

THE WILLIAM D. RUCKELSHAUS CENTER

UNIVERSITY OF WASHINGTON

A ROAD MAP TO WASHINGTON'S FUTURE

Final Report

June 30, 2019

VOLUME 4

Formal Letters Sent to the Project Team

Submission by the Tulalip Tribes of Washington to the the William D. Ruckelshaus Center regarding incorporating Tribal Reserved Treaty Rights into the Road Map to Washington's Future

June 21, 2019

The United States in 1855 signed the Treaty of Point Elliott to create what became the Tulalip Reservation. This treaty was negotiated in "utmost good faith." Treaties with the Indians are understood as the supreme law of the land in Article VI of the Constitution of the United States, which states that ". . . judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

This Treaty of Point Elliott was made between the United States and tribal sovereigns in order to acquire lands from the Indians under the rule of law. The lawful acquisition of lands by treaty formed the legal basis for the settlement of the Territory of Washington, later to become Washington State. In this Treaty, the Tulalip Tribes did not cede their sovereign rights to hunt, fish, gather and harvest on lands off their reservation.

The Canons of Construction of Federal Indian law provide guidance in understanding the treaties. A core principle is to interpret the treaties as the tribes would have perceived them. The ancestors that signed the Treaty of Point Elliott understood their reservation would be too small by itself to support their needs. They also desired to access to their ancestral sacred sites, places and areas in order to follow the teachings of their ancestors and maintain their cultures. They understood that they were connected to all their relations, and that actions off their reservations could affect themselves and their traditional and spiritual relationships with their lands, waters and life. Their understanding was that a core purpose of the Treaty was to maintain their identities, ways of life, ways of being and ways of relating to the world. This set up permanent and substantial obligations, not only by the federal government but by the State of Washington, to guarantee and protect their reserved rights in perpetuity.

The William D. Ruckelshaus Center was contracted by the State of Washington in 2015 to develop A *Road Map to Washington's Future* (Road Map) to "(1) articulate a vision of a desired future for Washington, and (2) examine the planning framework that provides the path to reach that desired future." The Tulalip Tribes recommends the following issues be addressed in the Road Map in order to ensure that their pathway into the future are integrated into the plan in a way that fully respects their sovereignty and guarantees their reserved treaty rights in a complex, changing world.

The Road Map must:

1. Include measures to identify, protect, enhance and restore, inter alia, the lands, waters, ecological and hydrological processes, habitats and any other relevant environmental factors critical to Tribal rights, resources and homelands. Rights to hunt, fish, harvest and gather are not just centered on species, but include all processes across levels that maintain resources at harvestable levels.
2. Be based on the principle of net gain. The current baselines related to Tulalip treaty rights is below that reserved in the Treaty of Point Elliott. The reserved resources are not limited to fish, game, roots and berries. It includes all resources used by the Tulalip Tribes. In many cases, these resources are degraded, declining and moderately to seriously threatened.

The habitats, ecosystems, ecological and hydrological processes that maintain these resources are not static, stable or generally healthy. In the 2014 Washington state water quality assessment, only 10 (1%) of 1,350 miles of listed streams met water quality standards. 70% of the streams did not meet water quality standards for bacteria. In that report, 100% of listed marine waters did not meet dissolved oxygen standards. 63% of the marine waters did not meet water quality standards for bacteria.

The Tulalip Tribes also recommend that the roadmap ensure not only the survival of their resources, but that these must occur in an abundance, quality and cleanliness to support their economic, health, ceremonial and other cultural needs.

Without net gains in overall environmental health and all the hydrological and ecosystem processes that maintain their resources, it will not be possible to maintain their treaty rights in the face of population growth, climate change, environmental change and an increasing scale of human, development and economic activities that impact Tulalip trust resources.

3. Evaluate measures in relation to Tulalip trust resources and ensure that policies and actions not diminish Tulalip treaty rights. Proposals for green development, such as the expansion of recreational activities, can lead to the diminishment of Tribal rights. Expanded recreational areas can limit tribal hunting rights in order to protect public safety and lead to wildlife disturbance that reduce access to game. Measures to improve adaptation to climate change, such as the expansion of stormwater drainage capacity, can disturb tribal cultural sites and resources. Measures must be fully evaluated against tribal rights and interests.

4. Identify future changes expected under climate change, environmental change in population growth. Measures must be future proofed so that there is enough flexibility and buffers to maintain Tulalip trust resources under complexity, change and uncertainty. Planning must embrace and fully incorporate scenarios that take these into account. Future change must be incorporated to provide robust measures that will ensure the continued health, abundance and survival of Tulalip trust resources over a range of possible scenarios. Models must provide adequate buffers so that trust resources have a high probability of being maintained in the face of extreme events and dynamic changes.

For example, the number of extreme drought events are increasing in the State of Washington. Nearly 71% of Washington's rivers are flowing below normal levels. Stream temperatures are increasing, as are the number of days per year that exceed lethal stream temperatures for salmon. Measures must be taken to identify and protect cold water refugia for salmon. Other measures are needed to capture, store, filter, clean and cool water in order to maintain freshwater resources and late summer streamflow. Climate change, in addition to affecting drought and low late-summer flows, is also increasing late winter and early spring peak flows that lead to flooding and the destruction of salmon spawning areas among other impacts.

In relation to the impacts of population growth, environmental change and climate change, attention must not only be given to wild or natural Tulalip resources, but also to managed resources in forests and hatcheries. Net habitat loss, both directly through habitat degradation or destruction or indirectly through barriers to fish passage that prevent salmon from reaching spawning and foraging habitat, is a primary cause of the loss of Tulalip reserved salmon stocks. Hatcheries are a necessary adjunct for the conservation of salmon stocks. The Tulalip Tribes have inadequate water resources for their current salmon hatchery needs, in this is likely to increase due to water diversions for competing uses and

climate change. Coho, chum and chinook fisheries that represent Tulalip reserved resources specifically identified in the Treaty of Point Elliott, have had to be closed a significant amount of time in the last 10 years due to conservation closures. Hatcheries are not only a means to assist salmon recovery efforts and meet recovery goals, but necessary for sustaining a meaningful treaty right in the context of salmon declines. Hatchery fish are treaty fish under Phase II of U.S. v. Washington (U.S. v. Washington, 506 F. Supp. 187 (W.D. Wash. 1980)).

Water storage is a critical need in the future to reduce conflicts between Tribal treaty rights and water demands among different water uses such as for irrigation, drinking water, domestic uses, manufacturing, supporting growing populations and other water uses. Particular attention needs to be made for neglected forms of water use, such as environmental water and cultural water. The Tribes must have enough water to support their reservation needs and nature. The Tulalip Tribes is currently working with the Snohomish County and King County Public Utility Districts to identify options for increasing water and infiltration, storage and flow management through mechanisms such as beaver translocations, beaver analog dams, identifying natural aquifer storage capacity, wetlands construction, high-altitude and low altitude small-scale impoundments, floodplains by design and other technical measures to enhance water storage, flood and stormwater control.

Other measures need to address future habitat changes and critical habitat for species. Climate change is affecting temperature, moisture and other conditions necessary for species to survive and thrive, often referred to as bioclimatic envelopes. In response to these changes many species are shifting their ranges, commonly moving upwards on mountains and northwards. These species range shifts will mean it will become harder for the Tulalip Tribes to access culturally important species on reservations and in usual and accustomed areas. In addition, areas that are currently provide critical habitat for species may no longer support them and currently non-critical habitat will become critical habitat elsewhere. Maintaining tribal access to reserved species will require identifying these future areas and climate refugia. Measures related to refugia include: maintaining open space for connectivity and the movement of species, vegetation, habitats, and even whole ecosystems; protecting current open space likely to serve as future refugia; and identifying current and future refugia for providing cold water, thermal protection from cold and heat, and moisture.

5. Take it whitecaps-to-whitecaps approach to developing a comprehensive Road Map to the future. Planning must encompass all aspects of Washington's environments from the tops of the mountains into Puget Sound, the Salish Sea and the Pacific Ocean. Climate change is affecting Tulalip trust resources due to ocean acidification, ocean warming and ocean heatwaves.

For migrating aquatic species such as salmon and trout, current and future impacts must be addressed both in fresh and marine waters. Land-based pollutants from agriculture and cities are affecting salmon, shellfish and other Tulalip resources in both fresh waters and marine waters. The sources a pollutants runoff from agricultural lands, highways, rooftops, and other impervious surfaces and untreated, inadequately treated or poorly treated urban discharges.

A disturbing increasing trend includes discharges from residential households that include endocrine-disrupting chemicals, household cosmetics and pharmaceuticals and illicit drugs and microplastics that enter the food chain and can interfere with the reproductive development and survival of freshwater and marine species. Plastic debris from land-based sources pose a threat to coastal and marine cultural resources and quality of life.

Increases in pollutants such as heavy metals from urban runoff and chemical contaminants from pesticides, manufacturing, stormwater runoff and urban wastes accumulate in the tissues of species fished and harvested by the Tulalip Tribes and is turning their traditional foods into hazardous substances that cannot be safely consumed. Nutrient pollutants trigger harmful algal blooms and exacerbate the growth of toxic microorganisms that cause shellfish and fishery closures and threaten human health.

Orcas, kin to the Tulalip Tribes, are increasingly threatened both by body burdens of contaminants and by loss of their traditional food sources, particularly salmon. The protection and recovery of orcas, as well as other marine mammals, must be addressed in the Road Map.

6. Develop indicators to inform evidence-based management of Tulalip trust resources. As previously mentioned, these trust resources must be well managed both on and off the Tulalip Reservation. Ecosystem health indicators, for example, must be developed to identify causative limiting factors for such things as forecast salmon returns and population dynamics under current and changing conditions. Indicators are needed to monitor the environment, salmon habitat, and salmon prey such as zooplankton. Indicators must be relevant to state and private land managers.

7. Construct participatory processes to ensure early tribal participation in decision making and ensure that any decisions that affect Tulalip reserved rights must involve them and require free, prior and informed consent (FPIC). Bob Ferguson, Attorney General of the State of Washington in May 2019 announced that the standard of FPIC applies to environmental decision making in Washington, in this process must be supported in the Road Map. This policy is based on the understanding that the Tribes of Washington are sovereign rights holders recognized in their treaties, and not simply citizen stakeholders. Guidance must be developed for both the state and private landowners to assist them in understanding their obligations to protecting treaty reserved resources. Guidance should also be developed, in conjunction with the Tulalip Tribes, to identify processes and measures for seeking FPIC.

8. While the Tulalip Tribes are sovereigns, they also recognize and support working cooperatively in establishing relationships with their neighbors and other jurisdictions. The increasing scale, magnitude and frequency of problems triggered by population growth, economic activity, development and climate change will require increasing cooperation and partnerships based on recognition and respect for the status of the Tulalip Tribes as sovereigns. These partnerships are also based on the recognition of mutual concerns in the need to find solutions to problems in a changing environment that benefit all parties. Good examples include the Tulalip Tribes' participation in Snohomish County recovery actions and the development of the Sustainable Lands Strategy (SLS). The SLS mandate includes a commitment to treat all members with respect and to develop win-win solutions that benefit both Tribes and farmers.



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April 11, 2019

The William D. Ruckelshaus Center
Attn: Joe Tovar, FAICP and Amanda Murphy
901 5th Avenue, Suite 2900
Seattle, WA 98164

RE: Ruckelshaus Memorandum - *A Road Map to Washington's Future* project

Dear Mr. Tovar and Ms. Murphy:

On behalf of the Washington State Department of Commerce, we are pleased to provide you with the following comments on the *Road Map to Washington's Future (Road Map)* project. This letter represents the collective comments, thoughts, and ideas of Buildable Lands counties, cities and stakeholders, who recently participated as a Steering Committee as the Buildable Lands Guidelines were updated. A full list of participating members is attached to this letter (*see attachment A*).

The following topics and issues are addressed in this Memorandum and are based on the issues identified in RCW 36.70A.217 and discussion by the Buildable Lands Steering Committee. They include:

- Growth Management Act funding
- Capital facility plans and planning
- Infrastructure funding and tools
- Growth Management Act Housing Element
- Annexation reform
- Growth Management Act periodic update schedule

We understand that the purpose of the *Road Map* project "...is to articulate a vision of Washington's future and identify additions, revisions, or clarifications to the state's growth management framework of laws, institutions, and policies needed to reach that future." The comments provided by Commerce are intended to inform that vision from the perspective of local governments and stakeholders subject to the requirements of RCW 36.70A.215 (Review and Evaluation program).



Background

The Review & Evaluation program (commonly referred to as the Buildable Lands program) was established in 1997 as part of an amendment to the Growth Management Act (GMA). The program, established in RCW 36.70A.215, originally applied to six counties and the cities within their boundaries, and was optional for all other jurisdictions. The six counties that were part of the original program were Clark, King, Kitsap, Pierce, Snohomish, and Thurston. In 2017, the Washington State Legislature passed E2SSB 5254 and included Whatcom County as a Buildable Lands county. Since 1997, the original six counties have produced three Buildable Lands reports.



In 2017, E2SSB 5254 was adopted and covered a number of topics, including substantive changes to the Review and Evaluation program. These changes resulted in updates to the Buildable Lands Guidelines, which were published in December 2018. The Guidelines provide information, best practices, and methodologies related to conducting the Review and Evaluation program's analysis to assist local governments through the process.

The Bill also included Section 3 (now RCW 36.70A.217), which outlined additional requirements for study beyond updating the Buildable Lands Guidelines. A Housing Memorandum on Issues Affecting Housing Cost & Affordability has been prepared as an informational document. This Memorandum is intended to cover remaining issues that are not included in the updated Guidelines or Housing Memorandum.

The issues addressed in this Memorandum were discussed during the Buildable Lands Steering Committee meetings held throughout 2018. Some of the topics discussed resulted in specific recommendations. Other items simply raise questions or issues that we hope are discussed further.

We have focused our comments on Buildable Lands but also highlight the interconnection between this important program and other elements of the GMA. Many of the county, city, and other stakeholders involved in this process are also heavily involved with other aspects of the GMA. This wealth of experience led to the identification of ideas that warrant further discussion as the *Road Map* project moves forward.

Lastly, it is important to emphasize that the discussions we held throughout 2018 are probably similar to what you are hearing from people across the State of Washington. There are diverse ideas and opinions on what is working well and where changes to the GMA may warrant consideration. This Memorandum is intended to convey the information we collected but certainly does not represent the opinions of every city, county, or stakeholder that participated. We hope, however, that the following information is helpful as you evaluate all of the information you gather throughout the *Road Map* project.

Growth Management Act funding

When the GMA was adopted in 1990, the legislature made the following findings: *“The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our Lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive Lands use planning.”*

These important legislative findings have been implemented by local government through the adoption of county-wide planning policies, comprehensive plans and development regulations, which are updated on an eight-year revolving cycle. However, since the GMA was adopted, the planning requirements have become more time consuming and expensive to implement, while funding for general planning support has steadily decreased.

The Buildable Lands Steering Committee appreciates that the legislature has provided an initial allocation of funding in the current biennium to begin the latest round of Buildable Lands reporting. We hope this financial support will continue into the future. It will ensure counties and cities can meet the requirements of RCW 36.70A.215. However, there is a strong need for long term, consistent funding to ensure all GMA goals and requirements can be met. As changes to the GMA are considered, **expectations and requirements of the GMA should be aligned with long term funding.**

As funding is discussed, **the following three categories should be considered.** These are provided in order from most to least important:

- 1) *GMA required planning* – all GMA planning requirements should be fully funded. This includes Buildable Lands, updates to Countywide Planning Policies, and the various elements of updating the comprehensive plan during the periodic update.
- 2) *Other non-GMA required policy/code updates* – many jurisdictions are so focused on GMA-required planning activities that they do not have the resources (time and money) to make other code updates. This could include updating permit processes, use matrixes, design guidelines, and zoning designations, for example, which can make a code function more effectively and efficiently. Funding should be periodically provided to assist local governments in updating codes for other required activities.
- 3) *Data collection* – many of the requirements that came from E2SSB 5254 hinge on the consistent collection and analysis of data. This is true for almost every aspect of the GMA. However, funding is not provided at the local or regional level for the consistent collection and analysis of data that can be used by local governments when making planning decisions. If the expectation is that local governments should better react to changing dynamics, a better system for collecting and analyzing important information would be paramount.

Capital Facility Plans and Planning

RCW 36.70A.215 requires the annual collection of data on capital facilities to determine the quantity and type of land suitable for development, both for residential and employment-based activities.

The Buildable Lands Steering Committee discussed this issue at length. The statute seems to put a lot of burden on Buildable Lands counties to assess capital facility plans. However, in most cases, any issues concerning the lack of capital facilities to support development should be reviewed and assessed during the GMA periodic update process. **Capital facility and land use plans should be synced.** In other words, counties and cities subject to the Review and Evaluation requirements should be able to rely on adopted capital facility plans. An exception may be an instance where a planned improvement, such as a large transportation or sewer treatment project, for example, does not occur as planned in the capital facility plan. This would get picked up in the assessment of achieved densities and could result in a reasonable measure finding.

Future updates to the GMA that result from the *Road Map* project **may want to assess how well the capital facility requirements in RCW 36.70A.070(3) are working.** Currently, capital facility plans require “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.” Commerce Capital Facility Planning Guidance also recommends a more general capital facilities plan that extends to the 20-year planning period. Although the GMA requires a reassessment of the land use element if funding falls short of meeting existing needs, it would be interesting to see how that has worked now that we have 25 years of perspective. This is especially important given the important relationship between growth and the infrastructure needs and costs to support that growth.

We now have the opportunity to reflect on what has and hasn’t worked well. One item that the Buildable Lands Steering Committee discussed is what cities/counties should do with land on the fringe of a city or UGA that has not been developed to urban densities due to a lack of capital facilities over the past 20-plus years. The GMA requires that the land use and capital facilities elements be coordinated. If review and evaluation of an area finds that it isn’t developing as expected, the locality should further coordinate updates and adjustments to both to encourage development as planned. Funding should be focused on redevelopment within the UGA, because it is already urban in nature. This is important because as stated above, Buildable Lands counties and the cities in those counties should be able to rely on adopted capital facility plans when determining the quantity and type of land suitable for development. In other words, population and employment capacity is going to be assigned to an area even when it hasn’t developed for over 20 years because the capital facility plan identifies that improvements will be made. **A study to review selected capital facility plans over the past 20 years could provide lessons learned and opportunities to fine tune the capital facility plan process going forward. Ensuring these plans are well synced with land use plans should be a priority.**

Infrastructure funding and tools

Providing the necessary infrastructure to support future growth may be one of the largest challenges we face moving forward. In many areas, we not only face the challenges of replacing aging infrastructure, but creating new infrastructure to support the vast growth we are planning for. **Restoring the Public Works Trust Fund** is one interim step that would provide some assistance to local governments.

As currently provided for, however, there are simply not enough mechanisms and options to pay for new infrastructure, and operation and maintenance of existing infrastructure. **We recommend that this issue be pulled out and looked at in depth** to provide long term options and solutions. Mechanisms such as Tax Increment Financing (TIF) may have appeal, but this currently is not allowed under the State constitution.

GMA Housing Element

The Steering Committee was tasked with discussing a number of issues regarding housing affordability and availability. Many of these issues were addressed in a separate Housing Memorandum that was prepared as part of this project. This Housing Memorandum includes discussion on issues of housing affordability and availability for all economic segments of the community, factors contributing to the high cost of housing, and how well growth targets align with market conditions, including the assumptions of where people desire to live.

This discussion, however, raised some questions about how the Housing Element requirements are being implemented (or not) and monitored through local comprehensive plans. We recommend exploring this further as possible amendments to the GMA are identified.

Overview

RCW 36.70A.070 (2) outlines the Housing Element requirements of the GMA. It states that “(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 that identifies the number of housing units necessary to manage projected growth; (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 Lands 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. In counties and cities subject to the review and evaluation requirements of RCW 36.70A.215, any revision to the housing element shall include consideration of prior review and evaluation reports and any reasonable measures identified.”

The Housing Element requires that local governments provide a level of detail for housing that goes well beyond simply designating the proposed general distribution and location of land for future population growth. However, a majority of local governments do not currently analyze or plan at this level of detail. In other words, if overall growth assumptions are being met, a lack of manufactured housing or adequate provisions for existing and projected needs of all economic segments of the community would not kick in reasonable measures under the Review and Evaluation requirements.

The purpose of the Review and Evaluation program (RCW 36.70A.215(1)(a)) is to “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 countywide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities.”

As noted above, the Review and Evaluation program is focused on achieving urban densities, not achieving urban densities and ensuring housing is affordable to all economic segments as identified under the Housing Element requirements. This level of detail does not appear to be taking place at the Comprehensive Plan stage and is not being considered as Buildable Lands programs are being updated.

The following could be considered as future GMA changes are discussed:

Ideas for consideration
Housing needs are typically not being assessed as part of the Housing Element requirements. Therefore it would be difficult to make “adequate provisions for existing and projected needs of all economic segments of the community.” The Housing Element requirements may need to be reconciled with the Lands Use Element requirements in RCW 36.70A.070(1), which states that “A land use element designating the proposed general distribution and general location and extent of the uses of lands...”. This very simple statement may not fully recognize the more in-depth analysis required by the Housing Element.
Housing affordability is a regional issue. As such, local jurisdictions should be required to accommodate their fair share of affordable housing based on a regional allocation. A regional approach necessarily involves counties and even multi-county agencies working with cities, and all levels incorporating housing affordability targets into the housing elements of their comprehensive plans.
Displacement/gentrification is not widely studied under Comprehensive Plan Housing Elements. This could impact the retention of affordable housing.
While the GMA is a “bottom up” exercise, greater consistency between cities and counties could be highly useful. Currently, there is a wide variation in how cities/counties accommodate the types of housing that are required to be planned for in the Housing Element.
Successfully implementing Housing Element requirements on a regional basis will require ongoing data collection and analysis. It may be advantageous to collect this information statewide for use by local governments when updating countywide planning policies and comprehensive plans. This will take funding but is necessary to fully implement current Housing Element requirements successfully on a broader scale. Consider adding a requirement for localities to complete an affordability analysis when conducting their buildable lands analysis.
In many jurisdictions, especially in the Puget Sound area, there is pushback on accommodating certain types of housing that the Housing Element requires GMA cities and counties to plan for. To successfully tackle housing issues, this will need to be addressed.

Overall, the requirements for implementing the Housing Element and connection to the Lands Use Element should be explored. Please do keep in mind, however, that the cost associated with this additional work could be substantial for local governments to develop and administer. This could also require a substantial amount of data collection and monitoring.

Annexation reform

Annexations play a key role in the proper implementation of the GMA. As RCW 36.70A.110(4) outlines, “In general, cities are the units of local government most appropriate to provide urban governmental services.” Throughout the state of Washington, countywide planning policies and comprehensive plans outline how unincorporated urban areas can transition to cities.

However, there are a number of barriers that prevent annexation from taking place. These include both financial and political considerations. While annexation statutes fall outside the GMA, we hope that the interplay between annexation and growth management will be reviewed as you consider the larger planning framework in Washington, specifically, these three areas:

1) Sales and use tax

RCW 82.14.415 previously provided a sales and use tax incentive for cities in larger counties to annex areas of larger population. This incentive expired on January 1, 2015, and since that time, we

have seen a decline in larger annexations. The **Steering Committee members generally felt that this sales and use tax incentive was a very useful tool** that helped incentivize the annexation of areas that would otherwise not make financial sense for a city to annex.

2) *Backlash to annexation*

The annexation process can be very costly for cities to undertake, especially for large annexations. Costs include a cost-benefit analysis, public relations and outreach, and managing a measure that may go on the ballot (depending on the annexation method). Currently, however, many cities face intense backlash for annexation proposals that are promoted as necessary to implement the goals of the GMA. Challenges not only come from citizens, but also from special districts such as fire or water/sewer districts who may be impacted by the annexation of territory within an unincorporated UGA.

We must find a way to streamline annexation processes. The current process creates great expense, is a deterrent to attempt annexations, has resulted in annexations not being approved by voters, and creates unnecessary animosity between local governments and both citizens and special districts they serve and work with.

This could mean a **more front-loaded process that would ensure annexation if certain steps are taken or making clearer what the priorities are in statute** (GMA vs. special districts, for example). Until greater clarity is provided, many cities will continue to be hesitant to take on a politically sensitive, expensive process where the outcome is not certain.

3) *Counties*

Counties have limited means to raise revenue and primarily count on sales and property tax to fund county services. As the GMA promotes annexation of unincorporated UGAs, counties are left with large geographical areas to serve and limited ways to fund those services. **As annexation policies are revisited, consideration on the impact to counties must be considered** and options provided to ensure there are not unintended consequences to making annexation easier or more efficient for cities to undertake.

Growth Management Act periodic update schedule

The Steering Committee members were tasked with determining *“Whether a more effective schedule could be developed for countywide planning policies and the county and city comprehensive plan updates to better align with implementing reasonable measures identified through the review and evaluation program, and population projections and census data while maintaining appropriate and timely consideration of planning needs best done through a comprehensive planning process. (RCW 36.70A.217)”*.

After considerable discussion, a majority of the Committee, on balance, felt that **a 10-year periodic update cycle could provide for a more effective schedule** for countywide planning policies and the county and city comprehensive plan updates. While still maintaining appropriate and timely consideration of planning needs, a 10-year schedule would align more effectively with population projections from OFM and the U.S. Census (for faster growing counties and cities), provide additional time to determine if reasonable measures are necessary and implement those measures under the Review and Evaluation program requirements. Other committee members disagreed.

There are pros and cons to both the 8-year and 10-year periodic update cycle. Figure 1 provides an outline of how a 10-year cycle could work. Pros and cons to making this change have also been provided for your consideration in Figure 2.

The alternative 10-year schedule being provided for consideration is based on aligning the update schedule with the release of OFM population projections. Here are the highlights of the proposed update schedule:

- Would move counties and cities to a 10 year periodic update schedule.
 - When GMA was adopted, major comprehensive plan updates were completed every 10 years while a compliance review occurred every 5 years. These two requirements were subsequently combined and are now required every 8 years. The discussion in this memorandum would have both sets of requirements completed concurrently (as cities and counties currently do). However, there are great reasons to complete the compliance review more frequently. A decision on this issue could be tied to a decision to fund these activities in the future. While updating development regulations to stay current with new case law, Best Available Science (BAS), and new laws and rules is very important, the ability of local governments to complete these changes more frequently should also be considered. The Review and Evaluation program schedule outlined in RCW 36.70A.215(2)(b) would not change. However, a 10 year update schedule would provide a longer evaluation period (8 vs 10 years) for Buildable Lands counties. This would include a greater amount of time to evaluate and determine if reasonable measures are necessary.
 - Would separate the update schedule between faster and slower growing counties and cities (please note that this idea does not attempt to draw a line as to what a higher or lower growth county or city is. That would happen at a later date and would most likely consider many factors). This would:
 - Provide even and consistent spacing between OFM population projections being issued and the deadline for counties and cities to update plans. However, slower growing counties may not be as concerned with utilizing the most current OFM population projections since they are growing more slowly.
 - Space out funding that is necessary for cities and counties to update plans.
 - Provide additional time for Commerce staff to work with cities and counties as Comprehensive Plans are updated.
 - Provide additional time for cities and counties to complete the long process of updating a Comprehensive Plan.
 - Keep current GMA process of having deadlines spread out over four years. As suggested in Figure 1, faster growing counties would simply be prioritized within the first two years.
 - If future GMA changes are considered, the higher/lower growth distinction could provide a way to differentiate GMA requirements in the future.
- Please note that this is just a suggestion if you decide to look at spacing out Comprehensive Plan updates. Even with a 10 year schedule, removing the gap between faster and slower growing counties and cities is always an option.
- Would provide additional time for regional planning efforts, such as the PSRC Vision update. Currently, PSRC must condense their update process so not to interfere with counties and cities as they update their plans.

Figure 1

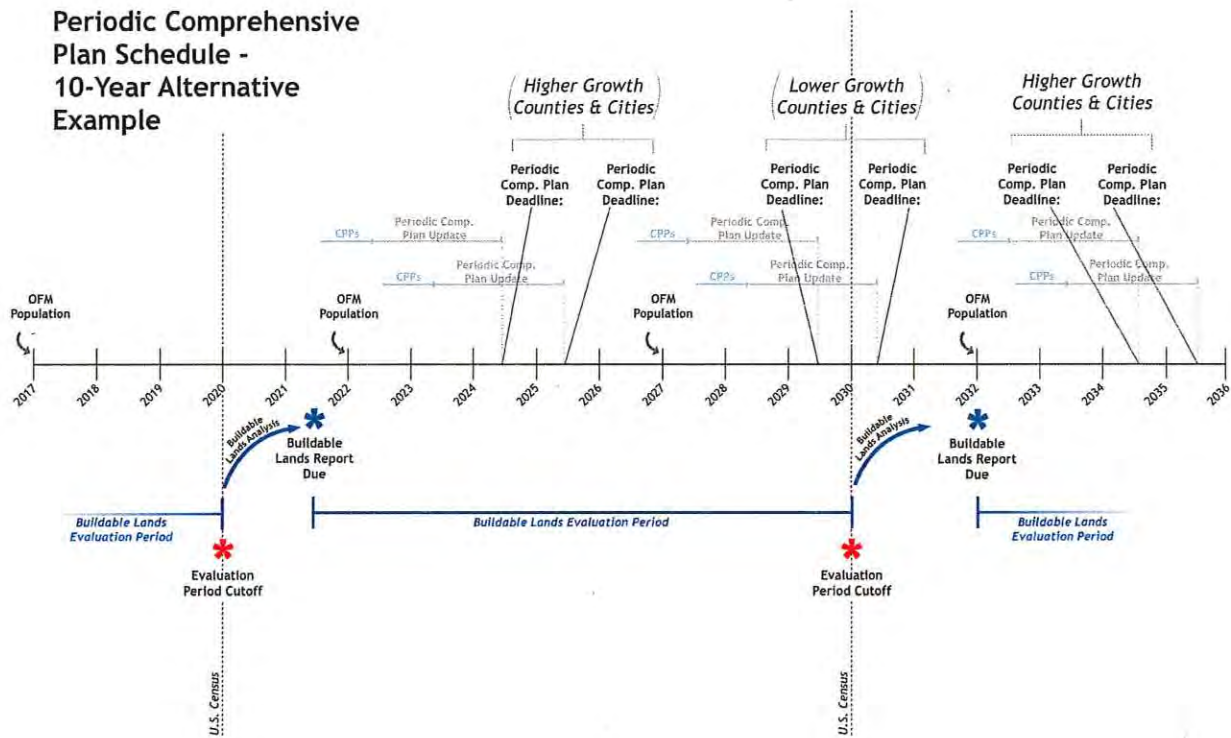


Figure 2

8-year vs. 10-year periodic update cycle	
Possible Pros	Possible Cons
For Buildable Lands counties and cities, a longer assessment period would provide more data when comparing growth and development assumptions, targets, and objectives contained in the countywide planning policies and the county and city comprehensive plans with actual growth and development that has occurred.	Buildable Lands requirements would be completed less frequently. This could create a longer time period to resolve inconsistencies through the use of Reasonable Measures, when necessary.
Office of Financial Management (OFM) population projections are issued every five years. A 10-year periodic review cycle, as outlined in Figure 1, would align more consistently with the issuance of those projections. This would	The Shoreline Master Program (SMP) update schedule may need to be adjusted to align with a revised GMA periodic update schedule.

<p>provide local governments more accurate information as they update comprehensive plans. Under the current alignment, local governments may have to use older OFM projections because of the timing between issuance and GMA deadlines. As an example, those with a current 2023 periodic update deadline would be using 2017 OFM projections, not 2022.</p>	<p>One idea is to align SMP updates with this new schedule. As higher growth counties/cities are updating comprehensive plans, slower growing counties/cities could be completing their SMP updates. Higher growth counties/cities would then perform SMP updates as lower growth counties/cities update comprehensive plans.</p>
<p>Funding – a 10-year cycle would space out funding necessary to complete GMA requirements.</p>	<p>Requirements to update regulations, such as critical areas or changes for consistency with GMA case law, legislative changes to the GMA, or incorporating Best Available Science (BAS) would occur less frequently.</p> <p>Further, this schedule would push out the timeline for lower growth counties until 2029 and 2030, which would be longer than 10 years as we develop this new schedule.</p> <p>An alternative would be to have lower growth counties and cities immediately follow higher growth counties and cities in completing their periodic update (2026 and 2027 instead of 2029 and 2030). However, this change would still create a gap with the OFM population forecast.</p>
<p>A longer time between periodic updates could provide necessary time to complete required periodic update steps/tasks that take several years to complete. The current timeline is very difficult to meet given the complexity of the work. It includes:</p> <ul style="list-style-type: none"> ➤ <i>Buildable Lands report (7 counties)</i> ➤ <i>PSRC Vision update (4 counties)</i> ➤ <i>Countywide Planning Policy update (GMA planning counties)</i> ➤ <i>Lands Capacity analysis (GMA planning counties)</i> ➤ <i>Periodic update (GMA planning counties) – this consists of planning for the next 20 years of population and updating policies and codes for compliance with the GMA.</i> <p>Under an 8-year cycle, planning for the next periodic update begins shortly after the last update has ended. This would space out the process.</p>	<p>Economic conditions change rapidly. Even with an annual comprehensive plan docket process, a longer time period between major comprehensive plan updates could delay action necessary to adjust to changing economic conditions.</p>

New schedule could place PSRC counties and cities and Buildable Lands counties/cities together so their periodic updates are due at the same time.	Addressing issues, such as climate change and affordable housing, would happen less frequently if the Comprehensive Plan update cycle was extended to 10 years.
Cities and counties with commonalities throughout the state could be aligned as well.	
Commerce review – spacing out periodic review deadlines would provide Commerce a greater ability to review comprehensive plans and provide assistance to local governments. This assistance is especially important for smaller cities and counties.	

Conclusion

On behalf of the Department of Commerce and the Buildable Lands Steering Committee, we appreciate the opportunity to provide comments on the *Road Map to Washington's Future (Road Map)* project. If you have any questions or would like further detail on the comments provided, please do not hesitate to contact me.

Sincerely,



Mark McCaskill, AICP
Managing Director
Growth Management Services

Attachment A

DEPARTMENT OF COMMERCE

Mark McCaskill, AICP, Managing Director of Growth Management Services
Ike C. Nwankwo, Western Washington Regional Manager
Valerie Smith, AICP, Senior Planner, Growth Management Services

EXECUTIVE STEERING COMMITTEE

Matt Aamot, Whatcom County
Gary Albrecht, Clark County
Leonard Bauer, City of Olympia
Laura Berg, Washington State Association of Counties
Jim Bolger, Kitsap County
Karla Boughton, City of Poulsbo
Dan Cardwell, Pierce County
Art Castle, Building Industry Association of Washington
Jeremy Davis, Thurston County
Jan Himebaugh, Building Industry Association of Washington
Michael Hubner, City of Seattle
Paul Ingram, Puget Sound Regional Council
Rebecca Maskin, King County
Oliver Orjiako, Clark County
Peter Orser, Affordable Housing Advisory Board
Jennifer Pettyjohn, City of Seattle
Carl Schroeder, Association of Washington Cities
Bryan Snodgrass, City of Vancouver
Veena Tabbutt, Thurston Regional Planning Council
Steve Toy, Snohomish County
Karen Wolf, King County
Bryce Yadon, Futurewise

CONSULTANT TEAM

Clay White, LDC
Brandon Gonzalez, LDC
Bill Reid, PNW Economics

Dec. 15, 2017

Mr. Joe Tovar and Ms. Amanda Murphy, Project Co-Leads
“A Road Map to Washington’s Future”
William D. Ruckelshaus Center
901 Fifth Avenue, Suite 2900
Seattle, WA 98164

RE: *Request that upcoming “A Road Map to Washington’s Future” study include a thorough analysis of and potential recommendations on condominium building shortage in our state*

Dear Mr. Tovar and Ms. Murphy:

We are writing as representatives of numerous cities that have worked diligently to implement the Growth Management Act (GMA) and to adequately prepare for the growth that our jurisdictions are dealing with today and will continue to experience in the future.

One of our key responsibilities under GMA is to provide a wide array of housing choices to our residents, as called for under RCW 36.70A.020(4): *“Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.”*

Unfortunately, for a variety of reasons related to the market, to insurance issues, and to state statute, there has been a dearth of condominium construction in our state over the last decade. While housing is being built on a continual basis, and the apartment market is as hot as ever, condominium building has been largely centered in Seattle and almost exclusively focused on high-end buyers. The lack of a condominium market is of particular concern given the soaring median costs of single-family homes, leaving first-time buyers who cannot afford these prices with few if any other multi-family, owner-occupied choices.

While we understand there will be consideration of some 2018 legislation to stimulate condominium building, we believe those bills are likely to be narrowly-focused. Thus, no matter the outcome of bills in front of the 2018 Legislature, there almost surely will continue to be a challenge involving the building of market-rate condominiums.

From our shared perspective, there will still exist a need for a thorough, holistic look at what can be done to better fuel condominium building in our state. We would suggest the Ruckelshaus Center’s “Road Map to the Future” study can be an important forum for this type of thorough discussion and analysis.

We see the Ruckelshaus Center as an appropriate vehicle for a comprehensive look at the condo issue precisely because the 'Road Map to the Future' study directed by the 2017 Legislature asked the Center to examine "*policies to meet future challenges in view of robust forecasted growth.*" One of those 'challenges' is, and will continue to be, a lack of meaningful housing choices for those that wish to move from renting to ownership.

We recognize you have been approached informally on this issue. Through this letter, we formally ask that the 'Road Map to the Future' study include a thorough and robust discussion and analysis of the condominium-building shortage in our state – hopefully with some meaningful and creative recommendations of how it might be addressed.

Thank you in advance for considering our request, and best of luck with the upcoming study!

Sincerely,

City of Edmonds – The Honorable Dave Earling, Mayor
City of Everett – The Honorable Ray Stephanson, Mayor
City of Issaquah – The Honorable Fred Butler, Mayor
City of Kenmore – The Honorable David Baker, Mayor
City of Kent – The Honorable Suzette Cooke, Mayor
City of Kirkland – The Honorable Amy Walen, Mayor
City of Lake Stevens – The Honorable John Spencer, Mayor
City of Lakewood – The Honorable Don Anderson, Mayor
City of Mountlake Terrace – The Honorable Jerry Smith, Mayor
City of Olympia – The Honorable Cheryl Selby, Mayor
City of Puyallup – The Honorable John Hopkins, Mayor
City of Renton – The Honorable Denis Law, Mayor
City of Tukwila – The Honorable Allan Ekberg, Mayor

816 Second Ave
Suite 200
Seattle, WA 98104



(206) 343-0681
fax (206) 709-8218
futurewise.org

July 28, 2017

Joe Tovar
Project Manager - The Road Map to Washington's Future
The William D. Ruckelshaus Center
900 Fifth Avenue - Suite 2900
Seattle, WA 98164

Dear Joe,

Thank you for this opportunity to offer our suggestions for Growth Management Act (GMA) issues that we believe should be considered by the Road Map project, and which we understand will be included in the first report. We have a unique perspective on GMA – being Washington's only public interest group focused entirely on GMA-related issues – and therefore our repository of issues is quite long. However, for this first round, we have decided to include some of our top systems-change level issues that we believe should be considered by the project as it works to strengthen and modernize GMA for the next quarter century.

In our view, the Growth Management Act should be amended to:

Substance

1. Include an element addressing climate change through mitigation and adaptation, including specific provisions for planning to address sea level rise, wildfires, and the protection/accessibility of natural resources – the three largest climate-related impacts affecting Washington State.
2. Include statutory requirements for the reduction of greenhouse-gas emissions (GHG) based on RCW 70.235.020 (Greenhouse gas emissions reductions—Reporting requirements).
3. Address the principles of racial equity, starting with providing a formal role for Indian Tribes and Nations in GMA planning.
4. Ensure better protection of natural resource lands, including methods to help support and nurture the agricultural and forest production industries, and increasing long-term protections for irrigation resources.
5. Improve the standards of the housing element, and develop funding sources, to better address housing affordability, and require regional distribution or “fair share” of affordable housing.

6. Require a statewide strategic plan prepared and adopted by Washington State. The strategic plan will provide policy direction on where growth should be encouraged, natural resource lands conserved, and state infrastructure investments made.

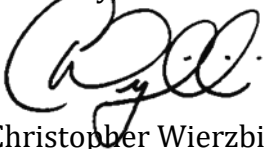
Process:

7. Establish a state agency-produced climate forecasting metric (similar to the population projections currently generated by OFM for GMA planning) that would serve as the foundation for climate planning.
8. Fund an organization or agency (such as the Municipal Research Services Center or the Department of Commerce) to prepare a biennial report that identifies emerging issues and opportunities for local governments to consider in their comprehensive plan and development regulation updates, along with best practices for address those issues and opportunities.
9. Require state review and approval of local government comprehensive plans and development regulations – similar to the role that the Department of Ecology currently plays in the approval of Shoreline Master Program updates.
10. Prevent premature vesting of development permits, and the use of annexations to undercut the review of GMA appeals.
11. Increase local government revenue options, such as the potential for an excise tax or permit surcharge, to fund long-range planning, plan implementation, and resources aimed at educating public on the land use review process.
12. Expand the existing Land Use Hearings Board to hear appeals of local land use decisions.

As stated earlier, the issues outlined above represent some of our initial priorities, however, we expect to submit a longer list of substantive and process-related concerns in the coming weeks, as well as comments on the issues outlined by others to date.

Thank you again for this opportunity, and I look forward to continuing our work together on the Road Map project. Please feel free to reach out to me with your questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Wierzbicki', with a stylized flourish at the end.

Christopher Wierzbicki
Executive Director, Futurewise



Washington State Association of Counties

November 12, 2017

Mr. Joe Tovar
The William D. Ruckelshaus Center
901 Fifth Avenue, Suite 2900
Seattle, WA 98164-2040

Re: Road Map to Washington's Future

Dear Mr. Tovar:

The Growth Management Act (GMA) has grown over the past 25 years into a major responsibility for County Government elected and appointed officials. The Ruckelshaus Center's "Road Map to Washington's Future" assessment and any possible recommended changes to the GMA, is of significant interest to the members of the Washington State Association of Counties (WSAC).

Funding for County Government

One of the most dramatic effects of the GMA is the re-direction of retail business growth and the corresponding sales and use tax generation into urban growth area and more specifically incorporated areas. This impact was in fact anticipated and an acknowledged consequence of the GMA by the legislature when creating this new planning framework. As such, legislators originally intended that "phase 2" of the GMA would find solutions to align local government funding with the realities of implementing the GMA beyond cursory discussions and acknowledgement that this IS a problem. "Phase 2" never materialized and as a result there is a steady decline in the ability for county revenues to fund their constitutional and statutory responsibilities. Simply put, many counties are no longer fiscally sustainable.

Funding for GMA Planning and Implementation

The State of Washington originally committed to, and in fact, provided implementation grants to pay for the first set of GMA Comprehensive Plans and associated development regulations. The State in fact lured some counties into becoming fully planning counties with funding – and the promise of continued funding. The State also appropriated partial funding for the first set of required GMA comprehensive plan updates. Since then there has been little to no funding to pay for the planning updates

and implementation of the GMA. Updates are funded solely from the county current expense fund, which is severely limited by the 1% cap on property taxes and the sales and use tax losses due to implementing the GMA. Moreover, the ease of appealing, and the excessive cost of appeals to the Growth Management Hearing Boards and Courts, further exasperate the cost of implementing the Growth Management Act.

We are concerned that the purpose of the Road Map to Washington's Future project is to improve the GMA without acknowledging the GMA's historic and current impact on counties, and their inability to meet current statutory and constitutional requirements caused by lack of state fiscal support. Our members are concerned that the project is engendering the expectation that counties should do more to improve the GMA, without addressing and correcting the massive impacts the original Act has had on counties. For these reasons, we have only two priorities for the "Road Map" at this time:

1. Complete a "Phase 2" of the GMA to implement solutions to align funding of County Government with the realities of implementing the GMA;
2. State funding to cover the cost of GMA planning updates and associated implementation.

We look forward to discussing these important issues with you and our two priorities. Please contact WSAC Executive Director, Eric Johnson, to arrange a meeting with WSAC members. We look forward to helping you set up a process for collecting input from elected county officials for the "Road Map" project.

Sincerely,



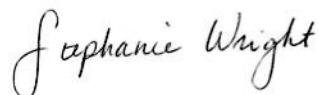
Obie O'Brien, Kittitas County
President



Blair Brady, Wahkiakum County
First Vice President



Scott Hutsell, Lincoln County
Second Vice President



Stephanie Wright, Snohomish County
Immediate Past President

March 1, 2019

A Roadmap to Washington's Future Project

Joe Tovar, Project Co-Lead

Amanda Murphy, Project Co-Lead

Ruckelshaus Center

Via email: jtovar@uw.edu; amanda.g.murphy@wsu.edu

Re: Port of Tacoma input into the Roadmap to Washington's Future Project

Dear Ms. Murphy and Mr. Tovar,

Since the project's inception, we have followed your efforts to solicit stakeholder input for a comprehensive look at the growth planning framework in Washington. We understand that it will ultimately result in recommendations for improvements to state laws on growth planning related to the Growth Management Act (GMA), the Shoreline Management Act, the State Environmental Policy Act and other laws, institutions and policies. We would like to congratulate you on a very thorough and structured process to date, and look forward to your final report and recommendations later on this summer.

Please accept this letter, which provides our assessment of the success of the GMA to date, as well as some thoughts about potential improvements to the issues the Port is facing under the current laws.

Since the inception of the GMA, the legislature's decision to require that local governments engage in comprehensive planning efforts to contain sprawl, protect natural resources and essential public facilities, and reduce the need for dispersed infrastructure has, overall, worked well for Washington and the citizens of Pierce County.

However, while local jurisdictions generally are successful in meeting most goals of the GMA, some, like Seattle and Tacoma, have developed visions for the future that do not fully address the economic development goals of the GMA. This is particularly true for the state's goals to promote economic opportunity for all citizens of the state, and to retain and support the growth of existing businesses. Blue-collar jobs in industrial and manufacturing industries, and the old-school businesses that support them, are not necessarily part of these jurisdictions' vision.

For county-wide Port Districts located in densifying metropolitan cities like Seattle and Tacoma, the biggest strength of the GMA is also its biggest weakness: Its laser-sharp focus on local comprehensive plans, despite the requirement for coordination and integration with larger, regional plans at the MPO level. Ports serve as economic development agencies of their respective counties, while the cities in which they are located are multi-purpose governments that find it difficult to integrate their own, often conflicting comprehensive planning goals, let alone those of the ports they host. The fact that ports are listed as Essential Public Facilities of statewide significance could help remedy this problem, but GMA is silent about the need to protect those that already exist.

This issue was discussed and addressed by Governor Gregoire's Container Port Initiative. The policy analysis effort highlighted areas where the initial act did not fully meet the goals of the state, and ultimately led to the 2009 inclusion of the requirement for a Container Port Element, RCW 36.70A.085, for the Cities of Seattle and Tacoma.

This amendment to the GMA showed legislative support for the continued economic development generated by Washington's major ports by declaring that:

"It is the intent of the legislature to ensure that local land use decisions are made in consideration of the long-term and widespread economic contribution of our international container ports and related industrial lands and transportation systems, and to ensure that container ports continue to function effectively alongside vibrant city waterfronts."¹

Unfortunately, our experience since has shown that neither the designation of ports as Essential Public Facilities, nor the requirement of a Container Port Element in Tacoma's Comprehensive Plan support the intent of the legislature in a meaningful way. This is exemplified by Tacoma's interim regulations for the Port of Tacoma Manufacturing Industrial Center (MIC), which placed a moratorium on some new heavy industrial uses in the Tacoma Tideflats. Current efforts to develop a Subarea Plan for the MIC are also of concern, as the goals of the planning effort appear to center on the protection of natural areas and the environment, potentially at the expense of the economic development role of the MIC for the City of Tacoma, the Port of Tacoma for Pierce County, and the entire state².

As illustrated by the points above, the growth planning framework needs better mechanisms for supporting land uses that may be unpopular with neighbors, but which provide benefits to the state and the region as a whole, help support the economic wellbeing of all citizens of the state, and retain and grow existing businesses and jobs. There are two concepts that may help improve the planning framework:

1. In the GMA provisions are made for the siting of "Essential Public Facilities" that contemplate the problems currently faced by ports. In fact, those provisions were helpful to the Port of Seattle at certain junctures in past expansion of Sea-Tac airport. However, more work is needed to protect existing port-related activities. This should include the MICs in which they are located, to ensure that the synergistic relationship between ports and businesses can continue to grow the economy. It will be critical to protect port Essential Public Facilities from incompatible land uses, and to ensure that the infrastructure that supports them can continue to do so. In the case of ports, that means protecting, and enhancing, the truck and rail freight corridors that enable port facilities to move cargo. It may be worthwhile to consider a state role in ensuring that state transportation funds, and

¹ RCW 36.70A.85, (Findings—Intent—2009 c 514.

² The preamble to the workplan reads: "This document (Work Plan) recognizes that the Tacoma Tideflats and adjacent areas are of great significance to Tacoma, the Puyallup Tribe, the Port of Tacoma, Pierce County, Fife, and the entire region and State for reasons of heritage, environment, economics, employment, and the preservation, protection and enhancement of natural and cultural resources.", <http://cms.cityoftacoma.org/Planning/Tideflats/Subarea%20Plan/Work%20Plan/DRAFT%20Tideflats%20Subarea%20Work%20Plan.pdf>

federal funds that are pass-through, support only projects that do not degrade the freight mobility of the truck freight corridors supporting port Essential Public Facilities.

2. An alternative concept is to grant port agencies the same "GMA planning body" status that is currently vested in cities and counties. Consideration was previously given to vesting ports -- as well as other state-sanctioned "special districts" -- with this role. But, to our knowledge, it has not been seriously considered since the 1990's. Port Districts are public agencies accountable to voters.
3. Protect the state assets and economic benefits realized by port districts by adopting state-designated comprehensive planning, zoning, and regulatory controls for property owned by port districts. These land use controls would allow for the uses authorized by port district statutes and would remove the authority of local governments to exercise land use control of port district property.
4. Authorize port districts to administer the International Building Code on port district property. While not a planning issue, this is intertwined with the land development process. POS currently exercises this authority over airport property located in the City of SeaTac, but only because the Port was granted this authority through the Interlocal Agreement (ILA) with the City. Without the agreement the Port doesn't have authority to exercise building permit authority over its own property. In years past, before the first ILA was adopted, conflicts frequently developed between POS and the City over permitting for airport projects. It appeared to the port that different issues were being obfuscated in the City's handling of individual permit applications.
5. Social justice is an increasingly important concept in local, regional, and state policy. With regard to ports, and related manufacturing industrial businesses, it is often looked at exclusively from an environmental point of view—see Tacoma's Interim Regulations and Subarea Planning effort. It may be worthwhile to explore a GMA requirement for local jurisdictions to ensure that the family-wage blue-color jobs related to port and manufacturing industrial activity are protected from encroachment by land uses that do not require Industrial or Heavy Industrial Zoning.

Thank for the opportunity to provide input on this important project. Please do not hesitate to Contact me at 253-428-8604 or dwilson@nwseaportalliance.com with any questions or comments.

Sincerely,



Deirdre Wilson
Senior Planning Manager

ROAD MAP TO WASHINGTON'S FUTURE GROWTH MANAGEMENT ACT ISSUES



Kitsap County is strongly supportive of the core concepts of the Growth Management Act (GMA). Efforts including the reduction of urban sprawl, protection of our environment and shorelines and provision of infrastructure to serve compact, livable urban areas are all important goals for our state. GMA has been an important vehicle to progress these interests through local planning. However, GMA includes several flaws, both from its original passage and subsequent implementation, that has negatively impacted local jurisdictions.

As part of the Roadmap to Washington's Future process, Kitsap County submits the following comments regarding past and current issues with GMA. While not comprehensive, they address many of the issues Kitsap has raised with the legislature and other state bodies over the last two decades. Attachment A provides greater details regarding some of our technical comments and the specific RCWs or WACs that apply.

GMA has become a huge unfunded mandate to local jurisdictions.

In 1990, GMA was a new construct for many jurisdictions. The clear distinction between urban and rural areas was going to be a complex issue to address at the local levels. When GMA was passed, the legislature somewhat acknowledged the additional requirements this would place on local jurisdictions and provided some funding for comprehensive plan development. That funding, while then inadequate, was subsequently eliminated over a decade ago. What was once an underfunded mandate is now fully unfunded. To exacerbate matters, Growth Board decisions and new legislation (e.g. buildable land requirements, best available science) has increased the complexity of plan development; increasing staff time, required county resources and, in certain cases, consultant costs. Some of this new legislation has included minor state support, but that funding is infrequent and unpredictable. The legislature needs a renewed appreciation of the costs of GMA planning to local jurisdictions and provide a reliable source of funding to meet the legislature's increasing expectations.

GMA is absent any general prioritization of its goals.

GMA planning is fraught with conflicts between various interests. In forming GMA, the legislature selected 13 laudable goals (expanded to 14) for local jurisdictions to "balance" through the lens of local circumstances. Many of these goals can be somewhat mutually exclusive, such as reduction of sprawl and providing housing options, environmental protection and focusing urban growth, and at times, private property rights and all the other goals. The state had decades long experience with the conflicts between these various interests, yet adopted GMA asking local jurisdictions to address them all at once. This has led to costly and lengthy legal challenges borne by local jurisdictions with only occasional guidance provided by the Department of Commerce; guidance which has been repeatedly ruled as non-binding by the Hearings Boards. While local circumstances are key in providing flexibility in our diverse

jurisdictions, the GMA should provide, at minimum, a general tiering or hierarchy of priorities to direct which are most important and planned accordingly at the local level.

GMA has been expanded by case-specific Hearings Board decisions and state agency rule-making.

The GMA legislation was passed through a thoughtful, contemplative process by the state legislature in 1990; setting goals for local planning decisions. However, the actual implementation of GMA often comes from WACs and Department of Commerce guidance that is not adequately vetted by the legislature.

Commonly, the new codes and guidance are proactive to provide greater clarity regarding the intent of the legislation. Though they also can be reactions to the decisions of the Growth Management Hearings Board(s). Hearings Board decisions are specific to individual jurisdictions based on the details of a specific case. These decisions can take the high-level goals of GMA and broaden them into the technical development of capital facility plans, population allocations, allowable densities, rural character and other complex issues. In certain circumstances the state then attempts to generalize the issues in these decisions by revising WAC or providing guidance, thus applying them to all jurisdictions. Again, these codes and guidance are inadequately vetted by the legislature to ensure they are consistent with legislative intent.

Growth targets and other required land calculations are too rigid.

Local planning under GMA is becoming much less planning and more math-driven. Planning is in many ways a creative effort to help shape communities through zoning, design standards and policies. Objective performance measures such as the Buildable Lands Report and land capacity analyses are important, but when hitting specific marks becomes paramount, planning decisions can become suspect. Subjective local circumstances must be given, at minimum, equal consideration to general objective targets and requirements.

The 8-year statutory Comprehensive Plan update schedule creates conflicts with the availability of required data sources and updated regional planning documents.

Regular data source updates such as the U.S. Census and OFM's population forecasts are available at the beginning of each decade. Once these sources are available, countywide planning policies and local forecasts are updated which act as foundational elements of local comprehensive plans. Often, the 8-year update cycle pushes up too closely to these releases leaving jurisdictions using outdated information or too-little time for a responsible update. For example, the Central Puget Sound jurisdictions must update their plans in 2023. With the Census out on 2021, OFM updating their forecasts in 2022 and then the local regional planning organizations updating their countywide planning policies, there is no time for the jurisdictions to use this updated information in their plans and meet the 2023 deadline.

Jurisdictions are often planning by Hearings Board opinions or fear of appeals. GMA should provide “safe harbors” for specific elements of Comprehensive Plans updates.

The application of GMA is not the same from jurisdiction to jurisdiction. Planning elements (densities, heights, land capacity assumptions) vary based upon each jurisdiction’s local circumstances which are often painstakingly adjudicated individually through the Hearings Boards. Determining the “correct” answers can be an expensive endeavor with no clear sideboards for jurisdictions. While local circumstances should always be the default in planning, GMA should provide an OPTIONAL set of standards (similar to the voluntary stewardship program for critical areas) for many of the most staff-intensive and costly planning elements including land capacity assumptions, minimum densities and infrastructure requirements. This would benefit small jurisdictions with limited resources and those suffering fatigue from regular appeals and the uncertainty to the community and economy they bring.

Many critical junior taxing districts such as sewer districts aren’t required to plan under GMA.

Counties often depend on sewer districts for wastewater provision to UGAs. These districts are not required to meet GMA requirements for district boundaries or levels of service. Any issues with their service can become a challenge to a county’s comprehensive plan before the Growth Boards with the county having no ability to address it.

The deferential status of counties’ adopted planning decisions is being eroded by the Hearings Boards.

Per GMA, local Comprehensive Plans are to be considered valid as adopted until challenged and that challenge found accurate. The burden of proof is on the appellant in these cases. Hearings Boards have been eroding this core principle by shifting the responsibility to the jurisdiction. Even at the legislature, recent bill proposals regarding vesting have also attempted to disregard this principle by requiring appeals periods to elapse prior to a plan or code becoming valid.

The Hearings Boards often allow greater flexibility to appellants in the appeals process.

The Hearings Boards do not always maintain a fair process, allowing appellants too much flexibility to correct clear procedural errors (e.g. missed deadlines, improper service) and often giving them greater time to prepare briefs than the jurisdiction (e.g. three months for appellants to prepare the initial brief and the only one month for the jurisdiction to reply). The Hearings Boards need to be run like more like a formal court as their decisions can have the same substantial impacts on local jurisdictions.

GMA establishes requirements for urban growth areas but does not resolve conflicts with other statutes (e.g. annexation law) that impact implementation by local jurisdictions.

GMA says that “generally” cities are promoted as service providers to urban areas. However, annexation law grossly restricts jurisdictions’ abilities to annex land in a logical manner. This confounds urban service provision leaving islands or peninsulas of jurisdiction that is costly and inefficient to serve. Through common annexation mechanisms such as the petition method, annexation boundaries are often arbitrary, based on who is willing to sign and/or focused on specific types of land (commercial, large vacant residential). Additionally, annexation law allows attempts to correct these issues to be overturned by the residents through election.

Local jurisdictions need to be given adequate tools to incentivize annexation or provide services if areas are left unincorporated.

If annexation law is not streamlined or local jurisdictions given greater discretion to negotiate the transfer of governance, cities and counties need to have incentives to promote annexations. These annexations can have significant financial implications to the annexing jurisdiction as they ramp up services. This can come in the form of sales tax remittance to cities that annex significant residential areas or similar mechanisms. Conversely, for areas that are not being annexed, counties need to be allowed revenue streams shared by their city colleagues (e.g. utility tax) to provide long-term urban services. Otherwise, infrastructure and services in unincorporated urban areas will degrade; further discouraging annexation by adjacent cities.

For more information or clarification regarding these comments, please contact Eric Baker at (360) 337-4495 or ebaker@co.kitsap.wa.us.

Amend the following Statutes	Issues	Proposed Changes
RCW 36.70A.130 WAC 365-196-610	Counties and cities are required to review and, if necessary, revise their comprehensive plans and development regulations every eight years. Kitsap was required to review and revise their comprehensive plan by June 30, 2016, and the next update is due June 20, 2024.	Propose to amend the schedule to undergo periodic review every 10-years instead of every 8-years so that the timing is appropriately synchronized with the census. It would also allow sufficient time for the plan to work and to gather data to prepare the buildable lands report as well as time to conduct the land capacity studies required between updates.
RCW 90.58.080 WAC 173-26-090	Kitsap’s Shoreline Management Program is due to be updated in 2028 and every eight years thereafter.	Propose to allow local governments the option of completing the Shoreline Master Program review 2 years following the Comp Plan review to avoid overlapping due dates and provide for logical sequencing of land use updates.
RCW 36.70A.300 RCW 36.70A.320 RCW 36.70A.3201	<p>GMA is a bottoms-up approach to planning and was intended to grant local governments discretion to determine how their jurisdiction’s future would look. While Growth Board’s did not implement this fully in the early years, there is now case law preventing Growth Boards from establishing “bright lines” in planning and a prohibition on Growth Boards from establishing safe harbors and regional policies.</p> <p>The pendulum may have swung too far, however. Creating limited safe harbors and being able to rely on prior decisions allowed a measure of certainty in planning. Now, rulings depend on who and what is challenged and it creates inconsistencies among the Puget Sound jurisdictions, which sometimes hampers cooperative planning and creates different privileges for citizens of neighboring counties. For example, while other counties were not challenged on developing individual drainfields in urban areas, this has been found improper in Kitsap County.</p>	<p>Provide the criteria governing the Growth hearings boards in their decision-making process to ensure fair and consistent decisions by narrowing their scope of discretion, and to avoid capricious and arbitrary decisions that create inconsistency across jurisdictions.</p> <p>Provide optional safe harbors for planning elements such as land capacity calculations, infrastructure assumptions and urban/rural densities, and unique local circumstances where meeting the Act will generate substantial hardship to the citizens.</p> <p>Alternatively, consider having the state perform a basic review of comprehensive plan updates, similar to the process for shoreline management programs, so that jurisdictions have a little more certainty right after adoption.</p>
RCW 36.70A.215 WAC 365-196-315 RCW 36.70A.115 WAC 365-196-325	Local planning under GMA is becoming more mathematical and complicated, and less focused on the creative effort to help shape communities through local zoning, design standards and policies. When hitting specific marks becomes paramount, planning decisions are no longer based on sound planning principles, but	Consider removal of some of the statistical work that are costly to jurisdiction and support very little sound planning principles.

	instead the focus is inappropriately heavy on land capacity, buildable land, and meeting the required activity units.	
WAC 365-196-840(6)(a)(ii)	<p>This provision states, " <i>'Concurrent with development' means 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.</i></p> <p>The time limits here for site-specific development activities do not necessarily align with capital improvement schedules, which are driven by a critical mass of funding. Further this six years is inconsistent with the expenditure of impact fees, which are now ten years under RCW 82.02.070.</p>	Allow a more realistic timeframe (such as ten years) or provide flexible terms that better match the realities of planning for capital improvements.
RCW 36.70A RCW 36.93.150 RCW 36.93.170	These statutes create the Boundary Review Board to review annexations and incorporations to ensure consistency with GMA, but (at least in Kitsap County) their jurisdiction is rarely invoked and even when it is, the ability to make effective decisions regarding boundaries, delivery of services, financing, etc. is limited.	GMA needs clearer to require jurisdictions to enter into agreements to address delivery of infrastructure and municipal services, tax and/or cost sharing upon annexation. More balanced annexation plans should be required as well to avoid the creation of county islands and to avoid cities from annexation only the revenue generating business, but leaving out adjacent residential areas.
RCW 36.70A.172 WAC 365-196-485, WAC 365-190-080 & .080(3) WAC 365-195-905 WAC 365-195-910	<p>GMA requires each jurisdiction to develop their own best available science (BAS) for critical areas ordinances. With the hundreds of local jurisdictions in Washington, managing local BAS is resulting in piecemeal efforts to protect ecosystems that cross jurisdictional boundaries. All of the separate efforts are producing inconsistent and fragmented management programs, and tends to result in sub-optimal natural resource protection, mitigation, and restoration outcome. Moreover, this is an expensive and often redundant endeavor that, in many cases, creates a hardship on jurisdictions with very limited resources.</p> <p>In addition to varied local regulatory schemes, environmental review for shorelines, streams, wetlands, etc. at the various agency levels (local, state, and federal) can also be highly redundant and inefficient. This is a common complaint from property owners and developers.</p> <p>Finally, very few jurisdictions have staff with expertise in the</p>	<p>GMA should be revised to allow jurisdictions to apply the BAS developed by the State instead of burdening local jurisdictions that are without the expertise. This is done for stormwater and wetlands and appears to work generally well. The state should also be responsible for maintaining and updating their BAS to address inconsistency and piecemealing effect until a comprehensive system is achieved.</p> <p>The state should also provide a guidebook of best management practices (BMPs) and training (with certification) on critical areas management to ensure government staff and private consultants/contractors have a minimum level of professional knowledge. It is a better investment of public funds that what currently exists as it would result in less redundancy, increased efficiency, and an investment of cost savings for implementation and performance monitoring that informs and improves BMPs). It</p>

	sciences needed to manage these important natural systems and, more importantly, their review often does not involve the broader ecological landscape (e.g., basin, watershed, drift cell, oceanographic basis, etc.) of the projects.	would also result in better management of natural resources since it would be more consistent, with a higher quality review and more comprehensive management. Additionally, the state should provide an integrating technical environmental review under the myriad of local, state, and federal environmental laws through some modifications of the GMA (and SMA and SEPA). Local governments should retain all final decision making on local permits and full independence over land use and non-environmental review.
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Cultural Resources Interest Group Comments on Ecology's Draft Status Report (9/10/13) and Draft SEPA Rule (9/17/13)

October 3, 2013

First, we would like to thank the Department of Ecology and the SEPA Rule Making Advisory Committee for their work during the entire SEPA rulemaking process (August 2012-present). While we have made a concerted effort to keep the larger cultural resource constituency informed about the process, the following comments are those of the cultural resources representatives to the Advisory Committee alone.

It is necessary to preface our comments with a note about the related and still outstanding report of the activities of the separate Cultural Resources Workgroup (see next paragraph for explanation). Although Ecology stated at the September 17 Advisory Committee meeting that their report would be made available prior to today's October 3 comment deadline, Ecology has yet to release the report. It is difficult to comment comprehensively on the Draft SEPA Rule until Ecology releases the report. Without the report, comparison of SEPA and non-SEPA proposals is impossible. We urge Ecology to complete their report with the input of the Workgroup and make it available for review.

In March 2013, Ecology convened a separate Cultural Resources Workgroup to address potential improvements via SEPA or "other means" per SB 6406. Members of the Workgroup represent parties with an interest in House Bill 1809 introduced by Rep. McCoy, including Cities, Counties, Cultural Resources, the Department of Archaeology and Historic Preservation (DAHP), and Tribal attorneys and lobbyists. The fifth and final meeting was held Monday, August 5, 2013. Ecology is drafting a report for submission to the Ecology Director and Rep. McCoy. It is expected that the report will assist Ecology and the Advisory Committee in determining which cultural resources elements should be included in the SEPA rules and which should be addressed outside SEPA (e.g. in other existing regulations like GMA or SMA; in a stand-alone regulation).

Background

SEPA explicitly includes cultural resources and is intended generally to "preserve important historic, cultural, and natural aspects of our national heritage" and prevent "probable significant adverse environmental impact." The purpose of the modernization called for in SB 6406 is to bring SEPA in line with current land-use planning and development regulations, including the Growth Management Act (GMA) and the Shoreline Management Act (SMA); however, not all local jurisdictions use the GMA or the SMA to plan for cultural resources, even though their protection is a stated goal of both Acts.

As a result, various aspects of the SEPA rulemaking, such as the directive to increase the thresholds for SEPA review of minor construction projects, will result in an increased number of projects that are not reviewed for impacts to cultural resources via the SEPA Checklist. The resulting impacts may well constitute a "probable significant adverse

environmental impact” (RCW 43.21C.031) and could result in violation of State cultural resource law (RCW 27.53 and 27.44). Such a scenario is in direct conflict with the broad agreement Ecology reported was reached during the multi-year effort leading up to SB 6406: “Reform will not reduce protection of the natural and built environment.”

Modernizing SEPA necessarily involves not only the proposed streamlining efforts but also a heightened recognition of cultural resource issues and the increased availability of relevant information available to local jurisdictions during planning and development activities [e.g. DAHP’s online WISAARD database]. It is no longer acceptable to ignore a critical pre-project opportunity to determine if a hole is to be dug in a high probability zone for archaeology or if a new building will affect existing historic resources. Pre-project review like that conducted via SEPA can help prevent situations like the Port Angeles Graving Dock.

COMMENTS

Exemption for demolition of buildings (pg. 12 of status report; pg. 18 of draft rule) – According to the Draft Status Report, Ecology is not planning any amendments to this section; however, we continue to request an amendment that includes the phrase “listed in or eligible for listing in an historic register” in order to clarify the current phrase “recognized historical significance” according to standard professional practice.

At the September 17 Advisory Committee meeting, general support was expressed for changing the current phrase “recognized historical significance” to “listed in an historical register” for clarity; however, including the phrase “or eligible for listing” was opposed, primarily due to concerns about the time it would take staff of local jurisdictions to determine a structure’s eligibility. Some Committee members, for example, oppose an amendment that would require staff efforts beyond consulting an existing register. This approach is flawed, however, as existing registers are incomplete; that is, many eligible buildings have not yet been added to a register, and more buildings become eligible over time. We have presented a process for staff to follow in order to determine eligibility, and we believe such efforts are merited in the face of demolition. At a minimum, DAHP is always available to advise staff on questions of eligibility.

Past opposition to the “eligible for listing” language also stemmed, in part, from an erroneous notion that “eligibility” is tied solely to the age of a building. In addition to age, integrity and significance are also considered when determining eligibility. All three factors (age, integrity, significance) are considered according to established criteria.

Exception to the Exemptions-Cultural Resources (pg. 29 of status report; pg. 15 of draft rule) – As stated above, it is difficult to comment comprehensively on this item until Ecology’s report of the activities of the separate Cultural Resources Workgroup is released. It is expected that the report will assist Ecology and the Advisory Committee in determining which cultural resources elements should be included in the SEPA rules and which should be addressed outside SEPA (e.g. in other existing regulations like GMA or SMA; in a stand-alone regulation). Without the report, comparison of SEPA and non-SEPA proposals is impossible.

According to the Draft Status Report, rather than creating an exception to the exemptions for cultural resources, Ecology is proposing inclusion of the “planning-level approach” we have presented throughout the rulemaking process as a required “finding” for raising maximum thresholds for minor new construction. The proposed language, therefore, would only apply to jurisdictions raising their exempt levels after the current round of rule making. While we support the current proposed language, we fear jurisdictions not covered by this section will continue to default to the “applicable state and federal regulations” standard, which currently addresses the treatment of cultural resources discovered after the fact (RCW 27.44 and 27.53) and results in no real improvement to the present situation.

At the September 17 Advisory Committee meeting, concerns with the proposed language included definitions and standards (e.g. CRMP, pre-project cultural resources review); where to house the CRMP (i.e. in the Comp Plan or as a freestanding document); requiring mandatory interlocal agreements with DAHP re: data-sharing; and liability concerns with the Statewide Predictive Model and other DAHP data. We believe the questions of definitions and standards are easily addressed via established professional practice, and DAHP is available to answer questions about interlocal agreements and liability concerns. The remaining issue, then, is that of *where* in the regulations these planning-level elements should be housed, and Ecology’s proposal provides a potential solution.

The required “findings” section allows jurisdictions to adopt higher maximum thresholds through ordinance or resolution provided the jurisdiction demonstrates it has adequately addressed “environmental analysis, protection and mitigation” in applicable and specific “adopted development regulations, comprehensive plans, and applicable state and federal regulations.” The proposed language would provide a consistent standard for jurisdictions to demonstrate that cultural resources have been adequately considered. We support this approach considering current streamlining efforts because, as long as cultural resources remain an optional element under the GMA and, by extension, comprehensive planning, relying on such regulations and plans will not necessarily address cultural resource concerns.

We continue to advise that projects should *not* be SEPA-exempt for cultural resources if the jurisdiction has neither a planning-level nor a project-level approach.

Additionally, all applicants and SEPA Officials should be informed of the following:

- Washington State law (RCW 27.53 and 27.44) protects archaeological resources (RCW 27.53) and Indian burial grounds and historic graves (RCW 27.44) located on both the public and private lands of the State.
- An archaeological excavation permit issued by DAHP is required in order to disturb an archaeological site.
- Knowing disturbance of burials/graves and failure to report the location of human remains are prohibited at all times (RCW 27.44 and 68.60).

Environmental Checklist (pg. 35 of status report; pg. 65 of draft rule) - Ecology is considering changes to section 13 of the Checklist in order "to better address identification of potential historic and cultural resources that may be on a site." Ecology's proposed alternate wording differs from language we suggested during last year's (2012) rule making, and we submit that wording again for consideration:

SEPA Checklist – Section B, Question #13

13(a) Current question: Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.

Revised question: Are there any buildings or structures over 45 years old listed in or eligible for listing in national, state, or local preservation registers located on or near to the site? If so, please record below. (Check DAHP website and with local historical societies or commissions).

13(b) Current question: Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site?

Revised question: Is there any evidence of Indian or historic use or occupation, human burials or old cemeteries on or next to the site? Is there any material evidence, artifacts, or areas of cultural importance on or next to the site? Please list any professional studies conducted at the site to identify such resources.

13(c) Current question: Proposed measures to reduce or control impacts, if any:

Revised question: Proposed measures to avoid, mitigate, or minimize disturbance to resources. Please include plans for the above and any permits that may be required. (Please see RCW 27.44, 27.53, RCW 68.50 and 68.60 to see if permits may be required).

Public Notice (pg. 33 of status report; pg. 6 and 8 of draft rule) - We support Ecology's stated goals for the SEPA Register:

- i. A website submittal format for uploading documents to be added to the SEPA Register;
- ii. Public access using the Register to a downloadable version of the electronic documents that are submitted to the Register.

However, we are concerned that the proposed improvements to public notice are too limited in scope. Because applicants and SEPA Officials often overlook cultural resources, notification is a crucial element of the SEPA process, and it is often the only notice we receive. The current rule does not require notification for projects that fall within the new maximums. From a cultural resources standpoint, this effectively precludes public comment for such projects, as SEPA is the only regulatory process at the State level that requires consideration of impacts to cultural resources. Such a scenario is in direct conflict with the broad agreement Ecology reported was reached: "Reform [of the notification process] will be equal or better [than the current process]."

ALTERNATIVE APPROACH

In our experience, significant savings of time and money are achieved by considering impacts during pre-project review like SEPA rather than during an inadvertent discovery during project implementation. The means for doing so are not inherently burdensome and do not require additional staff. With the increased availability of relevant information (e.g. DAHP's online WISAARD database, data-sharing agreements), local jurisdictions can readily integrate specific cultural resource findings during planning and development activities.

We reiterate the types of cultural resources "findings" necessary for a project to be SEPA-exempt; again, they are not dependent on size but on locational information.

"Project-level" approach-

Exempt for archaeology if *any*:

- 1) Prior negative survey on file.
- 2) No ground disturbance proposed.
- 3) Project in 100% culturally-sterile fill.

Exempt for built environment if *both*:

- 1) Less than 45 years old; *and*
- 2) Not eligible for or listed in any historic register or historic survey.

"Planning-level" approach (note: both options would include a project-level approach)-

Exempt for archaeology *and* built environment if:

- 1) Cultural resource management plan is incorporated into Comp Plan, *or*
- 1) Local ordinance or development regulations address pre-project review and standard inadvertent discovery language (SIDL), *and*
- 2) Data-sharing agreement is in place.

For *all* projects, exempt or not-

Include SIDL on all related permits (compliance with RCW 27.53, 27.44)

Conclusion

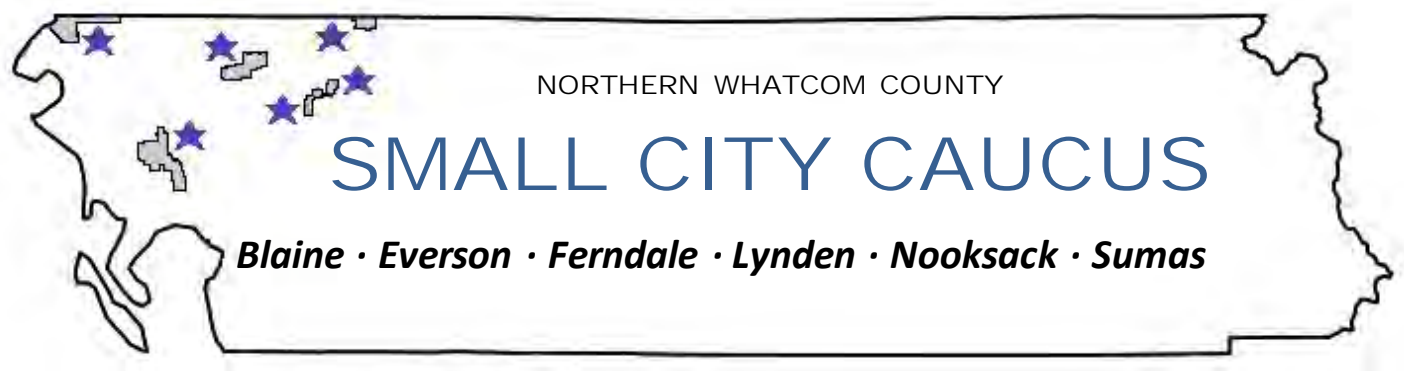
We cannot support proposals that result in fewer notifications and/or increased exemptions granted without appropriate cultural resource findings, as this will only raise the potential for increased impacts to cultural resources.

Cultural resource protection is not, as some have suggested, an "outlier" issue in terms of SEPA specifically or environmental protection generally. Cultural resources are the tangible evidence of our collective history. They are part of what makes communities unique, and they impart a sense of place critical to our individual and group identity.

Cultural resources enhance economic development pursuits and frequently represent a value-added component of successful projects. They are an integral part of sustainable development as measured from the "triple bottom line" perspective (i.e. people, planet,

profit). It is no mistake that “people” (i.e. stakeholders) come first.

It *is* possible to include cultural resources in pre-project review of potential impacts if we are willing to do so.



January 31, 2019

The William D. Ruckelshaus Center
901 5th Avenue, Suite 2900
Seattle, WA 98164-2040
c/o Joe Tovar, Amanda Murphy

Re: Roadmap to Washington's Future

Dear Mr. Tovar and Ms. Murphy,

The Small Cities of Whatcom County thank you for the opportunity to comment on the Washington State Growth Management Act (GMA), and for your efforts to develop recommendations to improve and update this transformative piece of legislation. As you may expect, our collective experiences with the GMA over the past two and a half decades are mixed. Without a doubt, the GMA has been transformative for our communities, but the extent to which this transformation is positive, negative, or simply different is up for some debate. We believe that improvements to the GMA and other statewide regulations are vital, that small cities subject to GMA often do not have the resources or time to develop thoughtful responses or critiques of the GMA, and that the voices of larger cities and interest groups may sometimes drown out the quieter voices of smaller jurisdictions. This letter is intended to address some, but not all, of our concerns. We look forward to continued dialogue and welcome your response.

EXECUTIVE SUMMARY:

The Washington State Growth Management Act has been in place for nearly three decades, and has had mixed success over that time. Whatcom County's small cities have sought to identify areas in which the GMA and other state regulations could be improved, as well as those areas that should be retained. The cities support the GMA's requirements for long-range comprehensive planning, for coordination

amongst jurisdictions, and the thirteen primary goals of the GMA. However, the cities contend that the GMA has been hampered by its reliance on the Growth Management Hearings Board to establish policy, the lack of coordination or incorporation of the GMA into the policies of various state agencies, the prioritization of certain GMA goals above others, and GMA's reliance on land use and environmental expectations in place at the time of its adoption, despite myriad changes to best management practices, science, and land use planning as a discipline since that time. The cities are especially concerned that the GMA has contributed to significantly higher costs for development, especially residential development which have led to a regional housing crisis. Further, that the Puget Sound region has experienced population growth beyond what can be reasonably or cost-effectively managed, resulting in disproportionate spending in that region to resolve issues that the GMA has created.

INTRODUCTION

We wish to begin with our rationale for sending you this letter. Through your investigative process, you have had the opportunity to hear from a wide variety of individuals, business groups, organizations, and others. In some cases, the responses you have heard can be grouped around a single issue; in other cases, the responses that you receive may have been distilled down or grouped together. In Whatcom County, the six small cities (Blaine, Everson, Ferndale, Lynden, Ferndale, Nooksack, and Sumas) meet monthly to discuss topics of importance to our communities. The cities realized that they had not submitted comments on this process, either individually or collectively – and we surmised that this is likely the norm for most other small jurisdictions as well.

If this is in fact the case, we believe that there may be a significant gap in the understanding of the impact of GMA on small communities such as ours. Additionally, as full-service cities, we may be as-well or better-equipped than any other entity to propose potential solutions.

This letter is split into various subsections, some of which are inter-related, and others not. The topics covered are not ordered by importance. Even amongst our six cities, there were arguments for different points of emphasis.

Issue 1: 1991 as basis for population growth and trends

The GMA was established in 1991, and many of the basic assumptions in terms of population trends, the physical location of Urban Growth Areas (UGA's), and scientific reasoning remain rooted in that era. Unlike some "living" documents that are written broadly enough to permit re-interpretation through time, the Growth Management Act and the Growth Management Hearings Boards' interpretation of the act, tend to rely on assumptions made in 1991.

As an example, the GMA pre-dates the adoption of any local Critical Areas Ordinance. It also pre-dates the adoption of modern stormwater regulations. And it pre-dates the understanding (at least in a modern land use context) of the inter-connectedness of water rights. These are hugely consequential considerations that have a dramatic impact on land use decisions. In fact, these environmental factors have become as important (and sometimes more important) than land use regulations such as zoning. If

the original Urban Growth Areas (or even the city limits) were established without a full understanding of these considerations – and we do not suggest that UGA’s were in all cases established in error – then it stands to reason that these UGA’s will be very difficult (and inefficient to develop) in 2019 and beyond.

Yet it is extraordinarily difficult to modify UGA boundaries, let alone expand those boundaries into an area that they did not previously occupy. These decisions have become overtly political, where the stated goals of GMA are often over-ridden, resulting in less-efficient, more expensive, and more impactful development occurring in areas that it shouldn’t.

Issue 2: Lack of Adoption Amongst State Agencies

While Washington State has appropriately tied compliance with the Growth Management Act to the receipt of grant funding, this is essentially a token gesture to penalize jurisdictions that are not in compliance. We do not advocate for allowing state funding without compliance, but we do believe that this approach may not be helpful, especially considering that many state agencies do not rely on the GMA themselves in the development of regulations or in their day-to-day activities.

As an example, the Department of Ecology and many of its staff members may only casually acquainted with the GMA, especially where it relates to critical areas or stormwater. The GMA is considered to be a separate set of rules that should be applied by local agencies, but not state-level agencies. In some respects, the environmental regulations work against the goals of GMA. In many cases, the protection of low-quality wetlands within a city is given the same priority as the protection of large wetland complexes in rural areas.

With respect to stormwater regulations, the recent Washington State Supreme Court decision (Snohomish County v Pollution Control Hearings Board, 2016) that determined that stormwater regulations are not land use regulations, but instead environmental regulations removed significant certainty for developments that were to be constructed in multiple phases. The ruling caught not only land use developers, but local jurisdictions and even the Department of Ecology by surprise, and has the potential to create a chilling effect on developments that expect to install infrastructure (such as stormwater) well in advance of full build-out. As the different iterations of these regulations have in some cases adopted philosophies and scientific approaches that stand in stark contrast to their predecessors, what may have been allowed under one regulation is now expressly prohibited in another, and there are sometimes few cost-effective solutions to bridge the divide. Though not specifically stated as a goal of GMA, *certainty* is one of the bedrock expectations of efficient development. And in 2019, stormwater and critical area regulations are two of the most important factors in making a development decision. Until certainty can be provided through these regulations, or at the very least a clear tie or vesting period between different versions of these regulations in statute, little development certainty can be provided in Washington State.

In terms of the creation of comprehensive plans or other long-range plans, and participation from state agencies, we request that all state agencies revise their timelines for review and adoption of their

respective regulations, to follow a process that aligns with individual jurisdiction's Comprehensive Plan updates. As an example, the timeline for Shoreline Master Program (SMP) updates for individual cities are relatively unique to each city. The SMP is reviewed by the Department of Ecology, but these reviews are completely independent of GMA. Often, Ecology may take months or even years to complete review of the SMP, forcing smaller jurisdictions to juggle several long-range planning procedures at the same time.

In short, if the GMA is to be the guiding land use and development regulation, every state regulation or department policy must reflect that fact and there must be opportunities to challenge agencies that do not follow these procedures, without fear of retaliation.

The hierarchy of regulations must be made clear, and all state agencies must be responsible for modifying their policies and training to reflect this fact. This will also model behavior for individual jurisdictions—aside from grant funding, there has been little incentive to actually follow comprehensive plan documents internally. Instead, the GMA and long-range planning has turned into a periodic exercise to *create* a plan—not to implement it.

Issue 3: Growth Management Hearings Boards and decision makers

The Growth Management Act has been labeled as “centralized planning,” a label that is unfair, inaccurate, and misleading. While it is true that counties planning under GMA must comply with state-mandated requirements, the GMA fails to establish an agency or department that jurisdictions can rely on for guidance. Unfortunately, lawsuits and politics have filled this void.

Today, local jurisdictions rely as much or more on Growth Management Hearings Board (GMHB) decisions than they do on adopted legislation. It is typical for counties and their consultants to review recent GMHB decisions to understand the trends in lawsuits, as a first step in discussing future Comprehensive Plan updates. The fear of a lawsuit, and steps to avoid it, are the biggest motivating factors in complying with the GMA. The quest to avoid legal risk should not be the hallmark of growth planning in this state.

Yet we cannot propose that a new or existing state agency take responsibility for approving or certifying comprehensive plans. The Washington State Department of Commerce does its best—but ultimately Commerce relies on a checklist to determine compliance, and is not directly involved (or aware of) the processes that may lead to the decisions in a local community. In order for comprehensive plans to truly reflect the community, a reviewer must have a more-complete understanding of local circumstance. What is clear is that the GMHB's have become too integral to the process, and that they tend to reward passive participation, where a party may file a suit following adoption of the plan, without having made any serious attempts to participate in the process.

Issue 4: Increased cost of development

It is no secret that the cost of housing in Washington State is one of the highest in the country. Until a recent weakening in the market, several metropolitan areas in the state were ranked in the top twenty nationwide in year-to-year home price increases, with Seattle leading the way. According to Zillow, the average home price in Washington is nearly double the nationwide average. And while there are a number of factors that contribute to these increased values, the GMA cannot be ignored as a main contributor.

For some of the reasons discussed elsewhere, the GMA tends to be overly prescriptive in terms of its determination of where new housing may go. In this manner, the GMA attempts to modify the market by adding population to existing population centers—even if residents do not wish to live in these areas, cannot afford to live in these areas, and/or the costs of establishing infrastructure to serve this growth is unsustainable and unreasonable.

We present two contrasts:

1. In unincorporated Whatcom County, the demand for new single family residences continues to exceed growth projections. This occurs despite the fact that many of these unincorporated areas are a significant distance from population or employment centers, are isolated from schools, and must frequently develop their own wells and septic systems. While many of these new residences achieve the goal of establishing a home “in the country,” a large percentage of these developments are built simply because it is still more affordable than developing in the cities.
2. In Downtown Seattle, nearly one-quarter of multifamily units lie vacant. In contrast, in many of our cities there is a less than 2% vacancy rate among all housing units. Yet the cost of development in our cities remains high, due in part to the cost to developers to extend public services and roadways to development, and to mitigate environmental conditions that could be avoided altogether with different UGA boundaries or more thoughtful regulations, and more.

In short, many of our cities are desirable locations for additional growth. There are areas that people would like to live. There are areas in which growth can be accommodated with minimal impacts to the natural environment, but there are also areas in which the GMA has made it more difficult than necessary to grow.

We again point to the lessons of Seattle, where nationwide many other regions are beginning to look at the Puget Sound area as a model for what should not happen, an illustration of a state not recognizing the “success” of growth management soon enough, and failing to make changes to guide growth to other areas before strengths become weaknesses.

Issue 5: Focus on Large Jurisdictions

One of the main criticisms of the GMA throughout its lifetime has been its apparent focus on large cities, particularly along the I-5 corridor. Though the state's population centers lie along this path, the over-emphasis of these urban areas has meant that a super-majority of state spending has also occurred there. And while it makes sense that this spending should go to those areas that are experiencing rapid change and development, one of the main reasons for this development is because the GMA has forced more people into this constrained area.

Since the GMA has not been significantly amended for nearly three decades, there has not been cause to reassess whether we have reached a point where this part of GMA has become too successful. Future GMA projections for individual counties are largely (but not solely) based upon past population growth. This means that cities are generally expected to absorb the same or similar population share as they have in the past. The big cities tend to get larger, and as growth begins to stretch infrastructure and the ability to serve this growth, these cities often ask for and receive flexibility or allowances to accept this additional growth.

Meanwhile, smaller cities are not given the same opportunity to attract or retain development. New industries cannot be attracted, as the smaller jurisdictions have not been able to demonstrate the need or market demand for such businesses. Often, this means that small cities cannot develop or plan for significant expansions of infrastructure (such as extending services within the city limits), even when the cities have sufficient land area to accommodate these businesses.

There are numerous examples of this, where smaller jurisdictions have not been provided the resources or the ability to establish incentives for development. A prime example is the Multifamily Property Tax Exemption program, authorized by RCW 84.14, which allows jurisdictions of 15,000 or more to incentivize multifamily development. Regulations such as this suggest that the only cities that can benefit from multifamily or mixed-use development, are cities with a population of 15,000 or more.

From a transportation perspective, there does not appear to be any analysis of the relative benefit (or benefit per vehicle/per capita) to improvements in smaller jurisdictions as compared to larger jurisdictions. As an example, the Alaskan Way Viaduct project is priced at over \$4 billion. In many smaller jurisdictions, transformative transportation projects could be completed for less than one percent of this total.

Issue 6: Weighting of GMA Goals

The GMA was established with thirteen goals that, per RCW 36.70A.020, were adopted to be used “exclusively for the purpose of guiding the development of comprehensive plans and development regulations,” with no order of priority given to any goal above or below another.

In practice several goals have risen to the top – likely due to the real or perceived notion that those goals were under threat, or simply because there were sophisticated and active advocates that could defend or promote those goals above others. Unfortunately, those goals that do not have support of these groups or individuals are often given token acknowledgement.

In truth, the GMA anticipates that local jurisdictions will seek to consider each of these goals, and to identify the appropriate balance within the context of the local jurisdiction, but with a broad understanding of the regional demands as well. This means that there must be allowances for flexibility in each of these goals.

Issue 7: Public Engagement and Notification

One of the things the GMA and other Washington State procedural regulations do well, in our opinion, is in encouraging meaningful public participation. We are hopeful that all professionals and elected officials working in the public sector recognize the importance of public engagement, versus formulating policies behind closed doors. However, we also recognize that there is the risk of over-saturating our residents with public notifications on all manner of regulatory or legislative actions, to the extent that residents cease to recognize their opportunities.

Similarly, we must recognize that the “traditional” forms of notification may no longer be effective, both in terms of getting the word out or in terms of cost. Print media and mail have both diminished in importance over the last two decades, so much so that public notifications in a “newspaper of record” has become ritualistic, instead of meaningful. Publication in the newspaper of record need no longer be a requirement for legal public notices.

Washington State should consider allowing jurisdictions to utilize municipal or county websites as the official posting of notices, in addition to physical postings onsite and in primary locations within the affected area. Though direct mail is perhaps less effective than it once was, there is no other alternative that could replace it. Washington State may also consider establishing a public notice website or central online location for notices, that would allow searches by geographic area, incorporating notices from all public agencies. This would provide a one-stop-shop for notifications, allowing public engagement and participation to be as easy as possible, for those who wish to participate.

Issue 8: Precision Versus Accuracy (Land Capacity Analysis)

As noted above, the GMA tends to focus on larger jurisdictions due in part to the growth pressures that may be exerted on those bigger cities. In most cases, these larger jurisdictions have more staff, more specialized staff, and larger budgets to support and manage GMA. Most small cities employ planners who are generalists who may split their time between current and long-range planning, with direct GMA management being a periodic focus.

Typically, a significant portion of this periodic focus on the GMA is devoted to the development of a Land Capacity Analysis (LCA). In many ways, this LCA is the bedrock of future decision-making, and the assumptions made within the LCA are the underpinnings of challenges to adopted comprehensive plans. The Growth Management Hearings Board has generally sought to support the decision of local jurisdictions unless a “clear error has occurred,” but what constitutes an error appears to be in dispute.

In order for a Land Capacity Analysis to be adopted, local planners must typically arrive at extremely precise twenty-year development assumptions that are narrowed down to as little as 1/10th of an acre, in zones that may occupy hundreds or even thousands of acres. The jurisdiction must demonstrate land use certainty down to approximately 4,000 square feet. Since the LCA is used as a basis for the further construction of the comprehensive plan, the LCA framework and conclusions are usually arrived at up to three years prior to the deadline for completing comprehensive plan amendments. Growth and change will not pause between the development of the LCA and the adoption of the plan – so there is a significant risk that the comprehensive plans will be outdated (or wrong) at the time they are adopted. Alternatively, cities can feverishly make changes to the comprehensive plan and land capacity assumptions up to the date of adoption. Failure to constantly update the LCA could, in theory, constitute an error that could nullify the long-range planning document immediately after adoption.

In theory, the local jurisdiction could adopt a GMA-compliant long-range planning document that is every bit as precise as the plan described above, but which is based on a growth projection provided by Washington State that is wildly inaccurate. As an example, many of the original growth projections identified in 1991 estimated that our small cities would grow much more rapidly than they have (despite actual record growth during the time period). These estimates were very precise, but completely wrong. Such is the nature of much of GMA.

The small cities would prefer that the GMA and other regulations seek accuracy as much or more than precision.

Issue 9: Codified Acknowledgement of Local Circumstance

The GMA goals do not acknowledge local circumstance, though in practice the GMHB has deferred to local decision-making and knowledge. We believe that local circumstance is vitally important. The Growth Management Act covers a large, diverse state. Yet the GMA does little to acknowledge that the different regions, economies, access to existing or potential markets, and more will contribute greatly to growth over the next twenty years and beyond. The primary projection for growth – population – depends greatly on attraction to markets and other quality-of-life issues.

Washington State's natural birth rate is just slightly greater than replacement level, yet it is one of the fastest-growing states in the country due to in-migration. These new residents are arriving in Washington not because there are existing population bases necessarily, but more because there are employment or quality of life opportunities. And these opportunities are not all in the population centers.

Each region is somewhat unique. In Whatcom County, growth trends are influenced by natural resources as well as our proximity to British Columbia's Lower Mainland. We are Washington State's international border. Yet this fact is completely ignored by the GMA. In many of our cities, water, stormwater, and traffic are affected more by Canadian policies or topography than they are by Washington State policies. If state regulations fail to account for the primary identifying characteristics

of a community or region, the state regulations must change to fit the community, rather than the community change to fit the regulation.

Conclusions

If given the time, each of the small cities of Whatcom County could likely craft a letter that is much longer than this, describing each error, inconsistency, or frustration with the Growth Management Act and other land use regulations. As authors of many of our own local regulations, the small cities do understand the fallacy that any land use regulation is perfect.

At the same time, small cities are often more nimble than larger jurisdictions, and are able to modify our regulations much more rapidly, in order to mitigate the unforeseen impacts, outdated language, or errors. Once changes to Washington's regulations are made, the state should not wait thirty years to make further modifications. By making small adjustments on a regular basis, the state will be in a much better position to avoid generational tectonic shifts in the land use environment.

We look forward to further correspondence on this issue. Our staffs are available to you at your request to provide additional insight. If you have questions related to specific language or meanings in this letter, please feel free to contact the Jori Burnett, City Administrator of the City of Ferndale at (360) 685-2351, or joriburnett@cityofferndale.org.

Sincerely,

A handwritten signature in blue ink that reads "Scott Korthuis". The signature is fluid and cursive, with the first name "Scott" and last name "Korthuis" clearly legible.

Scott Korthuis
Mayor of Lynden
Chair, Whatcom County Small City Caucus
korthuiss@lyndenwa.org

816 Second Ave
Suite 200
Seattle, WA 98104



(206) 343-0681
fax (206) 709-8218
futurewise.org

September 21, 2017

Joe Tovar
Project Manager - The Road Map to Washington's Future
The William D. Ruckelshaus Center
900 Fifth Avenue - Suite 2900
Seattle, WA 98164

Dear Joe,

Thank you for this opportunity to offer further suggestions for the Growth Management Act (GMA) issues that should be considered by the Road Map project. These suggestions are in addition to those sent by Futurewise on July 28, 2017. We believe that these more detailed issue areas should also be included and considered by the project going forward.

In our view, the Growth Management Act should be amended to:

Substance:

1. **Reform impact fee authorities.** The state laws authorizing these fees should be updated to allow the revenue to be used for the full range of county and city capital facilities needed to accommodate growth. Transportation impact fees should be amended to allow them to be used for transit operations.
2. **Adopt side boards for maximum rural densities and minimum urban densities.** The case-by-case approach to urban and rural densities creates significant uncertainty. The legislature can reduce these uncertainties by adopting maximum rural densities and minimum urban densities.
3. **Require best available science and best practices for natural hazards and critical areas.** Cities and counties should be using the best available science and best practices to identify and adequately protect people from natural hazards and protect critical areas.

Process:

4. **Increase local accountability and timeliness.** The GMA needs to be amended to increase incentives to meet the GMA requirements and increase sanctions for those who do not.
5. **Authorize rules we can all rely on.** The State of Washington Department of Commerce should have the authority to make binding rules interpreting the GMA through notice and comment

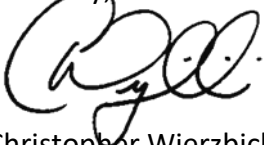
rule making. The rules should be based on broad public involvement and respect regional diversity. Binding rules could incorporate these decisions and local governments could rely upon them like they can Ecology's rules under the Shoreline Management Act.

6. **Authorize fiscal home rule.** Fiscal home rule will allow a community to plan for the future it wants and design a tax system to fit that community, rather than to design the community to fit Washington's current tax system. A major first step would be to eliminate the 1% property tax cap.
7. **Require school district and special purpose district planning.** Require school districts and special purpose districts to plan under the GMA in concert with their local jurisdiction. This would allow for greater coordination and understanding of needs across government entities.
8. **Increase state funding for planning.** There is inadequate funding from the state for local jurisdictions to complete their comprehensive plan updates, buildable lands reports and other requirements as part of the GMA. The GMA should be amended to provide incentives and funding to help update development regulations to remove barriers to development in urban growth areas.
9. **Require WSDOT-coordinated planning with local jurisdictions.** WSDOT should work with local jurisdictions to coordinate long range planning that will help ease congestion and provide transportation choices to new developments.
10. **Incentivize annexation.** Provide incentives for cities to annex areas that should be served by city infrastructure as well as provide counties with the funds to promote annexation of unincorporated urban areas.
11. **Encourage complete streets for cities.** Cities should be planning and prioritizing complete streets and the state should be incentivizing this type of infrastructure investment.

As stated earlier, the issues outlined above represent some of our additional priorities.

Thank you again for this opportunity, and I look forward to continuing our work together on the Road Map project. Please feel free to reach out to me with your questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Wierzbicki', with a stylized flourish at the end.

Christopher Wierzbicki
Executive Director, Futurewise

**Darren Nienaber
Chief Officer and Attorney
People and Otters
5617 Mt. St. Helens Road SE
Lacey, WA 98503
360.791.0137**

October 21, 2018

Rucklehaus Center
Joe Tovar
Amanda Murphy
901 5th Avenue, Suite 2900
Seattle, WA 98164-2040

Re: Updates to the GMA and related statutes

Dear Mr. Tovar, Ms. Stenovec and others:

Numerous changes to the GMA and related statutes are needed in order to fulfill the goals of the GMA as well as to better protect nature. Here are my top recommendations:

1. Add a protection of nature element. This is a safety net for nature. There are many ways to do a better job. Here is one. This can be accommodated by adding wording like this: RCW 36.70A.070(10):

“A nature element to identify and protect nature. This in part consists of a general inventory of natural areas. For purposes of this section, nature is the phenomena of the physical world collectively, including plants, animals, the landscape, and other features of the earth, as distinguished to humans or human creations and alterations to the land. The natural area may be more specifically defined by state agencies and local governments as the condition of the land at any time prior to the year 1800 except those times when the land was highly covered by glaciers.

The Washington Department of Fish and Wildlife shall adopt biome maps of the state. These may based on other previously adopted maps of the State. These biome maps would likely overlay other biome maps, for example Puget Sound rivers and low elevation conifer forests west of the Cascades as a hypothetical example. A biome is a complex biotic community characterized by distinctive plant and animal species and maintained under the climatic conditions of the region. Maps may include but not limited to alpine, subalpine, high elevation forests, low elevation forests, Puget Sound area, the pacific coast forests, river systems, and lakes, etc. WDFW shall then prioritize what is important to minimally protect in each biome in light of the uncertainties of global climate change. The city and county comprehensive plans shall contain the portion of the WDFW biome maps that are

within their jurisdiction and shall consider how to protect some nature in light of the maps within each biome consistent with WDFW guidelines.

Because cities and urban growth areas should be taking the majority of the population growth, the City Park element may replace the nature element provided that the park element and critical areas implementation ordinances contain provisions to educate the public about nature and to maintain at least one park in a substantially natural condition except, if desired, trails and parking. The City would also have an urban forestry and vegetation element (or clearly incorporated into other elements) to encourage trees and other vegetation whose purpose it is to make cities more enjoyable to people and to help nature to the extent desired by the City, provided that it does not conflict with the Cities primary purpose of accommodating growth.

With this amendment, an additional amendment should be to add “nature” as number 12 to the planning goals in RCW 36.70A.020. Or it can go to the front of the line. Or nature can be added to section (12).

2. Fully authorize local governments and state agencies to protect nature.
3. This section, as supplemental authority, authorizes all cities, counties, ports, school and other special purpose districts to have the statutory authority to take actions to protect nature including through acquisition and imminent domain.”
4. The Growth Management Act comprehensive plan and development regulations should contain a global climate change provision as well implementing regulations.
5. The Department of Commerce or other state agency should review and approve comprehensive plans and implementing development regulations and adopt implementing WACs so that the GMHB has more guidance for implementing the GMA. The GMA is a state mandate. Many, many times the local government experiences a great deal of local opposition both in counties (higher density zoning) and cities (lower density zoning). Compliance with the GMA can cause local elected people to get voted out of office. I think it would be better if the state is the ultimately approving body. As an alternative, the State agency could create its own comprehensive plan and implementing regulations and the cities and counties must exceed those minimums.

Another reason why the Department Commerce should review CPs and DRs is due to the need for consistency with neighboring jurisdictions, so that the overall system is not rigged to benefit the low density developers (4 units per acre). This can happen when a lower fee city with lower density attracts the developers who then drive to the jobs in the higher fee city. In addition, the cities and counties need support from the state in order to accomplish the goals of the GMA.

6. LUPA cases should be consolidated in one review board, replacing Superior courts. Superior courts do not have clear training in this highly specialized area of the law, so the decision results may vary.

7. Streams and wetland buffers of forest practice permits should always be no less than County requirements. It should be a concurrent requirement.
8. Annexation of county islands should be automatic or very easy and not subject to referendums. See Chapters 35.10, 35.13, and 35A.14 RCW. At least, annexations should be much easier in GMA-governed counties.
9. The annexations within urban growth areas should be easier. Those laws were written before the GMA and have now become out-dated.
10. Because 20 years of residential supply has not been economically sufficient to keep prices low in the cities, planning for residential supply should be for a longer period of time as follows:

RCW 36.70A.115

Comprehensive plans and development regulations must provide sufficient land capacity for development.

(1) Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable countywide planning policies and consistent with at least the twenty- thirty year population forecast from the office of financial management.

(2) This analysis shall include the reasonable measures findings developed under RCW 36.70A.215, if applicable to such counties and cities.

11. The cities and counties must plan for a greater variety in housing types for all people categories, including families. Some cities are able to attract low income grant funded development and people that afford expensive housing, but the lower middle class has to drive from further away. A city could include incentives like extra floors if they contain a full variety of apartment types from studio to five bedrooms, from low income to higher income. In addition, there should be more encouragement of families by encouraging better play ground equipment to substitute for parks that may be available in the suburbs.
12. Stronger connectivity of WSDOT with local plans approved by Department of Commerce. No easy way to enforce consistency of plans. Sometimes WSDOT has funded highways way out to what seems like nowhere because the land is cheap and thus it is growing.
13. The subdivision act should be amended in order to ensure accommodation of additional growth. Subdivisions should not contain provisions that limit density. Not should a subdivision HOA be allowed to limit density.

14. The County environmental health departments should be self-funded and not be subsidized by city people tax payers. It should be its own enterprise fund.
15. Because everything is intertwined, building fees should be allowed to be used to fund all of current enforcement of building and planning regulations. Planning and building permit funds should be expressly allowed to be mixed for the overall encouragement of urban development.
16. Should adopt ways for the state to ensure enforcement of local DR's, if the local jurisdiction isn't or can't. Perhaps this might include a penalty if failure of local enforcement is intentional.
17. Land use regulations should continue to enforce landscaping and aesthetic conditions on a land use permit (unless regulations have changed and superseded).
18. In order to open up city land for development, the state needs to adequately fund MTCA review of permits.
19. Encourage cities and counties somehow to set up a fund to acquire property when needed pursuant to Nolan/Dolan and/or Lucas rather than only exercising the "reasonable use exception card".
20. Encourage or simply reduce the type of land use permits allowed to be heard by legislative bodies.
21. Impact or other types of fees should be placed on rural development to mitigate their part in the collective impacts to nature. Potentially imposed by the state and redistributed to protect nature largely through acquisition.
22. The Planning Enabling Acts should be combined with the GMA, as they are not fully consistent in terms of requirements and notices. Or the law could say either one or the other applies. GMA governed jurisdictions sometimes forget about the Planning Act.
23. Specific site development notices should not be hand written. It is much harder to see at a distance.
24. A committee shall be formed that will specifically provide to the City Council device on regulation amendments and whether they help accommodate the next 20 years of growth. When proposals are coming to the City Council, there is too frequently no one at the City Council that is reminding them of the tremendous amount of people coming to the State and the Cities need to contain most of that growth. Either the City and County councils and commissions should have a committee that, when a proposal goes to a council or a county commission, focuses on how to meet or beat the projected growth estimates. Alternatively, the Council or Commission could require an analysis on each GMA-governed proposal that goes to it.
25. Like Oregon, we strongly need more implementing WACs written by Department of Commerce, except of course for those WACs otherwise authorized by other state agencies. The only potential problem with Commerce is having them be both good guys and bad guys

so to speak. Without more detailed WAC, it puts the GMHB in the difficult position of decided potentially vague areas in the GMA.

26. Get the political parties out of the GMHB. The identification of specific political parties and not others as having statutory rights is of questionable legality. It forever prohibits other parties from having that kind of power. Instead, the GMHB should be appointed by a total of five lawyers. One from each court of appeals and two from the Washington State Supreme Court. The GMHB member does not need to be a lawyer themselves but they should be appointed in this way in order to be more fair and evenhanded.
27. We need greater incentives to infill.
28. The GMA has gotten a little disorganized and occasionally looks like various special interests or special circumstances. Accordingly, the GMA should be simplified, such as GMA section .050 section 9 shall be repealed after 2 years.
29. Remove all master planned resort authority, as this is causing great damage to nature. The past is the past. Let's not allow anymore.
30. There should be a new recognition that people regionally are affected by actions of a local government in their actions regarding the use of the land due to the cumulative impacts on nature.
31. DRs open for challenge more often.
32. GMA compliant cities, as determined by DOC, should be considered for SEPA exemption.

Very Sincerely,

Darren Nienaber

Darren Nienaber
Chief Executive
People and Otters
www.peopleandotters.org
<https://www.facebook.com/Peopleandotters>



Dec. 15, 2017

Mr. Joe Tovar and Ms. Amanda Murphy, Project Co-Leads
“A Road Map to Washington’s Future”
William D. Ruckelshaus Center
901 Fifth Avenue, Suite 2900
Seattle, WA 98164

RE: *Request that upcoming “A Road Map to Washington’s Future” study include a thorough analysis of and potential recommendations on condominium building shortage in our state*

Dear Mr. Tovar and Ms. Murphy:

We are writing as representatives of numerous cities that have worked diligently to implement the Growth Management Act (GMA) and to adequately prepare for the growth that our jurisdictions are dealing with today and will continue to experience in the future.

One of our key responsibilities under GMA is to provide a wide array of housing choices to our residents, as called for under RCW 36.70A.020(4): *“Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.”*

Unfortunately, for a variety of reasons related to the market, to insurance issues, and to state statute, there has been a dearth of condominium construction in our state over the last decade. While housing is being built on a continual basis, and the apartment market is as hot as ever, condominium building has been largely centered in Seattle and almost exclusively focused on high-end buyers. The lack of a condominium market is of particular concern given the soaring median costs of single-family homes, leaving first-time buyers who cannot afford these prices with few if any other multi-family, owner-occupied choices.

While we understand there will be consideration of some 2018 legislation to stimulate condominium building, we believe those bills are likely to be narrowly-focused. Thus, no matter the outcome of bills in front of the 2018 Legislature, there almost surely will continue to be a challenge involving the building of market-rate condominiums.

From our shared perspective, there will still exist a need for a thorough, holistic look at what can be done to better fuel condominium building in our state. We would suggest the Ruckelshaus Center’s “Road Map to the Future” study can be an important forum for this type of thorough discussion and analysis.

We see the Ruckelshaus Center as an appropriate vehicle for a comprehensive look at the condo issue precisely because the 'Road Map to the Future' study directed by the 2017 Legislature asked the Center to examine "*policies to meet future challenges in view of robust forecasted growth.*" One of those 'challenges' is, and will continue to be, a lack of meaningful housing choices for those that wish to move from renting to ownership.

We recognize you have been approached informally on this issue. Through this letter, we formally ask that the 'Road Map to the Future' study include a thorough and robust discussion and analysis of the condominium-building shortage in our state – hopefully with some meaningful and creative recommendations of how it might be addressed.

Thank you in advance for considering our request, and best of luck with the upcoming study!

Sincerely,

City of Edmonds – The Honorable Dave Earling, Mayor
City of Everett – The Honorable Ray Stephanson, Mayor
City of Issaquah – The Honorable Fred Butler, Mayor
City of Kenmore – The Honorable David Baker, Mayor
City of Kent – The Honorable Suzette Cooke, Mayor
City of Kirkland – The Honorable Amy Walen, Mayor
City of Lake Stevens – The Honorable John Spencer, Mayor
City of Lakewood – The Honorable Don Anderson, Mayor
City of Mountlake Terrace – The Honorable Jerry Smith, Mayor
City of Olympia – The Honorable Cheryl Selby, Mayor
City of Puyallup – The Honorable John Hopkins, Mayor
City of Renton – The Honorable Denis Law, Mayor
City of Tukwila – The Honorable Allan Ekberg, Mayor