

A Short Course on Local Planning

Training citizen planners since 1977



Washington State
Department of
Commerce

We strengthen communities



HOUSING AND HOMELESSNESS



INFRASTRUCTURE AND BROADBAND



SMALL BUSINESS ASSISTANCE



ENERGY



PLANNING AND TECH ASSISTANCE



COMMUNITY SERVICES AND FACILITIES



CRIME VICTIMS AND PUBLIC SAFETY



ECONOMIC DEVELOPMENT

A SHORTCOURSE

ON LOCAL PLANNING

In partnership with



Planning Association
of Washington



American Planning Association
Washington Chapter



Short Course Resources

<https://www.commerce.wa.gov/serving-communities/growth-management/short-course/>

[Short Course Video Study Guide](#) 

[Get credit for taking the Short Course!](#) 

Read the Guidebook [A Short Course on Local Planning: Resource Guide \(295 pages, 2017\)](#)

Watch the Videos

[Introduction to the Short Course](#). 5 minutes

[Comprehensive Planning Basics](#). 11 minutes

[Implementing Your Plan](#). 10 minutes

[Updating Your Plan](#). 10 minutes

[Washington's Legal Framework for Land Use Planning](#). 7 minutes

[Constitutional Issues and Other Protections](#). 8 minutes

[Roles and Responsibilities in Planning](#). 7 minutes

[Public Participation and Effective Meetings](#). 7 minutes

[Open Public Meetings Act](#). 27 minutes [OPMA Certificate](#)

[Appearance of Fairness Doctrine](#). 17 minutes

More Washington Places to Learn About Planning

Municipal Research and Services Center www.mrsc.org



Planning Association of Washington www.planningassociationofwa.org/

Washington Chapter of the American Planning Association

www.washington-apa.org/

Regional Planner's Forums

www.commerce.wa.gov/serving-communities/growth-management/regional-planners-forums/

**Any Questions
Before We Begin?**



Washington State
Department of
Commerce

The Legal Basis of Planning in Washington State



**Z FOSTER
MENKE JACKSON BEYER, LLP
807 NORTH 39TH AVENUE
YAKIMA, WA 98902
(509) 575-0313**

Sources of planning and land use law



- **Constitutions (Federal & State)**
- **Statutes**
 - Federal
 - State (Revised Code of WA “RCW”)
 - Federal Examples
 - ✦ Endangered Species Act (ESA)
 - ✦ Clean Water Act (CWA)
 - State Examples
 - ✦ Growth Management Act (GMA)
 - ✦ State Env. Policy Act (SEPA)
 - ✦ Shoreline Management Act (SMA)
- **City/County Ordinances & Resolutions**
- **Comprehensive Plan & Updates**
 - For jurisdictions planning under the GMA
- **Administrative Regulations**
 - Federal = Code of Federal Regulations (CFR)
 - State = Washington Administrative Code (WAC)
- **Court Decisions**
- **Board, Agency and Commission Decisions**

Washington State Authority for Zoning



- **Washington Constitution, Article 11 § 11**
 - Legal authority for zoning and land use regulation
- **Planning Commission/Agency/Hearing Examiner**
 - RCW 35A.63 (code cities);
 - RCW 35.63 (cities and towns)
- **Chapter 36.70 Planning Enabling Act**
- **Chapter 36.70A Growth Management Act (“GMA”)**
- **Chapter 36.70B Local Project Review Act**
- **Chapter 36.70C Land Use Petition Act (“LUPA”)**
- **Chapter 43.21C State Environmental Policy Act (“SEPA”)**
- **Chapter 58.17 State Subdivision Act**
- **Chapter 90.58 Shorelines Management Act (“SMA”)**

City and Town classification



- *NOTE: When referencing statues and other sources of authority, it is important to know whether your subject jurisdiction is a county, town or city, and if a city, which type of city.*

CITIES & TOWN GOVERNMENTS IN WASHINGTON:

Classified according to their population at the time of organization (usually incorporation) or reorganization

- **FIRST CLASS CITY:** 10,000 or more at time of organization
- **SECOND CLASS CITY:** 1,500 or more at time of organization
- **TOWN:** less than 1,500 at time of organization (no longer possible to form)
- **CODE CITIES:** Most Washington cities are classified as “code cities” under the Optional Municipal Code, Title 35A RCW. This Code was created in 1967, designed to provide broad statutory home rule authority in matters of local concern

State Environmental Policy Act (SEPA) Chapter 43.21C RCW



- Adopted in 1971
- Essentially provides a mechanism for decision makers such as planners, hearing examiners, and city councils to have full information about projects in order to make well-founded decisions
- Extensive procedural statute – all about disclosure
- STEP 1: initial application (standardized “SEPA checklist”)
- STEP 2: threshold determination
- SEPA review occurs concurrently with general project review, to ensure that all relevant information is available to decision makers



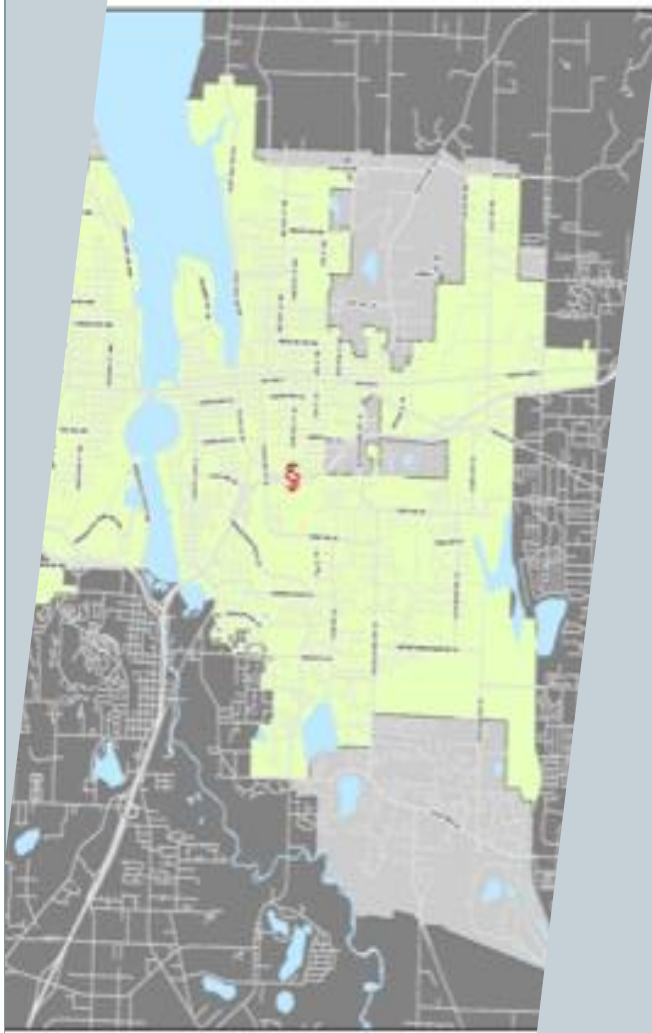
Shorelines Management Act (SMA) Chapter 90.58 RCW



- Adopted in 1971 by citizen initiative
- Purpose is to protect Washington shorelines in the context of development
- Goal: Shorelines to remain an attribute and amenity available to all citizens at all times
- Regulations updated to require “no net loss” of shorelines
- SMA also has detailed procedural process that may flow either concurrently or non-concurrently with the underlying application
- Local jurisdictions adopt local Shoreline Master Programs (SMPs) which inventory local shorelines, and identify and prioritize shoreline uses
- SMPs must be compliance with state regulations/reviewed by Department of Ecology
- Water dependent uses (such as marinas) are given priority



Growth Management Act (GMA) Chapter 36.70A RCW



- Adopted in 1990
- Establishes structure for comprehensive planning, concurrency/capital facilities, urban growth area (“UGA”), critical area ordinances
- Cities and counties subject to the Act must plan on a 20-year horizon based on population growth projections
- UGAs are drawn cooperatively between cities and counties based on population growth projections and needs analysis
- Required to be implemented at the local level
- Improvements that are necessary for development need to be in-place at the time the development is constructed; or funding sources need to be in-place to construct such improvements within a six-year horizon

Local Project Review Act Chapter 36.70B RCW



- Adopted in 1995
- Legislative response to concerns regarding burdens and delays resulting from ever increasing number of environmental laws and development requirements
- See statute for significant timelines and required actions

Land Use Petition Act (LUPA) Chapter 36.70C RCW



- Adopted in 1995; replaced writ of certiorari
- Requires and implements a streamlined process for appeals of land use decisions
- Establishes uniform, expedited appeal procedures and uniform review criteria
- Act applies to “land use decisions”
 - Applications; interpretative or declaratory decisions; local jurisdiction’s enforcement of land use ordinances

1
2
3
4
5
6
7
8
9
10
11
12

City of Kirkland

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING

POTALA VILLAGE KIRKLAND, LLC, a
Washington limited liability company, and
LOBSANG DARGEY and TAMARA AGASSI
DARGEY, a married couple,

Plaintiffs/Petitioners,

vs.

THE CITY OF KIRKLAND, a Washington
municipal corporation,

NO.

LAND USE PETITION AND
COMPLAINT FOR DECLARATORY
JUDGMENT, WRIT OF MANDAMUS,
CONSTITUTIONAL WRIT, AND
INJUNCTION

Procedural Due Process



Procedural due process essentially means that people have a right to have issues fairly heard and decided

Key elements of due process are:

- **Notice of what is happening**
- **Opportunity to be heard**

Substantive Due Process



The question of substantive due process focuses on the outcome of the rules.

There are 4 basic questions to ask:

- Does the regulation have a legitimate purpose?
- Does the regulation appropriately accomplish the legitimate purpose—is there a rational basis between the legitimate purpose and the regulation?
- Is the regulation reasonable?
- Is the regulation clear and able to be understood?

REMEDY FOR DUE PROCESS VIOLATION:

- **INVALIDATION OF SUBJECT ORDINANCE OR REGULATION**

Takings



1. **Physical Appropriation of Property**
2. **Regulatory Taking**
 - Just compensation must be paid before property is taken
 - Compensation must be paid even where property is not actually taken, but is damaged
 - Regulatory takings can result when the use of property is substantially impaired by applicable regulations

Exactions and Dedications



Exactions and **dedications** are essentially conditions placed on the development of property by the decision-maker approving the development

EXAMPLES: requirement to pay money outright; contribute or dedicate for things like open space and parks; traffic improvement requirements...

Reasonable Use Exceptions: If the regulations applied to property are so severe that they prohibit any use of the property a jurisdiction may allow a reasonable use of the property in order to avoid a takings claim.

Nollan/Dolan Standard

Allows governmental entities to conditions approval of permits on the dedication of property to the public, so long as there is a “nexus” and “rough proportionality” between the property that the government demands and the impacts from the applicant’s proposal

Vesting



- Relates to the question of what specific set of regulations apply to a development application that may progress over time
 - Vested to the codes in effect at the time of a **COMPLETE** application
 - Common law roots (case law)

Conclusion



- Concepts are often gray and difficult to understand, as opposed to clear black and white
- Accept that land use practice is often gray, sometimes without answers that are clearly “right” or “wrong”
- Seek to fully analyze issues from all angles, develop a strong factual record, and show how facts fit within the legal framework to support a decision
- Familiarize yourself with the relevant framework and standards and procedures that apply to the particular subject matter and process.

A SHORTCOURSE

ON LOCAL PLANNING

**Comprehensive
Planning under the
Growth Management Act**



Washington State
Department of
Commerce

Why Plan?

GMA Framework

Implementing the Plan

Updating the Plan



Why is Planning Important?

- Protect the good things about your community
- Agree on a shared vision for the future of your community
- Identify community needs
- Identify strategies to implement the vision and meet needs
- Agree on local spending priorities
- Build your sense of community



Values in tension

“I need to know what I can do and when I can get my permit”



“This affects my neighborhood and my home. I should have a say in what happens.”



What Makes a Good Plan?

Disciplined Imagination

Realistic:

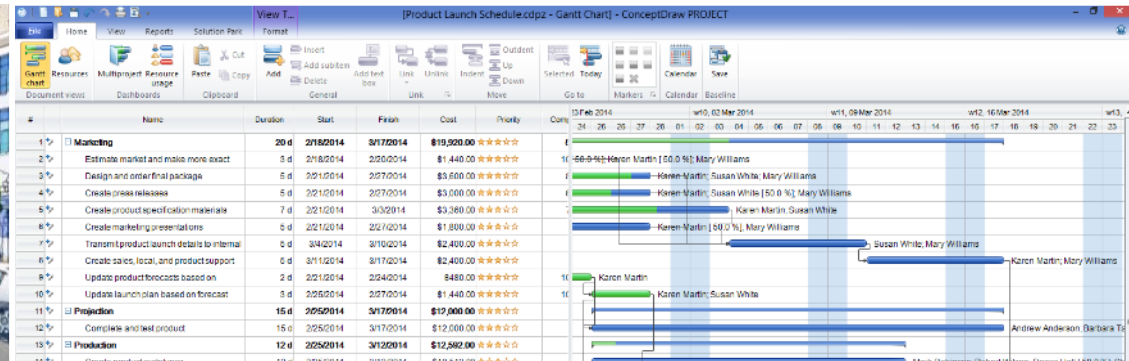
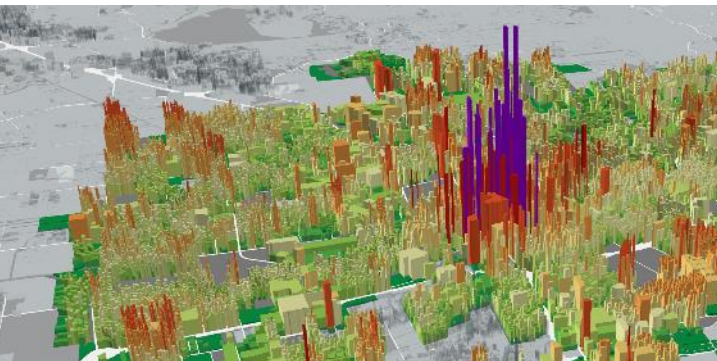
- Forecast
- Inventory
- Analysis

Compelling:

- Vision
- Goals and policies

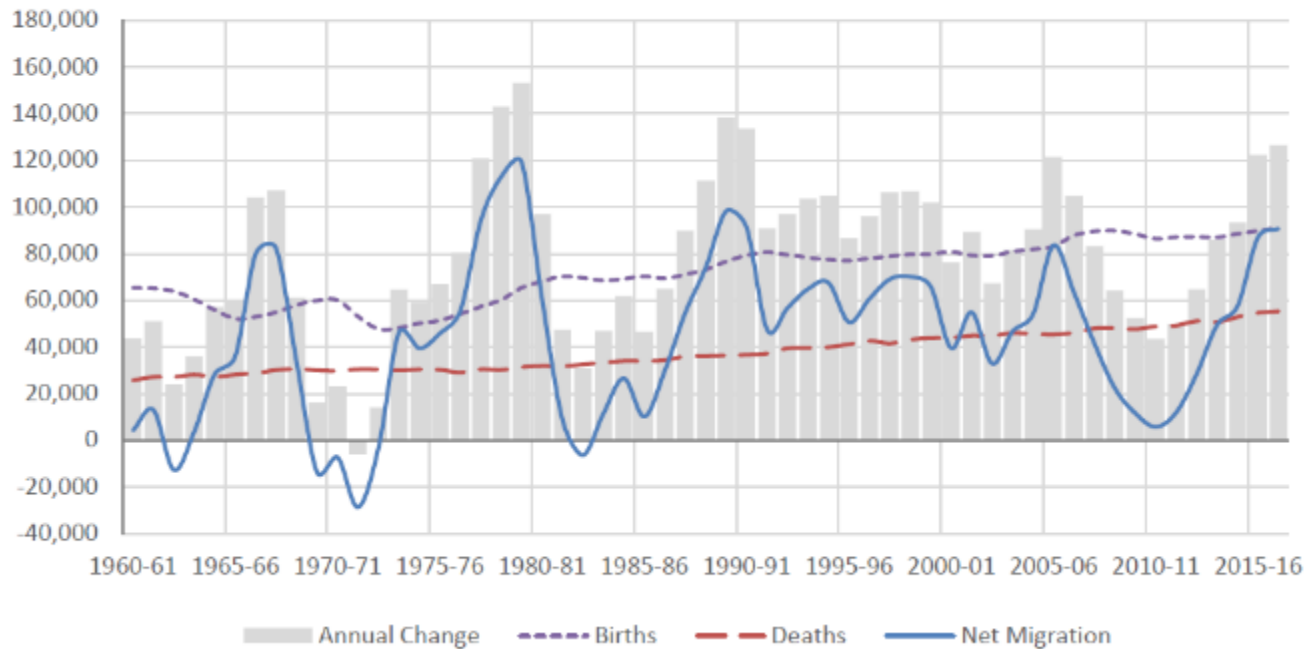
Specific:

- Level of service
- Performance measures
- Implementation plan
- Projects



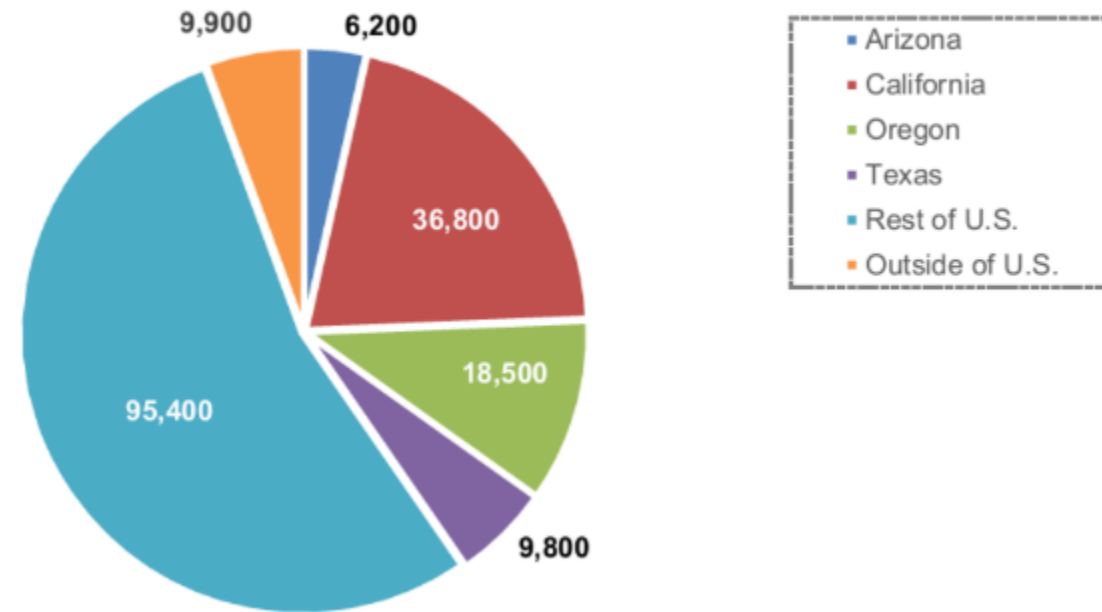
Accommodating future population growth

Washington State Population Change 1960-2017



Driver's Licenses Surrendered to Washington

2019



Population change involves many factors that must be considered to accommodate future population growth (births, deaths, migration, etc.). (OFM)

Why a Growth Management Act?

The GMA was adopted in 1990 as a statewide planning framework to:

Address uncoordinated development and urban sprawl

Manage threats to the quality of life in Washington

Require local planning, guided by state law, and regionally enforced

State law: **RCW 36.70A**

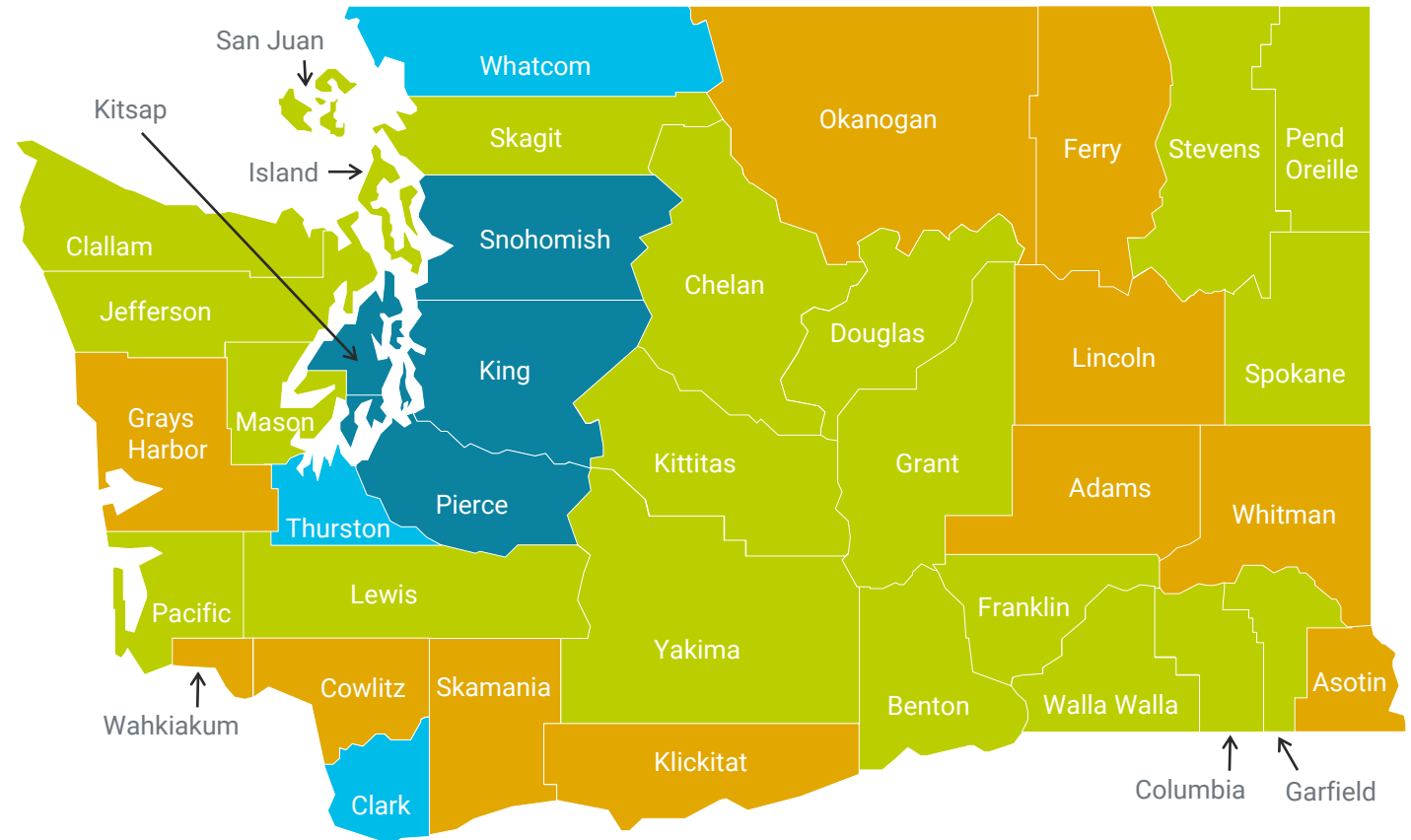
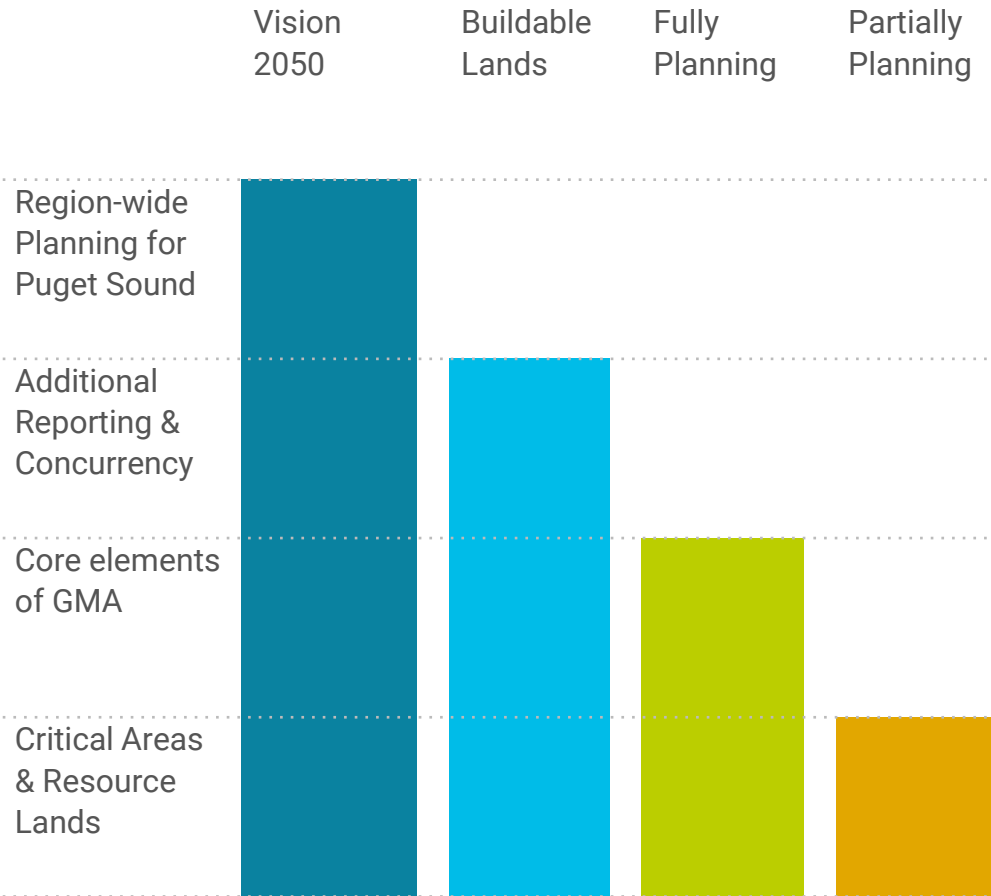
Advisory recommendations: **WAC 365-196**



15 GMA Planning Goals

- Encourage **compact urban growth**
- **Reduce sprawl**
- Encourage coordinated, **multimodal transportation**
- **Plan for and accommodate (2021) housing** affordable to all economic segments
- Encourage **economic development**
- **Protect property rights**
- **Predictable permitting**
- **Maintain natural resource industries**
- **Retain open space, enhance recreation**
- **Protect the environment**
- Encourage **citizen participation**
- **Ensure availability of public facilities and services**
- Encourage **historic preservation**
- **Manage shoreline development**
- **Ensure comprehensive plans adapt & mitigate effects of a **changing climate****

Regional Variation



The land speaks first

Natural resource lands, critical areas. . .



All counties must **designate and conserve natural resource lands** of long-term commercial significance.

- Agricultural lands
- Forest lands
- Mineral resource lands

RCW 36.70A.170

All jurisdictions must **designate and protect environmentally critical areas**. “Best available science” must inform regulations that protect the functions and values of:

- Frequently flooded areas
- Geologically hazardous areas
- Critical aquifer recharge areas
- Fish and wildlife habitat conservation areas
- Wetlands

RCW 36.70A.172

WAC 365-195-900 through 925 provides guidance related to best available science.

Countywide Planning Policies

Regional framework to:

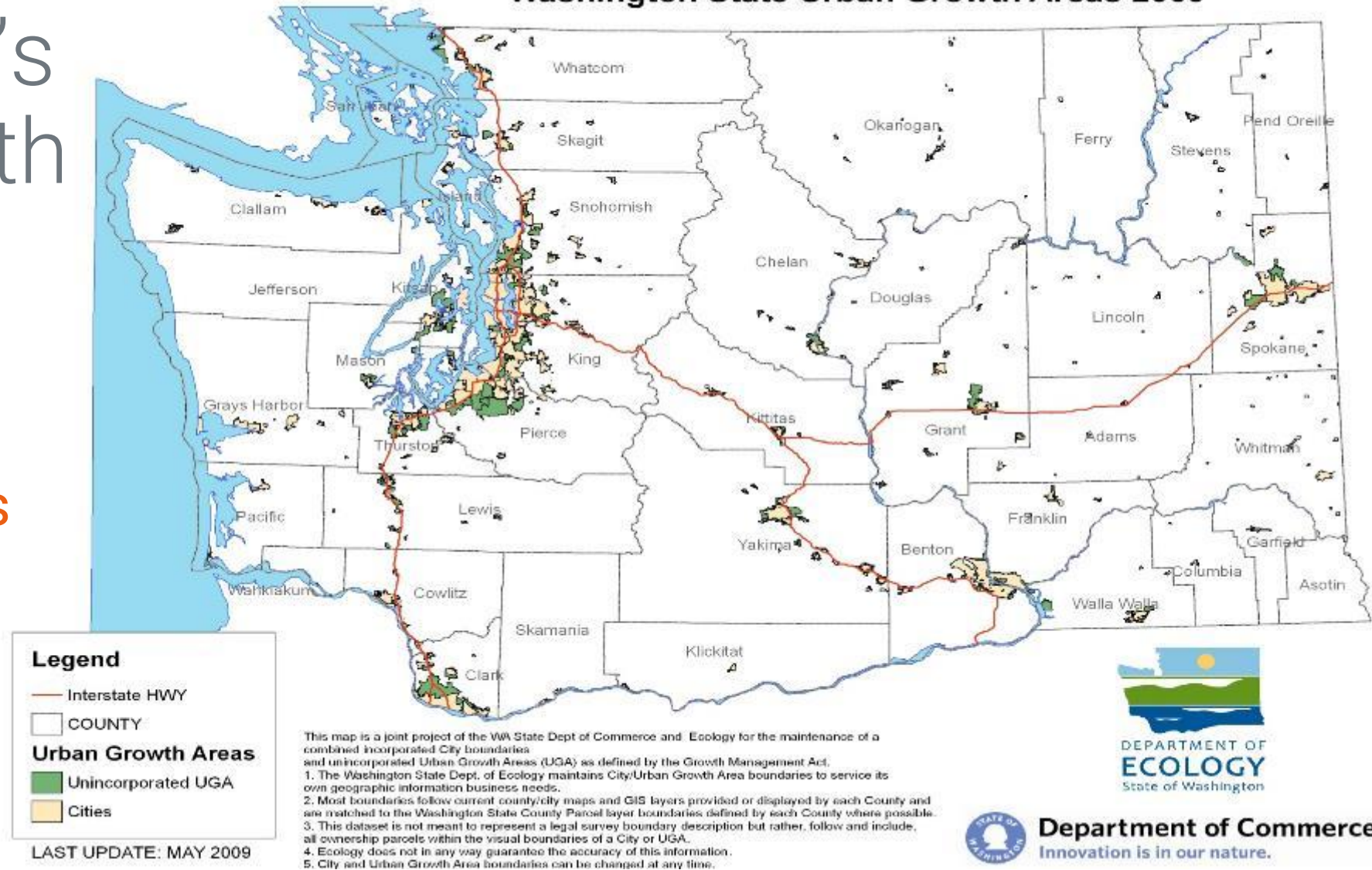
- Plan for future growth and address countywide population projections from the State Office of Financial Management.
- Designate and plan for urban growth areas and expansions to designated urban areas
- Plan for countywide facilities such as highways or airports
- Consider affordable housing needs
- Plan for countywide economic development
- Puget Sound region has multicounty planning policies assembled in Vision 2050



Washington's Urban Growth Areas

Fully planning counties must work with the cities to designate existing and future urban growth areas.

Washington State Urban Growth Areas 2009



Allocating Population

Urban areas to contain most of new growth

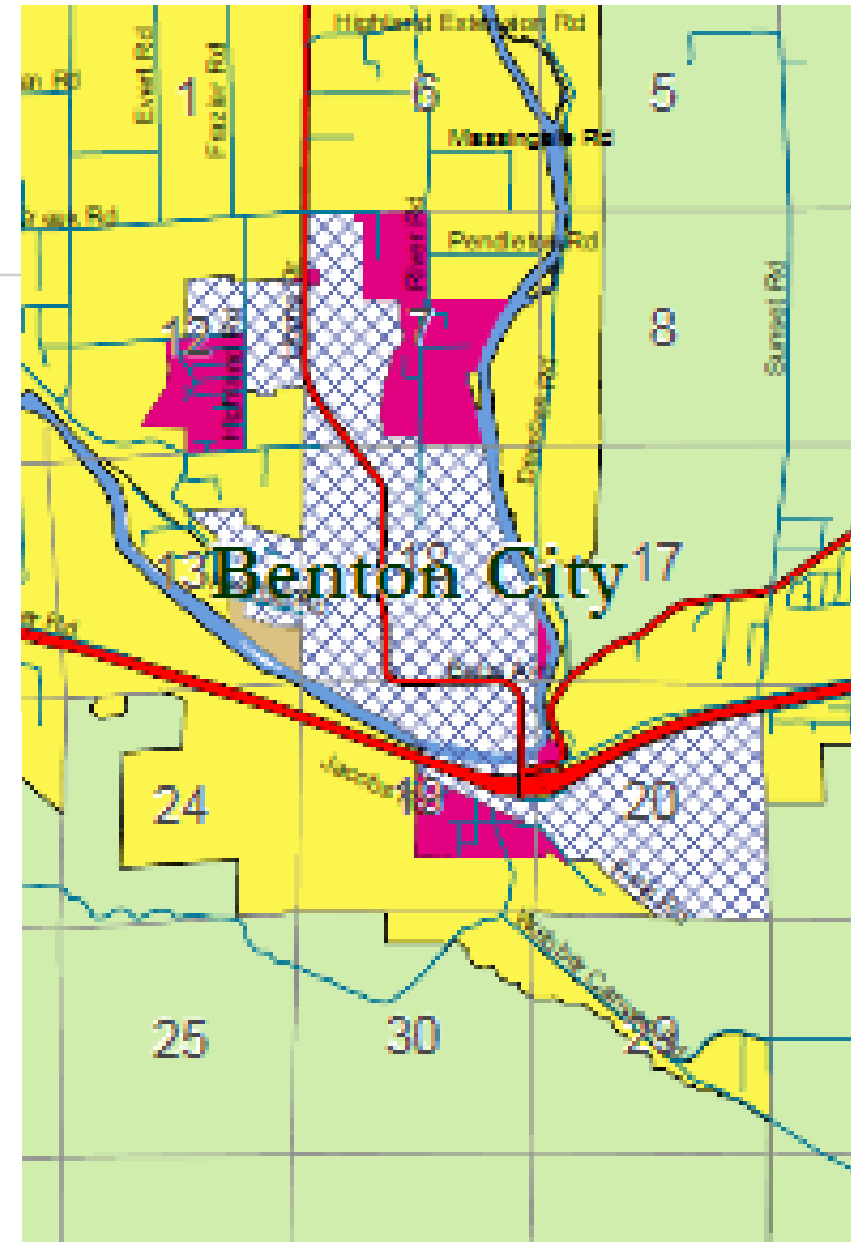
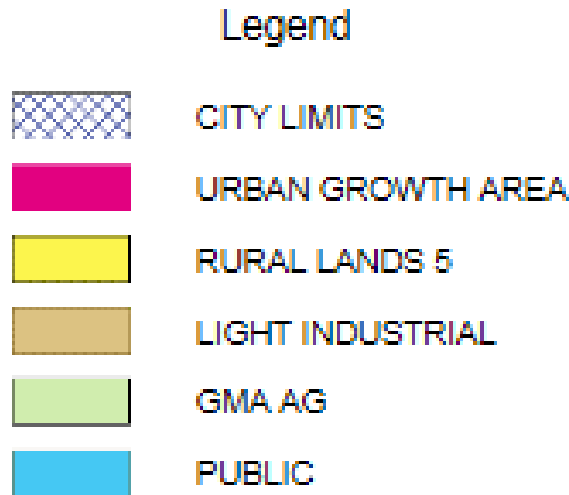
- UGA size based on 20-year countywide population projections from OFM **and countywide housing needs projections from Commerce**
- Greater housing / job densities
- Efficient use of facilities/public dollars

Rural areas to maintain rural character

- Low-density development
- Rural service levels
- Agriculture/Forestry
- LAMIRDs

“Buildable lands” counties

- must consider “reasonable measures” before expanding the UGA.



Buildable Lands, the Review and Evaluation Component of the Growth Management Act

7 counties



- *Looks back:* to what extent does achieved development, especially density, match planned development in the last period?

Looks forward: is there sufficient capacity for residential and employment growth for the next 20 years?

What *reasonable measures* could be used to better align actual development with planned development? **And match future zoning with housing needs**

Required elements of a GMA comp plan

Land Use: Land uses, stormwater planning, ground water, physical activity.

Housing: Identifies the character of residential areas, Inventories existing and projected housing needs and types, Identifies sufficient land for all types of housing, [addresses racially disparate impacts, displacement.](#)

Transportation: Inventory, assessment of current and future needs, bicycle and pedestrian component.

Capital Facilities: Inventory, assessment of current and future needs, coordination of planning affordability analysis of serving the land use plan.

Utilities: Inventory, assessment of current and future needs, coordination between providers and land development.

Rural (counties only): Define and protect rural character.

RCW 36.70A.070 and WAC 365-196



HB 1220:

Changes RCW 36.70A.070 (2) The Housing Element

Changes GMA housing goal:

- “**Plan for and accommodate** ~~encourage the availability of affordable~~ housing **affordable** to all economic segments.”

Requires Commerce to provide projected housing need to local governments:

- For moderate, low, very low, and extremely low-income households
- For permanent supportive housing, emergency housing and emergency shelters

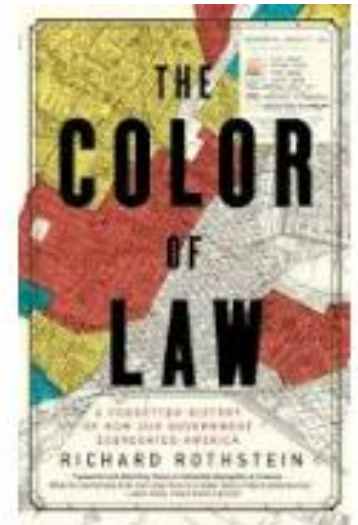
Local housing element to:

- Identify sufficient capacity of land for identified housing needs
- Within UGAs, moderate density housing options including, but not limited to duplex, triplex, townhomes
- Document barriers to housing availability such as gaps in local funding, development regulations, etc.
- Consider housing locations in relation to employment locations
- Consider role of ADUs

HB 1220

Disparate impacts, displacement and exclusion in housing

- **Identify local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing:**
 - Zoning that may have a discriminatory effect
 - Areas of disinvestment and infrastructure availability
- **Begin to undo racially disparate impacts, displacement and exclusion in housing**
- **Identify areas at higher risk of displacement and establish anti-displacement policies including:**
 - Preservation of historic and cultural communities
 - Investments in housing for lower income segments
 - Equitable development initiatives and land disposition policies
 - Inclusionary zoning and community planning requirements
 - Tenant protections



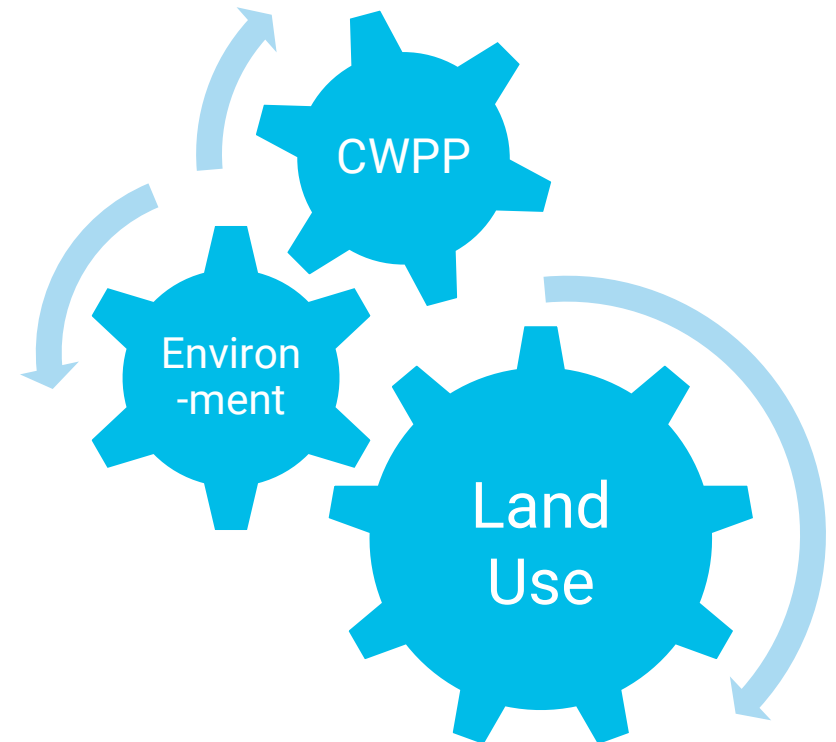
The plan must be coordinated and consistent

External consistency

- Countywide planning policies
- Adjacent jurisdictions

Internal consistency

- Is the plan based on the same set of assumptions? Do the plan elements all tell the same story?
- Can adequate public facilities be provided with planned development? (concurrency)



Adopting the comprehensive plan

Plan Adoption Process

- Public outreach early and often
- Review by planning commission
- Complete SEPA environmental review
- 60-days notice to state before adopting
- City or county council must adopt the comprehensive plan
- Transportation element to be certified by regional transportation organization

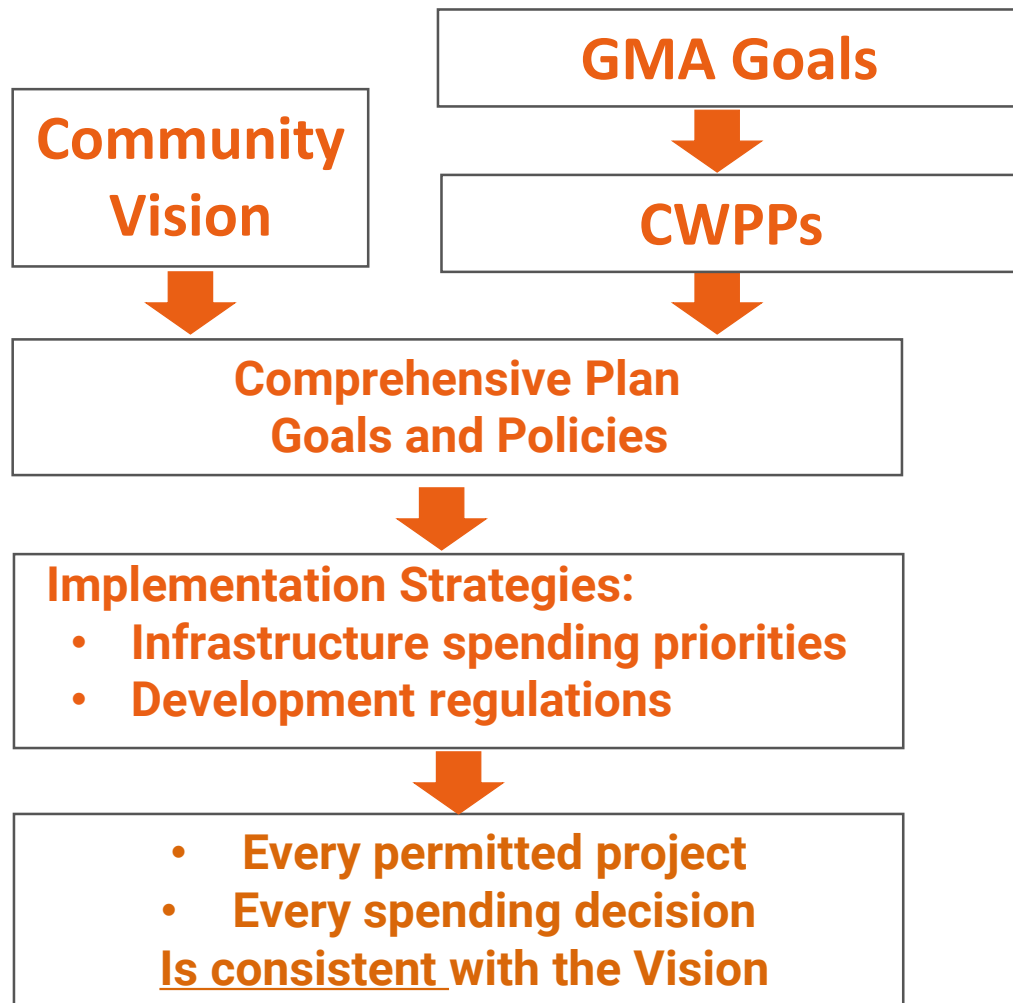
Plan Updates and Appeals

- Can be amended only once per year
- Must be updated every [10](#) years
- Appealable within 60 days to a regional Growth Management Hearings Board

www.gmhb.wa.gov



Implementing your Comprehensive Plan



- **Capital Improvement Plans (CIP)** priorities for local infrastructure investments must be consistent with the comprehensive plan.
- **Development regulations** must be consistent with and implement the comprehensive plan.

Development regulations implement the plan and set standards for development

Traditional zoning considers *maximum* densities and *minimum* lot sizes for efficient land use. Form based codes focus on design details.

Critical area regulations set buffers and restrictions in critical areas.

Subdivision regulations set out the process for dividing land and ensure “adequate provisions” for utilities, parks, schools, and other requirements of development.

Public works standards set out street widths and other standards related to public facilities.

Other regulations such as design standards, signs, landscaping, and parking regulate appearance, health, and safety within the community.



Capital facilities: truth in planning?

COMPREHENSIVE PLAN

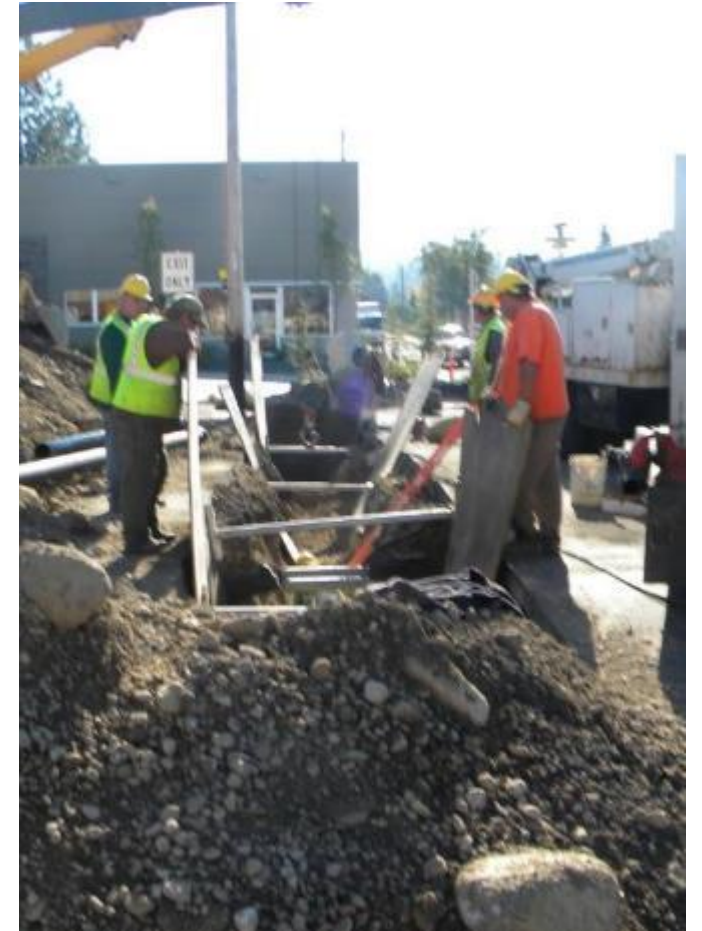
Requirement to **adopt a level of service (LOS)** and maintain LOS as development occurs. * Required for transportation facilities.

Reassessment: If revenues can't pay for needed facilities over the life of the plan, the land use element must be reassessed.

DEVELOPMENT REVIEW

Concurrency programs ensure that transportation and other facilities keep pace with growth. If a new development would decrease level of service:

- The development must be denied,
- The developer must provide the improvement
- Or the levels of service may be reassessed.

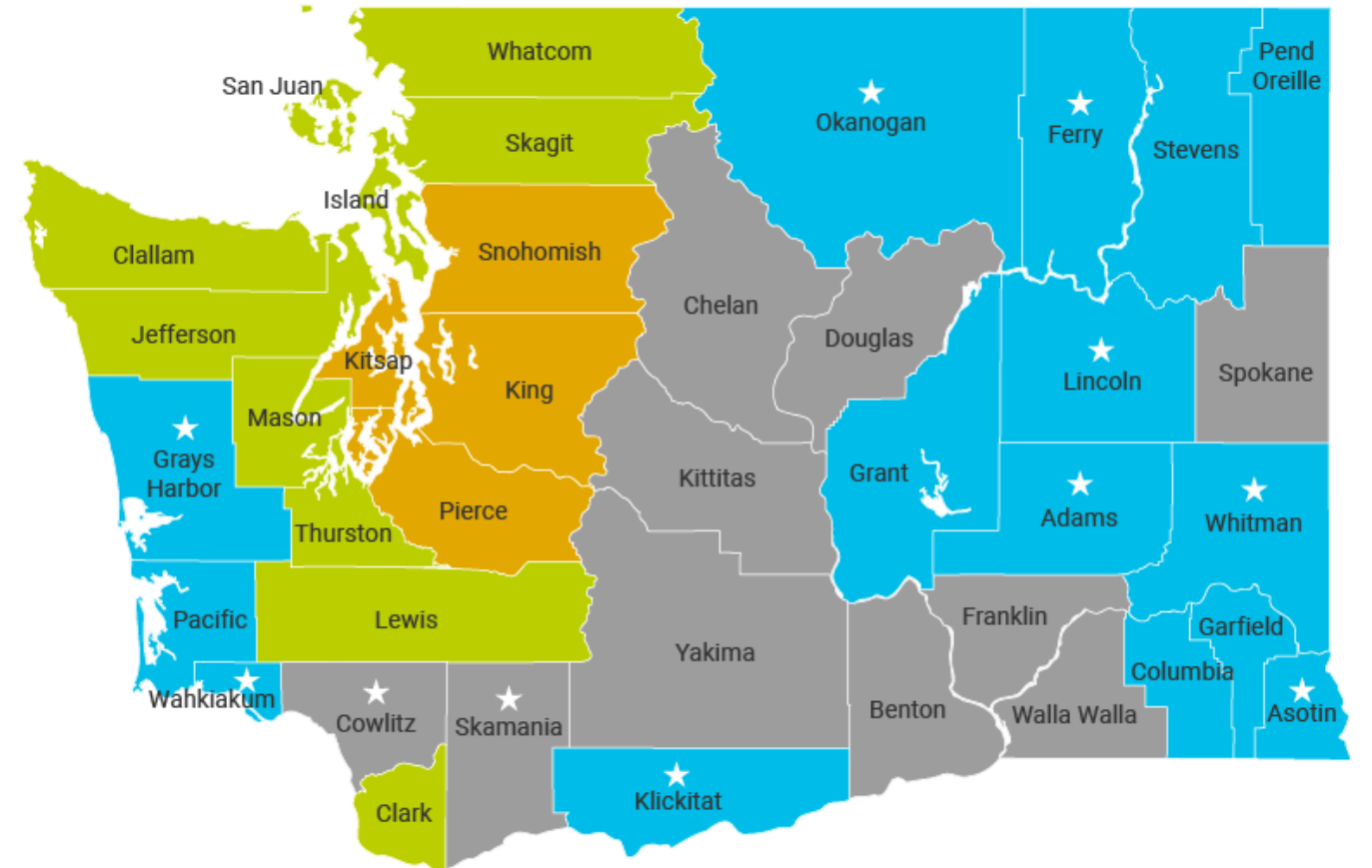


Review and revision, if necessary, of comprehensive plan and development regulations every 10 years

RCW 36.70A.130

Grant and Loan Programs Requiring Update Completion (and no active appeals):

- Public Works Trust Fund
- Drinking Water State Revolving Fund
- Centennial Clean Water Fund
- Recreation and Conservation Office
- Pre-Disaster Mitigation Grants



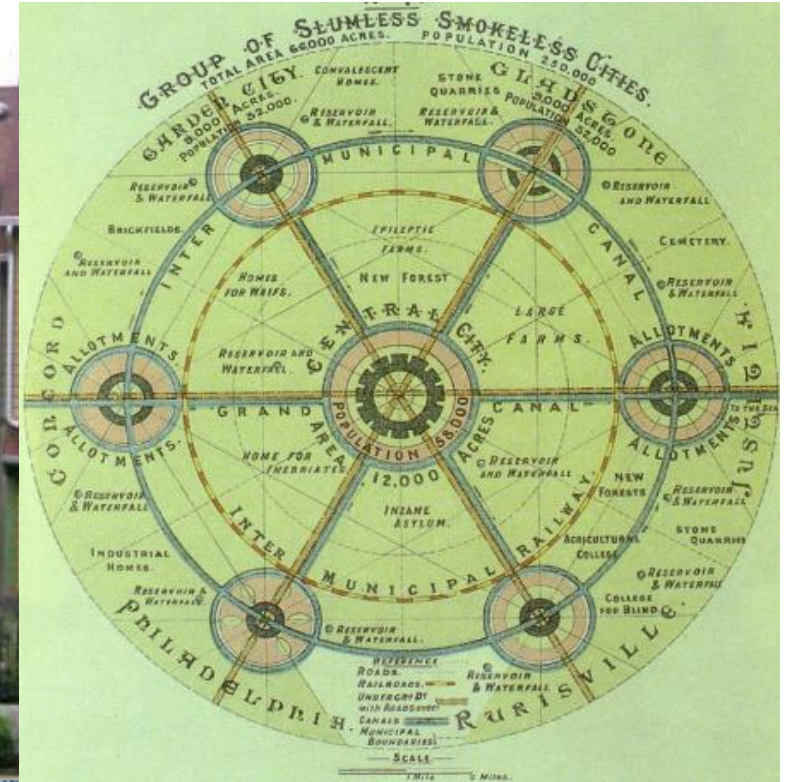
2024 Due December 31st 2025 Due June 30th 2026 Due June 30th 2027 Due June 30th

★ Starred counties are partially planning under the Growth Management Act

Final thoughts: Suggestions for land use....

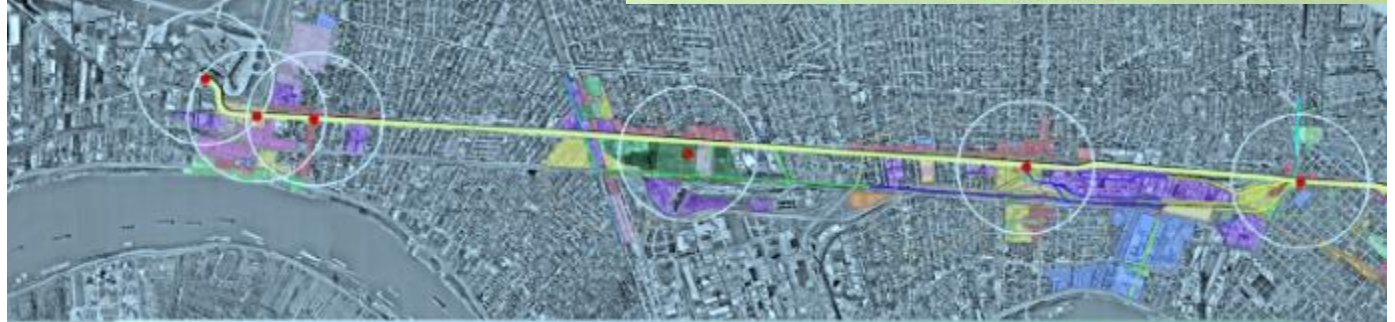
Urban areas absorb most development

- Human-centered design is timeless
- The community (or neighborhood) is walkable
- Affordable housing options are available
- Diverse local economy



Rural character is maintained

- Low-density development
- Rural service levels
- Natural resource lands



Questions?



Washington State
Department of
Commerce

Then a 10-Minute Break!

www.commerce.wa.gov



Mary Reinbold

SENIOR PLANNER

Mary.Reinbold@commerce.wa.gov

509-638-5449

A SHORTCOURSE



Department of Commerce

ON LOCAL PLANNING

Spring 2023

via Zoom

Roles in Planning and Effective Public Processes

Bill Grimes, AICP
Principal
SCJ Alliance

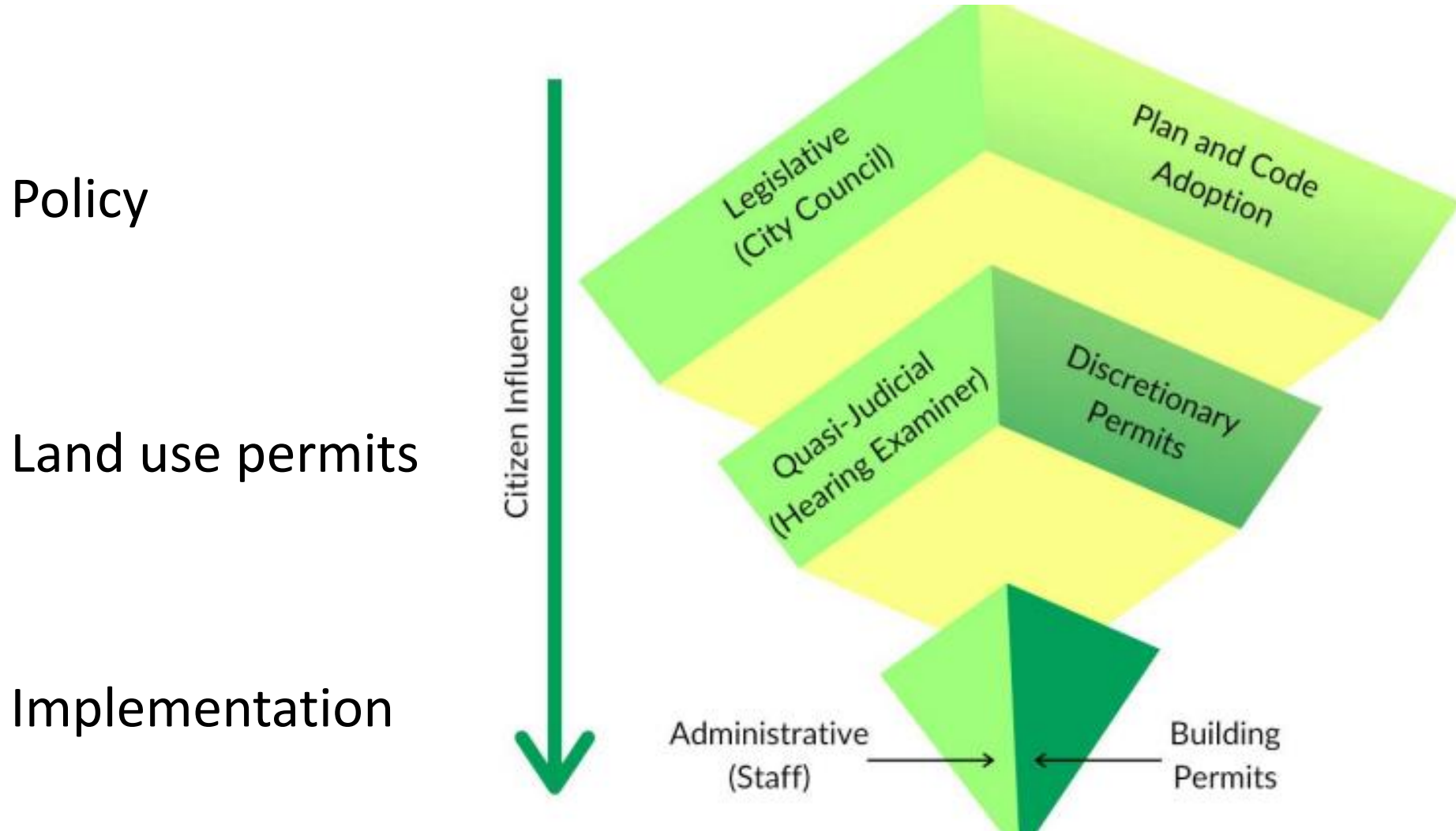


Tonight!



1. Roles and responsibilities in the planning process
2. Public participation in local planning
3. Best practices for effective meetings

Types of Decisions



Who Participates?

- Elected officials
- Planning commission
- Staff
- Hearing Examiner
- Other appointed bodies
- The public
- Agencies: Tribes, utilities, courts, districts (transit, school, water, sewer, fire, downtown.)
- Media



General Public

Residents

Business owners

Property owners

Developers

Media



General Public

Residents

Business owners

Property owners

Developers

Media

Those who have yet to arrive



Other Advisory Groups



(Like: Parks Board, Design Review Board, Historic Commission, Youth Advisory Board)

Understand & support comprehensive plan goals and strategies

Focus on key projects

Solicit/develop funding for implementation

Communicate with membership and others in the community

Planning Staff (administrative)

Legislation and policy development
Interagency coordination
Grant writing/administration
Economic/community development
Zoning administration
Environmental review
Permit review
Administrative permit issuance
Code enforcement



Hearing Examiner (quasi-judicial)



Administrative appeals, conditional use permits, planned unit developments, preliminary subdivisions, variances

Decision-making authority

Separation of policy and project-related action

Reduces local government liability exposure
(consistency, official record)

Planning Commission (advisory)

RCW 35.63.080 and 36.70.040:

Assist staff in carrying out duties

Prepare and execute the
comprehensive plan

Recommend elected officials' action



Elected Officials (legislative)

Mayor – Council

Council – Manager

Commission



Make policy decisions

Enact the strategic vision and mission

Adopt budgets and allocate resources

Appoint Planning Commissioners

Classifying Review by Type

Process consistency
 Project review types
 SEPA

Table: City of Ellensburg

	Type I	Type II	Type III	Type IV	Type V
Pre-application meeting (see ECC 15.220.010)	No	No ¹	Yes	Yes	Docketing
Notice of complete application (see ECC 15.220.040)	No	Yes	Yes	Yes	Docketing
Notice of application (see ECC 15.220.040)	No	Yes	Yes	Yes	Docketing
SEPA determination (see ECC Chapter 15.270)	No	Yes If applicable	Yes If applicable	Yes	Yes If applicable
Notice of hearing (see ECC 15.220.020)	No	No	Yes	Yes	Yes
Notice of decision (see ECC 15.220.080)	No	Yes	Yes	Yes	Yes
120 day review period (see ECC 15.220.070)	No ²	Yes	Yes	Yes	No

Best Practices for Effective Meetings

The Spectrum of Public Participation (RCW 36.70A.140)



“Each county and city that is required or chooses to plan...shall establish and broadly disseminate to the public a **public participation program** identifying procedures providing for **early and continuous public participation** in the development and amendment of comprehensive land use plans and development regulations implementing such plans.”

Best Practices for Effective Meetings

The Spectrum of Public Participation (RCW 36.70A.140)

Inform

Consult

Involve

Collaborate

Empower

“Today’s topic is public awareness...”

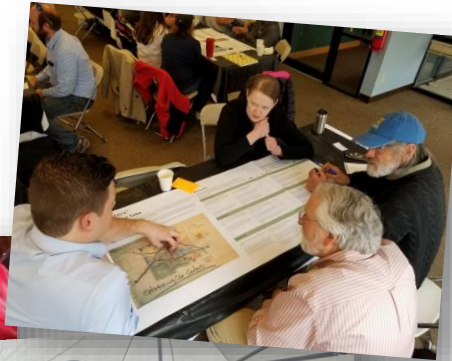


1-24

© LaughingStock International Inc./dist. by United Media, 2005

Which Type of Meeting?

Planning process
Project-related



Format?

Board/commission

Steering committee

Advisory committee

Workshop

Open house

Studio

Virtual/live/in-person

Which Type of Meeting? Project

Sign-up sheets

Name, address, contact information

Agenda item

Time limits

Consistent

Encourage a spokesperson

Speaker ordering

By topic

By group



Which Type of Meeting? Planning

$$\int_1^{84} \frac{dB^2 + Cm(Acm)}{I^{n-1}} dx$$

B = budget

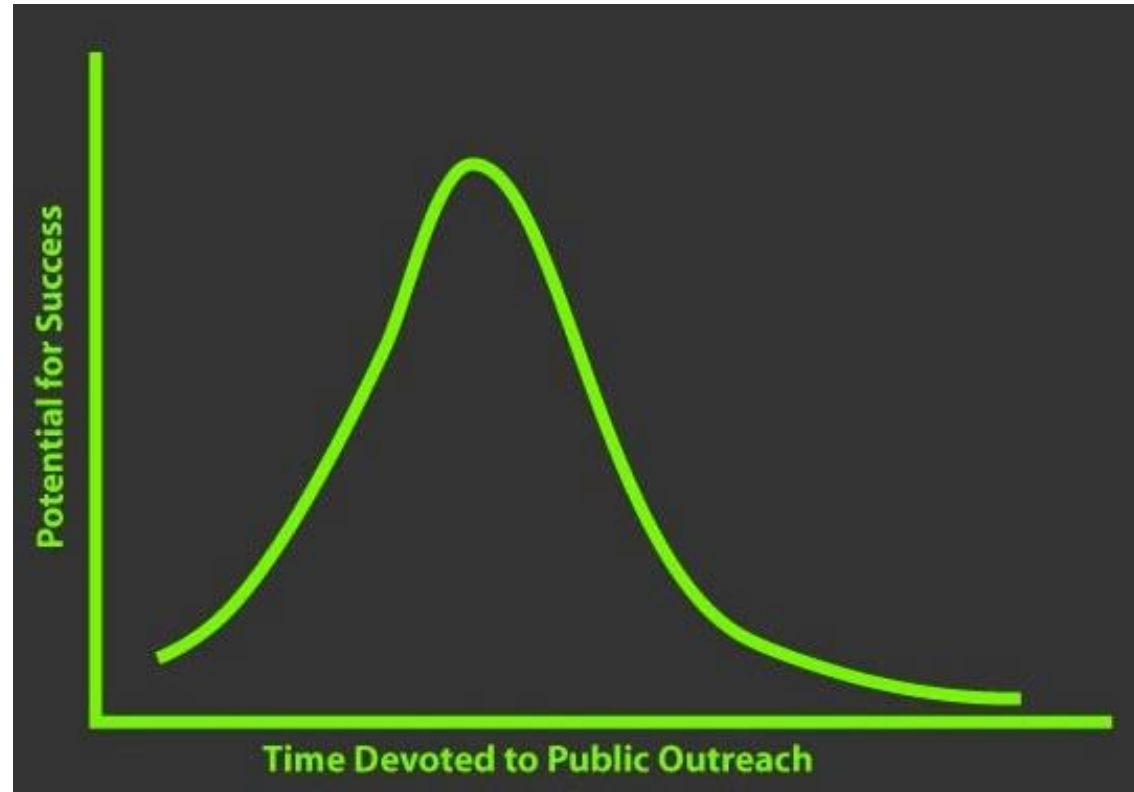
C = number of consultants

m = number of meetings

n = number of months

I = units of information

Acm = number of AC members



Which Type of Meeting? Planning

$$\int_1^{84} \frac{dB^2 + Cm(Acm)}{I^{n-1}} dx$$

B = budget

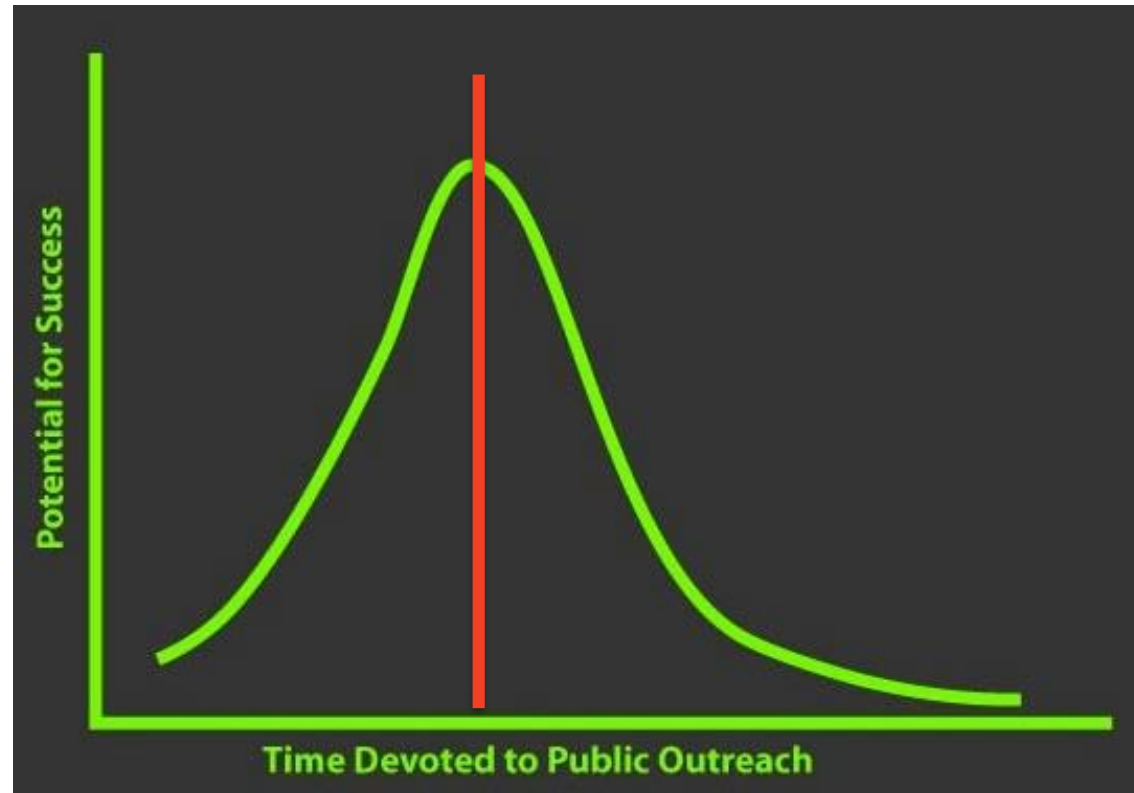
C = number of consultants

m = number of meetings

n = number of months

I = units of information

Acm = number of AC members



Which Public? Individuals




GOAL: Transparent, inclusive, influential, memorable, restorative, and fair decision-making process.

OBJECTIVES:

- Early and continuous, progressive
- Transparent, with access to resources
- Relevant, with proof of consideration
- Champions, with enthusiastic testimony

Public role/responsibility: Stay informed; respectful; and remember that fundamental choices are made at the time of planning, not permitting.

Which Public? Organizations



GOAL: Interests reflected in decision-making process.

OBJECTIVES:

- Early and continuous
- Mission consistency and adjustment (if appropriate)
- Relevant

Public role/responsibility: Stay informed, revisit organizational mission, and submit comments in writing.

Which Public? Biz Community



GOAL: Stimulate private investment and decision-making to leverage public policy initiatives.

OBJECTIVES:

- Early and frequent
- Risk/opportunity identification
- Early action commitment

ACTIONS: Stay informed, stay curious about policy ramifications, and be honest about likely investment actions.

As the Host



Planning

- Collaboration
- Information
- Education
- Empowerment
- Trust
- Capacity building

Project

- Information
- Evidence
- Fairness
- Relevance
- Findings
- Record building

Effective PC Meetings

Welcome participation

Encourage discussion

Avoid jargon

Maintain decorum

Respect perspectives

Remember long-term goals

Staff	PC Chair & members
Annual work program	Attendance/participation
Satisfactory meeting venue	Fairness
Satisfactory audio/visual	Curiosity
Staff reports in advance	Pace
Graphics visibility	Rules of procedure

We're Different



Open Public Meetings Act



**Z FOSTER
MENKE JACKSON BEYER, LLP
807 NORTH 39TH AVENUE
YAKIMA, WA 98902
(509) 575-0313**

Why Train?



- OPMA training is required for members of a governing body within 90 days of taking the oath of office or assuming duties and every four years thereafter.
 - RCW 42.30.205



The Big Picture



- All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency.
 - RCW 42.30.030
- Any action taken at a meeting held in violation of the OPMA is null and void.
 - RCW 42.30.060(1)
- Any member of a governing body who attends a meeting knowing it violates the OPMA is subject to personal liability of \$500 and \$1,000 thereafter.
 - RCW 42.30.120(1)(2)
- A person who prevails on an OPMA suit is awarded costs and attorney fees.
 - RCW 42.30.120(2)

What is a “Meeting”?



• Meeting = Action + Quorum
• Action = The transaction of official business, including but not limited to:

- Receipt of public testimony
- Deliberations
- Discussions
- Considerations
- Reviews
- Evaluations
- Final Actions

All meetings of the governing body of a public agency shall be open and public

Final Action = A collective positive or negative decision OR an actual vote by a majority of the members of a governing body

Action = A wide range of deliberative activity, not just a final vote!

What is a covered “Public Agency”?



- Public agency means:

- State agencies
- Counties, cities, school districts, special purpose districts, other muni districts
- Sub-agencies created by legislation
 - Planning commissions, civil service commissions, etc.

All meetings of the governing body of a **public agency** shall be open and public

MRSC Practice Tips for Electronic Communication



- Passive receipt of info via email okay, but discussion of issues via email by quorum of members can constitute illegal meeting.
- Emails to quorum or more allow to provide documents or factual information, such as things to review for next meeting.
 - First line of email states: “For informational purposes only. Do not reply.”
 - Have staff send emails such as meeting documents and information.
- Mixed media can constitute a meeting.
- Be careful with social media!

Regular Meeting Notice Requirements



- Held in accordance with a fixed schedule.
- Agendas available online at least 24 hours in advance, unless
 - Aggregate value of taxable property less than \$400 million
 - Population under 3,000 AND
 - Cost of posting notice online would exceed 1/10 of 1% of budget
- Cities and towns required to notify public of preliminary agenda.
- No restrictions on type of business transacted.
 - Can amend agenda at the meeting.
- Can go into executive session, even if not noticed.

Special Meeting Notice Requirements



- Called by presiding officer or majority of members.
- Notice must specify date, time, place, and business to be transacted.
 - Final action can only be taken on noticed agenda items.
- Notice must be delivered within 24 hours to:
 - Each member, unless waived or in actual attendance
 - Media outlets on file as requesting notice
- Notice posted online within 24 hours, unless:
 - No website
 - No full time equivalent employees
 - No employee whose duty is to maintain a website
- Notice prominently displayed at main entrance of principal location if special meeting is held elsewhere, not remote, and can be done safely.

Meetings during an Emergency



- If a local, state, or federal emergency is declared and the agency determines it cannot hold an in-person meeting with reasonable safety, it may:
 - Hold a meeting at a physical location with limited or no public attendance.
 - Hold a fully remote hearing with cost-free option for public attendance.
- Notice not required for special meetings called to deal with emergency involving injury or damage to people or property when notice would be impractical or dangerous.
 - If agency has a website, online notice of special meeting required even if no employees or personnel in charge of website.

Public Comment at Regular Meetings



- Agencies must provide opportunity for public comment at or before every regular meeting where final action is taken.
 - Oral or written, submitted by reasonable deadline.
 - When feasible, provide opportunities for individuals with difficulty attending in person to provide oral comments remotely.
- No need to connect public comment to final action taken.
 - Final action can be taken on a matter that did not receive public comment at that meeting, so long as public comments were accepted at or before the meeting—don't need to connect final action with public comments.
 - Public comment on a specific topic can be accepted before meeting at which final action is taken, such as previous public hearing.

Executive Session



- Before convening, presiding officer must announce the purpose of and the time the executive session is over.
 - Open meeting must reconvene at announced time, even if executive session ends early.
 - If executive sessions run long, must announce new time when originally scheduled to end.
- Limited points of discussion may take place in executive session, but final action must occur in public.
 - Cannot conduct “straw polls” in executive session.
- Executive session purpose must be entered into the minutes.

Common Executive Session Topics



- Evaluate qualifications of applicants for public employment or review performance of public employees.
 - Discussion of generally applicable compensation, benefits, conditions of employment, etc. must be in public.
- Litigation, potential litigation, and legal risks of actions.
 - For risks, an open discussion must present a danger of adverse legal or financial risk to the agency.
- Conveying real estate.
 - To consider site selection or acquisition when public knowledge would increase price.
 - To consider minimum price at which real estate will be offered when public knowledge would cause decreased price.
 - ✦ *Port of Vancouver* Supreme Court case: Executive session only to discuss bottom line price; factors impacting price must be discussed in public.
- Full list at RCW 42.30.110

Appearance of Fairness Doctrine



Application



Applies to:

- **Quasi-Judicial Actions:** Development permit applications, plats, subdivisions, variances, special use permits, site-specific rezones
- **But Not Legislative Actions:** Comprehensive plan amendments; Area-wide rezones

What are the rules?



The Rule: No *Ex Parte* contacts with opponents or proponents of a particular project coming before you board.

RCW 42.36.060

The Test: Would a disinterested person, having been apprised of the totality of a board member's personal interest in a matter being acted upon be reasonably justified in thinking that partiality may exist?

For example, do you have a **business, social, or family connection** to a matter in front of the board?

What to do if someone approaches you?

Tell the person you could be disqualified from participating in the hearing, and encourage them to make their point in writing or at the hearing to all of the people on the board.

The Fix



Time Limit:
Challenges must be timely, or the action at issue cannot be challenged on the basis of a violation of the Appearance of Fairness.

RCW 42.36.080

1. Poll the board at the start of the hearing. Substance of any communication should be placed into the record.
2. Opposing party must be given the opportunity to rebut the substance of the communication.
3. Offer the opportunity to object to your participation, if there are objections, you must recuse yourself from participating, and leave the room.

Consequences and Exceptions



- **Consequences**

- Action will be void
- Final action is delayed
- Potential of civil damages for bad intent or abuse

- **Exceptions**

- Not participating would result in loss of quorum
- Objections were raised too late in the process
- Campaign statements or campaign contributions before becoming a member of the board
- Prior participation in advisory action



PUBLIC RECORDS ACT

Purpose and Application



- Public records of government agencies are presumed open.
- **Purpose:** The “free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.”
- **Applies to Records of:**
 - State and local government agencies
 - Agencies that are the functional equivalent of public agencies
 - Limited extent to Legislature
- Does **Not** Apply to:
 - Court records (court files)
 - Private organizations or persons (Unless, for ex., the records are used or retained by a government agency.)

Agency Requirements



- Appoint a public records officer.
- Adopt procedures to:
- Make non-exempt records available for inspection and copying during customary business hours for a minimum of 30 hours per week, excluding holidays.
- Publish a fee schedule if charging for copying or mailing costs. Fees cannot be charged for searching, reviewing, or redacting records

RCW 42.56.040; RCW 42.56.070-.090; PRA Model Rules Ch. 44-14 WAC

“Public Record”



“[I]ncludes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function **prepared, owned, used, or retained** by any state or local agency regardless of physical form or characteristics.”

- Broadly defined; err on side of disclosure
- Includes emails, paper files, recordings, web content.
- Includes public records created on personal electronic devices or non-agency email accounts.
- May include social media posts.

Requestors



Should be specific and request identifiable records from public agencies

- Use an agency public records request form, or if agency form is not used, requester must provide “fair notice” that they are seeking public records.
- A request for “information” is not a request for “records” under the PRA.
- Requesters can ask to inspect records, or request copies of records

RCW 42.56.520; 42.56.080; 42.56.040; 42.56.100

Initial Response: The 5-Day Letter



- Provide the record
- Provide an internet address and link to the agency's website
 - If the requestor notifies the agency that they do not have access to the internet, agency must provide copies or allow the requestor to view copies using an agency computer
 - Cannot direct the requestor to another agency's website
- Acknowledge receipt of the request and provide a reasonable estimate of time needed to respond
 - Reasonableness will depend on specific facts and circumstances
 - Ex. Need to provide third-party notice, need for clarification, large volume, records in storage, records contain potentially exempt information, workload considerations
 - Avoid using blanket estimates for all requests (ex. 30 days)
 - **Must include estimate of time**, even if the exact amount of time needed is unknown
- Acknowledge receipt of the request, ask for clarification, *and* provide a reasonable estimate of time required to respond.
- Deny the request

Seeking Clarification



- If a request is unclear, seek clarification to determine what records the requestor is looking for
- Request for clarification **MUST** be accompanied by a reasonable estimate of time (“to the greatest extent possible”)
 - If requestor doesn’t clarify and the entire request is unclear, don’t have to process remainder
 - Otherwise, must process the portions of the PRR which are clear
- Consider asking the requestor to suggest search terms or rephrasing the request in a way that makes sense and ask the requestor to confirm the agency’s understanding
- Benefits of seeking clarification?
 - Helps to provide the fullest assistance to the requestor
 - Results in prompt disclosure by identifying only desired records
 - Means the requestor receives and pays for only those records requested

Searches



- **Read the request carefully** to understand what records are requested. Clarify request if needed, or ask requester to suggest search terms.
- **Conduct an adequate search** for responsive records.
 - Consider all formats (paper, electronic, etc.)
 - Consider records of current and former staff/officials
 - Consider possible locations (e.g., paper files, agency website audio files, etc.)
 - Don't rely solely on computer searches and key words
- The agency bears the **burden of proof** to show the adequacy of the search.
- **Document search efforts** (locations, search terms used, personnel consulted, etc.).

PRA Exemptions are Narrowly Construed



- If a record, or part of a record, is withheld from a requestor, the agency must cite to an “exemption” in the law and explain why. Common exemptions include personal information in employment records, attorney-client privileged information, pending investigative records, and protected health care information.
- When withholding (redacting) part or all of a record, agency must sufficiently describe the record (by date, type, authors/recipients, numbers of pages, etc.) on an exemption log
- “Privacy” is invaded only if (1) privacy is a factor in the exemption, (2) release of the information would be highly offensive, and (3) the information is not of legitimate concern to the public.

RCW 42.56.050; 42.56.210-.510; 42.56.550

Enforcement and Penalties



- PRA enforced by courts for claims listed in PRA
- A court can impose civil penalties up to \$100 per day **per record**. No proof of “damages” required.
- A court is to consider certain mitigating or aggravating factors in requiring an agency to pay a penalty.
- Requesters are awarded their attorney fees and costs if they prevail against an agency in court.
- Special provisions apply to inmate requests.
- Outside of the PRA, there can be criminal liability for willful destruction or alteration of a public record

Records Retention, Ch. 40.14 RCW



- Records must be retained per the ***Local Government Record Retention Schedule*** from Washington State Archives.
- After retention period has expired, then records should either be:
 - Transferred to state archives to protect state history
 - ✦ i.e. project files (after 6 years), maps and photographs, press releases, public opinion polls, speeches (after they have served local use).
 - Destroyed after they meet retention to reduce PRA workload
 - ✦ i.e. calendars (2 years), citizen complaints (3 years), contracts (6 years after completion), foreclosures (10 years after resolution).

Focus on Electronic Records



- Websites are records. Agencies must keep a copy of previous website when updating. WAC 434-662-140.
- Create clear electronic records. WAC 434-662-150.
 - Emails on agency business are public records.
 - Save agency business-related emails from private e-mail accounts or personal devices to agency servers.
 - Use descriptive subject lines.
 - Shorten e-mail strings and limit cc's.
 - Limit volume of records (delete unimportant emails, don't "Reply-all")
- Avoid making records you don't want to see on the front pages of the paper.

Questions?

