
HOUSE BILL 1925

State of Washington

54th Legislature

1995 Regular Session

By Representatives Cairnes, Hargrove, Lisk, Thompson, Goldsmith, Hymes, Honeyford, D. Schmidt, Koster, Elliot, Chappell, Blanton, Hickel, Hankins, Radcliff, Pelesky, McMahan, Padden, Sheldon, K. Schmidt, Reams, Basich, Mulliken, Carrell, Huff, L. Thomas, Johnson, Silver, McMorris, Clements, Skinner, Backlund, Campbell, Benton, Carlson, Smith, Van Luven, Schoesler and Stevens

Read first time 02/15/95. Referred to Committee on Government Operations.

1 AN ACT Relating to growth management; amending RCW 36.70A.010,
2 36.70A.020, 36.70A.050, 36.70A.060, 36.70A.070, 36.70A.110, 36.70A.130,
3 36.70A.160, 36.70A.210, 36.70A.370, and 76.09.050; reenacting and
4 amending RCW 36.70A.030; adding new sections to chapter 36.70A RCW;
5 creating a new section; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 36.70A.010 and 1990 1st ex.s. c 17 s 1 are each
8 amended to read as follows:

9 The legislature finds that uncoordinated and unplanned growth,
10 together with a lack of common goals expressing the public's interest
11 in the conservation and the wise use of our lands, pose a threat to the
12 environment, sustainable economic development, and the health, safety,
13 and high quality of life enjoyed by residents of this state. The
14 legislature also finds that private property rights should be
15 protected. It is in the public interest that citizens, communities,
16 local governments, and the private sector cooperate and coordinate with
17 one another in comprehensive land use planning. Further, the
18 legislature finds that it is in the public interest that economic

1 development programs be shared with communities experiencing
2 insufficient economic growth.

3 **Sec. 2.** RCW 36.70A.020 and 1990 1st ex.s. c 17 s 2 are each
4 amended to read as follows:

5 The following goals are adopted to guide the development and
6 adoption of comprehensive plans and development regulations of those
7 counties and cities that are required or choose to plan under RCW
8 36.70A.040. The following goals are not listed in order of priority
9 and shall be used exclusively for the purpose of guiding the
10 development of comprehensive plans and development regulations:

11 (1) Urban growth. Encourage development in urban areas where
12 adequate public facilities and services exist or can be provided in an
13 efficient manner.

14 (2) Reduce sprawl. Reduce the inappropriate conversion of
15 undeveloped land (~~((into sprawling, low density development))~~).

16 (3) Transportation. Encourage efficient multimodal transportation
17 systems that are based on regional priorities and coordinated with
18 county and city comprehensive plans.

19 (4) Housing. Encourage the availability of affordable housing to
20 all economic segments of the population of this state, promote a
21 variety of residential densities and housing types, and encourage
22 preservation of existing housing stock.

23 (5) Economic development. Encourage economic development
24 throughout the state that is consistent with adopted comprehensive
25 plans, promote economic opportunity for all citizens of this state,
26 (~~((especially for))~~) including unemployed and (~~((for))~~) disadvantaged
27 persons, and encourage growth in areas experiencing insufficient
28 economic growth(~~(, all within the capacities of the state's natural~~
29 ~~resources, public services, and public facilities))~~).

30 (6) Property rights. Private property shall not be taken for
31 public use without just compensation having been made. The property
32 rights of landowners shall be protected from arbitrary and
33 discriminatory actions.

34 (7) Permits. Applications for both state and local government
35 permits should be processed in a timely and fair manner to ensure
36 predictability. Counties and cities shall issue permits for single-
37 family residential construction within seven business days of
38 application. Counties and cities shall issue permits for multifamily

1 construction within thirty days. Counties and cities shall issue
2 permits for short-plat applications within thirty days and long-
3 subdivision applications within ninety days.

4 (8) Natural resource industries. Maintain (~~and enhance~~) natural
5 resource-based industries, including productive timber, agricultural,
6 and fisheries industries. Encourage the conservation of productive
7 forest lands and productive agricultural lands(~~, and discourage~~
8 ~~incompatible uses~~)).

9 (9) Open space and recreation. Encourage the retention of open
10 space and development of recreational opportunities, conserve fish and
11 wildlife habitat, increase access to natural resource lands and water,
12 and develop parks.

13 (10) Environment. Protect the environment from hazards and
14 nuisances and (~~enhance~~) maintain the state's high quality of life,
15 including air and water quality, and the availability of water.

16 (11) Citizen participation and coordination. Encourage the
17 involvement of citizens in the planning process and ensure coordination
18 between (~~communities~~) property owners and jurisdictions to reconcile
19 conflicts.

20 (12) Public facilities and services. Ensure that those public
21 facilities and services necessary to support development shall be
22 adequate to serve the development at the time the development is
23 available for occupancy (~~and use without decreasing current service~~
24 ~~levels below locally established minimum standards~~)). A city that
25 operates public facilities and services shall serve within its service
26 area if service is technically feasible and in compliance with local
27 regulations.

28 A city that provides water or sewer service outside the corporate
29 boundaries of the city shall not require, as a condition of providing
30 water or sewer service, the property owner who has requested water or
31 sewer service to agree to:

32 (a) Lot sizes different from those required by the jurisdiction
33 with zoning authority over the property; or

34 (b) Other development or design requirements not required by the
35 local government with jurisdiction over the property.

36 (13) Historic preservation. Identify and encourage the
37 preservation of lands, sites, and structures, that have historical or
38 archaeological significance.

1 (14) Equal protection of property owners' rights. Property owners
2 have the prospective right to those existing uses of similar properties
3 adjacent to the property owners.

4 **Sec. 3.** RCW 36.70A.030 and 1994 c 307 s 2 and 1994 c 257 s 5 are
5 each reenacted and amended to read as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

8 (1) "Adopt a comprehensive land use plan" means to enact a new
9 comprehensive land use plan or to update an existing comprehensive land
10 use plan.

11 (2) "Agricultural land" means land primarily devoted to the
12 commercial production of horticultural, viticultural, floricultural,
13 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
14 straw, turf, seed, Christmas trees not subject to the excise tax
15 imposed by RCW 84.33.100 through 84.33.140, finfish in upland
16 hatcheries, or livestock, and that has long-term commercial
17 significance for agricultural production.

18 (3) "City" means any city or town, including a code city.

19 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
20 means a generalized coordinated land use policy statement of the
21 governing body of a county or city that is adopted pursuant to this
22 chapter.

23 (5) "Critical areas" include the following areas and ecosystems:

24 (a) Wetlands, limited to the United States army corps of engineers'
25 definition of wetlands, as now existing or subsequently amended under
26 its authority, under section 401 of the Clean Water Act, 33 U.S.C. Sec.
27 1344; (b) areas with a documented critical (~~recharging~~) recharge
28 effect that is limited to health and sanitation effects on aquifers
29 used for potable water; (c) fish and wildlife habitat conservation
30 areas as limited in chapter 75.20 RCW; (d) frequently flooded areas no
31 larger than areas within one hundred year flood plains under Title 86
32 RCW; and (e) geologically hazardous areas.

33 (6) "Department" means the department of community, trade, and
34 economic development.

35 (7) For purposes of RCW 36.70A.065 and 36.70A.440, "development
36 permit application" means any application for a development proposal
37 for a use that could be permitted under a plan adopted pursuant to this
38 chapter and is consistent with the underlying land use and zoning,

1 including but not limited to building permits, subdivisions, binding
2 site plans, planned unit developments, conditional uses or other
3 applications pertaining to land uses, but shall not include rezones,
4 proposed amendments to comprehensive plans or the adoption or amendment
5 of development regulations.

6 (8) "Development regulations" means any controls placed on
7 development or land use activities by a county or city, including(~~(7~~
8 ~~but not limited to,~~) zoning ordinances, official controls, planned
9 unit development ordinances, subdivision ordinances, and binding site
10 plan ordinances.

11 (9) "Forest land" means land primarily devoted to growing trees for
12 long-term commercial timber production on land that can be economically
13 and practically managed for such production, including Christmas trees
14 subject to the excise tax imposed under RCW 84.33.100 through
15 84.33.140, and that has long-term commercial significance. In
16 determining whether forest land is primarily devoted to growing trees
17 for long-term commercial timber production on land that can be
18 economically and practically managed for such production, the following
19 factors shall be considered: (a) The proximity of the land to urban,
20 suburban, and rural settlements; (b) surrounding parcel size and the
21 compatibility and intensity of adjacent and nearby land uses; (c) long-
22 term local economic conditions that affect the ability to manage for
23 timber production; and (d) the availability of public facilities and
24 services conducive to conversion of forest land to other uses.

25 (10) "Geologically hazardous areas" means areas that because of
26 their susceptibility to erosion, sliding, earthquake, or other
27 geological events, are not suited to the siting of commercial,
28 residential, or industrial development consistent with public health or
29 safety concerns that the county or city has the burden of proving the
30 areas are not suited for development without any cost to the property
31 owner.

32 (11) "Long-term commercial significance" includes the growing
33 capacity, productivity, and soil composition of the land for long-term
34 commercial production, in consideration with the land's proximity to
35 population areas, and the possibility of more intense uses of the land.

36 (12) "Minerals" include gravel, sand, and valuable metallic
37 substances.

38 (13) "Public facilities" include streets, roads, highways,
39 sidewalks, street and road lighting systems, traffic signals, domestic

1 water systems, storm and sanitary sewer systems, parks and recreational
2 facilities, and schools.

3 (14) "Public services" include fire protection and suppression, law
4 enforcement, public health, education, and recreation~~((environmental~~
5 ~~protection, and other governmental services))~~.

6 (15) "Urban growth" refers to growth that makes intensive use of
7 land for the location of buildings, structures, and impermeable
8 surfaces to such a degree as to be incompatible with the primary use of
9 such land for the production of food, other agricultural products, or
10 fiber, or the extraction of mineral resources. When allowed to spread
11 over wide areas, urban growth typically requires urban governmental
12 services. "Characterized by urban growth" refers to land ~~((having))~~
13 that: (a) Has urban growth located on it, or to land located in
14 relationship to an area with urban growth on it ~~((as to be appropriate~~
15 ~~for urban growth))~~; or (b) is so located in relationship to facilities,
16 infrastructure, and services as to make urban growth on the land
17 feasible through public or private extensions of service.

18 (16) "Urban growth areas" means those areas designated by a county
19 pursuant to RCW 36.70A.110.

20 (17) "Urban governmental services" include those governmental
21 services historically and typically delivered by cities, and include
22 storm and sanitary sewer systems, domestic water systems, street
23 cleaning services, fire and police protection services, public transit
24 services, and other public utilities associated with urban areas ~~((and~~
25 ~~normally not associated with nonurban areas))~~.

26 (18) "Wetland" or "wetlands" means areas that are inundated or
27 saturated by surface water or ground water at a frequency and duration
28 sufficient to support, and that under normal circumstances do support,
29 a prevalence of vegetation typically adapted for life in saturated soil
30 conditions. Wetlands generally include swamps, marshes, bogs, and
31 similar areas. Wetlands ~~((do not include))~~ are limited to wetlands
32 under the United States army corps of engineers' definition under
33 section 401 of the Clean Water Act, 33 U.S.C. Sec. 1344, as now
34 existing or hereafter amended. Wetlands do not include those
35 artificial wetlands intentionally created from nonwetland sites,
36 including, but not limited to, irrigation and drainage ditches, grass-
37 lined swales, canals, detention facilities, wastewater treatment
38 facilities, farm ponds, and landscape amenities. However, wetlands may
39 include those artificial wetlands intentionally created from nonwetland

1 areas created to mitigate conversion of wetlands(~~(, if permitted by the~~
2 ~~county or city)~~)).

3 NEW SECTION. **Sec. 4.** The department of ecology shall
4 expeditiously and summarily waive the water quality certification
5 process of the Clean Water Act, 33 U.S.C. Sec. 1341, as now existing or
6 hereafter amended.

7 NEW SECTION. **Sec. 5.** Land developing under this chapter is exempt
8 from RCW 76.09.050.

9 NEW SECTION. **Sec. 6.** Critical areas shall be regulated only for
10 the limited purpose of protecting the public's health and safety.

11 NEW SECTION. **Sec. 7.** Development regulations shall only be
12 adopted for the limited purpose of protecting the public's health and
13 safety.

14 NEW SECTION. **Sec. 8.** Geologically hazardous areas are not
15 precluded from development activities unless the city or county can
16 prove that geologic conditions are not conducive to development.

17 NEW SECTION. **Sec. 9.** Outside an established urban growth area, if
18 a project applicant has an approved water system and an approval for
19 sewer or a septic tank system, the city or county shall approve permits
20 for single-family residences.

21 **Sec. 10.** RCW 36.70A.050 and 1990 1st ex.s. c 17 s 5 are each
22 amended to read as follows:

23 (1) Subject to the definitions provided in RCW 36.70A.030, the
24 department shall adopt guidelines, under chapter 34.05 RCW, no later
25 than September 1, 1990, and shall amend these guidelines to conform to
26 this chapter by December 31, 1995, to guide the classification of: (a)
27 Agricultural lands; (b) forest lands; (c) mineral resource lands; and
28 (d) critical areas. The department shall consult with the department
29 of agriculture regarding guidelines for agricultural lands, the
30 department of natural resources regarding forest lands and mineral
31 resource lands, and the department of ecology regarding critical areas.

1 (2) In carrying out its duties under this section, the department
2 shall consult with interested parties, including but not limited to:
3 (a) Representatives of cities; (b) representatives of counties; (c)
4 representatives of developers; (d) representatives of builders; (e)
5 representatives of owners of agricultural lands, forest lands, and
6 mining lands; (f) representatives of local economic development
7 officials; (g) representatives of environmental organizations; (h)
8 representatives of special districts; (i) representatives of the
9 governor's office and federal and state agencies; and (j)
10 representatives of Indian tribes. In addition to the consultation
11 required under this subsection, the department shall conduct public
12 hearings in the various regions of the state. The department shall
13 consider the public input obtained at such public hearings when
14 adopting the guidelines.

15 (3) The guidelines under subsection (1) of this section shall (~~be~~
16 ~~minimum guidelines that~~) apply to all jurisdictions(~~(, but also shall~~
17 ~~allow for regional differences that exist in Washington state)~~). The
18 intent of these guidelines is to assist counties and cities in
19 designating the classification of agricultural lands, forest lands,
20 mineral resource lands, and critical areas under RCW 36.70A.170.
21 Counties and cities may not designate lands that do not qualify as
22 resource lands or critical areas under the guidelines.

23 (4) The guidelines established by the department under this section
24 regarding classification of forest lands shall not be inconsistent with
25 guidelines adopted by the department of natural resources.

26 **Sec. 11.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended
27 to read as follows:

28 (1) Each county that is required or chooses to plan under RCW
29 36.70A.040, and each city within such county, shall adopt development
30 regulations on or before September 1, 1991, to assure the conservation
31 of agricultural, forest, and mineral resource lands designated under
32 RCW 36.70A.170. Regulations adopted under this subsection may not
33 prohibit uses legally existing on any parcel prior to their adoption
34 and shall remain in effect until the county or city adopts development
35 regulations pursuant to RCW 36.70A.120. (~~Such regulations shall~~
36 ~~assure that the use of lands adjacent to agricultural, forest, or~~
37 ~~mineral resource lands shall not interfere with the continued use, in~~
38 ~~the accustomed manner and in accordance with best management practices,~~

1 of these designated lands for the production of food, agricultural
2 products, or timber, or for the extraction of minerals. Counties and
3 cities shall require that all plats, short plats, development permits,
4 and building permits issued for development activities on, or within
5 three hundred feet of, lands designated as agricultural lands, forest
6 lands, or mineral resource lands, contain a notice that the subject
7 property is within or near designated agricultural lands, forest lands,
8 or mineral resource lands on which a variety of commercial activities
9 may occur that are not compatible with residential development for
10 certain periods of limited duration.))

11 (2) Each county and city shall adopt development regulations that
12 protect critical areas from hazards and health and safety risks that
13 are required to be designated under RCW 36.70A.170. For counties and
14 cities that are required or choose to plan under RCW 36.70A.040, such
15 development regulations shall be adopted on or before September 1,
16 1991. For the remainder of the counties and cities, such development
17 regulations shall be adopted on or before March 1, 1992, but cities and
18 counties shall amend their development regulations to conform with this
19 chapter by December 1, 1995.

20 (3) Such counties and cities shall review these designations and
21 development regulations when adopting their comprehensive plans under
22 RCW 36.70A.040 and implementing development regulations under RCW
23 36.70A.120 ((and may alter such designations and development
24 regulations to insure consistency)).

25 (4) Forest land and agricultural land located within urban growth
26 areas shall not be designated by a county or city as forest land or
27 agricultural land of long-term commercial significance under RCW
28 36.70A.170 ((unless the city or county has enacted a program
29 authorizing transfer or purchase of development rights)).

30 **Sec. 12.** RCW 36.70A.070 and 1990 1st ex.s. c 17 s 7 are each
31 amended to read as follows:

32 The comprehensive plan of a county or city that is required or
33 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
34 and descriptive text covering objectives, principles, and standards
35 used to develop the comprehensive plan. The plan shall be an
36 internally consistent document and all elements shall be consistent
37 with the future land use map. A comprehensive plan shall be adopted
38 and amended with public participation as provided in RCW 36.70A.140.

1 Each comprehensive plan shall include a plan, scheme, or design for
2 each of the following:

3 (1) A land use element designating the proposed general
4 distribution and general location and extent of the uses of land, where
5 appropriate, for agriculture, timber production, housing, commerce,
6 industry, recreation, open spaces, public utilities, public facilities,
7 and other land uses. ~~((The land use element shall include population
8 densities, building intensities, and estimates of future population
9 growth. The land use element shall provide for protection of the
10 quality and quantity of ground water used for public water supplies.))~~
11 ~~Where applicable, the land use element shall review drainage, flooding,
12 and storm water run-off in the area and nearby jurisdictions ((and
13 provide guidance for corrective actions to mitigate or cleanse those
14 discharges that pollute waters of the state, including Puget Sound or
15 waters entering Puget Sound.))~~

16 (2) A housing element recognizing the vitality and character of
17 established residential neighborhoods that: (a) Includes an inventory
18 and analysis of existing and projected housing needs; (b) includes a
19 statement of goals, policies, and objectives for the preservation,
20 improvement, and development of housing; (c) identifies sufficient land
21 for housing~~((, including, but not limited to, government-assisted
22 housing, housing for low income families, manufactured housing,
23 multifamily housing, and group homes and foster care facilities)).~~
24 However, private property regulated for the purpose of utilizing
25 inclusionary zoning shall be prohibited by counties and cities; and (d)
26 makes adequate provisions for existing and projected needs of all
27 economic segments of the community, except that counties and cities
28 cannot condition private project approvals for the purpose of issuing
29 a permit or granting a land-use approval.

30 (3) A capital facilities plan element consisting of: (a) An
31 inventory of existing capital facilities owned by public entities,
32 showing the locations and capacities of the capital facilities; (b) a
33 forecast of the future needs for such capital facilities; (c) the
34 proposed locations and capacities of expanded or new capital
35 facilities; (d) at least a six-year plan that will finance such capital
36 facilities within projected funding capacities and clearly identifies
37 sources of public money for such purposes; and (e) a requirement to
38 reassess the land use element if probable funding falls short of
39 meeting existing needs and to ensure that the land use element, capital

1 facilities plan element, and financing plan within the capital
2 facilities plan element are coordinated and consistent.

3 (4) A utilities element consisting of the general location,
4 proposed location, and capacity of all existing and proposed utilities,
5 including, but not limited to, electrical lines, telecommunication
6 lines, and natural gas lines.

7 (5) Counties shall include a rural element (~~((including lands that~~
8 ~~are not designated for urban growth, agriculture, forest, or mineral~~
9 ~~resources))~~). The rural element shall permit land uses that are
10 compatible with the rural character of such lands and provide for a
11 variety of rural densities. "Compatible with the rural character of
12 such lands" means development of less than five single-family
13 residential units by a property owner.

14 (6) A transportation element that implements, and is consistent
15 with, the land use element. The transportation element shall include
16 the following subelements:

17 (a) Land use assumptions used in estimating travel;

18 (b) Facilities and services needs, including:

19 (i) An inventory of air, water, and land transportation facilities
20 and services, including transit alignments, to define existing capital
21 facilities and travel levels as a basis for future planning;

22 (ii) Level of service standards for all arterials and transit
23 routes to serve as a gauge to judge performance of the system. These
24 standards should be regionally coordinated;

25 (iii) Specific actions and requirements for bringing into
26 compliance any facilities or services that are below an established
27 level of service standard;

28 (iv) Forecasts of traffic for at least ten years based on the
29 adopted land use plan to provide information on the location, timing,
30 and capacity needs of future growth;

31 (v) Identification of system expansion needs and transportation
32 system management needs to meet current and future demands;

33 (c) Finance, including:

34 (i) An analysis of funding capability to judge needs against
35 probable funding resources;

36 (ii) A multiyear financing plan based on the needs identified in
37 the comprehensive plan, the appropriate parts of which shall serve as
38 the basis for the six-year street, road, or transit program required by

1 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
2 35.58.2795 for public transportation systems;

3 (iii) If probable funding falls short of meeting identified needs,
4 a discussion of how additional funding will be raised, or how land use
5 assumptions will be reassessed to ensure that level of service
6 standards will be met;

7 (d) Intergovernmental coordination efforts, including an assessment
8 of the impacts of the transportation plan and land use assumptions on
9 the transportation systems of adjacent jurisdictions;

10 (e) Demand-management strategies.

11 After adoption of the comprehensive plan by jurisdictions required
12 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions
13 must adopt and enforce ordinances (~~((which prohibit development approval
14 if the development causes the level of service on a transportation
15 facility to decline below the standards adopted in the transportation
16 element of the comprehensive plan, unless transportation improvements
17 or strategies to accommodate the impacts of development are made
18 concurrent with the development.— These))~~ that provide strategies
19 ~~((may))~~ that include increased public transportation service, ride
20 sharing programs, demand management, and other transportation systems
21 management strategies. ~~((For the purposes of this subsection (6)
22 "concurrent with the development" shall mean that improvements or
23 strategies are in place at the time of development, or that a financial
24 commitment is in place to complete the improvements or strategies
25 within six years.))~~)

26 The transportation element described in this subsection, and the
27 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for
28 counties, and RCW 35.58.2795 for public transportation systems, must be
29 consistent.

30 **Sec. 13.** RCW 36.70A.110 and 1994 c 249 s 27 are each amended to
31 read as follows:

32 (1) Each county that is required or chooses to plan under RCW
33 36.70A.040 shall designate an urban growth area or areas within which
34 urban growth shall be encouraged (~~((and outside of which growth can
35 occur only if it is not urban in nature))~~). Each city that is located
36 in such a county shall be included within an urban growth area. An
37 urban growth area may include more than a single city. An urban growth
38 area may include territory that is located outside of a city (~~((only if~~

1 ~~such territory already is characterized by urban growth or is adjacent~~
2 ~~to territory already characterized by urban growth))~~ if a county
3 chooses to expand the urban growth boundaries beyond the boundaries of
4 existing cities. However, a county's designated urban growth areas
5 shall be at least large enough to accommodate all projected growth and
6 all growth that actually occurs. Cities and counties shall designate
7 urban growth areas that favor expansive delineation of these areas.

8 (2) ~~((Based upon the population growth management planning~~
9 ~~population projection made for the county by the office of financial~~
10 ~~management, the urban growth areas in the county shall include areas~~
11 ~~and densities sufficient to permit the urban growth that is projected~~
12 ~~to occur in the county for the succeeding twenty year period.))~~ The
13 office of financial management may be a source for which counties base
14 their population forecasts. Counties may add their own calculations or
15 deduct from the office of financial management's forecasts. Each urban
16 growth area shall permit urban densities and shall include greenbelt
17 and open space areas. Within one year of July 1, 1990, each county
18 that as of June 1, 1991, was required or chose to plan under RCW
19 36.70A.040, shall begin consulting with each city located within its
20 boundaries and each city shall propose the location of an urban growth
21 area. Within sixty days of the date the county legislative authority
22 of a county adopts its resolution of intention or of certification by
23 the office of financial management, all other counties that are
24 required or choose to plan under RCW 36.70A.040 shall begin this
25 consultation with each city located within its boundaries. The county
26 shall attempt to reach agreement with each city on the location of an
27 urban growth area within which the city is located. If such an
28 agreement is not reached with each city located within the urban growth
29 area, the county shall justify in writing why it so designated the area
30 an urban growth area. A city may object formally with the department
31 over the designation of the urban growth area within which it is
32 located. Where appropriate, the department shall attempt to resolve
33 the conflicts, including the use of mediation services. This section
34 is intended to establish only a minimum standard for the size of urban
35 growth areas. This section neither limits the discretion of counties
36 to include an ample land supply within urban growth areas nor compels
37 counties to limit or disregard existing property rights.

38 (3)(a) Urban growth should be located ~~((first))~~ in areas already
39 characterized by urban growth that have existing public facility and

1 service capacities to serve such development, and (~~second~~) in areas
2 already characterized by urban growth that will be served by a
3 combination of both existing public facilities and services and any
4 additional needed public facilities and services that are provided by
5 either public or private sources. Further, it is appropriate that
6 urban government services be provided by cities(~~(, and urban government~~
7 ~~services should not be provided in rural areas)~~). This section does
8 not limit the common law duty of a public utility, whether publicly or
9 privately owned, to make service available to all within its franchise
10 area and within areas as to which a public utility has held itself out
11 as a provider of service. "Public utility," as used in this
12 subsection, refers to a private entity or municipal or quasi-municipal
13 corporation that provides electricity, sanitary sewer, storm sewer,
14 water, telephone, cable television, communications services, natural
15 gas, or steam to the public.

16 (b) In addition to (a) of this subsection, a city that provides
17 water or sewer service outside the corporate boundaries of the city
18 shall not require, as a condition of providing water or sewer service,
19 the property owner who has requested water or sewer service to agree
20 to:

21 (i) Lot sizes different from those required by the jurisdiction
22 with zoning authority over the property; or

23 (ii) Other development or design requirements not required by the
24 local government with jurisdiction over the property.

25 (4) On or before October 1, 1993, each county that was initially
26 required to plan under RCW 36.70A.040(1) shall adopt development
27 regulations designating interim urban growth areas under this chapter.
28 Within three years and three months of the date the county legislative
29 authority of a county adopts its resolution of intention or of
30 certification by the office of financial management, all other counties
31 that are required or choose to plan under RCW 36.70A.040 shall adopt
32 development regulations designating interim urban growth areas under
33 this chapter. Adoption of the interim urban growth areas may only
34 occur after public notice; public hearing; and compliance with the
35 state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110.
36 Such action may be appealed to the appropriate growth management
37 hearings board under RCW 36.70A.280. Final urban growth areas shall be
38 adopted at the time of comprehensive plan adoption under this chapter.

1 (5) Each county shall include designations of urban growth areas in
2 its comprehensive plan.

3 NEW SECTION. **Sec. 14.** (1) A county or city that downzones any
4 property, in the course of planning, bears the burden of proving, by
5 clear and convincing evidence that the downzone is justified by
6 reference to the common law standards governing downzones.

7 (2) The standard set forth in subsection (1) of this section
8 applies to a downzone regardless of whether that downzone is quasi-
9 judicial or legislative in nature.

10 (3) A county or city proposing a downzone shall give timely notice
11 of the proceedings to each affected property owner and shall provide
12 each individual property owner with a separate quasi-judicial hearing
13 in accordance with local procedure. Commencement of a downzone
14 proceeding against a property owner must be by written petition,
15 setting forth in full detail the facts, circumstances, and theories
16 upon which the entity's claim is based. The county or city shall not
17 prove any ground for the downzone not specifically pled.

18 (4) A proceeding for a downzone shall not be commenced within five
19 years of the determination of another downzone proceeding relating to
20 the same property.

21 (5) A property owner who prevails in a proceeding under this
22 section shall recover reasonable attorneys' fees, expert witness fees,
23 and costs.

24 **Sec. 15.** RCW 36.70A.130 and 1990 1st ex.s. c 17 s 13 are each
25 amended to read as follows:

26 (1) Each comprehensive land use plan and development regulations
27 shall be subject to continuing evaluation and review by the county or
28 city that adopted them.

29 Any amendment or revision to a comprehensive land use plan shall
30 conform to this chapter, and any change to development regulations
31 shall be consistent with and implement the comprehensive plan.

32 (2) Each county and city shall establish procedures whereby
33 proposed amendments or revisions of the comprehensive plan are
34 considered by the governing body of the county or city no more
35 frequently than once every year. All proposals shall be considered by
36 the governing body concurrently so the cumulative effect of the various
37 proposals can be ascertained. However, a county or city may adopt

1 amendments or revisions to its comprehensive plan that conform with
2 this chapter whenever an emergency exists.

3 (3) Each county that designates urban growth areas under RCW
4 36.70A.110 shall review, at least every (~~ten~~) five years, its
5 designated urban growth area or areas, and the densities permitted
6 within both the incorporated and unincorporated portions of each urban
7 growth area. In conjunction with this review by the county, each city
8 located within an urban growth area shall review the densities
9 permitted within its boundaries, and the extent to which the urban
10 growth occurring within the county has located within each city and the
11 unincorporated portions of the urban growth areas. The county
12 comprehensive plan designating urban growth areas, and the densities
13 permitted in the urban growth areas by the comprehensive plans of the
14 county and each city located within the urban growth areas, shall be
15 revised to accommodate the urban growth projected to occur in the
16 county for the succeeding twenty-year period.

17 **Sec. 16.** RCW 36.70A.160 and 1992 c 227 s 1 are each amended to
18 read as follows:

19 Each county and city that is required or chooses to prepare a
20 comprehensive land use plan under RCW 36.70A.040 shall identify open
21 space corridors within and between urban growth areas. They shall
22 include lands useful for recreation, wildlife habitat, trails, and
23 connection of critical areas as defined in RCW 36.70A.030.
24 Identification of a corridor under this section by a county or city
25 shall not restrict the use or management of lands within the corridor
26 for agricultural or forest purposes. Restrictions on the use or
27 management of such lands for agricultural or forest purposes imposed
28 after identification solely to maintain or enhance the value of such
29 lands as a corridor may occur only if the county or city acquires
30 sufficient interest to prevent development of the lands or to control
31 the resource development of the lands. The requirement for acquisition
32 of sufficient interest does not include those corridors regulated by
33 the interstate commerce commission, under provisions of 16 U.S.C. Sec.
34 1247(d), 16 U.S.C. Sec. 1248, or 43 U.S.C. Sec. 912. (~~Nothing in this~~
35 ~~section shall be interpreted to alter the authority of the state, or a~~
36 ~~county or city, to regulate land use activities.)) Private property
37 shall not be taken for public use without just compensation having been~~

1 made. The property rights of landowners shall be protected from
2 arbitrary and discriminatory actions.

3 The city or county may acquire by donation or purchase the fee
4 simple or lesser interests in these open space corridors using funds
5 authorized by RCW 84.34.230 or other sources.

6 **Sec. 17.** RCW 36.70A.210 and 1994 c 249 s 28 are each amended to
7 read as follows:

8 (1) The legislature recognizes that counties are regional
9 governments within their boundaries, and cities are primary providers
10 of urban governmental services within urban growth areas. For the
11 purposes of this section, a "county-wide planning policy" is a written
12 policy statement or statements used solely for establishing a county-
13 wide framework from which county and city comprehensive plans are
14 developed and adopted pursuant to this chapter. This framework shall
15 ensure that city and county comprehensive plans are consistent as
16 required in RCW 36.70A.100. Nothing in this section shall be construed
17 to alter the land-use powers of cities.

18 (2) The legislative authority of a county that plans under RCW
19 36.70A.040 shall adopt a county-wide planning policy in cooperation
20 with the cities located in whole or in part within the county as
21 follows:

22 (a) No later than sixty calendar days from July 16, 1991, the
23 legislative authority of each county that as of June 1, 1991, was
24 required or chose to plan under RCW 36.70A.040 shall convene a meeting
25 with representatives of each city located within the county for the
26 purpose of establishing a collaborative process that will provide a
27 framework for the adoption of a county-wide planning policy. In other
28 counties that are required or choose to plan under RCW 36.70A.040, this
29 meeting shall be convened no later than sixty days after the date the
30 county adopts its resolution of intention or was certified by the
31 office of financial management.

32 (b) The process and framework for adoption of a county-wide
33 planning policy specified in (a) of this subsection shall determine the
34 manner in which the county and the cities agree to all procedures and
35 provisions including but not limited to desired planning policies,
36 deadlines, ratification of final agreements and demonstration thereof,
37 and financing, if any, of all activities associated therewith.

1 (c) If a county fails for any reason to convene a meeting with
2 representatives of cities as required in (a) of this subsection, the
3 governor may immediately impose any appropriate sanction or sanctions
4 on the county from those specified under RCW 36.70A.340.

5 (d) If there is no agreement by October 1, 1991, in a county that
6 was required or chose to plan under RCW 36.70A.040 as of June 1, 1991,
7 or if there is no agreement within one hundred twenty days of the date
8 the county adopted its resolution of intention or was certified by the
9 office of financial management in any other county that is required or
10 chooses to plan under RCW 36.70A.040, the governor shall first inquire
11 of the jurisdictions as to the reason or reasons for failure to reach
12 an agreement. If the governor deems it appropriate, the governor may
13 immediately request the assistance of the department of community,
14 trade, and economic development to mediate any disputes that preclude
15 agreement. If mediation is unsuccessful in resolving all disputes that
16 will lead to agreement, the governor may impose appropriate sanctions
17 from those specified under RCW 36.70A.340 on the county, city, or
18 cities for failure to reach an agreement as provided in this section.
19 The governor shall specify the reason or reasons for the imposition of
20 any sanction.

21 (e) No later than July 1, 1992, the legislative authority of each
22 county that was required or chose to plan under RCW 36.70A.040 as of
23 June 1, 1991, or no later than fourteen months after the date the
24 county adopted its resolution of intention or was certified by the
25 office of financial management the county legislative authority of any
26 other county that is required or chooses to plan under RCW 36.70A.040,
27 shall adopt a county-wide planning policy according to the process
28 provided under this section and that is consistent with the agreement
29 pursuant to (b) of this subsection, and after holding a public hearing
30 or hearings on the proposed county-wide planning policy.

31 (3) A county-wide planning policy shall at a minimum, address the
32 following:

33 (a) Policies to implement RCW 36.70A.110;

34 (b) Policies for promotion of contiguous and orderly development
35 and provision of urban services to such development;

36 (c) Policies for siting public capital facilities of a county-wide
37 or state-wide nature;

38 (d) Policies for county-wide transportation facilities and
39 strategies;

1 (e) Policies that consider the need for affordable housing, such as
2 housing for all economic segments of the population (~~and parameters~~
3 ~~for its distribution~~);

4 (f) Policies for joint county and city planning within urban growth
5 areas;

6 (g) Policies for county-wide economic development and employment;
7 and

8 (h) An analysis of the fiscal impact.

9 (4) Federal agencies and Indian tribes may participate in and
10 cooperate with the county-wide planning policy adoption process.
11 Adopted county-wide planning policies shall be adhered to by state
12 agencies.

13 (5) Failure to adopt a county-wide planning policy that meets the
14 requirements of this section may result in the imposition of a sanction
15 or sanctions on a county or city within the county, as specified in RCW
16 36.70A.340. In imposing a sanction or sanctions, the governor shall
17 specify the reasons for failure to adopt a county-wide planning policy
18 in order that any imposed sanction or sanctions are fairly and
19 equitably related to the failure to adopt a county-wide planning
20 policy.

21 (6) Cities and the governor may appeal an adopted county-wide
22 planning policy to the growth management hearings board within sixty
23 days of the adoption of the county-wide planning policy.

24 (7) Multicounty planning policies shall be adopted by two or more
25 counties, each with a population of four hundred fifty thousand or
26 more, with contiguous urban areas and may be adopted by other counties,
27 according to the process established under this section or other
28 processes agreed to among the counties and cities within the affected
29 counties throughout the multicounty region.

30 **Sec. 18.** RCW 36.70A.370 and 1991 sp.s. c 32 s 18 are each amended
31 to read as follows:

32 (1) The state attorney general shall establish by October 1, 1991,
33 an orderly, consistent process, including a checklist if appropriate,
34 that better enables state agencies and local governments to evaluate
35 proposed regulatory or administrative actions to assure that such
36 actions do not result in an unconstitutional taking of private
37 property. It is not the purpose of this section to (~~expand or~~)
38 reduce the scope of private property protections provided in the state

1 and federal Constitutions. The attorney general shall review and
2 update the process at least on an annual basis to maintain consistency
3 with changes in case law.

4 (2) Local governments that are required or choose to plan under RCW
5 36.70A.040 and state agencies shall utilize the process established by
6 subsection (1) of this section to assure that proposed regulatory or
7 administrative actions do not result in an unconstitutional taking of
8 private property.

9 (3) The attorney general, in consultation with the Washington state
10 bar association, shall develop a continuing education course to
11 implement this section.

12 ~~((4) The process used by government agencies shall be protected by
13 attorney client privilege. Nothing in this section grants a private
14 party the right to seek judicial relief requiring compliance with the
15 provisions of this section.))~~

16 NEW SECTION. **Sec. 19.** It is necessary that the procedures
17 established in this chapter ensure that all applicable permit
18 processes, approvals, and reviews are processed concurrently, rather
19 than consecutively. The lead environmental agency or counties and
20 cities shall establish by rule or ordinance an expedited appeals
21 process by which an applicant may appeal any failure by any permit
22 agency, county, or city to take timely action on the issuance or denial
23 of a permit or land-use approval or subdivision of land in accordance
24 with the time limits established under this chapter. If the hearing
25 examiner finds that the time limits under appeal have been violated
26 without good cause, the examiner shall establish a date certain by
27 which the permit agency shall act on the permit application and provide
28 for the full reimbursement of any filing or permit processing fees paid
29 by the applicant to the local government or agency for the permit
30 application under appeal.

31 **Sec. 20.** RCW 76.09.050 and 1994 c 264 s 49 are each amended to
32 read as follows:

33 (1) The board shall establish by rule which forest practices shall
34 be included within each of the following classes:

35 Class I: Minimal or specific forest practices that have no direct
36 potential for damaging a public resource that may be conducted without
37 submitting an application or a notification;

1 Class II: Forest practices which have a less than ordinary
2 potential for damaging a public resource that may be conducted without
3 submitting an application and may begin five calendar days, or such
4 lesser time as the department may determine, after written notification
5 by the operator, in the manner, content, and form as prescribed by the
6 department, is received by the department. However, the work may not
7 begin until all forest practice fees required under RCW 76.09.065 have
8 been received by the department. Class II shall not include forest
9 practices:

10 (a) On lands platted after January 1, 1960, or being converted to
11 another use;

12 (b) Which require approvals under the provisions of the hydraulics
13 act, RCW 75.20.100;

14 (c) Within "shorelines of the state" as defined in RCW 90.58.030;
15 or

16 (d) Excluded from Class II by the board;

17 Class III: Forest practices other than those contained in Class I,
18 II, or IV. A Class III application must be approved or disapproved by
19 the department within thirty calendar days from the date the department
20 receives the application. However, the applicant may not begin work on
21 that forest practice until all forest practice fees required under RCW
22 76.09.065 have been received by the department;

23 Class IV: Forest practices other than those contained in Class I
24 or II: (a) On lands platted after January 1, 1960, (b) on lands being
25 converted to another use, (c) on lands which, pursuant to RCW 76.09.070
26 as now or hereafter amended, are not to be reforested because of the
27 likelihood of future conversion to urban development, and/or (d) which
28 have a potential for a substantial impact on the environment and
29 therefore require an evaluation by the department as to whether or not
30 a detailed statement must be prepared pursuant to the state
31 environmental policy act, chapter 43.21C RCW. Such evaluation shall be
32 made within ten days from the date the department receives the
33 application: PROVIDED, That nothing herein shall be construed to
34 prevent any local or regional governmental entity from determining that
35 a detailed statement must be prepared for an action pursuant to a Class
36 IV forest practice taken by that governmental entity concerning the
37 land on which forest practices will be conducted. A Class IV
38 application must be approved or disapproved by the department within
39 thirty calendar days from the date the department receives the

1 application, unless the department determines that a detailed statement
2 must be made, in which case the application must be approved or
3 disapproved by the department within sixty calendar days from the date
4 the department receives the application, unless the commissioner of
5 public lands, through the promulgation of a formal order, determines
6 that the process cannot be completed within such period. However, the
7 applicant may not begin work on that forest practice until all forest
8 practice fees required under RCW 76.09.065 have been received by the
9 department.

10 Forest practices under Classes I, II, and III are exempt from the
11 requirements for preparation of a detailed statement under the state
12 environmental policy act.

13 (2) No Class II, Class III, or Class IV forest practice shall be
14 commenced or continued after January 1, 1975, unless the department has
15 received a notification with regard to a Class II forest practice or
16 approved an application with regard to a Class III or Class IV forest
17 practice containing all information required by RCW 76.09.060 as now or
18 hereafter amended: PROVIDED, That any person commencing a forest
19 practice during 1974 may continue such forest practice until April 1,
20 1975, if such person has submitted an application to the department
21 prior to January 1, 1975: PROVIDED, FURTHER, That in the event forest
22 practices regulations necessary for the scheduled implementation of
23 this chapter and RCW 90.48.420 have not been adopted in time to meet
24 such schedules, the department shall have the authority to regulate
25 forest practices and approve applications on such terms and conditions
26 consistent with this chapter and RCW 90.48.420 and the purposes and
27 policies of RCW 76.09.010 until applicable forest practices regulations
28 are in effect.

29 (3) If a notification or application is delivered in person to the
30 department by the operator or the operator's agent, the department
31 shall immediately provide a dated receipt thereof. In all other cases,
32 the department shall immediately mail a dated receipt to the operator.

33 (4) Forest practices shall be conducted in accordance with the
34 forest practices regulations, orders and directives as authorized by
35 this chapter or the forest practices regulations, and the terms and
36 conditions of any approved applications.

37 (5) The department of natural resources shall notify the applicant
38 in writing of either its approval of the application or its disapproval
39 of the application and the specific manner in which the application

1 fails to comply with the provisions of this section or with the forest
2 practices regulations. Except as provided otherwise in this section,
3 if the department fails to either approve or disapprove an application
4 or any portion thereof within the applicable time limit, the
5 application shall be deemed approved and the operation may be
6 commenced: PROVIDED, That this provision shall not apply to
7 applications which are neither approved nor disapproved pursuant to the
8 provisions of subsection (7) of this section: PROVIDED, FURTHER, That
9 if seasonal field conditions prevent the department from being able to
10 properly evaluate the application, the department may issue an approval
11 conditional upon further review within sixty days: PROVIDED, FURTHER,
12 That the department shall have until April 1, 1975, to approve or
13 disapprove an application involving forest practices allowed to
14 continue to April 1, 1975, under the provisions of subsection (2) of
15 this section. Upon receipt of any notification or any satisfactorily
16 completed application the department shall in any event no later than
17 two business days after such receipt transmit a copy to the departments
18 of ecology and fish and wildlife, and to the county, city, or town in
19 whose jurisdiction the forest practice is to be commenced. Any
20 comments by such agencies shall be directed to the department of
21 natural resources.

22 (6) If the county, city, or town believes that an application is
23 inconsistent with this chapter, the forest practices regulations, or
24 any local authority consistent with RCW 76.09.240 as now or hereafter
25 amended, it may so notify the department and the applicant, specifying
26 its objections.

27 (7) The department shall not approve portions of applications to
28 which a county, city, or town objects if:

29 (a) The department receives written notice from the county, city,
30 or town of such objections within fourteen business days from the time
31 of transmittal of the application to the county, city, or town, or one
32 day before the department acts on the application, whichever is later;
33 and

34 (b) The objections relate to lands either:

35 (i) Platted after January 1, 1960; or

36 (ii) Being converted to another use.

37 The department shall either disapprove those portions of such
38 application or appeal the county, city, or town objections to the
39 appeals board. If the objections related to subparagraphs (b) (i) and

1 (ii) of this subsection are based on local authority consistent with
2 RCW 76.09.240 as now or hereafter amended, the department shall
3 disapprove the application until such time as the county, city, or town
4 consents to its approval or such disapproval is reversed on appeal.
5 The applicant shall be a party to all department appeals of county,
6 city, or town objections. Unless the county, city, or town either
7 consents or has waived its rights under this subsection, the department
8 shall not approve portions of an application affecting such lands until
9 the minimum time for county, city, or town objections has expired.

10 (8) In addition to any rights under the above paragraph, the
11 county, city, or town may appeal any department approval of an
12 application with respect to any lands within its jurisdiction. The
13 appeals board may suspend the department's approval in whole or in part
14 pending such appeal where there exists potential for immediate and
15 material damage to a public resource.

16 (9) Appeals under this section shall be made to the appeals board
17 in the manner and time provided in RCW 76.09.220(8). In such appeals
18 there shall be no presumption of correctness of either the county,
19 city, or town or the department position.

20 (10) The department shall, within four business days notify the
21 county, city, or town of all notifications, approvals, and disapprovals
22 of an application affecting lands within the county, city, or town,
23 except to the extent the county, city, or town has waived its right to
24 such notice.

25 (11) A county, city, or town may waive in whole or in part its
26 rights under this section, and may withdraw or modify any such waiver,
27 at any time by written notice to the department.

28 (12) Land developing under Title 36 RCW is exempt from this
29 section.

30 NEW SECTION. Sec. 21. Sections 4 through 9, 14, and 19 of this
31 act are each added to chapter 36.70A RCW.

32 NEW SECTION. Sec. 22. If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 23.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect immediately.

5 NEW SECTION. **Sec. 24.** This act is remedial in nature and applies
6 retroactively to July 1, 1990.

--- END ---