
ENGROSSED SUBSTITUTE HOUSE BILL 1660

State of Washington

67th Legislature

2022 Regular Session

By House Local Government (originally sponsored by Representatives Shewmake, Ryu, Fitzgibbon, Ramel, Bateman, Gregerson, Goodman, Macri, Peterson, Simmons, Bergquist, Tharinger, Kloba, Pollet, and Ormsby)

READ FIRST TIME 01/25/22.

1 AN ACT Relating to accessory dwelling units; amending RCW
2 36.70A.070, 36.70A.697, and 36.70A.698; adding a new section to
3 chapter 64.38 RCW; adding a new section to chapter 64.90 RCW; adding
4 a new section to chapter 36.70A RCW; adding a new section to chapter
5 64.34 RCW; and adding a new section to chapter 64.32 RCW.

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

7 **Sec. 1.** RCW 36.70A.070 and 2021 c 254 s 2 are each amended to
8 read as follows:

9 The comprehensive plan of a county or city that is required or
10 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
11 and descriptive text covering objectives, principles, and standards
12 used to develop the comprehensive plan. The plan shall be an
13 internally consistent document and all elements shall be consistent
14 with the future land use map. A comprehensive plan shall be adopted
15 and amended with public participation as provided in RCW 36.70A.140.
16 Each comprehensive plan shall include a plan, scheme, or design for
17 each of the following:

18 (1) A land use element designating the proposed general
19 distribution and general location and extent of the uses of land,
20 where appropriate, for agriculture, timber production, housing,
21 commerce, industry, recreation, open spaces, general aviation

1 airports, public utilities, public facilities, and other land uses.
2 The land use element shall include population densities, building
3 intensities, and estimates of future population growth. The land use
4 element shall provide for protection of the quality and quantity of
5 groundwater used for public water supplies. Wherever possible, the
6 land use element should consider utilizing urban planning approaches
7 that promote physical activity. Where applicable, the land use
8 element shall review drainage, flooding, and stormwater runoff in the
9 area and nearby jurisdictions and provide guidance for corrective
10 actions to mitigate or cleanse those discharges that pollute waters
11 of the state, including Puget Sound or waters entering Puget Sound.

12 (2) A housing element ensuring the vitality and character of
13 established residential neighborhoods that:

14 (a) Includes an inventory and analysis of existing and projected
15 housing needs that identifies the number of housing units necessary
16 to manage projected growth, as provided by the department of
17 commerce, including:

18 (i) Units for moderate, low, very low, and extremely low-income
19 households; and

20 (ii) Emergency housing, emergency shelters, and permanent
21 supportive housing;

22 (b) Includes a statement of goals, policies, objectives, and
23 mandatory provisions for the preservation, improvement, and
24 development of housing, including single-family residences, and
25 within an urban growth area boundary, moderate density housing
26 options including ~~(+)~~, but not limited to, duplexes, triplexes,
27 and townhomes;

28 (c) Identifies sufficient capacity of land for housing including,
29 but not limited to, government-assisted housing, housing for
30 moderate, low, very low, and extremely low-income households,
31 manufactured housing, multifamily housing, group homes, foster care
32 facilities, emergency housing, emergency shelters, permanent
33 supportive housing, and within an urban growth area boundary,
34 consideration of duplexes, triplexes, and townhomes;

35 (d) Makes adequate provisions for existing and projected needs of
36 all economic segments of the community, including:

37 (i) Incorporating consideration for low, very low, extremely low,
38 and moderate-income households;

1 (ii) Documenting programs and actions needed to achieve housing
2 availability including gaps in local funding, barriers such as
3 development regulations, and other limitations;

4 (iii) Consideration of housing locations in relation to
5 employment location; and

6 (iv) Consideration (~~of the role~~) and utilization of accessory
7 dwelling units in meeting housing needs in compliance with RCW
8 36.70A.698;

9 (e) Identifies local policies and regulations that result in
10 racially disparate impacts, displacement, and exclusion in housing,
11 including:

12 (i) Zoning that may have a discriminatory effect;

13 (ii) Disinvestment; and

14 (iii) Infrastructure availability;

15 (f) Identifies and implements policies and regulations to address
16 and begin to undo racially disparate impacts, displacement, and
17 exclusion in housing caused by local policies, plans, and actions;

18 (g) Identifies areas that may be at higher risk of displacement
19 from market forces that occur with changes to zoning development
20 regulations and capital investments; and

21 (h) Establishes antidisplacement policies, with consideration
22 given to the preservation of historical and cultural communities as
23 well as investments in low, very low, extremely low, and moderate-
24 income housing; equitable development initiatives; inclusionary
25 zoning; community planning requirements; tenant protections; land
26 disposition policies; and consideration of land that may be used for
27 affordable housing.

28 In counties and cities subject to the review and evaluation
29 requirements of RCW 36.70A.215, any revision to the housing element
30 shall include consideration of prior review and evaluation reports
31 and any reasonable measures identified. The housing element should
32 link jurisdictional goals with overall county goals to ensure that
33 the housing element goals are met.

34 (3) A capital facilities plan element consisting of: (a) An
35 inventory of existing capital facilities owned by public entities,
36 showing the locations and capacities of the capital facilities; (b) a
37 forecast of the future needs for such capital facilities; (c) the
38 proposed locations and capacities of expanded or new capital
39 facilities; (d) at least a six-year plan that will finance such
40 capital facilities within projected funding capacities and clearly

1 identifies sources of public money for such purposes; and (e) a
2 requirement to reassess the land use element if probable funding
3 falls short of meeting existing needs and to ensure that the land use
4 element, capital facilities plan element, and financing plan within
5 the capital facilities plan element are coordinated and consistent.
6 Park and recreation facilities shall be included in the capital
7 facilities plan element.

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

12 (5) Rural element. Counties shall include a rural element
13 including lands that are not designated for urban growth,
14 agriculture, forest, or mineral resources. The following provisions
15 shall apply to the rural element:

16 (a) Growth management act goals and local circumstances. Because
17 circumstances vary from county to county, in establishing patterns of
18 rural densities and uses, a county may consider local circumstances,
19 but shall develop a written record explaining how the rural element
20 harmonizes the planning goals in RCW 36.70A.020 and meets the
21 requirements of this chapter.

22 (b) Rural development. The rural element shall permit rural
23 development, forestry, and agriculture in rural areas. The rural
24 element shall provide for a variety of rural densities, uses,
25 essential public facilities, and rural governmental services needed
26 to serve the permitted densities and uses. To achieve a variety of
27 rural densities and uses, counties may provide for clustering,
28 density transfer, design guidelines, conservation easements, and
29 other innovative techniques that will accommodate appropriate rural
30 economic advancement, densities, and uses that are not characterized
31 by urban growth and that are consistent with rural character.

32 (c) Measures governing rural development. The rural element shall
33 include measures that apply to rural development and protect the
34 rural character of the area, as established by the county, by:

- 35 (i) Containing or otherwise controlling rural development;
36 (ii) Assuring visual compatibility of rural development with the
37 surrounding rural area;
38 (iii) Reducing the inappropriate conversion of undeveloped land
39 into sprawling, low-density development in the rural area;

1 (iv) Protecting critical areas, as provided in RCW 36.70A.060,
2 and surface water and groundwater resources; and

3 (v) Protecting against conflicts with the use of agricultural,
4 forest, and mineral resource lands designated under RCW 36.70A.170.

5 (d) Limited areas of more intensive rural development. Subject to
6 the requirements of this subsection and except as otherwise
7 specifically provided in this subsection (5)(d), the rural element
8 may allow for limited areas of more intensive rural development,
9 including necessary public facilities and public services to serve
10 the limited area as follows:

11 (i) Rural development consisting of the infill, development, or
12 redevelopment of existing commercial, industrial, residential, or
13 mixed-use areas, whether characterized as shoreline development,
14 villages, hamlets, rural activity centers, or crossroads
15 developments.

16 (A) A commercial, industrial, residential, shoreline, or mixed-
17 use area are subject to the requirements of (d)(iv) of this
18 subsection, but are not subject to the requirements of (c)(ii) and
19 (iii) of this subsection.

20 (B) Any development or redevelopment other than an industrial
21 area or an industrial use within a mixed-use area or an industrial
22 area under this subsection (5)(d)(i) must be principally designed to
23 serve the existing and projected rural population.

24 (C) Any development or redevelopment in terms of building size,
25 scale, use, or intensity shall be consistent with the character of
26 the existing areas. Development and redevelopment may include changes
27 in use from vacant land or a previously existing use so long as the
28 new use conforms to the requirements of this subsection (5);

29 (ii) The intensification of development on lots containing, or
30 new development of, small-scale recreational or tourist uses,
31 including commercial facilities to serve those recreational or
32 tourist uses, that rely on a rural location and setting, but that do
33 not include new residential development. A small-scale recreation or
34 tourist use is not required to be principally designed to serve the
35 existing and projected rural population. Public services and public
36 facilities shall be limited to those necessary to serve the
37 recreation or tourist use and shall be provided in a manner that does
38 not permit low-density sprawl;

39 (iii) The intensification of development on lots containing
40 isolated nonresidential uses or new development of isolated cottage

1 industries and isolated small-scale businesses that are not
2 principally designed to serve the existing and projected rural
3 population and nonresidential uses, but do provide job opportunities
4 for rural residents. Rural counties may allow the expansion of small-
5 scale businesses as long as those small-scale businesses conform with
6 the rural character of the area as defined by the local government
7 according to RCW 36.70A.030(23). Rural counties may also allow new
8 small-scale businesses to utilize a site previously occupied by an
9 existing business as long as the new small-scale business conforms to
10 the rural character of the area as defined by the local government
11 according to RCW 36.70A.030(23). Public services and public
12 facilities shall be limited to those necessary to serve the isolated
13 nonresidential use and shall be provided in a manner that does not
14 permit low-density sprawl;

15 (iv) A county shall adopt measures to minimize and contain the
16 existing areas or uses of more intensive rural development, as
17 appropriate, authorized under this subsection. Lands included in such
18 existing areas or uses shall not extend beyond the logical outer
19 boundary of the existing area or use, thereby allowing a new pattern
20 of low-density sprawl. Existing areas are those that are clearly
21 identifiable and contained and where there is a logical boundary
22 delineated predominately by the built environment, but that may also
23 include undeveloped lands if limited as provided in this subsection.
24 The county shall establish the logical outer boundary of an area of
25 more intensive rural development. In establishing the logical outer
26 boundary, the county shall address (A) the need to preserve the
27 character of existing natural neighborhoods and communities, (B)
28 physical boundaries, such as bodies of water, streets and highways,
29 and land forms and contours, (C) the prevention of abnormally
30 irregular boundaries, and (D) the ability to provide public
31 facilities and public services in a manner that does not permit low-
32 density sprawl;

33 (v) For purposes of (d) of this subsection, an existing area or
34 existing use is one that was in existence:

35 (A) On July 1, 1990, in a county that was initially required to
36 plan under all of the provisions of this chapter;

37 (B) On the date the county adopted a resolution under RCW
38 36.70A.040(2), in a county that is planning under all of the
39 provisions of this chapter under RCW 36.70A.040(2); or

1 (C) On the date the office of financial management certifies the
2 county's population as provided in RCW 36.70A.040(5), in a county
3 that is planning under all of the provisions of this chapter pursuant
4 to RCW 36.70A.040(5).

5 (e) Exception. This subsection shall not be interpreted to permit
6 in the rural area a major industrial development or a master planned
7 resort unless otherwise specifically permitted under RCW 36.70A.360
8 and 36.70A.365.

9 (6) A transportation element that implements, and is consistent
10 with, the land use element.

11 (a) The transportation element shall include the following
12 subelements:

13 (i) Land use assumptions used in estimating travel;

14 (ii) Estimated traffic impacts to state-owned transportation
15 facilities resulting from land use assumptions to assist the
16 department of transportation in monitoring the performance of state
17 facilities, to plan improvements for the facilities, and to assess
18 the impact of land-use decisions on state-owned transportation
19 facilities;

20 (iii) Facilities and services needs, including:

21 (A) An inventory of air, water, and ground transportation
22 facilities and services, including transit alignments and general
23 aviation airport facilities, to define existing capital facilities
24 and travel levels as a basis for future planning. This inventory must
25 include state-owned transportation facilities within the city or
26 county's jurisdictional boundaries;

27 (B) Level of service standards for all locally owned arterials
28 and transit routes to serve as a gauge to judge performance of the
29 system. These standards should be regionally coordinated;

30 (C) For state-owned transportation facilities, level of service
31 standards for highways, as prescribed in chapters 47.06 and 47.80
32 RCW, to gauge the performance of the system. The purposes of
33 reflecting level of service standards for state highways in the local
34 comprehensive plan are to monitor the performance of the system, to
35 evaluate improvement strategies, and to facilitate coordination
36 between the county's or city's six-year street, road, or transit
37 program and the office of financial management's ten-year investment
38 program. The concurrency requirements of (b) of this subsection do
39 not apply to transportation facilities and services of statewide
40 significance except for counties consisting of islands whose only

1 connection to the mainland are state highways or ferry routes. In
2 these island counties, state highways and ferry route capacity must
3 be a factor in meeting the concurrency requirements in (b) of this
4 subsection;

5 (D) Specific actions and requirements for bringing into
6 compliance locally owned transportation facilities or services that
7 are below an established level of service standard;

8 (E) Forecasts of traffic for at least (~~ten~~) 10 years based on
9 the adopted land use plan to provide information on the location,
10 timing, and capacity needs of future growth;

11 (F) Identification of state and local system needs to meet
12 current and future demands. Identified needs on state-owned
13 transportation facilities must be consistent with the statewide
14 multimodal transportation plan required under chapter 47.06 RCW;

15 (iv) Finance, including:

16 (A) An analysis of funding capability to judge needs against
17 probable funding resources;

18 (B) A multiyear financing plan based on the needs identified in
19 the comprehensive plan, the appropriate parts of which shall serve as
20 the basis for the six-year street, road, or transit program required
21 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
22 35.58.2795 for public transportation systems. The multiyear financing
23 plan should be coordinated with the (~~ten-year~~) 10-year investment
24 program developed by the office of financial management as required
25 by RCW 47.05.030;

26 (C) If probable funding falls short of meeting identified needs,
27 a discussion of how additional funding will be raised, or how land
28 use assumptions will be reassessed to ensure that level of service
29 standards will be met;

30 (v) Intergovernmental coordination efforts, including an
31 assessment of the impacts of the transportation plan and land use
32 assumptions on the transportation systems of adjacent jurisdictions;

33 (vi) Demand-management strategies;

34 (vii) Pedestrian and bicycle component to include collaborative
35 efforts to identify and designate planned improvements for pedestrian
36 and bicycle facilities and corridors that address and encourage
37 enhanced community access and promote healthy lifestyles.

38 (b) After adoption of the comprehensive plan by jurisdictions
39 required to plan or who choose to plan under RCW 36.70A.040, local
40 jurisdictions must adopt and enforce ordinances which prohibit

1 development approval if the development causes the level of service
2 on a locally owned transportation facility to decline below the
3 standards adopted in the transportation element of the comprehensive
4 plan, unless transportation improvements or strategies to accommodate
5 the impacts of development are made concurrent with the development.
6 These strategies may include increased public transportation service,
7 ride-sharing programs, demand management, and other transportation
8 systems management strategies. For the purposes of this subsection
9 (6), "concurrent with the development" means that improvements or
10 strategies are in place at the time of development, or that a
11 financial commitment is in place to complete the improvements or
12 strategies within six years. If the collection of impact fees is
13 delayed under RCW 82.02.050(3), the six-year period required by this
14 subsection (6)(b) must begin after full payment of all impact fees is
15 due to the county or city.

16 (c) The transportation element described in this subsection (6),
17 the six-year plans required by RCW 35.77.010 for cities, RCW
18 36.81.121 for counties, and RCW 35.58.2795 for public transportation
19 systems, and the ten-year investment program required by RCW
20 47.05.030 for the state, must be consistent.

21 (7) An economic development element establishing local goals,
22 policies, objectives, and provisions for economic growth and vitality
23 and a high quality of life. A city that has chosen to be a
24 residential community is exempt from the economic development element
25 requirement of this subsection.

26 (8) A park and recreation element that implements, and is
27 consistent with, the capital facilities plan element as it relates to
28 park and recreation facilities. The element shall include: (a)
29 Estimates of park and recreation demand for at least a (~~ten-year~~)
30 10-year period; (b) an evaluation of facilities and service needs;
31 and (c) an evaluation of intergovernmental coordination opportunities
32 to provide regional approaches for meeting park and recreational
33 demand.

34 (9) It is the intent that new or amended elements required after
35 January 1, 2002, be adopted concurrent with the scheduled update
36 provided in RCW 36.70A.130. Requirements to incorporate any such new
37 or amended elements shall be null and void until funds sufficient to
38 cover applicable local government costs are appropriated and
39 distributed by the state at least two years before local government
40 must update comprehensive plans as required in RCW 36.70A.130.

1 **Sec. 2.** RCW 36.70A.697 and 2020 c 217 s 3 are each amended to
2 read as follows:

3 (1) Cities and counties must adopt or amend by ordinance, and
4 incorporate into their development regulations, zoning regulations,
5 and other official controls the requirements of RCW 36.70A.698 to
6 take effect by the time of the city's or county's next comprehensive
7 plan update after July 1, 2021.

8 (2) Beginning ~~((July 1, 2021))~~ after the deadline in subsection
9 (1) of this section, the requirements of RCW 36.70A.698:

10 (a) Apply and take effect in any city or county that has not
11 adopted or amended ordinances, regulations, or other official
12 controls as required under this section; and

13 (b) Supersede, preempt, and invalidate any local development
14 regulations that conflict with RCW 36.70A.698.

15 **Sec. 3.** RCW 36.70A.698 and 2020 c 217 s 4 are each amended to
16 read as follows:

17 ~~((Except as provided in subsection[s] (2) and (3) of this~~
18 ~~section, through ordinances, development regulations, zoning~~
19 ~~regulations, and other official controls as required under RCW~~
20 ~~36.70A.697, cities)) Cities and counties may not ~~((require))~~ prohibit
21 the construction of accessory dwelling units within urban growth
22 areas.~~

23 (2) When regulating accessory dwelling units, cities and counties
24 may not:

25 (a) Impose a maximum floor area limit on the size of an accessory
26 dwelling unit of less than:

27 (i) Eight hundred fifty square feet for an accessory dwelling
28 unit on a lot with a total square footage of less than 4,500 square
29 feet; or

30 (ii) One thousand three hundred fifty square feet combined
31 between attached and detached accessory dwelling units on a lot with
32 a total square footage of more than 4,500 square feet, except that an
33 attached accessory dwelling unit may be limited to half of the square
34 footage of the principal unit and a county or city may require that
35 public health, safety, building code, and environmental permitting
36 requirements that would be applicable to the principal unit are met
37 prior to the construction of the accessory dwelling unit;

38 (b) Impose any impact fees on the construction or development of
39 an accessory dwelling unit that are greater than 50 percent of the

1 impact fees that would be imposed on a similarly sized principal
2 unit;

3 (c) Impose a limit on accessory dwelling units of fewer than one
4 attached and one detached accessory dwelling unit on a lot zoned for
5 residential use with a total square footage of more than 4,500 square
6 feet, unless the lot is otherwise zoned to allow at least three
7 dwelling units;

8 (d) Impose any prohibition of the sale or other conveyance of a
9 condominium unit independently of a principal unit that is based
10 solely on the grounds that the condominium unit was originally built
11 as an accessory dwelling unit, provided that the condominium unit is
12 served by utilities that are independent of the principal unit;

13 (e) Impose any owner occupancy requirements on any housing or
14 dwelling unit on a lot containing an accessory dwelling unit. A city
15 or county may retain an owner occupancy requirement if:

16 (i) An accessory dwelling unit on the lot is offered or used for
17 short-term rental as defined in RCW 36.70A.696; or

18 (ii) The owner of the accessory dwelling unit accepts an offer
19 from the city or county for the reduction or waiver of the costs or
20 fees that would have normally been imposed on the construction of the
21 accessory dwelling unit. In order to utilize this provision, a city
22 or county must have a general program offering the waiver or
23 reduction of fees and costs associated with accessory dwelling unit
24 construction, with specific additional waiver provisions for units
25 offered at or below 80 percent of the area median income;

26 (f) Require the provision of off-street parking for accessory
27 dwelling units within one-quarter mile of a major transit stop.

28 ~~((2) A city may require the provision of off-street parking for~~
29 ~~an accessory dwelling unit located within one-quarter mile of a major~~
30 ~~transit stop if the city has determined that the accessory dwelling~~
31 ~~unit is in an area with a lack of access to street parking capacity,~~
32 ~~physical space impediments, or other reasons supported by evidence~~
33 ~~that would make on-street parking infeasible for the accessory~~
34 ~~dwelling unit.~~

35 ~~(3) A city that has adopted or substantively amended accessory~~
36 ~~dwelling unit regulations within the four years previous to June 11,~~
37 ~~2020, is not subject to the requirements of this section.))~~

38 (3) Cities and counties may apply generally applicable
39 development regulations to the construction of accessory dwelling
40 units.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.38
2 RCW to read as follows:

3 (1) Governing documents created after the effective date of this
4 section and applicable to an association located within an urban
5 growth area may not actively or effectively prohibit the
6 construction, development, or use on a lot of an accessory dwelling
7 unit.

8 (2) For the purposes of this section, "urban growth area" has the
9 same meaning as in RCW 36.70A.030.

10 (3) A city or county issuing a permit for the construction of an
11 accessory dwelling unit may not be held civilly liable on the basis
12 that the construction of the accessory dwelling unit would violate
13 governing documents that were created after the effective date of
14 this section and that are contrary to subsection (1) of this section.

15 NEW SECTION. **Sec. 5.** A new section is added to chapter 64.90
16 RCW to read as follows:

17 (1) Neither a declaration nor a governing document created after
18 the effective date of this section and applicable to a common
19 interest community located inside an urban growth area may actively
20 or effectively prohibit the construction, development, or use on a
21 lot of an accessory dwelling unit.

22 (2) For the purposes of this section, "urban growth area" has the
23 same meaning as in RCW 36.70A.030.

24 (3) A city or county issuing a permit for the construction of an
25 accessory dwelling unit may not be held civilly liable on the basis
26 that the construction of the accessory dwelling unit would violate
27 declarations or governing documents that were created after the
28 effective date of this section and that are contrary to subsection
29 (1) of this section.

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 36.70A
31 RCW to read as follows:

32 (1) No restrictive covenant or deed restriction created after the
33 effective date of this section and applicable to a property located
34 within an urban growth area may prohibit the construction,
35 development, or use on a lot of an accessory dwelling unit.

36 (2) For the purposes of this section, "urban growth area" has the
37 same meaning as in RCW 36.70A.030.

1 (3) A city or county issuing a permit for the construction of an
2 accessory dwelling unit may not be held civilly liable on the basis
3 that the construction of the accessory dwelling unit would violate a
4 restrictive covenant or deed restriction that was created after the
5 effective date of this section and that is contrary to subsection (1)
6 of this section.

7 NEW SECTION. **Sec. 7.** A new section is added to chapter 64.34
8 RCW to read as follows:

9 (1) A declaration created after the effective date of this
10 section and applicable to an association located within an urban
11 growth area may not actively or effectively prohibit the
12 construction, development, or use of an accessory dwelling unit.

13 (2) For the purposes of this section, "urban growth area" has the
14 same meaning as in RCW 36.70A.030.

15 (3) A city or county issuing a permit for the construction of an
16 accessory dwelling unit may not be held civilly liable on the basis
17 that the construction of the accessory dwelling unit would violate
18 governing documents that were created after the effective date of
19 this section and that are contrary to subsection (1) of this section.

20 NEW SECTION. **Sec. 8.** A new section is added to chapter 64.32
21 RCW to read as follows:

22 (1) A declaration created after the effective date of this
23 section and applicable to an association of apartment owners located
24 within an urban growth area may not actively or effectively prohibit
25 the construction, development, or use of an accessory dwelling unit.

26 (2) For the purposes of this section, "urban growth area" has the
27 same meaning as in RCW 36.70A.030.

28 (3) A city or county issuing a permit for the construction of an
29 accessory dwelling unit may not be held civilly liable on the basis
30 that the construction of the accessory dwelling unit would violate
31 governing documents that were created after the effective date of
32 this section and that are contrary to subsection (1) of this section.

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