwater facilities in another part of the City, carefully decoupling stormwater management from the site. The City will allow the developer to pay into the off-site facility in lieu of managing the difference between existing flow and the flow control standard of forested conditions as required by the municipal permit.

Visualization Tools to Engage the Public in Placemaking

There are a number of tools available to engage the public in developing a vision for their community. They include:

- Aerial perspectives can give context and show the setting for urban infill. Google Earth provides three dimensional (3-D) aerial photographs at www.google.com/earth that can be used to inform citizens about their community.
- 3-D modeling provides examples of what proposed infill development would look like, including design guidelines. Two web sites (www.sketchup.com; www.Sketchupartists.org) allow you to download programs and create models, includes building shadows during certain times of day.
- Visual preference surveys can engage citizens at a public meeting by showing photographs of design alternatives and encouraging the audience to select their favorite. Some digital systems allow immediate feedback from the audience. www.planningtoolexchange.org/tool/visual-preference-surveys
- Neighborhood walkabouts allow participants to look at and discuss what exists on the ground, and can put plans and policies in context. Planners can talk to people they encounter and ask them what they think about what is being considered. <http://www.walklive.org>



- Design charrettes can engage the public in an interactive exercise to help them develop a vision. <http://www.charretteinstitute.org>

Successful infill development, like city-building itself, is about context and character – in short, placemaking. Uses evolve and change over time in a healthy and thriving city, but a strong sense of place lasts. This is what attracts residents, customers, businesses and investors. Regulatory and other infill tools should be applied with the qualities of the place in mind.

C. Infrastructure Funding and Developer Incentives

How does a city operationalize and implement the vision? The two main challenges to infill are the cost to upgrade aging and deficient infrastructure and redevelopment economics.

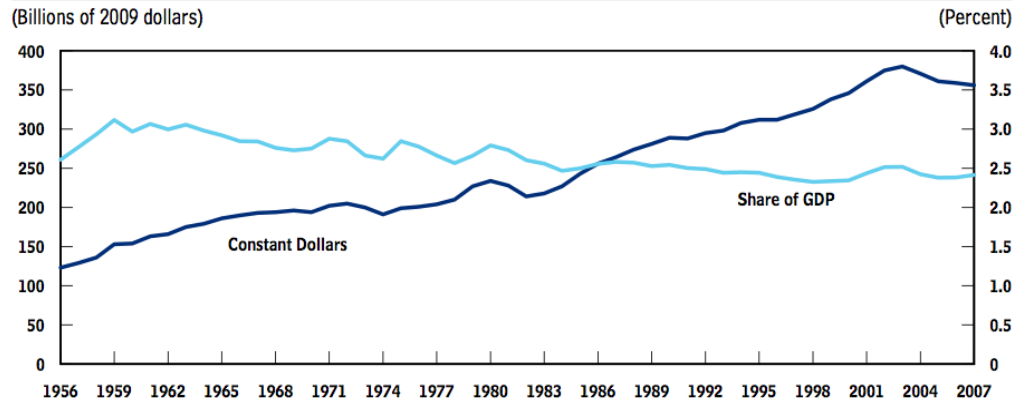
1. Infrastructure Funding

Redevelopment often requires significant upgrading or replacement of old infrastructure to meet new standards. These standards are often higher than comparable infrastructure in a more traditional suburban or low density development because more intense levels of development require more infrastructure. Many older cities face sizeable investments to upgrade existing infrastructure to support more vibrant urban areas. This becomes a real challenge for smaller cities with limited financial resources.

Note that “funding” and “financing” are two different things. Funding is revenue; financing is the mechanism by which the cost of a project is paid. For example, for a city, property tax is funding while bonding is a financing mechanism.

Paying for infrastructure is hard for any city regardless of its size. Communities are spending less as a share of what they need for infrastructure.

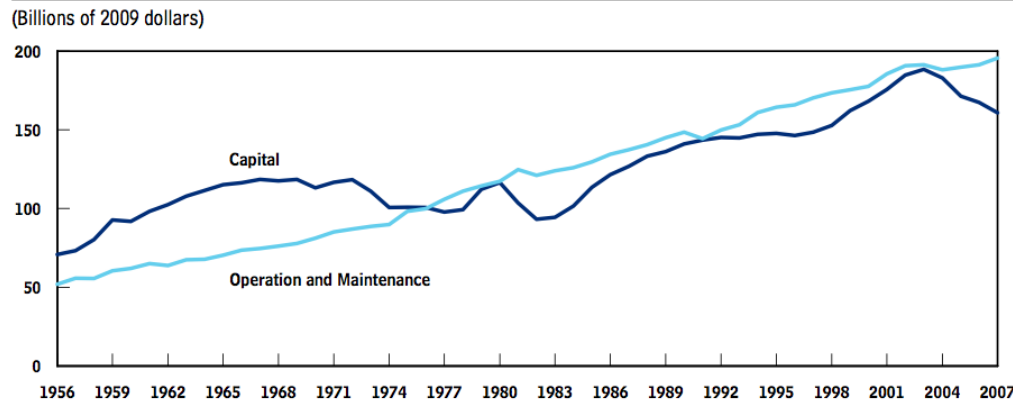
Total Public Spending for Transportation and Water Infrastructure in Constant Dollars and as a Share of GDP, 1956 to 2007



Source: Congressional Budget Office.

Also, it costs more to build infrastructure today than it did in the past. Environmental and design standards are higher today than they were when much of the older, existing infrastructure was built. It is harder to do projects on a per unit basis than it was in the 1950s. Not only is there the cost of building the physical infrastructure, it must be maintained and operated over time. All of this forces cities to grow more efficient and get more out of what they have.

Total Public Spending for Transportation and Water Infrastructure: Expenditures for Capital and Related Operation and Maintenance, 1956 to 2007



Source: Congressional Budget Office.

While in decades past there was a prominent role for state and federal funding of projects, local governments are increasingly responsible for funding their own infrastructure. Fewer federal and state funds are available. What federal and state funds are available are typically awarded on a competitive basis which makes it hard to develop a predictable multi-year funding plan,

they come with more strings and process requirements attached, they often have a cap on how much can be awarded or how often, and they usually require a local match. Local funds are an important asset for attracting infill development.

With development impact mitigation strategies tending to be project specific, and the constraints on use of federal and state funds, how can cities generate more local funds for non-project infrastructure to support infill development? Cities have dedicated or expanded existing sources of revenue through the general fund. Some cities have raised utility taxes and dedicated them for infrastructure projects.

In addition to traditional methods, cities are increasingly turning to alternative tools. Some of these tools reflect efforts to capture increased increments of value as properties improve, with mixed success.

- Various versions of **tax increment financing (TIF)**¹⁵ have been enacted by the Legislature – Local Infrastructure Finance Tool, Local Revitalization Financing, Community Revitalization Financing, Hospital Benefit Zone Financing and the Landscape Conservation and Local Infrastructure Program (a marriage of TIF and transfer of development rights (TDR) that has been adopted by the City of Seattle, but is still untested)¹⁶. Most of these financing tools require state funding support which is not consistently available.
- **Local Improvement Districts (LIDs)** finance the improvement by tapping into the potential increase in private property values adjacent to the project. LIDs can be very challenging to assemble and execute.
- **Community Facility Districts** are a form of local improvement district on a very large scale, such as a big subarea development. To date, only one municipality has taken advantage of this tool. The City of Redmond adopted a community facility district to allow Microsoft to partner with Redmond and Sound Transit in funding the redevelopment of the Overlake Transit Center. Overlake Transit Center is the end of the planned light rail extension from Seattle to the east side of Lake Washington.
- **Transportation Benefit Districts (TBD)** are quasi-municipal corporations with independent taxing authority, including the authority to impose property taxes, impact fees, license fees and sales taxes for transportation purposes. The license fee is the most common TBD revenue. It is paid when vehicle owners renew their license tabs every year. Up to \$20 / vehicle can be imposed without a vote of the people. This is an increasingly popular transportation funding mechanism, particularly for cities, which do not have a separate road taxing district like counties.

The bottom line is that municipal infrastructure is expensive and usually costs more than cities have to spend. In making decisions about how to fund infrastructure, cities have to balance issues of equity and fiscal prudence with community goals such as economic development, quality of life and affordable housing.

2. Incentives for Developers

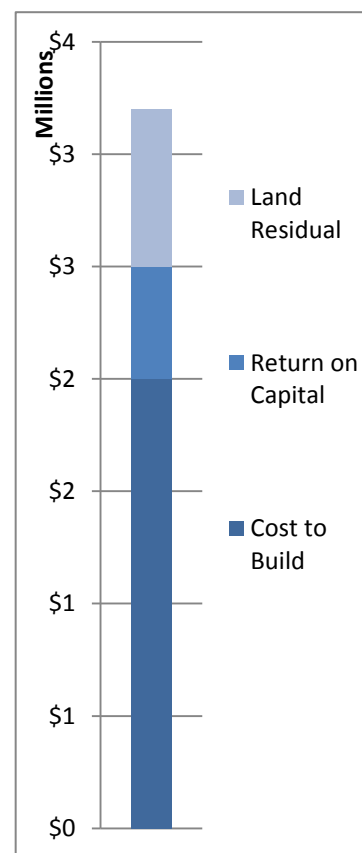
These days, most public infrastructure needed to accommodate growth is funded and financed through impact mitigations imposed on a developer through the powers of government. This is a primary financing tool for infrastructure upgrades needed to support infill.

Incentives for developers such as increased density are another tool for providing local infrastructure or amenities. Developer incentives promote infill, which in turn helps finance existing infrastructure upgrades through impact mitigations. Thus, the more a city can incent the kind of development it wants, the more it can leverage infrastructure investment.

The financial feasibility of a project for a developer is based on **residual land value**. Residual land value is what remains after all costs of development are incurred. Residual land value must be positive in order for the project to be financially feasible. It is a calculation that incorporates what the developer can earn on the project, the cost to build the project, the risk adjusted return on capital, and the cost to buy the land. If the developer can earn more than the sum of these respective costs it indicates that the project has positive residual land value and can pencil out.

In redevelopment projects there are a number of hurdles that have to be cleared to make a project pencil out. The **“hurdle rate”** is what the project can earn versus the cost of the land plus construction and financing costs. Effective developer incentives can help close the gap by reducing or deferring some costs, or by cost-sharing. There are various ways that a city can reduce the gap and make an otherwise desirable infill project financially feasible.

An incentive is a payment or concession to stimulate greater output or investment. It is a way for cities to “close the value gap” for projects that help deliver the vision but that don’t quite pencil out when all the costs of development are considered. Public funding of infrastructure is



another incentive because these are costs the developer doesn't have to incur – money is money.

a. Permit Streamlining

One developer incentive that is virtually cost-free is increased certainty in the permitting process. This is an incentive because time is money for developers – they are paying interest on construction loans before the first shovel of dirt is turned. Delays in the permitting process increase the time that they are paying interest and generating no revenue. Increased certainty can be provided by permit “streamlining” which is good business practice for any city. Cities should also strive for regulatory clarity to increase certainty and reduce time-consuming delays resulting from confusion about city standards. Reducing time and increasing certainty in the development process are meaningful incentives for the developer. Development is inherently risky, and infill development is much riskier because of the inherent financial challenges and uncertainties.

b. Tax Exemptions and Fee Waivers

The Washington State Constitution limits what cities can do to support development of any type. Most developer financial incentives are considered to be “tax expenditures”, that is, exemptions from paying certain taxes for a specified period of time.

Multifamily Tax Exemption¹⁷ Cities of a certain size may adopt property tax exemptions for multifamily housing development in targeted residential areas. It exempts the developer from paying property taxes for up to eight years as an incentive to build multifamily housing where the city wants it. However, if the developer commits to renting or selling at least twenty percent of the multifamily housing units as affordable housing units to low and moderate-income households, the property tax exemption is extended to twelve years. The City of Tacoma established a successful tax exemption program to stimulate multifamily housing within its 17 mixed use centers.

Historic Preservation Tax Credit¹⁸ If an area slated for infill includes historic buildings listed on the National Register of Historic Places, historic preservation tax credits may be available. Building owners may obtain a twenty percent federal income tax credit on the qualified amount of private investment for certified rehabilitation of a National Register historic building.

Fee waivers:

- **Permit Fees:** Cities have wide latitude to waive permit fees. However, waived fees must be made up from other sources of city revenue. The waived fees cannot be passed on to other developments.

- **Impact Fees:** Under the GMA, cities have the option to impose impact fees for public street and roads; publicly owned parks, open space, and recreation facilities; school facilities; and fire protection facilities in jurisdictions that are not part of a fire district. A city may waive these fees, but the waiver must be limited to “public purpose” projects. This usually applies only to affordable housing projects. A waiver of the fee requires the city to find another source of revenue to make up the fees they waived. As with waiving permit fees, the city cannot simply shift the burden of these waived fees onto another development.

c. “Up-front” Environmental Review under the State Environmental Policy Act (SEPA)

One incentive that a city can offer developers is to conduct up front environmental review in conjunction with the designation of and planning for a subarea. This review predefines mitigation for development in the area and greatly reduces the risk of uncertainty for potential infill projects in already developed areas. The review would include and address any impacts to the natural or built environment that will be generated by all allowed future development.

A study completed by the Department of Commerce in July 2010, [*State Environmental Policy Act Case Studies*](#), found that predefined mitigation in all eight case study cities resulted in greater certainty and predictability for developers, and a decrease in the number and scale of required environmental assessments and technical studies at the project level. Other key findings were that subareas experienced 60% to 107% of planned development; both developers and cities reported time and cost savings; and predefined mitigation spurred development that increased tax revenues.

As described below, up-front environmental review, or pre- defined mitigation, can take a variety of forms under SEPA:

- **Integrated GMA Plan/SEPA Document:** A city or county can develop a combined environmental review document for a subarea - Environmental Impact Statement (EIS), supplemental EIS (SEIS), or expanded checklist - and growth management comprehensive or subarea plan in one document. The document satisfies the requirements of both GMA and SEPA, evaluating the environmental consequences of the proposed land use plan in the subarea compared to the alternatives. The adopted document is then used as a basis for requiring identified (defined) mitigation for projects that implement the plan.
- **Plan-Level “Non-Project” SEPA Document:** A separate document containing an environmental review and mitigation for a subarea plan – again, an EIS, SEIS, or expanded checklist - can also be developed. The adopted SEPA document can be used as a basis for requiring identified mitigation for projects that implement the plan.
- **Planned Action:**¹⁹ SEPA allows jurisdictions to provide an even more streamlined environmental review process for permits than the two previous processes described by

performing a more detailed environmental review to assess the impacts of a subarea being built to maximum zoned capacity. Designating planned actions and adopting a planned action ordinance requires more work up front on the part of the government. But it can yield the unique result of making development that is consistent with designated planned actions much easier because project permits are not subject to an appeal under SEPA.

- **Comprehensive Plan Optional Element/Subarea Plan:**²⁰ This provision of SEPA allows the use of subarea planning for high-density urban development, similar to a planned action, but limited to cities with a population greater than 5,000 and to areas that are either:
 - Designated as mixed-use or urban centers; or
 - Within one-half mile of a major transit stop zoned with an average minimum density of 15 dwelling units per acre.

Use of this provision is encouraged for a Transfer of Development Rights (TDR) receiving area. If the city decides not to establish a TDR program, it must state in the record its reasons for not doing so.

There are two categorical exemptions under SEPA that may be helpful for encouraging infill development:

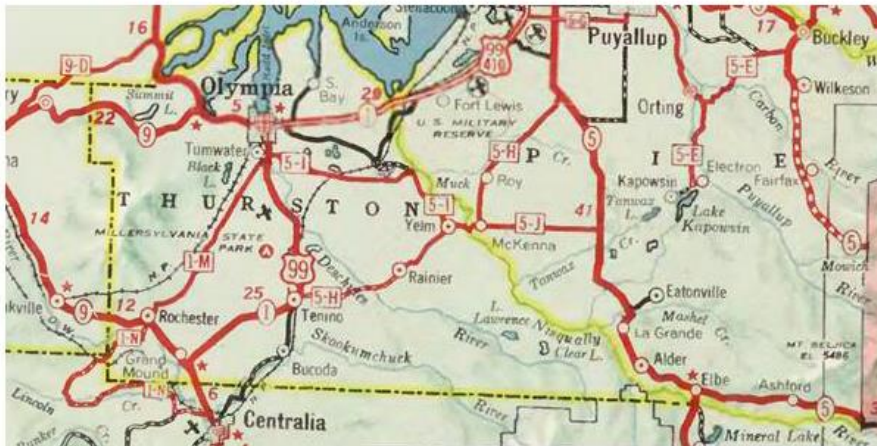
- **Categorical infill exemption:**²¹ A city or county may categorically exempt development that is new residential or mixed-use development proposed to fill in a designated urban growth area where current density and intensity of use in the area is lower than called for in the goals and policies of the applicable comprehensive plan. An environmental impact statement must have been prepared in conjunction with the comprehensive plan.
- **Minor new construction exemption – flexible thresholds:** The SEPA rules allow cities and counties to raise the exemption limit for minor new construction to better accommodate the needs in their jurisdiction. The exemptions may be raised up to the maximum specified in the SEPA Rules²². For example, cities and counties may choose to exempt residential developments in urban growth areas at any level between four and 30 single family and up to 60 multifamily dwelling units. The exemption for commercial buildings can range between 4,000 to 30,000 square feet. These "flexible thresholds" must be designated through ordinance or resolution by the city or county.

There are many incentives or infrastructure tools available. Choosing and applying the ones that work best in the local context can substantially help to encourage the development of infill projects.

D. Local Examples of Planning for Infill Development

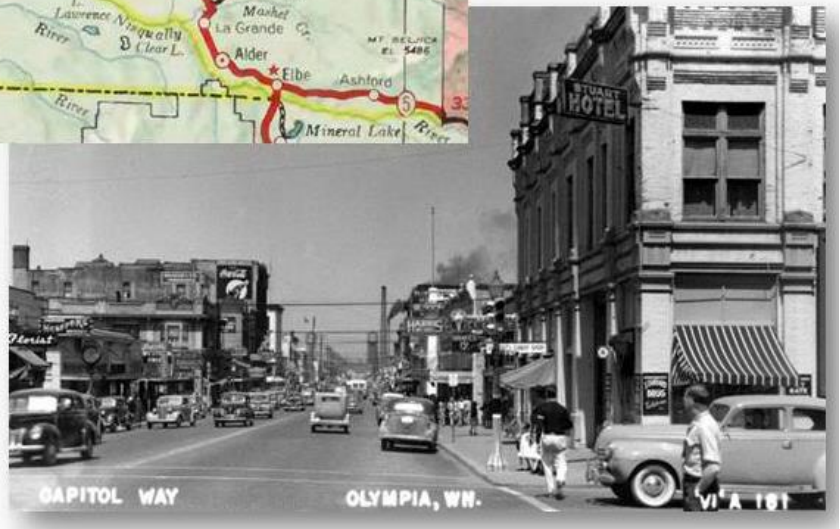
Why Plan for Corridors in the Thurston Region?

Many of today's urban corridors used to be the state highways that connected cities and served interstate travel. In the Thurston Region, several corridors were built as regional highways. Today, I-5 and U.S. 101 handle much of the regional traffic, and these corridors now function as local arterials. Infill is key to transforming these corridors into places where driving is an option and not a necessity. The Thurston Region adopted a regional plan for sustainable development²³ that identified primary urban corridors and key districts on which to focus efforts for achieving these kinds of infill opportunities. Efforts to transform these old highways into people-oriented places are underway in Olympia's Martin Way district, in Tumwater's Capitol Boulevard and Brewery Districts, and in Lacey's Woodland District²⁴. Infill and redevelopment will enable places to emerge that are more urban in character than suburban, and where transit, walking, and biking are viable travel options.



1939 WA State Highway Map

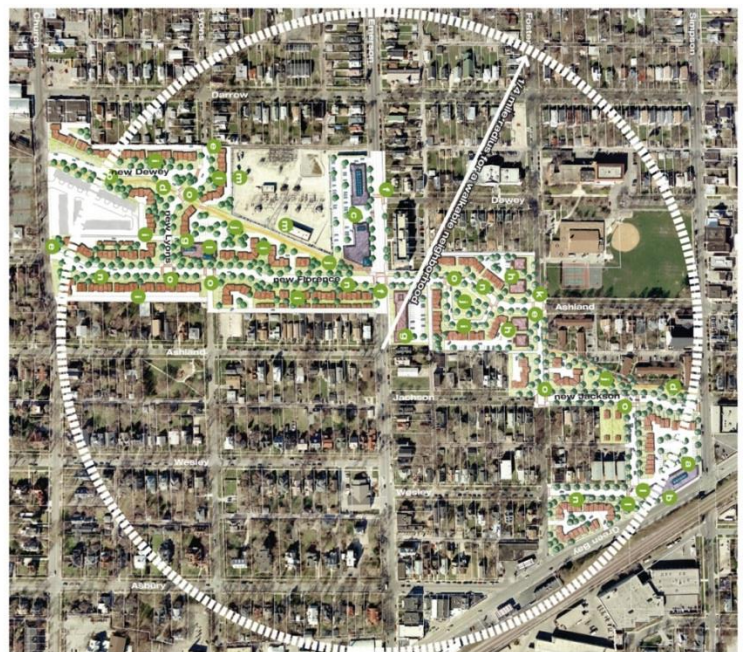
We have to know where we've been to understand where we are and where we're headed.



Community plans may envision one thing but the reality is often quite different. Changing the character of these old highway corridors is hard and it takes a long time.

Why the Focus on Corridors?

Corridors form the foundation for efficient urban transit service and their influence reaches beyond the main arterial. One-quarter mile either side of the arterial usually defines a corridor. That is because one-quarter mile, or about a ten-minute walk, is the average distance most people will walk to make a utility trip. Most people will walk five or six blocks to get some groceries, meet a friend for coffee, get a massage or take a yoga class. When planning walkable urban places it is important to



CHAPTER 12: INFILL DEVELOPMENT F $\frac{1}{4}$ mile = distance most people will walk to make a utility trip

think about the destinations people can easily reach on foot. That area is best described by the one-quarter mile swath on either side of the arterial which connects people, places, and opportunities. Strategic thinking about corridors means thinking about the form and function of the built environment, and the ways it supports local businesses and entrepreneurship opportunities.

From the regional standpoint corridors offer some of the best opportunities for neighborhood-serving retail and small-scale enterprises like coffee shops to take root. That is because much of the real estate is lower cost than real estate close to freeway interchanges, and retrofitting older buildings is usually cheaper than new construction. It's a natural place for residences and neighborhood-scale businesses to co-exist, reducing demand for vehicle travel and strengthening the local economy at the same time.

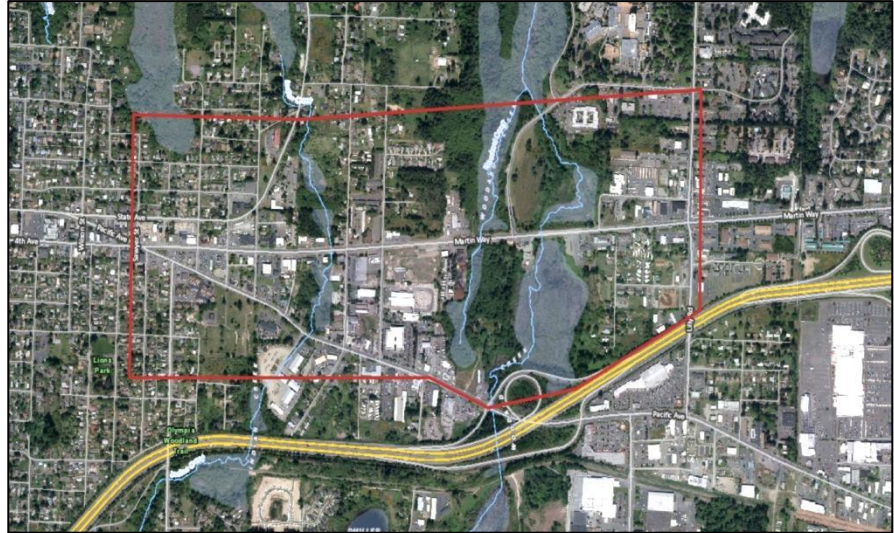
In the urban fabric there's a symbiotic relationship between the neighborhoods and the businesses that serve them. The cities in Thurston County are not very old, and so they don't have a lot of examples of this relationship. For communities intent on supporting small, start-up mom-and-pop businesses and creating local business incubators, infill can repurpose and incrementally transform these corridors into more people-oriented places. Infill along corridors creates destinations, places where small businesses can thrive and opportunities for lifestyles that require less driving.

Very little infill occurred on the region's corridors over the last few decades. When the Thurston Region looks at forecasts, it finds pent up demand for more urban residential opportunities. Infill is likely the predominant means that will meet that demand. So if there is so much demand for urban housing and infill opportunities, why isn't it happening?

City of Olympia – Martin Way Corridor

Olympia's vision for its urban corridors is vibrant, mixed use areas with higher density housing close to jobs, services and shopping. This vision would be supported by an efficient transportation system with transit that provides an inviting alternative to driving. Trips would be short and easy to make on foot or by bike. Buildings would front on wide sidewalks with street amenities such as benches, trees, and landscaping. This vision, built on the regional transportation plan adopted in 1993, has been in the City's Comprehensive Plan since 1994.

So, why hasn't Olympia seen redevelopment and infill happen along Martin Way? The HUD Community Challenge Grant gave the City an opportunity to explore the reasons for very little redevelopment along this corridor compared to the development that has been experienced along other corridors in the City. The area is close to downtown, with transit service every 15 minutes. Was it lack of infrastructure, or market conditions?



The project goals were:

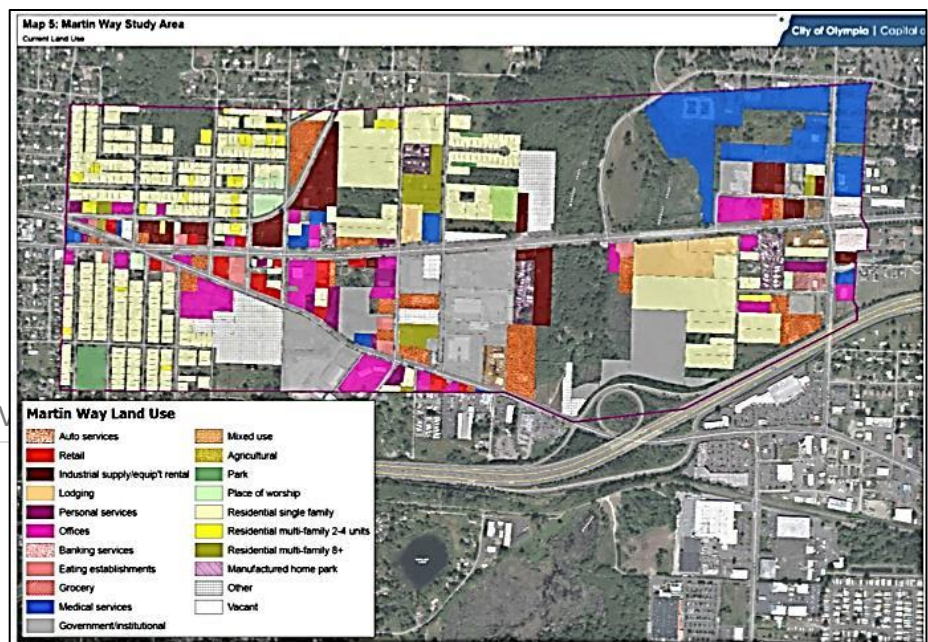
- A better understanding of existing conditions – demographics, housing, infrastructure, transportation and developable land.
- A better understanding of market conditions using high level market analysis and a pro forma.
- Understanding the infrastructure needs, costs and possible funding strategies that would support the City's economic development goals.
- Engaging the public and generating interest in the area.

Unlike the other two cities discussed below, the goal was not to develop a district subarea plan, but to understand the area better at a higher level and to engage the public.

Existing Conditions

Uses and building styles in the Martin Way corridor vary greatly depending upon when they were constructed.

Commercial uses include old buildings dating back to when Martin Way was a highway. There are some new buildings with local favorites, such as a diner, and then some businesses that have struggled.



Health care is a major property owner and employer, as well as Intercity Transit, the local transit agency. There is a range of housing stock, from older single family housing, with an average age of 60 years, to trailer parks and transitional housing.

The wetlands in the center of the area offer habitat, open space, recreation, and water quality function. The presence of these environmentally sensitive areas limits development, but preserves these amenities. In the long term, the City Parks Department has a plan for trails north of Martin Way.

Total traffic volume on Martin Way is 16,000 trips per day, including bus service on 15-minute headways. There is variable infrastructure for pedestrians and bicycles, and sidewalks are not continuous throughout the corridor. The road shoulders are in poor condition in many locations.

Public Outreach

Public outreach was a critical piece of the project. The City reached out to the business community with focused interviews by a consultant, and a survey with assistance from the Thurston Economic Development Council. The Housing Authority of Thurston County helped the City reach out to residents, and the city conducted a well-attended workshop with the public.

Study Findings

The findings of the study are that infrastructure is not as big an issue as was expected, but market conditions are a significant issue. The lack of development is due to two market challenges. First, values and rents for most uses are relatively low, making it difficult for new development to substantially increase income potential through redevelopment. And second, there is a competing supply of easily developable land (i.e., large and vacant lots) with good transportation access elsewhere within the region.

While not the biggest issue, there are gaps in infrastructure with costs that impact the feasibility of development. This will require a shift in thinking to view development as a longer term goal in the area. Given the finding that lack of infrastructure is not the primary reason for the lack of development, and that the market is not “ripe”, the City learned that the district is not ready for a district plan. Rather than looking at the whole corridor, the City can focus on areas where investment will pay off in the west end of the district. The focus should shift to key commercial nodes with incremental improvements that support businesses, such as retrofits to improve pedestrian safety.

The study concluded that, given the limited near-term development potential in the Martin Way study area and other infrastructure priorities in the City, it is likely not the right time to

make large scale infrastructure improvements to the corridor. Instead, the study recommends advancing smaller projects to address current safety issues and developing partnerships in the area to support transformation of the Martin Way corridor over the near term.

Next Steps

The public workshop focused on the west end to fine tune more meaningful strategies and propose some near term investments that might be less costly. The City is looking at incremental improvements toward the long term vision. The City is also considering revisiting the one size fits all approach to corridors in the comprehensive plan, and looking at taking a more refined approach to the districts. For more information, go to the [Martin Way Study](#).

City of Tumwater – Capitol Boulevard Corridor

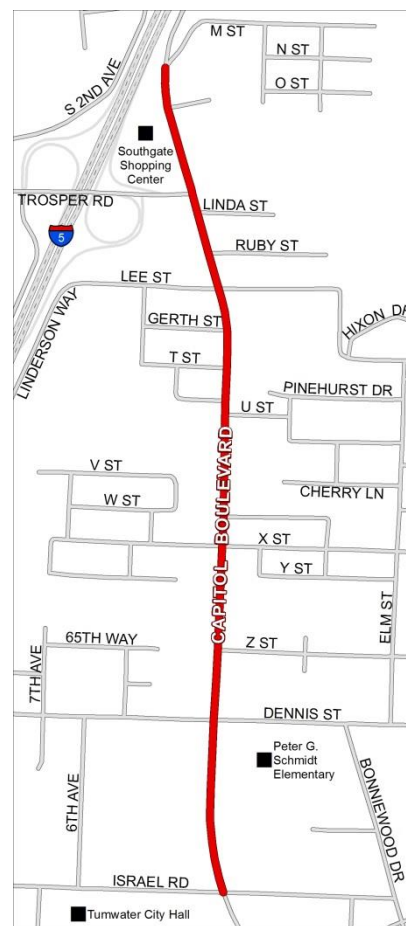
Many communities have corridors like Capitol Boulevard where the main highway used to pass through the town. They are a significant opportunity for infill development. The Capitol Boulevard project focused on a one-mile corridor in the middle of Tumwater that has traffic problems, a marginal business climate, a haphazard development pattern, and is aesthetically challenged.

Existing Conditions

Capitol Boulevard through Tumwater was a segment of Highway 99 through Washington and along the Pacific coast. With the development of Interstate Highway 5 in the mid 1950's, the Boulevard no longer served as a regional transportation facility. However, it continued to be used as a major arterial in this area of the Thurston County, and has significant volumes of vehicular traffic today. Much of the development along the corridor is auto-oriented by business type and physical form, including quick serve restaurants, motels, and auto services.

Capitol Boulevard was originally designed and constructed within extremely limited rights-of-way. The original design was for a moderately high speed, low volume thoroughfare; there was no

apparent need to consider access, circulation, and multi-modal transportation. Sidewalks were eventually built along Capitol



Boulevard but lack sufficient width or buffering, from the now much heavier traffic volumes, to offer a pedestrian-friendly environment. Transit stops, crosswalks and some median crossing treatments have been added to the corridor to improve pedestrian mobility, but they are often located in awkward locations and lack some visibility measures for optimum operation.

The property owner of a catalytic site, the Washington State Department of Transportation (WSDOT), is looking to move to a location in another city. The 11.6 acre WSDOT site just south of East Lee Street represents the single most important redevelopment opportunity in the corridor. While the legislature has not currently appropriated any funds for the move, it is likely that in future budgets there will be an allocation for such a move and that will open up this site for redevelopment. That possibility makes it logical to plan for substantial mixed use redevelopment on this site and to zone it for such an eventuality.

Public Outreach

The public process involving every portion of the community was critical to the success of the project. For the plan to be supported by the community it needed to reflect the wants, needs, concerns, issues, goals and ideas of the community. To get all of this input into the plan, a number of methodologies were used during the three-year public engagement process. Two hundred on-site interviews with property owners and businesses were one of the most effective methods to reach stakeholders. For example, some property and business owners had decades-old grudges for such minor things as having not been allowed to have a gravel parking lot. New parking lots are required to be paved in the City. An onsite meeting with the City administrator and staff helped immensely and got people like this “on board”. One on one interviews were also helpful in dispelling myths and other misconceptions regarding the plan, roundabouts, zoning, and numerous other issues. The City used modern communication through e-mail and a Web site, as well as letters, public meetings and targeted audience meetings. The number of public meetings gave people multiple opportunities for involvement. The team’s expertise was used to analyze the public’s input and determine the actions necessary to accomplish the goals of the project. A key to keeping the plan moving was to act quickly while the public was still engaged and thinking about it.

2011-13 Outreach

Summary:

- *30,682 letters sent*
- *18,532 e-mail notifications*
- *4,402 surveys*
- *270 business contacts/interviews*
- *45 public meetings/open houses/presentations*

The outcome of the public input was three goals for the plan:

- To improve the business climate and conditions;

- Improve safety and expand transportation options for all users of the corridor including pedestrians, bikes, and vehicles; and
- To improve the aesthetic appeal of the corridor as a whole.

Key Lessons from the Plan

Economic Development: The market analysis was critical to make sure what was proposed would pencil for the developer. The redevelopment strategy for economic development identified the most powerful tool available to the City to be adoption of the Multifamily Tax Exemption. The City will also be addressing thresholds for frontage improvements, a reduction and/or delay of impact fees and connection charges, and special planning for mitigation of roadway construction impacts.

Visual Appeal: The corridor plan recommends that visual appeal issues be addressed by the public and private sector through zoning, design guidelines, streetscape improvements, undergrounding of utilities, and taking personal responsibility for aspects such as removal of graffiti and trash.

Transportation: Transportation issues are addressed by emphasizing alternatives to driving, such as partnering with Intercity Transit, planning improvements to bike lanes, medians, roundabouts, pedestrian crossings, and other streetscape elements. The plan also recommends more efficient use of the corridor and better road connections.

Implementation Actions and Next Steps

The City has adopted the corridor plan, zoning, design guidelines, and a value engineering study of transportation improvement. It is still working on:

- Design/engineering for Capitol Boulevard
- Multi-family tax exemption program
- Work with catalyst site owners (WSDOT)
- Impact fee reduction or delay
- Access modifications for a busy coffee shop
- Bicycle network

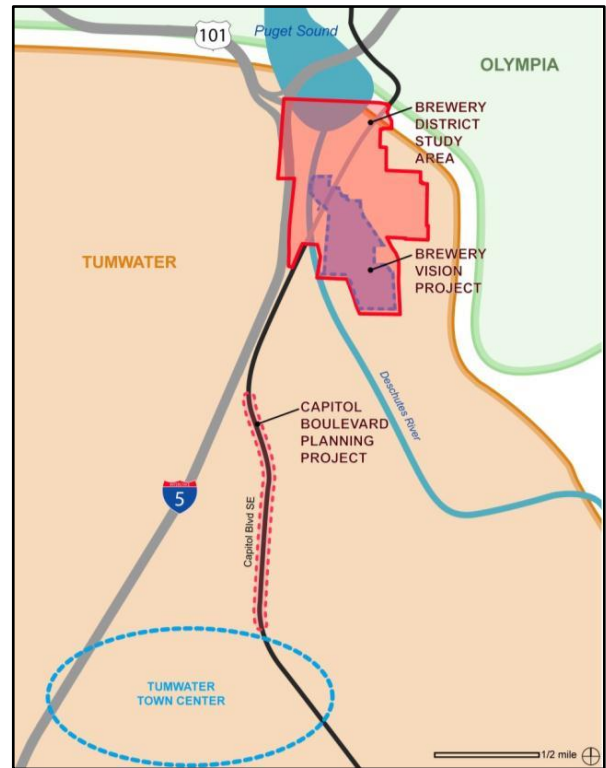
The biggest challenge for the City is the funding to make the transportation improvements. For more information, go to the [Capitol Boulevard Corridor Plan](#) page on the City of Tumwater website.

City of Tumwater – Brewery District

The Brewery District Plan is one of the oldest commercial districts in Tumwater. The district is unique because it provides services to both Tumwater and Olympia residents, and because it was anchored for years by the Olympia brewery. The brewery produced beer for over 100 years before it closed in 2003. The City hopes this plan will help with redevelopment of the brewery.

Existing Conditions

The site of the brewery comprises a significant portion of the district. A lot of the roads within the district are very old, with wide lanes and narrow sidewalks. The area is very congested during the morning and evening commutes from east Lacey. Custer Way is a constrained corridor without the ability to widen the road. The City is looking for an alternative route eastward to avoid the Custer Way corridor.

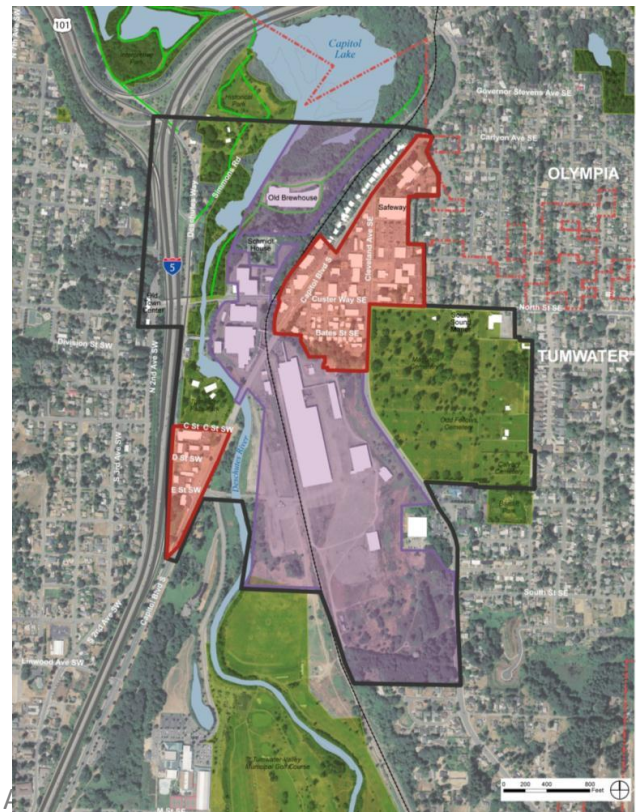


Project Purpose

The project purpose was to:

- Improve the transportation system by upgrading roads and reducing congestion
- Encourage investment in new businesses
- Enhance shopping and services for area residents
- Allow existing and new businesses to prosper
- Create opportunities with the brewery redevelopment

The City spent considerable time a few years ago in a community visioning process to determine the best use of the brewery buildings. The process focuses land use efforts on the two commercial areas in red. The transportation effort focuses on



the whole area and how it can work better for vehicles as well as pedestrians and bicyclists.

Public Outreach and the Preferred Alternative for the Brewery District Plan

As with the Capitol Boulevard Corridor, community engagement was an important part of the project for two reasons. The City wanted to connect with Olympia residents that are significant users of the area, in addition to its own citizens and business owners. The City received many phone calls from Olympia citizens asking that they be included in the process. Consequently, the City of Tumwater convened meetings at a venue close to Olympia residents, and convened a focus group that included Olympia residents and an Olympia city councilmember to work with the consultant. Community open houses were well attended.

As with the Capitol Boulevard Corridor Plan, individual business owner meetings were held. These meetings were especially important to small businesses that are just trying to survive, and didn't always have the time to attend multiple meetings. The City was able to hear their concerns and receive good feedback on what they could do in the plan to improve the area. The City also used email, the web site, mailings, and a public hearing at the end of the process.

The north commercial focus area has a number of challenges. It is very auto-oriented with wide rights-of-way, lacks pedestrian amenities, and is dominated by surface parking lots. It is easy to get to the district, but is difficult to move around in it because of its configuration. A goal of the district plan is to foster walkable and attractive design. Much of the feedback was to increase the area's attractiveness and walkability, including access to Tumwater Falls. To improve the transportation system, the City looked at an E Street connection between Capitol Boulevard and Cleveland Avenue as an alternative to Custer Way for commuters.

The public process resulted in a preferred alternative for land use and transportation. It proposes to extend E Street to Cleveland Avenue because, over time, it is expected to reroute 25,000 cars per day from Custer Way. This will maintain current traffic levels on Custer Way over the 20-year planning period, which is good for business. But it will



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Bates Neighborhood – Building Character and Height

The biggest challenges are securing implementation funding, and keeping the community engaged. For more information, go to the [Brewery District Plan](#).

City of Lacey – Woodland District

The City of Lacey developed a strategic subarea plan for the Woodland District over a year-long planning process. The strategic plan is unique in that it is more targeted and achievable in 10 rather than 20 years, which is typical for standard subarea plans.

History and Existing Conditions

The Woodland District is a link along the Martin Way corridor, and is the area of Lacey most closely resembling a downtown. It has been a vital commercial and employment hub within Thurston County for 30 to 40 years, with the South Sound Center, Lacey Market Square, Lacey Transit Center, state offices, and City Hall.

The district has many opportunities with good infrastructure, including sidewalks and the transit center. South Puget Sound Community College will be locating a campus across the street from the transit center in the next year. It is bounded by and has good access to I-5, with a number of urban trails, a grocery store, and several city parks.

The City started planning for the area in the early 1990's. It culminated in a Downtown 2000 plan that established four key goals.

- A. Encourage density and a diverse mix of uses in the center.
- B. Create a core area that is strongly pedestrian-oriented and transit friendly.



The Woodland District did not always have amenities like transit, sidewalks and trails. The City has come a long ways in the last 40 years.

- C. Create a strong identity for the core area.
- D. Create places that provide for the needs of a diverse population of different ages.

This was the original subarea plan for the Woodland District that was re-validated in 2011.

The strategic plan takes these goals to the next level. The timing of the grant to develop this plan was perfect because the City was left with 240,000 square feet of vacant office space after the economic downturn. A lot of this space, owned by the state, was purchased by a development company.

Public Outreach

The community outreach process the City conducted included a steering committee of business owners, property owners, a commercial property broker, Saint Martin's University, South Puget Sound Community College, residents, Thurston Economic Development Council (EDC), and Intercity Transit.

The City met with business owners and large property owners, and conducted a business survey with the Thurston EDC. It conducted a walkability audit, held community events and open houses, and conducted a visual preference survey. As with the other cities, Lacey had a project web site and Facebook page. The outreach focus was on business and commercial property owners because there are very few residents in the district.

The Woodland District Plan

The plan includes an urban design concept that breaks the Woodland District into smaller subareas.

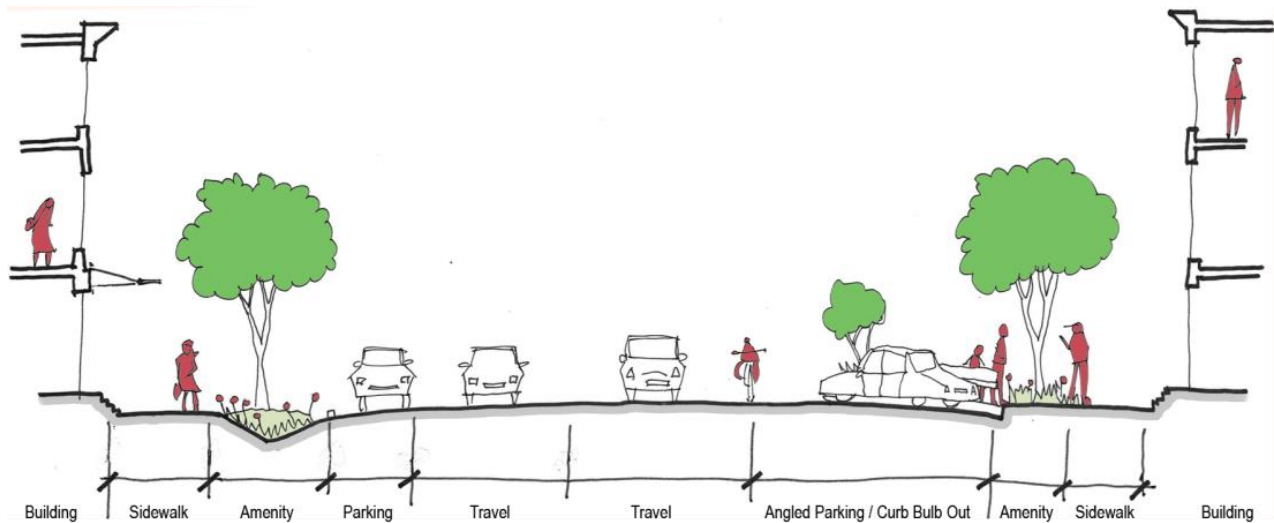


It looks at transitioning some of these areas to distinct districts with future place types. This provides finer grain detail.

The (blue) Urban Neighborhood District on the east side consists mostly of state office complexes. The District is a mixed-use employment district supported by retail and services. It is a walking neighborhood with small retail and the Transit Center. The public identified it as the cultural center of Lacey centered at Huntamer Park with a year-round pavilion building (potentially in the future), YMCA, water feature and cultural uses. It has a medical and human services cluster at the north end.



An important element of the plan is the transportation element that identifies future street types. It breaks down a suburban grid into a smaller, more legible urban grid system. The keystone of the plan is the Golf Course Road extension that will be a main street of the district. The main street is broken down further in the plan with features such as angled parking, slow traffic, wide sidewalks, landscaping and places for people to sit.



This all culminated in the Illustrative Site Plan. This is not how development will exactly happen in the Woodland District, but it is one idea to communicate with developers and the community. But it is based on the market, making the plan more feasible.

Implementing the Plan

The plan provides a framework and incentives to catalyze development. Strategies lay out—four categories with 25 actions to implement the plan. Each will result in multiple benefits over the 10 year implementation period. At a very high level, it looks like this:

Action Plan

1. Set the Stage
 - Form-Based Code
 - College Street Transportation Study



2. Improve Investment Climate
 - Multi-Family Tax Exemption
 - Golf Club Road Connection
3. Strategic Partnerships
 - South Puget Sound Community College
 - South Puget Sound Community College/Economic Development Council Business and Entrepreneurial Center
4. Recruitment, Advocacy and Stewardship

The biggest challenges are securing funds for implementation. The Council has set aside funds for the Form Based Code and Multi-family Tax Exemption. However, to achieve the full plan additional sources of funds will be needed. The second challenge is the time needed for redevelopment and implementation. The City cannot do this by itself. It will require partnerships with the development community, time and effort.

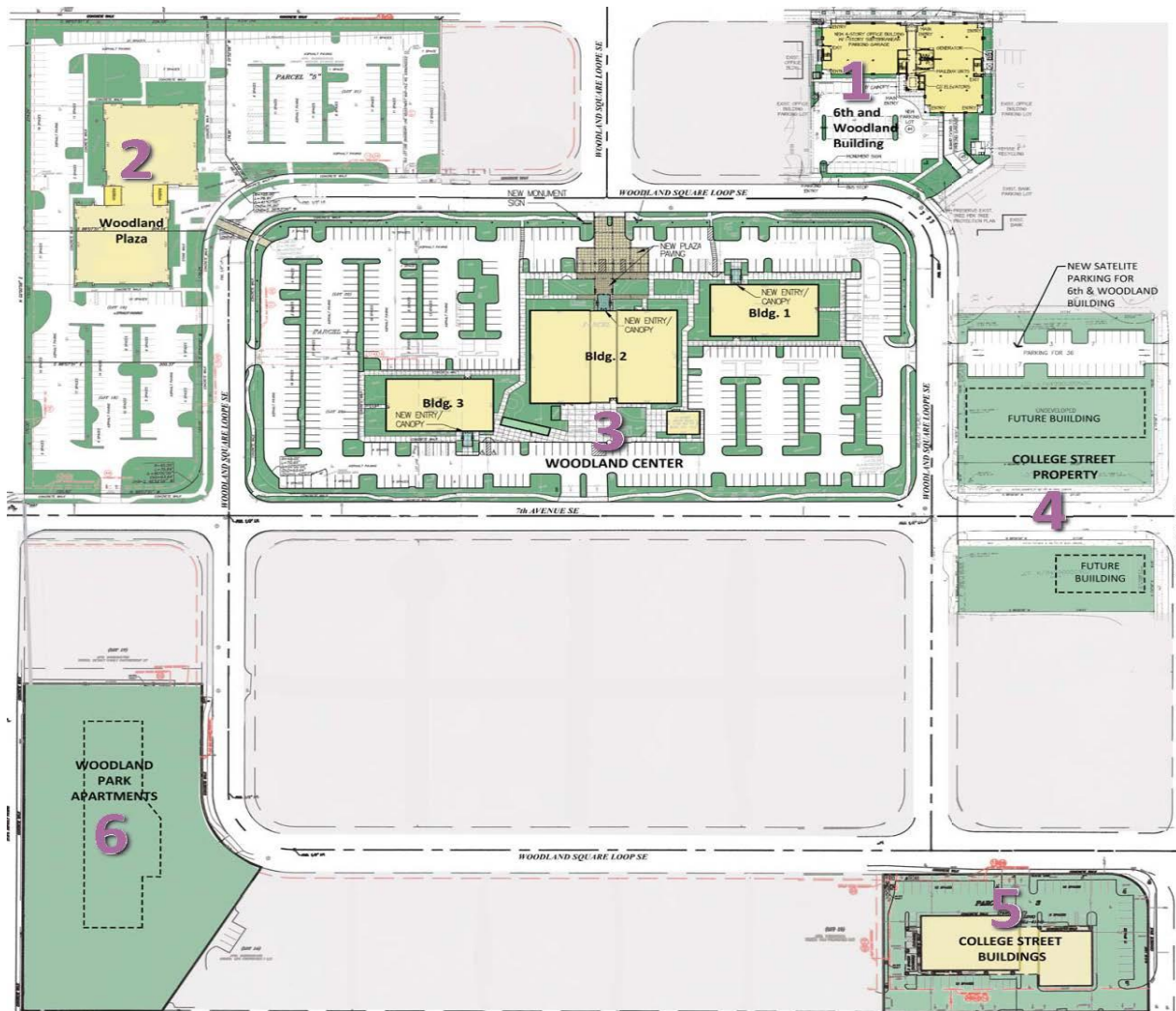
For more information, go to the [Woodland District Strategic Plan](#).

E. Examples of Infill Development Projects in the Woodland District

MJR Development is a Kirkland-based company. Mark Lahaie, a lifelong resident of Thurston County, participated in the development of the Woodland District Plan on behalf of MJR. Mr. Lahaie is the project manager for a number of infill redevelopment projects currently under way in the Woodland District.

The Woodland District Plan and a Developer's Vision

Woodland District attributes that attracted MJR include its park like setting, good access to Interstate 5, and a great existing campus. The walkable campus that MJR acquired about two years ago includes a mix of uses, with integrated plazas and courtyards, restaurants, Class A office buildings, parking, and fantastic access to transit. While some of the buildings are old, MJR was able to acquire them at a good price.



MJR appreciates the updated Woodland District Plan because it provides an opportunity for incremental change. Developers are provided with a number of options for redevelopment. The City considered redevelopment options that were supported by market realities, and considered form-based codes that allow for a flexible range of uses as long as the buildings meet architectural standards required by the code. There is a policy in the plan (Policy B-1.2 on page 40) that states “Achieve some consistency in character and quality that identifies the district as a unique place, while still allowing design flexibility.” (See the Illustrative Site Plan)

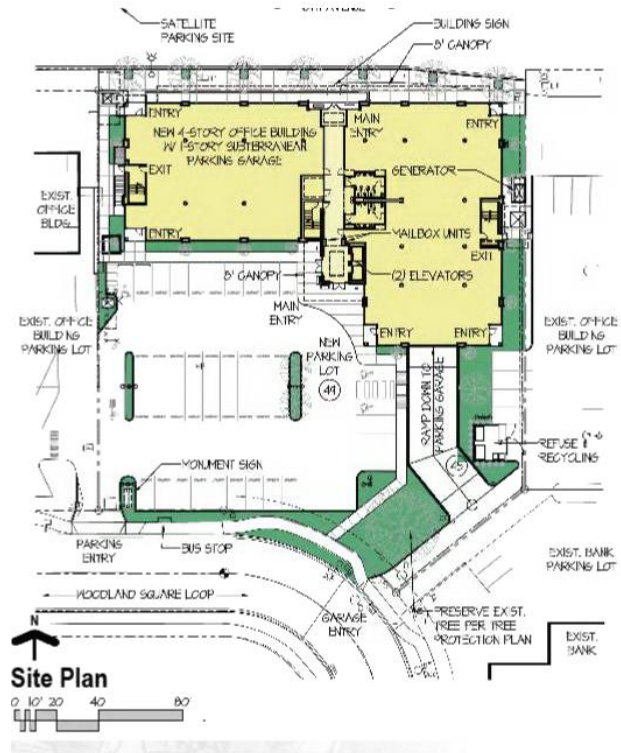
MJR’s plans for its properties in the Woodland District seek to add to the place-based context of the “Urban Neighborhood District”. MJR’s plans directly support goals in the plan for the area around Woodland Square Loop to create a complete vibrant, livable district with a mix of residences, employment, and retail, centered on Huntamer Park as a destination cultural heart. MJR’s plans support a policy in the Woodland District Plan that identifies opportunities for the reuse of vacant buildings, and will help meet the goal of creating a cohesive architectural character within the district.

Infill Development Projects in the Woodland District

MJR bought seven buildings (approximately 300,000 square feet) on 14 acres and seven parcels in the last two years. Each building has unique attributes and challenges for redevelopment.

Sixth and Woodland Building

The Sixth and Woodland Building is an urban style development on small lot with 43 on-site parking stalls plus another 40 off-site. It is a high quality building even with limited parking. MJR has acquired more parking. It was at 40 percent occupancy when the company acquired the building, and is now at 80 percent occupancy.



Woodland Plaza

The Woodland Plaza consists of two of the oldest buildings in the district, sited on close to three acres (72,000 square feet). These have good bones, but all the systems are old. There is a small atrium feature between the buildings, but it leaks, and it is difficult to heat. MJR will gut and replace all of the systems, replace the atrium and create a bigger floor plan adding 9,000 square feet to the building. It will be a good facility for government or a medical clinic.

Before



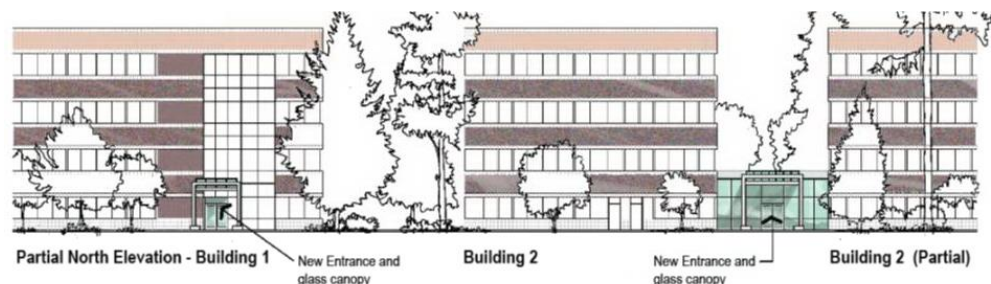
- Replace Atrium with New Expanded Lobby Area, Curtain Wall Glass and Canopy
- New Exterior Look

After



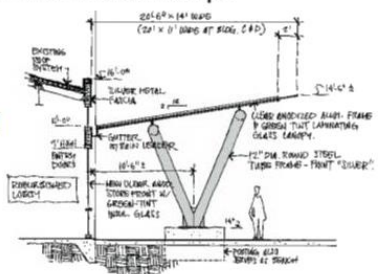
Woodland Center

With the Woodland Center, MJR will focus on creating a sense of place. The entrances and landscaping need to be updated, in fact, it is hard to see where the entrances are currently located. MJR will do some hardscaping and entrance elements. MJR also wants to



Woodland Center - New Entrance Concepts

- New Lobby Entrances w/ Canopies
- New Parking Lot Entrance w/ Monument Sign
- New Updated Landscaping
- New Outdoor Lounge Area & Sport Court



New Canopy Section at Building 2 (Similar at 1 and 3)

Some of the Woodland Center office area has already been demolished for a general common area with the possibility of meeting rooms, a coffee cart, and a food van. The landscape architects are working on an outdoor café idea. A restaurateur has approached them for help with designing a café, potentially managed as a conference center. They are contemplating installation of roll up doors for when the weather is nice.

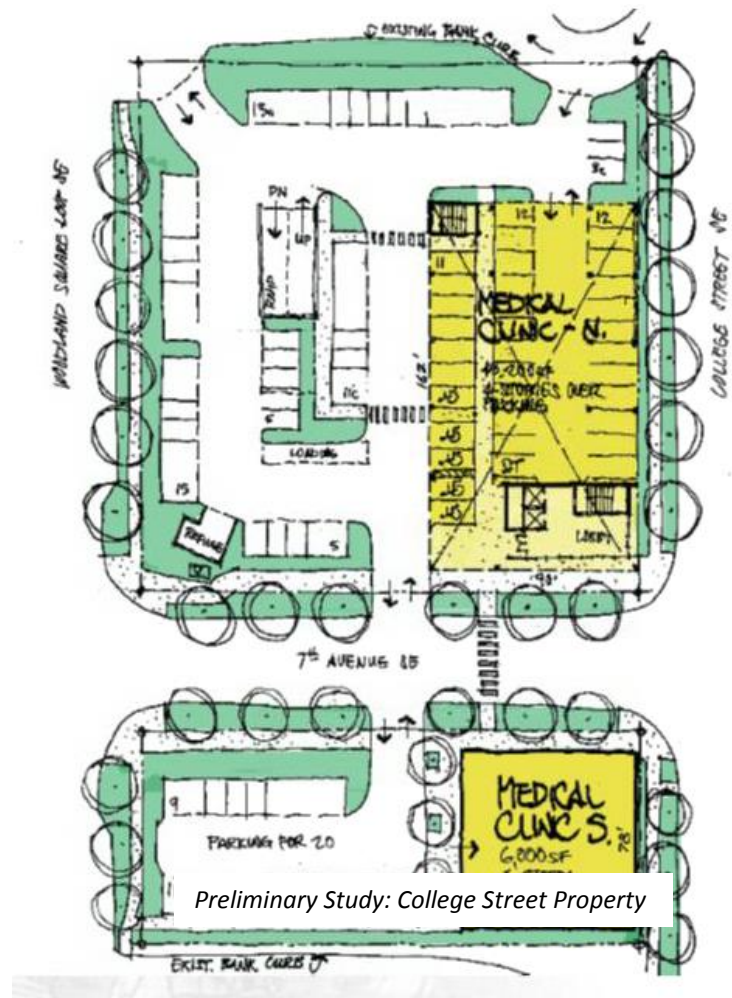


The Prudential Property is a 33,000 square-foot three-story building that is water damaged and underutilized. MJR has done an initial study to replace the building with apartments. The study considers a four-story apartment building with reduced parking. After 5:00 p.m. there are 1200

empty stalls in the District. If the project moves forward, MJR will approach the City with a plan for a higher building, with more density and less parking.

Vacant Land

There are two vacant parcels fronting on College Street totaling 1.3 acres. This high-traffic location is challenging to develop because any building will be small, reducing potential economies of scale. Any development will be tenant driven to ensure optimal investment in a building. This site is most likely to develop as a professional building or a medical clinic with restaurants or fast food.



Harborstone Credit Union

Harborstone Credit Union is a 26,000 square-foot, two-story, wood frame building. MJR intends to paint the building and due to its great visibility on College Street, and should be able to easily rent out the building.



F. Other Resources for Infill Development

Municipal Research Services Center (MRSC) - [Infill Development: Completing the Community Fabric](#)

Form-Based Codes and Hybrids

[Form Based Code Institute](#)

[MRSC - Traditional Neighborhood Development and Form-Based Codes](#)

[MRSC A Hybrid Approach to Form-Based Codes in the NW](#)

[Clark County Highway 99 Corridor Hybrid Form Based Code](#)

[Shoreline Town Center Subarea Plan and Development Code](#) (hybrid)

Local Examples of Infill Planning and Development

City of Olympia's [Martin Way Study](#)

City of Tumwater's the [Capitol Boulevard Corridor Plan](#) and [Capitol Boulevard Design Guidelines](#)

City of Tumwater's [Brewery District Plan](#)

City of Lacey's [Woodland District Strategic Plan](#)

Visualization Tools for Engaging the Public

- Aerial perspectives that give context and show place for urban infill. Google Earth provides 3D aerials at <http://www.google.com/earth> that can be used to inform citizens about their community.

- 3-D modeling provides examples of what proposed infill development would look like, including design guidelines. Two web sites (www.sketchup.com; www.Sketchupartists.org) allow you to download programs and create models, includes building shadows during certain times of day
- Visual preference surveys engage citizens at a public meeting <http://www.planningtoolexchange.org/tool/visual-preference-surveys>
- Walkabouts around the neighborhood with citizens allow them to look at and discuss what is there. Planners can talk to people they encounter and ask them what they think about what is being considered. <http://www.walklive.org>
- Design charrettes are another tool to engage the public and help them develop a vision <http://www.charretteinstitute.org>

Reasonable Measures for Accommodating Population

Buildable Lands Program

City of Everett's [Potential Residential Infill Measures Report](#)

Brownfield Redevelopment

Brownfield Revolving Loan Fund

Chapter Endnotes

¹ Chapter 36.70A RCW

² RCW 36.70A.110(2)

³ RCW 36.70A.010(1)

⁴ RCW 36.70A.070(3)

⁵ RCW 36.70A.010(2) and (8), and RCW 36.70A.070(5)

⁶ RCW 36.70A.070(2)

⁷ RCW 36.70A.070(4)

⁸ RCW 36.70A.090

⁹ RCW 36.70A.215

¹⁰ RCW 36.70A.080

¹¹ Anderson v. Issaquah, 851 P.2d 744 – Washington Court of Appeals

¹² Village of Euclid, Ohio vs. Ambler Realty Corp., 272 U.S. 365 (1926)

¹³ Washington State Department of Ecology Municipal Stormwater NPDES Permit Program, [Report to the Legislature, January 2004](#), page 31.

¹⁴ [City of Redmond Watershed Management Plan](#)

¹⁵ Traditional tax increment financing has been struck down by the voters and the courts on the grounds they have diverted tax revenue intended to support the common schools.

¹⁶ The Landscape Conservation and Local Infrastructure Program is established in legislation passed by the legislature and signed into law by the governor in 2011 to provide a financing tool for certain cities in King, Pierce, and Snohomish Counties to invest in infrastructure in designated TDR receiving areas. Eligible cities are cities with

a population and employment of 22,500 or more in the three counties. Consistent with the regional TDR program in Chapter 43.362 RCW, transfers must be from county sending areas to incorporated city receiving areas.

¹⁷ Chapter 84.14 RCW

¹⁸ Washington State Department of Archaeology and Historic Preservation, [Federal Historic Tax Credit](#)

¹⁹ RCW 43.21C.440

²⁰ RCW 43.21C.420

²¹ RCW 43.21C.229

²² WAC 197-11-800(1)(c)

²³ The Thurston Region is defined as Thurston County and the cities within it. Using a Sustainable Communities grant from the U.S. Housing and Urban Development Department (HUD), the Thurston Region developed and adopted [Creating Places – Preserving Spaces: A Sustainable Development Plan for the Thurston Region](#).

²⁴ The Thurston Regional Planning Council and the three cities are using a Community Challenge grant from HUD for these efforts to plan for urban development.