

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

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

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

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

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

(c) Availability and adequacy of public facilities:

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

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

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

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

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

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

[Statutory Authority: RCW 36.70B.040. WSR 01-13-039, § 365-197-070, filed 6/13/01, effective 7/14/01.]