

# HOUSING ISSUES – BUILDING DENSITY RECAPTURE

## **HOUSING CHALLENGE:**

- Counties and cities planning under the Growth Management Act are required to plan for the availability of affordable housing to all economic segments as part of their planning effort (RCW 36.70A.020, Goal 4).
- In addition, Goal #6 provides that private property shall not be taken for public use without just compensation having been made, and that the property rights of landowners shall be protected from arbitrary and discriminatory actions.
- Property owners may lose the ability to build to the density allowed by existing zoning regulations due to the limitations imposed by adoption or amendment of a critical areas ordinance.

## **PROPOSED SOLUTION:**

- Each jurisdiction should adopt policies and regulations that allow increased building density when a property owner cannot construct the same number of units as would otherwise be allowable under existing zoning due to limitations imposed by a critical areas ordinance.
- When a jurisdiction takes an action that removes the development potential of lands assumed to be developed in their comprehensive plans, the jurisdiction risks having the comprehensive plan deemed invalid.

## **Sample Ordinance – Recovery of Building Densities**

**Policy:** Adopt regulations that provide for the recovery of building densities reduced by constraints imposed by the adoption or amendment of critical areas ordinances.

**Comment:** This document is to be used to enact or amend a local ordinance relating to the recapture of building densities for both cities and counties. The form is designed to be a starting place for discussion and negotiation. You may choose to use all or part of the suggested language. You are also encouraged to come up with additional language that fits your local circumstances.

### **Chapter 00.00 – RECOVERY OF BUILDING DENSITIES**

(1) If a property owner cannot build to zoned densities due to constraints imposed by a critical area ordinance, that property owner shall be allowed increased building density on the remaining buildable land so that the property owner may construct the same number of units on that land as the property owner would be able to construct absent the critical areas ordinance, Provided: That in no case shall a property owner be allowed a density that exceeds \_\_\_\_\_% of existing density.

(2) All land use regulations applicable to the proposed development within the jurisdiction in which the subject property lies shall be applied in the same manner as if the property was being developed at the original unrecovered density.

(3) To the extent that a property owner cannot recover 100% of the density otherwise allowed without critical area restrictions, that property may recover the difference off-site on other property located within the same jurisdiction, or may sell the recovery credit to another property owner who owns property that can take advantage of the credit.

(4) On lands containing fish and wildlife habitat conservation areas or their buffers, the county shall allow a transfer of density for residential uses from the portion of the property containing the critical areas or buffers to that portion of the property that does not contain critical areas or buffers so that the property could be developed with the same number of lots it would have if critical areas were not present, provided that such transfer does not create any adverse impacts to the critical area that can not be adequately mitigated and provided that all other development regulations can be met.