RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: Department of Community Development

☒ Permanent Rule
☐ Emergency Rule

(1) Date of adoption: August 5, 1993

(2) Purpose: Amending Chapter 365-195 WAC (Procedural Criteria - Growth Management), adding Part Seven (Relationship of Growth Management Planning to Other Laws) and Part Eight (Development Regulations)

(3) Citation of existing rules affected by this order:
Repealed:
Amended: Adds new sections, amends WAC 365-195-210, 220, 620
Suspended:

(4) Authority for adoption:
Statute: RCW 36.70A.190(4)(b)
Other Authority:

(5.1) **PERMANENT RULE ONLY**

Pursuant to notice filed as WSR 93-13-138 on June 23, 1993 (date).

Describe any changes other than editing from proposed to adopted version:

See attached

(5.2) **EMERGENCY RULE ONLY**

Pursuant to 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:

(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	Emergency Rules
☒ 31 days after filing	☐ Immediately
☐ Other (specify) _____ *	☐ 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)
Gene Canque Liddell

SIGNATURE
Gene Canque Liddell

TITLE
Director

DATE
8-5-93

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

AUG 11 1993

TIME: 2:47 AM PM

WSR 93-17-090

WSR 93-13-138

Changes other than editing from proposed to adopted version:

1) Altered WAC 365-195-620 to provide for the filing of five copies of comprehensive plans and development regulations with the department rather than two, and to require that additional copies be filed with other state agencies identified on a list to be distributed by the department.

2) Substituted the term "nonproject" for "programmatic"in WAC 365-195-760.

3) Inserted the phrase "by the deadline" for adoption in place of "at the time" for adoption in WAC 365-195-810(1).

AMENDATORY SECTION (Amending WSR 92-23-065, filed 11/17/92, effective 12/18/92)

WAC 365-195-210 Definitions of terms as used in this chapter. The following are definitions of terms which are not defined in RCW 36.70A.030 but which are defined here for purposes of these procedural criteria. The department recommends that counties and cities planning under the act adopt these definitions in their plans:

((~~(1)~~)) "Act" means the Growth Management Act as enacted in chapter 17, Laws of 1990 1st ex. sess., and chapter 32, Laws of 1991 sp. sess., state of Washington.

((~~(2)~~)) "Adequate public facilities" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

((~~(3)~~)) "Affordable housing" means residential housing that is rented or owned by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income.

"Available public facilities" means that facilities or services are in place or that a financial commitment is in place to provide the facilities or services within a specified time. In the case of transportation, the specified time is six years from the time of development.

((~~(4)~~)) "Concurrency" means that adequate public facilities are available when the impacts of development occur. This definition includes the two concepts or "adequate public facilities" and of "available public facilities" as defined above.

((~~(5)~~)) "Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

((~~(6)~~)) "Coordination" means consultation and cooperation among jurisdictions.

((~~(7)~~)) "Contiguous development" means development of areas immediately adjacent to one another.

((~~(8)~~)) "Demand management strategies," or "transportation demand management strategies (TDM)" means strategies aimed at changing travel behavior rather than at expanding the transportation network to meet travel demand. Such strategies can include the promotion of work hour changes, ride-sharing options, parking policies, telecommuting.

((~~(9)~~)) "Domestic water system" means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of a development.

((~~(10)~~)) "Financial commitment" means that sources of public or private funds or combinations thereof have been identified which will be sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

((~~(11)~~)) "Growth Management Act" - see definition of "Act."

((~~(12)~~)) "Level of service" means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need.

((~~(13)~~)) "Master planned resort" means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

((~~(14)~~)) "New fully contained community" is a development proposed for location outside of the existing designated urban growth areas which is characterized by urban densities, uses, and services, and meets the criteria of RCW 36.70A.350.

((~~(15)~~)) "Planning period" means the twenty-year period following the adoption of a comprehensive plan or such longer period as may have been selected as the initial planning horizon by the planning jurisdiction.

((~~(16)~~)) "Public service obligations" means obligations imposed by law on utilities to furnish facilities and supply service to all who may apply for and be reasonably entitled to service.

((~~(17)~~)) "Regional transportation plan" means the transportation plan for the regionally designated transportation system which is produced by the regional transportation planning organization.

((~~(18)~~)) "Regional transportation planning organization (RTPO)" means the voluntary organization conforming to RCW 47.80.020, consisting of local governments within a region containing one or more counties which have common transportation interests.

((~~(19)~~)) "Rural lands" means all lands which are not within an urban growth area and are not designated as natural resource lands having long term commercial significance for production of agricultural products, timber, or the extraction of minerals.

((~~(20)~~)) "Sanitary sewer systems" means all facilities, including approved on-site disposal facilities, used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial waste.

((~~(21)~~)) "Solid waste handling facility" means any facility for the transfer or ultimate disposal of solid waste, including land fills and municipal incinerators.

((~~(22)~~)) "Transportation facilities" includes capital facilities related to air, water, or land transportation.

((~~(23)~~)) "Transportation level of service standards" means a measure which describes the operational condition of the travel stream and acceptable adequacy requirements. Such standards may be expressed in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety.

((~~(24)~~)) "Transportation system management (TSM)" means the use of low capital expenditures to increase the capacity of the transportation system. TSM strategies include but are not limited to signalization, channelization, and bus turn-outs.

((~~(25)~~)) "Utilities" or "public utilities" means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution, and processing

facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

((~~(26)~~)) "Visioning" means a process of citizen involvement to determine values and ideals for the future of a community and to transform those values and ideals into manageable and feasible community goals.

AMENDATORY SECTION (Amending WSR 92-23-065, filed 11/17/92, effective 12/18/92)

WAC 365-195-220 Additional definitions to be adopted locally. In addition to adopting definitions of terms set forth in the preceding section, planning jurisdictions should consider developing local definitions of the following, to the extent such terms are used in local plans. The definitions should in every case be consistent with county-wide planning policies:

((~~(1) "Affordable housing."~~
~~(2)~~)) "Development rights."
((~~(3)~~)) "Essential public facilities."
((~~(4)~~)) "Rural governmental services."
((~~(5)~~)) "Objectives, principles, and standards."
((~~(6)~~)) "Related regional issues."

AMENDATORY SECTION (Amending WSR 92-23-065, filed 11/17/92, effective 12/18/92)

WAC 365-195-620 Submissions to state. (1) Each county or city proposing adoption of a comprehensive plan or development regulations shall notify the department of its intent at least sixty days prior to final adoption. Notification shall be made by filing with the department ((~~two~~)) five complete copies of the plan ((~~or one copy and a computer disc containing the plan~~)) or development regulation(s). In addition, copies shall be provided to other state agencies identified on a list distributed by the department to planning jurisdictions. State agencies including the department many provide comments, during the public review process prior to adoption.

(2) Each county or city planning under the act shall transmit a complete and accurate copy of its comprehensive plan or development regulations to the department within ten days after final adoption.

(3) Any proposed amendments for permanent changes to a comprehensive plan or development regulation shall be submitted to the department in the same manner as initial plans and development regulations. Adopted amendments shall be transmitted to the department in the same manner as the initial plans and regulations.

PART SEVEN
RELATIONSHIP OF ((~~GMA~~)) GROWTH MANAGEMENT PLANNING TO OTHER LAWS

AMENDATORY SECTION (Amending WSR 92-23-065, filed 11/17/92, effective 12/18/92)

WAC 365-195-700 ((~~Analysis of preemption.~~)) Background. ((~~(Reserved.)~~)) For local jurisdictions subject to its terms, the Growth Management Act mandates the development of comprehensive plans and development regulations that meet statutory goals and requirements. These plans and regulations will take their place among existing laws relating to resource management, environmental protection, regulation of land use, utilities and public facilities. Many of these existing laws were neither repealed nor amended by the act.

This circumstance places responsibilities both on local growth management planners and on administrators of preexisting programs to work toward producing a single harmonious body of law.

The need to consider and recognize other laws should profoundly influence, limit and shape planning and decision making under the act. At the same time, in recognition of the broad and fundamental changes intended by creation of the growth management scheme, prior programs should be interpreted and directed, to the maximum extent possible, in a manner consistent with the products of the comprehensive new land use management system.

The far-reaching nature of the act and the wide variety of possible outcomes under its authority dictate that identification of all the points of contact between its products and other laws will have to be elaborated over time. The entire process of determining how the act fits into the overall legal framework will, of necessity, be an incremental one. Nonetheless, for growth management to succeed, this process must begin at the outset.

At the planning stage, this means that a conscious effort to address the requirements of other existing law is needed as an essential initial step in the process. This need poses an unprecedented challenge to all governmental entities - municipalities, counties, regional authorities, special districts and state agencies - to communicate and collaborate. The act is a mandate to government at all levels to engage in coordinated planning and cooperative implementation.

NEW SECTION

WAC 365-195-705 Basic assumptions. (1) Where the legislature has spoken expressly on the relationship of the act to other statutory provisions, the explicit legislative directions shall be carried out. Examples of such express provisions are set forth in WAC 365-195-750.

(2) Absent a clear statement of legislative intent or judicial interpretation to the contrary, it should be presumed that neither the act nor other statutes are intended to be preemptive. Rather they should be considered together and, wherever possible, construed as mutually consistent.

AMENDATORY SECTION (Amending WSR 92-23-065, filed 11/17/92, effective 12/18/92)

WAC 365-195-710 ((~~Takings analysis.~~)) Identification of other laws. ((~~(Reserved.)~~)) (1) In the development of their comprehensive plans and implementing regulations, cities and counties planning under the act should attempt to identify other statutes and legal authorities affecting subjects addressed by the plans and regulations.

(2) To aid in this identification, state agencies, regional authorities, special districts and utilities should implement programs to inform the planning entities of relevant programs and provisions within their jurisdiction or expertise. Every effort should be made to provide this information before the plan drafting process is complete.

(3) Opportunities to comment on draft comprehensive plans or on related SEPA documents should be used by commenting agencies as additional occasions for advising planning jurisdictions of preexisting programs and related legal authorities.

NEW SECTION

WAC 365-195-715 Integrating external considerations. (1) Agencies administering existing programs have already generated data, performed analyses and developed effective approaches to many of the challenges posed by the act. Planners should take advantage of such experience and use it to shape the form and content of plans and regulations under the act where relevant.

(2) Governmental entities with expertise in subjects affecting or affected by the act and private companies which provide public services should, as practicable, offer assistance to counties and cities planning under the act in formulating their plans and regulations, through model ordinances, model plan provisions, direct drafting assistance, or other technical advice.

(3) The drafting of comprehensive plans and development regulations should involve the identification of other related laws, an evaluation of any potential areas of conflict and an effort to avoid such conflicts. Where the text of outside sources can appropriately serve local needs, consideration should be given to adoption of that text in local plans or regulations.

AMENDATORY SECTION (Amending WSR 92-23-065, filed 11/17/92, effective 12/18/92)

WAC 365-195-720 ((~~State agency compliance.~~)) Sources of law. ((~~(Reserved.)~~)) (1) In seeking to identify other relevant legal authorities, planners should refer to sources at all levels of government, including federal and state Constitutions, federal and state statutes, federal and state administrative regulations, and judicial interpretations thereof.

(2) The categories set forth in WAC 365-195-725 through 365-195-755 are an attempt to assist planners by highlighting various kinds of external legal provisions with which planning under the act should be concerned. Some of the categories overlap. The listing is not exhaustive. It is intended to supplement, not substitute for, the informational efforts of state agencies, regional authorities, special districts and utilities.

NEW SECTION

WAC 365-195-725 Constitutional provisions. (1) Local plans and regulations adopted under the act are subject to the supremacy principle of Article VI, United States Constitution and of Article XI, Section 11, Washington state Constitution.

(2) Counties and cities planning under the act are required to use a process established by the state attorney general to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. This process is set forth in a publication entitled, *"State of Washington, Attorney General's Recommended Process for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property,"* first published in February 1992. Review and updating of this process by the attorney general is required on at least an annual basis to maintain consistency with changes in case law.

NEW SECTION

WAC 365-195-730 Federal authorities. (1) The drafting of plans and development regulations under the act should involve a consideration of the effects of federal authority over land or resource use within the planning area, including:

(a) Treaties with Native Americans;

(b) Jurisdiction on land owned or held in trust by the federal government;

(c) Federal statutes or regulations imposing national standards;

(d) Federal permit programs and plans.

(2) Examples of such federal standards, permit programs and plans are:

(a) National ambient air quality standards, adopted under the Federal Clean Air Act;

(b) Drinking water standards, adopted under the Federal Safe Drinking Water Act;

(c) Effluent limitations, adopted under the Federal Clean Water Act;

(d) Dredge and fill permits issued by the Army Corps of Engineers under the Federal Clean Water Act;

(e) Licenses for hydroelectric projects issued by the Federal Energy Regulatory Commission;

(f) Plans created under the Pacific Northwest Electric Power Planning and Conservation Act;

(g) Recovery plans and the prohibition on taking listed species under the Endangered Species Act.

NEW SECTION

WAC 365-195-735 State and regional authorities. (1) The drafting of plans and development regulations under the act should involve a consideration of numerous state and regional regulatory and planning provisions affecting land use, resource management, environmental protection, utilities, or public facilities including:

(a) State statutes and regulations imposing state-wide standards;

(b) Programs involving state-issued permits or certifications;

(c) State statutes and regulations regarding rates, services, facilities and practices of utilities, and tariffs of utilities in effect pursuant to such statutes and regulations;

(d) State and regional plans;

(e) Regulations and permits issued by regional entities;

(f) Locally developed plans subject to approval or review by state or regional entities.

(2) Examples of state-wide standards are:

(a) Water quality standards and sediment standards, adopted by the department of ecology under the state Water Pollution Control Act;

(b) Drinking water standards adopted by the department of health pursuant to the Federal Safe Drinking Water Act;

(c) Minimum functional standards for solid waste handling, adopted by the department of ecology under the state Solid Waste Management Act;

(d) Minimum cleanup standards under the Model Toxics Control Act;

(e) Statutory requirements under the Shoreline Management Act and implementing guidelines and regulations adopted by the department of ecology;

(f) Standards for forest practices, adopted by the forest practices board under the state Forest Practices Act;

(g) Minimum requirements for flood plain management, adopted by the department of ecology under the Flood Plain Management Act.

(h) Minimum performance standards for construction pursuant to the state building code;

(i) Safety codes, such as the electrical construction code, adopted by the department of labor and industries.

(3) Examples of programs involving state issued permits or certifications are:

(a) Permits relating to forest practices, issued by the department of natural resources;

(b) Permits relating to surface mining reclamation, issued by the department of natural resources;

(c) National pollutant discharge elimination permits and waste discharge permits, issued by the department of ecology;

(d) Water rights permits, issued by department of ecology under state surface and ground water codes;

(e) Hydraulic project approvals, issued by departments of fisheries and wildlife under the state fisheries code;

(f) Water quality certifications, issued by the department of ecology;

(g) Operating permits for public water supply systems, issued by the state health department;

(h) Site certifications developed by the energy facility site evaluation council.

(i) Permits relating to the generation, transportation, storage or disposal of dangerous wastes, issued by the department of ecology.

(4) Examples of state and regional plans are:

(a) State implementation plan for ambient air quality standards under the Federal Clean Air Act;

(b) State transportation policy plan;

(c) Instream resource protection regulations for water resource inventory areas adopted under the Water Resources Act of 1971;

(d) Ground water management area programs, adopted pursuant to the ground water code;

(e) Puget Sound water quality management plan adopted by the puget sound water quality authority.

(f) State outdoor recreation and open space plan;

(g) State trails plan.

(5) Examples of regulations and permits issued by regional entities are:

(a) Solid waste disposal facility permits issued by health departments under the Solid Waste Management Act;

(b) Regulations adopted by regional air pollution control authorities.

(c) Operating permits for air contaminant sources issued by regional air pollution control authorities.

(6) Examples of locally developed plans subject to approval or review by state or regional agencies are:

(a) Shorelines master programs, approved by the department of ecology;

(b) The consistency requirement for lands adjacent to shorelines of the state set forth in RCW 90.58.340.

(c) Coordinated water system plans for critical water supply service areas, approved by the state health department;

(d) Plans for individual public water systems, approved by the state health department;

(e) Comprehensive sewage drainage basin plans, approved by the department of ecology;

(f) Local moderate risk waste plans, approved by the department of ecology;

(g) Plans required to be filed with the utilities and transportation commission in accordance with WAC 480-100-251.

NEW SECTION

WAC 365-195-740 Regional perspective. Some of the above authorities require planning for particular purposes for areas related by physical features, such as watersheds, rather than by political boundaries. Moreover, the systems addressed in resource management, service by utilities, fish and wildlife management and pollution control are generally not circumscribed by city and county lines. Planning entities should attempt to identify those subject areas which by law or logic require a regional planning approach and, where this is the case, work toward creating collaborative processes involving all agencies with jurisdiction in the relevant geographical area. This approach, where followed, should assist in achieving interjurisdictional consistency.

NEW SECTION

WAC 365-195-745 Special siting statutes. (1) Plans and regulations adopted under the act should accommodate situations where the state has explicitly preempted all local land use regulations, as for example, in the siting of major energy facilities under RCW 80.50.110.

(2) Where special statutes relate specifically to the setting aside of designated areas for particular purposes and under particular management programs, local land use regulations adopted under the act should be consistent with those purposes and programs. Examples in this category are the statutes relating to:

(a) Natural resource conservations areas;

(b) Natural area preserves;

(c) Seashore conservation area;

(d) Scenic rivers.

NEW SECTION

WAC 365-195-750 Explicit statutory directions. (1) In approving the Growth Management Act, the legislature expressly amended numerous existing statutes. On the matters they address, these amendments define the relationship of such existing statutes to comprehensive plans and development regulations under the act. Examples are:

(a) RCW 19.27.097 (state building code - evidence of adequate supply of potable water.)

(b) RCW 35.13.005 (annexation of unincorporated areas - prohibited beyond urban growth areas)

(c) RCW 35.58.2795 (municipal corporations - six-year transit plan consistent with GMA comprehensive plans)

(d) RCW 35.77.010 (city streets - six-year comprehensive street program consistent with GMA comprehensive plans)

(e) RCW 35A.14.005 (annexation by code cities - prohibited beyond urban growth areas)

(f) RCW 36.81.121 (county roads - six-year comprehensive road program consistent with GMA comprehensive plans)

(g) RCW 36.94.040 (sewerage, water, drainage systems - incorporation of relevant comprehensive plan provisions into sewer or water general plan)

(h) RCW 56.08.020 (sewer districts - district comprehensive sewer plan consistent with urban growth area restrictions)

(i) RCW 57.16.010 (water districts - district comprehensive water plan consistent with urban growth area restrictions)

(j) RCW 58.17.060 (short plats - written findings about appropriate provisions for infrastructure)

(k) RCW 58.17.110 (subdivisions - written findings about appropriate provisions for infrastructure)

(l) RCW 58.18.440 (land development - authority of GMA planning entities to require relocation assistance)

(m) RCW 86.12.200 (comprehensive flood control management plans - may be incorporated into comprehensive plans under the act)

(2) Approval of the act included the creation of a new chapter (chapter 47.80 RCW) authorizing and assigning duties to regional transportation planning organizations (RTPO's). These organizations were expressly given responsibilities for ensuring the consistency of transportation planning throughout a region containing multiple local governmental jurisdictions.

(3) Approval of the act included the addition of new sections (RCW 82.02.050 through 82.02.090) concerning impact fees on development in counties or cities that plan under the GMA. These sections explicitly authorize and condition the use of such fees as part of the financing of public facility system improvements needed to serve new development.

NEW SECTION

WAC 365-195-755 Voluntary interjurisdictional planning efforts. Needs for regional and interagency planning coordination have in some areas been responded to in the past by innovative voluntary planning efforts, such as the timber, fish and wildlife agreement and the Chelan agreement regional water resource planning process. Such efforts can provide a valuable source of prior analysis and serve as the basis for plan provisions which accomplish interjurisdictional consistency. Counties and cities planning under the GMA should evaluate such work for possible incorporation into their plans and regulations.

NEW SECTION

WAC 365-195-760 Integration of SEPA process with creation and adoption of comprehensive plans and development regulations. (1) The SEPA process is supplementary to other governmental decision-making processes, including the processes involved in creating and adopting comprehensive plans and development regulations under the act. The thoughtful integration of SEPA compliance with the overall effort to implement the act will provide understanding and insight of significant value to the choices growth management requires.

(2) The growth management process is designed to proceed in phases, moving, by and large, from general policy-making to more specific implementation measures. Phased review available under SEPA can be integrated with the growth management process through a strategy which identifies the points in that process where the requirements of the two statutes are connected and seeks to accomplish the requirements of both at those points.

(3) In an integrated approach major emphasis should be placed on the quality of SEPA analysis at the front end of the growth management process - the local legislative phases of plan adoption and regulation adoption. The objective should be to create nonproject impact statements and progressively more narrowly focused supplementary documents which are sufficiently informative that subsequent environmental analysis at the individual project stage will, ordinarily, need to be neither extensive nor time consuming.

(4) While not compromising SEPA's basic aim of ensuring consideration of environmental impacts in advance of development, this approach can serve the goal that project applications be processed in a timely manner.

(5) In the creation of SEPA documents, maximum advantage should be taken of relevant prior environmental analysis through identification and incorporation of statements prepared by other lead agencies in connection with other plans or projects.

(6) Planners are encouraged to consult the *"SEPA/GMA Workbook"* published by the department in January of 1993. The workbook deals in detail with the integration of the two statutory processes.

NEW SECTION

WAC 365-195-765 State agency compliance. (1) RCW 36.70A.103 declares that state agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to the act.

(2) The department construes the provision for state agency compliance to require that each state agency must meet local siting and building requirements when it occupies the position of an applicant proposing development, except where specific legislation explicitly dictates otherwise. Generally this means that the development of state facilities is subject to local approval procedures and substantive provisions, including zoning, density, setbacks, bulk and height restrictions.

(3) RCW 36.70A.210(4) provides that adopted county-wide planning policies shall be adhered to by state agencies. Consistent with other statutory mandates, state programs should be administered in a manner which does not interfere with implementation of the county framework for interjurisdictional consistency.

(4) Overall, the broad sweep of policy contained in the act implies a requirement that all programs at the state level accommodate the outcomes of the growth management process wherever possible. State agencies are rarely concerned solely with the rote application of fixed standards. The exercise of statutory powers, whether in permit functions, grant funding, property acquisition or otherwise, routinely involves such agencies in discretionary decision-making. The discretion they exercise should now take into account the new reality of legislatively mandated local growth management programs.

(5) After local adoption of plans and regulations under the act, state agencies are encouraged to review their existing programs in light of the local plans and regulations. Within relevant legal constraints, this review should lead to redirecting the state's actions in the interests of consistency with the growth management effort.

NEW SECTION

WAC 365-195-770 Compliance by regional agencies and special districts. (1) Regional and special purpose government entities possess statutorily defined powers which include planning, development, regulatory, facility management and taxing functions. Such entities include regional air pollution control authorities, metropolitan municipal corporations, fire protection districts, port districts, public utility districts, school districts, sewer districts, water districts, irrigation districts, flood control districts, diking and drainage districts, park and recreation districts.

(2) Except where any specific enactment may state the contrary, the department interprets the GMA as requiring that regional agencies and special districts comply with the comprehensive plans and development regulations developed under the act.

AMENDATORY SECTION (Amending WSR 92-23-065, filed 11/17/92, effective 12/18/92)

WAC 365-195-800 ((~~Consistency with~~)) Relationship to comprehensive plans. ((~~(Reserved.)~~)) (1) Development regulations under the Growth Management Act are specific controls placed on development or land use activities by a county or city. Such regulations must be consistent with comprehensive plans developed

pursuant to the act and they must implement those comprehensive plans.

"Implement" in this context has a more affirmative meaning than merely "consistent" (See WAC 365-195-210(5).) "Implement" connotes not only a lack of conflict but sufficient scope to carry out fully the goals, policies, standards and directions contained in the comprehensive plan.

(2) The legislature has specifically provided that the designation of interim urban growth areas shall be in the form of development regulations. Such interim designations shall generally precede the adoption of comprehensive plans.

NEW SECTION

WAC 365-195-805 Implementation strategy. Each county or city planning under the act should develop a detailed strategy for implementing its comprehensive plan. The strategy should describe the regulatory and nonregulatory measures (including actions for acquiring and spending money) to be used in order to apply the plan in full. The strategy should identify each of the specific development regulations needed.

(1) Selection. In determining the specific regulations to be adopted, jurisdictions may select from a wide variety of types of controls. The strategy should include consideration of:

(a) The choice of substantive requirements, such as the delineation of use zones; general development limitations concerning lot size, setbacks, bulk, height, density; provisions for environmental protection; urban design guidelines and design review criteria; specific requirements for affordable housing, landscaping, parking; levels of service, concurrency regulations and other measures relating to public facilities.

(b) The means of applying the substantive requirements, such as methods of prior approval through permits, licenses, franchises, or contracts.

(c) The processes to be used in applying the substantive requirements, such as permit application procedures, hearing procedures, approval deadlines, and appeals.

(d) The methods of enforcement, such as inspections, reporting requirements, bonds, permit revocation, civil penalties, and abatement.

(2) Identification. The strategy should include a list of all regulations identified as development regulations for implementing the comprehensive plan. Some of these regulations may already be in existence and consistent with the plan. Others may be in existence, but require amendment. Still others will need to be written.

(3) Adoption schedule. The strategy should include a schedule for the adoption or amendment of the development regulations identified. Individual regulations or amendments may be adopted at different times. However, all of the regulations identified should be adopted by the applicable final deadline for adoption of development regulations.

(4) The implementation strategy for each jurisdiction should be in writing and available to the public. A copy should be provided to the department. Completion of adoption of all regulations identified in the strategy will be construed by the department as completion of the task of adopting development regulations for the purposes of deadlines under the statute.

AMENDATORY SECTION (Amending WSR 92-23-065, filed 11/17/92, effective 12/18/92)

WAC 365-195-810 ((~~Concurrency regulations.~~)) Timing of initial adoption. ((~~(Reserved.)~~)) (1) Except for interim regulations, required development regulations must be enacted either by the deadline for adoption of the comprehensive plan or within six months thereafter, if an extension is obtained. The possibility of a time gap between the adoption of a comprehensive plan and the adoption of development regulations pertains to the time frame after the initial adoption of the comprehensive plan. Subsequent amendments to the plan should not face any delay before being implemented by regulations. After adoption of the initial plan and development regulations, such regulations should at all times be consistent with the comprehensive plan. Whenever amendments to comprehensive plans are adopted, consistent implementing regulations or amendments to existing regulations should be enacted and put into effect concurrently. (See WAC 365-195-865.)

(2) To obtain an extension of the deadline for adopting development regulations, a county or city must notify the department of its need by letter prior to the initial deadline. Six-month extensions will be obtained whenever such letters are timely received, but no extensions will result from requests received after the initial deadline.

NEW SECTION

WAC 365-195-815 Review for compliance. (1) When adopting any development regulation intended, in part, to carry out a comprehensive plan, the proposing jurisdiction should review its terms to ensure that it is consistent with and implements the comprehensive plan and make a finding to that effect.

(2) When the implementation strategy has been completely developed, the proposing jurisdiction should review the total package to ensure that such implementation is consistent with the comprehensive plans of other counties or cities with which it shares common borders or related regional issues.

(3) Planning jurisdictions should consider the use or creation of regional entities (county-wide or broader) to provide an interjurisdictional overview of consistency issues raised by comprehensive plans and development regulations.

AMENDATORY SECTION (Amending WSR 92-23-065, filed 11/17/92, effective 12/18/92)

WAC 365-195-820 ((~~Alternative control mechanisms.~~)) Submissions to state. ((~~(Reserved.)~~)) (1) Development regulations may be submitted to the department and other state agencies for comment individually as they are drafted. Except as set forth in subsection (2) of this section, the statutory requirement to notify the department of the intent to adopt development regulations at least sixty days prior to final adoption will apply each time any implementing regulation or amendment is proposed for adoption.

(2) The department construes the sixty-day notice requirement as inapplicable to interim regulations for natural resource lands and critical areas, and to regulations or amendments which are merely procedural or ministerial.

(3) Counties and cities should provide the department with notice of intent sixty days prior to adopting interim growth areas.

(4) Separate notice should be provided to the department of all preexisting regulations that are to be included in the implementation strategy without change.

NEW SECTION

WAC 365-195-825 Regulations specifically required by the act. (1) Conservation of natural resource lands.

(a) Lands designated as agricultural, forest and mineral lands of long-term commercial significance are collectively referred to as natural resource lands.

(b) "Conservation" in this context is construed to mean measures designed to assure that the natural resource lands will remain available to be used for commercial production of the resources designated.

(c) Classification, designation and designation amendment. The department has adopted minimum guidelines in chapter 365-190 WAC, detailing the process involved in establishing a natural resource lands conservation program. Included are criteria to be considered before any designation change should be approved. (See WAC 365-190-040((2)(g).)

(d) Initial adoption and subsequent review.

(i) The act requires the designation of natural resources lands by all counties and cities. The adoption of development regulations for the conservation of such lands by jurisdictions planning under the act is required to occur prior to the adoption of comprehensive plans.

(ii) Upon the adoption of the comprehensive plans, such designations and regulations must be reviewed and, where necessary altered, to ensure consistency with the plans.

(e) Review upon adoption of other development regulations.

(i) In connection with the adoption of the total package of development regulations implementing the comprehensive plan, each planning jurisdiction must again review the regulations for conserving natural resource lands to ensure consistency.

(ii) If any regulations for conserving natural resource lands are by their terms effective only in the interim before the regulations implementing comprehensive plans are adopted, the subject must be covered in the development regulation package, so that there will be no gap in the effectiveness of a natural resource lands conservation program.

(f) Statutory limitations.

(i) Prior uses. Regulations for the conservation of natural resource lands may not prohibit uses legally existing on any parcel prior to their adoption.

(ii) Adjacent lands. Such regulations shall assure that the use of lands adjacent to designated natural resource lands does not interfere with the continued use, in the accustomed manner and in accordance with the best management practices, of the natural resource lands.

(iii) Plats and permits. Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within three hundred feet, of designated natural resource lands contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.

(g) Relationship to comprehensive plans. The act does not explicitly require that comprehensive plans address the conservation of natural resource lands. However, because the required natural resource lands regulations must be consistent with the comprehensive plans, logic dictates that each comprehensive plan should set forth the underlying policies for the jurisdiction's natural resource lands program. In pursuing the natural resource industries goal of the act, such policies should identify nonregulatory measures for assuring the conservation of the designated lands as well as regulatory approaches. When such policies are incorporated into the plan (either as a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(h) Relationship to other programs. In designing development regulations and nonregulatory programs to conserve designated natural resource lands, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal resource management programs applicable to the same lands. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

(2) Protection of critical areas.

(a) Critical areas include the following areas and ecosystems: Wetlands, areas of critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas and geologically hazardous areas.

(b) "Protection" in this context is construed to mean measures designed to preserve the structure, values and functions of the natural environment or to safeguard the public from hazards to health and safety.

(c) Classification, designation and designation amendment. The department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

(d) Initial enactment and subsequent review.

(i) The act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities. For jurisdictions planning under the act this is required to occur prior to the adoption of comprehensive plans.

(ii) Upon the adoption of the comprehensive plans, such designations and regulations must be reviewed and, where necessary altered, to ensure consistency with the plans.

(e) Review upon adoption of other development regulations.

(i) In connection with the adoption of the total package of development regulations implementing the comprehensive plan, each planning jurisdiction must again review the regulations for protecting critical areas to ensure consistency.

(ii) If any regulations for protecting critical areas are by their terms effective only in the interim before the regulations implementing comprehensive plans are adopted, the subject must be covered in the development regulation package, so that there will be no gap in the effectiveness of a critical area protection program.

(f) Relationship to comprehensive plans. The act does not explicitly require that comprehensive plans address the protection of critical areas. However, because the required critical area regulations must be consistent with the comprehensive plans, logic dictates that each comprehensive plan should set forth the underlying policies for the jurisdiction's critical areas program. In pursuing the environmental protection and open space goals of the act, such policies should identify nonregulatory measures for protecting critical areas as well as regulatory approaches. When such policies are incorporated into the plan (either in a separate element or as a part of the land use element), the consistency of the regulations can be readily assessed.

(g) Relationship to other programs. In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

(3) Interim urban growth area designations.

(a) The adoption of interim urban growth area designations shall be preceded by public notice, public hearing, compliance with SEPA and compliance with RCW 36.70A.110.

(b) The department construes compliance with RCW 36.70A.110 for interim growth areas to require the same consultation and attempted agreement process as is required for the adoption of final urban growth areas. Where an interim urban growth area is adopted without the agreement of any affected city, the county will prepare a written justification.

(4) Subdivisions.

(a) Regulations for subdivision approvals, including approvals of short subdivisions, shall require written findings that "appropriate provisions" have been made for the public health, safety, and general welfare, including open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds.

(b) Counties and cities may add other items related to the public health, safety and general welfare to the specific listing above, such as protection of critical areas, conservation of natural resource lands and affordable housing for all economic segments of the population.

(c) In drafting such regulations, "appropriate provisions" should be defined in a manner consistent with the requirements of other applicable laws and with any level of service standards or planning objectives established by the jurisdiction for the facilities involved.

(d) The definition of "appropriate provisions" could also cover the timing within which the facilities involved should be available for use, requiring, for example, that such timing be consistent with the definition of "concurrency" in this chapter. (See WAC 365-195-210(4).)

(5) Potable water.

(a) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an "adequate water supply" for the intended use of the building. By statute such evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply.

(b) Receipt of one of the statutory forms of evidence may not provide enough information for building departments to determine whether the proposed water supply is, in fact, adequate. Local regulations should be designed to produce enough data to make such a determination, addressing both water quality and water quantity issues.

(c) Planning jurisdictions should give consideration to guidelines promulgated by the departments of ecology and health on what constitutes an "adequate water supply." In addition, Attorney General's Opinion, AGO 1992 No. 17, should be consulted for assistance in determining what substantive standards should be applied.

(d) If the department of ecology has adopted rules on this subject, or any part of it, local regulations should be consistent with those rules.

(e) Counties and cities may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency.

AMENDATORY SECTION (Amending WSR 92-23-065, filed 11/17/92, effective 12/18/92)

WAC 365-195-830 ((~~Impact fees.~~)) Optional authorizations. ((~~(Reserved.)~~)) (1) Relocation assistance.

(a) Any county or city required to plan under the act is authorized to require property owners to provide their portion of reasonable relocation assistance to low-income tenants displaced by certain changes to residential property. The changes include

demolition, substantial rehabilitation (whether due to code enforcement or any other reason), change of use and removal of use restrictions in an assisted-housing development.

(b) The regulations implementing the relocation assistance program shall be governed by the provisions of RCW 59.18.440.

(c) "Low-income tenants" means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.

(d) For purposes of determining eligibility, the department shall annually inform counties and cities of the appropriate dollar limits to use for median income, adjusted for family size, in different areas within the state. In deciding on these limits, the department will refer to the county-by-county family income figures published annually by the federal department of housing and urban development. As soon as the federal figures become available each year, the department will review them and advise counties and cities promptly of the appropriate dollar limits and their effective dates.

(2) New communities.

(a) Any county planning under the act may reserve a portion of its twenty-year population projection for new fully contained communities, located outside of the initially designated urban growth areas.

(b) Proposals to authorize such communities shall be processed pursuant to development regulations which implement the criteria set forth in RCW 36.70A.350.

(3) Master planned resorts.

(a) Any county planning under the act may permit master planned resorts constituting urban growth outside of urban growth areas.

(b) Proposals to authorize such resorts shall be processed pursuant to development regulations which implement policies on the subject in the comprehensive plan. Approval criteria shall conform to the provisions of RCW 36.70A.360.

NEW SECTION

WAC 365-195-835 Concurrency regulations. (1) Each planning jurisdiction should produce a regulation or series of regulations which govern the operation of that jurisdiction's concurrency management system. This regulatory scheme will set forth the procedures and processes to be used to determine whether relevant public facilities have adequate capacity to accommodate a proposed development. In addition, the scheme should identify the responses to be taken when it is determined that capacity is not adequate to accommodate a proposal. Relevant public facilities for these purposes are those to which concurrency applies under the comprehensive plan. Adequate capacity refers to the maintenance of concurrency.

(2) Compliance with applicable environmental requirements, such as ambient air quality standards or water quality standards,

should have been built into the determination of the facility capacities needed to accommodate anticipated growth.

(3) The variations possible in designing a concurrency management system are many. However, such a system could include the following features:

(a) Capacity monitoring -- a process for collecting and maintaining real world data on use for comparison with evolving public facility capacities in order to show at any moment how much of the capacity of public facilities is being used.

(b) Capacity allocation procedures -- a process for determining whether proposed new development can be accommodated within the existing or programmed capacity of public facilities. This can include preassigning amounts of capacity to specific zones, corridors or areas on the basis of planned growth. For any individual development this may involve:

(i) A determination of anticipated total capacity at the time the impacts of development occur.

(ii) Calculation of how much of that capacity will be used by existing developments and other planned developments at the time the impacts of development occur.

(iii) Calculation of the amount of capacity available for the proposed development.

(iv) Calculation of the impact on capacity of the proposed development, minus the effects of any mitigation provided by the applicant. (Standardized smaller developments can be analyzed based on predetermined capacity impact values.)

(v) Comparison of available capacity with project impact.

(c) Provisions for reserving capacity -- a process of prioritizing the allocation of capacity to proposed developments. This might include:

(i) Setting aside a block or blocks of available or anticipated capacity for specified types of development fulfilling an identified public interest.

(ii) Adopting a first-come, first-served system of allocation, dedicating capacity to applications in the order received.

(iii) Adopting a preference system giving certain categories or specified types of development preference over others in the allocation of available capacity.

(d) Provisions specifying the response when there is insufficient available capacity to accommodate development.

(i) In the case of transportation, an ordinance must prohibit development approval if the development causes the level of service of a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan unless improvements or strategies to accommodate the impacts of development are made concurrent with development.

(ii) If the proposed development is consistent with the land use element, relevant levels of service should be reevaluated.

(iii) Other responses could include:

(A) Development of a system of deferrals, approving proposed developments in advance but deferring authority to construct until adequate public facilities become available at the location in question. Such a system should conform to and help to implement the growth phasing schedule contemplated in the land use and capital facilities elements of the plan.

(B) Conditional approval through which the developer agrees to mitigate the impacts.

(C) Denial of the development, subject to resubmission when adequate public facilities are made available.

(e) Form, timing and duration of concurrency approvals. The system should include provisions for how to show that a project has met the concurrency requirement, whether as part of another approval document (e.g., permit, platting decisions, planned unit development) or as a separate certificate of concurrency, possibly a transferable document. This choice, of necessity, involves determining when in the approval process the concurrency issue is evaluated and decided. Approvals, however made, should specify the length of time that a concurrency determination will remain effective, including requirements for development progress necessary to maintain approval.

(f) Provisions for interjurisdictional coordination.

(4) Planning jurisdictions should consider integrating SEPA compliance on the project-specific level with the case-by-case process for concurrency management.

AMENDATORY SECTION (Amending WSR 92-23-065, filed 11/17/92, effective 12/18/92)

WAC 365-195-840 ((~~Method for adjusting regulations when comprehensive plan is amended.~~)) Essential public facilities. ((~~(Reserved.)~~)) (1) Development regulations for identifying and siting essential public facilities shall be consistent with and implement the process for this purpose set forth in the comprehensive plan.

(2) The regulations should list those types of facilities which the planning jurisdiction has determined are essential, pursuant to the definition and the criteria established in the comprehensive plan for identifying such facilities. The designated facilities should include those listed by the state office of financial management and those necessary to list in order to comply with county-wide planning policies. In addition, other facilities needed locally should be listed. These may include facilities which receive funding from the state or other governmental units, but which are not identified on the state list or by virtue of county-wide policies.

(3) Except where county-wide planning policies have otherwise dictated siting choices, provision should be made for the possibility of siting each of the listed essential public facilities somewhere within each jurisdiction's planning area.

(4) For the purposes of making the threshold determination on whether a proposal presents siting difficulties, the regulations should specify a method for publicizing applications for siting essential public facilities and for soliciting initial comment on the site(s) proposed. The regulations should describe how and by whom the threshold decision will be made.

(5) For proposals involving siting difficulties, the regulations should:

(a) Provide requirements for notice to other interested jurisdictions, and for public participation in the siting decision;

(b) Consistent with county-wide planning policies, require an evaluation of feasible alternative sites and of equity in geographical distribution;

(c) When appropriate interlocal agreements have been made, provide for an interjurisdictional process for facilities of a county-wide, regional or state-wide nature;

(d) Call for an evaluation of the extent to which design features or operational conditions can eliminate or reduce unwanted project impacts;

(e) Where appropriate, establish incentives or require amenities for siting in particular areas;

(f) Include in criteria for siting decisions a consideration of the need for the particular facility in light of established level of service standards or planning assumptions.

NEW SECTION

WAC 365-195-845 Permit process. The development regulations of planning jurisdictions should include provisions addressing the general procedures for processing applications for development, designed to promote timeliness, fairness and predictability.

(1) Centralized processing. Consideration should be given to the establishment of a master permit or centralized permit process which would allow an applicant to apply for all needed approvals at once and for the simultaneous processing by the local jurisdiction of all aspects of project approval.

(2) Time limits. Consistent with the requirements of SEPA, consideration should be given to adopting self-imposed permit processing deadlines, so that applicants will be able to plan with greater certainty in most cases.

(3) Fast tracking. Consistent with fairness, consideration should be given to expedited permit procedures for developments which include features which the planning jurisdiction particularly wishes to encourage. An example might be the inclusion of affordable housing in a residential development project.

(4) Vertical integration. In designing permit programs planning entities should review the permit requirements of regional, state and federal agencies on the same subjects and, working with those agencies, attempt to coordinate processing in order to avoid overlapping reviews and unnecessary time delays.

NEW SECTION

WAC 365-195-850 Impact fees. (1) Counties and cities planning under the act are authorized to impose impact fees on development activity as part of the financing for public facilities. However, the financing for system improvements to serve new development must provide a balance between impact fees

and other sources of public funds and cannot rely solely on impact fees.

(2) The decision to use impact fees should be specifically implemented through development regulations. The impact fees:

(a) Shall only be imposed for system improvements that are reasonably related to the new development. "System improvements" (in contrast to "project improvements") are public facilities included in the capital facilities plan and designed to provide service to service areas within the community at large;

(b) Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Shall be used for system improvements that will reasonably benefit the new development.

The implementing regulation should call for a specific finding on all three of the above limitations whenever an impact fee is imposed.

(3) Impact fees may be collected and spent only for the following capital facilities owned or operated by government entities: Public streets and roads; publicly owned parks, open space, and recreation facilities; school facilities; and fire protection facilities in jurisdictions that are not part of a fire district. These facilities must have been addressed in a capital facilities plan element which identifies:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

(4) The local ordinance by which impact fees are imposed shall strictly conform to the provisions of RCW 82.02.060. The department recommends that jurisdictions include the authorized exemption for low-income housing.

NEW SECTION

WAC 365-195-855 Protection of private property. In the drafting of development regulations, consideration should be given to the attorney general's process of evaluation issued pursuant to RCW 36.70A.370, to assure that governmental actions do not result in an unconstitutional taking of private property. Procedures for avoiding takings, such as variances or exemptions, should be built into the overall regulatory scheme.

NEW SECTION

WAC 365-195-860 Housing for persons with handicaps. No county or city planning under the act may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments of 1988 (42 U.S.C. Sec. 3602).

NEW SECTION

WAC 365-195-865 Supplementing, amending and monitoring. (1) New development regulations may be adopted from time to time as the need for supplementing the initial implementation strategy becomes apparent. However, because development regulations must be consistent with the comprehensive plans, substantive amendments to such regulations will frequently need to be accompanied by a comprehensive plan amendment. Since comprehensive plans can be amended only once a year (except in emergencies), consideration of significant changes in the land use management scheme will, by and large, become an annual affair.

(2) Cities and counties should institute an annual review of growth management implementation on a systematic basis. To aid in this process, planning jurisdictions should consider establishing a growth management monitoring program designed to measure and evaluate the progress being made toward accomplishing the act's goals and the provisions of the comprehensive plan. This program should be integrated with provisions for continuous public involvement. (See WAC 365-195-600(2)(b).)