

Chapter 10

Comprehensive planning, growth management and environmental protection

The combination of comprehensive planning, growth management and environmental protection are areas that can require not just one expert, but many. The level of complexity - and continuing changes in the law - can be a leading cause of disconnect at city hall.

Nonetheless, the underlying ideas are simple: A city needs to plan for growth if they intend to protect the environment and leave healthy communities for their children, and grandchildren. And the planning process can be a powerful way to clarify community values, needs and goals. A comprehensive plan expresses a community's vision, and is the blueprint for all subsequent land use activity.

Developing, implementing and updating a comprehensive plan are great opportunities to:

- Create a vision - know what the community should look and be like in the future;
- Have a roadmap - guide growth and development toward the vision; and
- Achieve goals - attain the community's vision and desired future.

The goals of a comprehensive plan are implemented through regulatory ordinances. These are collectively known as "development regulations" and include zoning codes, subdivision codes, building and health codes, environmental codes, and others that make up the planning and regulatory framework of the community.

Local codes can include incentives that stimulate the kind of growth desired, including such options as local property tax incentives or density bonuses for projects that carry out habitat restoration or provide affordable housing, such as the multi-family housing tax exemption, conservation district property tax exemptions, or density bonuses.

There is assistance from state agencies and other experts to help a city and its citizens understand what needs to be done.

“The good news is we’ve been found. The bad news is, we’ve been found.”

Small City Roundups

The Growth Management Act

In 1990 the Washington State Legislature declared that “uncoordinated and unplanned growth, together with a lack of common goals...pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state” and that “it is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning.” This is the foundation for the Growth Management Act (GMA).

The GMA specifies that all cities (and counties) in Washington must, at a minimum:

- Designate and protect five types of critical areas, such as wetlands and frequently flooded areas;
- Counties must designate farm lands, forest lands, and other natural resource areas; and
- Both cities and counties must ensure that new residential subdivisions have appropriate provisions for public services and facilities, and obtain proof of potable water prior to issuance of a building permit.

Comprehensive planning requirements

While Washington cities and counties have prepared comprehensive plans for many years, the GMA establishes the comprehensive plan as the starting point for any planning process, and the centerpiece of local planning.

Who must plan?

In addition to the three minimum requirements noted above, 29 counties and the cities therein, comprising about 95% of the state’s population, are required (or have chosen to) create plans that conform to the GMA. The GMA specifies the elements and goals of a comprehensive plan and additional criteria for the jurisdictions covered by the law. This includes approximately 112 cities with 5,000 or fewer in population.

The remaining ten counties (and the cities within them) are required to plan only for critical areas and natural resource lands. This includes approximately 57 cities with 5,000 or fewer in population.

GMA goals

The GMA requires that growth plans and regulations in the 29 counties and the cities within them be guided by the following 14 goals (summarized):

- Sprawl reduction
- Affordable housing
- Open space and recreation
- Environmental protection
- Natural resource industries
- Permit processing
- Early and continuous public participation
- Concentrated urban growth
- Economic development
- Regional transportation
- Property rights
- Historic lands and buildings
- Public facilities and services
- Shoreline management

Comprehensive plan elements

The GMA provides a framework for regional coordination. Counties that plan in conformance with the GMA are required to adopt countywide planning policies to coordinate with their cities as they create and adopt their comprehensive plans. Counties are also required to establish urban growth areas (UGAs), which delineate those areas which will eventually be annexed into cities.

Local - both city and county - comprehensive plans must include the following elements: land use, housing, capital facilities, utilities, and transportation. Counties must also include a plan to protect rural areas. Shoreline protection policies are also an element of local comprehensive plans. Although parks and recreation and economic development elements are not required until adequate state funding is provided, some jurisdictions have chosen to include them in their comprehensive plans.

Key requirements of comprehensive planning

While there are many requirements for cities in developing their comprehensive plans, cities should always keep in mind the following priorities:

- Comprehensive plans will be measured against the goals and requirements of the GMA.
- Comprehensive plans must comply with countywide planning policies.
- Development regulations must be consistent with comprehensive plans.
- Individual elements of comprehensive plans need to be consistent with each other.
- Comprehensive plans must be consistent with the comprehensive plans of adjacent jurisdictions.
- Developments (both private and public) must be measured for consistency with the comprehensive plan.

Comprehensive plan updates

The GMA requires that each fully planning city and county in Washington periodically review and, if necessary, revise its comprehensive plan and development regulations to ensure that they comply with the GMA. In addition to comprehensive plan amendments that are adopted annually by many jurisdictions, communities must conduct a review of the comprehensive plan and development regulations every seven years. All counties and cities, including those not fully planning under the GMA, are required to review and, if necessary, amend their policies and development regulations regarding critical areas and natural resource lands.

Under the GMA, a schedule is set for updates to comprehensive plans and development regulations.

Land use liability

Land use is a complicated area with broad procedural requirements and overlapping state and federal statutory requirements. As a result, it is a frequent source of legal challenges.

Critical areas

In 1995 the GMA was amended to require counties and cities to include the “best available science” in developing policies and development regulations to protect critical areas. All counties and cities in the state are required to review, evaluate, and, if necessary, revise their critical areas ordinances according to a schedule established by the Legislature and approved by the Governor. The update timelines for critical areas are tied to Comprehensive Plan update schedules and can be found in the Comprehensive Plan schedules noted as a resource on the previous page.

Department of Commerce has developed a technical assistance tool to help small communities implement their Critical Areas Ordinances (CAO), called the Small Communities Critical Areas Ordinance Implementation Guidebook. This document recommends simple procedures and includes references to sources of information, descriptions of permitting processes, examples of common permitting scenarios, and some useful checklists and public information brochures that can be customized for use in small communities.

Development regulations and regulatory reform

Local plans and development regulations must also conform to such environmental laws as the State Environmental Policy Act (SEPA) and the Shoreline Management Act (SMA).

The Regulatory Reform Act was passed in 1995 to improve how project permits are processed and issued in Washington. This law is an attempt to simplify and integrate various state land use and environmental regulations. All of the legislation’s requirements apply to cities and counties planning fully under the GMA, while only some apply to non-fully planning cities and counties. The most important provisions require coordination and consolidation of the local permit process with SEPA, and streamlining the local permit process. Cities and counties fully planning under the GMA must have an integrated and consolidated project permit process that includes certain time limits for permit processing. More information about the Regulatory Reform Act can be found in Chapter 3 of COM’s *Short Course Manual* on planning, which is available on COM’s Growth Management website.

State Environmental Policy Act (SEPA)

The State Environmental Policy Act (SEPA), enacted in 1971 requires that a city identify possible environmental impacts that may result from governmental decisions such as issuing permits for private projects, constructing public facilities, or adopting regulations, policies or plans.

Information provided during the SEPA review process helps agency decision makers, applicants, and the public understand how a proposal will affect the environment. This information can be used to change a proposal to reduce likely impacts, or to condition or deny a proposal when adverse environmental impacts are identified.

SEPA applies to decisions by every state and local government agency within Washington. One agency is usually identified as the “lead agency” for a specific proposal. The lead agency for most private projects will be the city or county where the project is located. For public projects, the lead agency will be the agency proposing the project.

A SEPA environmental review is usually initiated when:

- An application is submitted to an agency for a license to construct a private project, such as an office building, a grocery store, or an apartment building;
- An agency is considering construction of a public project, such as a new school, a highway, or a water pipeline; or
- An agency is developing a regulation, policy, or plan, such as a county or city comprehensive plan, a critical area ordinance, or a state water quality regulation.

Stormwater

Under federal and state laws 103 cities across the state are required to manage stormwater as required by municipal stormwater permits administered by the Department of Ecology. These cities are in Washington’s 14 census defined urban areas. (The list of cities is available from the Department of Ecology.)

Stormwater is rain water and snow melt that runs off surfaces such as rooftops, paved streets, highways, and parking lots. As stormwater runs off these surfaces, it picks up pollution such as oil, fertilizers, pesticides, pet waste, and trash and carries this pollution into our lakes, streams, rivers, and bays. Polluted runoff that goes into a storm drain is usually not treated and winds up in our downstream waters.

In simple terms, the municipal stormwater permits require operators of municipal separate storm sewer systems (MS4s) to develop and implement a stormwater management program that:

- Reduces the discharge of pollutants to the “maximum extent practicable;”
- Protects water quality; and
- Involves planning, public education and involvement, illicit discharge detection programs, and passing appropriate ordinances to reduce stormwater pollution.

Shoreline Management Act (SMA)

Washington’s Shoreline Management Act (SMA) which applies to all 39 counties and more than 200 cities that are located on a state shoreline, was passed by the Legislature in 1971 and adopted by the public in a 1972 referendum. The goal of the SMA is “to prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.” The Act establishes a broad policy giving preference to uses that:

- Protect the quality of water and the natural environment;
- Depend on proximity to the shoreline (“water-dependent uses”); and
- Preserve and enhance public access or increase recreational opportunities for the public along shorelines.

The SMA is administered through a partnership between local governments and the Department of Ecology (DOE). The partnership provides that:

- Cities and counties develop shoreline master programs that regulate development along larger streams, lakes, and marine waters;
- The DOE provides technical assistance, and reviews local programs and permitting decisions; and
- The Act places a strong emphasis on public participation in developing local shoreline programs and in the local permit process.

DOE’s adoption of new shoreline master program (SMP) guidelines in 2003 initiated a new generation of shoreline planning in Washington, establishing a new schedule for updating SMPs and a biennial appropriation to help fund local SMP development.

Endangered Species Act

The Endangered Species Act (ESA) is a federal statute designed to protect endangered and threatened fish, wildlife and plant species and the ecosystems upon which they depend. The ESA is administered by the National Marine Fisheries Service (NOAA Fisheries) when the affected species are marine and anadromous (i.e. salmonid), and the United States Fish and Wildlife Service (USFWS) when the affected species live on land or in freshwater.

The ESA provides a variety of mechanisms for saving species threatened with extinction. One widely used tool is the "Habitat Conservation Plan," which offers protection to landowners in exchange for an agreement to manage land in a way that minimizes impacts to listed species. Another mechanism is the adoption of protective regulations, commonly called the "4(d) rules," named after a section in the ESA. The June 2000 4(d) rule adopted by NOAA prohibits "take" of salmon and steelhead listed as threatened under the Endangered Species Act (ESA) except in cases where the take is associated with an approved program that comes under one of the limits in the 4(d) rule. One of those programs is for the restoration of salmon habitat, if done under an approved plan. Projects that implement the salmon recovery plans produced by salmon recovery regional organizations meet the criteria for coverage under the 4(d) rule. Many cities are members of such regional organizations and are developing recovery plans.

In Washington, the listings of salmon, steelhead, and bull trout have focused attention on the ESA, although other species in the state, such as the northern spotted owl and western pond turtle, also have been listed as "endangered" or "threatened."

Resources

Building Climate Resilient Cities Guidebook, ICLEI

icleiusa.org/wp-content/uploads/2015/06/Building-Resilient-Cities_FINAL.pdf

Growth Management Services, Department of Commerce

commerce.wa.gov/Services/localgovernment/GrowthManagement/Pages/default.aspx

Growth Management Services - Technical Assistance Regions,

Department of Commerce

commerce.wa.gov/Documents/GMS-TA-Region-Map-Final2sidedweb.pdf

Comprehensive planning requirements

Comprehensive Planning and Growth Management topic page, MRSC

mrsc.org/Home/Explore-Topics/Planning/General-Planning-and-Growth-Management/Comprehensive-Planning-Growth-Management.aspx

GMA Comp Plan Conversation Starters, AWC

awcnet.org/ResourcesResearch/GMACompPlanConversationStarters.aspx

Growth Management Laws and Rules, Department of Commerce

commerce.wa.gov/Services/localgovernment/GrowthManagement/Pages/LawsRules.aspx

Critical areas

Critical Areas and Best Available Science, Department of Commerce

commerce.wa.gov/Services/localgovernment/GrowthManagement/Growth-Management-Planning-Topics/Critical-Areas-and-Best-Available-Science

Critical Areas Ordinance Implementation Guidebook for Small Cities,

MRSC

commerce.wa.gov/Documents/GMS-Small-Communities-Critical-Area-Ordinance-Implementation.pdf

Critical Areas topic page, MRSC

mrsc.org/Home/Explore-Topics/Environment/Critical-Areas-and-Species/Critical-Areas.aspx

State Agency Resources for Local Governments Updating Critical Areas Ordinances, Department of Commerce

commerce.wa.gov/Documents/GMS-Periodic-Update-CAO-Resources-from-State-Agencies-2009.pdf

Development regulations and regulatory reform

Growth Management Hearings Board

gmhb.wa.gov

Periodic Update Process for Comprehensive Plans and Development Regulations topic page, MRSC

mrsc.org/Home/Explore-Topics/Planning/General-Planning-and-Growth-Management/GMA-Plan-Development-Regulations-Updates.aspx

Short Course on Local Planning, Department of Commerce
commerce.wa.gov/Services/localgovernment/GrowthManagement/Short-Course-on-Local-Planning/Pages/default.aspx

Small Communities Critical Areas Ordinance Implementation Guidebook,
Department of Commerce
commerce.wa.gov/Documents/GMS-Small-Communities-Critical-Area-Ordinance-Implementation.pdf

State Environmental Policy Act (SEPA)

SEPA and the Promise of the GMA, Department of Commerce
commerce.wa.gov/Documents/GMS-SEPA-Promise-GMA.pdf

State Environmental Policy Act (SEPA), Department of Commerce
commerce.wa.gov/Services/localgovernment/GrowthManagement/Growth-Management-Planning-Topics/Pages/State-Environmental-Policy-Act.aspx

State Environmental Policy Act (SEPA), Department of Ecology
ecy.wa.gov/programs/sea/sepa/e-review.html

State Environmental Policy Act (SEPA) topic page, MRSC
mrsc.org/Home/Explore-Topics/Environment/Environmental-Laws/State-Environmental-Policy-Act.aspx

Shoreline Management Act (SMA)

Shorelands and Environmental Assistance, Department of Ecology
ecy.wa.gov/programs/sea/shorelan.html

Shoreline Management, Department of Ecology
ecy.wa.gov/programs/sea/sma/st_guide/intro.html

Shoreline Master Programs, Department of Ecology
ecy.wa.gov/programs/sea/shorelines/smp/index.html

Who's Covered Under the Municipal Stormwater Permits, Department of Ecology
ecy.wa.gov/programs/wq/stormwater/municipal/MuniStrmWtrPermList.html

Endangered Species Act (ESA)

Citizen's Guide to the 4(d) Rule for Threatened Salmon and Steelhead on the West Coast, National Oceanic and Atmospheric Administration
nwr.noaa.gov/1salmon/salmesa/4ddocs/citguide.htm

Endangered Species, U.S. Department of Fish and Wildlife
fws.gov/endangered/

Governor's Salmon Recovery Office
rco.wa.gov/salmon_recovery/gsro.shtml

Salmon Recovery and Restoration, Washington Department of Fish and Wildlife (DFW)
fortress.wa.gov/dfw/score/score/recovery/recovery.jsp

Know the law

- RCW 36.70A - Growth management
- RCW 35.63 - Planning commissions
- RCW 35A.63 - Planning and zoning in code cities
- RCW 36.70 - Planning Enabling Act (counties)
- RCW 36.70A - Growth Management
- RCW 36.70A.130(4) & (5) - Comprehensive plans - Review procedures and schedules - Amendments
- WAC 365-195 - Growth management act - Procedural criteria for adopting comprehensive plans and development regulations
- RCW 36.70B - Local project review (Regulatory Reform Act)
- RCW 36.70C - Judicial review of land use decisions
- RCW 90.58 - Shoreline Management Act of 1971
- RCW 90.58.080 - Timetable for local governments to develop or amend master programs
- WAC 173-26 - State master program approval/amendment procedures and master program guidelines
- WAC 173-27 - Shoreline management permit and enforcement procedures
- WAC 173-18 - Shoreline management act - streams and rivers constituting shorelines of the state
- WAC 173-20 - Shoreline management act - lakes constituting shorelines of the state
- WAC 173-22 - Adoption of designations of shorelands and wetlands associated with shorelines of the state
- ESA, 16 U.S.C. 1531 et seq. or Endangered Species Act, National Marine Fisheries Service
- ESA 4(d) Rules for Pacific Salmon (Protective Regulations), National Marine Fisheries Service, Northwest Regional Office
- Selected Court Decisions regarding ESA, ESA Salmon - Laws, court decisions, and regulations, Environment webpage, MRSC
- ESA Section 4 Regulations, 50 CFR Part 424 - Listing endangered and threatened species and designating critical habitat (pdf)
- ESA Section 7 Regulations, 50 CFR Part 402 - Interagency cooperation (pdf)
- ESA Section 10 Regulations, 50 CFR Part 222 - General endangered and threatened marine species (pdf)