COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 DEC -4 PM 2:40

No. 91475-3

No. 70796-5-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

WHATCOM COUNTY,

Appellant,

v.

ERIC HIRST, LAURA LEIGH BRAKKE, WENDY HARRIS, DAVID STALHEIM, FUTUREWISE, AND WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD,

Respondents.

APPELLANT / CROSS-RESPONDENT WHATCOM COUNTY'S ANSWER TO AMICUS CURIAE BRIEF OF THE CENTER FOR ENVIRONMENTAL LAW & POLICY

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ORIGINAL

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I. INTRODUCTION

Whatcom County files this Answer to the Amicus Curiae Brief of the Center for Environmental Law & Policy ("CELP"). CELP's arguments are without merit.

CELP's entire argument, like that of the Hirst Petitioners, stems from the false premise that the County's regulations do not require an evaluation of the legal availability of water. Contrary to that characterization, the question before this Court is not whether the County's regulations evaluate the legal availability of water, but how the County evaluates legal availability. The County's regulations, which are incorporated into the rural element of its comprehensive plan, work in concert with the Department of Ecology ("Ecology") and rely on Ecology's interpretation and implementation of the relevant instream flow rule. This cooperative approach is entirely consistent with the Supreme Court's decision in *Kittitas County* because the County's regulations ensure that the County exercises its land use authority in a manner that is consistent with Ecology's interpretation and implementation of the Water Code.[1]

By contrast, CELP (like the Hirst Petitioners) advocates a novel interpretation of the Growth Management Act ("GMA") that would require the County to interpret and implement the Water Code in a manner

[1] We use the term "Water Code" to refer to the various statutes governing water resources, including the surface water code, Chapter 90.03 RCW, the groundwater code, Chapter 90.44 RCW, the Water Resources Act, Chapter 90.54 RCW, and statutes governing water rights registration and relinquishment, Chapter 90.14 RCW.

that is independent of and inconsistent with that of Ecology. CELP and the Hirst Petitioners' approach would shift the primary responsibility for managing water resources from Ecology, the agency with primary authority over water resource management, to local governments throughout the state. CELP, like the Hirst Petitioners in their reply brief, argues that the GMA's "rural character" provisions were intended to drastically transform the state's approach to water resource management by requiring local governments to make independent decisions regarding the legal availability of water for subdivision, short plat, and building permit proposals – and to override Ecology's water availability decisions in cases of disagreement. If adopted, CELP's interpretation would create uncertainty in water resource management, with conflicting interpretations at the state and local levels and no mechanism for resolving such conflicts other than case-by-case litigation.

The Court should reject CELP's interpretation of the GMA's rural character provisions. As explained below, CELP's interpretation is inconsistent with all applicable authorities cited by the parties, including: the Supreme Court's *Kittitas County* decision, which described the need to exercise land use authority in manner that is cooperative with Ecology's water resource management; fundamental rules of statutory construction; and the legislative history surrounding the "rural character" provisions.

Fundamentally, CELP contests Ecology's interpretation of the Nooksack Rule. At times, CELP's brief reads like a response to Ecology's Amicus Brief in this case. Indeed, while CELP makes several conclusory

statements about the County's regulations that are incorporated into its rural element, CELP's brief does not include any meaningful discussion of or even citation to the regulations themselves. CELP's dispute with Ecology's interpretation of the Water Code is not properly before this Court. The question before this Court is whether the County's cooperative approach complies with the GMA. Neither CELP nor the Hirst Petitioners should be allowed to use the GMA and the County's rural element to seek a precedential interpretation of the Water Code that is different from Ecology's. Indeed, CELP's focus on Ecology and its interpretation of the Water Code underscores the reason why the County should be allowed to rely on Ecology and work in concert with Ecology's legal interpretations. In any event, as explained below and in Ecology's amicus brief, CELP's interpretation of the Nooksack Rule is simply incorrect. It is inconsistent with Ecology's longstanding interpretations and decisions and with Supreme Court decisions addressing fundamental water law principles.

II. ARGUMENT

A. CELP's Interpretation of the GMA's "Rural Character" Provisions Is Not Supported by Applicable Authority.

The key GMA provision at issue in this case is in RCW 36.70A.070(5)(c)(iv), which requires the County to adopt "measures that apply to rural development and protect the rural character of the area, as established by the county, by . . . [p]rotecting . . . surface water and ground water resources." CELP interprets this language, when read together with the GMA's water availability requirements for subdivisions, short plats,

and building permits,[2] as requiring local governments to independently interpret the Water Code even if that interpretation is inconsistent with Ecology's determinations. That interpretation is not supported by controlling case law, well-established rules of statutory construction, or the GMA's legislative history.

1. CELP's interpretation is inconsistent with the cooperative approach described in *Kittitas County*.

As explained in the County's briefing, *Kittitas County* requires counties to adopt rural measures that are cooperative and consistent with Ecology's water resource management decisions.[3] *Kittitas County* affirmed that "Ecology is the primary administrator of chapter 90.44 RCW" and that "Ecology maintains its role, as provided by statute, and ought to assist counties in their land use planning to adequately protect water resources."[4] The Supreme Court held that local governments have some authority to regulate water resources, but emphasized that Chapter 90.44 RCW allows only "consistent local regulation" – that is, local land use regulation that is consistent with Ecology's management of water resources.[5]

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[2] RCW 19.27.097; RCW 58.17.060; RCW 58.17.110; WAC 365-196-745(1)(a), (l), (m).

[3] *See* Brief of Appellant Whatcom County at 14-16 (citing *Kittitas Cnty. et al. v. Eastern Washington Growth Management Hearings Board, et al.*, 172 Wn.2d 144, 175-81, 256 P.3d 1193 (2011)).

[4] *Kittitas Cnty.*, 172 Wn.2d at 180.

[5] *Id.*, 172 Wn.2d at 178 ("Nothing in the text of chapter 90.44 RCW expressly preempts consistent local regulation."). As noted in the Brief of Amici Curiae Washington Realtors® *et al.*, the cooperative approach described in *Kittitas County* harmonizes with GMA regulations promulgated by the Washington Department of Commerce, which state that local planning actions related to potable water "should be consistent with" Ecology's water resource rules. *See* Realtors® *et al.* Brief at 17-19 (citing WAC 365-196-825(3);

Ignoring this language in *Kittitas County*, CELP suggests that *Kittitas County* should be interpreted to mean that local governments are directly and independently responsible for interpreting the Water Code and other water resource regulations when making water availability determinations, even if the local government's legal interpretation of the Water Code is ultimately inconsistent with that of Ecology.[6] Nothing in *Kittitas County* supports this proposition. *Kittitas County* held that local governments "must regulate to some extent to assure that land use is not inconsistent with available water resources," but it did not hold that local governments must regulate to the maximum possible extent, even beyond the limits of the County's authority and in a manner inconsistent with Ecology.[7] Indeed, as confirmed in *Kittitas County*, the "extent" of the County's ability to regulate is limited by Ecology's authority under Chapter 90.44 and other laws.[8]

As discussed in the Brief of Amici Curiae Washington Realtors® *et al.*,[9] CELP's interpretation is contrary to multiple provisions of

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WAC 365-196-700(1); WAC 365-196-735).

[6] *See* Amicus Curiae Brief of CELP at 12 (asserting that Chapter 90.44 RCW "is not directed solely to the Department of Ecology") and that "local government administration of GMA water adequacy requirements must be consistent with" RCW 90.54.020(9); *see id.* at 8 ("The purposes of the Nooksack rule help define the scope of Whatcom County's duties to protect water resources under the GMA.").

[7] *Kittitas Cnty.*, 172 Wn.2d at 178

[8] *Id.*

[9] *See* Realtors® *et al.* Brief at 3-6 (citing RCW 90.22.010; RCW 90.54.040; RCW 43.21A.020; RCW 90.03.247).

Washington's Water Code, which grant Ecology exclusive authority over water allocation and management actions, including the adoption of instream flows rules. In particular, RCW 90.03.247 expressly provides as follows:

> No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to RCW 77.55.100 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section.

Contrary to this clear provision, CELP's position would require Whatcom County and other local governments to independently evaluate Ecology's instream flow rules and to establish *de facto* instream flow restrictions in cases of disagreement with Ecology. CELP, like the Petitioners, confuses the question of whether the County is responsible for adopting measures to protect water resources (which the County does not dispute) with the question of how the County must fulfill that obligation.[10] Contrary to CELP's suggestion, the mere fact that the GMA requires local governments to protect rural character by including measures to protect water resources does not mean that the Legislature intended to authorize local governments to step into Ecology's shoes in order to fulfill that

[10] *See* Amicus Curiae Brief of CELP at 5, 7, 12.

GMA obligation. In fact, *Kittitas County* clarified that the County may not exercise Ecology's exclusive authority, and must instead adopt an approach that is "consistent" with Ecology's approach.

In short, *Kittitas County* confirmed that the GMA requires local land use regulation that is "consistent" with Ecology's management of water resources. The GMA does not require independent local regulation of water resources that contradicts Ecology's interpretation and implementation of the Water Code. Indeed, the independent and contradictory approach to local regulation sought by CELP and the Hirst Petitioners is prohibited by the Water Code. CELP's desired result is unsupported by *Kittitas County*.

2. <u>CELP's interpretation is inconsistent with rules of statutory construction.</u>

CELP's interpretation of the GMA is inconsistent with several specific and general rules of statutory construction. First, CELP's interpretation would violate the rule that "the GMA 'is not to be liberally construed.'"[11] The Supreme Court has explained that this rule is appropriate because the GMA "was spawned by controversy, not consensus."[12] As discussed in Section II.A.1 above, CELP's reading of the GMA is clearly a liberal one, and one that disregards the readily apparent lack of consensus surrounding the "rural character" provisions at issue in this case (which is evidenced by the Governor decision to veto the

[11] *Kittitas Cnty.*, 172 Wn.2d at 155 (citing *Thurston Cnty. v. W. Washington Growth Mgmt. Hearings Bd.*, 164 Wn. 2d 329, 342, 190 P.3d 38, 44 (2008)).

[12] *Thurston County*, 164 Wn.2d at 342.

statement of intent regarding the rural element passed by the Legislature). CELP's interpretation also fails to harmonize related provisions of the GMA, the Water Code, and other related authorities.[13] Its interpretation gives no consideration to sequential drafts of the GMA or other legislative history surrounding the "rural character" provisions.[14] Finally, CELP's interpretation would lead to absurd results, including the creation of unnecessary conflict and duplication between Ecology's authority to adopt and administer instream flow rules for particular basins and the obligations of local governments to protect water availability during subdivision, short plat, and building permit processes.[15] It would unreasonably burden local planning department staff members who lack the resources and expertise to make independent interpretations of the complex web of laws, regulations, and court decisions that govern water resources. It would expose local governments to potential liability for making decisions that are inconsistent with Ecology's regulations and interpretations.[16] The Legislature did not intend such absurd results when it adopted the GMA's "rural character" provisions.

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[13] *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 43 P.3d 4 (2002) (plain meaning "is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question"). *See* Sections II.A.2, *supra*, II.B.2, *infra*.

[14] *Lewis v. Dep't of Licensing*, 157 Wn.2d 446, 470, 139 P.3d 1078 (2006). See Section II.A.1, *supra*.

[15] *State v. Keller*, 143 Wn.2d 267, 277, 19 P.3d 1030, 1036 (2001).

[16] *See* Brief of Appellant Whatcom County at 24-25.

3. CELP's interpretation is inconsistent with the legislative history of the "rural character" provisions.

The GMA's "rural character" provisions were adopted in 1997 as part of a larger package of GMA amendments. *See* E.S.B. 6094, Laws of 1997, ch. 429, attached as **Appendix A.**[17] The majority of E.S.B. 6094's provisions affecting rural development originated from the Governor's Land Use Study Commission, which published its final report in January 1997.[18]

The central GMA provision at issue in this case is found in Section 7 of E.S.B. 6094, which added the requirement to adopt "Measures governing rural development."[19] CELP suggests that this language requires local governments to independently interpret the Water Code in a manner contrary to Ecology. Nothing in the legislative history surrounding E.S.B. 6094, including the bill itself and the final report issued by the Governor's Land Use Study Commission, support this reading.[20]

If the Legislature had intended the E.S.B. 6094's "rural character" provisions to result in the striking transformation of water resource

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[17] The Court may take judicial notice of such legislative materials. *Tobin v. Dep't of Labor & Indus.*, 145 Wn. App. 607, 616, 187 P.3d 780, 784 (2008), *aff'd*, 169 Wn. 2d 396, 239 P.3d 544 (2010).

[18] *See* E.S.B. 6094.

[19] *See id.*, Section 7.

[20] The Land Use Study Commission's final report is available at: http://www.commerce.wa.gov/Documents/GMS-Land-Use-Study-Commission-Report-1998.pdf. *See also* Jared B. Black, The Land Use Study Commission and the 1997 Amendments to Washington State's Growth Management Act, 22 Harv. Envtl. L. Rev. 559 (1998).

management suggested by CELP, it would have done so expressly. As explained in the Brief of Amici Curiae Washington Realtors® *et al.*,[21] the Legislature considered but ultimately declined to include language in the original GMA legislation that would have required Ecology to subject all new groundwater uses, including uses exempt under RCW 90.44.050, to a permit review process similar to the four-part test in RCW 90.03.290. *See* E.S.H.B. 2929, 51st Leg., Reg. Sess. (Wash. 1990).[22] This result, which the Legislature rejected, is precisely what CELP seeks to find in E.S.B. 6094's "rural character" provisions, except that CELP's end goal is even more drastic: CELP wants to hold local governments responsible for such a review process, and to authorize (and sometimes require) local governments to override Ecology's water availability decisions. Nothing in the language of the GMA or its history supports such an interpretation.

B. CELP's Collateral Attack on Ecology's Interpretation of the Nooksack Rule Is Impermissible and Incorrect.

1. CELP's collateral attack on Ecology's interpretation of the Nooksack Rule is impermissible.

Like the Hirst Petitioners, CELP's critique of the County's rural element relies on a collateral attack on Ecology's interpretation of the Nooksack Rule. CELP's brief barely mentions the substance of Whatcom

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[21] *See* Brief of Amici Curiae Washington Realtors®, Building Industry Association of Washington, and Washington State Farm Bureau (the "Realtors® *et al.* Brief") at 16-17.

[22] Notably, the original GMA legislation requiring local governments to evaluate evidence of potable water supply for building permits also included a provision authorizing Ecology to adopt rules to implement the provisions of that section. *See* RCW 19.27.097(3).

County's rural measures, focusing instead on Ecology's interpretation of the Nooksack Rule and related authorities.[23] CELP's attack on the merits of Ecology's interpretation of the Nookasck Rule is not properly before the Court in this GMA appeal. As explained in Section II.A above, Whatcom County has satisfied the GMA's "rural character" requirements by adopting regulations that require consistency with Ecology's approach. It is not the County's burden in this GMA proceeding to defend the Nooksack Rule or Ecology's interpretation of that rule, and the Court need not resolve CELP's collateral attack on Ecology's position.[24] Notwithstanding CELP's prediction that Ecology would not amend the Nooksack Rule if presented with a request,[25] CELP and the Hirst Petitioners have other potential avenues to seek relief from the rule, including rulemaking proceedings before Ecology and possibly other forums. The County is not obligated to assist CELP in selecting a forum for seeking relief from the Nooksack Rule, but in any event, this GMA appeal is not the appropriate forum.

2. CELP's interpretation of the Nooksack Rule is inconsistent with the Supreme Court's other decisions addressing water law.

Even if the merits of Ecology's interpretation of its rule were properly before this Court, CELP's interpretation of the Nooksack Rule is incorrect. CELP's reading of the rule is inconsistent with several other

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[23] *See* Amicus Curiae Brief of CELP at 2-20.

[24] *See* RCW 36.70A.280. *See also* Brief of Appellant Whatcom County at 28-29.

[25] *See* Amicus Curiae Brief of CELP at 18-19.

Supreme Court decisions addressing fundamental water law principles. Contrary to CELP's "straw man" argument, the County and Ecology clearly do not believe they are "free to ignore" the Supreme Court's recent decisions.[26] Rather, the County and Ecology simply disagree with CELP's interpretations of Supreme Court precedent.

Most fundamentally, CELP's interpretation, which advocates for a uniform reading of all instream flow rules, ignores the holding in *Postema v. Pollution Control Hearings Bd.*, 142 Wash. 2d 68, 87, 11 P.3d 726, 738 (2000). CELP strains to argue that the Nooksack Rule (and all other instream flow rules) should be interpreted to apply to permit-exempt wells – "not because of any language in the Nooksack rule per se," but because of the generic purpose of Ecology's instream flow rules and "well-established principles of water law."[27] *Postema* flatly rejected this notion, declining to search for a "uniform meaning to rules that simply are not the same."[28] Instead, consistent with Ecology's interpretations in this case, the Court concluded that differences in the rules result in different regulatory outcomes.[29]

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[26] *See id.*, at 2, 9 (suggesting that the County and Ecology believe "Ecology's unofficial interpretation would trump post-adoption decisional law").

[27] *See* Amicus Curiae Brief of CELP at 7-8.

[28] *Postema*, 142 Wn.2d at 84 ("Ultimately, we are unconvinced by the parties' arguments urging their respective versions of a consistent interpretation applying to all WRIAs...While there is some appeal to the idea that all of the rules should mean the same thing therefor, we too decline to search for a uniform meaning to rules that simply are not the same.")

[29] CELP's reliance on *Swinomish Indian Tribal Community v. Ecology*, 178 Wn.2d 571, 311 P.3d 6 (2013) is also misplaced. *See* Amicus Curiae Brief of CELP at 14 (citing *Swinomish* for the proposition that "the rules of priority apply to limit permit-exempt groundwater uses that deplete flow in surface waters that are protected by instream flow

CELP's interpretation is also unsupported by *Campbell & Gwinn.* CELP relies on *Campbell & Gwinn* for its assertion that the County is required to adopt regulations that "properly assess water availability" for projects involving exempt wells. While *Campbell & Gwinn* held that exempt uses are subject to the basic principle of prior appropriation, it did not suggest that Ecology or any other agency was required to complete an impairment analysis prior to the initiation of an exempt use. On the contrary, the Court recognized that, "where the exemption in RCW 90.44.050 applies, Ecology does not engage in the usual review of a permit application under RCW 90.03.290, including review addressing impairment of existing rights and public interest review." *Campbell & Gwinn*, 146 Wn.2d at 16. *Campbell & Gwinn* is unhelpful to CELP's position.[30]

In sum, CELP's interpretation of the Nooksack Rule need not be considered by this Court, but if it is, it should be rejected as inconsistent with the plain language of the rule, with Ecology's interpretations of the

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rules"). *Swinomish* involved a challenge to Ecology's amendment to the instream flow for the Skagit basin (the "Skagit Rule"). Unlike the Nooksack Rule, the Skagit Rule expressly governed permit exempt-withdrawals, in addition to permits and certificates. Under *Postema*, the Nooksack Rule and the Skagit Rule have different meanings.

[30] CELP cites no authority for its suggestion that Ecology's interpretation of the Nooksack Rule is not entitled to deference because it has not been adopted as a "policy statement" or an "interpretive statement." *See* Amicus Curiae Brief of CELP at 19-20. Moreover, CELP's suggestion is contradicted by well-established precedent. *See, e.g., Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn. 2d 568, 593, 90 P.3d 659, 672 (2004) (holding that Ecology's interpretation of water resources "is entitled to great weight," without regard to whether the interpretation had been formally adopted).

rule (which are entitled to deference),[31] and with relevant Supreme Court decisions addressing water law.

III. CONCLUSION

For these reasons, the Court should reject CELP's arguments and reverse the Board's conclusions regarding water availability.

Respectfully submitted this 4th day of December, 2014.

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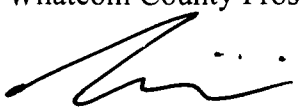

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Attorney for Petitioner
per Email authorization

[31] CELP's position is similarly unsupported by the Attorney General Opinions cited in its brief, which simply do not state what CELP would like them to say. *See* Amicus Curiae Brief of CELP at 14 (citing AGO 2009 No. 6 at 11); *id.* at 16-17 (citing AGO 1992 No. 17). Indeed, AGO 1992 No. 17 directly supports the County's position in this appeal. That opinion, like *Kittitas County*, described a cooperative approach under which local governments must exercise their authority consistently with Ecology's rules:

> [I]n determining whether a water supply is adequate, therefore, a local building department must consider both the quantity and the quality of the water. RCW 19.27.097(3) authorizes the Department of Ecology to adopt rules to implement the provisions of that section. If the Department of Ecology exercises this authority, then local building departments will make their determinations in accordance with the standards set in those rules.

Appendix A

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6094

Chapter 429, Laws of 1997

(partial veto)

55th Legislature
1997 Regular Session

GROWTH MANAGEMENT--MODIFICATIONS

EFFECTIVE DATE: 7/27/97 - Except sections 29 and 30 which become effective 5/9/97

Passed by the Senate April 27, 1997
YEAS 30 NAYS 18

BRAD OWEN

President of the Senate

Passed by the House April 27, 1997
YEAS 62 NAYS 36

CLYDE BALLARD

Speaker of the House of Representatives

Approved May 19, 1997, with the exception of sections 1, 4, 5, 6, 8, 15, 17, 18, 19, 44, 45, and 52, which are vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6094** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

Secretary

FILED

May 19, 1997 - 7:38 p.m.

Secretary of State
State of Washington

ENGROSSED SENATE BILL 6094

AS AMENDED BY THE HOUSE

Passed Legislature - 1997 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By Senators McCaslin and Haugen; by request of Governor Locke

Read first time 04/04/97.

1 AN ACT Relating to growth management; amending RCW 36.70A.030,
2 36.70A.060, 36.70A.070, 36.70A.130, 36.70A.270, 36.70A.290, 36.70A.300,
3 36.70A.305, 36.70A.320, 36.70A.330, 36.70A.110, 43.62.035, 36.70A.500,
4 43.155.070, 70.146.070, 84.34.020, 84.34.060, 84.34.065, 84.40.030,
5 90.60.030, 35A.14.295, 35.13.174, 36.93.170, 84.14.010, 84.14.030,
6 84.14.050, 90.61.020, 90.61.040, 36.70B.040, 43.21C.110, 36.70B.110,
7 43.21C.075, 90.58.090, 90.58.143, and 34.05.518; adding new sections to
8 chapter 36.70A RCW; adding a new section to chapter 35.13 RCW; creating
9 new sections; providing expiration dates; and declaring an emergency.

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

11 ***NEW SECTION.** Sec. 1. A new section is added to chapter 36.70A*
12 *RCW to read as follows:*
13 *In enacting the section 7(5), chapter . . ., Laws of 1997 (section*
14 *7(5) of this act) amendments to RCW 36.70A.070(5), the legislature*
15 *finds that chapter 36.70A RCW is intended to recognize the importance*
16 *of agriculture, forestry, and rural lands and rural character to*
17 *Washington's economy, its people, and its environment, while respecting*
18 *regional differences and, in accordance with one of the goals of the*
19 *growth management act, protecting the property rights of landowners*
20 *from arbitrary and discriminatory actions. Rural lands and rural-based*
21 *economies, including agriculture and forest uses that are located*

outside of designated resource lands, enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life. The legislature also finds that in developing its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that: Will help preserve rural-based economies and traditional rural lifestyles; will encourage the economic prosperity of rural residents; will foster opportunities for small-scale, rural-based employment and self-employment; will permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; will foster the private stewardship of the land and preservation of open space; and will enhance the rural sense of community and quality of life. The legislature recognizes that there will be a variety of interpretations by counties of how best to implement a rural element, reflecting the diverse needs and local circumstances found across the state. RCW 36.70A.070(5) provides a framework for local elected officials to make these determinations. References to both wildlife and water are intended in RCW 36.70A.030 and 36.70A.070 to acknowledge their importance as features or components of rural character. It is expected that these matters will be addressed in comprehensive plans, but that counties may not necessarily need to adopt new regulations to account adequately for them in establishing a pattern of land use and development for rural areas.

***Sec. 1 was vetoed. See message at end of chapter.**

NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A RCW to read as follows:

In amending RCW 36.70A.320(3) by section 20(3), chapter . . ., Laws of 1997 (section 20(3) of this act), the legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties

and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

Sec. 3. RCW 36.70A.030 and 1995 c 382 s 9 are each amended to read as follows:

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

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

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

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

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

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.

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

(7) "Development regulations" <u>or "regulation"</u> means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development

regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

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

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

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

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) <u>"Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:</u>

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(15) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(16) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(17) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of ((~~such~~)) land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread

over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

((~~(15)~~)) (18) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

((~~(16)~~)) (19) "Urban governmental services" or "urban services" include those ((~~governmental~~)) public services and public facilities at an intensity historically and typically ((~~delivered by~~)) provided in cities, ((~~and include~~)) specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with ((~~nonurban~~)) rural areas.

((~~(17)~~)) (20) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

***NEW SECTION.** Sec. 4. A new section is added to chapter 36.70A RCW to read as follows:*

(1) A county, after conferring with its cities, may develop alternative methods of achieving the planning goals established by RCW 36.70A.020.

(2) The authority provided by this section may not be used to modify:

(a) Requirements for the designation and protection of critical areas or for the designation of natural resource lands under RCW 36.70A.060(2), 36.70A.170, and 36.70A.172;

(b) The requirement that wetlands be delineated consistent with the requirements of RCW 36.70A.175; or

(c) The requirement to establish a process for the siting of essential public facilities pursuant to RCW 36.70A.200.

(3) Before adopting any alternative methods of achieving the planning goals established by RCW 36.70A.020, a county shall provide an opportunity for public review and comment. An ordinance or resolution proposing or adopting alternative methods must be submitted to the department in the same manner as provided in RCW 36.70A.106 for submittal of proposed and adopted comprehensive plans and development regulations.

***Sec. 4 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 5. A new section is added to chapter 36.70A RCW to read as follows:*

The legislature finds that it is the goal of the state of Washington to achieve no overall net loss of wetland functions. Wetlands can provide public benefits related to flood control, groundwater recharge, water quality, and wildlife habitat. The legislature further finds that consideration should be given to the functions wetlands provide and to the needs of private property owners to assure that wetlands regulations both reflect the impact to wetland functions and allow for a reasonable use of property. In adopting critical areas development regulations, counties and cities should consider and balance all of the goals under RCW 36.70A.020. The legislature intends that no goal takes precedence over any of the others, but that counties and cities may prioritize the goals in accordance with local history, conditions, circumstances, and choice.

***Sec. 5 was vetoed. See message at end of chapter.**

**Sec. 6. RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended to read as follows:*

(1) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.120. Such regulations shall assure

that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals. Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within three hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

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

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

(5) Counties and cities may exempt the following from critical areas development regulations:

(a) Emergency activities; and

(b) Activities with minor impacts on critical areas.

***Sec. 6 was vetoed. See message at end of chapter.**

Sec. 7. RCW 36.70A.070 and 1996 c 239 s 1 are each amended to read as follows:

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

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

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

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

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

facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

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

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

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

(b) Rural development. The rural element shall permit ((~~appropriate land uses that are compatible with the rural character of such lands and~~)) rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities ((~~and~~)), uses ((~~and may also provide~~)), essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

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

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

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

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

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

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population;

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

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

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

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

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

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

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

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

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

(a) Land use assumptions used in estimating travel;

(b) Facilities and services needs, including:

(i) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general

aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning;

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

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

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

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

(c) Finance, including:

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

(ii) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems;

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

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

(e) Demand-management strategies.

After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies.

For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

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

***NEW SECTION.** Sec. 8. A new section is added to chapter 36.70A RCW to read as follows:*

(1) Except as otherwise provided in this chapter, residential and nonresidential uses in the rural element shall not require urban services and nonresidential rural development shall be principally designed to serve and provide jobs for the existing and projected rural population or serve existing nonresidential uses.

(2) This section applies to (a) a county with a population of ninety-five thousand or more; and (b) a county that has committed five percent or more of its land base to urban growth areas under RCW 36.70A.110 and that has no more than eighty percent of its land base in public ownership or resource lands of long-term commercial significance designated under RCW 36.70A.170.

***Sec. 8 was vetoed. See message at end of chapter.**

NEW SECTION. **Sec. 9.** A new section is added to chapter 36.70A RCW to read as follows:

(1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, and organizations of proposed amendments to comprehensive plans and development regulation. Examples of reasonable notice provisions include:

(a) Posting the property for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and

(e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

(2)(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

(b) An additional opportunity for public review and comment is not required under (a) of this subsection if:

(i) An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the scope of the alternatives available for public comment;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.

(3) This section is prospective in effect and does not apply to a comprehensive plan, development regulation, or amendment adopted before the effective date of this section.

Sec. 10. RCW 36.70A.130 and 1995 c 347 s 106 are each amended to read as follows:

(1) Each comprehensive land use plan and development regulations shall be subject to continuing ((~~evaluation and~~)) review <u>and evaluation</u> by the county or city that adopted them. <u>Not later than September 1, 2002, and at least every five years thereafter, a county or city shall take action to review and, if needed, revise its comprehensive land use</u>

plan and development regulations to ensure that the plan and regulations are complying with the requirements of this chapter. The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section.

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

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program identifying procedures whereby proposed amendments or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year except that amendments may be considered more frequently under the following circumstances:

(i) The initial adoption of a subarea plan; ((~~and~~))

(ii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW; and

(iii) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with a growth management hearings board or with the court.

(3) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas. The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the

urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by section 25 of this act.

Sec. 11. RCW 36.70A.270 and 1996 c 325 s 1 are each amended to read as follows:

Each growth management hearings board shall be governed by the following rules on conduct and procedure:

(1) Any board member may be removed for inefficiency, malfeasance, and misfeasance in office, under specific written charges filed by the governor. The governor shall transmit such written charges to the member accused and the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Removal of any member of a board by the tribunal shall disqualify such member for reappointment.

(2) Each board member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060. If it is determined that the review boards shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor pursuant to RCW 43.03.040. If it is determined that a review board shall operate on a part-time basis, each member shall receive compensation pursuant to RCW 43.03.250, provided such amount shall not exceed the amount that would be set if they were a full-time board member. The principal office of each board shall be located by the governor within the jurisdictional boundaries of each board. The boards shall operate on either a part-time or full-time basis, as determined by the governor.

(3) Each board member shall not: (a) Be a candidate for or hold any other public office or trust; (b) engage in any occupation or business interfering with or inconsistent with his or her duty as a board member; and (c) for a period of one year after the termination of his or her board membership, act in a representative capacity before the board on any matter.

(4) A majority of each board shall constitute a quorum for making orders or decisions, adopting rules necessary for the conduct of its powers and duties, or transacting other official business, and may act even though one position of the board is vacant. One or more members

may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.

(5) The board may appoint one or more hearing examiners to assist the board in its hearing function, to make conclusions of law and findings of fact and, if requested by the board, to make recommendations to the board for decisions in cases before the board. Such hearing examiners must have demonstrated knowledge of land use planning and law. The boards shall specify in their joint rules of practice and procedure, as required by subsection (7) of this section, the procedure and criteria to be employed for designating hearing examiners as a presiding officer. Hearing examiners selected by a board shall meet the requirements of subsection (3) of this section. The findings and conclusions of the hearing examiner shall not become final until they have been formally approved by the board. This authorization to use hearing examiners does not waive the requirement of RCW 36.70A.300 that final orders be issued within one hundred eighty days of board receipt of a petition.

(6) Each board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members of the board and upon being filed at the board's principal office, and shall be open for public inspection at all reasonable times.

(7) All proceedings before the board, any of its members, or a hearing examiner appointed by the board shall be conducted in accordance with such administrative rules of practice and procedure as the boards jointly prescribe. All three boards shall jointly meet to develop and adopt joint rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals. The boards shall publish such rules and decisions they render and arrange for the reasonable distribution of the rules and decisions. Except as it conflicts with <u>specific</u> provisions of this chapter, the administrative procedure act, chapter 34.05 RCW<u>, and specifically including the provisions of RCW 34.05.455 governing ex parte communications</u>, shall govern the practice and procedure of the boards.

(8) A board member or hearing examiner is subject to disqualification under chapter 34.05 RCW. The joint rules of practice of the boards shall establish procedures by which a party to a hearing

conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing.

(9) The members of the boards shall meet jointly on at least an annual basis with the objective of sharing information that promotes the goals and purposes of this chapter.

Sec. 12. RCW 36.70A.290 and 1995 c 347 s 109 are each amended to read as follows:

(1) All requests for review to a growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board. <u>The board shall render written decisions articulating the basis for its holdings. The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.</u>

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication by the legislative bodies of the county or city.

(a) Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published.

(b) Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

Except as provided in (c) of this subsection, for purposes of this section the date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

(c) For local governments planning under RCW 36.70A.040, promptly after approval or disapproval of a local government s shoreline master program or amendment thereto by the department of ecology as provided in RCW 90.58.090, the local government shall publish a notice that the shoreline master program or amendment thereto has been approved or disapproved by the department of ecology. For purposes of this

section, the date of publication for the adoption or amendment of a shoreline master program is the date the local government publishes notice that the shoreline master program or amendment thereto has been approved or disapproved by the department of ecology.

(3) Unless the board dismisses the petition as frivolous or finds that the person filing the petition lacks standing, <u>or the parties have filed an agreement to have the case heard in superior court as provided in section 13 of this act,</u> the board shall, within ten days of receipt of the petition, set a time for hearing the matter.

(4) The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

(5) The board, shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations.

<u>NEW SECTION.</u> **Sec. 13.** A new section is added to chapter 36.70A RCW to read as follows:

(1) The superior court may directly review a petition for review filed under RCW 36.70A.290 if all parties to the proceeding before the board have agreed to direct review in the superior court. The agreement of the parties shall be in writing and signed by all of the parties to the proceeding or their designated representatives. The agreement shall include the parties' agreement to proper venue as provided in RCW 36.70A.300(5). The parties shall file their agreement with the board within ten days after the date the petition is filed, or if multiple petitions have been filed and the board has consolidated the petitions pursuant to RCW 36.70A.300, within ten days after the board serves its order of consolidation.

(2) Within ten days of receiving the timely and complete agreement of the parties, the board shall file a certificate of agreement with the designated superior court and shall serve the parties with copies of the certificate. The superior court shall obtain exclusive jurisdiction over a petition when it receives the certificate of agreement. With the certificate of agreement the board shall also file the petition for review, any orders entered by the board, all other

documents in the board's files regarding the action, and the written agreement of the parties.

(3) For purposes of a petition that is subject to direct review, the superior court's subject matter jurisdiction shall be equivalent to that of the board. Consistent with the requirements of the superior court civil rules, the superior court may consolidate a petition subject to direct review under this section with a separate action filed in the superior court.

(4)(a) Except as otherwise provided in (b) and (c) of this subsection, the provisions of RCW 36.70A.280 through 36.70A.330, which specify the nature and extent of board review, shall apply to the superior court's review.

(b) The superior court:

(i) Shall not have jurisdiction to directly review or modify an office of financial management population projection;

(ii) Except as otherwise provided in RCW 36.70A.300(2)(b), shall render its decision on the petition within one hundred eighty days of receiving the certification of agreement; and

(iii) Shall give a compliance hearing under RCW 36.70A.330(2) the highest priority of all civil matters before the court.

(c) An aggrieved party may secure appellate review of a final judgment of the superior court under this section by the supreme court or the court of appeals. The review shall be secured in the manner provided by law for review of superior court decisions in other civil cases.

(5) If, following a compliance hearing, the court finds that the state agency, county, or city is not in compliance with the court's prior order, the court may use its remedial and contempt powers to enforce compliance.

(6) The superior court shall transmit a copy of its decision and order on direct review to the board, the department, and the governor. If the court has determined that a county or city is not in compliance with the provisions of this chapter, the governor may impose sanctions against the county or city in the same manner as if a board had recommended the imposition of sanctions as provided in RCW 36.70A.330.

(7) After the court has assumed jurisdiction over a petition for review under this section, the superior court civil rules shall govern a request for intervention and all other procedural matters not specifically provided for in this section.

Sec. 14. RCW 36.70A.300 and 1995 c 347 s 110 are each amended to read as follows:

(1) The board shall issue a final order ((~~within one hundred eighty days of receipt of the petition for review, or, when multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated. Such a final order~~)) that shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, ((~~adopted~~)) under RCW 36.70A.040 or chapter 90.58 RCW.

(2)(a) Except as provided in (b) of this subsection, the final order shall be issued within one hundred eighty days of receipt of the petition for review, or, if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated.

(b) The board may extend the period of time for issuing a decision to enable the parties to settle the dispute if additional time is necessary to achieve a settlement, and (i) an extension is requested by all parties, or (ii) an extension is requested by the petitioner and respondent and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute. The request must be filed with the board not later than seven days before the date scheduled for the hearing on the merits of the petition. The board may authorize one or more extensions for up to ninety days each, subject to the requirements of this section.

(3) In the final order, the board shall either:

(a) Find that the state agency, county, or city is in compliance with the requirements of this chapter ((~~or~~)), chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county, or city is not in compliance with the requirements of this chapter ((~~or~~)), chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040

or chapter 90.58 RCW, in which case the board shall remand the matter to the affected state agency, county, or city ((~~and~~)). The board shall specify a reasonable time not in excess of one hundred eighty days, or such longer period as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply with the requirements of this chapter. The board may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

((~~(2)~~)) (4) Unless the board makes a determination of invalidity as provided in section 16 of this act, a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand((~~, unless the board's final order also:~~

~~(a) Includes a determination, supported by findings of fact and conclusions of law, that the continued validity of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and~~

~~(b) Specifies the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.~~

~~(3) A determination of invalidity shall:~~

~~(a) Be prospective in effect and shall not extinguish rights that vested under state or local law before the date of the board's order; and~~

~~(b) Subject any development application that would otherwise vest after the date of the board's order to the local ordinance or resolution that both is enacted in response to the order of remand and determined by the board pursuant to RCW 36.70A.330 to comply with the requirements of this chapter.~~

~~(4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (2) of this section whether the prior policies or regulations are valid during the period of remand~~)).

(5) Any party aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of the final order of the board.

1 ***NEW SECTION.** Sec. 15. A new section is added to chapter 36.70A*
2 *RCW to read as follows:*
3 *After the effective date of this section, all appeals of a decision*
4 *taken from a final decision of a board shall be filed in the court of*
5 *appeals for assignment by the chief presiding judge.*
6 ***Sec. 15 was vetoed. See message at end of chapter.**

7 NEW SECTION. **Sec. 16.** A new section is added to chapter 36.70A
8 RCW to read as follows:
9 (1) A board may determine that part or all of a comprehensive plan
10 or development regulations are invalid if the board:
11 (a) Makes a finding of noncompliance and issues an order of remand
12 under RCW 36.70A.300;
13 (b) Includes in the final order a determination, supported by
14 findings of fact and conclusions of law, that the continued validity of
15 part or parts of the plan or regulation would substantially interfere
16 with the fulfillment of the goals of this chapter; and
17 (c) Specifies in the final order the particular part or parts of
18 the plan or regulation that are determined to be invalid, and the
19 reasons for their invalidity.
20 (2) A determination of invalidity is prospective in effect and does
21 not extinguish rights that vested under state or local law before
22 receipt of the board's order by the city or county. The determination
23 of invalidity does not apply to a completed development permit
24 application for a project that vested under state or local law before
25 receipt of the board's order by the county or city or to related
26 construction permits for that project.
27 (3)(a) Except as otherwise provided in subsection (2) of this
28 section and (b) of this subsection, a development permit application
29 not vested under state or local law before receipt of the board's order
30 by the county or city vests to the local ordinance or resolution that
31 is determined by the board not to substantially interfere with the
32 fulfillment of the goals of this chapter.
33 (b) Even though the application is not vested under state or local
34 law before receipt by the county or city of the board's order, a
35 determination of invalidity does not apply to a development permit
36 application for:
37 (i) A permit for construction by any owner, lessee, or contract
38 purchaser of a single-family residence for his or her own use or for

the use of his or her family on a lot existing before receipt by the county or city of the board's order, except as otherwise specifically provided in the board's order to protect the public health and safety;

(ii) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before receipt of the board's order by the county or city; and

(iii) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before receipt of the board's order by the county or city.

(4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (1) of this section whether the prior policies or regulations are valid during the period of remand.

(5) A county or city subject to a determination of invalidity may adopt interim controls and other measures to be in effect until it adopts a comprehensive plan and development regulations that comply with the requirements of this chapter. A development permit application may vest under an interim control or measure upon determination by the board that the interim controls and other measures do not substantially interfere with the fulfillment of the goals of this chapter.

(6) A county or city subject to a determination of invalidity may file a motion requesting that the board clarify, modify, or rescind the order. The board shall expeditiously schedule a hearing on the motion. At the hearing on the motion, the parties may present information to the board to clarify the part or parts of the comprehensive plan or development regulations to which the final order applies. The board shall issue any supplemental order based on the information provided at the hearing not later than thirty days after the date of the hearing.

(7)(a) If a determination of invalidity has been made and the county or city has enacted an ordinance or resolution amending the invalidated part or parts of the plan or regulation or establishing interim controls on development affected by the order of invalidity, after a compliance hearing, the board shall modify or rescind the determination of invalidity if it determines under the standard in subsection (1) of this section that the plan or regulation, as amended

or made subject to such interim controls, will no longer substantially interfere with the fulfillment of the goals of this chapter.

(b) If the board determines that part or parts of the plan or regulation are no longer invalid as provided in this subsection, but does not find that the plan or regulation is in compliance with all of the requirements of this chapter, the board, in its order, may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

<u>NEW SECTION.</u> Sec. 17. A board shall determine that part or all of a comprehensive plan or development regulations, or amendments thereto, are invalid only if, in addition to the requirements of section 16 of this act, the board finds that in adopting plans or development regulations, or amendments thereto, the county or city acted in an arbitrary and capricious manner.

***Sec. 17 was vetoed. See message at end of chapter.**

**Sec. 18. RCW 36.70A.305 and 1996 c 325 s 4 are each amended to read as follows:*

<u>(1)</u> The court shall provide expedited review of ((~~a determination of invalidity or~~)) an order ((~~effectuating~~)) <u>that includes</u> a determination of invalidity made or issued under RCW 36.70A.300 <u>and section 16 of this act</u>. The matter must be set for hearing within sixty days of the date set for submitting the board's record, absent a showing of good cause for a different date or a stipulation of the parties.

<u>(2) A determination of substantial interference under this chapter must be based on evidence of actual development or development permit applications that would substantially interfere with the goals of this chapter, and not on hypothetical or speculative development potential.</u>

***Sec. 18 was vetoed. See message at end of chapter.**

**<u>NEW SECTION.</u> Sec. 19. A new section is added to chapter 36.70A RCW to read as follows:*

A court, in reviewing an order of the board, may:

(1) Affirm the board's order;

(2) Set aside the board's order, enjoin or stay the board's order, remand the matter for further proceedings, order the board to rescind or modify an order; or

(3) Enter a declaratory judgment order of compliance or noncompliance, which may include a determination of invalidity if (a) the determination is supported by findings of fact and conclusions of law that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter and (b) the court's order specifies the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

***Sec. 19 was vetoed. See message at end of chapter.**

Sec. 20. RCW 36.70A.320 and 1995 c 347 s 111 are each amended to read as follows:

(1) Except as provided in subsection ((~~(2)~~)) (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

(2) Except as otherwise provided in subsection (4) of this section, the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.

(3) In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4). The board shall find compliance unless it ((~~finds by a preponderance of the evidence that the state agency, county, or city erroneously interpreted or applied this chapter~~)) determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

((~~(2)~~)) (4) A county or city subject to a determination of invalidity made under RCW 36.70A.300 or section 16 of this act has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this chapter under the standard in section 16(1) of this act.

(5) The shoreline element of a comprehensive plan and the applicable development regulations adopted by a county or city shall take effect as provided in chapter 90.58 RCW.

Sec. 21. RCW 36.70A.330 and 1995 c 347 s 112 are each amended to read as follows:

(1) After the time set for complying with the requirements of this chapter under RCW ((~~36.70A.300(1)(b)~~)) 36.70A.300(3)(b) has expired, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.300, the board shall set a hearing for the purpose of determining whether the state agency, county, or city is in compliance with the requirements of this chapter.

(2) The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance schedule established by the board in its final order. A person with standing to challenge the legislation enacted in response to the board's final order may participate in the hearing along with the petitioner and the state agency, ((~~city, or~~)) county, or city. A hearing under this subsection shall be given the highest priority of business to be conducted by the board, and a finding shall be issued within forty-five days of the filing of the motion under subsection (1) of this section with the board. The board shall issue any order necessary to make adjustments to the compliance schedule and set additional hearings as provided in subsection (5) of this section.

(3) If the board after a compliance hearing finds that the state agency, county, or city is not in compliance, the board shall transmit its finding to the governor. The board may recommend to the governor that the sanctions authorized by this chapter be imposed. The board shall take into consideration the county's or city's efforts to meet its compliance schedule in making the decision to recommend sanctions to the governor.

(4) In a compliance hearing upon petition of a party, the board shall also reconsider its final order and decide((~~:~~

~~(a) If a determination of invalidity has been made, whether such a determination should be rescinded or modified under the standards in RCW 36.70A.300(2); or~~

~~(b)~~)), if no determination of invalidity has been made, whether one now should be made ((~~under the standards in RCW 36.70A.300(2)~~)) under section 16 of this act.

(5) The board shall schedule additional hearings as appropriate pursuant to subsections (1) and (2) of this section.

NEW SECTION. **Sec. 22.** A new section is added to chapter 36.70A RCW to read as follows:

A county or city subject to an order of invalidity issued before the effective date of section 14 of this act, by motion may request the board to review the order of invalidity in light of the section 14, chapter . . ., Laws of 1997 (section 14 of this act) amendments to RCW 36.70A.300, the section 21, chapter . . ., Laws of 1997 (section 21 of this act) amendments to RCW 36.70A.330, and section 16 of this act. If a request is made, the board shall rescind or modify the order of invalidity as necessary to make it consistent with the section 14, chapter . . ., Laws of 1997 (section 14 of this act) amendments to RCW 36.70A.300, and to the section 21, chapter . . ., Laws of 1997 (section 21 of this act) amendments to RCW 36.70A.330, and section 16 of this act.

NEW SECTION. **Sec. 23.** A new section is added to chapter 36.70A RCW to read as follows:

(1) A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy. A county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

(2) Innovative zoning techniques a county or city may consider include, but are not limited to:

(a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land;

(b) Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;

(c) Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;

(d) Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land; and

(e) Sliding scale zoning, which allows the number of lots for single-family residential purposes with a minimum lot size of one acre to increase inversely as the size of the total acreage increases.

Sec. 24. RCW 36.70A.110 and 1995 c 400 s 2 are each amended to read as follows:

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, ((~~the urban growth areas in~~)) the county <u>and each city within the county</u> shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county <u>or city</u> for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of

the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

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

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

NEW SECTION. **Sec. 25.** A new section is added to chapter 36.70A RCW to read as follows:

(1) Subject to the limitations in subsection (7) of this section, a county shall adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In developing and implementing the review and evaluation program required by this section, the county and its cities shall consider information from other appropriate jurisdictions and sources. The purpose of the review and evaluation program shall be to:

(a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and

(b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

(2) The review and evaluation program shall:

(a) Encompass land uses and activities both within and outside of urban growth areas and provide for annual collection of data on urban and rural land uses, development, critical areas, and capital facilities to the extent necessary to determine the quantity and type of land suitable for development, both for residential and employment-based activities;

(b) Provide for evaluation of the data collected under (a) of this subsection every five years as provided in subsection (3) of this section. The first evaluation shall be completed not later than September 1, 2002. The county and its cities may establish in the county-wide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation;

(c) Provide for methods to resolve disputes among jurisdictions relating to the county-wide planning policies required by this section and procedures to resolve inconsistencies in collection and analysis of data; and

(d) Provide for the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this

section, or to bring these policies into compliance with the requirements of this chapter.

(3) At a minimum, the evaluation component of the program required by subsection (1) of this section shall:

(a) Determine whether there is sufficient suitable land to accommodate the county-wide population projection established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110;

(b) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) of this section; and

(c) Based on the actual density of development as determined under (b) of this subsection, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.

(4) If the evaluation required by subsection (3) of this section demonstrates an inconsistency between what has occurred since the adoption of the county-wide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities shall adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period. If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to county-wide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.

(5)(a) Not later than July 1, 1998, the department shall prepare a list of methods used by counties and cities in carrying out the types of activities required by this section. The department shall provide this information and appropriate technical assistance to counties and

cities required to or choosing to comply with the provisions of this section.

(b) By December 31, 2007, the department shall submit to the appropriate committees of the legislature a report analyzing the effectiveness of the activities described in this section in achieving the goals envisioned by the county-wide planning policies and the comprehensive plans and development regulations of the counties and cities.

(6) From funds appropriated by the legislature for this purpose, the department shall provide grants to counties, cities, and regional planning organizations required under subsection (7) of this section to conduct the review and perform the evaluation required by this section.

(7) The provisions of this section shall apply to counties, and the cities within those counties, that were greater than one hundred fifty thousand in population in 1995 as determined by office of financial management population estimates and that are located west of the crest of the Cascade mountain range. Any other county planning under RCW 36.70A.040 may carry out the review, evaluation, and amendment programs and procedures as provided in this section.

Sec. 26. RCW 43.62.035 and 1995 c 162 s 1 are each amended to read as follows:

The office of financial management shall determine the population of each county of the state annually as of April 1st of each year and on or before July 1st of each year shall file a certificate with the secretary of state showing its determination of the population for each county. The office of financial management also shall determine the percentage increase in population for each county over the preceding ten-year period, as of April 1st, and shall file a certificate with the secretary of state by July 1st showing its determination. At least once every ((~~ten~~)) <u>five</u> years <u>or upon the availability of decennial census data, whichever is later,</u> the office of financial management shall prepare twenty-year growth management planning population projections required by RCW 36.70A.110 for each county that adopts a comprehensive plan under RCW 36.70A.040 and shall review these projections with such counties and the cities in those counties before final adoption. The county and its cities may provide to the office such information as they deem relevant to the office's projection, and the office shall consider and comment on such information before

adoption. Each projection shall be expressed as a reasonable range developed within the standard state high and low projection. The middle range shall represent the office's estimate of the most likely population projection for the county. If any city or county believes that a projection will not accurately reflect actual population growth in a county, it may petition the office to revise the projection accordingly. The office shall complete the first set of ranges for every county by December 31, 1995.

A comprehensive plan adopted or amended before December 31, 1995, shall not be considered to be in noncompliance with the twenty-year growth management planning population projection if the projection used in the comprehensive plan is in compliance with the range later adopted under this section.

NEW SECTION. **Sec. 27.** In order to ensure that there will be no unfunded responsibilities imposed on counties and cities, if specific funding for the purposes of section 25 of this act, referencing this act by bill or chapter number, is not provided by June 30, 1997, in the omnibus appropriations act, section 25 of this act is null and void.

Sec. 28. RCW 36.70A.500 and 1995 c 347 s 116 are each amended to read as follows:

(1) The department of community, trade, and economic development shall provide management services for the fund created by RCW 36.70A.490. The department ((~~by rule~~)) shall establish procedures for fund management. The department shall encourage participation in the grant program by other public agencies. The department shall develop the grant criteria, monitor the grant program, and select grant recipients in consultation with state agencies participating in the grant program through the provision of grant funds or technical assistance.

(2) A grant may be awarded to a county or city that is required to or has chosen to plan under RCW 36.70A.040 and that is qualified pursuant to this section. The grant shall be provided to assist a county or city in paying for the cost of preparing ((~~a detailed environmental impact statement~~)) an environmental analysis under chapter 43.21C RCW, that is integrated with a comprehensive plan ((~~or~~)), subarea plan ((~~and~~)), plan element, county-wide planning

policy, development regulation((~~s~~)), monitoring program, or other planning activity adopted under or implementing this chapter that:

(a) Improves the process for project permit review while maintaining environmental quality; or

(b) Encourages use of plans and information developed for purposes of complying with this chapter to satisfy requirements of other state programs.

(3) In order to qualify for a grant, a county or city shall:

(a) Demonstrate that it will prepare an environmental analysis pursuant to chapter 43.21C RCW and subsection (2) of this section that is integrated with a comprehensive plan ((~~or~~)), subarea plan ((~~and~~)), plan element, county-wide planning policy, development regulations, monitoring program, or other planning activity adopted under or implementing this chapter;

(b) Address environmental impacts and consequences, alternatives, and mitigation measures in sufficient detail to allow the analysis to be adopted in whole or in part by ((~~subsequent~~)) applicants for development permits within the geographic area analyzed in the plan;

(c) Demonstrate that procedures for review of development permit applications will be based on the integrated plans and environmental analysis;

(d) Include mechanisms ((~~in the plan~~)) to monitor the consequences of growth as it occurs in the plan area and ((~~provide ongoing~~)) to use the resulting data to update the plan, policy, or implementing mechanisms and associated environmental analysis;

((~~(d) Be making~~)) (e) Demonstrate substantial progress towards compliance with the requirements of this chapter. A county or city that is more than six months out of compliance with a requirement of this chapter is deemed not to be making substantial progress towards compliance; and

((~~(e)~~)) (f) Provide local funding, which may include financial participation by the private sector.

(4) In awarding grants, the department shall give preference to proposals that include one or more of the following elements:

(a) Financial participation by the private sector, or a public/private partnering approach;

(b) ((~~Comprehensive and subarea plan proposals that are designed to identify and monitor~~)) Identification and monitoring of system

capacities for elements of the built environment, and to the extent appropriate, of the natural environment;

(c) Coordination with state, federal, and tribal governments in project review;

(d) Furtherance of important state objectives related to economic development, protection of areas of state-wide significance, and siting of essential public facilities;

(e) Programs to improve the efficiency and effectiveness of the permitting process by greater reliance on integrated plans and prospective environmental analysis;

((~~(d)~~)) (f) Programs for effective citizen and neighborhood involvement that contribute to greater ((~~certainty~~)) likelihood that planning decisions ((~~will~~)) can be implemented with community support; and

((~~(e) Plans that~~)) (g) Programs to identify environmental impacts and establish mitigation measures that provide effective means to satisfy concurrency requirements and establish project consistency with the plans.

(5) If the local funding includes funding provided by other state functional planning programs, including open space planning and watershed or basin planning, the functional plan shall be integrated into and be consistent with the comprehensive plan.

(6) State agencies shall work with grant recipients to facilitate state and local project review processes that will implement the projects receiving grants under this section.

Sec. 29. RCW 43.155.070 and 1996 c 168 s 3 are each amended to read as follows:

(1) To qualify for loans or pledges under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a long-term plan for financing public works needs;

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors; and

(d) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town that is required or chooses to plan under RCW 36.70A.040 must have adopted a comprehensive plan in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan be adopted, and must have adopted development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that development regulations be adopted.

(2) The board shall develop a priority process for public works projects as provided in this section. The intent of the priority process is to maximize the value of public works projects accomplished with assistance under this chapter. The board shall attempt to assure a geographical balance in assigning priorities to projects. The board shall consider at least the following factors in assigning a priority to a project:

(a) Whether the local government receiving assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(c) The cost of the project compared to the size of the local government and amount of loan money available;

(d) The number of communities served by or funding the project;

(e) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(f) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards, including the cost of extending existing service to such a system;

(g) The relative benefit of the project to the community, considering the present level of economic activity in the community and the existing local capacity to increase local economic activity in communities that have low economic growth; and

(h) Other criteria that the board considers advisable.

(3) Existing debt or financial obligations of local governments shall not be refinanced under this chapter. Each local government applicant shall provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

(4) Before November 1 of each year, the board shall develop and submit to the appropriate fiscal committees of the senate and house of representatives a description of the loans made under RCW 43.155.065, 43.155.068, and subsection (7) of this section during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list shall include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list shall also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits and state averages, including local government sales taxes; real estate excise taxes; property taxes; and charges for or taxes on sewerage, water, garbage, and other utilities.

(5) The board shall not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has appropriated funds for a specific list of public works projects. The legislature may remove projects from the list recommended by the board. The legislature shall not change the order of the priorities recommended for funding by the board.

(6) Subsection (5) of this section does not apply to loans made under RCW 43.155.065, 43.155.068, and subsection (7) of this section.

(7)(a) Loans made for the purpose of capital facilities plans shall be exempted from subsection (5) of this section. In no case shall the total amount of funds utilized for capital facilities plans and emergency loans exceed the limitation in RCW 43.155.065.

(b) For the purposes of this section "capital facilities plans" means those plans required by the growth management act, chapter 36.70A RCW, and plans required by the public works board for local governments not subject to the growth management act.

(8) To qualify for loans or pledges for solid waste or recycling facilities under this chapter, a city or county must demonstrate that the solid waste or recycling facility is consistent with and necessary to implement the comprehensive solid waste management plan adopted by the city or county under chapter 70.95 RCW.

Sec. 30. RCW 70.146.070 and 1991 sp.s. c 32 s 24 are each amended to read as follows:

When making grants or loans for water pollution control facilities, the department shall consider the following:

(1) The protection of water quality and public health;

(2) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;

(3) Actions required under federal and state permits and compliance orders;

(4) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;

(5) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and

(6) The recommendations of the Puget Sound ((~~water quality authority~~)) action team and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.

Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town that is required or chooses to plan under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan be adopted, or unless it has adopted development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that development regulations be adopted.

Sec. 31. RCW 84.34.020 and 1992 c 69 s 4 are each amended to read as follows:

As used in this chapter, unless a different meaning is required by the context:

(1) "Open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly((~~,~~)), or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or

scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b)(iii) of this subsection for the purpose of promoting conservation of wetlands.

(2) "Farm and agricultural land" means ((~~either~~)):

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:

(i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes((~~,~~)):

(ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture((~~,~~)): or

(iii) Other similar commercial activities as may be established by rule ((~~following consultation with the advisory committee established in section 19 of this act~~));

(b) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to, as of January 1, 1993((~~,~~)):

(i) One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993((~~,~~)): and

(ii) On or after January 1, 1993, two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income as of January 1, 1993, of:

(i) One thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993((,)); and

(ii) On or after January 1, 1993, fifteen hundred dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter.

Parcels of land described in (b)(i) and (c)(i) of this subsection shall, upon any transfer of the property excluding a transfer to a surviving spouse, be subject to the limits of (b)(ii) and (c)(ii) of this subsection.

Agricultural lands shall also include such incidental uses as are compatible with agricultural purposes, including wetlands preservation, provided such incidental use does not exceed twenty percent of the classified land and the land on which appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands"; ((~~or~~))

(d) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes;

(e) Any parcel of land designated as agricultural land under RCW 36.70A.170; or

(f) Any parcel of land not within an urban growth area zoned as agricultural land under a comprehensive plan adopted under chapter 36.70A RCW.

(3) "Timber land" means any parcel of land that is five or more acres or multiple parcels of land that are contiguous and total five or

more acres which is or are devoted primarily to the growth and harvest of forest crops for commercial purposes. A timber management plan shall be filed with the county legislative authority at the time (a) an application is made for classification as timber land pursuant to this chapter or (b) when a sale or transfer of timber land occurs and a notice of classification continuance is signed. Timber land means the land only.

(4) "Current" or "currently" means as of the date on which property is to be listed and valued by the assessor.

(5) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract "owner" shall mean the contract vendee.

(6) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a farming operation, shall be considered contiguous.

(7) "Granting authority" means the appropriate agency or official who acts on an application for classification of land pursuant to this chapter.

(8) "Farm and agricultural conservation land" means either:

(a) Land that was previously classified under subsection (2) of this section, that no longer meets the criteria of subsection (2) of this section, and that is reclassified under subsection (1) of this section; or

(b) Land that is traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture.

Sec. 32. RCW 84.34.060 and 1992 c 69 s 8 are each amended to read as follows:

In determining the true and fair value of open space land and timber land, which has been classified as such under the provisions of this chapter, the assessor shall consider only the use to which such property and improvements is currently applied and shall not consider potential uses of such property. The assessed valuation of open space land shall not be less than the minimum value per acre of classified farm and agricultural land except that the assessed valuation of open space land may be valued based on the public benefit rating system

adopted under RCW 84.34.055: PROVIDED FURTHER, That timber land shall be valued according to chapter 84.33 RCW. In valuing any tract or parcel of real property designated and zoned under a comprehensive plan adopted under chapter 36.70A RCW as agricultural, forest, or open space land, the appraisal shall not be based on similar sales of parcels that have been converted to nonagricultural, nonforest, or nonopen-space uses within five years after the sale.

Sec. 33. RCW 84.34.065 and 1992 c 69 s 9 are each amended to read as follows:

The true and fair value of farm and agricultural land shall be determined by consideration of the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years, capitalized at indicative rates. The earning or productive capacity of farm and agricultural lands shall be the "net cash rental", capitalized at a "rate of interest" charged on long term loans secured by a mortgage on farm or agricultural land plus a component for property taxes. The current use value of land under RCW 84.34.020(2)(d) shall be established as: The prior year's average value of open space farm and agricultural land used in the county plus the value of land improvements such as septic, water, and power used to serve the residence. This shall not be interpreted to require the assessor to list improvements to the land with the value of the land.

In valuing any tract or parcel of real property designated and zoned under a comprehensive plan adopted under chapter 36.70A RCW as agricultural, forest, or open space land, the appraisal shall not be based on similar sales of parcels that have been converted to nonagricultural, nonforest, or nonopen-space uses within five years after the sale.

For the purposes of the above computation:

(1) The term "net cash rental" shall mean the average rental paid on an annual basis, in cash, for the land being appraised and other farm and agricultural land of similar quality and similarly situated that is available for lease for a period of at least three years to any reliable person without unreasonable restrictions on its use for production of agricultural crops. There shall be allowed as a deduction from the rental received or computed any costs of crop production charged against the landlord if the costs are such as are customarily paid by a landlord. If "net cash rental" data is not

available, the earning or productive capacity of farm and agricultural lands shall be determined by the cash value of typical or usual crops grown on land of similar quality and similarly situated averaged over not less than five years. Standard costs of production shall be allowed as a deduction from the cash value of the crops.

The current "net cash rental" or "earning capacity" shall be determined by the assessor with the advice of the advisory committee as provided in RCW 84.34.145, and through a continuing internal study, assisted by studies of the department of revenue. This net cash rental figure as it applies to any farm and agricultural land may be challenged before the same boards or authorities as would be the case with regard to assessed values on general property.

(2) The term "rate of interest" shall mean the rate of interest charged by the farm credit administration and other large financial institutions regularly making loans secured by farm and agricultural lands through mortgages or similar legal instruments, averaged over the immediate past five years.

The "rate of interest" shall be determined annually by a rule adopted by the department of revenue and such rule shall be published in the state register not later than January 1 of each year for use in that assessment year. The department of revenue determination may be appealed to the state board of tax appeals within thirty days after the date of publication by any owner of farm or agricultural land or the assessor of any county containing farm and agricultural land.

(3) The "component for property taxes" shall be a figure obtained by dividing the assessed value of all property in the county into the property taxes levied within the county in the year preceding the assessment and multiplying the quotient obtained by one hundred.

Sec. 34. RCW 84.40.030 and 1994 c 124 s 20 are each amended to read as follows:

All property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

Taxable leasehold estates shall be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid.

The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

(1) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal shall be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. The appraisal shall also take into account: (a) In the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (b) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of similar property.

(2) In addition to sales as defined in subsection (1), consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection (2) shall be the dominant factors in valuation. When provisions of this subsection (2) are relied upon for establishing values the property owner shall be advised upon request of the factors used in arriving at such value.

(3) In valuing any tract or parcel of real property, the value of the land, exclusive of structures thereon shall be determined; also the value of structures thereon, but the valuation shall not exceed the value of the total property as it exists. In valuing agricultural land, growing crops shall be excluded.

(4) In valuing any tract or parcel of real property designated and zoned under a comprehensive plan adopted under chapter 36.70A RCW as agricultural, forest, or open space land, the appraisal shall not be based on similar sales of parcels that have been converted to

nonagricultural, nonforest, or nonopen-space uses within five years after the sale.

Sec. 35. RCW 90.60.030 and 1995 c 347 s 603 are each amended to read as follows:

The permit assistance center is established within the department. The center shall:

(1) Publish and keep current one or more handbooks containing lists and explanations of all permit laws. ((~~The center shall coordinate with the business assistance center in providing and maintaining this information to applicants and others.~~)) To the extent possible, the handbook shall include relevant federal and tribal laws. A state agency or local government shall provide a reasonable number of copies of application forms, statutes, ordinances, rules, handbooks, and other informational material requested by the center and shall otherwise fully cooperate with the center. The center shall seek the cooperation of relevant federal agencies and tribal governments;

(2) Establish, and make known, a point of contact for distribution of the handbook and advice to the public as to its interpretation in any given case;

(3) Work closely and cooperatively with the business license center ((~~and the business assistance center~~)) in providing efficient and nonduplicative service to the public;

(4) Seek the assignment of employees from the permit agencies listed under RCW 90.60.020(6)(a) to serve on a rotating basis in staffing the center; ((~~and~~))

(5) Collect and disseminate information to public and private entities on federal, state, local, and tribal government programs that rely on private professional expertise to assist governmental agencies in project permit review; and

(6) Provide an annual report to the legislature on potential conflicts and perceived inconsistencies among existing statutes. The first report shall be submitted to the appropriate standing committees of the house of representatives and senate by December 1, 1996.

Sec. 36. RCW 35A.14.295 and 1967 ex.s. c 119 s 35A.14.295 are each amended to read as follows:

((~~When there is, within~~)) (1) The legislative body of a code city may resolve to annex territory containing residential property owners to the city if there is within the city, unincorporated territory:

(a) Containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to the code city((~~, the legislative body may resolve to annex such territory to the code city~~)); or

(b) Of any size and having at least eighty percent of the boundaries of such area contiguous to the city if such area existed before June 30, 1994, and is within the same county and within the same urban growth area designated under RCW 36.70A.110, and the city was planning under chapter 36.70A RCW as of June 30, 1994.

(2) The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and set a date for a public hearing on such resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks prior to the date of the hearing, in one or more newspapers of general circulation within the code city and one or more newspapers of general circulation within the area to be annexed.

(3) For purposes of subsection (1)(b) of this section, territory bounded by a river, lake, or other body of water is considered contiguous to a city that is also bounded by the same river, lake, or other body of water.

NEW SECTION. **Sec. 37.** A new section is added to chapter 35.13 RCW to read as follows:

(1) The legislative body of a city or town planning under chapter 36.70A RCW as of June 30, 1994, may resolve to annex territory to the city or town if there is, within the city or town, unincorporated territory containing residential property owners within the same county and within the same urban growth area designated under RCW 36.70A.110 as the city or town:

(a) Containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to the city or town if such area existed before June 30, 1994; or

(b) Of any size and having at least eighty percent of the boundaries of the area contiguous to the city if the area existed before June 30, 1994.

(2) The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing in the area as nearly as may be, and set a date for a public hearing on the resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the city or town and one or more newspapers of general circulation within the area to be annexed.

(3) For purposes of subsection (1)(b) of this section, territory bounded by a river, lake, or other body of water is considered contiguous to a city that is also bounded by the same river, lake, or other body of water.

Sec. 38. RCW 35.13.174 and 1973 1st ex.s. c 164 s 17 are each amended to read as follows:

Upon receipt by the board of county commissioners of a determination by a majority of the review board favoring annexation of the proposed area that has been initiated by resolution pursuant to RCW 35.13.015 by the city or town legislative body, the board of county commissioners<u>, or the city or town legislative body for any city or town within an urban growth area designated under RCW 36.70A.110,</u> shall fix a date on which an annexation election shall be held, which date will be not less than thirty days nor more than sixty days thereafter.

Sec. 39. RCW 36.93.170 and 1989 c 84 s 5 are each amended to read as follows:

In reaching a decision on a proposal or an alternative, the board shall consider the factors affecting such proposal, which shall include, but not be limited to the following:

(1) Population and territory; population density; land area and land uses; comprehensive plans and zoning, as adopted under chapter 35.63, 35A.63, or 36.70 RCW; <u>comprehensive plans and development regulations adopted under chapter 36.70A RCW; applicable service agreements entered into under chapter 36.115 or 39.34 RCW; applicable interlocal annexation agreements between a county and its cities;</u> per capita assessed valuation; topography, natural boundaries and drainage basins, proximity to other populated areas; the existence and preservation of prime agricultural soils and productive agricultural uses; the likelihood of significant growth in the area and in adjacent

incorporated and unincorporated areas during the next ten years; location and most desirable future location of community facilities;

(2) Municipal services; need for municipal services; effect of ordinances, governmental codes, regulations and resolutions on existing uses; present cost and adequacy of governmental services and controls in area; prospects of governmental services from other sources; probable future needs for such services and controls; probable effect of proposal or alternative on cost and adequacy of services and controls in area and adjacent area; the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units; and

(3) The effect of the proposal or alternative on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county.

The provisions of chapter 43.21C RCW, State Environmental Policy, shall not apply to incorporation proceedings covered by chapter 35.02 RCW.

Sec. 40. RCW 84.14.010 and 1995 c 375 s 3 are each amended to read as follows:

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

(1) "City" means either (a) a city or town with a population of at least one hundred ((~~fifty~~)) thousand or (b) the largest city or town, if there is no city or town with a population of at least one hundred thousand, located in a county planning under the growth management act.

(2) "Governing authority" means the local legislative authority of a city having jurisdiction over the property for which an exemption may be applied for under this chapter.

(3) "Growth management act" means chapter 36.70A RCW.

(4) "Multiple-unit housing" means a building having four or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from new construction or rehabilitated or conversion of vacant, underutilized, or substandard buildings to multifamily housing.

(5) "Owner" means the property owner of record.

(6) "Permanent residential occupancy" means multiunit housing that provides either rental or owner occupancy on a nontransient basis. This includes owner-occupied or rental accommodation that is leased for

a period of at least one month. This excludes hotels and motels that predominately offer rental accommodation on a daily or weekly basis.

(7) "Rehabilitation improvements" means modifications to existing structures, that are vacant for twelve months or longer, that are made to achieve a condition of substantial compliance with existing building codes or modification to existing occupied structures which increase the number of multifamily housing units.

(8) "Residential targeted area" means an area within an urban center that has been designated by the governing authority as a residential targeted area in accordance with this chapter.

(9) "Substantial compliance" means compliance with local building or housing code requirements that are typically required for rehabilitation as opposed to new construction.

(10) "Urban center" means a compact identifiable district where urban residents may obtain a variety of products and services. An urban center must contain:

(a) Several existing or previous, or both, business establishments that may include but are not limited to shops, offices, banks, restaurants, governmental agencies;

(b) Adequate public facilities including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and

(c) A mixture of uses and activities that may include housing, recreation, and cultural activities in association with either commercial or office, or both, use.

NEW SECTION. **Sec. 41.** A new section is added to chapter 36.70A RCW to read as follows:

The legislature recognizes that the preservation of urban greenbelts is an integral part of comprehensive growth management in Washington. The legislature further recognizes that certain greenbelts are subject to adverse possession action which, if carried out, threaten the comprehensive nature of this chapter. Therefore, a party shall not acquire by adverse possession property that is designated as a plat greenbelt or open space area or that is dedicated as open space to a public agency or to a bona fide homeowner's association.

Sec. 42. RCW 84.14.030 and 1995 c 375 s 6 are each amended to read as follows:

An owner of property making application under this chapter must meet the following requirements:

(1) The new or rehabilitated multiple-unit housing must be located in a residential targeted area as designated by the city;

(2) The multiple-unit housing must meet the guidelines as adopted by the governing authority that may include height, density, public benefit features, number and size of proposed development, parking, low-income or moderate-income occupancy requirements, and other adopted requirements indicated necessary by the city. The required amenities should be relative to the size of the project and tax benefit to be obtained;

(3) The new, converted, or rehabilitated multiple-unit housing must provide for a minimum of fifty percent of the space for permanent residential occupancy. In the case of existing occupied multifamily development, the multifamily housing must also provide for a minimum of four additional multifamily units. Existing multifamily vacant housing that has been vacant for twelve months or more does not have to provide additional multifamily units;

(4) New construction multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application;

(5) Property proposed to be rehabilitated must be vacant at least twelve months before submitting an application and fail to comply with one or more standards of the applicable state or local building or housing codes on or after July 23, 1995; and

(6) The applicant must enter into a contract with the city approved by the governing body under which the applicant has agreed to the implementation of the development on terms and conditions satisfactory to the governing authority.

Sec. 43. RCW 84.14.050 and 1995 c 375 s 8 are each amended to read as follows:

An owner of property seeking tax incentives under this chapter must complete the following procedures:

(1) In the case of rehabilitation or where demolition or new construction is required, the owner shall secure from the governing authority or duly authorized agent, before commencement of rehabilitation improvements or new construction, verification of property noncompliance with applicable building and housing codes;

(2) In the case of new and rehabilitated multifamily housing, the owner shall apply to the city on forms adopted by the governing authority. The application must contain the following:

(a) Information setting forth the grounds supporting the requested exemption including information indicated on the application form or in the guidelines;

(b) A description of the project and site plan, including the floor plan of units and other information requested;

(c) A statement that the applicant is aware of the potential tax liability involved when the property ceases to be eligible for the incentive provided under this chapter;

(3) The applicant must verify the application by oath or affirmation; and

(4) The application must be made on or before April 1 of each year, and must be accompanied by the application fee, if any, required under RCW ((~~84.14.070~~)) 84.14.080. The governing authority may permit the applicant to revise an application before final action by the governing authority.

**Sec. 44. RCW 90.61.020 and 1995 c 347 s 802 are each amended to read as follows:*

The commission shall consist of not more than ((~~fourteen~~)) twenty-two members. ((~~Eleven~~)) Fifteen members of the commission shall be appointed by the governor. ((~~Membership~~)) The commission members appointed by the governor shall reflect the interests of business, ((~~agriculture~~)) operators of small businesses, owners of small property holdings, livestock producers, irrigated agriculture, dryland farmers or major crop commodity producers, labor, the environment, neighborhood groups, other citizens, the legislature, cities, counties, and federally recognized Indian tribes. ((~~Members~~)) The commission members appointed by the governor shall have substantial experience in matters relating to land use and environmental planning and regulation, and shall have the ability to work toward cooperative solutions among diverse interests. The director of the department of community, trade, and economic development, or the director s designee, shall be a member and shall serve as chair of the commission. The director of the department of ecology, or the director s designee, and the secretary of the department of transportation, or the secretary's designee, shall also be members of the commission. Two members of the commission shall

be members of the senate, one from each caucus appointed by the president of the senate, and two members of the commission shall be members of the house of representatives, one from each caucus appointed by the speaker of the house of representatives. Staff for the commission shall be provided by the department of community, trade, and economic development, with additional staff to be provided by other state agencies and the legislature, as may be required. State agencies shall provide the commission with information and assistance as needed.

This section expires June 30, 1998.

***Sec. 44 was vetoed. See message at end of chapter.**

**Sec. 45. RCW 90.61.040 and 1995 c 347 s 804 are each amended to read as follows:*

The commission shall:

(1) Consider the effectiveness of state and local government efforts to consolidate and integrate the growth management act, the state environmental policy act, the shoreline management act, and other land use, planning, environmental, and permitting laws.

(2) Identify the revisions and modifications needed in state land use, planning, and environmental law and practice to adequately plan for growth and achieve economically and environmentally sustainable development, to adequately assess environmental impacts of comprehensive plans, development regulations, and growth, and to reduce the time and cost of obtaining project permits.

(3) Draft a consolidated land use procedure, following these guidelines:

(a) Conduct land use planning through the comprehensive planning process under chapter 36.70A RCW rather than through review of individual projects;

(b) Involve diverse sectors of the public in the planning process. Early and informal environmental analysis should be incorporated into planning and decision making;

(c) Recognize that different questions need to be answered and different levels of detail applied at each planning phase, from the initial development of plan concepts or plan elements to implementation programs;

(d) Integrate and combine to the fullest extent possible the processes, analysis, and documents currently required under chapters 36.70A and 43.21C RCW, so that subsequent plan decisions and subsequent

implementation will incorporate measures to promote the environmental, economic, and other goals and to mitigate undesirable or unintended adverse impacts on a community's quality of life;

(e) Focus environmental review and the level of detail needed for different stages of plan and project decisions on the environmental considerations most relevant to that stage of the process;

(f) Avoid duplicating review that has occurred for plan decisions when specific projects are proposed;

(g) Use environmental review on projects to: (i) Review and document consistency with comprehensive plans and development regulations; (ii) provide prompt and coordinated review by agencies, tribes, and the public on compliance with applicable environmental laws and plans, including mitigation for site specific project impacts that have not been considered and addressed at the plan or development regulation level; and (iii) ensure accountability by local government to applicants and the public for requiring and implementing mitigation measures;

(h) Maintain or improve the quality of environmental analysis both for plan and for project decisions, while integrating these analyses with improved state and local planning and permitting processes;

(i) Examine existing land use and environmental permits for necessity and utility. To the extent possible, existing permits should be combined into fewer permits, assuring that the values and principles intended to be protected by those permits remain protected; and

(j) Consolidate local government appeal processes to allow a single appeal of permits at local government levels, a single state level administrative appeal, and a final judicial appeal.

(4) Monitor instances state-wide of the vesting of project permit applications during the period that an appeal is pending before a growth management hearings board, as authorized under RCW 36.70A.300. The commission shall also review the extent to which such vesting results in the approval of projects that are inconsistent with a comprehensive plan or development regulation provision ultimately found to be in compliance with a board's order or remand. The commission shall analyze the impact of such approvals on ensuring the attainment of the goals and policies of chapter 36.70A RCW, and make recommendations to the governor and the legislature on statutory changes to address any adverse impacts from the provisions of RCW 36.70A.300. The commission shall provide an initial report on its

findings and recommendations by November 1, 1995, and submit its further findings and recommendations subsequently in the reports required under RCW 90.61.030.

(5) Monitor local government consolidated permit procedures and the effectiveness of the timelines established by RCW 36.70B.090. The commission shall include in its report submitted to the governor and the legislature on November 1, 1997, its recommendation about what timelines, if any, should be imposed on the local government consolidated permit process required by chapter 36.70B RCW.

(6) Evaluate funding mechanisms that will enable local governments to pay for and recover the costs of conducting integrated planning and environmental analysis. The commission shall include its conclusions in its first report to the legislature on November 1, 1995, and include any recommended statutory changes.

(7) Study, in cooperation with the state board for registration of professional engineers and the state building code council, ways in which state agencies and local governments could authorize professionals with appropriate qualifications to certify a project's compliance with certain state and local land use and environmental requirements. The commission shall report to the legislature on measures necessary to implement such a system of professional certification.

(8) Review long-term approaches for resolving disputes that arise under the growth management act, chapter 36.70A RCW; the shoreline management act, chapter 90.58 RCW; and other environmental laws. In particular, in the commission's recommendations on a consolidated land use procedure and integration and consolidation of Washington's land use and environmental laws, identify needed changes to the structure of the boards that hear environmental appeals as well as the extent to which quasi-judicial bodies are needed to provide continued oversight of matters currently brought before the growth management hearings board and other boards that hear such appeals.

(9) If the commission finds that there is no longer a need for the growth management hearings boards and recommends sunset of the boards, include in its recommendations a plan for implementing the sunset process. Alternatively, if the boards are to become advisory bodies with the primary duty of mediating disputes and making advisory decisions, the commission shall make recommendations as to how such a change in the board's authority should be implemented. If the

commission makes other recommendations with respect to the boards, it shall make recommendations to implement any needed changes.

(10) Evaluate the effect of the 1997 amendments to this chapter that raise the standard of review of agency, county, and city actions by the growth management hearings boards and make changes with respect to board determinations of invalidity, and make recommendations as to whether the latitude of the boards should be further curtailed and greater deference given to local decisions by raising the standard of review, limiting the authority of the board to make determinations of invalidity, or making other changes.

These guidelines are intended to guide the work of the commission, without limiting its charge to integrate and consolidate Washington's land use and environmental laws into a single, manageable statutory framework.

This section expires June 30, 1998.

***Sec. 45 was vetoed. See message at end of chapter.**

Sec. 46. RCW 36.70B.040 and 1995 c 347 s 405 are each amended to read as follows:

(1) A proposed project's consistency with a local government's development regulations adopted under chapter 36.70A RCW, or, in the absence of applicable development regulations, the appropriate elements of the comprehensive plan ((~~or subarea plan~~)) adopted under chapter 36.70A RCW shall be ((~~determined~~)) decided by the local government during project review by consideration of:

(a) The type of land use;

(b) The level of development, such as units per acre or other measures of density;

(c) Infrastructure, including public facilities and services needed to serve the development; and

(d) The ((~~character~~)) characteristics of the development, such as development standards.

(2) In ((~~determining consistency~~)) deciding whether a project is consistent, the determinations made pursuant to RCW 36.70B.030(2) shall be controlling.

(3) For purposes of this section, the term "consistency" shall include all terms used in this chapter and chapter 36.70A RCW to refer to performance in accordance with this chapter and chapter 36.70A RCW, including but not limited to compliance, conformity, and consistency.

(4) Nothing in this section requires documentation, dictates an agency's procedures for considering consistency, or limits a ((~~unit of government~~)) city or county from asking more specific or related questions with respect to any of the four main categories listed in subsection (1)(a) through (d) of this section.

(5) The department of community, trade, and economic development is authorized to develop and adopt by rule criteria to assist local governments planning under RCW 36.70A.040 to analyze the consistency of project actions. These criteria shall be jointly developed with the department of ecology.

Sec. 47. RCW 43.21C.110 and 1995 c 347 s 206 are each amended to read as follows:

It shall be the duty and function of the department of ecology:

(1) To adopt and amend thereafter rules of interpretation and implementation of this chapter, subject to the requirements of chapter 34.05 RCW, for the purpose of providing uniform rules and guidelines to all branches of government including state agencies, political subdivisions, public and municipal corporations, and counties. The proposed rules shall be subject to full public hearings requirements associated with rule promulgation. Suggestions for modifications of the proposed rules shall be considered on their merits, and the department shall have the authority and responsibility for full and appropriate independent promulgation and adoption of rules, assuring consistency with this chapter as amended and with the preservation of protections afforded by this chapter. The rule-making powers authorized in this section shall include, but shall not be limited to, the following phases of interpretation and implementation of this chapter:

(a) Categories of governmental actions which are not to be considered as potential major actions significantly affecting the quality of the environment, including categories pertaining to applications for water right permits pursuant to chapters 90.03 and 90.44 RCW. The types of actions included as categorical exemptions in the rules shall be limited to those types which are not major actions significantly affecting the quality of the environment. The rules shall provide for certain circumstances where actions which potentially are categorically exempt require environmental review. An action that

is categorically exempt under the rules adopted by the department may not be conditioned or denied under this chapter.

(b) Rules for criteria and procedures applicable to the determination of when an act of a branch of government is a major action significantly affecting the quality of the environment for which a detailed statement is required to be prepared pursuant to RCW 43.21C.030.

(c) Rules and procedures applicable to the preparation of detailed statements and other environmental documents, including but not limited to rules for timing of environmental review, obtaining comments, data and other information, and providing for and determining areas of public participation which shall include the scope and review of draft environmental impact statements.

(d) Scope of coverage and contents of detailed statements assuring that such statements are simple, uniform, and as short as practicable; statements are required to analyze only reasonable alternatives and probable adverse environmental impacts which are significant, and may analyze beneficial impacts.

(e) Rules and procedures for public notification of actions taken and documents prepared.

(f) Definition of terms relevant to the implementation of this chapter including the establishment of a list of elements of the environment. Analysis of environmental considerations under RCW 43.21C.030(2) may be required only for those subjects listed as elements of the environment (or portions thereof). The list of elements of the environment shall consist of the "natural" and "built" environment. The elements of the built environment shall consist of public services and utilities (such as water, sewer, schools, fire and police protection), transportation, environmental health (such as explosive materials and toxic waste), and land and shoreline use (including housing, and a description of the relationships with land use and shoreline plans and designations, including population).

(g) Rules for determining the obligations and powers under this chapter of two or more branches of government involved in the same project significantly affecting the quality of the environment.

(h) Methods to assure adequate public awareness of the preparation and issuance of detailed statements required by RCW 43.21C.030(2)(c).

(i) To prepare rules for projects setting forth the time limits within which the governmental entity responsible for the action shall comply with the provisions of this chapter.

(j) Rules for utilization of a detailed statement for more than one action and rules improving environmental analysis of nonproject proposals and encouraging better interagency coordination and integration between this chapter and other environmental laws.

(k) Rules relating to actions which shall be exempt from the provisions of this chapter in situations of emergency.

(l) Rules relating to the use of environmental documents in planning and decision making and the implementation of the substantive policies and requirements of this chapter, including procedures for appeals under this chapter.

(m) Rules and procedures that provide for the integration of environmental review with project review as provided in RCW 43.21C.240. The rules and procedures shall be jointly developed with the department of community, trade, and economic development and shall be applicable to the preparation of environmental documents for actions in counties, cities, and towns planning under RCW 36.70A.040. The rules and procedures shall also include procedures and criteria to analyze ((~~the consistency of project actions, including~~)) planned actions under RCW 43.21C.031(2)((~~, with development regulations adopted under chapter 36.70A RCW, or in the absence of applicable development regulations, the appropriate elements of a comprehensive plan or subarea plan adopted under chapter 36.70A RCW~~)) and revisions to the rules adopted under this section to ensure that they are compatible with the requirements and authorizations of chapter 347, Laws of 1995, as amended by chapter . . ., Laws of 1997 (this act). Ordinances or procedures adopted by a county, city, or town to implement the provisions of ((~~RCW 43.21C.240~~)) chapter 347, Laws of 1995 prior to the effective date of rules adopted under this subsection (1)(m) shall continue to be effective until the adoption of any new or revised ordinances or procedures that may be required. If any revisions are required as a result of rules adopted under this subsection (1)(m), those revisions shall be made within the time limits specified in RCW 43.21C.120.

(2) In exercising its powers, functions, and duties under this section, the department may:

(a) Consult with the state agencies and with representatives of science, industry, agriculture, labor, conservation organizations, state and local governments, and other groups, as it deems advisable; and

(b) Utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies, organizations, and individuals, in order to avoid duplication of effort and expense, overlap, or conflict with similar activities authorized by law and performed by established agencies.

(3) Rules adopted pursuant to this section shall be subject to the review procedures of chapter 34.05 RCW.

Sec. 48. RCW 36.70B.110 and 1995 c 347 s 415 are each amended to read as follows:

(1) Not later than April 1, 1996, a local government planning under RCW 36.70A.040 shall provide a notice of application to the public and the departments and agencies with jurisdiction as provided in this section. If a local government has made a determination of significance under chapter 43.21C RCW concurrently with the notice of application, the notice of application shall be combined with the determination of significance and scoping notice. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of application. Nothing in this section or this chapter prevents a lead agency, when it is a project proponent or is funding a project, from conducting its review under chapter 43.21C RCW or from allowing appeals of procedural determinations prior to submitting a project permit application.

(2) The notice of application shall be provided within fourteen days after the determination of completeness as provided in RCW 36.70B.070 and, except as limited by the provisions of subsection (4)(b) of this section, shall include the following in whatever sequence or format the local government deems appropriate:

(a) The date of application, the date of the notice of completion for the application, and the date of the notice of application;

(b) A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070 or 36.70B.090;

(c) The identification of other permits not included in the application to the extent known by the local government;

(d) The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, such as a city land use bulletin, the location where the application and any studies can be reviewed;

(e) A statement of the public comment period, which shall be not less than fourteen nor more than thirty days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A local government may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;

(f) The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application;

(g) A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency as provided in RCW ((~~36.70B.040~~)) 36.70B.030(2); and

(h) Any other information determined appropriate by the local government.

(3) If an open record predecision hearing is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.

(4) A local government shall use reasonable methods to give the notice of application to the public and agencies with jurisdiction and may use its existing notice procedures. A local government may use different types of notice for different categories of project permits or types of project actions. If a local government by resolution or ordinance does not specify its method of public notice, the local government shall use the methods provided for in (a) and (b) of this subsection. Examples of reasonable methods to inform the public are:

(a) Posting the property for site-specific proposals;

(b) Publishing notice, including at least the project location, description, type of permit(s) required, comment period dates, and location where the notice of application required by subsection (2) of

this section and the complete application may be reviewed, in the newspaper of general circulation in the general area where the proposal is located or in a local land use newsletter published by the local government;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional or neighborhood newspapers or trade journals;

(f) Publishing notice in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; and

(g) Mailing to neighboring property owners.

(5) A notice of application shall not be required for project permits that are categorically exempt under chapter 43.21C RCW, unless ((~~a public comment period or~~)) an open record predecision hearing is required or an open record appeal hearing is allowed on the project permit decision.

(6) A local government shall integrate the permit procedures in this section with its environmental review under chapter 43.21C RCW as follows:

(a) Except for a determination of significance and except as otherwise expressly allowed in this section, the local government may not issue its threshold determination((~~, or issue a decision or a recommendation on a project permit~~)) until the expiration of the public comment period on the notice of application.

(b) If an open record predecision hearing is required ((~~and the local government's threshold determination requires public notice under chapter 43.21C RCW~~)), the local government shall issue its threshold determination at least fifteen days prior to the open record predecision hearing.

(c) Comments shall be as specific as possible.

(d) A local government is not required to provide for administrative appeals of its threshold determination. If provided, an administrative appeal shall be filed within fourteen days after notice that the determination has been made and is appealable. Except as otherwise expressly provided in this section, the appeal hearing on a determination of nonsignificance shall be consolidated with any open record hearing on the project permit.

(7) At the request of the applicant, a local government may combine any hearing on a project permit with any hearing that may be held by another local, state, regional, federal, or other agency ((~~provided that~~)), if:

(a) The hearing is held within the geographic boundary of the local government((~~. Hearings shall be combined if requested by an applicant, as long as~~)); and

(b) The joint hearing can be held within the time periods specified in RCW 36.70B.090 or the applicant agrees to the schedule in the event that additional time is needed in order to combine the hearings. All agencies of the state of Washington, including municipal corporations and counties participating in a combined hearing, are hereby authorized to issue joint hearing notices and develop a joint format, select a mutually acceptable hearing body or officer, and take such other actions as may be necessary to hold joint hearings consistent with each of their respective statutory obligations.

(8) All state and local agencies shall cooperate to the fullest extent possible with the local government in holding a joint hearing if requested to do so, as long as:

(a) The agency is not expressly prohibited by statute from doing so;

(b) Sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule; and

(c) The agency has received the necessary information about the proposed project from the applicant to hold its hearing at the same time as the local government hearing.

(9) A local government is not required to provide for administrative appeals. If provided, an administrative appeal of the project decision((~~, combined with~~)) and of any environmental determination((~~s~~)) issued at the same time as the project decision, shall be filed within fourteen days after the notice of the decision or after other notice that the decision has been made and is appealable. The local government shall extend the appeal period for an additional seven days, if state or local rules adopted pursuant to chapter 43.21C RCW allow public comment on a determination of nonsignificance issued as part of the appealable project permit decision.

(10) The applicant for a project permit is deemed to be a participant in any comment period, open record hearing, or closed record appeal.

(11) Each local government planning under RCW 36.70A.040 shall adopt procedures for administrative interpretation of its development regulations.

Sec. 49. RCW 43.21C.075 and 1995 c 347 s 204 are each amended to read as follows:

(1) Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action.

(2) Unless otherwise provided by this section:

(a) Appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations.

(b) Appeals of environmental determinations made (or lacking) under this chapter shall be commenced within the time required to appeal the governmental action which is subject to environmental review.

(3) If an agency has a procedure for appeals of agency environmental determinations made under this chapter, such procedure:

(a) Shall ((~~not~~)) allow no more than one agency appeal proceeding on ((~~a~~)) each procedural determination (the adequacy of a determination of significance/nonsignificance or of a final environmental impact statement)((~~. The appeal proceeding on a determination of significance may occur before the agency's final decision on a proposed action. The appeal proceeding on a determination of nonsignificance may occur before the agency's final decision on a proposed action only if the appeal is heard at a proceeding where the hearing body or officer will render a final recommendation or decision on the proposed underlying governmental action. Such appeals shall also be allowed for a determination of significance/nonsignificance which may be issued by the agency after supplemental review~~));

(b) Shall consolidate an appeal of procedural issues and of substantive determinations made under this chapter (such as a decision

to require particular mitigation measures or to deny a proposal) with a hearing or appeal on the underlying governmental action by providing for a single simultaneous hearing before one hearing officer or body to consider the agency decision or recommendation on a proposal and any environmental determinations made under this chapter, with the exception of ((~~the~~)):

(i) An appeal((~~, if any,~~)) of a determination of significance ((~~as provided in (a) of this subsection~~)));

(ii) An appeal of a procedural determination made by an agency when the agency is a project proponent, or is funding a project, and chooses to conduct its review under this chapter, including any appeals of its procedural determinations, prior to submitting an application for a project permit;

(iii) An appeal of a procedural determination made by an agency on a nonproject action; or

(iv) An appeal to the local legislative authority under RCW 43.21C.060 or other applicable state statutes;

(c) Shall provide for the preparation of a record for use in any subsequent appeal proceedings, and shall provide for any subsequent appeal proceedings to be conducted on the record, consistent with other applicable law. An adequate record consists of findings and conclusions, testimony under oath, and taped or written transcript. An electronically recorded transcript will suffice for purposes of review under this subsection; and

(d) Shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight.

(4) If a person aggrieved by an agency action has the right to judicial appeal and if an agency has an administrative appeal procedure, such person shall, prior to seeking any judicial review, use such agency procedure if any such procedure is available, unless expressly provided otherwise by state statute.

(5) Some statutes and ordinances contain time periods for challenging governmental actions which are subject to review under this chapter, such as various local land use approvals (the "underlying governmental action"). RCW 43.21C.080 establishes an optional "notice of action" procedure which, if used, imposes a time period for appealing decisions under this chapter. This subsection does not modify any such time periods. In this subsection, the term "appeal" refers to a judicial appeal only.

(a) If there is a time period for appealing the underlying governmental action, appeals under this chapter shall be commenced within such time period. The agency shall give official notice stating the date and place for commencing an appeal.

(b) If there is no time period for appealing the underlying governmental action, and a notice of action under RCW 43.21C.080 is used, appeals shall be commenced within the time period specified by RCW 43.21C.080.

(6)(a) Judicial review under subsection (5) of this section of an appeal decision made by an agency under subsection (3) of this section shall be on the record, consistent with other applicable law.

(b) A taped or written transcript may be used. If a taped transcript is to be reviewed, a record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review. A party may provide a written transcript of portions of the testimony at the party's own expense or apply to that court for an order requiring the party seeking review to pay for additional portions of the written transcript.

(c) Judicial review under this chapter shall without exception be of the governmental action together with its accompanying environmental determinations.

(7) Jurisdiction over the review of determinations under this chapter in an appeal before an agency or superior court shall upon consent of the parties be transferred in whole or part to the shorelines hearings board. The shorelines hearings board shall hear the matter and sign the final order expeditiously. The superior court shall certify the final order of the shorelines hearings board and ((~~said~~)) the certified final order may only be appealed to an appellate court. In the case of an appeal under this chapter regarding a project or other matter that is also the subject of an appeal to the shorelines hearings board under chapter 90.58 RCW, the shorelines hearings board shall have sole jurisdiction over both the appeal under this section and the appeal under chapter 90.58 RCW, shall consider them together,

and shall issue a final order within one hundred eighty days as provided in RCW 90.58.180.

(8) For purposes of this section and RCW 43.21C.080, the words "action", "decision", and "determination" mean substantive agency action including any accompanying procedural determinations under this chapter (except where the word "action" means "appeal" in RCW 43.21C.080(2)). The word "action" in this section and RCW 43.21C.080 does not mean a procedural determination by itself made under this chapter. The word "determination" includes any environmental document required by this chapter and state or local implementing rules. The word "agency" refers to any state or local unit of government. Except as provided in subsection (5) of this section, the word "appeal" refers to administrative, legislative, or judicial appeals.

(9) The court in its discretion may award reasonable ((~~attorney's~~)) attorneys' fees of up to one thousand dollars in the aggregate to the prevailing party, including a governmental agency, on issues arising out of this chapter if the court makes specific findings that the legal position of a party is frivolous and without reasonable basis.

Sec. 50. RCW 90.58.090 and 1995 c 347 s 306 are each amended to read as follows:

(1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department. Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

(2) Upon receipt of a proposed master program or amendment, the department shall:

(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government, all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes. The receipt by the department of the written notice of agreement constitutes final action by the department approving the amendment; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide written notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(4) The department shall approve those segments of the master program relating to shorelines of state-wide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the state-wide interest. If the department does not approve a segment of a local government master program relating to a shoreline of state-wide significance, the department may develop and by rule adopt an alternative to the local government s proposal.

(5) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(6) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. Shoreline master programs that were adopted by the department prior to July 22, 1995, in accordance with the provisions of this section then in effect, shall be deemed approved by the department in accordance with the provisions of this section that became effective on that date. The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program.

Sec. 51. RCW 90.58.143 and 1996 c 62 s 1 are each amended to read as follows:

(1) The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized under this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may adopt different time limits from those set forth in subsections (2) and (3) of this section as a part of action on a substantial development permit.

(2) Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

(3) Authorization to conduct construction activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

(4) The effective date of a substantial development permit shall be the date of ((~~the last action required on the substantial development permit and all~~)) filing as provided in RCW 90.58.140(6). The permit time periods in subsections (2) and (3) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative ((~~and~~)) or legal actions on any such permits or approvals.

Sec. 52. RCW 34.05.518 and 1995 c 382 s 5 are each amended to read as follows:

(1) The final decision of an administrative agency in an adjudicative proceeding under this chapter may be directly reviewed by the court of appeals either (a) upon certification by the superior court pursuant to this section or (b) if the final decision is from an environmental board as defined in subsection (3) of this section, upon acceptance by the court of appeals after a certificate of appealability has been filed by the environmental board that rendered the final decision.

(2) For direct review upon certification by the superior court, an application for direct review must be filed with the superior court

within thirty days of the filing of the petition for review in superior court. The superior court may certify a case for direct review only if the judicial review is limited to the record of the agency proceeding and the court finds that:

(a) Fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;

(b) Delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;

(c) An appeal to the court of appeals would be likely regardless of the determination in superior court; and

(d) The appellate court's determination in the proceeding would have significant precedential value.

Procedures for certification shall be established by court rule.

(3)(a) For the purposes of direct review of final decisions of environmental boards, environmental boards include those boards identified in RCW 43.21B.005 ((~~and growth management hearings boards as identified in RCW 36.70A.250~~)).

(b) An environmental board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest and either:

(i) Fundamental and urgent state-wide or regional issues are raised; or

(ii) The proceeding is likely to have significant precedential value.

(4) The environmental board shall state in the certificate of appealability which criteria it applied, explain how that criteria was met, and file with the certificate a copy of the final decision.

(5) For an appellate court to accept direct review of a final decision of an environmental board, it shall consider the same criteria outlined in subsection (3) of this section.

(6) The procedures for direct review of final decisions of environmental boards include:

(a) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and serve the appropriate environmental board and all parties of record. The application shall request the environmental board to file a certificate of appealability.

(b) If an issue on review is the jurisdiction of the environmental board, the board may file an application for direct review on that issue.

(c) The environmental board shall have thirty days to grant or deny the request for a certificate of appealability and its decision shall be filed with the superior court and served on all parties of record.

(d) If a certificate of appealability is issued, the parties shall have fifteen days from the date of service to file a notice of discretionary review in the superior court, and the notice shall include a copy of the certificate of appealability and a copy of the final decision.

(e) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(f) If a certificate of appealability is denied, review shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

***Sec. 52 was vetoed. See message at end of chapter.**

NEW SECTION. **Sec. 53.** Except as otherwise specifically provided in section 22 of this act, sections 1 through 21, chapter . . ., Laws of 1997 (sections 1 through 21 of this act) are prospective in effect and shall not affect the validity of actions taken or decisions made before the effective date of this section.

NEW SECTION. **Sec. 54.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 55.** Sections 29 and 30 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

Passed the Senate April 27, 1997.
Passed the House April 27, 1997.
Approved by the Governor May 19, 1997, with the exception of certain items that were vetoed.
Filed in Office of Secretary of State May 19, 1997.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 1, 4, 5, 6, 8, 15, 17, 18, 19, 44, 45, and 52, Engrossed Senate Bill No. 6094 entitled:

"AN ACT Relating to growth management;"

This bill, enacting the recommendations of the Land Use Study Commission, was introduced at my request. However, the bill was amended significantly in the legislative process. Therefore, I have listened to the input of a broad range of interests and conducted a thorough review of all of the provisions of the bill as passed by the Legislature.

I have maintained throughout the 1997 legislative session that the consensus recommendations of the Land Use Study Commission, comprising representatives of business, agricultural, local and state government, neighborhood activists and environmentalists, should provide the framework for the debate over how best to improve the state's Growth Management Act. I thank the members of the commission for their diligent work, developing a variety of issue papers, conducting hours of public hearings, and developing a well-reasoned and well-crafted legislative proposal.

As I reviewed this bill as passed by the legislature, I always kept in mind the framework for the analysis provided by the Commission. I believe that this bill will go a long way toward resolving many of the specific concerns people have had with the way the Growth Management Act has worked since it was first enacted. Among other things, this bill provides greater deference to the decisions of local elected officials throughout the state, improves public participation in the growth management process, and gives the Growth Management Hearings Boards the added direction they need in resolving some very difficult land use issues. I have signed every section of this bill that includes the language proposed by the Land Use Study Commission, as well as some other sections. However, I was unable to sign the bill in its entirety and have vetoed the following sections.

Section 1 changes the intent section recommended by the Land Use Study Commission. The language of the recommended intent section represented a fine balance of the interests represented on the Commission and should not have been altered, thereby implying an intent that was not agreed to by the Commission.

Section 4 provides that a county, after conferring with its cities, may develop alternative methods of achieving the planning goals of the Growth Management Act. This GMA-flex option was briefly discussed by the Land Use Study Commission and dismissed without recommendation because it is an issue that represents a major change in direction and needs much more discussion and refinement before it is a viable alternative.

Section 5 states that the goal of the state is to achieve no overall net loss of wetland functions. This section also provides that in adopting critical areas development regulations, counties and cities should balance all of the goals of the GMA and that the legislature intends that no goal takes precedence, but that counties and cities may prioritize the goals in accordance with local history, conditions, circumstances, and choice. This issue was not addressed by the Land

Use Study Commission and seems to me to be inconsistent with the tenor of the Commission's recommendations.

Section 6 allows for exemptions from critical area development regulations for emergency activities and activities with minor impacts on critical areas. This idea was not considered by the Land Use Study Commission. This change in policy would have to be fully explored before I could be comfortable signing it into law.

Section 8 provides that in certain counties, developments in rural areas shall not require urban services and shall be principally designed to serve and provide jobs for the local rural population. This section creates confusion because it states a rule that currently applies in all counties planning under the Growth Management Act, but implies that the rule applies only to specific counties. Section 7 of this bill provides all the direction needed by counties to plan for the rural element, including guidelines for rural development.

Section 7 provides that the rural element shall permit rural development providing for a variety of rural densities, uses, essential public facilities, and rural governmental services to serve the permitted densities and uses in the rural element. There are three exceptions in which businesses in the rural element are not required to be principally designed to serve the existing and projected rural population. These exceptions are: (1) infill of existing development; (2) small-scale recreational or tourist uses; and (3) development of cottage industries and small-scale businesses. Therefore, section 8 is unnecessary, confusing, and potentially more restrictive in certain counties than are the recommendations of the Land Use Study Commission embodied in section 7.

Section 15 provides that all appeals of Growth Management Hearings Board decisions shall be filed directly in the Court of Appeals. This is not a recommendation of the Land Use Study Commission and I am not certain that it would be in the best interest of the parties who appear before the boards. Most parties believe that Superior Court review of board decisions is appropriate and is working well.

Section 17 establishes a new and higher standard for findings of invalidity - the "arbitrary and capricious" standard. I believe this would strip too much authority from the Growth Management Hearings Boards and severely weaken the important state role in the Growth Management Act.

Section 18 adds language to the Land Use Study Commission recommendation which clarifies the current expedited review provision relating to orders of invalidity. The new language creates a burden on those who challenge land use decisions that in many instances would be impossible to meet, because the plan or regulation has not been in effect long enough to have caused actual harm. In some instances there is no prudent policy justification for waiting until actual harm can be proven before allowing the invalidation of a comprehensive plan or development regulation.

Section 19 would allow the Superior Court, when reviewing an order of invalidity, to: affirm, set aside, enjoin, or remand orders of the Growth Management Hearings Boards; or enter a declaratory judgment of compliance or noncompliance, which may include an order of invalidity setting out the particular part or parts of the plan or regulation that

are invalid. This was not a recommendation of the Land Use Study Commission and was not the subject of any other bills introduced this session. The concept received no public scrutiny or debate. This provision could have the unintended effect of providing for review of a comprehensive plan without the court having the benefit of the entire record.

I recognize that there is not enough money provided in the operating budget (ESHB 2259) to accomplish the full purpose of section 25. However, by approving section 25 of this bill and section 103(4) of the operating budget, I am indicating my commitment to beginning the work of reviewing and evaluating the effectiveness of the growth management act in achieving the desired densities in urban growth areas. To accomplish this, I will work with the legislature to identify additional resources, a cost recovery program, or other means to assure sufficient funding to allow the first evaluations to be completed by the September 1, 2002 deadline.

By approving sections 29 and 30, I have approved the use of the Public Works Trust Fund and the Centennial Clean Water Fund to address critical or emergent public health and existing environmental problems related to infrastructure in jurisdictions that are not currently in compliance with the Growth Management Act. I am very concerned that this legislation not be used as a method to provide unrestricted access to these accounts for local governments that are not in compliance with the law. For this reason, I have directed the Department of Health, the Department of Ecology, the Department of Community, Trade and Economic Development, and the Public Works Board to interpret this new authority conservatively.

Section 44 would add new members to the Land Use Study Commission. I am concerned that the Commission may already be unable to meet its time schedule for completing its ambitious work plan. The selection and appointment of new members to the Commission is likely to cause delay in the Commission's process. Furthermore, I believe the Commission is currently well-balanced in its composition. I would like to see that same balance maintained for the last year of the Commission's work. However, I do encourage interested legislators to attend the meetings of the Commission and to provide input when appropriate.

Section 45 amends the charge given to the Land Use Study Commission by adding the following requirements: (1) Review long-term approaches for resolving disputes that arise under the Growth Management Act, the Shoreline Management Act, and other environmental laws, including identifying needed changes to the structure of the boards that hear environmental appeals; (2) If the LUSC determines that there is no longer a need for the Growth Management Hearings Boards, recommend a plan for sunsetting the boards; and (3) Evaluate the effect of the changes to the standard of review and make recommendations raising the standard of review, limiting the authority of the boards to make determinations of invalidity, or making other changes.

The ambitious Land Use Study Commission work plan for 1997-98 already includes much of the work proposed in section 45. However, I am concerned that the language of this section has the unintended effect of predetermining a result or, at least, a range of results. I encourage the Land Use Study Commission to review as many of these

issues as it can reasonably fit within its crowded work plan and narrow time constraints.

Section 52 makes a technical change to effectuate the purpose of section 15, which I have vetoed.

For the reasons stated above, I have vetoed sections 1, 4, 5, 6, 8, 15, 17, 18, 19, 44, 45, and 52 of Engrossed Senate Bill No. 6094.

With the exception of sections 1, 4, 5, 6, 8, 15, 17, 18, 19, 44, 45, and 52, Engrossed Senate Bill No. 6094 is approved."