



RULE-MAKING ORDER

CR-103 (7/10/97)

(RCW 34.05.360)

Agency: Community, Trade and Economic Development

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: *Martha Choe* 6-12-01

(2) Purpose: Criteria to analyze project consistency with comprehensive plans and development regulations adopted under Chapter 36.70A RCW.

(3) Citation of existing rules affected by this order: None
Repealed:
Amended:
Suspended:

(4) Statutory authority for adoption: RCW 36.70B.040
Other Authority:

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)
Adopted under notice filed as WSR 01-03-165 on 1/24/01 (date).
Describe any changes other than editing from proposed to adopted version: None

EMERGENCY RULE ONLY
Under RCW 34.05.350 the agency for good cause finds:
 (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

EXPEDITED REPEAL ONLY
Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date)

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:
 Yes No If Yes, explain:

(6) Effective date of rule:
Permanent Rules or Expedited Repeal
 31 days after filing
 Other (specify) _____*
Emergency Rules
 Immediately
 Later (specify) _____

*If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required

Name (Type or Print)
Martha Choe

Signature
Martha Choe

Title: Director Date: 6-12-01

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILE

JUN 13 2001

TIME: 2:12 PM
WSR: 0113-039

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>8</u>	Amended	_____	Repealed	_____

The number of sections adopted at the request of nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>8</u>	Amended	_____	Repealed	_____

Chapter 365-197 WAC

PROJECT CONSISTENCY

NEW SECTION

WAC 365-197-010 Purpose of a project consistency rule. The Local Project Review Act (chapter 36.70B RCW) authorizes the department of community, trade, and economic development to develop and adopt by rule criteria to assist local governments planning under RCW 36.70A.040 to analyze the consistency of project actions. These criteria are to be jointly developed with the department of ecology (RCW 36.70B.040(5)).

A basic principle of the Growth Management Act (GMA) and the Local Project Review Act is that land use decisions made in adopting a comprehensive plan and development regulations under chapter 36.70A RCW should not be revisited during project review. When review of a project indicates that it is consistent with earlier land use decisions, that project should not be reevaluated or scrutinized with respect to whether those decisions were appropriate. Given the number of jurisdictions and agencies in the state, it is essential to establish a uniform framework for jurisdictions planning under the GMA to consider the consistency of a proposed project with the applicable development regulations or, in the absence of applicable regulations, the adopted comprehensive plan.

Consistency should be considered in the project review process by analyzing four factors found in applicable regulations or plans. The four factors are:

- (1) The type of land use allowed;
- (2) The level of development allowed, such as dwelling units per acre or other measures of intensity;
- (3) Infrastructure, such as the adequacy of public facilities and services to serve the proposed project; and
- (4) The characteristics of the proposed development, such as assessment for compliance with specific development regulations or standards. This uniform approach is based upon existing project review practices and should not place a "new" burden on applicants or local government. The intent is that consistency analysis be largely a matter of code checking for most projects, which are simple or routine. More complex projects may require more analysis of these factors, including any required studies. During project review, a question may be raised about whether a project is

consistent with applicable regulations or plans after some initial analysis. A project's consistency with applicable development regulations may not initially be clear due to the complexity of the project or the regulations. For example, provision for infrastructure. In these cases, the criteria in the rule are intended to provide guidance to local government, applicants, and reviewers in conducting a consistency analysis. The criteria are not intended for every aspect of the project, only for those aspects where there are still questions of consistency after the initial review.

This rule is advisory in nature. As provided by RCW 36.70B.040, local governments may develop and apply their own procedures for determining project consistency.

NEW SECTION

WAC 365-197-020 Definitions. (1) "GMA" means the Growth Management Act, chapter 36.70A RCW and those statutes codified in other chapters of the Revised Code of Washington that were enacted or amended as part of chapter 17, Laws of 1990 1st ex. sess. and chapter 32, Laws of 1991 sp. sess.

(2) "GMA county/city" means a county or city that is planning under RCW 36.70A.040.

(3) "SEPA" means the State Environmental Policy Act of 1971, chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC, as enacted or later amended.

NEW SECTION

WAC 365-197-030 Integrated project review--GMA project consistency analysis and environmental review under SEPA. The GMA is a fundamental building block of regulatory reform. The GMA should serve as an integrating framework for other land use-related laws. (ESHB 1724, Section 1.)

Integration of permit review and environmental review is intended to eliminate duplication in processes and requirements. The legislature recognized that consistency analysis and determinations of whether environmental impacts have been adequately addressed involve many of the same studies and analyses. SEPA substantive authority should not be used to condition or deny a permit for those impacts adequately addressed by the applicable development regulations.

The primary role of environmental review under SEPA at the project level is to focus on those environmental impacts that have

not been addressed by a GMA county's/city's development regulations and/or comprehensive plan adopted under chapter 36.70A RCW, or other local, state, and federal laws and regulations. SEPA substantive authority should only be used when the impacts cannot be adequately addressed by existing laws. As consistency analysis involves the application of development regulations and/or the comprehensive plan to a specific project, it will also help answer the question of whether a project's environmental impacts have been adequately addressed by the regulations and/or plan policies.

During project review, a GMA county/city may determine that some or all of the environmental impacts of the project have been addressed by its development regulations, comprehensive plan, or other applicable local, state, or federal laws or rules (RCW 43.21C.240 and WAC 197-11-158). The GMA county/city may make this determination during the course of environmental review and preparation of a threshold determination (including initial consistency review), if the impacts have been adequately addressed in the applicable regulations, plan policies, or other laws. "Adequately addressed" is defined as having identified the impacts and avoided, otherwise mitigated, or designated as acceptable the impacts associated with certain levels of service, land use designations, development standards, or other land use planning decisions required or allowed under the GMA. Once a determination has been made that an impact has been adequately addressed, the jurisdiction may not require additional mitigation for that impact under its SEPA substantive authority.

Thus, through the project review process:

(1) If the applicable regulations require studies that adequately analyze all of the project's specific probable adverse environmental impacts, additional studies under SEPA will not be necessary on those impacts;

(2) If the applicable regulations require measures that adequately address such environmental impacts, additional measures would likewise not be required under SEPA; and

(3) If the applicable regulations do not adequately analyze or address a proposal's specific probable adverse environmental impacts, SEPA provides the authority and procedures for additional review. (Note to RCW 43.21C.240.)

NEW SECTION

WAC 365-197-040 Definition and review of project consistency. (1) "Project consistency" refers to whether a project is consistent with adopted and applicable development regulations, or in their absence, comprehensive plans adopted under chapter 36.70A RCW.

(2) Project review for consistency is not subject to the provisions of this chapter for regulations or plans that:

(a) Do not exist or have not been adopted under chapter 36.70A RCW; or

(b) Do not apply to the particular project (e.g., no need to review compliance with floodplain ordinances if the site is not in a floodplain).

(3) The adopted and applicable development regulations/plans that apply to a project fall into four basic categories, which are defined in different levels of detail by GMA counties/cities:

(a) Type of land use;

(b) Level of development (dwelling units per acre or other measures of density);

(c) Infrastructure to support the proposed project (public facilities and services); and

(d) The other characteristics of the development (how the project is sited or otherwise built and operated from a growth management/land use and environmental perspective).

(4) Reviewing consistency in these four categories will be largely a code-checking exercise for relatively simple or routine projects in GMA counties/cities with specific development regulations, while more complex projects or projects that affect critical areas may require more analysis.

NEW SECTION

WAC 365-197-050 Criteria to analyze consistency of project actions. (1) In considering the four basic categories of project consistency, it may not be clear on initial review whether a project is consistent with a particular applicable development regulation, or in its absence, the comprehensive plan. The following criteria, in the form of questions, are intended to assist cities/counties, applicants, and reviewers in analyzing for consistency.

(a) **Type of land use:** Is the project's proposed land use within the range of allowable uses identified for this site in the comprehensive plan/development regulation? This would include uses that may be allowed under certain circumstances if they satisfy approval criteria, for example, planned unit developments, conditional uses, or special uses.

(b) **Level of development:** Is the project's proposed land use within the range of densities, including dwelling units per acre or other measures of intensity, as defined in the comprehensive plan/development regulations? Other measures of intensity may include, but are not limited to, such measures as square footage of nonresidential development, number of employees, or floor area ratio.

(c) **Infrastructure:** Are the system-wide public facilities and services necessary to serve the development available? To make this decision, the local jurisdiction should ask:

(i) Is the system-wide infrastructure sufficient to serve the development? (If yes, no need to ask the next question.)

(ii) Have any system improvements needed for the proposed development and site:

(A) Been identified as necessary to support development in the comprehensive plan; and

(B) Had provision for funding in the comprehensive plan (e.g., capital facilities plan, utilities element, transportation improvement plan)? Alternatively, can the applicant demonstrate capacity, e.g., through a certificate of concurrency process? (If yes, no need to ask the next question.)

(iii) Will the proposed project use more capacity than the usage or assumptions on which the capital facilities plan, utilities element, or transportation improvement plan were based, or will the project cause current service levels to fall below level of service standards identified in the comprehensive plan? (If yes, does the applicant want to pay for the improvements or allow the GMA county/city to docket the issue for future plan amendment?)

(d) **Characteristics of development:** Does the proposed project:

(i) Meet or fall within the range of numerical standards that apply? (Examples of numerical standards may include, but are not limited to, number of dwelling units per acre, floor area ratio, building setbacks, building height, lot size, lot coverage, minimum width and depth for new lots, parking requirements, and density/intensity bonuses or incentives. In applying some of these standards, some overlap may occur with the analysis for level of development, i.e., units per acre and floor area ratio.)

(ii) Promote or not substantially conflict with narrative standards that apply? (Examples of narrative standards include performance standards, engineering or design criteria, methods for determining compliance such as monitoring or contingency plans, and mandatory policies or criteria.) Analysis of consistency with narrative standards may be contingent upon preparation, completion, and approval of required studies, plans, determinations, or monitoring (e.g., delineation of critical areas, mitigation plans, etc.).

(e) For purposes of this section, "system-wide" infrastructure means those public services or facilities that may be needed to serve a geographic area greater than the specific site on which the project is located. For example, sewer systems, water systems, or transportation systems that serve a geographic area beyond the project site. Public services or facilities that are not system-wide and may be needed on or near a proposed project (such as drainage facilities, utility connections or transportation improvements to primarily serve the project) should be addressed through analysis of the characteristics of development.

(2) Analysis of project consistency should take into consideration regulatory standards and policies that provide a method to reconcile a project's proposed type of development, level of development, infrastructure needs, or characteristics of

development with development regulation and/or comprehensive plan requirements. Such provisions include, but are not limited to, variance and conditional use procedures, innovative land use techniques, developer funding for infrastructure construction or improvements, and project-specific mitigation measures.

(3) If the information needed to analyze project consistency does not exist in the applicable development regulations or comprehensive plan, the county or city should determine whether a deficiency exists pursuant to WAC 365-197-060.

NEW SECTION

WAC 365-197-060 Definition of plan "deficiency" identified in project review and how such deficiencies should be docketed.

(1) Project review may continue under SEPA and other applicable laws, if, during project review, a GMA county/city identifies a deficiency in the applicable development regulations or the policies in the comprehensive plan. The identified deficiency shall be docketed for possible future development regulation or plan amendments. The applicant may proceed as provided in subsection (4)(c) of this section. The project review process shall not be used as a comprehensive planning process. Docketed deficiencies shall be considered through the normal amendment process for comprehensive plans or development regulations.

(2) "Deficiency" in a development regulation or comprehensive plan refers to the absence of required or potentially desirable contents of a comprehensive plan or development regulation. It does not refer to whether a development regulation adequately addresses a project's probable specific adverse environmental impacts, which the permitting agency could mitigate in the normal project review process. Some project-specific impacts could be identified that the agency will need to or prefer to address at the project level rather than in the comprehensive plan or development regulations.

For purposes of docketing, use of the term "deficiency" shall not mean that a comprehensive plan or development regulation adopted by a county or city under chapter 36.70A RCW is invalid or out of compliance with chapter 36.70A RCW. Docketing is intended to allow and encourage GMA counties/cities to improve their plans and regulations as a result of experience in reviewing projects, but without stopping review of the project that may have disclosed the "deficiency."

(3) A project should not be found to be inconsistent with applicable regulations or the plan if the inconsistency is the result of a deficiency of one of the four criteria for project consistency. The deficiency should be docketed for possible future regulation or plan amendments, and the project proponent can proceed with either of the options provided in subsection (4) of

this section.

(4) If all of the information to analyze consistency does not exist in the regulations or plan, the absent policy or regulatory information should be docketed for possible future regulation or plan amendments. At this point the applicant may:

(a) Await docketing and decision on the proposed amendment to address the deficiency before proceeding with the project review process; or

(b) Proceed with the project review process under SEPA and other applicable laws.

NEW SECTION

WAC 365-197-070 Appeals of consistency. (1) When and how appeals of consistency may fit into a GMA county's/city's appeal process depends upon the individual jurisdiction's project review and appeals process. Nothing in this section requires documentation or dictates a GMA county's/city's procedures for considering consistency.

(2) Fundamental land use planning decisions made in comprehensive plans and development regulations should not be revisited at the project level. During project review, the local government or any subsequent reviewing body shall not reexamine alternatives to or hear appeals on the planning decisions specified in subsection (3)(a) through (c) of this section, except for issues of code interpretation. The planning decisions in subsection (3)(a) through (c) of this section are a subset of the four basic categories of criteria for analyzing project consistency under WAC 365-197-050 (1)(a) through (d). The planning decisions in subsection (3)(a) through (c) of this section are identified in RCW 36.70B.030(2) as decisions that are determinative and cannot be reexamined at the project level if they have been addressed in the development regulations and/or comprehensive plan. As project review includes environmental review, the local government or subsequent reviewing body shall not reexamine or hear appeals on how the environmental impacts of those planning decisions in subsection (3)(a) through (c) of this section were addressed under chapter 43.21C RCW. However, if environmental information is required to analyze project consistency under subsection (3)(a) through (c) of this section and that information is not available, the decision may still be challenged under SEPA.

(3) During project review, a GMA county/city or any subsequent reviewing body shall determine whether the items listed in (a) through (c) of this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations, the adopted comprehensive plan under chapter 36.70A RCW. At a minimum, such applicable regulations or plans shall be determinative of the:

(a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;

(b) Density of residential development in urban growth areas, including densities that may be allowed under certain circumstances, such as planned unit developments and density bonuses;

(c) Availability and adequacy of public facilities:

(i) That are needed to serve the proposed development;

(ii) That are identified in the comprehensive plan; and

(iii) For which the plan or development regulations identify the probable sources of funding, as required by chapter 36.70A RCW.

(4) Upon a determination of consistency of the project with the planning decisions in subsection (3)(a) through (c) of this section, no further analysis of the project with respect to those items will be required. However, because the planning decisions in subsection (3)(a) through (c) of this section do not include all of the project review criteria in WAC 365-197-050 (1)(a) through (d), further analysis may be required to apply the remaining criteria listed in WAC 365-197-050 (1)(a) through (d) that are not addressed in the planning decisions in subsection (3)(a) through (c) of this section. For example, analysis of residential densities outside the urban growth area or the character of development may still need to be addressed.

(5) For purposes of this section, "code interpretation" includes the correct application of the applicable regulations or plan to the project. As part of its project review process, each GMA county/city must adopt procedures for obtaining a code interpretation pursuant to RCW 36.70B.030(3) and 36.70B.110(11). A GMA county/city may provide a formal or informal process for code interpretation. The GMA county or city or subsequent reviewing body may consider comments on the application of regulations or the plan to the project without requiring a formal code interpretation.

(6) As provided above, agencies should not be revisiting fundamental land use planning decisions made in comprehensive plans and development regulations at the project level. However, nothing in this chapter limits the authority of a permitting agency to approve, condition, or deny a project as provided in its development regulations adopted under chapter 36.70A RCW and in its SEPA substantive policies adopted under RCW 43.21C.060. An agency may still use its authority under adopted development regulations or SEPA substantive policies to condition a project. For example, an agency may condition a project to reduce neighborhood traffic or traffic impacts, which could have the effect of reducing the level of development otherwise permitted by zoning ordinance.

NEW SECTION

WAC 365-197-080 An agency may deny a project based upon consistency analysis. (1) An agency has the authority to deny a project if it:

(a) Is inconsistent and does not comply with the applicable development regulations, or in their absence, the adopted comprehensive plan;

(b) Will result in significant adverse environmental impacts which cannot be mitigated per RCW 43.21C.060 and WAC 197-11-660; or

(c) Does not comply with other local, state, or federal law and rules, and the local jurisdiction has the authority to deny based upon these other laws and rules.

(2) This rule is not intended to modify any criteria developed by a GMA county/city for denying a project.