



# Compact Urban Development Requirements & Safe Harbors, Buildable Lands Reports, & Reasonable Measures

## Why Sprawl is Bad and Density is Good

Poorly planned low density sprawling development results in many adverse impacts on Washington's residents, property owners, local governments, and environment.<sup>1</sup> A partial list of the adverse impacts of low density development include:

- Higher public facility costs.<sup>2</sup>
- Higher housing costs and the exclusion of minorities and low-income families.<sup>3</sup>
- More traffic because more people drive alone and must drive longer distances to work and to meet the needs of their families.<sup>4</sup> Sprawling places are likely to have more traffic fatalities per capita than more compact regions due to higher rates of vehicle use.
- Sprawl converts more prime agricultural land from farming to urban uses than more compact forms of development.<sup>5</sup>
- Sprawl destroys more critical areas and other environmentally sensitive areas than compact development.<sup>6</sup> Sprawl results in fish and wildlife habitat losses and habitat fragmentation, the separation of habitats by development.<sup>7</sup> Sprawl's dispersed development pattern leads to the degradation of water quality by increasing runoff volume, altering regular stream flow and watershed hydrology, reducing groundwater recharge, and increasing stream sedimentation.<sup>8</sup> Scientists at the University of Washington have concluded that although impacts on salmon habitat from urbanization

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<sup>1</sup> For a comprehensive study of the adverse effects of sprawl see Robert W. Burchell, Naveed A. Shad, David Listokin, Hilary Phillips, Anthony Downs, Samuel Seskin, Judy S. Davis, Terry Moore, David Helton, and Michelle Gall. *The Costs of Sprawl—Revisited* (Transit Cooperative Research Program Report 39, Transportation Research Board, National Research Council 1998), hereinafter *The Costs of Sprawl—Revisited*. Available at: [http://gulliver.trb.org/publications/tcrp/tcrp\\_rpt\\_39-a.pdf](http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-a.pdf) [http://gulliver.trb.org/publications/tcrp/tcrp\\_rpt\\_39-b.pdf](http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-b.pdf) [http://gulliver.trb.org/publications/tcrp/tcrp\\_rpt\\_39-c.pdf](http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-c.pdf) [http://gulliver.trb.org/publications/tcrp/tcrp\\_rpt\\_39-d.pdf](http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-d.pdf) [http://gulliver.trb.org/publications/tcrp/tcrp\\_rpt\\_39-e.pdf](http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-e.pdf) [http://gulliver.trb.org/publications/tcrp/tcrp\\_rpt\\_39-f.pdf](http://gulliver.trb.org/publications/tcrp/tcrp_rpt_39-f.pdf) Also see *Bremerton, et al. v. Kitsap County*, Central Puget Sound Growth Management Hearings Board (CPSGMHB) Consolidated Case No.: 95-3-0039c Corrected Final Decision and Order pp. \*17 – \*22 (October 6, 1995) (a listing of the adverse effects of sprawl).

<sup>2</sup> *The Costs of Sprawl—Revisited* pp. 50 – 52.

<sup>3</sup> *The Costs of Sprawl—Revisited* pp. 52 – 54 & p. 107.

<sup>4</sup> *The Costs of Sprawl—Revisited* pp. 62 – 63.

<sup>5</sup> *The Costs of Sprawl—Revisited* pp. 73 – 75.

<sup>6</sup> United States Environmental Protection Agency. *Our Built and Natural Environments: A Technical Review of the Interactions between Land Use, Transportation, and Environmental Quality* p. 19 (EPA 231-R-01-022 January 2001) available from: <http://www.epa.gov/smartgrowth/pdf/built.pdf>

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

occur in a linear fashion, changes to the physical and biological factors necessary for high quality salmon habitat occurs most rapidly when five to ten percent of a river basin is covered by impervious surfaces (roads, buildings, and parking lots).<sup>9</sup>

Assuring that urban areas have sufficient densities to wisely use the land addresses each of these adverse affects and others. Futurewise urges cities and counties to provide densities that wisely and efficiently use land. While the four dwelling unit per net acre rule helps, it is not sufficient in itself. To provide transit supportive densities, at least seven homes per acre are necessary.<sup>10</sup> In most communities, to provide housing affordable for working families and to meet residents housing choices will require higher housing densities.<sup>11</sup> These needs must be considered in planning for sustainable communities.

## The Urban Density Safe Harbor

**The Growth Management Act requires Urban Growth in Urban Growth Areas**  
To address these adverse impacts the Growth Management Act encourages and requires urban growth within urban growth areas (UGAs). Consider the first two goals in the GMA adopted by the Washington State Legislature:

- (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.<sup>12</sup>

The legislature also required urban growth in the urban growth area. RCW 36.70A.110(1) provides in relevant part that “[e]ach county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.” Second RCW 36.70A.110(2) provides in relevant part that: “Each urban growth area shall permit urban densities and shall include greenbelt and open space areas.” In interpreting RCW 36.70A.110(2) the Central Board has held that all cities “are directed by the Act to

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<sup>9</sup> Christopher W. May, Richard R. Horner, James R. Karr, Brian W. Mar, Eugene B. Welch. *The Cumulative Effects of Urbanization on Small Streams in the Puget Sound Lowland* p. 15 (University of Washington, Seattle, Washington).

<sup>10</sup> Boris Pushkarev & Jeffrey Zupan. *Public Transportation and Land Use Policy* p. 30 (Indiana University Press, Bloomington, Indiana, 1977) (public transit use is minimal below a net residential density of seven dwelling units an acre).

<sup>11</sup> The advantages of density are well summarized in Local Government Commission. *Creating Great Neighborhoods: Density In Your Community* (September 2003) available at: <http://www.epa.gov/smartgrowth/density.htm>

<sup>12</sup> RCW 36.70A.020(1) & (2).

permit urban densities. To clarify, the Board holds that the GMA requires every city to designate all lands within its jurisdiction at appropriate urban densities.”<sup>13</sup>

### The Four Single-Family Homes per Net Acre Safe Harbor or Bright Line Rule

To meet these goals and requirements, The Central Puget Sound Growth Management Hearings Board (Central Board) adopted a ‘bright line’ rule that a residential pattern of four net dwelling units per acre or higher “is clearly compact urban development and satisfies the low end of the range required by the [Growth Management] Act.”<sup>14</sup> “Any new residential land use pattern within a UGA that is less dense is not a compact urban development pattern, constitutes urban sprawl, and is prohibited.”<sup>15</sup>

In subsequent cases, the board has clarified that all properties that do not meet limited exceptions have to be designated and zoned at four or more housing units per net acre. As the Central Board recently wrote:

In *LMI/Chevron*, the Board held, “the GMA requires every city to *designate all* lands within its jurisdiction at appropriate urban densities.” *LMI/Chevron*, [Final Decision and Order], at 23; (underlining in original, *italics* supplied). This concept of *designating* lands at appropriate urban densities within unincorporated UGAs was extended to counties and zoning designations in *Forster Woods Homeowners Association, et al., v. King County (Forster Woods)*, CPSGMHB Case No. 01-3-008c, Final Decision and Order, (Nov. 6, 2001), at 32.<sup>16</sup>

The Board has pointed out that the four dwelling unit per acre benchmark provides a safe harbor for cities and counties. It provides a high degree of certainty and predictability.<sup>17</sup> The exceptions, discussed below, also provide flexibility for cities and counties.<sup>18</sup>

The Western Washington Growth Management Hearings Board used four dwelling units per acre as a minimum urban density for determining if land was characterized by urban growth for the purposes of establishing an UGA.<sup>19</sup> The Eastern Board has not adopted such a rule as of this date.

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<sup>13</sup> *Lawrence Michael Investments, L.L.C.; Chevron USA Inc.; and Chevron Land and Development Company v. Town of Woodway*, CPSGMHB Case No. 98-3-0012 (LMI/Chevron) Final Decision and Order p.\*14, 1999 WL 68668 p. \*17 (January 8, 1999) (bold in original).

<sup>14</sup> *Bremerton, et al. v. Kitsap County*, CPSGMHB Consolidated Case No.: 95-3-0039c Corrected Final Decision and Order p. \*33, 1995 WL 903165 p. \*35 (October 6, 1995).

<sup>15</sup> *Id.*

<sup>16</sup> *Master Builders Association of Pierce County, Terry L. Brink, et al. v. Pierce County (MBA/Brink)*, CPSGMHB Case No. 02-3-0010 Order Finding Partial Noncompliance and Continuing Invalidity p. \*8, 2003 WL 22896415 p. \*7 (September 4, 2003).

<sup>17</sup> *Kaleas, et al. v. City of Normandy Park*, CPSGMHB Case No. 05-3-0007c Final Decision and Order pp. \*15 – 17 (July 19, 2005).

<sup>18</sup> *Id.* at \*17.

<sup>19</sup> *Fred R. Klein v. San Juan County*, Western Washington Growth Management Hearings Board (WWGMHB) Case No. 02-2-0008, *Michael Durland, et al. v. San Juan County*, WWGMHB Case No. 00-2-0062c, & *Town of*

## Limited Exceptions

The Central Board has recognized three exceptions to the bright line rule requiring all urban residential properties to have minimum density of four dwelling units per net acre. First, if part of the UGA contains “... environmentally sensitive systems [that] are large in scope (e.g., watershed or drainage sub-basin), their structure and functions are complex and their rank order value is high, ...” then a local government can apply densities of less than four housing units per net acre.<sup>20</sup> All three of these criteria must be met to qualify for the exception. Examples of areas found to meet this test have been the “large environmentally sensitive system [that] includes overlapping flood hazard areas, wetlands, critical fish and wildlife habitat areas and corridors ...” and wildlife habitat diversity areas in *MBA/Brink*, a wetlands system adjacent to Hylebos Creek in *Litowitz*, and the overlapping seismic hazards, floodplains, wetlands, and aquifer recharge areas in *Benaroya*.<sup>21</sup>

In contrast, in *MBA/Brink* four areas had “isolated, sporadic and scattered occurrences of flooding, wetlands, or priority habitats that can be appropriately addressed through existing critical areas regulations.”<sup>22</sup> So these areas did not qualify for densities of less than four dwelling units per net acre. Similarly, in *LMI/Chevron* a 2.4-acre part of a wetland and pileated woodpecker and banded pigeon habitat on a 60.8-acre property did not meet the *Litowitz* test.<sup>23</sup>

Second, in *Bremerton* the Central Board also indicated that a major equestrian facility surrounded by “horse-acre lots” may also justify densities less than four dwelling units net acre.<sup>24</sup> However, this potential exemption was in dicta which is not an essential part of the decision and is not legally binding. So this potential exemption should be carefully evaluated before it is used.

Third, in *Kaleas, et al. v. City of Normandy Park*, the Board wrote “that if a city has an explicit phasing program that sequences and times the provision of urban services and facilities to coincide with the jurisdiction’s capital facilities and transportation financing

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*Friday Harbor, Fred R. Klein, John M. Campbell, Lynn Bahrych, et al. v. San Juan County*, WWGMHB Case No. 99-2-0010c Final Decision and Order Compliance Order p. \*8, 2002 WL 31405482 p. \*7 (October 15, 2002).

<sup>20</sup> *Master Builders of Pierce County & Brink (MBA/Brink), et al. v. Pierce County*, CPSGMHB Case No.: 02-3-0006 Final Decision and Order p. \*10, 2002 WL 31998487 p. \*11 (February 4, 2002). This exception is sometimes referred to as the *Litowitz* test because the three part test was first enunciated in *Litowitz v. City of Federal Way*, CPSGMHB Case No. 96-3-0005 Final Decision and Order p. \*12, 1996 WL 678415 p. \*9 (July 22, 1997).

<sup>21</sup> *MBA/Brink*, Final Decision and Order p. \*13, 2002 WL 31998487 p. \*13, *Litowitz* p.\*12, 1996 WL 678415 p. \*9, & *Benaroya v. City of Redmond*, CPSGMHB Case No. 95-3-0072c Finding of Compliance pp. \*10 – 11, 1997 WL 159852 pp. \*10 – 11 (March 13, 1997)

<sup>22</sup> *MBA/Brink*, Final Decision and Order pp. \*12-13, 2002 WL 31998487 p. \*13.

<sup>23</sup> *Lawrence Michael Investments, L.L.C. & Chevron (LMI/Chevron) v. Town of Woodway*, CPSGMHB Case No. 98-3-0012 Final Decision and Order p. \*17, 1999 WL 68668 p. \* 13 (January 8, 1999).

<sup>24</sup> *Bremerton* at p. \*33, 1995 WL 903165 p. \*35.

plans and programs, lower densities in some areas may be appropriate for an established time horizon, particularly if offset by much higher densities where capital facilities are already in place.”<sup>25</sup> Again this was dicta, but is a helpful guideline for cities and counties.

### **The Four Dwelling Units per Net Acre Bright Line Rule Should be Permitted Outright**

In footnote 6 of the *MBA/Brink* Order Finding Partial Noncompliance and Continuing Invalidity, the Central Board included this note of caution against using applicant initiated rezones or planned unit developments (PUDs) to reach the minimum four dwelling units per net acre density.

It should be the exception, rather than the rule, that lands within UGAs do not yield a minimum density of 4 du/acre. In such exceptions, a variety of flexible regulatory mechanisms are available to local governments to accommodate new development when challenged by difficult topography, parcel shapes or other localized constraints. Nevertheless, the Board cautions against reliance on certain pre-GMA tools, such as planned unit development permits and site specific rezones, as the primary mechanism to enable developers to reach the GMA-mandated minimum urban densities. The growth accommodation mandate of RCW 36.70A.110 and the permit processing guidance of RCW 36.70A.020(7) would be thwarted if, in order to meet these mandates, an applicant would also be required to show “changed circumstances” (pre-GMA rezone criteria) or “public benefit” (classic PUD criteria).<sup>26</sup>

Indeed, the four housing unit per acre minimum should be allowed as of right. Also, to meet the other requirements of the Growth Management Act and to wisely use our limited land resources, most residential zoning should have maximum densities much higher than four dwelling units per net acre.

### **The Four Dwelling Units per Net Acre Bright Line Rule is Not Excused by a Lack of Capital Facilities, the Protection of the Existing Housing Stock, or the Protection of the Character of Existing Neighborhoods**

The Central Board has also concluded that a lack of capital facilities cannot justify densities of less than four dwelling units per net acre in urban growth areas. “[T]he City points to Policy LU-3.6 to argue that, in effect, lack of service capacity serves as justification for a [Future Land Use Map] FLUM with densities significantly below 4 du/acre. The Board disagrees with the City.”<sup>27</sup> Indeed, city and county “capital facilities plans must certainly

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<sup>25</sup> *Kaleas, et al. v. City of Normandy Park*, CPSGMHB Case No. 05-3-0007c Final Decision and Order p. \*20 (July 19, 2005).

<sup>26</sup> *Master Builders Association of Pierce County, Terry L. Brink, et al. v. Pierce County (MBA/Brink)*, CPSGMHB Case No. 02-3-0010 Order Finding Partial Noncompliance and Continuing Invalidity Footnote 6 p. \*12, 2003 WL 22896415 p. \*11 (September 4, 2003).

<sup>27</sup> *Corrine R. Hensley v. City of Woodinville (Hensley III)*, CPSGMHB Case No. 96-3-0031 Final Decision and Order, 1997 WL 123989 p. \*8 (February 25, 1997) (footnote omitted from quote).

identify, locate, and take steps to finance those capital facilities that are needed to accommodate new growth.”<sup>28</sup>

The Central Board has also addressed the issue of whether RCW 36.70A.020(4)’s goal of encouraging the preservation of the existing housing stock and RCW 36.70A.070(2)’s requirement to “ensur[e] the vitality and character of established residential neighborhoods” affects the duty to designate and zone residential areas at a net density of at least four dwelling units per acre. The board has answered no.

The GMA clearly encourages the preservation of existing housing stock (See RCW 36.70A.020(4)) and provides for ensuring the vitality and character of established residential neighborhoods (See RCW 36.70A.070([2])). However, as the Board stated supra, “any opportunity to perpetuate an ‘historic low-density residential’ development pattern, in the Parkland Spanaway Midland area, ended in 1994 when the County included the area within the UGA.” It is clear that existing housing stock and neighborhoods may be maintained and preserved, however existing low-density patterns of development cannot be perpetuated.<sup>29</sup>

### The Meaning of Net

For properties that do not qualify for the limited exceptions, the definition of net may be an issue in crafting comprehensive plan policies and development regulations. The Central Board defined “net” in *Benaroya v. City of Redmond*:

As applied to GMA planning exercises, “net” has the same general meaning as “buildable.” Most cities within King County determined what their “net” land supply was for purposes of the County’s UGA allocation exercise. From the record in *Vashon-Maury*, the Board is aware that various cities in King County deducted, for example, public rights-of-way and environmentally sensitive lands in order to determine the “net supply” of buildable land. Generally speaking, the concept of “net” remains the same when applied to a specific parcel of land – that portion

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<sup>28</sup> *West Seattle Defense Fund and Neighborhood Rights Campaign (WSDF IV) v. City of Seattle*, CPSGMHB Case No. 96-3-0033 p. \*32, 1997 WL 176356 p. \*27 (March 24, 1997). (“FN15. In *Hensley v. City of Woodinville*, CPSGMHB Case No. 96-3-0031, Final Decision and Order (1997), at 9, the Board held: The GMA creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that ensures that over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA. In *Benaroya, et al. v. City of Redmond*, CPSGMHB Case No. 95-3-0072c, Finding of Compliance (1997), at 8, the Board clarified that this affirmative duty means that cities are to: ‘give support to,’ ‘foster’ and ‘stimulate’ urban growth throughout the jurisdictions’ UGAs within the twenty-year life of their comprehensive plans.”)

<sup>29</sup> *MBA/Brink*, Final Decision and Order p. \*10, 2002 WL 31998487 p. \*10.

which is encumbered with rights-of-way or certain critical areas would not be available for the placement of housing, for example.<sup>30</sup>

So in calculating net densities, the unbuildable land may be deducted from the gross acres to determine the net acres.

## Cities and Counties are Required to Review This Issue as Part of Periodic Updates

The Growth Management Act, in RCW 36.70A.130(1), requires each city and county in Washington State that fully plans under the Growth Management Act “to take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter ....” This means that each city and county must review their comprehensive plan and development regulations to ensure they comply with the requirements of the Growth Management Act.<sup>31</sup> This includes the requirements for urban densities in the urban growth area.

The legislature adopted this requirement in 1997 and the original deadline was September 1, 2002.<sup>32</sup> The plans and development regulations were to be updated every five years.<sup>33</sup> In 2002, the deadlines for Clark, Clallam, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom Counties and the cities in these counties was extended over two years to December 1, 2004 and the update interval increased to seven years.<sup>34</sup> The deadlines for other counties and cities were extended to 2005 through 2007.

## Additional Growth Management Act Provisions that Require Higher Residential Densities

It is important to remember that the four dwelling unit per net acre rule is a floor. There are other Growth Management Act provisions that will require higher residential densities. They include:

- The Growth Management Act goals to encourage growth in the UGA, reduce sprawl, protect natural resource based industries and protect the environment.<sup>35</sup>
- The Growth Management Act goal to encourage the availability of affordable housing to all economic segments of the population of this state and promote a variety of residential densities and housing types.<sup>36</sup>

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<sup>30</sup> *Benaroya, et al. v. City of Redmond*, CPSGMHB Consolidated Case No. 95-3-0072 p. \*21, 1996 WL 650317 p. \*25 (March 25, 1996).

<sup>31</sup> *FEARN, et al. v. City of Bothell*, CPSGMHB Case No. 04-3-0006c Order on Motions p. \*9 of 12 (May 20, 2004).

<sup>32</sup> 1997 Session Laws, Chapter 429 § 10.

<sup>33</sup> *Id.*

<sup>34</sup> 2002 Session Laws, Chapter 320 § 1 & *FEARN, et al. v. City of Bothell*, CPSGMHB Case No. 04-3-0006c Order on Motions p. \*8 of 12 (May 20, 2004).

<sup>35</sup> RCW 36.70A.020(1), (2), (8), & (9).

- The requirement that the housing element, and its implementing development regulations, shall include mandatory provisions for the preservation, improvement and development of housing.<sup>37</sup>
- The requirement that the housing element, and its implementing development regulations, shall identify sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities.<sup>38</sup>
- The requirement that the housing element, and its implementing development regulations, shall make adequate provisions for existing and projected needs of all economic segments of the community.<sup>39</sup>
- The requirement that the UGA shall include “areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period.”<sup>40</sup>

Also, if most of our cities and towns are zoned for four housing units per acre, the land needed to accommodate our future growth will be much greater than if we accommodate more homes per acre.

## Reasonable Measures

The Growth Management Act, in RCW 36.70A.215, requires Clark, King, Kitsap, Pierce, Snohomish, and Thurston counties to prepare a buildable lands analysis. The analysis has two purposes:

- To determine whether a county and cities are achieving urban densities within UGAs by:
  - Comparing growth and development assumptions, targets, and objectives from the Growth Management Act, countywide planning policies, comprehensive plans, and development regulations
  - With actual growth
- To identifying reasonable measures other than adjusting UGAs to take to comply with the GMA.<sup>41</sup>

The counties and cities are required to collect annual data on urban and rural uses, development, critical areas, and capital facilities to determine land suitable for residential and employment development.<sup>42</sup> The data is to be evaluated every five years to determine:

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<sup>36</sup> RCW 36.70A.020(4).

<sup>37</sup> RCW 36.70A.070(2) & RCW 36.70A.040(3) &(5) (counties and cities shall adopt development regulations that are consistent with and implement the comprehensive plan).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> RCW 36.70A.110(2).

<sup>41</sup> RCW 36.70A.215(1).

<sup>42</sup> RCW 36.70A.215(2)(a).

- If sufficient suitable land to accommodate the county-wide State of Washington Office of Financial Management (OFM) population projection adopted by the county and the population allocations to cities and subareas within the county.
- Actual housing densities.
- The actual amount of land developed for residential, commercial and industrial uses.
- Based on actual development, “review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.”<sup>43</sup>

The first buildable lands report was due on September 1, 2002. The buildable lands counties must complete an evaluation and report every five years.<sup>44</sup>

If the buildable lands evaluation shows inconsistencies between the “planning goals and the requirements of the [Growth Management Act],” county-wide planning policies (which are guides to coordinated planning within a county), comprehensive plans, and development regulations and the actual development, “the county and cities shall adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period.”<sup>45</sup> “If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to county-wide planning policies to increase consistency.” The county and its cities shall annually monitor the adopted reasonable measures to determine their effect and “may revise or rescind them as appropriate.”<sup>46</sup>

Reasonable measures must address any inconsistencies between actual development and the Growth Management Act, policies, plans and regulations. RCW 36.70A.215(3) identifies the following big topic areas that must be addressed by reasonable measures if they are inconsistent with the adopted plans:

- Sufficient suitable land to accommodate the adopted population projections.<sup>47</sup> However, reasonable measures are not to include UGA expansions.<sup>48</sup>
- Housing densities are lower than called for in the Growth Management Act and the comprehensive plan.<sup>49</sup>
- Housing of certain housing densities are not being produced as called for in the plan.<sup>50</sup>
- Additional land may be needed for commercial uses, industrial use, or housing types and housing density ranges.<sup>51</sup>

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<sup>43</sup> RCW 36.70A.215(3).

<sup>44</sup> RCW 36.70A.215(2)(b).

<sup>45</sup> RCW 36.70A.215(4) underlining added.

<sup>46</sup> RCW 36.70A.215(4).

<sup>47</sup> RCW 36.70A.215(3)(a).

<sup>48</sup> RCW 36.70A.215(1)(b).

<sup>49</sup> RCW 36.70A.215(3)(b).

<sup>50</sup> RCW 36.70A.215(3)(c).

Consider the following findings from the buildable lands reports:

- Development in UGAs is achieving urban density
  - Dwelling units per acre: Clark 6, King 7.3, Pierce 4.02, and Thurston 3.59.
  - Using different methodology, which may result in higher estimates, Kitsap reported 3.87 and Snohomish 8.89 dwelling units per acre.
  - Low densities in Thurston County, parts of Kitsap County, the Eastside of King County, some Pierce County suburbs. Other areas too.
- For all counties but Kitsap, most residential growth is occurring in UGAs
  - Clark 89 percent
  - King 91 percent
  - Kitsap 45 percent
  - Pierce 52 percent
  - Snohomish 87 percent of population
  - Thurston 61 percent

Based on the author's review of the buildable lands reports, the greatest need for reasonable measures is in the area of housing densities. It is also important to note that the adoption of a new population target, a new urban growth area or a new plan does not obviate the requirement to adopt and implement reasonable measures.

Clark County did a good job identifying jurisdiction reasonable measures. Some buildable lands reports did not include any reasonable measures. Some counties have done separate reports identifying reasonable measure. In *FEARN, et al. v. City of Bothell*, the Central Puget Sound Growth Management Hearings Board held "that the outside limit for a local government to adopt reasonable measures to avoid the need to adjust the UGA is the December 1, 2004 deadline established in [RCW 36.70A.]130(4)."<sup>52</sup> The failure to adopt reasonable measures by those deadlines can be appealed to the Growth Management Hearings Boards after the deadline.<sup>53</sup>

The Growth Management Act does not require reasonable measures as a precondition to expanding UGAs, although other requirements have to be met. However if to implement RCW 36.70A.215 a county has amended its county-wide planning policies or comprehensive plan to require adopting, considering, or implementing reasonable measures, the failure to adopt and consider or implement reasonable measures before expanding the UGA violates the Growth Management Act.<sup>54</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> *FEARN, et al. v. City of Bothell*, CPSGMHB Case No. 04-3-0006c Order on Motions p. \*8 (May 20, 2004).

<sup>53</sup> RCW 36.70A.280(1)(a) & *FEARN, et al. v. City of Bothell*, CPSGMHB Case No. 04-3-0006c Order on Motions pp. \*7 – 8 (May 20, 2004).

<sup>54</sup> *Hensley and 1000 Friends of Washington v. Snohomish County (Hensley VI)*, Case No. 03-3-0009c Final Decision and Order p. \*20, 2003 WL 22896423 p.\*20 (September 22, 2003).

All of the buildable lands reports are available on the web and you can download them at the following sites:

- Clark: <http://www.clark.wa.gov/longrangeplan/review/buildable-lands.html>
- King: <http://www.metrokc.gov/budget/buildland/bldInd02.htm>
- Kitsap: [http://www.kitsapgov.com/dcd/community\\_plan/blp/bla.htm](http://www.kitsapgov.com/dcd/community_plan/blp/bla.htm)
- Pierce: <http://www.co.pierce.wa.us/xml/services/home/property/pals/pdf/blreport.pdf> and maps at:  
<http://www.co.pierce.wa.us/pc/services/home/property/pals/landuse/blmaps2.htm>
- Snohomish: <http://www.co.snohomish.wa.us/pdsapp/1000-SCT/Buildable%20Lands/Index.asp>
- Thurston:  
<http://www.trpc.org/programs/estimates+and+forecasts/development/benchmarks2003.htm> now included as Chapter II in the 2003 edition of the Regional Benchmarks Report.

The Washington State Department of Community, Trade, and Economic Development did a report that summarized and analyzed the buildable lands reports. It is available at: [http://cted.wa.gov/portal/alias\\_cted/lang\\_en/tabID\\_420/DesktopDefault.aspx](http://cted.wa.gov/portal/alias_cted/lang_en/tabID_420/DesktopDefault.aspx) Scroll down to *Buildable Lands Program: 2002 Evaluation Report – A Summary of Findings, 2003*.

## Practice Tips

In planning for urban densities, consider the following recommendations:

- Almost all of the land within the UGA will require a density of four housing units per net acre and most will require greater densities to achieve community goals and to comply with all of the goals and requirements of Growth Management Act. Remember four units per net acre is “the low end of the range required by the [Growth Management] Act.”<sup>55</sup>
- If an area has extensive critical areas, do not add it to the urban growth area in the first place. If it is not annexed, move it outside of the urban growth area. That will provide the land with the most protection since it will not be subject to urbanizing pressures. All three of the boards have held that extensive critical areas should not be added to the UGA.<sup>56</sup>

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<sup>55</sup> *Bremerton, et al. v. Kitsap County*, CPSGMHB Consolidated Case No.: 95-3-0039c Corrected Final Decision and Order p. \*33, 1995 WL 903165 p. \*35 (October 6, 1995) (underlining added).

<sup>56</sup> *Bremerton, et al. v. Kitsap County*, Central Puget Sound Growth Management Hearings Board (CPSGMHB) Consolidated Case No.: 95-3-0039 Final Decision and Order pp. \*33 – 34 (footnote omitted) (October 6, 1995), *Friends of Skagit County v. Skagit County*, WWGMHB No. 95-2-0075 Final Decision and Order p. \*8, 1996 WL 650300 p. \*6 (January 22, 1996) (quoting *Bremerton*), & *Confederated Tribes and Bands of the Yakima Indian Nation v. Yakima County*, EWGMHB 94-1-0021, Final Decision and Order, 1995 WL 903191 p. \*5 (Mar. 10, 1995). *Accord City of Redmond v. Central Puget Sound Growth Management Hearings Bd.*, 136 Wn. 2d 38, 47 – 48, 959 P.2d 1091, 1094 – 1095 (1998) (agricultural resource lands should not be included in urban growth areas).

- Build a good record showing why the less than four housing units per acre density is needed and that you have enough land elsewhere to meet your adopted growth targets. Maps showing the critical areas are very helpful and were specifically referred to in *MBA/Brink*. Aerial and ground photos help too. In both *Litowitz* and *Benaroya*, the fact that it was undisputed that both cities had adequate land for their growth targets impressed the board.
- The more critical areas the merrier in this context. In both *Benaroya* and *MBA/Brink*, the areas that were upheld for less than four housing units per acre zoning had multiple critical areas.
- The critical areas should cover the whole area or almost entirely the whole area if you want to apply the *Litowitz* rule. This was important in *Litowitz*, *Benaroya*, and *MBA/Brink*.
- The critical areas should be serious natural hazards or important habitats.

In adopting and implementing **reasonable measures**, consider the following recommendations:

- Ask why the development your community is experiencing is not in accordance with the plan? What barriers in the development regulations or permitting process are in the way?
- Take current market conditions into account and make sure that you have a real problem.
- Consider whether other housing types may make sense for your community. High density detached single-family homes and townhouses can reach significant densities and may avoid some of the current problems some condo developers are facing. These housing types and cottages may have a high level of community acceptance too.

## For Additional Information

Please contact Tim Trohimovich, ACIP, JD, Planning Director of Futurewise, formerly 1000 Friends of Washington. Telephone (206) 343-0681 or e-mail [tim@futurewise.org](mailto:tim@futurewise.org)

Copies of the Growth Management Hearings Board decisions referenced in this report are available at their website: <http://www.gmhb.wa.gov/index.html> The boards' also have excellent digests that summarize their decisions. The digests are also available at their website.

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