

CHAPTER THREE/C

**CURRENT ISSUES IN GROWTH MANAGEMENT/
LAND USE AND TRANSPORTATION
THE “NEW CITIES” EXPERIENCE**

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By Tim Trohimovich
Planning Director

1000 Friends of Washington
766 Thomas Street
Seattle, Washington 98109
(206) 343-0681 phone
(206) 343-0683 fax
tim@1000friends.org

Tim Trohimovich, is graduate of Willamette University and the Lewis & Clark College, Northwestern School of Law, cum laude. He is licensed to practice law in Washington. Tim is currently the Planning Director for 1000 Friends of Washington, a citizen’s group that supports effective implementation of the Growth Management Act, stopping sprawl, and sustainable development. For the last seven and half years, he was a Senior Planner and then Comprehensive Planning Manager for the City of Redmond Department of Planning and Community Development. He also spent over 12 years working in various capacities in Grays Harbor County Washington, including several years with Grays Harbor County. He has been a professional planner in Washington State for 20 years. While at Redmond he worked on land use, environmental, housing, transportation, and capital facility issues. He is a member of the American Institute of Certified Planners (AICP). At 1000 Friends he focuses on land use and environmental policy studies, policy advocacy, land use law, and environmental law. He is a frequent speaker on land use issues.

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I. INTRODUCTION

The 1990s were a time of rapid change in Washington State. The state grew by more people than ever before. The 1990s were the first time Washington state grew by a million people in a ten-year period. Washington was the tenth fastest growing state in percentage terms and the seventh fastest growing state in absolute terms.¹

A new law, the Growth Management Act (GMA) changed planning in Washington State as never before. The GMA included new substantive and procedural requirements. And citizens can appeal a city plan to state administrative agency that can overrule local elected officials.

State residents grew restive over taxes. The federal and state courts applied new legal doctrines to police the planning activities of cities.

Planners responded to this ferment with new innovations: Neotraditional developments, smart growth, sustainable development, and planning processes with records containing hundreds of documents and thousands of pages.

This paper will consider some of the changes wrought by these forces and suggest measures to deal with them. This paper draws on Tim's experience with the City of Redmond and his observations of other cities that are new, either because their character has changed, as has Redmond's, or that are new in a temporal sense.²

II. CURRENT BIG ISSUES IN LAND USE AND TRANSPORTATION

A. Growth Fatigue Meets the Recession

Redmond, like many new cities grew rapidly in the 1990s, increasing its population by over 9,000 people. Its employment growth was even more impressive, growing by 29,364 jobs between 1990 and 1999. In fact, Redmond has more jobs than residents: 65,072 jobs in 1999 and 45,256 residents in 2000.

Growth is one of the drivers for new transportation and capital facilities. Strong growth in King and Snohomish Counties is one of the reasons for the current transportation and capital facility needs.

This fast growth in Redmond, Sammamish, and similar cities has resulted in some growth fatigue and a desire to slow growth. The recession we are likely in may give them their wish for the

¹ U.S. Census Bureau, Census 2000 Redistricting Data (P.L. 94-171) Summary File and 1990 Census. Internet Release date: April 2, 2001.

² "New" city is a bit of misnomer for Redmond, which incorporated in 1912. In fact there are relatively few new cities in Washington State. In the 1990s, 13 cities incorporated, 10 in King County and three in Pierce County. This was a lot compared to the two earlier decades. In the 1980s one city incorporated, in Snohomish County, and in the 1970s one city incorporated, in Grays Harbor County. Liberty Lake in Spokane County incorporated on August 31, 2001, perhaps reflecting the 1990s relative boom in incorporations. Compare that with the current total of 279 cities and towns.

early 2000s, but growth is likely to increase in the later part of the decade. In section V, this paper discusses likely future population projections.

B. Land Use Innovations Work

While the high level of growth in many jurisdictions has presented challenges, but it also shows that planning under the Growth Management Act can accommodate rapid growth. There have been other successes:

- Seattle's growth rate increased during the 1990s after turning around a 30-year decline in the mid-80s. In 2000, Seattle received an amazing 44 percent of the county's new residential units, more than 6,500 housing units.
- Growth is being successfully encouraged in urban centers. Urban centers in Seattle and Bellevue showed the most dramatic growth, while smaller centers in Renton, Kent, Auburn, Kirkland, and Redmond have gained substantial numbers of new residents.

Concerns have been raised that the mixed-use development in centers may decline as the economy turns bad. While the higher vacancy rates will likely reduce the level of development, especially if state is in a recession, I think evidence is good that mixed-use and centers development makes sense to the real estate industry.

When PricewaterhouseCoopers and Lend Lease Real Estate Investments, Inc. issued their *Emerging Trends in Real Estate 2001*, the message for real estate investors was the same as in recent years: invest in "24-hour cities" with constraints on new construction to prevent overbuilding. These 24-hour cities have centers with a mix of housing, employment, retail, and entertainment uses. Bellevue, Washington is identified as one of several emerging "Subcities," "suburban locations evolving into 24-hour markets and therefore becoming attractive investment targets." In contrast, Dallas-Ft. Worth and Houston were identified as risky places to invest due to a lack of constraints on development. The May 2001 issue of the *Urban Land Institute Real Estate Forecast* reached similar conclusions.

Mixed-use and centers developments have challenges, particularly in weaker markets, but I think the long-term prognosis is good.

- Urban growth areas are working. Rural portions of King County grew at a relatively slow rate. The Rural-designated areas gained only 20,000 persons to a 2000 population of about 137,000 or 8% of the county total. Communities such as Vashon Island, Hobart and the Snoqualmie Valley (outside the cities) grew more slowly than had been predicted early in the 1990s.
- Local governments are working hard on affordable housing. Seattle is nearing the end of its third property tax funded housing levy, approved by the city's voters. Suburban areas, such as Bellevue and Redmond, are also providing substantial funding for affordable housing.
- Regulatory reform is starting to improve permit processing. Redmond, for example, adopted a planned action for the Overlake area that substantially reduces environmental review time for office buildings and housing.³

³ See WAC 197-11-172 for the Planned Action requirements.

- Cooperation between local governments is improving. Redmond and Bellevue jointly adopted a revision of the Bel-Red/Overlake Transportation Study (BROTS), updating plans to build transportation facilities in the Overlake and Bel-Red areas of the two cities. The plan also included trip reduction measures and a system for sharing transportation facility funding.
- The Growth Management Act's requirements for critical areas regulations has improved environmental protection statewide. It is also getting increased support. A dramatic illustration of this was provided in Clallam County. When property rights activists obtain signatures for a referendum to repeal the Clallam County critical areas regulations, the Board of County Commissioners sued to keep it off the ballot. The court, following Washington State Supreme Court precedent held that critical areas regulations could not be repealed by referendum.

For more Growth Management Act success stories, see the State of Washington Office of Community Development's *Achieving Growth Management Goals: Local Success Stories* (December 2000).

III. TRANSPORTATION CONCURRENCY

One of the key innovations of the Growth Management Act is transportation concurrency. The Growth Management Act requires that the cities and counties must enforce an ordinance precluding development approval if a development would cause the transportation LOS standards to fall below the city's or county's adopted standard, unless revenues are secured to complete mitigating transportation improvements or strategies within six years. This section of this paper looks first to the requirements for transportation concurrency, several key issues, some lessons, and some potential solutions.

A. Goal of Transportation Concurrency

"The concept of concurrency is not an end in itself, but a foundation for local governments to achieve the coordinated, consistent, sustainable growth called for by the [Growth Management Act]."⁴

B. Legal Requirements for Transportation Concurrency

1. The Growth Management Act (GMA), in RCW 36.70A.070(6)(b), requires:
 - (a) Local governments required to plan or choosing to plan under the Growth Management Act
 - (b) To adopt an ordinance
 - (c) And enforce it
 - (d) That prohibits development approval
 - (e) If the development causes the level of service on a

⁴ *Taxpayers for Responsible Government v. Oak Harbor*, WWGMHB Case Number 96-2-002 Final Decision and Order 12 (July 16, 1996). Available, like all Growth Board decisions, at: <http://www.gmaboards.wa.gov/>

- (i) locally owned transportation facility
- (ii) and for counties consisting of islands whose only connections to the mainland are state highways or ferry routes and the cities within them, a state highway and state ferry route⁵

to decline below the standards adopted in the transportation element of the comprehensive plan

- (f) Unless transportation improvements or strategies needed to accommodate the new development are
- (g) In place at the time of occupancy
- (h) Or that a financial commitment is in place to complete the improvements or strategies within six years of the “time of development.” The strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies.
- (i) Timing. RCW 36.70A.070(6)(b) requires that the transportation concurrency regulations be enacted “after adoption of the comprehensive plan.”

2. Key Procedural Criteria Guidance.

- (a) The state procedural guidelines are advisory, but very influential on the courts and increasingly on the Growth Management Hearings Boards.⁶ In addition, they contain some good advice!
- (b) Level of Service (LOS) Standards.
 - (i) Locally designated levels of service (LOS) for transportation plans subject to regional transportation plans under RCW 47.80.030 should be consistent with the regional transportation plan.⁷
 - (ii) LOS should be set to reflect realistic expectations consistent with the achievement of growth aims.
 - (A) Deliberately setting the LOS so high that no growth results is contrary to the Growth Management Act.⁸
 - (B) Setting the LOS so low that the GMA concurrency requirements would be avoided also violates the GMA.⁹ This has led the no denial test. If a system would never result in a project denial, it violates the GMA.¹⁰

⁵ *Ibid* and *Island County Citizen’s Growth Management Coalition v. Island County*, WWGMHB Case Number 98-2-023c Final Decision and Order 73 (June 2, 1999).

⁶ RCW 36.70A.190(4)(b). Please note that the Guidelines to classify agriculture, forest, and minerals lands adopted under RCW 36.70A.050 have a different status in that they are minimum guidelines and must be consulted by local governments. *Redmond v. Growth Hearings Board* 136 Wn.2d 38, 54 (1998).

⁷ WAC 365-195-510(3)(a).

⁸ WAC 365-195-510(3)(b).

⁹ *Butler, et al. v. Lewis County*, WWGMHB Case Number 99-2-0027c Final Decision and Order 67 (June 30, 2000).

¹⁰ *Achen, et al. v. Clark County*, WWGMHB Case Number 95-2-0067 Compliance Order (Transportation) 5 (November 16, 2000). “The record does not demonstrate that the concurrency ordinance could never be used to deny a development application. As acknowledged by the County, there will be intermittent LOS failures, resulting in a denial of an application until a way to reach the LOS standard can be achieved.” *Ibid*.

- (c) Suggested Components of a Concurrency Management System.¹¹
- (i) Capacity monitoring: Collecting and maintaining real world data on use to compare with changing capacities.
 - (ii) Capacity Allocation Procedures: A process to determine whether proposed developments can be accommodated by existing and planned capacity improvements.
 - (iii) Capacity Reservation Processes: A process to prioritize the allocation of available capacity for development the community wants or for development in priority locations.
 - (iv) Provisions specifying the response if capacity is not sufficient to accommodate the proposed development.
 - (A) May provide for conditional approval if the developer agrees to mitigate the development's impacts.
 - (B) Approval cannot be granted if the performance will decline below the adopted LOS standards.
 - (v) Provisions governing the form, timing, and duration of concurrency approvals should be included. Redmond's experience is that these details are very important.
 - (f) Consider provisions for interjurisdictional coordination.
 - (g) Consider integrating project level SEPA review with concurrency review.
- (d) Environmental Standards. Compliance with environmental requirements, such as air and water quality standards, should be built into the facilities planned to meet the needs of growth.¹² Do not forget the mitigation measures needed to implement your community's Endangered Species Act (ESA) strategy.
3. Check the applicable County-wide Planning Policies and Multicounty Planning Policies for requirements and recommendations. Some have requirements applicable to concurrency. They can be either advisory or mandatory, depending on how they are written.
4. Growth Management Hearings Boards.
- (a) Mandatory if within the board's jurisdiction. Otherwise it is advisory, but the boards and courts are often persuaded by decisions of the other boards.
 - (b) More and more Growth Board decisions on concurrency.
 - (c) You can find almost all of the three board's decisions on their great web site: <http://www.gmaboardswa.gov/>
 - (d) **What GMA Jurisdictions have to adopt concurrency ordinances?** All jurisdictions planning under 36.70A must adopt concurrency ordinances. That

¹¹ WAC 365-195-835(3).

¹² WAC 365-195-835(2).

you do not have the same growth pressures as other communities will not insulate you from the statutory deadlines to adopt such ordinances.¹³

- (e) **Overview.** “RCW 36.70A.070(6) directs that a local government must establish a level of service, inventory all transportation facilities and services ‘to define existing capital facilities and travel levels,’ project future needs, and adopt a ‘multi-year’ financing plan that is coordinated, and consistent, with the TIP plan. Local governments have the authority to adjust any of those three elements (LOS, needs and/or funding) to fit local circumstances as long as the ultimate decision concerning those elements are consistent with each other, based upon facts established in the record, including consistent measuring methodologies, and are not based upon artificial standards designed to avoid the concurrency requirements of RCW 36.70A.070(6)(b).”¹⁴

(f) **Exemptions from the concurrency system.**

- (i) While not specifically authorized by the Growth Management Act, exemptions are permissible if the local government includes the transportation demand in its concurrency accounting and pays for any needed capacity.¹⁵

Presumably a local government could exempt a development from concurrency and require them to pay impact fees, separating concurrency compliance from funding. But that is just my surmise; no board or court has yet addressed this question.

- (ii) Exempting developments that generate less than ten peak hour trips from concurrency review violates the Growth Management Act because the exemption “would lead to an incomplete assessment of cumulative impact on LOS.”¹⁶ Ten peak hour trips is the peak hour traffic typically generated by ten single-family homes.

While the board did not mention its previous *Island County* decision, the difference between the Vancouver and Island County exemptions is probably that Island County included the exempted developments in its accounting of transportation capacity consumed and Vancouver apparently did not. In a later decision on the new Clark County concurrency system that used a delay system like Vancouver they noted that Clark County’s system was better than the Vancouver system because it did not have the ten trip exemption.

(g) **Transportation Level of Service Standards (LOS)**

¹³ *Concerned Friends of Ferry County v. Ferry County* EWGMHB Case No.: 00-1-0001 Final Decision and Order 7 of 8 (July 6, 2000).

¹⁴ *Achen, et al. v. Clark County*, WWGMHB Case Number 95-2-0067 Compliance Order (Transportation) 4-5 (November 16, 2000).

¹⁵ *Island County Citizen’s Growth Management Coalition v. Island County*, WWGMHB Case Number 98-2-023c Final Decision and Order 72 (June 2, 1999).

¹⁶ *Progress Clark County, Inc. v. Vancouver*, WWGMHB Case Number 99-2-038c Final Decision and Order 11 (May 22, 2000).

- (i) Local governments have “wide discretion” in setting LOS.¹⁷ An LOS of “failing” for some roads is within the range of discretion.¹⁸
 - (ii) That a transportation management zone does not comply with the adopted LOS standard when the concurrency ordinance is adopted “does not constitute an inconsistency among LOS standards, the CP [comprehensive plan], and the CFP [capital facility plan].”¹⁹
- (h) A **temporary prohibition on development** in a transportation analysis zone that does not meet its level of service standards is consistent with RCW 36.70A.070(6)(b)’s prohibition on approving development that would violate adopted LOS standards.²⁰ A local government, “under the [Growth Management Act (GMA)], must occasionally say ‘no.’”²¹
- (i) The GMA does not allow adoption of a concurrency system “in the face of evidence that deficiencies exist, in order to allow continued unrestrained and uncoordinated development anywhere in the County.”²² This system used a corridor approach, an LOS of D, and a two-hour peak period for measuring the LOS. Little analysis supported the program and the county’s consultant told them if they did not adopt the “right” system, they would have to deny development. More tellingly, the Transportation Improvement Program (TIP), used for grants and other purposes, used a more typical method of evaluating transportation needs and estimated a \$12 million funding deficiency.
- (j) A concurrency system can designate transportation services and facilities as at their ultimate capacity and then can rely on mitigation strategies other than facility expansions. But developments that affect the facility must undergo concurrency review and mitigate their impacts on LOS in some way.²³

C. Key Issues

It is fair to say that there is significant dissatisfaction with current concurrency systems. Neighborhood groups are dissatisfied because concurrency systems have not been adopted, have not been well designed, or have not been effectively implemented or enforced.²⁴ Some

¹⁷ *Achen, et al. v. Clark County*, WWGMHB Case Number 95-2-067 Final Decision and Order 47 (May 22, 2000). *Accord West Seattle Defense Fund v. Seattle (West Seattle I)*, CPSGMHB Case Number 94-3-0016 Final Decision and Order 61-62 (April 4, 1995).

¹⁸ *Ibid.*

¹⁹ *Progress Clark County, Inc.* at 9.

²⁰ *Ibid* at 9.

²¹ *Ibid.*

²² *Butler, et al. v. Lewis County*, WWGMHB Case Number 99-2-0027c Final Decision and Order 68 (June 30, 2000).

²³ *Sky Valley, wt al. v. Snohomish County*, CPSGMHB Case Number 95-3-0068c Final Decision and Order 128-29 (March 12, 1996) (addressing a policy rather than concurrency regulations).

²⁴ Office of the Hearing Examiner King County, Washington. *Report and Decision on Appeals of Threshold Determination Greens at Beaver Crest Preliminary Plat Application and SEPA Threshold Determination Appeals and Bordeaux at Beaver Crest SEPA Threshold Determination Appeals File Nos. L97P0011 and B97C0177* (October 23, 1998). Technical errors, assumptions, and adjustments result in inappropriately optimistic projections of roadway capacity for the arterial system serving the Sammamish Plateau. This has resulted in inaccurate

communities have been concerned that concurrency will be expensive to administer, the concurrency system will not result in the urban form they want, the system will require them to build facilities they do not want to build, or they cannot fund the facilities needed to achieve concurrency. The development community is concerned that concurrency requirements will reduce predictability and result in development denials. The environmental community is concerned that poorly designed auto oriented systems will lead to sprawl, excessive spending on single-occupancy vehicle facilities, and auto-oriented community design rather than human-oriented design. Many are dissatisfied with the current intersection level of service systems that tend to rely on volume to capacity ratios. Some are dissatisfied that state highways are not included in concurrency calculations. Others are concerned that if state highways were included in concurrency calculations, they would stop development in the Central Puget Sound Region due to a lack of state highway funding.

D. Concurrency Lessons

Based on my experience with concurrency systems, I would offer the follow lessons on designing concurrency systems.

1. Be clear on your jurisdiction's goals for the community.
2. Be clear on your community's objectives for the concurrency system.
3. Tailor your system to your goals and objectives, the environment in which the system will operate, and the resources you want to go into administering the system.
 - A. Try to avoid a really complex system unless you are going to experience a high level of growth.
 - B. Is the system intended to help fund projects or just to make sure capacity is available when needed?
 - (a) When relying on a concurrency system for funding you should plan on devoting more resources to its administration. It is important that any funding requirements for transportation, at least, be based on some modeling and calculation to comply with state and federal court decisions.
 - (b) Less resources are needed to just check to see if the capacity will be there.
 - C. Do you want your system to control the rate of growth?
 - (a) If yes, then you need to clearly document your decisions and make sure you have the necessary authority.
 - (b) If no, be sure you will build the transportation capacity you need or have sufficient flexibility to allow applicants to do it.
 - D. Make sure the staff administering the concurrency system understand the community's goals and objectives.

concurrency modeling results. Available from <http://www6.metrokc.gov/search/search.htm> King County has since worked very hard to fix the errors.

If they are trying to make growth happen no matter what and the City Council or County Commission want it to manage growth then someone is going to be unhappy. The reverse is also a problem.

4. Be careful what you measure, that is what you will get.
 - A. Do try to have the indicators used by your system measure what the community cares about, but do not obsess over it.
 - (a) One of the great current controversies is over what indicators to use in concurrency systems and whether they accurately portray the actual experience of the traveling public and address what the community truly cares about.
 - (b) Most common indicators were developed as an attempt to quantify traffic congestion, so most fit that category although some are more abstract than others.
 - (c) Pick indicators that get at the mobility problems of your community at a cost the community can afford.
 - (d) Some of these discussions are really about allowing more growth with the same transportation facilities; you need to recognize this.
 - B. Redmond's system measures intersection volume to capacity, so we get left turn lanes, right turn lanes, and new signals.
 - C. We also allow carefully designed and monitored trip reduction programs to reduce peak trips, so we have gotten some to these as well.
5. Do not over promise.
 - A. Many systems, such as Redmond's, were not designed to maintain current levels of single-occupant motor vehicle (SOV) mobility.
 - B. If this is consistent with community goals it is a good approach, just make sure the elected officials and the public understand that this will be the result and the tradeoffs.
6. Make sure your planned land use, planned transportation facilities, and funding will match over the long-term.
 - A. A concurrency system cannot work if you have not identified sufficient transportation facilities to accommodate the planned growth.
 - B. Do sufficient modeling to make sure they will work. (If your system relies on modeling.)
 - (a) If you can afford it, what if modeling can help a lot.
 - (b) Make sure your model is accurate. If you have a complex mode and can afford it, have it reviewed by a third party.
7. Check back on your plan periodically to make sure the rate of growth, the rate of construction of transportation facilities, and funding is working out like you planned.

- A. The City of Bellevue does a very good annual State of Mobility report, for example.
 - B. The Growth Management Act required five-year update is a great opportunity to do this too.
8. Only allow applicants to construct facilities in your adopted plan.
 9. Remember you are not an island (unless you are an island). Growth in other areas that sends trips to or through your community can consume lots of capacity so plan for it.
 10. In preparing your Six Year Perpetual Street Plan, model the capacity projects included to ensure you will get the capacity you need.
 11. Watch out for sprawl.
 - A. Sprawl can occur if capacity is not available close in so applicants try to be the first to build further out.
 - B. Has been a real problem in Florida.
 - C. Your community's standards can help prevent sprawl by having tougher standards further out.
 - D. Investing in capacity where you want growth is probably the most effective solution if your community has the funds to invest.

E. Potential Solutions

Smart Growth

The key principles of smart growth are: (1) the efficient use of land resources, (2) full use of our current urban services, (3) mixed-use neighborhoods, (4) transportation options, and (5) human-scale design. Smart Growth can help reduce transportation demand and public facility costs. For example, Cambridge Systematics has estimated that households would make 20 to 25 percent fewer automobile trips in compact, higher density transit-oriented suburbs compared to typical auto-oriented suburbs.²⁵ *The Costs of Sprawl—Revisited* concluded that compact development could reduce local street capital costs by 25 percent.²⁶

Smart growth is an alternative to sprawl. The major characteristics of the two land use patterns are summarized in the following table.

²⁵ Cambridge Systematics, *The LUTRAQ Alternative /Analysis of Alternatives*, 1000 Friends of Oregon (Portland; OR 1992). Available at the 1000 Friends of Oregon website: www.friends.org

²⁶ Robert W. Burchell, Naveed A. Shad, David Listokin, Hilary Phillips, Anthony Downs, Samuel Seskin, Judy S. Davis, Terry Moore, David Helton, Michelle Gall. *The Costs of Sprawl—Revisited* 49 (Transit Cooperative Research Program Report 39, Transportation Research Board, National Research Council 1998). Available at the National Academy Press website: http://www4.nationalacademies.org/trb/onlinepubs.nsf/web/TCRP_Reports

Smart Growth	Unmanaged Sprawl
■ Higher-density, compact development.	■ Low-density development.
■ Human-scale design.	■ Large-scale, auto-oriented design.
■ Development focuses on already built-up areas (infill or brownfield redevelopment).	■ Urban periphery (greenfield) development.
■ Mixed land uses.	■ Large areas of homogeneous land use.
■ Multi-modal transportation and land use patterns that support walking, biking, and public transit.	■ Automobile-oriented transportation and land use patterns, poorly suited for walking, biking, and transit.
■ Streets designed to accommodate a variety of activities. Traffic calming.	■ Streets designed to maximize traffic volume and speed.
■ Planned and coordinated with other jurisdictions and stakeholders.	■ Unplanned, with little coordination between stakeholders.

Source: Victoria Transport Policy Institute, *Online TDM Encyclopedia* (March 2001). Modified by 1000 Friends of Washington.

New Concurrency Systems

Some examples of “new” systems include:

1. Intersection Level of Service (LOS) Based System with Modifications

A. Modifications being considered by some jurisdictions include:

- (a) Extend the time used to calculate volume to capacity ratios. For example rather than measuring capacity during a one-hour peak, use a two-hour peak.
- (b) Change the method used to calculate the level of service. Different methods use different capacities so they yield different results.
- (c) Lower the LOS standards, in some cases as high as 1.25 to 1.50 (125 to 150 percent of calculated capacity).

B. Key Advantages

- (a) Increases capacity for growth at low cost.
- (b) If you have an existing intersection LOS system, it does not require much change in the system.
- (c) Increasing the number of peak hours addresses the complaint that you should not design your transportation system for just one hour.

C. Key Disadvantages

- (a) None of these changes increase real capacity. They just allow more development with the same transportation facilities.
- (b) Requires modeling to determine compliance.
- (c) Can make complex systems more complex.

2. Add Multi-modal Indicators to a concurrency system
 - A. Could include a variety of indicators, such as:
 - (a) Proximity to transit routes, stops, or other facilities.
 - (b) Non-single-occupancy mode split.
 - (c) Whether the sidewalk or bike system is complete near a proposed development.
 - B. Key Advantages. Takes into account additional travel modes.
 - C. Key Disadvantages.
 - (a) Adds complexity, although some indicators, such as sidewalk completion would be easy to figure if you have a good sidewalk inventory.
 - (b) Data may not be readily available for some indicators, increasing the cost of administration.
 - (c) Can make complex systems more complex.
3. Travel Delay Systems
 - A. The City of Vancouver, Washington and Clark County have adopted corridor travel time and intersection delay systems. These well though out systems do the following:
 - (a) Uses travel time along selected arterial streets (links). Different classes of arterials have different standards.
 - (b) It would also measure delay at intersections at such selected arterial streets.
 - (c) The number or percentage of intersections operating under the average would also be limited. This is referred to as a “mobility index.”
 - B. Key Advantages
 - (a) Travel delay is considered to have the advantage of being very comprehensible to the public. Easy to explain and understand.
 - (b) It measures something the public cares about, the time it takes to drive through a corridor.
 - (c) The Western Washington Growth Management Hearings Board upheld both of these systems, concluding “that the corridor-approach LOS standards discourage sprawl and encourage multi-modal transportation by avoiding costly intersection improvements that promote single occupancy vehicle use and discourage walking and cycling.”²⁷
 - C. Key Disadvantages

²⁷ *Progress Clark County, Inc. v. Vancouver*, WWGMHB Case Number 99-2-038c Final Decision and Order 10 (May 22, 2000) and *Achen, et al. v. Clark County*, WWGMHB Case Number 95-2-067 Compliance Order (Transportation) 6 (November 16, 2000).

- (a) Requires lots of data to know the current conditions to use in setting standards. New technology, such as GPSs (geographical positioning systems), makes this data easier and cheaper to gather.
 - (b) Requires modeling to determine compliance.
 - (c) Can be a complex system.
 - (d) Travel time equates largely to speed. If travel times are set too low, you may have to widen streets or intersections your community does not want to modify.
 - (e) People are familiar with the roadway level of service standards; this is a completely new system.
- D. See the City of Vancouver web page for information on this system at: <http://www.ci.vancouver.wa.us/transportation/concurrency/index.html>
4. Average Vehicle Operating Speed
- A. Commended by Reid Ewing as “potentially a better basis for area wide level of service” than volume to capacity based systems.²⁸ Would use average vehicle speed on arterial corridors.
 - B. Key Advantages
 - (a) It is a more direct measure than volume to capacity, and so “is more consistent with the philosophy of the 1985 Highway Capacity Manual which (which abandoned volume/capacity ratios in favor of more direct measures).”²⁹
 - (b) It measures something the public cares about, delay.
 - (c) Speed on streets is easy to gather.
 - C. Key Disadvantages
 - (a) People are familiar with the roadway level of service standards; this is a completely new system.
 - (b) Requires modeling to determine compliance.
 - (c) Can be a complex system.
 - (d) Average vehicle operating speed equates to speed. If travel times are set too low, you may have to widen streets or intersections your community does not want to modify.
5. Use LOS at screen lines rather than intersection or link LOS
- A. The City of Seattle uses such a system. Uses travel time along selected arterial streets (links).
 - B. Key Advantages

²⁸ Reid Ewing, *Transportation & Land Use Innovations* 78 (1997)

²⁹ *Id.*

- (a) Upheld by the Central Puget Sound Growth Management Hearings Board.³⁰
 - (b) Simpler because you need fewer calculations.
- C. Key Disadvantages
- (a) Requires modeling to determine compliance.
 - (b) Depending on the number of screen lines, the system may not be very sensitive to differences in different parts of the city.
 - (c) Could allow increased growth without much increase in transportation facilities.
6. Designate areas that have lots of transportation choices, such as downtowns, as multimode transportation districts. These areas would incorporate community design elements to reduce single-occupancy vehicle trips and adopt level of service standards that rely primarily on multi-modal or non-vehicular travel modes.
- A. Florida allows multi-modal transportation districts as part of its concurrency system. *See* Florida Statutes § 163.3180(15) (2000).
- B. Key Advantages.
- (a) Prevents transportation concurrency from preventing development where a community wants it.
 - (b) Could encourage development where you want it, such as downtown.
 - (c) By making it easier to develop downtown, it could reduce sprawl.
- C. Key Disadvantages
- (a) If sufficient transportation alternatives are not present, traffic could get very bad.
 - (b) Not specifically authorized by Washington State's concurrency law, so it is unclear if it is legal. If expressed as an LOS, I think it could work in Washington.
 - (c) May be unpopular with people who want to be able to drive anywhere, anytime.
7. Require that the arterials that serve a development meet a certain construction standards.
- A. The City of Steilacoom uses such a system.
- (a) For transportation, the LOS is a two lane arterial street with thickened asphalt edge and a sidewalk or a paved path on one side.
 - (b) Steilacoom has standards for other facilities as well.
 - (c) Could be modified by having additional facility standards for intersections or different standards for different classifications of arterials.

³⁰ *West Seattle Defense Fund v. Seattle (West Seattle I)*, CPSGMHB Case Number 94-3-0016 Final Decision and Order 61-62 (April 4, 1995). Decisions on the adopted LOS standards are local policy decisions.

- B. Key Advantages
 - (a) Simple, easy, and cheap to administer. Does not require traffic modeling.
 - (b) Easy to explain and understand.
 - (c) Well suited to small slow or moderate growth communities with few public facility limitations.
 - C. Key Disadvantages
 - (a) Does not address intersections, which are the primary limitations on urban area capacity. But could be modified to do so.
 - (b) Rapid growth or unforeseen facility needs could overwhelm the system because a set facility standard, such as a two lane arterial, may not have sufficient capacity in high growth areas.
8. Person Through Put or Person Carrying Capacity
- A. This system would measure person transportation carrying capacity using all modes, including cars, buses, high capacity transit, walking, and biking.
 - B. Key Advantages
 - (a) Encourages adding capacity in all modes, not just street improvements.
 - (b) Gives the local government many options to meet transportation needs.
 - (c) The community can chose what to spend its transportation money, not be driven to make street or intersection widenings it does not want.
 - (d) Arguable a very environmental responsible approach since it treats less polluting travel modes on the same level as capacity for single-occupancy vehicles.
 - C. Key Disadvantages
 - (a) People are familiar with the roadway level of service standards, this is a completely new system.
 - (b) If a local government chose to concentrate on alternative travel modes, traffic could get real bad, but many people would have transportation choices.
 - (c) Little data on some modes, so it may be hard to figure compliance.
 - (d) Would be unpopular with people who want to be able to drive anywhere, anytime.
9. Provide that once certain transportation facilities (streets, intersections, or both) are built out, they are not included in concurrency calculations
- A. Olympia uses a similar system. Some identified downtown Olympia streets will only be widened to a certain number of lanes. Once they are built out, they are not included in concurrency calculations. So there is no need to make additional modifications to these streets to accommodate automobiles to achieve concurrency. Investments would then be made in other transportation modes.

B. Key Advantages

- (a) Prevents transportation concurrency from requiring streets and intersections to be widened beyond the level desired by the community.
- (b) Could encourage development where you want it, such as downtown.
- (c) May help manage transportation facility costs.

C. Key Disadvantages

- (a) If sufficient transportation alternatives are not present, traffic could get very bad.
- (b) Not specifically authorized by Washington State's concurrency law, so it is unclear if it is legal. If expressed as an LOS, I think it could work in Washington.
- (c) May be unpopular with people who want to be able to drive anywhere, anytime.

10. Regional System

A. A regional organization; such as a Regional Planning Council, Metropolitan Transportation Organization, Rural Transportation Organization, county, or consortium of cities; could maintain a concurrency model and conduct the concurrency analysis.

B. Key Advantages

- (a) In smaller communities, this could provide an affordable concurrency system. Transportation models are expensive to develop and smaller communities cannot afford in house modeling staff, although consultants are available. The local governments can pool their resources.
- (b) Existing concurrency systems are not doing a good job of taking into account regional traffic. A regional system could do this better because the organization would see all developments within a region and consider them in the concurrency analysis.
- (c) Traffic is a regional problem and many solutions are also regional. A regional concurrency system recognizes these realities,
- (d) Some parties, such as the development community, may prefer a uniform regional system.
- (e) The system could be structured to encourage the form of development preferred by regional plans.

C. Key Disadvantages

- (a) Local governments would have less control over the concurrency system.
- (b) Local governments may have difficulty using the concurrency system to get the transportation system the community wants if these preferences differ from the regionally preferred transportation system.

Legislative Fixes

Specifically authorize the designation of multimode transportation districts patterned after Florida's districts of the same name. *See* Florida Statutes § 163.3180(15) (2000). These areas would incorporate community design elements to reduce single-occupancy vehicle trips and have level of service standards that rely primarily on multi-modal or non-vehicular travel modes.

Concurrency is complex and would benefit from expert guidance. The Legislature should authorize the Office of Community Development to adopt binding regulations to fill the gaps in the Growth Management Act. This will help fix the system.

IV. TRANSPORTATION & CAPITAL FACILITY PLANNING & FUNDING

Capital facility plans need to be updated frequently to take into account the passage of time and progress in the construction of public facilities such as streets, water systems, sewer systems and parks. The adoption of new population targets, new employment targets, or changes to urban growth areas also require amendments to capital facility plans because they are the primary drivers of demands for public facilities and services.

A. Requirements

1. The Growth Management Act (GMA), in RCW 36.70A.070(3), requires that comprehensive plans include a capital facilities plan element consisting of:
 - (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities;
 - (b) A forecast of the future needs for such capital facilities;
 - (c) The proposed locations and capacities of expanded or new capital facilities;
 - (d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and
 - (e) A requirement to reassess the land use element if probable funding falls short of meeting existing needs;
 - (f) The land use element, capital facilities plan element, and financing plan within the capital facilities plan element must be coordinated and consistent.
2. Each of the three Growth Boards have read Goal 12, in RCW 36.70A.020(12), to require that public facilities and services must be available to serve development as that development occurs or within a reason time.³¹

³¹ *Cascade Columbia Alliance v. Kittitas County*, EWGMHB 98-1-0004, Final Decision and Order (Dec. 21, 1998). The GMA does not require water, sewer, and other services to be in place until development occurs. (RCW 36.70A.020(12)) We require the cities to provide these facilities and services at least concurrently with the projected growth. *Taxpayers for Responsible Government v. Oak Harbor*, WWGMHB Case Number 96-2-002 Final Decision and Order 11 (July 16, 1996). Compliance with Goal 12 requires local governments to adopt either policies or regulations or a combination that provide reasonable assurances, but not absolute guarantees that the locally defined (within the perimeters of the Act) public facilities and services necessary for future growth are

B. Issues

1. Rapid Growth. Washington state grew by more people in the 1990s than any other decade.
2. Growth leads to more cars and while the growth in vehicle miles traveled has moderated, we are still driving farther each year.
3. Both state and local governments lack the money needed to construction transportation and other capital facilities. This results in part from an anti-tax atmosphere that has lead to several tax limitations, all of which were ultimately unconstitutional, but some of which were put into effect by the legislature.
4. Local governments are facing significant scrutiny from the courts in imposing conditions on new development to constructed needed transportation and capital facilities. The *Nollan* and *Dolan* tests have acted as a limit on what local governments can require developers to do.
 - (a) *Nollan v. California Coastal Comm'n* requires a nexus between the condition and the problem the condition seeks to solve.³² This requirement is usually meet.
 - (b) *Dolan v. City of Tigard* requires that conditions be roughly proportional to the development's impact on the problem.³³ This is typically the harder prong.
 - (c) While some hope that the Washington State Supreme Court will reconsider these requirements in its review of the Court of Appeals decision in *Benchmark Land Company v. City of Battle Ground*, No. 22254-0-II, (Slip Op., December 15, 2000), it is not clear what the outcome will be.
4. Capital facility planning will need to be improved to cope with high levels of growth, a lack of funds, and takings concerns. Capital facility planning must also ensure that adequate funds are allocated to safety improvements and operating and maintenance funding.

C. Potential Solutions

1. Addressing the *Nollan* and *Dolan* tests
 - (a) One solution is to build *Nollan* and *Dolan* tests into permitting regulations. The City of Redmond has done this, providing for an administrative review process if

adequate within previously established LOS levels to serve that new growth either at the time of occupancy and use, or within an appropriately timed phasing of growth connected to a clear and specific funding strategy. *Gig Harbor v. Pierce County*, CPSGMHB Case Number 95-3-0016 Final Decision and Order 13 (October 13, 1995). Jurisdictions have a duty to provide for adequate public facilities, including parks. However, this duty is limited by two constraints. First, provision of those services is to take place “at the time development is available for occupancy and use” and second, adequacy is measured by “locally established minimum standards.” The public facility goal reads in full: “(12) Public facilities and services. 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.” RCW 36.70A.020 (12).

³² *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 838-39, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987).

³³ *Dolan v. City of Tigard*, 512 U.S. 374, 387 & 391, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994).

a developer or property owner believes a condition is unconstitutional. This gives the local government the opportunity both to correct its mistakes and build a record showing that the *Nollan* and *Dolan* tests are met. See Attachment A for a copy of the portion of the Redmond regulations that include the administrative review process.

- (b) Impact fees are also important because tool because you can build *Nollan* and *Dolan* tests into the fee calculations.
2. Financing Tools. 1000 Friends is issuing a new report entitled *Pricing and Financing Smart Growth* that summarizes tools local governments can take to better finance growth. It will be available at our website www.1000friends.org in November. The tools include:
- (a) Target Public Investments for Smart Growth & Adopt Focused Public Investment Plans. Using public facility and amenity investments to encourage smart growth. An additional and beneficial step would be to adopt a focused public investment plan that identifies the parts of the urban growth area where public funding for public facilities will be focused.
 - (b) Impact Fees and SEPA Mitigation Should Reflect the Costs of Development and Encourage Growth in Smart Growth Locations. Impact fees are payments made by new developments to fund the capital facilities needed to accommodate growth. They can be charged for transportation, parks and recreation, school, and fire facilities. Impact fees should be set to reflect the often higher costs of serving the urban fringe and the targeting of public funds to centers and other smart growth locations.
 - (c) Utility Connection Charges Should Reflect the Capital Facilities Needed to Serve an Area. Utility connection charges pay a development's fair share in the existing water, sewer, and storm water systems and the new utility facilities needed to accommodate growth. Connection charges should be set to reflect the often higher costs of serving the urban fringe and the targeting of public funds to centers and other smart growth locations.
 - (d) Cost Based Utility Rates. Cities, special districts, public utility districts (PUDs), and, in some cases counties, have service charges to fund the operation of water systems, sewer systems, and other utilities. These charges should reflect the higher costs of serving more remote locations due to longer pipe runs and other costs.
 - (e) Use Local Improvement Districts (LIDs) and Utility Local Improvement Districts (ULIDs) to Help Fund Public Facilities in Smart Growth Locations. LIDs and ULIDs are a method of financing public facilities and paying for them over time. LIDs and ULIDs are complicated to setup and administer, but properly used LIDs and ULIDs can help finance public improvements in smart growth locations.
 - (f) Adopt Real Estate Excise Taxes to Help Fund Public Facilities and Conservation Areas. Real estate excise taxes are paid when real estate is sold. Cities and counties may levy two real estate excise taxes of up to 0.25 percent each for capital facilities. In addition, a county can levy a real estate excise tax of up to

one percent for the acquisition and maintenance of conservation areas. One of the 0.25 percent taxes and the one percent tax require voter approval.

3. Financing Reforms. *Pricing and Financing Smart Growth* also advocates a series of reforms state and local governments should adopt. The reforms include:
 - (a) Adopt a Washington Smart Growth Investment Strategy. Target state grants, loans, facilities, and spending to existing downtowns, town centers, urban growth areas, industrial areas and other locally determined smart growth sites.
 - (b) MPOs and RTPOs Should Target Federal Transportation Capacity Funding to Smart Growth Locations. Metropolitan Planning Organizations (MPOs) and Rural Transportation Planning Organizations (RTPOs) already identify transportation needs and help distribute federal funding. They should target federal transportation capacity funding to priority smart growth locations, especially those having difficulty attracting private investments to encourage their development.
 - (c) Reform State Laws on Development Mitigation. The state laws that authorize development mitigation, RCW 82.02.020, should be updated and made more flexible and effective.
 - (d) Reform Impact Fee Authorities. Impact fees are payments made by new developments to fund the capital facilities needed to accommodate growth. They can be charged for transportation, parks and recreation, school, and fire facilities. The state laws authorizing these fees should be updated to make their administration and use more effective.
 - (e) Authorize Street Utilities. A utility charge is a payment to fund the maintenance of a public facility, in this case streets. Due to the Washington State Supreme Court decision in *Covell v. City of Seattle*, 127 Wn.2d 874, 905 P2d 324 (1995); street utilities are not allowed in Washington State. The street utility laws and, if needed, the state constitution should be amended to allow local governments to adopt a street utility and use the additional revenues to help reduce general taxes such as property or sales taxes.
 - (f) Authorize Fiscal Home Rule. Fiscal home rule refers to allowing local governments to enact the taxes of their choice within the requirements of the Washington State and U.S. Constitutions. Currently in Washington State, local governments can only adopt taxes and charges authorized by state law and this gives local governments little flexibility in raising revenues. Fiscal home rule will allow a community to plan for the future it wants and design a tax system to fit that community, rather than to design the community to fit Washington's current tax system.
 - (g) Adopt a Development Excise Tax to Fund Growth Management Planning. High quality and effective planning can lead both to smart growth and more efficient permitting, reducing development costs. Adequate funding is needed for good capital facility planning. Community- or neighborhood-wide environmental review is also more effective and cheaper than the predominate project-by-project

approach. A development excise tax, a tax paid during the development process, will allow local governments to effectively do this work.

- (h) Comprehensive Tax Reforms. A variety of property and other tax reforms have been suggested. The legislature should comprehensively consider these ideas.
- 4. Smart Growth. As was noted under the transportation discussion, Smart Growth has the potential to reduce overall capital facility costs. *The Costs of Sprawl—Revisited* concluded that compact development can reduce street costs by 25 percent, school costs by five percent, and utility costs by 20 percent.³⁴

V. FUTURE ISSUES & SOLUTIONS

A. New Population Targets & New Facility Demands

As required by the Growth Management Act, the State of Washington Office of Financial Management (OFM) is working on a new range of population forecasts for Washington State and its counties. In 2002, OFM will publish the new range. RCW 36.70A.110 requires counties and cities to allocate this population forecast and to plan to accommodate the population allocations.

OFM is using the 2000 census data to update its prior projections. An OFM analysis shows that growth in King County in the 1990s exceeded the prior OFM forecast range by 34,163 people. Growth in Snohomish County exceeded the forecast range by 12,192, and growth in Clark County exceeded the target range by 15,455 people. Growth in Pierce and Kitsap Counties lagged the OFM forecast range by 9,708 and 5,736 respectively.³⁵ The counties that have exceeded the OFM projection range may get increases in the population projections they need to accommodate and the counties that lag the projections may see a lower range. This is likely to result in three significant issues.

First, some counties and cities may request that one of the three regional Growth Boards adjust the OFM population forecast range.³⁶ Some cities may consider the ranges too high. Some counties that have historically wanted strong growth may want higher projections. Now that

³⁴ Robert W. Burchell, Naveed A. Shad, David Listokin, Hilary Phillips, Anthony Downs, Samuel Seskin, Judy S. Davis, Terry Moore, David Helton, Michelle Gall. *The Costs of Sprawl—Revisited* 49 (Transit Cooperative Research Program Report 39, Transportation Research Board, National Research Council 1998). Available at the National Academy Press website: http://www4.nationalacademies.org/trb/onlinepubs/nsf/web/TCRP_Reports

³⁵ Theresa Lowe. Coming soon: A growth management population forecast update. *About Growth* 1 (Olympia WA: Washington State Office of Community Development, Summer 2001). Available at <http://www.ocd.wa.gov/info/lgd/growth/newsletter/index.tpl>

³⁶ RCW 36.70A.280(1)(b) and (4). The **Central Puget Sound Growth Management Hearings Board** has jurisdiction over King, Kitsap, Pierce, and Snohomish Counties and the cities in those counties. The **Western Washington Growth Management Board Hearings Board** has jurisdiction over the other Western Washington counties that fully plan under the Growth Management Act and the cities within them. These are currently: Clallam County, Clark County, Island County, Jefferson County, Lewis County, Mason County, Pacific County, San Juan County, Skagit County, Thurston County, and Whatcom County. The **Eastern Washington Growth Management Board Hearings Board** has jurisdiction over the Eastern Washington counties that fully plan under the Growth Management Act and the cities within them. These are currently: Benton County, Chelan County, Columbia County, Douglas County, Ferry County, Franklin County, Garfield County, Grant County, Kittitas County, Pend Oreille County, Spokane County, Stevens County, Walla Walla County, and Yakima County.

such counties know that the OFM projections are ceilings for setting urban growth areas, they may request adjustment of the forecast range.

Second, the within the fast growing counties, the allocation of the population projections to cities may be controversial. Some cities may want a smaller rather than larger population projection.

Third, the changes may precipitate disputes over whether urban growth areas should be expanded in fast growing counties and held stable, or perhaps even be reduced, in the slow growing counties. In the first round of GMA comprehensive plans, urban growth areas were quite controversial.

County comprehensive plans must include urban growth areas (UGA). The UGA consists of the incorporated cities and unincorporated areas where urban growth is encouraged. The GMA, in RCW 36.70A.130(3), requires that counties review urban growth areas and the densities permitted in urban and rural areas at least once every ten years. Each city in the county must review the densities being permitted within the urban growth area as well. Urban growth areas must include sufficient land to accommodate the OFM's 20-year population forecast for the urban part of the county.

While no county adopted its urban growth area over ten years ago and so no county is required to revisit the urban growth area in 2002, some counties may choose to review their urban growth areas as part of their planning for the OFM population forecast range.

A related requirement is the buildable lands analysis, review, and evaluation program. The GMA, in RCW 36.70A.215, requires that Clark, King, Kitsap, Pierce, Snohomish, and Thurston counties to prepare a buildable lands analysis that determines whether these counties are achieving their planned densities, if sufficient buildable lands are available to meet the population projections and employment needs for the county, and whether measures need to be taken to accommodate the projected growth. This report is due on September 1, 2002. These cities and counties will use the results of the analysis in updating their comprehensive plans.

An ideal solution to growth fatigue in King and South Snohomish Counties and growth envy that may exist in other counties would be to encourage growth in other counties rather than King County. This is tricky to do, but there are some examples of firms that have migrated from places such as Redmond to Tacoma and, while maintaining their facilities in Redmond, have expanded in Eastern Washington. Efforts that would help this effort include the rapid rail connections in the I-5 corridor, investments in infrastructure, similar to Tacoma's fiber optic network, and educational improvements throughout the state. These efforts would also help the transportation situation as well.

B. Five-Year Updates: Do we really have to have it done in a year?

Answer: No the five year update is really due in 11 months, September 1, 2002. The Growth Management Act (GMA) requires that comprehensive plans and development regulations must be reviewed every five years to determine if they comply with the requirements of the GMA.³⁷

³⁷ RCW 36.70A.130(1).

If the comprehensive plan or development regulations do not comply with the GMA, the city or county “shall take action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure that the plan and regulations are complying with the requirements of this chapter.”³⁸ In the last legislative session, an amendment to the GMA to extend the deadline was proposed. It is possible an extension may be approved in the 2002 legislative session. Information on such extensions will be available from 1000 Friends of Washington.

A **comprehensive plan** is a long-range guide to the future of a community or region. The plan is based on an analysis of the community, projections of future population and employment growth, community preferences, and the goals and requirements of the GMA. A comprehensive plan typically includes maps showing future land uses, transportation facilities, and parks. It includes policies that address land use, housing, capital facilities, public facilities (such as water, sewer, storm water, and park facilities), utilities, transportation, the natural environment, and, for counties, rural areas.

The comprehensive plan guides development regulations, budgeting, and other measures to carry out a comprehensive plan. **Development regulations** are controls placed on the development and use of land. They including zoning regulations, which manage the location and intensity of uses, and critical areas ordinances, which protect wetlands, streams, aquifer recharge areas, fish and wildlife habitats, frequently flooded areas, and geological hazards.

One of the reasons for five-year updates is that there are periodic changes to the Growth Management Act (GMA). A second reason is that some comprehensive plan provisions are only useful for limited time periods and need frequent updates. The GMA changes and the frequently updated items mean that many local governments will have to update their comprehensive plans and development regulations as part of the 2002 Five-Year Review. The major changes that may require amendments to comprehensive plans and development regulations are listed below. If a community has recently adopted or updated a comprehensive plan or development regulations, it may have already incorporated these changes.

Comprehensive Plans

- **Critical areas policies** shall include the best available science to protect the functions and values of critical areas.³⁹
 - The characteristics of best available science are that the information has been developed by qualified scientific experts using scientific methods suitable to the field to obtain the data, the data was analyzed using appropriate statistical or quantitative methods, the information is placed in its proper context, logical conclusions and reasonable inferences were drawn from the data, and the work has been peer reviewed by other scientific experts. The basis of the work should be referenced to credible scientific sources and other existing pertinent information. See WAC 365-195-900 through WAC 365-195-920 for more information on the characteristics of best available science.

³⁸ *Ibid.*

³⁹ RCW 36.70A.172(1).

- In *HEAL v. Seattle*, the Court of Appeals held that to include best available science the city or county must obtain “scientific evidence and ... balance that evidence among the [GMA’s] many goals and factors to fashion locally appropriate [policies and] regulations based on the evidence and not on speculation and surmise. ... [E]vidence of best available science must be included in the record and considered substantively in the development of critical areas policies and regulations.” *See HEAL v. Seattle*, 96 Wn.App. 522, 532, 979 P.2d 864, 870 (1999).
- “Critical areas” include the following areas and ecosystems: (a) Wetlands, (b) areas with a critical recharging effect on aquifers used for potable water, (c) fish and wildlife habitat conservation areas, (d) frequently flooded areas, and (e) geologically hazardous areas. *See RCW 36.70A.030(5)*.
- In adopting policies, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. *See RCW 36.70A.172(1)*. Anadromous fish migrate up rivers from the sea to breed in fresh water. Salmon, steelhead, and some Bull trout are anadromous fish.
- **Agricultural lands of long-term commercial significance.** In a recent Washington State Supreme Court decision, the court concluded that the Growth Management Act has a strong policy to assure the conservation of agricultural lands. In determining whether land should be designated as agricultural land of long-term commercial significance, cities and counties should consider whether the land is used for agriculture or could be used for agriculture and whether the land meets the criteria in RCW 36.70A.030(10) and in WAC 365-190-050. *See City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 47-55, 959 P.2d 1091, 1094-98 (1998). In light of this strong policy, cities and counties should review their comprehensive plans to ensure they have designated all lands that fit the criteria in RCW 36.70A.030(10) and in WAC 365-190-050 as agricultural lands of long-term commercial significance.
- **Rural Element.** Counties are required to adopt a rural element that complies with RCW 36.70A.070(5). Rural lands are identified by subtraction and include lands outside the urban growth area that are not designated for agriculture, forestry, or as mineral resources lands. Major features of the rural element include:
 - A variety of rural densities and uses that taken into account local circumstances and the goals and requirements of the GMA. The element may provide for clustering, density transfers, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are consistent with rural character.
 - Provisions for essential public facilities and rural governmental services needed to serve the permitted densities and uses.
 - Measures that protect the rural character of the area, including protecting visual compatibility, to reduce the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area, to protect critical areas, and to protect against conflicts with the use of agricultural, forest, and mineral resource lands.
 - The element can allow limited areas of more intensive rural development (LAMRDs) if they meet the requirements of RCW 36.70A.070(5)(d).

- RCW 36.70A.520 allows counties planning under RCW 36.70A.040 to designate national historic towns and authorize urban growth in the historic towns if certain criteria are met.
- **Housing and Affordable Housing.** The strong growth in Washington state in the 1990s put significant pressure on housing prices especially in the central Puget Sound and retirement communities. The GMA requires comprehensive plans and development regulations to provide housing opportunities for all income groups in the community. Cities and counties need to evaluate whether their comprehensive plans and development regulations are effectively delivering the housing the community needs. Based on this evaluation, comprehensive plans and development regulations should be updated to ensure they are making adequate provisions for housing and affordable housing. The new OFM 20-year population forecasts and, for the Buildable Lands counties, the Buildable Lands Reports, may identify additional changes needed to meet the community's housing needs as well.
- **Capital Facility Plans.** Capital facility plans need to be updated frequently to take into account the passage of time, progress in the construction of public facilities, and new population and employment targets.
- **Transportation Elements.** For the same reasons as capital facility plans, transportation elements need regular updates. In addition, much has been learned about transportation concurrency since many of the systems were developed and they should be carefully reviewed to determine if the concurrency systems are effective, if the community is getting the development pattern it wants, if they comply with recent growth board decisions, and if changes are needed to the concurrency system to achieve these outcomes. *See* RCW 36.70A.070(6) and WAC 365-195-510 for the requirements for transportation elements and transportation concurrency systems.
- RCW 36.70A.070 requires cities or counties to include level of service standards for state highways in local comprehensive plans in order to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the Washington State Department of Transportation's (WSDOT) six-year investment program. Inventories of transportation facilities are required to include state-owned transportation facilities.
- RCW 36.70A.365 allows counties, in consultation with cities in the county, to establish a process for reviewing and approving proposals to authorize the siting of specific major industrial developments outside urban growth areas. The process must meet specific criteria and requirements.
- RCW 36.70A.131 requires counties and cities with mineral resource lands to consider new information available since the adoption of its designations and development regulations, including new or modified model development regulations for mineral resource lands prepared by the Washington Department of Natural Resources (DNR), the Washington State Office of Community Development, or the Washington Association of Counties.

Development Regulations (including Critical Areas Ordinances)

- **Critical areas regulations** shall include the best available science to protect the functions and values of critical areas. *See* RCW 36.70A.172(1). *See* the discussion of critical areas policies in the previous section for a description of best available science.

- Remember that best available science is intended to help implement GMA Goal 10, environmental protection in RCW 36.70A.020(10), and to be considered in the preparation of development regulations to protect critical areas. RCW 36.70A.060(2) requires that those development regulations must “protect critical areas.”
- The most effective argument for critical areas protection will include GMA Goal 10’s admonition to protect the environment, RCW 36.70A.060(2)’s requirement that development regulations are to protect critical areas, the requirement that the policies and regulations must incorporate best available science from RCW 36.70A.172(1), and the requirement to give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries also in RCW 36.70A.172(1).
- In adopting regulations, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. *See* RCW 36.70A.172(1).
- Counties and cities should also adopt storm water regulations equivalent to the Washington Department of Ecology’s storm water manual for their region. While not specifically required by the Growth Management Act, the adoption of the manual may well represent the best available science for storm water management and are needed to protect streams and aquatic wildlife habitats that are two GMA critical areas. The manual is certainly consistent with RCW 36.70A.172(1) that requires counties and cities to give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.
- Cities and counties in the Puget Sound basin should implement the storm water, habitat, shellfish, and on-site sewage programs of the *2000 Puget Sound Water Quality Management Plan* through their comprehensive plans (including the capital facilities plan), critical areas ordinances, and development regulations. While not specifically required by the Growth Management Act, many of these programs may well represent the best available science for protecting streams and aquatic wildlife habitats that are two GMA critical areas. They are certainly consistent with RCW 36.70A.172(1) that requires counties and cities to give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. They are also consistent with RCW 36.70A.070(1)’s requirement that comprehensive plans include guidance for corrective actions to mitigate or cleanse discharges that pollute the waters of the state, including Puget Sound and the waters that enter Puget Sound.
- **Agricultural and forest lands.** In a recent Washington State Supreme Court decision, the court concluded that the Growth Management Act has a mandate to conserve agricultural land. Development regulations adopted for agricultural land must “conserve agricultural lands for the maintenance and enhancement of the agricultural industry.” The development regulations cannot allow the conversion of agricultural land to unrelated uses. *See King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 560-61, 14 P.3d 133, 142-43 (2000). This reasoning also applies to the protection of forestlands. Counties and cities should review their agriculture and forest protection policies and regulations to ensure they protect agricultural and forest lands of long-term commercial significance from conversion to other uses.
- RCW 36.70A.177 allows a variety of innovative zoning techniques in designated agriculture lands of long-term commercial significance. In *King County v. Central Puget Sound Growth*

Management Hearings Board, 142 Wn.2d 543, 14 P.3d 133 (2000), the Supreme Court held that innovative techniques must protect prime and unique agricultural land from conversion to other uses and some of the techniques can only be used on poor quality agricultural soils or land is otherwise unsuited to agriculture.

- RCW 36.70A.060 requires that a notice warning that activities on resource lands may be incompatible with other uses be included on plats and permits issued for development activities within 500 feet of agriculture, forestry, and mineral resource lands.

The State of Washington Office of Community Development (OCD) has prepared a comprehensive list of amendments to the Growth Management Act. The document, *Growth Management Act Amendments 1995-2001*, is available at OCD's Growth Management Program website at: www.oed.wa.gov/growth

Current Issues in GM Land Use Transpo New Cities

Attachment A

Redmond Community Development Guide § 20D.220.20-020 General Requirements.

- (1) All new development proposals including any use, activity, structure or division of land allowed by the Redmond Community Development Guide (RCDG) or the Redmond Municipal Code that requires City of Redmond approval shall be adequately served by the following facilities and services prior to the time of occupancy, recording, or other land use approval, as further specified in this chapter:
 - (a) Sewage disposal.
 - (b) Water supply.
 - (c) Surface water management.
 - (d) Streets, sidewalks, trails, and access.
 - (e) Fire protection service.
 - (f) Schools.

- (2) All improvements, dedications, or property transfers required under this division shall meet both of the following provisions:
 - (a) The impacts of the development shall contribute to the need for the required improvement, dedication, or transfer.
 - (b) The required improvement, dedication, or transfer shall be roughly proportional to the impact of the development. A requirement is roughly proportional if it is related in nature and extent to the impact of the proposed development.

- (3) Requests to Modify or Rescind Requirements.
 - (a) An applicant may request that the Technical Committee modify or rescind a required improvement, dedication, or transfer if the requirement does not meet either of the provisions of subsection (2) of this section.
 - (b) The applicant shall explain what condition justifies the modification or rescission. The request shall be made in writing and be made no later than the end of the appeal period for the approval that imposes the required improvement, dedication, or transfer.
 - (c) The Technical Committee shall adopt written findings and conclusions documenting its decision to approve or deny the request. The findings and conclusions shall document whether (i) the development contributes to the need for the required improvement or dedication and (ii) the required improvement or dedication is roughly proportional to the impact from the development. The Technical Committee shall consider whether credits, latecomer's fees, or other measures can be used to modify the required improvement, dedication, or transfer so that it is roughly proportional to the impact from the development.
 - (d) As a condition of approving an exception, the Technical Committee may require:
 - (i) Those dedications or improvements necessary to mitigate the impacts of the development; and
 - (ii) The applicant to furnish an interim improvement plan to mitigate the impacts of the development. Any interim improvement plan may include a covenant consenting to formation of a local improvement district, and a plan for the installation of improvements that will bring the facility up to the adopted level of service standards. Any requirement to prepare an interim plan shall be proportionate to the scale of the proposed development. (Ord. 2052)