Written Comments
submitted prior to February 8, 2008, Noon, deadline regarding the Eastern Washington Growth Hearings Board Decision Compliance
Dear Chairman McClain:

The Central Washington Home Builders Association represents 789 member companies with approximately 10,000 employees throughout Central Washington. Approximately 1/3 of our member companies are located in Kittitas County.

We wish to place in the written record for the Board of Commissioners' consideration supplemental information on cluster platting and the uses to which it may be put. This submission consists of the body of the letter and the supporting documents referenced at the end.

Through the last several years Kittitas County has experienced significant growth not only in urban areas, but also especially in the rural portions of the county. Here we use the term 'rural' in the sense of the Growth Management Act as lands outside the urban growth area not Commercial Forest, Commercial Agricultural, or Mineral. Annual reports from Community Development Services for 2005 through 2007 show, respectively, 332, 396 and 313 permits for new residential construction. The potential for partitioning of the rural lands into large, but scattered housing lots is therefore significant. The conventional thought is that a near exclusive focus on controlling 'rural sprawl' by lower densities will preserve the rural character. Though large lot zoning reduces the number of homes that can be built, at the same time it spreads out the homes in such a way that none of the residual lands can support viable farming, forestry, or other traditional rural usages. In fact, what has been demonstrated is development spreading further into the hinterlands since there is less land available when subdivided into 5, 10, and 20 acres with each parcel supporting one dwelling. A second impact we observe is that of increasing land prices reflecting the limited supply of land available leads eventually to the exclusion of lower income households in the rural area.

Cluster platting provides for the clustering of housing units on lots smaller than those normally required by the underlying zoning. This technique requires, however, that the new construction be located on only a portion of the parcel. The tradeoff for smaller footprint lots is for permanent retention of at least 50% of the total parcel in open space. It is important to recognize the economic
considerations faced by the developer to undertake cluster development. These, at a minimum, include requirements for class A or B community septic systems and class A or B community wells. These costs are not inconsequential and can lead to even higher land prices. One method to encourage use of cluster plats and to help leaven out the economic burden is to allow a density bonus. We suggest this can be done in such a way as to preclude densities greater than 1.5 acres per dwelling unit. This can be used to provide the developer with an economic incentive to incorporate standards and additional requirements beyond those normally expected. While planners may prefer compulsory “open space” development (see Arendt below) we believe an incentive based system can be more effective.

Cluster development clearly does not strictly focus on density, but its use may take a more viable approach to reaching the elements specified in RCW 36.70A.011 by focusing on characteristics that describe rural areas. Aspects such as: native vegetation, undisturbed terrain and cultivated land, clustered buildings in juxtaposition resembling a farm assemblage of a few farm and out buildings, farm houses and freestanding commercial buildings, buildings utilizing a small portion of an average 20 acre site; and two lane roads. Methods suggested to achieve these rural characteristics combined with lower densities include cluster platting with reduced size lots where homeowners jointly own the larger open space and individually own the smaller lot on which their home is built and transfer of development rights. In fact, RCW 36.70A.090 recognizes these management techniques along with density bonuses and planned unit developments. By allowing planned areas of more intense, clustered development in rural areas the inclination to creep outwards in 10 or 20 acre leaps with individual house lots may be restrained, at the same time preserving larger areas of open space to maintain the rural characteristics.

An example of this type of planning is found in the Northfield, Minnesota Comprehensive Plan:
Cluster Housing

**Northfield Comprehensive Plan**

*June 2000*  

**Cluster Housing**

**Northfield, Minnesota**

Sample Development in Washington County, Minnesota that uses cluster housing to preserve open space, provide for recreational trail amenities and to provide for sustainable agriculture practices.

Common and natural septic systems are also successfully demonstrated within this development.

Cluster housing to preserve open space, farmland or natural resources.

Clustering serves as a development tool to allow rural residential development while reserving the ability to provide urban services at a future date.

Single Family housing clustered on 1/4 acre to 2 acre lots. The project incorporates a 5 mile trail system and a communal wetland filtration system.

Used cluster housing techniques to preserve open space and natural features.

Building into the landscape to preserve open space.
It is doubtful if cluster platting by itself can protect farming and forestry in the rural area. However, with planning it can provide buffers between residential and agricultural activities, protect and provide for wildlife habitat, and help retain a visual landscape of rural characteristics. One important aspect of this is to set minimum viable parcel sizes in which cluster development may be applied such as provided in KCDC Title16.09. Serious efforts to preserve farming and forestry outside of transition areas are likely to be right-to-farm Ordinances and transfer of development rights that, in effect, create exclusive agricultural zoning, as examples.

David K. Whitwill
Coordinator,
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Supporting documents:


RCW 36.70A.011 and .090

WILLIAMS, MITCH, 1994 CA, A DEVELOPER'S POINT OF VIEW IN ZONING DEBATES. DAILY RECORD, ELENTBURG, WA.
"Open Space" Zoning: What It Is & Why It Works
by Randall Arendt

About the Author

From Issue 5 of the PCJ, July/August 1992

Local officials in most rural and suburbanizing areas have a long-term choice about which many are not fully aware. That is whether to continue implementing "conventional zoning", or whether to refine their existing land-use regulations to ensure the preservation of open space through creative development design.

Conventional zoning is essentially a blueprint for development, and development alone. Of course, zoning normally separates incompatible uses, and it does establish certain standards (such as maximum densities and minimum setbacks), but it typically does little to protect open space or to conserve rural character. The reason many subdivisions consist of nothing more than house lots and streets is because zoning and subdivision design standards usually require developers to provide nothing more. While many ordinances contain detailed standards for pavement thickness and culvert diameters, very few set any noteworthy standards for the quantity, quality and configuration of open space to be preserved.

Conventional zoning assigns a development designation to every acre of land, generally residential, commercial, or industrial. The only lands which are normally not designated for development are wetlands and floodplains. Conventional zoning has been accurately described as "planned sprawl," because every square foot of each development parcel is converted to front yards, back yards, streets, sidewalks, or driveways. Period. Nothing is left over to become open space, in this land-consumptive process.
Above photo is of conventional large lot zoning in Middletown, Rhode Island.

Above photo is of open space development in Lower Makefield Township, Pennsylvania, where over half of this 431 acre tract has been preserved as farmland (137 acres donated to a local farmland trust) or as woods and wetlands (100 acres). House lots are about 1/2 acre in size. Buyer response has been very favorable, with sales outpacing similarly priced developments. The developer advertises the project as "a community that will be forever surrounded by acres of preserved farmland, open fields and woodlands."

[Editor's Note: The Center for Rural Massachusetts's Web site contains excellent drawings comparing development under conventional zoning principles and development using open space/cluster principles].

A Better Solution

Local officials who are interested in ensuring that their communities will not ultimately become a seamless web of subdivisions, shopping centers and office or industrial parks now have a practical and effective alternative: compulsory open space zoning. This technique has been successfully implemented by a number of municipalities in New England and the Mid-Atlantic states, and by several counties in Virginia, Washington State and California.
In order to avoid disturbing the equity held by existing landowners, open space zoning allows the same overall amount of development that is already permitted. The key difference is that this technique requires new construction to be located on only a portion -- typically half -- of the parcel. The remaining open space is permanently protected under a conservation easement co-signed by a local conservation commission or land trust, and recorded in the registry of deeds.

As "open space zoning" is based upon the technique of "clustering," these two terms are used interchangeably throughout the rest of this article. It should also be noted that the cluster concept can be restricted to detached, single-family homes, each on its own down-sized housetlot, in communities or in specific zoning districts where this is politically desirable. In other words, cluster housing is by no means limited to townhouses, apartments, or condominiums, as is typical in many PUDs (planned unit developments) and PRDs (planned residential developments). In fact, the classic rural village settlement pattern is a superb example of single-family clustering, sometimes with a central green constituting the permanently preserved open space.

Cluster Design

The basic principle of cluster development is to group new homes onto part of the development parcel, so that the remainder can be preserved as unbuilt open space. The degree to which this accomplishes a significant saving of land, while providing an attractive and comfortable living environment, depends largely on the quality of the zoning regulations and the expertise of the development designer (preferably someone experienced in landscape architecture).

Although the concept of clustering is fairly simple, this "new" form of development has raised concerns among some residents of rural or suburbanizing areas because it is quite different from the conventional, standardized subdivision pattern with which most of us are very familiar. Interestingly, the conventional suburban model, commonplace in many growing communities, is actually a pattern that is at odds with the otherwise traditional rural landscape. It looks "at home" only in our sprawling metropolitan post-war suburbs, where it has become the predominant building pattern.

The purpose of this article is to first briefly explain what I believe are the major advantages of requiring clustered (open space) development, and then to discuss several of the concerns typically expressed at local meetings where the open space planning concept has been discussed.

The Advantages of Open Space Development

The conventional approach to development results in the entire parcel being covered with housetlots and subdivision streets. Communities which have had a lot of experience with this type of development ultimately realize that, as one parcel after another is eventually developed, their formerly open landscape
evolves into a network of "wall-to-wall" subdivisions. [See Sidebar, "Large Lot Zoning" at the end of this article].

The beauty of open space zoning is that it is easy to administer, does not penalize the rural landowner, does not take development potential away from the developer, and is extremely effective in permanently protecting a substantial proportion of every development tract. It does not require large public expenditures (to purchase development rights), and allows farmers and others to extract their rightful equity without seeing their entire land holding bulldozed for complete coverage by houselots.

This pattern of down-sized houselots and preserved open space offers distinct economic advantages to all parties. Developers can reduce the costs of building roads and, if applicable, water and sewer lines. Local governments save on snowplowing and on periodic road re-surfacing. And home buyers often pay less because of these cost savings.

Landowners who view their property as their "pension" no longer have to destroy their woods and fields in order to retire with a guaranteed income, as their equity is not diminished. Local governments do not have to raise property taxes to finance expensive open space acquisitions, and are not faced with the administrative complexities posed by TDR (transfer of development rights) systems. Developers are not placed under unreasonable constraints, and realtors gain a special marketing tool, in that views from the new houses will be guaranteed by conservation easements protecting the open space from future development.

Why Require Cluster Design?

Perhaps the most controversial issue surrounding the cluster concept is the suggestion that this open space approach be made mandatory. The rationale is that there are certain types of irreplaceable natural resources which are extremely important to protect. Among these may be listed aquifers, riverfront land, fields and pastures. In addition, clustering allows flexibility in layout so that a developer can avoid impacting important wildlife habitat areas, such as deeryards, or scenic features of the rural landscape, such as large rock formations, hill crests, and mature tree-stands. It is a local decision whether to require the cluster approach when development is proposed on any or all of these resource lands.

There are several possible options to mandating open space. One is to require the cluster approach in only certain zoning districts, or when certain resources are present. Another alternative is to authorize the planning commission to require it only when the developer's conventional plan would destroy or remove more than a specified percentage of certain listed resources, leaving determination on a case-by-case basis. Whatever the choice, it is important -- in my view -- not to leave it to the developer to decide whether to opt for cluster development. [See Sidebars "Requiring Open Space Design" and "West Manchester Township" at the end of the article].
Questions About Cluster Development:

Will It Harmonize With Its Surroundings? A concern I often hear is that cluster housing will not blend in with a town's rural character. It is true that some cluster developments done in the past have failed to harmonize with their surroundings. Recognizing this potential problem, a few communities are now requiring that new cluster plans consist of only detached, single family homes, each set on its own, down-sized individual lot, roughly resembling a traditional village pattern. This also ensures that everyone will have their own separate yard space, in addition to the larger "open space" which the cluster approach creates.

The related issue of "impact upon surrounding property values" is also often raised. Along any part of the parcel perimeter where down-sized lots would adjoin standard-sized lots, communities can require buffer strips. Along other edges, this may not be desirable or logical, as lots which border permanently protected open space almost always enjoy higher property values. Indeed, most realtors would attest to the fact that all lots within a well-designed cluster development usually gain enhanced value as a result of the protected open space. [See Sidebar, "Enhancing Property Values" at the end of this article].

"Open Space" Maintenance. Another issue is maintenance of the open space created by clustering. If this space is recreational (playing fields, jogging trails, tennis courts), upkeep is typically handled by a homeowners' association, to which everyone is contractually obligated to contribute when they purchase their home. Home buyers sign a legally enforceable agreement which enables the homeowners' association to collect any unpaid dues.

If the open space is agricultural, there are several options. The agricultural open space can be sold "in fee" to the homeowners' association, which can in turn lease it to local farmers. Alternatively, the original farmer can retain ownership of it and sell only his "development rights." I favor the latter option, even if the farmer is planning to retire, because he could still sell the field to a younger farmer in the neighborhood at an affordable price reflecting the land's agricultural value -- not its potential building-lot value -- thus strengthening the local farming economy.

Buffering Farm Operations. In order to reduce potential conflicts between new residents and agricultural practices, communities are beginning to require that cluster lots be separated from the protected farmland by a "buffer" strip, typically 75 to 100 feet wide. Where it is not possible to use existing woodlands for this purpose, officials can require new buffer areas to be thickly planted with a variety of rapidly growing native trees and shrubs. A similar requirement should also be placed on conventional subdivisions when they abut working fields, but this is rarely done.

Street Standards in Cluster Developments. When cluster developments are designed with privately maintained road systems, planning boards are often asked to reduce their normal street construction standards. This has sometimes created substandard conditions, and is a practice which communities would be
well-advised to resist. If subdivision street construction standards are excessive -- as they often are -- they should be revised for all types of new development, so that street width bears a reasonable relationship to the expected volume of traffic. [Editor's Note: On this point, see Joseph Molinaro's article, "Rethinking Residential Streets," in Issue 1 of the PCJ].

Sewerage and Septic Systems.

Because of the shorter road system needed to serve lots in a cluster development, substantial savings are possible with respect to the construction of roads, sewers, and water lines. Where sewer service is unavailable, however, people have expressed concerns about siting septic systems on the smaller cluster lots. Recognizing this factor, officials are requiring such houselots to be located on that part of the parcel where soils are most favorable for leaching fields. The flexibility of cluster design allows this to happen. On the other hand, in a conventional subdivision, septic systems are located wherever the soils manage to pass minimum health requirements, even on marginal soils whose long-term suitability is questionable. In addition, it should be noted that septic systems can be located beyond one's lot lines, on an easement within the protected open space.

Summing Up:

Whether continuous coverage by large-lot subdivisions is more desirable than a mixture of village-sized cluster lots surrounded by permanently protected fields and woodland is a decision for residents and officials in each town. As long as everyone is clear about the ultimate consequences of the various development types which are available to them, these decisions can be made on an informed basis.

Sidebars:

Large Lot Zoning

One of the "solutions" that many conventional zoning ordinances use for presumably maintaining open space and rural character is large lot zoning -- that is establishing large, five to ten acre, minimum lot sizes in rural zoning districts. Although large lot zoning does reduce the number of homes that can be built, it also spreads out the homes in such a way that none of the remaining land is useable for farming, forestry, or even recreational trails. Houselots become "too large to mow, but too small to plow," and the greater distance between homes effectively stifles the emergence of any sense of neighborhood.

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Open Space: What Size and Shape?

Unless local regulations require the open space to be at least a certain size with specific minimum dimensions, it can end up being a long narrow fringe abutting rear lot lines and the parcel's outer perimeter. This can be easily avoided by clarifying, in the ordinance, that lots and roads shall not cover more than, say, 50% of the parcel, and that at least half of this open space must be shaped so as to be useable for active recreation or agriculture, for example.

Requiring Open Space Design

Experience has shown that when clustering and open space preservation are left optional, only a small percentage of developers choose to take advantage of this approach. Most simply continue to do as they have always done: creating checkerboards of house lots and streets. This means that even though the clustering option is in the zoning ordinance, it remains essentially unused. The community is still left with conventional development patterns repeated over fields and woodlands.

If a community is reluctant to require clustering, it might consider the approach taken by Clallam County, Washington. The County recently revised its zoning from a density of one unit per five acres (which was creating non-functional "farnettes") to a minimum of thirty acres. However, the original one unit per five acres density remains available if the house lots are downsized so as not to consume more than fifteen to twenty percent of the parcel. Applying this kind of stiff "density penalty" to discourage land-consumptive farnettes may be a far more effective technique than offering meager density bonuses to encourage clustering.

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West Manchester Township, Pennsylvania

West Manchester Township, in south-central Pennsylvania, last year amended its zoning ordinance to require open space development within an undeveloped portion of the township. The area had been zoned for single-family detached residential homes, on half acre or smaller lots. Before amending the ordinance, the township had prepared build-out maps showing what the area might look like if developed under the existing conventional zoning. These maps vividly showed the potential loss of the existing farmland and open space. The township also mapped out the open space it hoped to preserve to show landowners and developers exactly what was envisioned: interconnected open spaces crossing parcel lines.

Under the township's open space zoning provision, a developer first prepares a sketch plan showing the number of units that could be built under a conventional
development pattern. This determines the allowable density that can be used when
the project is designed in a clustered manner. According to Jan Dell, Assistant
Township Administrator, allowing the same density was important to allay the
concerns of affected landowners. At the same time, preserving views of open space
would make developments more attractive to home buyers. One other note, West
Manchester's open space zoning requirement only applies to developments
involving more than fifteen acres.

Editor's Note: Manchester Twp. also made use of the design manual and video cited
in the Resources sidebar.

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"Build-Out" Maps

One of the most understandable, inexpensive and effective tools for showing local
residents and officials the long-term result of implementing existing zoning and
subdivision regulations is the "build-out" map. This map shows the probable
location of new roads and houses which could legally be constructed on the vacant
and buildable land remaining within the municipality (or a portion of the
municipality). Because so many people assume their town is adequately protected
by existing zoning, a build-out map, by graphically showing what might occur, can
be a real "eye opener" for members of the community. To ensure accuracy, build-
out maps must not project development into areas where natural or regulatory
constraints would prevent it. The Center for Rural Massachusetts has available "A
maps.

Enhancing Property Values

A recent study, "An Examination of Market Appreciation for Clustered Housing
with Permanent Open Space," by Jeff Lacy at the Center for Rural Massachusetts
comparing conventional and open space developments in two Massachusetts towns
over long periods of time found that the value of homes in open space developments
appreciated at a greater rate.

An interesting article by Philip Larsen, "Open Space That Sells," in Land
Development, the publication of the National Association of Homebuilders, explores
how well-planned open space can enhance a development's market value. As Larsen
notes: "The key is to view the various open space requirements as opportunities
rather than as liabilities. A look at the most successful projects in any region will
reveal that open space has not been wasted. Projects that feature open space are
projects that sell and, at the same time, provide environmental amenities and
Resources:


"Rural Design," a 60-minute video of Randall Arendt's slide show, provides a very useful visual introduction to cluster design and related topics. It can be ordered from the American Planning Association: (312) 955-9100.

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subdivision regulations are one of the principal tools for shaping our communities. It is through the subdivision review process that communities most directly assure that residential development is designed in a way which promotes community objectives such as the preservation of open space and natural areas.

But to back up a step, why should we be concerned about protecting open space? In a nutshell, by preserving open space we protect streams and water quality, provide habitat for plants and animals, preserve rural “atmosphere,” provide recreational areas, protect home values, and reduce costs of municipal services. In short, land conservation makes our communities better places to live.

As you will see on the following pages, the conservation subdivision approach involves small, but significant, changes to the subdivision design and review process. When integrated with comprehensive plan and zoning provisions which encourage the preservation of open space, a community can — over a period of years — protect an interconnected network of conservation lands. Developers can easily become the community’s leading conservationists, as each new subdivision adds another link to an area-wide open space system. One Michigan community has, in fact, conserved more than 1,000 acres through this approach in the last eight years, a conservation value of at least $10 million!

It is critical to realize that conservation subdivision design is not only fair to developers, it actually enhances the value of development. Studies comparing developments built according to conservation design principles with those following more conventional, land-consumptive, layouts show that houses tend to sell faster and real estate values appreciate more with conservation design. This should not be surprising. Homebuyer surveys show that people strongly desire open space, recreation areas, and scenic views. See pages 8-9 for more on this.

Conservation subdivision design differs in several significant ways from the more familiar “cluster development” approach. Under conservation design principles (as you will see in the model ordinance), full density is achievable only when at least 50 percent of potentially buildable land is set aside. This compares with cluster provisions that frequently require only 25 to 30 percent of the gross land area to be conserved. Moreover, with cluster development this open space is often comprised of left over, undesirable areas such as stormwater management facilities or land under high-tension power lines.

Although clustering has produced a few small “green islands” here and there, conservation design can protect blocks and corridors of permanent open space. These areas should be pre-identified on a community-wide map of potential conservation lands in the comprehensive plan (see page 11) so that each new development will add to — rather than subtract from — the community’s open space acreage.

Another result is that conservation subdivisions make it easier for municipalities to implement community-wide greenway plans, which may depend on developers to provide critical links along particular stream valleys or hilltop ridges.

On the following pages you’ll learn more about conservation subdivision design, and how this approach might benefit your efforts to plan for a more liveable community.

Editor’s Note: On the following pages, excerpts from Randall Arendt’s Model Ordinance Provisions for Conservation Subdivision Design are set out, along with discussion of nine key issues — including the “economics” of conservation subdivisions. As a planning commissioner I’ve found it is often helpful in understanding how a proposal really works to see it in ordinance form. In reading through the model ordinance note, in particular, how the focus is on identifying land to be conserved before moving on to locate house sites and streets.

Our thanks to Island Press for allowing us to excerpt from the Model Ordinance, which appeared in Arendt’s Conservation Design for Subdivisions (Island Press, 1996). Note also that Island Press will be publishing Arendt’s Growing Greener Workbook this Autumn. It will contain illustrated case studies, and much additional material. For information on either publication, call Island Press at: 800-828-1302.
MODEL ORDINANCE PROVISIONS FOR CONSERVATION SUBDIVISION DESIGN

MINIMUM PERCENTAGE OF OPEN SPACE

The minimum percentage of land that shall be designated as permanent open space, not to be further subdivided, and protected through a conservation easement...

A minimum of fifty percent (50%) of the total tract area, after deducting the following kinds of unbuildable land...

- wetlands... floodway and floodway fringe within the 100-year floodplain... land with slopes exceeding 25%, or soils subject to slumping... land required for street rights-of-way (10%) of the net tract area... land under permanent easement prohibiting future development...

LOCATION OF OPEN SPACE

The location of open space conserved through compact residential development shall be consistent with the policies contained in the Open Space, Recreation, and Environmental Resources Element of the comprehensive plan, and with the recommendations contained in this section and the following section ("Evaluation Criteria").

Open space shall be comprised of two types of land. "Primary Conservation Areas" and "Secondary Conservation Areas." All lands within both Primary and Secondary Areas are required to be protected by a permanent conservation easement, prohibiting further development, and setting other standards safeguarding the site's special resources from negative changes.

1. Primary Conservation Areas.

This category consists of wetlands, lands that are generally inundated (under ponds, lakes, creeks, etc.), land within the 100-year floodplain, slopes exceeding 25%, and soils subject to slumping. These sensitive lands are deducted from the total parcel acreage to produce the "Adjusted Tract Acreage," on which density shall be based.

2. Secondary Conservation Areas.

In addition to the Primary Conservation Areas, at least fifty percent (50%) of the remaining land shall be designated and permanently protected. Full density credit shall be allowed for land in this category that would otherwise be buildable under local, state, and federal regulations, so that their development potential is not reduced by this designation. Such density credit may be applied to other unconstrained parts of the site.

...The locations of Secondary Conservation Areas shall be guided by the maps and policies contained in the Open Space, Recreation, and Environmental Resources Element of the comprehensive plan, and shall include all or part of the following kinds of resources: mature woodlands, aquifer recharge areas, areas with highly permeable ('excessively drained') soil, significant wildlife habitat areas, sites listed on the [state natural areas inventory], prime farmland, historic, archaeological or cultural features listed (or eligible to be listed) on national, state or county registers or inventories, and scenic views into the property from existing public roads. Secondary Conservation Areas therefore typically consist of... upland forest, meadows, pastures, and farm fields, part of the ecologically connected matrix of natural areas significant for wildlife habitat, water quality protection, and other reasons. Although the resource lands listed as potential Secondary Conservation Areas may comprise more than half of the remaining land on a development parcel (after Primary Conservation Areas have been deducted), no applicant shall be required to designate more than 50% of that remaining land as a Secondary Conservation Area.

EVALUATION CRITERIA

In evaluating the layout of lots and open space, the following criteria will be considered by the Planning Commission as indicating design appropriate to the site's natural, historic, and cultural features, and meeting the purposes of this ordinance. Diversity and originality in lot layout shall be encouraged to achieve the best possible relationship between development and conservation areas. Accordingly, the Planning Commission shall evaluate proposals to determine whether the proposed conceptual preliminary plan:

1. Protects and preserves all floodplains, wetlands, and steep slopes from clearing, grading, filling, or construction (except as may be approved by the governing body for essential infrastructure or active or passive recreation amenities).
2. Preserves and maintains mature...

continued on page 10
and developers to achieve full density under the municipality's current zoning.

Although conservation zoning precludes full-density layouts that do not conserve open space, this is legal because there is no constitutional "right to sprawl."

Second, no land is taken for public use. None of the land which is required to be designated for conservation purposes becomes public (or even publicly accessible) unless the landowner or developer wants it to be. In the vast majority of situations, municipalities themselves have no desire to own and manage such conservation land, which they generally feel should be a neighborhood responsibility.

The "economics" of conservation subdivisions

The first advantage of conservation subdivision design is the opportunity it offers to reduce infrastructure engineering and construction costs. Because the development pattern is more compact, street and utility costs are reduced. In addition, conservation design can reduce the number of costly wetland crossings needed, since those parts of the site are within the open space conservation area.

The second advantage occurs during marketing and sales, when developers and realtors can capitalize on the amenities that have been preserved or provided within the development. These positive features can form the basis for an environmentally-oriented marketing strategy highlighting the benefits of living in a community where forest habitat, meadows, wetland buffers, and/or productive farmland has been preserved.

A national survey of homebuyers conducted in 1994 by American Lives revealed that of 39 features critical to their choice, homebuyers ranked "lots of natural open space" and plenty of "walking and biking paths" as the third and fourth highest rated factors affecting their decisions. The "art" of marketing conservation subdivisions emphasizes that buyers of smaller lots are actually purchasing much more than their individual lots. With open space ranging from 50 to 65 percent, sales strategies focusing on this kind of amenity strike a responsive chord among many homebuyers, particularly when lots are laid out to maximize views of the conservation land.

When the conservation area abuts other similar land, as in the community-wide open space network, a further marketing advantage exists.

How do residential values in conservation subdivisions compare to conventional subdivisions?

Homes in conservation subdivisions tend to appreciate in value faster than their counterparts in conventional developments. A fairly long-term study comparing two Amherst, Massachusetts, subdivisions built at about the same time, with very similar homes that originally sold for almost the same price, found that homes in the "open space" subdivision (which included more woodlands, meadows, and trails, but smaller house lots) appreciated in value 13 percent more over a 20 year period than the conventionally designed subdivision (which had much larger individual house lots, but little community open space). In conservation subdivisions with substantial open space, there is little or no correlation between lot size and price. These developments have sometimes been described as "golf course communities without the golf course," underscoring the idea that a house on a small lot with a great view is frequently worth as much or more than the same house on a larger lot which is boxed in on all sides by other houses.

Wildlife management benefits

Conservation biologists tell us that riparian woodlands along rivers, creeks, and streams offer our best hope for creating a system of interconnecting corridors for a variety of wildlife—from aquatic organisms and fish to amphibians and small terrestrial mammals (such as raccoons, muskrats, and otters) — that link the aquatic system to the adjoining upland.

Natural areas preserved in conservation subdivisions provide important habitat for wildlife to dwell in and travel through. The greenways that are one of the hallmarks of conservation subdivision design provide cover and naturally selected corridors for various species to move through, as they travel.

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1 See page 5 for citation.
2 Jeff Lacy, "An Examination of Market Appreciation for Clustered Housing With Permanent Open Space." Center for Rural Massachusetts 1990. For information, call: 413-343-2612.
woodlands, existing fields, pastures, meadows, and orchards, and creates sufficient buffer areas to minimize conflicts between residential and agricultural uses...

3. If development must be located on open fields or pastures because of greater constraints in all other parts of the site, dwellings should be sited on the least prime agricultural soils, or in locations at the far edge of a field, as seen from existing public roads....

4. Maintains or creates an upland buffer of natural native species vegetation of at least 100 feet in depth adjacent to wetlands and surface waters, including creeks, streams, springs, lakes, and ponds.

5. Designs around existing hedgerows and treelines between fields or meadows, and minimizes impacts on large woodlands (greater than five acres), especially those containing mature trees or a significant wildlife habitat, or those not degraded by invasive vines. Also, woodlands of any size on highly erodible soils with slopes greater than 10% should be avoided. However, woodlands in poor condition with limited management potential can provide suitable locations for residential development....

6. Leaves scenic views and vistas unblocked or uninterrupted, particularly as seen from public thoroughfares....

7. Avoids siting new construction on prominent hillslopes or ridges, by taking advantage of lower topographic features.

8. Protects wildlife habitat areas of species listed as endangered, threatened, or of special concern...

9. Designs around and preserves sites of historic, archaeological, or cultural value, and their environs, insofar as needed to safeguard the character of the feature, including stone walls, spring houses, barn foundations, cellar holes, earthworks, and burial grounds.

10. Protects rural roadside character and improves public safety and vehicular carrying capacity by avoiding development fronting directly onto existing public roads. Establishes buffer zones along the scenic corridor of rural roads with historic buildings, stone walls, hedgerows, and so on.

11. Landscapes common areas (such as community greens), cul-de-sac islands, and both sides of new streets with native specie shade trees and flowering shrubs with high wildlife conservation value....

12. Provides active recreational areas in suitable locations that offer convenient access by residents and adequate screening from nearby house lots.

13. Includes a pedestrian circulation system designed to assure that pedestrians can walk safely and easily on the site, between properties and activities or special features within the neighborhood open space system. All roadside footpaths should connect with off-road trails, which in turn should link with potential open space on adjoining undeveloped parcels (or with existing open space on adjoining developed parcel, where applicable).

14. Provides open space that is reasonably contiguous. For example, fragmentation of open space should be minimized so that these resource areas are not divided into numerous small parcels located in various parts of the development.

ELEMENTS OF THE PRELIMINARY PLAN PROCESS

1. Pre-Application Discussion.

A pre-application discussion is strongly encouraged between the applicant, the site designer(s), and the Planning Commission. The purpose of this informal meeting is to introduce the applicant and the site designer(s) to the zoning and subdivision regulations and procedures, and to discuss the applicant’s objectives in relation to the official policies and ordinance requirements....

2. Existing Resources (Site Analysis) Plan.

Plans analyzing each site’s special features are required for all proposed subdivisions, as they form the basis of the design process for greenway lands, house locations, street alignments, and lot lines. The applicant or his/her representative shall bring a copy of the Existing Resources (Site Analysis) Plan to the on-site walkabout. Detailed requirements for Existing Resources (Site Analysis) Plans are contained in another section of this ordinance, but at the minimum must include:

(1) a contour map based at least upon topographical maps published by the U.S. Geological Survey;

(2) the location of severely constraining elements such as steep slopes (over 25%), wetlands, watercourses, intermittent streams and 100-year floodplains, and all rights-of-way and easements;

(3) soil boundaries as shown on USDA Natural Resources Conservation Service medium-intensity maps; and

(4) the location of significant features such as woodlands, treelines, open fields or from their nests and burrows to their feeding places or hunting grounds.

In addition, conservation subdivisions can include areas managed as wildlife or wildflower meadows.

Community map of potential conservation lands

Although many communities have adopted either Comprehensive Plans or Open Space Plans containing detailed inventories of their natural and historic resources, very few have taken the next logical step of pulling...
Planning documents. The next task is to identify two kinds of resource areas. Primary Conservation Areas comprise only the most severely constrained lands, where development is typically restricted under current codes and laws (such as wetlands, floodplains, and slopes exceeding 25%). Secondary Conservation Areas include all other locally noteworthy or significant features of the natural or cultural landscape—such as mature woodlands, wildlife habitats and travel corridors, prime farmland, groundwater recharge areas, greenways and trails, river and stream corridors, historic sites and buildings, and scenic viewsheds. These Secondary Conservation Areas are often best understood by the local residents who may be directly involved in their identification. Usually these

A Map of Potential Conservation Lands starts with information contained in the community’s existing

resource areas are totally unprotected and are simply zoned for one kind of development or another.

A base map is then prepared on which the Primary Conservation Areas have been added to an inventory of lands which are already protected (such as parks, land trust preserves, and properties under conservation easement). Clear acetate sheets showing each kind of Secondary Conservation Area are then laid on top of the base map in an order reflecting the community’s preservation priorities (as determined through public discussion).

This overlay process will reveal certain situations where two or more conservation features appear together (such as woodlands and wildlife habitats, or farmland and scenic viewsheds). It will also reveal gaps where no features appear.

Although this exercise is not an exact science, it frequently helps local officials and residents visualize how various kinds of resource areas are connected to one another, and enables them to tentatively identify both broad swaths and narrow corridors of resource land that could be protected in a variety of ways.

Not surprisingly, the most important step in designing a conservation subdivision is to identify the land that is to be preserved. By using the community-wide Map of Potential Conservation Lands as a template for the layout and design of conservation areas within new subdivisions, these developments help to create an interconnected network of open space spanning the entire municipality.

Figure 1 shows how the open space in three adjoining subdivisions has been designed to connect, and illustrates the way in which the Map of Potential Conservation Lands can become a reality.

**Stormwater management & water quality**

Conservation subdivision design offers a more effective and less costly approach to stormwater management than conventional subdivision layout. This is because conservation design causes less disturbance to the subdivision parcel as a whole (leaving a greater percentage of woodlands and meadows in their natural state), providing larger areas of natural vegetation that act as buffers to help filter stormwater.
meadows, scenic views into or out from the property, watershed divides and drainage ways, fences or stone walls, rock outcrops, and existing structures, roads, tracks and trails...

These Existing Resources (Site Analysis) Plans shall identify both the Primary Conservation Areas (floodplains, wetlands, and steep slopes, and Secondary Conservation Areas... The Existing Resources (Site Analysis) Plan shall form the basis for the conceptual Preliminary Plan, which shall show the tentative location of houses, streets, lot lines, and greenway lands in new subdivisions, according to the four-step design process described below.

3. On-Site Walkabout.

After the Existing Resources (Site Analysis) Plan has been prepared, the Planning Commission shall schedule a mutually convenient date to walk the property with the applicant and his/her site designer. The purpose of this visit is to familiarize local officials with the property's special features, and to provide them an informal opportunity to offer guidance (or at least a response) to the applicant regarding the tentative location of the Secondary Conservation Areas and the potential house locations and street alignments. If this visit is not scheduled before submission of the sketch plan or the Conceptual Preliminary Plan, it should occur soon thereafter.

4. Pre-Submission Conference.

Prior to the submission of the sketch plan or a Conceptual Preliminary Plan, the applicant shall meet with the Planning Commission to discuss how the four-step approach to designing subdivisions, described below, could be applied to the subject property. At the discretion of the Planning Commission this conference may be combined with the on-site walkabout.


After the pre-submission conference, a sketch plan or a Conceptual Preliminary Plan shall be submitted for all proposed subdivisions. As used in this ordinance, the term "Conceptual Preliminary Plan" refers to a preliminarily engineered sketch plan drawn to illustrate initial thoughts about a conceptual layout for greenway lands, house sites, and street alignments. This is the stage where drawings are tentatively illustrated, before heavy engineering costs are incurred in the design of any proposed subdivision layout...

A Conceptual Preliminary Plan shall be submitted by the applicant to the zoning officer who will then submit it to the Planning Commission for review for the purpose of securing early agreement on the overall pattern of streets, houseslots, Primary and Secondary Conservation Areas, and potential trail linkages (where applicable), prior to any significant expenditure on engineering costs in the design of streets, stormwater management, or the accurate delineation of internal lot boundaries...


Each sketch plan or Conceptual Plan shall follow a four-step design process, as described below (See Figure 2 below)

a. Designating the Open Space. During the continued on page 14

Reducing runoff velocity allows stormwater to be absorbed into the soil and be taken up by the vegetation. Buffers also offer important infiltration and "recharge" benefits because they help maintain adequate flows of filtered water to underground aquifers. Aquifer replenishment is essential for maintaining stream flow during dry summer months, which is, in turn, necessary for the health of aquatic habitats.

Although the groundwater impact of an individual development may not be terribly significant, the cumulative effect of hundreds of acres of native woodland and meadows being evenly graded and
covered with streets, driveways, patios, rooftops, and lawns (which allow for a surprisingly high amount of runoff) can be very considerable.

By reducing the overall area of impervious surfaces and suburban lawns that would otherwise be created, conservation design reduces the total volume of stormwater runoff.

**Sewage Treatment**

Conservation subdivisions offer greater opportunities to implement environmentally sensitive sewage treatment and disposal systems, known alternatively as "land treatment," "spray irrigation," and "wastewater reclamation and reuse." These terms describe variations of a well-documented technology that is superior to conventional mechanical systems in many ways because they produce only very small amounts of sludge by-products and help to replenish local aquifers.

With spray irrigation, wastewater is heavily aerated in deep lagoons where it receives a "secondary" level of treatment, similar to that provided by conventional sewage plants. It is then applied to the land surface at rates consistent with the soil's natural absorption capacity. A growing number of environmentally sensitive golf courses are irrigated and fertilized with wastewater treated in this way. The practice has been well accepted by golfers and nearby residents because it is safe, odorless, and environmentally sound.

Although the conservation design makes it easier to use land treatment systems, a conservation subdivision can, of course, be served by conventional sewage plants, individual septic systems, or community septic systems.

**Who will own and maintain the conservation land?**

Ownership Choices.

There are basically four options, which may be combined within the same subdivision where that makes the most sense.

- **Individual Landowner**
  At its simplest level, the original landowner (a farmer, for example) can retain ownership to as much as 80 percent of the conservation land to keep it in the family. (At least 20 percent of the open space should be reserved for common neighborhood use by subdivision residents.) That landowner can also pass this property on to sons or daughters, or sell it to other individual landowners, with permanent conservation easements running with the land and protecting it from development under future owners. The open space should not, however, be divided among all of the individual subdivision lots as land management and access difficulties are likely to arise.

- **Homeowners' Associations**
  Most conservation land within subdivisions is owned and managed by homeowners' associations (HOAs). A few basic ground rules encourage a good performance record. First, membership must be automatic, a precondition of property purchase in the development. Second, zoning should require that bylaws give such associations the legal right to place liens on properties of members who fail to pay their dues. Third, facilities should be minimal (ball fields and trails rather than clubhouses and swimming pools).
first step, all potential conservation areas (both primary and secondary) are identified, using the Existing Resources (Site Analysis) Plan. Primary Conservation Areas shall consist of wetlands, floodplains, slopes over 29%, and soils susceptible to slumping. Secondary Conservation Areas shall comprise 50% of the remaining land, and shall include the most sensitive and noteworthy natural, scenic, and cultural resources on that remaining half of the property.

Guidance on which parts of the remaining land to classify as Secondary Conservation Areas shall be based upon:
- the procedures described in Conservation Design for Subdivisions...
- on-site visits or “walkabouts”
- the open space locational criteria
- the evaluation criteria
- information from published data and reports, and
- conversations with existing or recent owners of the property, and members of the planning commission.

b. Location of House Sites. During the second step, potential house sites are tentatively located. Because the proposed location of houses within each lot represents a significant decision with potential impacts on the ability of the development to meet the 14 evaluation criteria, subdivision applicants shall identify tentative house sites on the Conceptual Preliminary Plan and proposed house sites on the detailed Final Plan. House sites should generally be located not closer than 100 feet from Primary Conservation Areas, but may be situated with 50 feet of Secondary Conservation Areas, in order to enjoy views of the latter without negatively impacting the former...

c. Street and Lot Layout. The third step consists of aligning proposed streets to provide vehicular access to each house in the most reasonable and economical way. When lots and access streets are laid out, they shall be located in a way that avoids or at least minimizes adverse impacts on both the Primary and Secondary Conservation Areas. To the greatest extent practicable, wetland crossings and streets traversing existing slopes over 15% shall be strongly discouraged. Street connections shall generally be encouraged to minimize the number of cul-de-sacs to be maintained by the township and to facilitate easy access to and from homes in different parts of the property (and on adjoining parcels)....

d. Lot Lines. The fourth step is simply to draw in the lot lines (where applicable)....

to keep annual dues low. And fourth, detailed maintenance plans for conservation areas should be required by the municipality as a condition of approval. The municipality has enforcement rights and may place a lien on the property should the HOA fail to perform their obligations to maintain the conservation land.

- Land Trusts

Although homeowners' associations are generally the most logical recipients of conservation land within subdivisions, occasionally situations arise where such ownership most appropriately resides with a land trust (such as when a particularly rare or significant natural area is involved). Land trusts are private, charitable groups whose principal purpose is to protect land under its stewardship from inappropriate change. Their most common role is to hold easements or fee simple title on conservation lands within new developments and elsewhere in the community, to ensure that all restrictions are observed. To cover their costs in maintaining land they own or in monitoring land they hold easements on, land trusts typically require some endowment funding.

- Municipality or Other Public Agency

In special situations a local government might desire to own part of the conservation land within a new subdivision, such as when that land has been identified in a municipal open space plan as a good location for a neighborhood park or for a link in a community trail network. Developers can be encouraged to sell or donate certain acreage to municipalities through additional density incentives, although the final decision would remain the developer's.

Maintenance Issues.

Local officials should require conservation area management plans to be submitted and approved prior to granting final subdivision approval.

Randall Arendt is a land use planner, site designer, author, lecturer, and advocate of conservation planning. He is vice president of conservation at the Natural Lands Trust in Media, Pennsylvania. Arendt is the principal author of Rural by Design: Maintaining Small Town Character (APA Planners Press, 1994), and authored "Open Space Zoning: What It Is & Why It Works," in PCJ #5 (1992). If you have any questions, you can contact Arendt at: Natural Lands Trust, 1031 Palmers Mill Rd., Media, PA 19063; 610-353-5587. More details on the Growing Greener approach outlined in this article can be found at the Natural Lands Trust web site: www.nltrust.org
Cluster Development

CDFS-1270-99

Land Use Series

Thomas W. Blaine
Northeast District Specialist
Community Development

Peggy Schear
Southwest District Specialist
Community Development

Introduction

Throughout the post World War II era, out migration from urban to suburban areas and into the countryside has constituted a significant trend throughout much of the United States. In response to this phenomenon, planners, developers, and elected officials have created a number of tools designed to balance growth with the preservation of community environmental and financial assets. One tool that has received an increasing amount of attention in the 1990s is cluster development. This approach may be termed open-space development, conservation development, hamlet style, farm village, or other unique names coined by proponents and developers. Regardless of the title used to describe it, cluster development is an important tool community planners should consider as they look to the future. The purpose of this fact sheet is to describe cluster development, its history, potential, and limitations.

What Is a Subdivision?

Most of the residential development that has emerged in the suburban United States since World War II can be described as "checkerboard housing development." Since it is so common, this pattern is also considered to be "conventional development." Residential zoning regulations typically provide standards for the division of large land parcels which require that when a piece of land is divided into smaller parcels, or plots, each must have a uniform road frontage, meet specified street standards, and achieve
minimum setbacks from roads or neighboring property owners. These restrictions generally result in equal lot areas with homes placed in the same location on each lot regardless of the parcel's characteristics. The resulting group of homes or vacant lots is typically termed a subdivision. In conventional development subdivisions, all of the land is privately owned by the individual homeowners.

What Is a Cluster Subdivision?

A cluster subdivision generally sites houses on smaller parcels of land, while the additional land that would have been allocated to individual lots is converted to common shared open space for the subdivision residents. Typically, road frontage, lot size, setbacks, and other traditional subdivision regulations are redefined to permit the developer to preserve ecologically sensitive areas, historical sites, or other unique characteristics of the land being subdivided.

Consider the following distinction between a conventional and a cluster subdivision. Imagine that a 100-acre piece of land might be subdivided into 50 two-acre parcels, each with a residential dwelling. Under a cluster design, a developer would plan differently. Imagine that the plan would still call for 50 dwellings, but this time each would be located on, say half-acre parcels, "clustered" together in groups. This would only use 25 acres of land for residences and would leave 75 acres of "open space." Typically, the open space areas are in the midst of the development and are designed around the natural or man-made features of the landscape. In our hypothetical 100-acre parcel, for example, we might have three separate areas of open space averaging 25 acres each. One might be centered around a section of woods, one around a pond or a creek, and one around a meadow.

In a typical cluster subdivision, each homeowner has access to all of the open space areas, which may be permanently preserved by a conservation easement -- a restrictive covenant forbidding any type of development in perpetuity (see OSU Extension Fact Sheet CDFS 1261-99, Conservation Easements). To provide maximum protection for both the resource and the residents, the conservation easement should be assigned to at least two organizations, a homeowners' association, whose membership consists of all the homeowners in the subdivision, and a local government agency or land trust (see OSU Extension Fact Sheet CDFS 1262-99, Land Trusts). The conservation easement should specify the types of activity permitted on the open land, i.e., recreation, type of agriculture, woodland protection, or stream buffers. It is ideal, but not essential, for the easement to be placed on the property prior to the development of the subdivision. If that does not occur, the property owners could place an easement on the land at a later time.

What Are the Advantages of a Cluster Subdivision?

Clustering housing in rural areas can maintain the rural character of the area. It can also provide open space for community members and preserve critical land qualities. It may provide a sense of community among residents, particularly if some of the open areas are designed for communal activities. Another advantage is that developers often experience cheaper site development costs involving the construction of roads and water/sewer infrastructure. These reduced costs often offset the costs of restoration or development of amenities such as trails in the open space areas. Other advantages include meeting a market need for low-maintenance housing and greatly reducing the impacts of development on watersheds.

What Are the Disadvantages of a Cluster Subdivision?

In many communities, current zoning and subdivision regulations require conventional building
patterns. This forces the developer to educate and convince local zoning boards to approve variances for a cluster subdivision, adding a potential time delay to the project.

The maintenance of open space normally requires the formation of a homeowners’ association and the assessment of maintenance fees to each subdivision lot owner to pay for taxes, insurance, and the general upkeep of the land in the open-space areas. This is a cost not typically incurred in a conventional subdivision, since all of the land is privately owned.

The smaller-sized lots often result in close proximity to neighbors’ homes and are considered a disincentive to some homeowners. If the lots and housing layouts are designed carefully, each house in the subdivision has a private unobstructed view that overcomes the disadvantage of the small lot size. Unfortunately, some earlier cluster subdivision models did not provide very much open space, resulting in a negative attitude toward this option in some communities.

What Is the Role of Sewage Disposal in Determining What Types of Residential Development Are Created?

In the past, many zoning regulations that called for large minimum lot sizes (two to five acres, for example) were put into place primarily to allow adequate room for on-site septic systems. This was especially true in rural areas, where central sewers were not available. Advances in technology, however, have given developers the capability of creating small community systems where wastewater is transported and treated in an environmentally safe, economically feasible, and aesthetically pleasing manner.

What Is the Difference Between a Cluster Development and a Planned Unit Development?

Most zoned communities in Ohio have ordinances permitting Planned Unit Developments (PUDs). They often include a mix of residential, commercial, industrial, or other uses, whereas the cluster subdivision normally only includes single family housing. Within the PUD, zoning and subdivision regulations need not be uniform with the community’s traditional codes. Planned Unit Developments often include single- and multi-family housing at higher densities than permitted in conventional subdivisions. They can contain many of the amenities of cluster developments, i.e., open space, pedestrian paths, or recreational areas. One major difference between PUDs and cluster development is the amount of open space. Where PUDs usually contain 20% open space or less, most proponents of cluster development recommend a minimum of 40%.

How Does Cluster Development Protect Farmland?

Some proponents of rural cluster development contend that this is a tool that saves farmland. The open space areas that are protected by conservation easements do protect land, but it is not likely that these areas can provide space for a vigorous agricultural industry. They are designed more for the enjoyment of the residents than for use in agriculture. However, these areas can be used as effective buffers to separate residential areas from agricultural enterprises and thus may reduce agricultural nuisances, such as odors and noise. Nevertheless, if communities are serious about preserving farmland itself they need to consider very specific farmland preservation tools such as exclusive agricultural zoning, water and sewer boundaries, and purchase of development rights programs (see OSU Extension Fact Sheets CDFS 1266-99, Agricultural Zoning, and CDFS 1263-98, Purchase of Development Rights).

Where Have Cluster Developments Been Built and Have They Been Successful?
Cluster housing developments have been very popular in rural areas in the eastern United States. Surveys have shown that residents generally rate them very highly as places to live, and they have maintained their property values well. In Ohio, the concept has been applied in Wayne, Lake, Geauga, Medina, Summit, and Madison counties. For more information on the cluster subdivision concept, refer to the resources and web sites listed in this fact sheet.

Suggested Reading


You Can Read About Cluster Development on the Worldwide Web! Try the Following Addresses:


*An Examination of Market Appreciation for Clustered Housing With Permanent Open Space*, by Jeff Lacy: [http://www-unix.oit.umass.edu/~ruralma/LacyMarket.html](http://www-unix.oit.umass.edu/~ruralma/LacyMarket.html)


The entire OSU Extension Land-Use Fact Sheet Series is on line at: [http://www.ag.ohio-state.edu/~landuse](http://www.ag.ohio-state.edu/~landuse)

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Cluster Developments
Handout #24 Revised 2/5/08

What is the purpose of a cluster development?
A cluster development provides for a small lot residential development in the rural zoning district that:

- Maintains rural character,
- Maintains and conserves larger remainder parcels, and
- Protects and/or enhances sensitive environmental and wildlife habitat areas.

Cluster developments are permitted only within the rural zoning districts of R-5, R-10 and R-20. This is achieved by placing homes in a small portion of the property while maintaining the majority of the site in a remainder parcel. The remainder parcel shall comprise a minimum of 65% of the site within the R-5 zone and 75% of the site within the R-10 and R-20 zones.

What development standards apply to cluster developments?
1. Cluster lots: Cluster lots shall be sited to minimize conflicts between housing and adjacent agricultural or forest zoned property. In addition, cluster lots and building sites may not include critical areas unless no other alternative exists.
2. Remainder parcels: The remainder parcel shall be contiguous. Fragmentation shall not occur unless no other alternative exists. Remainder parcels shall provide a buffer for the cluster lots from adjacent lands in a resource zoning district. The remainder parcel should contain to the maximum extent possible forested areas, prominent hillsides, meadows and ridges, in order to retain the rural character.

Remainder parcels can be included in the housing density for the proposal but they do not have to be. For instance, you could have a 20-acre parcel in the Rural-5 zoning district that would normally allow for density of 4, five acre lots. The density can be used in either of two ways for cluster division:

Option 1. Three 1-acre lots and the remainder lot can also have a house constructed on it, or

Option 2. Four 1-acre lots and the remainder parcel can only be used for agriculture, forestry or open space – no residence can be constructed on the remainder lot.

Are there any specific design standards associated with this type of development?
Yes, and they are required to be recorded on the plat. The following are required:
1. No entryway treatments, monument or other permanent development signs are permitted.
2. Sight obscuring fences are not permitted within 50 ft of the public right of way, nor along cluster lot lines adjacent to the remainder lot; and,
3. Existing historic rural features shall be preserved as much as is possible.

What about conducting resource activities on remainder parcels?
Any uses permitted in the Rural zone districts are permitted on the remainder parcel. This includes forestry and agriculture. If the density is used fully on the small lots (option 2 above), then a note has to be placed on plot map and a covenant recorded that gives notice of what activities are permitted on the remainder parcel.

What type of review is required?
Generally, if your proposal is for 4 or fewer lots, a Type II review is required. If the proposal is for more than 4 lots, a Type III review is required.

What is a Type II Review Process?
A Type II review process requires a ministerial decision by the Planning Director. In making the decision, the Director must determine if the proposed development meets the requirements of the applicable sections of the Clark County Code (CCC). This decision is made after reviewing the proposal and considering written comments received from the public. The Planning Director will approve, approve with conditions, or deny the application. This decision may be appealed to the County Hearing Examiner.

What is a Type III Review Process?
A Type III review process requires a public hearing before the County Hearing Examiner. In making the decision, the Hearing Examiner must determine if the proposed development meets the requirements of the applicable sections of the Clark County Code (CCC). This decision is made after reviewing the proposal, and after considering staff's recommendation and testimony from the public. The Hearing Examiner will approve, approve with conditions, or deny the application. This decision may be appealed to the Board of County Commissioners.

Is a pre-application conference required?
A pre-application conference is required before submitting a Type II or III application. A pre-application conference requires that the applicant submit a completed pre-application conference submittal and a fee in the amount of $1,166. The requirement for a conference may be waived if the Planning Director determines that the proposal is relatively simple. A waiver requires the applicant to submit a completed "Pre-Application Review Waiver Request Form" and fee in the amount of $152.

What is the application process?
The first step is to complete a State Environmental Policy Act (SEPA) environmental checklist, if applicable. The Permit Services staff, located at Community Development's Permit Services Center at the Public Service Center, 1300 Franklin Street, 1st Floor, Vancouver, Washington, will assist the applicant in determining if a SEPA checklist is required with the application. The SEPA Review
Cluster Housing Environmentally Friendly, Socially Supportive

For the past fifty years, towns and cities in the state of New Hampshire have worked to impose zoning restrictions on lands within their borders, in large part to protect against overdevelopment. Some towns require building lots of anywhere from a half-acre to five acres for a detached single-family home. Unfortunately, an unintended consequence of this regulation has been that real estate developers have subdivided large parcels of land into smaller plots and leveled forested areas, filled in swamps, and generally degraded the ecosystem of the property in favor of rows of houses, all with their own little front and back yards.

Cluster housing, which is beginning to be considered in New Hampshire, uses a different approach. If a town requires that a particular piece of land have a two-acre minimum for building sites, a traditional developer would subdivide the land into ten units and build a home on each unit. A cluster development, however, involves concentrating those same ten houses in a single area on perhaps four acres of the land, leaving 16 acres relatively undeveloped, thus preserving natural wildlife habitats and forested areas that can be enjoyed by the residents.

The Nubanuisit Neighborhood and Farm, a new housing development project in Peterborough, New Hampshire, takes the cluster housing concept one step further. Twenty-nine small single-family homes will be augmented by shared areas on the 113-acre site, which will also include a small working organic farm. The shared facilities offer places where the community's residents can interact. This co-housing concept, which originated in Denmark, offers community support while utilizing the land in an environmentally sustainable way.

The Peterborough project is a great idea, one that will hopefully spread throughout the state. The downside is that the housing units are expensive; according to a June 19, 2006, article in the Keene Sentinel, prices start at $278,000 for an 849-square-foot home and extend to $580,000 for a 1334-square-foot home -- very reasonable considering the amenities, but far beyond the reach of many working-class families.

Perhaps as the Nubanuisit project succeeds other communities will learn from it and take the cluster and cooperative housing concepts into account when developing new residential projects. Combining low- and middle-income housing, both for families and single people, with elder and assisted living facilities makes sense, for instance, providing a community atmosphere for those who often find themselves isolated because of financial, age-, or health-related circumstances. Ownership of single-family homes could be augmented with small rental units or even a cluster of low-cost single-occupancy rooms with common cooking and living facilities, with the rent going to pay the expenses of the rental units themselves and possibly helping pay general expenses for the community.
Cluster and cooperative housing can potentially offer solutions to a lot of problems. Thoughtful cluster housing development may actually allow New Hampshire to sustain its recent growth while meeting the needs of all its citizens and preserving the natural environment that draws people to the state in the first place.

By Aldene Fredenburg
Published: 7/26/2006

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Use the feedback form below to submit your comments.

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Chapter Two: Avoiding Sprawl in Rural Areas

by Amy L. Kosterlitz
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902 Waterfront Place
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Seattle, WA 98104
(206) 382-9540

August, 1997

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This paper was prepared with the assistance of Chris deRoos, an associate at Buck & Gordon. Ms. deRoos specializes in real estate, land use and environmental law.

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TAMING THE SPRAWL BEAST

I. INTRODUCTION

A. DIFFICULTIES INHERENT IN GMA/HEARINGS BOARDS' DEFINITIONS OF RURAL/URBAN DEVELOPMENT.

Many counties have found it difficult to interpret the requirements of the Growth Management Act (GMA) regarding the issue of permissible rural growth or to satisfy the Growth Management Hearings Boards (Boards) that they have correctly planned for rural areas. Although most counties have by now struggled their way through the comprehensive planning process, a few counties, such as Clark, Kitsap, Snohomish, Whatcom and Island remain hung up on GMA Plan compliance. A review of the numerous attempts by these counties to address the required rural element in comprehensive plans illustrates the problems with the rural development provisions of the Act and the Boards' interpretations of these.

A major issue that has frequently led the Boards to hold comprehensive plans out of compliance with GMA, and on occasion to invalidate such plans, is the issue of whether counties properly distinguish between urban and rural lands. For example, the issue of what constitutes impermissible "sprawl" and the appropriate size of UGA boundaries was a key factor in the invalidation of the plans of Whatcom County and Kitsap County. Other counties, such as Island County and Pierce County, have also run into problems because they were not able to show their work to the Board's satisfaction in sizing their UGAs. In the case of Snohomish County, Kitsap County and King County, a major stumbling block in their plans was the density of proposed rural residential development and the allowance of impermissible "sprawl."

The Boards have focused heavily on density as the defining characteristic of "rural" and "urban." Contrary to the Boards' decisions' definitive proclamations, however, a "bright line" which distinguishes urban growth from rural growth is not easily discernable in the GMA itself. The Boards' rigid density definitions of urban and rural also appear to ignore other characteristics that might be germane to the characterization of development as rural. In addition, the "one size fits all" density definitions of urban and rural have posed difficulties for more rural counties because of longstanding development patterns and preferences.

B. ISSUES OF COMMERCIAL AND INDUSTRIAL DEVELOPMENT IN RURAL AREAS.

The role of commercial and industrial areas in the rural element has also proven to be a headache for some counties. On the one hand, counties must decide how much industrial land is appropriate within a UGA. On the other hand, counties have struggled with what industrial uses are allowed outside of UGAs. Attempts to reserve areas for future industrial use as tried by Clark, Pierce and other counties, have been rejected by the Boards. Whatcom County's industrial land designations were also invalidated for failure to adequately justify the market factors it utilized in sizing its industrial areas.

C. ATTEMPT TO UTILIZE NON-MUNICIPAL UGAS FOR DENSER DEVELOPMENT OUTSIDE OF CITIES.

Clusters of development outside of existing cities have also posed an interesting dilemma for counties. Some counties have tried to use the concept of "island," "satellite" or "non-municipal" UGAs (allowed by the 1995 amendments to the GMA) to
address these pockets of denser development outside of cities. To date, the Boards have take a dim view of non-municipal UGAs. However, a non-municipal UGA supported by a county’s CPs recently was upheld by the King County Superior Court. The court reversed a portion of a Central Board reconsideration decision in King County, Vashon-Maury v. King County, CP5GMBH 95-3-0008 (Final Decision 10/23/95), which decision would have eliminated an island UGA. The court decision is now on appeal and a decision is expected sometime this fall. A recent decision of the Eastern Board in Douglas County, Wenatchee Valley Mall Partnership v. Douglas County, EWGMBH 96-1-0009 (Final Decision and Order 12/10/96), also appears to have allowed a non-municipal airport industrial area, although its facts may not be broadly applicable.

D. ATTEMPT TO UTILIZE "RURAL ACTIVITY CENTERS" CONCEPT FOR DENSER DEVELOPMENT OUTSIDE OF UGAs.

Finally, several counties have crafted the concept of "rural activity centers" such as "villages," "hamlets" and "crossroads," to provide a method of recognizing existing development outside of cities and of clustering rural development. Pierce County attempted to utilize this approach, but was unsuccessful because the Central Board did not find sufficient restrictions to prevent urban growth in a rural area. Douglas County’s rural service centers were recently remanded to provide for density limitations. San Juan County’s newly adopted comprehensive plan contains several varieties of activity centers, such as villages, hamlets and island centers, all of which allow rural growth. This plan is currently being appealed by more than ten different parties, one of whom is sure to raise the issue of urban growth in rural areas.

E. PROBLEMATIC FIT OF GMA WITH RURAL AREAS.

These issues demonstrate the difficult fit of GMA with the realities of development patterns in rural counties. Unfortunately, as interpreted by the Boards, GMA represents a "one size fits all" approach, while each county is obviously distinct in its historical development patterns, geographical and natural features, growth rates, lifestyle preferences, economic realities, etc. While it may work for an urban county, such as King County, to have the bulk of its municipalities included in UGAs, that approach may not work so well in Snohomish County, where many residences already exist in rural areas, and have brought with them the beginnings of rural commercial development. The strict notion of density confined in UGAs also does not work as well in counties such as Kittap, Whatcom and San Juan where the recreational and aesthetic attractions of shorelines have spread development along the coastlines.

F. LEGISLATIVE ATTEMPTS TO DEAL WITH RURAL DEVELOPMENT ISSUES.

Some new legislation this year has attempted to reconcile GMA requirements with the realities of rural counties. These included amendments to the definition of rural lands and the master planned resorts provisions, as well as adding new provisions for industrial land banks.

This legislation is discussed further in Section V below.

II. OVERVIEW OF GMA PROVISIONS REGARDING "URBAN" AND "RURAL".

GMA provisions provide little guidance regarding what development is "urban" and where it is appropriate. Even less guidance is provided regarding what is "rural." Only indirectly, by providing that no urban growth can occur outside of a UGA, does GMA indicate that rural, whatever it may be, is to occur outside UGAs.

A. URBAN GROWTH.

1. RCW 36.70A.020(1) includes as a planning goal:

   Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

2. RCW 36.70A.030(14) defines urban growth:

   "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

3. RCW 36.70A.030(16) defines urban governmental services:
“Urban governmental services” include those governmental services historically and typically delivered by cities, and include storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with nonurban areas.

B. THE RURAL ELEMENT.

1. "Rural" is not explicitly defined in GMA and is defined only in the negative in the WAC regulations. WAC 365-195-210 defines “rural lands” as:

[All lands which are not within an urban growth area and are not designated as natural resource lands having long-term commercial significance for production of agricultural products, timber, or the extraction of minerals.]

2. RCW 36.70A.070(5) provides:

Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses and may also provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural uses not characterized by urban growth.

3. RCW 36.70A.110(4) provides:

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

C. COMMERCIAL AND INDUSTRIAL LANDS.

1. The Major Industrial Development (MID) section, RCW 36.70A.365, authorizes counties to establish a review process for proposals to site specific MIDs outside UGAs. "Major industrial development" is defined as "a master planned location for a specific manufacturing, industrial, or commercial business that; (a) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or (b) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent." MIDs may not be used for retail commercial development or multifamily office parks. Section .365 provides a list of criteria that must be met for a MID to be approved outside a UGA.

2. RCW 36.70A.367 provides for an industrial land bank, however the provision is drafted in such a way that it can only be utilized by Clark County.

3. WAC 365-195-330(2) recommends steps for preparing the rural element of a plan. These include:

(c) (ii) Provision for a variety of densities for residential, commercial, and industrial development consistent with maintenance of the rural character of the area.

4. WAC 365-195-070(2) indicates that whether a jurisdiction adopts a separate economic development element in its plan or not, "levels of job growth, and of commercial and Industrial expansion should be identified and supporting strategies should be integrated" with the other features of the plan.

III. GMHBS INTERPRETATION OF WHAT IS "URBAN" AND WHAT IS "RURAL".

A. LACK OF RURAL DEFINITION -- "The Leftover Meatloaf in the GMA Refrigerator"

Because prior to July 27, 1957 the GMA did not define "rural," the Boards have struggled on their own to come up with an acceptable definition. Early in this process, the Central Board in Rural Residents v. Kitsap County, CP5MHB 93-3-0010 (Final
Decision and Order 6/3/94) at 433 adopted the WAC 365-195-210 definition of rural lands as the proper definition of "rural" in the GMA context. Later, in *Bremerton v. Kitsap County*, CPSGMHB 95-3-0039 (Final Decision and Order 10/6/93), the Central Board attempted to add to the concept of rural, as follows:

- The GMA universe consists of three major land use types: (1) resource lands (designated forest, agricultural and mineral resource lands); (2) urban lands, which are within UGAs; and (3) rural lands, which are entirely outside UGAs and exclude resource lands. In order to discern the uses permitted in each of these types of lands, it is important to recognize that various provisions of the Act create a relationship between and among them. *Bremerton* at 1198.

- See also, *Achen v. Clark*, WWGMHB 95-2-0067 (Final Decision and Order 9/20/95), at 1133 which recognized the fact that although the rural element often seems like an afterthought of GMA, in reality it is an important element of comprehensive planning. The Board wrote that "While rural lands may be the leftover meatloaf in the GMA refrigerator, they have very important functions both as a planning mechanism and as applied on the ground. One of the most important symbiotic relationships is the one between rural and resource lands. Properly planned rural areas provide necessary support of and buffering for resource lands."

**B. FOCUS ON DENSITY AS THE DETERMINATIVE CHARACTERISTIC.**

In the absence of clear guidance from GMA regarding what characteristics make an area rural as opposed to urban, the Boards have come to rely on density as the defining characteristic. Although Individual decisions indicate a "bright line" has been established, review of the many references to densities indicates that the line is not really so clear.

- In *Peninsula Neighborhood Association v. Pierce County*, CPSGMHB 95-3-0071 (Final Decision and Order 3/20/96) at 1740 the Central Board held that in general new land use patterns of 5 to 10 acre lots is appropriate in rural areas. A new land use pattern of lots smaller than 5 acre is generally prohibited in rural areas.

- *Vashon-Maury v. King County*, CPSGMHB 95-3-0008 (Final Decision and Order 12/23/95) at 1295 held 10 acre lots are clearly rural. This line was followed also in *Tacoma v. Pierce County*, CPSGMHB 94-3-0001 (Final Decision and Order 7/5/94) at 480 and *Sky Valley v. Snohomish County*, CPSGMHB 95-3-0068c (Final Decision and Order 3/12/96) at 1661. Rural lots smaller than 10 acres are subject to increased scrutiny to assure the pattern of such lots sizes (meaning their number, location and configuration) does not constitute urban growth, present an undue threat to large scale natural resource lands and large critical areas, and will not thwart long term flexibility to expand the UGA and will not otherwise be inconsistent with GMA.

- Decisions are consistent that densities between 1 and 2.5 dwelling units per acre are generally urban, contribute to sprawl, and are therefore prohibited by GMA outside of IUGAs or UGAs. See, e.g., *Bremerton* at 1199-1200, adopting a "bright line" at 4 dwelling units per acre at which density or higher residential development is clearly compact urban development. Any larger urban lots are subject to increased scrutiny. The decision indicates there are exceptions to the bright line, but they are infrequent and cannot constitute a pattern over a large area. New 1 and 2.5 acre lots are prohibited as a residential development pattern in rural areas. *Id.* at 1201.

- *Port Townsend v. Jefferson County*, WWGMHB 94-2-0006 (Final Order 8/10/94) at 573 indicates 1 dwelling unit per acre density will rarely, if ever, be able to comply with GMA. "Candidly, we are not disposed to adopt a 'bright-line' rule that prohibits the use of a 1:1 density in each and every case. We agree that 1:1 density can easily lead to a violation of the anti-sprawl goals and requirements of the Act as well as cumulatively place new demands for urban governmental services in violation of the Act. We would expect that very rarely, if ever, would a 1:1 density requirement in rural, or even most urban, designations comply with the Act. It is possible that a situation involving a proper background analysis for an area demonstrates that a 1:1 density within a 'variety of densities' could be within the discretion of local government officials authorized by the GMA."
• Gig Harbor v. Pierce County, CPSGMB 95-3-0016 (Final Decision and Order 10/31/95) discouraged lots from 1 to 5 acres just outside a UGA boundary because it could "thwart the long term flexibility to expand the UGA." Id. at 1355. The Board also held in this decision that the 5 acre lot size in rural areas could result in urban growth because as an incentive it was possible to double density and there was no requirement to cluster. Therefore, the result could be two freestanding building pads each centered on a 2.5 acre lot. Id. at 1353-54.

• The Eastern Board held in Woodmansee v. Ferry County, EWGMHB 95-1-0010 (Final Decision and Order 5/13/96) that "given circumstances unique to Ferry County, and in acceptance of the local decision making process, that 2.5 acre lots constitute rural development in Ferry County" and that "lots under 2.5 acres are urban development in Ferry County." Id. at 2070. The Ferry County plan required community water service for lots between 1 acre and 2.5 acres, contributing to the Board's decision that these lots constitute urban development that was inappropriately allowed in rural areas by the Island County plan.

C. PATTERN OF DENSITIES ALSO DEEMED IMPORTANT.

In addition to overall residential density, the Boards have stated that the pattern and variety of densities plays an important role in what constitutes rural development. However, despite the Boards' suggestion that a proper variety of densities could justify a pattern of lots with less than 5-10 acres, there are few situations where this has been approved.

• Achen held that a variety of densities are required, although GMA does not require any particular methodology to provide for such variety. In this case, providing for variety by "default" was sufficient because the Board found more varieties of densities occurred in Clark County after 1990 than ever envisioned by GMA. Id. at 1134. The Board also held that a uniform 5 acre provision for rural areas was insufficient because it failed to recognize differences in existing parcelization within the rural areas. Id. at 1132-33.

• Gig Harbor at 1355 held providing only 2 types of densities is insufficient because it is too small a number to constitute a variety and such small selection consumed too much of the total rural area.

• The Central Board in Bremerton determined that Kitsap County's five rural classifications did not constitute a variety because two of the densities were identical, two others were "virtually the same," and the final density, at 1-9 dwelling units per acre was not a rural density at all. Id. at 1215-16. The Board indicated its expectation was "to see a true variety of rural densities, such as, for example, 1du/10 acres, 1du/20 acres, 1du/40 acres and 1du/80 acres." Id. at 1216. The Board, at pg. 1199, also held that suburban growth is a subset of urban growth and therefore is prohibited in rural areas.

• Sky Valley decision held that as a general rule, a land use pattern consisting of between 5 and 10 acre lots is an appropriate rural use, provided the criteria established in Vashon-Maury are met. Any new land use pattern of lots smaller than 5 acres would be prohibited as urban growth in rural areas.

D. ELEVATION OF THE "SPRAWL GOAL".

Although there are numerous goals set out in the Act that indicate the purposes of GMA, Board decisions have generally focused on the goal of eliminating urban sprawl. The result is that the sprawl goal has apparently been elevated above all the other goals of the Act.

• "The foundational characteristic of the Act is the avoidance of inefficiencies found in a sprawling development pattern." Reading v. Thurston County, WWGMHB 94-2-0019, (Final Order 3/23/95) at 749.

• "Among the primary intentions are to reduce sprawl (and the attendant high cost to taxpayers), to conserve natural resources and to protect critical areas." Friends of Skagit County v. Skagit
County, WWGMHB 95-2-0065, (Finding of Non-Compliance and Finding of Invalidity, Regarding Interim Urban Growth Areas (IUGAs) 2/7/96) at 1547.

- "[T]he County has a responsibility to its residents to stop sprawl, commercial and industrial strip developments and the corresponding a bill that will become unnecessarily large because of poor planning." Port Townsend at 572.

The Central Board in Bremerton explained that the Boards' rationale for elevating the sprawl goal arises from the fact that the key purposes of GMA are compact development within a rural/resource lands landscape and transformation of governance.

- [T]wo of the fundamental purposes that both UGAs and CPPs must serve: to achieve the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve compact urban development. It must be remembered that much of the impetus to adopt the GMA was the sprawling urbanization of many of these unincorporated areas. It would be illogical now to blindly include within UGAs not only every unincorporated parcel urbanized within the past century, but non-urbanized intervening lands. The Board will give a higher degree of scrutiny to UGA challenges that allege that these fundamental purposes are thwarted. Bremerton at 1193. See also, Tacoma at 473.

E. LIMITATIONS ON COMMERCIAL AND INDUSTRIAL DEVELOPMENT IN RURAL AREAS.

The Central Board in Bremerton at 1201 attempted to describe the intensity and character of activity and development permitted by GMA in rural areas. In doing so, the Board adopted language of the Puget Sound Regional Council that stated:

Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural-resource based activities.


Thus, although commercial and industrial development are generally only allowed within UCAs, the Board recognized that in limited circumstances, commercial and industrial development is acceptable in rural areas. Thus far, the circumstances appear to have been limited to where the use, by its very nature, is dependent on a rural location and is functionally and visually compatible with the rural character in the vicinity. See, e.g., Gig Harbor at 1349 and Vashon-Maury at 1290. Additionally, essential public services (such as K-12 schools) are also permitted in rural areas. Id.

Theoretically, industrial or commercial development outside UGA's is allowed by RCW 36.70A.365, the major industrial development (MID) provision, if certain criteria are met, but no jurisdiction has taken advantage of this yet. Perhaps the reason is that the MID section of GMA does not function well as the sole method to allow non-resource dependent industrial development in rural areas because that section requires siting development outside an UGA on a project specific basis. Counties and prospective industrial users need to have advance notice of large available areas designated for new industrial development in order to attract the development. Thus, it becomes a problem analogous to the chicken and the egg. How can counties use the project specific MID process to designate large areas of rural land for industrial development if in order to attract a specific project to guide through the MID process a large area of rural land stated for industrial development must already be designated?

Some of these issues will be resolved if proposed amendments to GMA are adopted. Provisions allowing "grandfathering" of industrial lands within rural areas and the allowance of infill therein, discussed in detail below, should also help alleviate some of the tension. The proposed industrial land bank legislation, section .367, is also particularly designed to deal with this problem.

IV. OVERSIGHTS IN GMA AND HEARINGS BOARDS' ANALYSES.

A. FAILURE TO CONSIDER ELEMENTS OF RURAL CHARACTER.

Having the benefit of some hindsight, it is now possible to analyze the picture of "rural" that has developed from GMA and Board decisions, and to question whether this is really what is best for "growth management." The near exclusive focus on establishing lower densities in rural areas is an example of the conventional thought that lower densities will defacto preserve rural character. In fact, however, the result could be development spread out further ("exurban" versus "suburban" development) because there is less land available if it is divided up into 5-10 acre parcels, each parcel to accommodate only one dwelling. (i.e. "rural sprawl"). Also, when supply of land is limited, land prices rise and all but high income households are
excluded from rural areas. Additionally, lower densities do nothing to establish public open space.

A more reasonable and comprehensive approach to preserving rural lands is one of the challenges facing the GMA and the Boards today. As noted by one Board already, rural sprawl is no better than urban sprawl. See Achen at 1133 (noting that "rurban sprawl" has the same devastating effects on proper land uses and efficient use of tax payer dollars as urban sprawl. Uncordinated development of rural areas often involves greater economic burdens than in urban areas.) Thus, it isn't merely the fact that a definition of rural should be included in GMA, but rather the definition that is included should encompass considerations beyond those taken into account so far by GMA and Board decisions. For instance, open space preservation and the configuration of uses in rural lands are important considerations to rural character that to date have not played a major role in the determination of what is rural.

Several planners have suggested that with performance standards to judge what makes rural lands "rural," there is a better chance of preserving traditional characteristics of the rural landscape, such as: indigenous vegetation, undisturbed terrain and cultivated land; buildings limited to a few farm and "out" buildings, houses and freestanding commercial buildings; buildings covering five percent of an average 10 acre site; and the usual two lane road with open ditches. Methods that could be utilized in conjunction with lower densities to preserve the rural environment include cluster housing, reduced lots wherein each homeowner has the right to disturb only a small area and the remainder of the property is shared and owned in common, and transfer of development rights.

B. DIFFICULTY UTILIZING RECOGNIZED EXCEPTIONS TO URBAN GROWTH IN RURAL AREAS—FCCs, MPRs AND MIDS.

1. Fully Contained Communities, Master Planned Resorts and Major Industrial Developments.

Since GMA was passed, many counties have encountered difficulty locating all intense development in urban areas. GMA does recognize certain circumstances where urban type growth is acceptable outside UGAs; for instance, section .360, Master Planned Resorts (MPRs), section .350, Fully Contained Communities (FCCs), and .365 Major Industrial Developments (MIDS). As yet, however, no county has been able to utilize these provisions. The Boards have indicated that some development outside of urban areas is theoretically permissible, but in fact they have rarely approved it.

- In Whidbey Environmental Action Network v. Island County, 95-2-0063 (Second Compliance Hearing Order and Finding of Invalidity 4/10/96) at 1818, the Western Board held that 6 dwelling units per acre "is clearly urban and is not required to meet criteria for fully contained communities or master planned resorts." According to the Western Board, a less dense development could utilize the FCC or MPR provisions. The Board also stated: "The Act allows appropriate non-urban uses outside IUGAs. Non-residential uses outside IUGAs must, by their very nature, be dependent upon being in a rural area and must be compatible both functionally and visually with the rural area." Id.

- In Kitsap Citizens For Rural Preservation v. Kitsap County, CPSGMHB 94-3-0005 (Final Decision and Order 10/25/94) at 608-609, the Central Board held the County's IUGA development regulation out of compliance with GMA because it did not include a maximum limit on acreage or units permitted in rural areas nor any restraints on the configuration, servicing or location of rural development. The Board stated it could "conceive of a well designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties" which would not constitute urban growth.

2. "Island" UGAs.

GMA explicitly allows counties to include within UGAs land beyond municipalities. See RCW 36.70A.110(1) which allows UGAs to include territory located outside a city if the territory is already characterized by urban growth, is adjacent to territory already characterized urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350. Thus far, Boards have given section .110 a strict reading, and have not endorsed "Island" or "non-municipal" UGAs, with the exception of the Eastern Board in Wenatchee Valley Mall v. Douglas County.

- The recent Eastern Board decision in Wenatchee Valley Mall Partnership v. Douglas County, EWGMHB 96-1-0009 (Final Decision and Order 12/10/96) indicates that island UGAs are permitted, although they "must be scrutinized in detail because of the Act's goal to stop
sprawl." *Id.* at 2239. In that case, the Board held petitioners did not meet their burden to
demonstrate the Pangborn Airport Industrial Area encouraged sprawl. A Motion for
Reconsideration of this decision was recently denied by the Board and as yet an appeal has
not been filed. It is important to note that this is an Eastern Board decision and therefore it
may not be a trend the other Boards will follow. Additionally, this decision does not provide a
rationale for its decision on the island UGA issue and may in the future be limited to its
facts.

- In *Rural Residents* at 446, the Central Board indicated that if it can be shown that existing
cities cannot accommodate projected population growth, counties may extend UGAs beyond
existing incorporated areas per GMA section .110. On reconsideration, the Central Board
wrote that "counties do not have carte blanche permission to include unincorporated urban
areas, or even non-urban areas, in UGAs. Nevertheless, it is possible that a county may
choose to and can justify the inclusion of non-city and even non-urban land within a UGA."
*Rural Residents v. Kitsap County*, CPSGMHB 93-3-0010 (Order Denying Kitsap County's
Petition for Reconsideration 6/24/94) at 446. To do so, the Board indicated, a county must
acknowledge the rank order preference of section .110, meet the other requirements of the
Act, and "show its work." *Id.* The Board concluded Kitsap County had not followed, or even
attempted, those requirements. *Id.*

- The Central Board reiterated its decision in *Rural Residents* in the *Vashon-Maury* decision,
concluding that counties do not have "carte blanche permission to designate as UGAs all
urbanized unincorporated lands . . . ." *Id.* at 1260-61. Additionally, the Board questioned
whether an island UGA could meet the goals and requirements of GMA without sufficient
safeguards such as the MPR, FCC or MID requirements. *Id.* at 1270. On reconsideration, the
Board remanded the island UGA back to the county for deletion, redesignation as an FCC, or
justification as to why it was consistent with section .110 and the Board's Orders. *Vashon-
Maury*, (Order on Motions to Reconsider and Motion to Correct 12/1/95) at 1393. This
decision was partially reversed by the King County Superior Court, however, which held the
Board on reconsideration erroneously Interpreted King County's CPPs. *King County v.
CPSGMHB*, King County Superior Court Cause No. 95-2-33178-5SEA (K.C. Sup. Ct. 1996).
The court reinstated the original CPSGMHB decision regarding inclusion of the Bear Creek
urban planned development sites within the UGA. Friends of the Law has appealed and a
decision is not expected until sometime this fall.

- *Friends of the Law v. King County*, CPSGMHB 94-3-0009 (Order Granting Dispositive Motions
11/8/94) at 652-653 theoretically acknowledges counties have some discretion in
designating UGAs provided they support their designations. "While the objective analysis is
essential, counties also have the latitude to consider subjective factors, such as a land
supply market factor and the preferred vision that each city expresses in its comprehensive
plan . . . . [T]he County is entitled to exercise its discretion in applying the requirements of
the Act for designating FUGAs. The appropriate exercise of that discretion may lead to
FUGAs being drawn to include unincorporated lands and even non-urbanized lands."

- *Whatcom Environmental Council v. Whatcom County*, WWGMHB 94-2-0009 (Final Order
11/9/94) at 623 required a "proper planning analysis of the necessity for land areas outside
municipal boundaries, the availability of public facilities and services to those areas and the
recognition of the cost of providing those facilities and services" as part of establishing
IUGAs outside of municipal boundaries. Without such analysis, "an IUGA beyond municipal
boundaries cannot be established."

3. **Rural Activity Centers.**

Another category of rural development that counties have struggled with are rural activity centers (RACs). Counties
have attempted to use RACs as a means to acknowledge existing "crossroads" development or to provide for
commercial businesses located in rural areas to serve the needs of local communities. As noted above, however, both
the *Gig Harbor* and *Vashon-Maury* decisions determined that the only avenues for this type of growth in a rural area
are rural-dependent uses compatible with the rural area, essential public facilities, or developments explicitly authorized by sections of GMA (e.g. MPRs, FCCs, and MIDs).

- RACs as provided by Pierce County's plan were held out of compliance by the Central Board in Gig Harbor because the RAC policies did not contain necessary limitations on non-residential uses, including limiting such uses to those that depend on a rural location and are functionally and visually compatible with the character of the immediate vicinity. Id. at 1350-51. In the later case of Peninsula Neighborhood Association, the Central Board reviewed the development regulations associated with the Pierce County RACs. The Board held the RAC development regulations out of compliance with the Act because the regulations permitted new urban growth outside of designated UGAs. Id. at 1734-35. The Board wrote that "[a]lthough counties cannot be expected to undo past land use practices, they cannot adopt regulations that fail to place appropriate conditions on growth outside UGAs to limit it to achieve conformance with requirements of .110." Id. at 1735.

- The recent decision in Wenatchee Valley Mall Partnership at 2227, remanded portions of the plan relating to rural service centers back to the County for addition of density limitations. The Board also noted the plan did not appear to limit new non-residential growth to uses that are dependent by their nature on rural location and which are functionally and visually compatible with the surrounding land character. The Board ultimately decided it was unnecessary to reach this issue in this case. However the Board indicated it "would be persuaded to join other Growth Management Hearings Boards in their conclusion that non-residential uses outside UGAs must, by their very nature, be dependent upon being in a rural area and must be compatible both functionally and visually with the rural area." Id.

The appeal of the recently adopted San Juan County plan will likely provide additional guidance on this issue. That plan contains provisions for "villages," designed to provide rural governmental services to unincorporated areas, "hamlets," which are "high density residential surroundings rural and resource land uses," and "island centers," which may include rural commercial and rural industrial uses. One of the many parties challenging this plan will raise the issue of whether this amounts to urban development in rural areas.

V. IMPACTS OF NEW GMA REFORM BILLS ON "URBAN" AND "RURAL".

Several bills amending GMA's rural provisions were passed in the most recent legislative session. These include Engrossed Senate Bill 6094, Substitute House Bill 2083, and Senate Bill 5915. Overall, these bills loosen some of the restrictions on rural development that were the result of the hearings boards' interpretations of GMA.

Engrossed Senate Bill 6094 ("ESB 6094") contains the majority of the GMA amendments. The majority of ESB 6094's provisions that affect rural development originated from the Governor's Land Use Study Commission, which published its final report in January 1997. There were a couple sections that went beyond the Land Use Study Commission's proposal that were vetoed by the Governor.

Engrossed Senate Bill 6094 adds several new definitions to GMA, which reflects the Land Use Study Commission's goal to clarify the Act. Terms related to the rural element that are now defined include "rural character" and "rural development." These are defined as follows:

14. "Rural character" refers to the patterns of land use development established by a county in the rural element of its comprehensive plan:

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

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

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

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

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

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

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

ESB 6094 '3(14) and (15).

Section 7 of ESB 6094 also addresses the mandatory rural element of comprehensive plans. That section gives jurisdictions authority to consider local circumstances, provided a written record is developed to demonstrate how the rural element harmonizes GMA's planning goals. ESB 6094 '7(5)(a). It also explicitly allows counties to utilize clustering, density transfers, conservation easements, and other innovative techniques to achieve GMA's required variety of rural densities and uses. ESB 6094 '7(5)(b).

Counties are required to include in the rural element measures to protect rural character. ESB 6094 '7(5)(c). These measures should:

- contain or control rural development;
- assure visual compatibility of rural development with the surrounding area;
- reduce the inappropriate conversion of undeveloped land into low-density sprawl;
- protect critical areas and water resources; and
- protect against conflicts with agricultural, forestry, and mineral use.

ESB 6094 '7(5)(c)(l-v).

ESB 6094 contains provisions explicitly allowing more intense development in some rural areas. This includes "infill, development, or redevelopment of existing commercial, industrial, residential, or mixed use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments." ESB 6094 '7(d)(l). Industrial areas are not required to principally serve the existing and projected rural population. Id. The rural element may also allow more intense development of lots containing recreational uses, tourist uses, isolated nonresidential uses, new development of isolated cottage industries and small-scale businesses. ESB 6094 '7(d)(iii). These uses are also not required to be principally designed to serve the existing and projected rural population.

None of these provisions are intended to allow major industrial developments in master planned resorts in rural areas. ESB 6094 '7(5)(e). Counties are required to establish logical outer boundaries for all areas of more intensive rural development. The more intense development must be provided in a manner that does not encourage low-density sprawl. ESB 6094 '7(d)(iv).

Some question has been raised regarding the effect of ESB 6094 because of a recent Central Board decision. In Kelly v. Snohomish County, CPSGMHB 97-3-0012 (Final Decision and Order 7/30/97), Snohomish County requested that the Central Board apply ESB 6094 because it was to take effect 2 days after the hearing on the merits. The Central Board did not apply ESB 6094, however, pointing instead to the bill's prospective effect. The Board held that "[a]ny actions taken by a local government after July 27, 1997, to comply with a Board remand order will be subject to the provisions of ESB 6094.
The Board's compliance review of the remand action will, likewise, be subject to ESB 6094." 1997 Westlaw 453593 at 4. This Central Board case makes it unclear whether counties which adopted comprehensive plans prior to July 27, 1997 will benefit from the provisions of ESB 6094. However, arguably, at minimum the additional rural lands clarifications in ESB 6094 should be considered by the Boards in interpretation of the statute for the purposes of reviewing prior enacted comprehensive plans.

GMA amendments were also included in Substitute House Bill 2083 ("SHB 2083") that, among other things, modified the Master Planned Resorts provision contained in RCW 36.70A.360(1). Counties are now allowed to designate existing resorts as master planned resorts and these may constitute urban growth outside of UGAs. SHB 2083 '1. Existing master planned resorts may include conference facilities, residential facilities, and commercial activities to support the resort, as well as recreational facilities which are already allowed. Counties are also authorized to account for the number of projected permanent residents within the master planned resort by allocating a portion of the 20 year population projection to the master planned resort. SHB 2083 '1(5).

The final bill that affected GMA's rural provisions is Senate Bill 5915. This bill added to the major industrial development provisions, codified at RCW 36.70A.365 and .367, to allow a very small number of counties (Clark and Whatcom counties) to establish up to two industrial land banks as permissible urban growth outside of UGAs. Land banks may not be used for retail commercial development or multitenant office parks and must generally include or be adjacent to existing industrial or commercial growth. To utilize the provisions, a county would need to find that necessary infrastructure, buffers, development regulations, and transportation can be developed and/or provided.

VI. CONCLUSION

Given the difficulty involved in determining what is permissible development in rural areas, the logical next question is whether GMA, in spite of its sometimes confusing provisions and interpretations, is effective at controlling "sprawl." With regard to rural areas, it seems that to date the GMA provisions and the Hearings Boards' decisions have generally clamped down on most development in rural areas except very large lot residential and very small scale rural-dependent industry.

Very large lot residential, meaning homes on 10 acre or greater residential lots, may not end up looking like anyone's idea of rural, however. Even the requirement for a variety of densities may amount to "rural sprawl" if each house and its related garages and drives are visible from the road. The ability to control sprawling development is especially problematic if the residences that are placed on rural lots are not the small farmhouses of the past, but instead are the large suburban-style houses of individuals who desire and can afford to escape "city life." How well counties size their UGAs impacts who will be able to afford these rural residential lots and thereby the type of houses that will be built. Sizing of UGAs depends upon many considerations, including the political, economic and environmental realities in the individual counties.

Although pursuant to current Board decisions rural development is severely restricted, it is unclear if this will remain the case. It is hard to know whether strict constraints on rural development will backfire, pushing "rural sprawl" farther into the hinterland or whether growth will truly be contained in UGAs.

Perhaps the recent GMA amendments which aim to loosen the constraints on rural development, especially rural commercial and industrial development, will relieve some of the pressure of "rural sprawl" by allowing some concentrated areas of rural development.

If carefully constructed, it appears that allowing pockets of more intense, clustered development in rural areas, may be the best way to preserve larger areas of open space, and hence the desired "rural character." This would recognize the principle that the Western Board emphasized by paraphrasing Bonnie Raitt: we cannot change the past, but we can leave it behind.
Affordable Housing Techniques A Primer for Local Government Officials

March 1992 - Report No. 22

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FOREWORD

Affordable housing is fast becoming one the most important issues for city officials in the 1990s. Rapid increases in home prices and rents together with high mortgage interest rates through the 1980s have pushed the dream of homeownership beyond the reach of growing numbers of Washington residents. Population growth and changing demographics have added more people to the state and increased the number of households, placing intense demand pressures on local housing markets.

In order to meet this need, a growing number of Washington's local government officials are beginning to take a hard look at the ways in which their land development regulations can be modified to increase the availability of decent, safe and affordable housing in their communities.

This report is intended as a primer for local policy makers on land use techniques that other communities in Washington and across the country have implemented to encourage affordable housing. It is recognized that local government efforts in this area form only one part of the housing equation and that similar efforts are needed from all segments of the community including public, private, and nonprofit groups interested in the creation and maintenance of affordable housing.

Special acknowledgement is given to Byron Katsuyama, Public Policy Consultant, and Brooke Madrone, Policy Research Intern, who prepared this report, to Lois Weed for her assistance with copy preparation, and to Sandy Dameron for her assistance in format design and preparation.

Richard Yukubosky, Executive Director

Municipal Research & Services Center of Washington

INTRODUCTION

The American dream of owning a home is becoming less and less of a reality to millions of Americans. And for those who are financially ill-equipped to buy, it is becoming increasingly difficult to obtain sound, desirable rental housing at affordable prices.

What is affordable housing? Affordable housing is generally defined as decent, quality housing that costs no more than 30 percent of a household's gross monthly income for rent/mortgage and utility payments.

Contrary to popular belief, the people who are unable to find affordable housing are not limited to those at the bottom rungs of the income ladder. Increasingly, they include growing numbers of middle income families and individuals. More often than not they are the children or elderly parents of residents from our own communities. Many who hold jobs in essential services—trade, manufacturing and government—are being forced to commute long distances to work because they are unable to locate affordable housing near their jobs. For a growing number of workers this means that they cannot afford to live in the same community where they work. Long commutes contribute, in turn, to the worsening of other problems including increased traffic congestion, air pollution and the over-consumption of fossil fuels. Longer commutes also add more stress to daily routines and can result in the disruption of households and lower productivity at work.

To save costs and meet changing market demands, pressures have increased in recent years to allow higher density housing development, make more efficient use of existing housing stocks, reduce regulatory barriers to the siting of mobile/manufactured housing and housing for those with special needs, and to allow greater flexibility in the housing development process.

Recent state and federal legislation have underscored the need to review local housing needs and to
plan for and take specific actions to encourage housing affordability.

The purpose of this publication is to assist local officials in their efforts to provide affordable housing in their communities. It is intended as a primer for city council and planning commission members on the need for affordable housing and some of the approaches that are being used in other communities to increase housing affordability. The report is focused primarily on regulatory techniques that can be applied through local zoning and subdivision ordinances. It does not include discussion of reform measures aimed at streamlining local administrative review and permitting procedures. The list of additional readings in Appendix A contains several references to reports on the subject of administrative streamlining. With the exception of a brief overview, the report does not discuss federal or state programs that provide direct or indirect financial assistance in support of housing. These are also covered in other sources listed in the appendix.

The report begins with a discussion of the growing problem of housing affordability and how it affects all Washington residents. It briefly reviews federal and state programs which have an impact on the provision of affordable housing at the local level. The remaining sections focus on a range of regulatory and other affordable housing techniques, providing basic definitions, and highlighting intended benefits and key policy issues.

Appendix A contains a list of additional reading materials on the subject of affordable housing that are available through the Library of the Municipal Research and Services Center. Finally, a resource list is provided in Appendix B to assist local officials in identifying public and private agencies that can serve as resources in developing and implementing affordable housing strategies.

THE NEED FOR AFFORDABLE HOUSING

There has been a major reduction in the supply of affordable housing both statewide and nationally since 1980. The causes of this reduction are multiple. Rapid population growth has led to growing demands for additional housing which, in turn, has led to a rapid rise in housing prices. The dwindling supply and high cost of developable land, as well as the rising costs of materials and labor, have contributed significantly to increases in development costs for new housing. In addition, incomes in most areas have not increased sufficiently to overcome the effects of inflation and escalating home prices.

Population Growth Fuels Demand for Housing

Nearly 735,000 persons have been added to Washington's population since 1980, representing an overall increase of 18 percent. Ninety percent of this growth has taken place in communities located along the I-5 corridor. [1992 Comprehensive Housing Affordability Strategy - Draft, pp. 12 and 35] Rapid population and employment growth in the region have created intense demand pressures for additional housing. Declines in average household size—from 2.68 in 1980 to 2.53 in 1990—have also added to the increase in housing demand. [1992 Comprehensive Housing Affordability Strategy - Draft, p.13] These factors, in turn, have contributed to an equally rapid escalation in the prices for new and existing housing. Escalating land costs, in particular, have been a primary contributor to the rise in housing costs.

We might think of all the housing possibilities in the State of Washington arranged on a ladder, with the housing that has been seen as most desirable—large owner-occupied single-family homes on good-sized lots in secure neighborhoods—on the top rung, and poorly-maintained, single-room rental units in dangerous neighborhoods on the bottom. If we look at that classic American ladder of housing opportunities against the evidence coming in from the 1990 census, it becomes clear that in the past ten years many of us in the State of Washington, and in many other parts of the country, have moved down a notch on the housing ladder.

Slow Growth in Incomes

In spite of the fact that the Puget Sound/I-5 corridor has been a leader in economic growth nationwide in the past 10 years, average incomes per job exceeded inflation by only 3 percent. In the remainder of the state, average incomes per job actually fell behind inflation by more than 20 percent during the same period. [Closing the Gap, p. 1] Declining Homeownership

Housing prices have risen faster than incomes since 1980. For home buyers, the price of single family homes has risen 75 percent over the last ten years, exceeding the growth in average incomes by over 25 percent. In the central Puget Sound region, average home prices have actually doubled since 1980. [Closing the Gap, p. 3] As a result, homeownership rates, statewide, have dropped from 65.6 percent in 1980 to 62.6 percent in 1990. This decline is particularly striking since it comes at a time when homeownership rates were actually expected to be increasing, as the crest of the baby boom generation reached prime home buying ages. [1992 Comprehensive Housing Affordability Strategy - Draft, p. 41]

Increasing Demand for Rental and Mobile/Manufactured Housing

Many of the households that have been priced out of the conventional single-family home market have begun moving into the relatively more affordable rental and mobile/manufactured housing markets. The results of this market shift have been reflected in the growing numbers of new rental units and mobile/manufactured homes. During the 1980s the number of mobile/manufactured homes grew by 57% (accounting for 20% of all new housing units), while the number of multi-family units increased by 30% (accounting for 38% of all new housing units). [Closing the Gap, p. 4]

As a result of increased market pressures, rents during the 1980s increased by 63 percent, amounting to a 13 percent rise over the rate of inflation. [Closing the Gap, p. 4] In addition, many of the new multi-family units have been built for the high end of the market and, therefore, have not resulted in increased housing opportunities for low income households.

In the part of Washington where rapid growth and high demand are the signs of a hot economy, people are hurt by rising rents or soaring home prices and a shrinking stock of low-rent buildings. In the state’s slower regional economies, people suffer from the lack of jobs and lack of construction activity. In all areas of the state, a severe shortage of apartments that are available and affordable means greater and greater difficulty in finding housing at all.

Washington State Department of Community Development

Although increased demand has led to price increases for mobile/manufactured homes, an average price of $40,000 for new mobile/manufactured homes can still provide an affordable housing option for many low- and moderate-income households. However, zoning restrictions in many communities continue to place barriers to the siting of mobile/manufactured homes and increasing development pressures are threatening existing mobile/manufactured home parks with closures and conversions.

A recent study by the University of Washington’s Institute for Public Policy and Management indicated that more than 10 percent of Washington households in 1989 (approximately 191,000 households) were in need of rental housing assistance either because they were living in substandard housing or paying more than 30 percent of their incomes for housing. This estimate did not include those already receiving housing or rental assistance. [Closing the Gap, p. 15]

An estimate of the gap between 1991 fair market rent levels and affordable rent (at 30 percent of income) for a three-person family earning 50 percent of 1991 median family income was made for each
of Washington’s counties. Only in three counties could that family afford to pay fair market rent; the gap ranged as high as $208 per month.

The amount of money a three-person family would need to earn to be at 50 percent of median income varies from county to county, as income levels vary. But if our three-person family has only one breadwinner, she or he would have to work full time at wages ranging from $5.50 in the poorest county to $9.50 in the wealthiest to make 50 percent of median income. These very-low income families, our working poor families, are very likely to be forced to spend a disproportionate amount of their income to rent housing, and that housing is likely to be substandard.

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<th>Annual Income Ranges for Families of Four in Selected Counties</th>
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Washington State Department of Community Development

**Impacts on Moderate and Low Income Households**

Hopeful first-time homebuyers earning moderate incomes (between 81 and 95 percent of median income) in particular are finding it increasingly difficult to purchase a home without some form of assistance. Many in this group have been forced to remain in rental housing, delaying home purchases indefinitely. Increasing rents, in turn, have made it even more difficult to save for down payments, thus further delaying plans for home purchases. In fact, across the U.S., 80 percent of young adults (between the ages of 25 and 34) do not have the 20 percent down payment needed for a starter home. Of those who have enough for a down payment, 60 percent do not have incomes that are sufficient to meet monthly mortgage payments. [*Blueprint for Affordable Housing, p. 11*]

Those whose incomes are 50 percent below the area median income (very low-income group) are particularly at risk because they are now being displaced by higher income groups who are "buying down" into housing that had previously served this group. If they are displaced, they may experience great difficulty in finding replacement housing at affordable rates.

Extremely low income families (earning less than 30 percent of median income) receiving public assistance support, as a group, are the least able to afford housing. The vast majority of these households rent and typically pay over 40 percent of their incomes in rental payments. For the poor
who are not receiving public assistance this figure is even greater--amounting to 50 percent of their annual incomes. [1992 Comprehensive Housing Affordability Strategy - Draft, p.17]

The end result of this chain reaction of higher income groups displacing lower income groups for those at the bottom of the housing chain is all too often homelessness.

THE CHANGING FEDERAL ROLE

In addition to the unfavorable economic trends, changes in federal housing policies have increased the burden on state and local resources to deal with housing needs. In 1983, federal housing policy was revised, discontinuing subsidies for low income housing construction and rehabilitation. In addition, federal programs offering down-payment assistance for first-time buyers were cut. Housing advocates have argued that new federal programs, which rely more heavily on the use of housing voucher systems to stimulate the production of low income housing, are not working and have failed to adequately meet housing needs. [1992 Comprehensive Housing Affordability Strategy - Draft, p. 88]

National Affordable Housing Act

The Cranston-Gonzalez National Affordable Housing Act (NAHA) passed in 1990 is the first major federal housing legislation in over ten years. [1992 Comprehensive Housing Affordability Strategy - Draft, p. 1] The Act is intended to address affordable housing needs by promoting the production of low-income housing through federal/local partnerships and existing HUD programs, including the Community Development Block Grant (CDBG) program.

The centerpiece of the Act - the HOME Investment Partnerships Program - will provide grants, allocated by formula, to state and local governments to develop and support affordable rental housing and homeownership opportunities through the acquisition, construction, reconstruction or moderate or substantial rehabilitation of affordable housing, including property acquisition, site improvement, and other expenses. In order to receive HOME funds, state and local governments will be required to contribute matching funds, ranging from 25 percent, for rehabilitation of low income housing, to 50 percent, for projects involving new construction . [Summary of the Cranston-Gonzalez National Affordable Housing Act of 1990, p. 9]

In addition to the substantial matching fund requirements, NAHA also provides that "participating jurisdictions," including state and local governments, applying for HOME program or CDBG funds, must have an approved five-year "comprehensive housing affordability strategy" (CHAS). To complete the CHAS, state and local governments must examine housing needs comprehensively, establish goals, and develop short and long-term action plans for implementing these goals. The completed housing strategy must then be used to guide the distribution of federal and other housing resources within the participating jurisdiction.

While this federal legislation shows some promise of a continued, but very small, role for the federal government in stimulating the supply of housing in markets with acute housing shortages, these measures should not be mistaken for a return to its previous largesse in supplying housing dedicated for low income households. The unilateral withdrawal of the federal government from its primary policy of housing supply stimulus in the mid-1980's was not an ideological deviation, but a conscious bi-partisan budget decision by both Congress and the Reagan Administration designed to extract the federal government from a costly social policy.

Closing the Gap: Housing Needs in Washington State
James L. McIntire and Stanislav Fritz

Several of NAHA's provisions appear to reflect the current federal administration's concerns about the role that regulatory barriers play in reducing affordable housing opportunities.* (See "Not In My Back...
Yard - Removing Barriers to Affordable Housing, Report to President Bush and Secretary Kemp by the Advisory Commission on Regulatory Barriers to Affordable Housing, Washington, D.C., 1991) In addition to the requirement that CHAS documents review housing needs and the allocation of housing resources, those jurisdictions completing a CHAS must also include an analysis of local tax policies, building and zoning codes, land use controls, development fees and other growth control regulations, and their impact on housing affordability. The CHAS must further describe how the identified negative impacts will be removed or ameliorated.

Of course, the primary source of public subsidies to support homeownership is the tax system. In 1989, it is estimated that federal tax expenditures for housing amounted to over $53 billion—nearly three and one-half times the amount of direct expenditures on housing assistance for low and moderate income households.

Closing the Gap: Housing Needs in Washington State
James L. McIntire and Stanislav Fritz

THE GROWING STATE AND LOCAL ROLE

While federal support has diminished, state and local governments have gradually begun to assume larger roles in the provision of low- and moderate-income housing.

Over the past ten years, Washington State has established a variety of new programs designed to promote affordable housing opportunities, including establishment of the Washington State Housing Finance Commission, the Housing Trust Fund Program (now called the Housing Assistance Program), and, most recently, the Affordable Housing Program. In addition to these programs, the state Department of Community Development is currently in the process of completing a Comprehensive Housing Affordability Strategy as required by the National Affordable Housing Act. Finally, the state's new Growth Management Act contains several planning measures designed to promote the development of affordable housing.

Washington State Housing Finance Commission

Established in 1983, the Washington State Housing Finance Commission was the state's first program to promote home ownership by assisting first-time homebuyers with low-interest mortgage loans and low down payments. The Commission's programs are generally aimed at first-time homebuyers with incomes between 50 and 115 percent of area median income. Since its inception, the program has assisted in financing more than 20,000 single-family housing units. The commission also provides low-interest financing for affordable multifamily housing projects.

Housing Trust Fund/Housing Assistance Program

The Housing Trust Fund program, established in 1986, makes grants or low interest loans to provide housing for low income households, or households with special housing needs, with incomes at or below 50 percent of area median income. Trust fund moneys can be used to assist new construction, rehabilitation, rent subsidies, and other costs related to the development of low-income housing.

During the 1991 session of the state legislature, the Housing Trust Fund program was expanded and renamed the Housing Assistance Program. The program is administered by the state Department of Community Development.

Affordable Housing Program

The Affordable Housing Program was established in the state Department of Community Development by the legislature in 1991 to provide loans and/or grants to increase the availability and affordability of low-income housing. Funding from the program is targeted to households with incomes at or below 80
percent of area median incomes. Activities eligible for funding include: new construction, rehabilitation, or acquisition of low-income housing, rent subsidies, assistance with down-payments or closing costs for first-time buyers, and mortgage subsidies for construction of multi-family units.

Washington State CHAS

The Department of Community Development was designated as the state agency responsible for preparing the Comprehensive Housing Affordability Strategy (CHAS) required by the 1990 National Affordable Housing Act (NAHA). Local governments or government consortiums which are eligible to apply for Community Development Block Grants or for funding through NAHA’s HOME Investment Partnership program are also required to prepare a CHAS.

The Washington CHAS reviews housing market trends and their impacts on various income groups, including special needs groups, and develops an assessment of housing needs. It also contains an evaluation of the current institutional structure and resources available for delivering housing in the state. After reviewing housing needs, the plan sets forth one-year and five-year action plans to guide the use of state and federal resources for the development of affordable housing in the state.

The plan focuses on strategies that are designed to build public/private partnerships for the development of affordable housing, including cities, counties, private lenders, developers, nonprofit groups, and the users of low-income housing. [1992 Comprehensive Housing Affordability Strategy - Draft, p. 2]

The State recognizes that it shares responsibility with the Federal and local government for shaping a regulatory climate that is housing friendly while maintaining needed health, safety, environmental, and consumer protections. The costs, benefits, and tradeoffs of various regulations must be carefully weighed so that they promote the affordability and availability of housing. In addition, the process for administering the regulations must be done in a way that minimizes cost and delay.

Washington Growth Management Act

The Growth Management Act (GMA), passed by the legislature in 1990 and amended in 1991, establishes an extensive planning and land use regulatory framework and requires the counties (and cities within those counties) with the greatest population growth to formulate both a comprehensive plan and development regulations in conformance with the plan. Counties that are not required to plan under the GMA may elect to do so. The GMA establishes a framework and timelines for comprehensive plans to be developed together with local regulations for implementation of the comprehensive plans.

In addition to its many other requirements, the GMA contains a number of mandatory and discretionary provisions specifically designed to enhance the development of affordable housing. In developing comprehensive plans, the GMA provides that communities should strive to "encourage the availability of affordable housing to all economic segments of the population" and to "promote a variety of residential densities and housing types, and encourage the preservation of existing housing stock." The Act also discourages the conversion of undeveloped land "into sprawling, low-density development." [RCW 36.70A.020, 1990 Supp.]

Comprehensive plans developed under the GMA are required to have a separate housing element that includes:

- An inventory and analysis of existing and projected housing needs;
- A statement of goals and policies for housing preservation, improvement and development;
- Identification of sufficient land for housing, including government-assisted housing, housing for low-income families, mobile/manufactured housing, multifamily housing, and special needs housing; and
A plan for meeting the housing needs of all economic segments of the community

[RCW 36.70A.070, 1990 Supp.]

A 1991 amendment to the GMA adds a requirement for county-wide planning policies which include, among other things, "policies that consider the need for affordable housing for all economic segments of the population and parameters for its distribution." [RCW 36.70A.210(3)(e), 1990-91 Supp.]

Finally, the GMA specifically encourages the use of innovative land use management techniques to enhance affordable housing opportunities, including, "density bonuses, cluster housing, planned unit developments, and the transfer of development rights." [RCW 36.70A.090] Each of these land use techniques, and others, will be discussed further in the remaining sections of this publication.

WHAT LOCAL GOVERNMENTS CAN DO

Local governments have little or no control over many of the factors that affect housing prices, including national and international economic trends, private lending practices and interest rates, labor and materials costs, and other factors that are subject to, and change, along with the cycles of the national and regional economies. Population growth, migration patterns and shifting demographics can have dramatic affects on the demand for land and housing, but are also matters largely out of the realm of local government's control and influence.

Local governments do, however, exercise clear control in setting local land use and development regulations, which can, and do, have significant impacts on housing development costs, most notably in the areas of land acquisition, site development and construction costs. These costs, in turn, are reflected in local housing prices.

How Can Cities Help to Reduce Housing Prices?

Recognizing the links between land use regulation and housing costs, cities can encourage affordable housing by reviewing and updating, where appropriate, land use and development policies contained in local comprehensive plans, zoning ordinances and subdivision ordinances that regulate how land can be used and developed.

Comprehensive Plans

The comprehensive plan sets out the broad outlines of the community's plans and goals governing land use. Under the Growth Management Act, a community's comprehensive plan must include a housing element that addresses the issue of housing affordability by reviewing existing and projected housing needs and developing plans to accommodate those needs with a variety of housing types and densities. For those communities not planning under the GMA, the inclusion of a housing element within the comprehensive plan will be a logical place to begin the process of planning for affordable housing.

While comprehensive plans establish the broad policies and goals which guide the land development process, a community's zoning and subdivision regulations provide the detailed means for achieving those goals.

The housing agenda for local governments is best written by local governments in cooperation with State and Federal governments. The Growth Management Act provides real opportunity to positively impact affordable housing at the local level and will be the tool through which that agenda is written.

Washington State Department of Community Development*
Zoning Regulations

Zoning ordinances govern such matters as density (the number of housing units per acre of land), lot sizes, setbacks, frontage requirements, and the placement and mix of residential, commercial, and industrial uses. Density standards in particular have been identified as having a direct relationship to land values. Land values, in turn, are a central component of housing costs. According to a study by the U.S. Department of Housing and Urban development, the cost of raw land may range from 8 to 25 percent of the cost of a new housing unit, depending upon the local market. [How Local Regulatory Improvements Can Help, p. 3] Where density standards are unduly restrictive, land prices per housing unit are likely to be high. In many of the techniques discussed in this primer, reducing land costs through increased density is generally the largest single factor in achieving affordability.

Subdivision Regulations

Subdivision regulations set standards for street widths and construction, sidewalks, parking, drainage and other site development requirements. Site planning and development represent major areas of potential cost savings for housing developers. These costs may make up 10 to 20 percent of the cost of a new single-family home. [Streamlining Local Regulations, p. 4] A number of communities are reviewing the development standards in their subdivision ordinances to determine where they can be modified to enhance housing affordability.

Successful approaches to affordable housing require more efficient utilization of land than has often characterized American home building practices in the past.

Affordable Residential Land Development
HUD/Joint Venture for Affordable Housing

Additional Strategies

Many cities are also employing new approaches that encourage development of affordable housing either by providing incentives to developers to include affordable housing in new developments or by giving developers greater flexibility in design and site development, or some combination of the two. Other approaches seek to make more efficient use of existing housing resources by removing regulatory barriers or by encouraging the adaptive reuse of existing buildings.

The remainder of this publication will highlight a number of regulatory and other types of techniques being used by local governments in Washington and across the country that are designed to encourage affordable housing.

LAND USE TECHNIQUES

UPZONING (HIGHER DENSITY)

Upzoning is one of the most basic and potentially effective techniques for promoting housing affordability. It involves the selective rezoning of residential land to allow greater density (measured by the number of housing units that can be placed on a parcel of land). Higher density can include both multi-family and single-family housing. Cities that allow higher densities may also enact special design requirements to ensure that new higher density developments are compatible with existing housing in the community.

Simple arithmetic reveals an extreme divergence. A single-family home on a half-acre lot uses 12.5 times as much land per household as a garden apartment of 25 units per acre. At the extremes, a steel and concrete high-rise of 80 units per acre holds 400 times as many households per acre as a five-acre lot development of single-family homes.
Benefits:

Increasing allowable density generally has the effect of reducing land and site development costs for developers, letting them spread these costs over a larger number of units, and therefore, reducing purchase prices for homes and rents for apartments. Site development costs include the labor, material and equipment expenses for the construction of roads, sidewalks, water and sewer lines, drainage, landscaping, and other on-site work.

Higher density urban development may help to preserve farm land, open space and environmentally sensitive areas by reducing the overall amount of land needed for residential development.

Density increases near employment centers and transit stops can help reduce traffic congestion by providing more opportunities for residents to live near their jobs.

Higher densities can result in more efficient use of existing infrastructure capacity (assuming it is adequate to serve growth).

Key Policy Issues:

Higher density development requires greater attention to design (architectural style, landscaping, lot coverage, open space, parking, etc.) to enhance aesthetic appeal and to blend in with surrounding developments.

High density developments require convenient access to recreation and transit.

Opposition in community may be based on concern over out-of-scale buildings, increased traffic congestion, longer lines, impact on property values, and the perception that people who live in higher density housing are somehow "different."

Debate over desirability of greater density is often couched in terms of "high" verses "low." Communities may want to consider other options, including "moderate" densities or a mix of densities.

INCLUSIONARY ZONING

Inclusionary zoning is a technique applied to new housing developments in which a certain portion of the units being constructed are set aside to be affordable to low- and moderate-income home buyers. [Affordable Housing - Local Government Regulatory and Administrative Techniques, p.16] This technique may by applied to both rental and owned units, and single- or multi-family housing projects.

Inclusionary zoning ordinances can be either mandatory, requiring developers to build a specified number of affordable units, or voluntary, based on development incentives, such as density bonuses which allow a developer to build more units (at a higher density) on the same site in exchange for the inclusion of a number of affordable units.

Inclusionary zoning ordinances generally contain provisions defining income eligibility requirements, criteria used for determining the pricing of affordable units, restrictions on the resale of affordable units (to ensure that new owners do not turn around and resell the units at market rates), and provisions for the payment of fees in-lieu of construction. [Blueprint for Bay Area Housing, p. 49]

Benefits:
Inclusionary zoning programs do not generally require the expenditure of local tax dollars to fund the construction of affordable housing units.

Ordinances based on developer incentives, such as density bonus programs, offer a positive alternative to mandatory programs that may be resisted by local developers. Voluntary programs allow developers to determine for themselves whether participation will be cost effective.

Inclusionary programs that do not provide for density bonuses can preserve zoning restrictions on higher density development and may be more acceptable in communities opposed to general upzoning as a solution to affordable housing shortages.

Inclusionary programs avoid the problems of overconcentration, isolation, and stigmatization of affordable housing units, by integrating them into housing developments located throughout the community.

Inclusionary zoning can be flexible, since the provision for affordable housing can either be regulated or encouraged by developer incentives.

**Key Policy Issues:**

Mandatory requirements should be relatively modest (10 -15 percent of total units) if there are no compensating developer incentives. [Blueprint for Bay Area Housing, p. 50]

Inclusionary programs will require some ongoing administrative oversight to provide for the collection and management of fees paid by developers who opt to pay into a housing fund and to ensure that units that are constructed will be maintained as affordable housing.

The legal authority for inclusionary programs based on mandatory requirements remains unclear in Washington. Cities contemplating this type of program should consult with their city attorney.

**Inclusionary Zoning (Bellevue, Washington)**

20.20.128 Affordable Housing

A. **Purpose:** The purpose of this Section is to implement through regulations the responsibility of the City under the State Environmental Policy Act, Chapter 43.21C RCW, and the Growth Management Act, Chapter 36, Laws of 1990, 1st ex. sess., to consider the housing needs of all economic segments of the community, and to assure that the impacts of new development will be mitigated to the extent feasible to assure an adequate affordable housing supply in the City.

B. **General:** This Section applies to: all new residential development (Paragraph 1); all new subdivisions (Paragraph 2); and all rezone applications (Paragraph 3). These requirements are adopted pursuant to the authority of the State Environmental Policy Act and the review of all projects under these requirements is SEPA based.

1. **Multifamily Development:** At least 10% of the units in all new multifamily development proposals of ten units or greater must be affordable units. In addition, one bonus market rate unit is permitted for each affordable unit provided, up to 15% above the maximum density permitted in the underlying zoning district.

2. **Subdivision Development:** At least 10% of the units in all new subdivision proposals of ten lots or greater must be affordable units. In addition, one bonus market rate unit is permitted for each affordable unit provided, up to 15% above the maximum density permitted in the underlying zoning district.

3. **Rezones:** All rezone proposals for an increase in residential zoning density must provide that at least 10% of the units buildable under the original maximum density be affordable units and that at least 20% of the units buildable as a result of the increase in density from the original maximum density to the total number of approved units must be affordable units. In addition, one bonus market rate unit is permitted for each of the affordable units provided to meet the minimum 10% requirement of the original maximum density, up to 15% above the original maximum density.

Source: Bellevue Municipal Code
DENSITY BONUSES

Many communities have developed programs that offer developers "density bonuses" in exchange for the inclusion of affordable units within a proposed residential project. A density bonus allows a developer to build more units within a project than would otherwise be permitted under normal density limits. Both zoning and subdivision regulations can be modified to allow density bonuses.

Benefits:


By increasing the overall value of a project, density bonuses make the provision of affordable housing units more economical.

Density bonus programs allow for the provision of affordable housing that in many cases would not be economically feasible for either the developer or the municipality.

Key Policy Issues:

Density bonuses alone may not be sufficient, depending on market conditions, as an incentive to developers. Cities may want to consider additional incentives such as reduced setbacks, street frontages, and other cost reducing inducements.

City officials need to consider what level of additional density will be allowed in exchange for a specified number of affordable units. Density bonuses are usually expressed as a percentage of the density allowed under normal zoning regulations.

Density bonus programs must be designed on the basis of a thorough understanding of the real estate market to determine feasibility and to develop appropriate regulations. If current zoning allows enough density to satisfy current market demand, developers may have no interest in using a density bonus.

Attention should be given to the location and design of affordable housing units within proposed projects to ensure project quality.

If most new houses in the community are built individually or two and three at a time, density bonuses may not be appropriate. This approach generally works best in larger scale developments. [How Regulatory Improvements Can Help, p. 19]

Density Bonuses (Vancouver, Washington)


Duplexes and multifamily developments may be allowed in the R-3 district, provided no residential development shall be constructed at a density higher than the standard density of 1 d.u./2,500 sq. ft., in the R-3 district, except as provided in Sections 20.13.311 and 20.13.312. (Ord. M-2254 (part), 1981)

20.13.311 Density bonus "A."

Residential development may be permitted up to a density of 1 d.u./2,000 sq. ft., subject to staff review, if all of the following features are provided:

A. Compatible design;

B. Energy-conscious construction;
C. Private open space;
D. One covered parking space per unit;
E. Sidewalk and curb dedicated and constructed to city standards (if not already in place), unless in a planned development;
F. Either solar heating, large unit size, tree preservation, or underground utilities. (Ord. M-2254 (part), 1981)

20.13.312 Density bonus "B."

Residential development may be permitted up to a density of 1 d.u./1,250 sq. ft., subject to staff review, if the following features are provided:

A. Compatible design;
B. A minimum twenty-thousand-square-foot site;
C. One covered parking space per unit;
D. Private open space;
E. Energy-conscious construction;
F. Sound transmission reduction;
G. Half-street, curb and sidewalk constructed to city standards (right-of-way to be dedicated). As an alternate, the developer may place funds sufficient to complete such part of the project in an escrow account by an instrument approved as to form by the city attorney. If the city does not participate in full street improvements within five years of project approval, all such money shall revert to developer upon petition and approval of the city council;
H. Either solar heating, large unit size, tree preservation, underground utilities, or one garage per unit (as replacement for covered parking). (Ord. M-2254 (part), 1981)

Source: Vancouver Municipal Code

PERFORMANCE/IMPACT ZONING

Performance/impact zoning is a type of flexible zoning which determines land use locations and characteristics through the application of a system of performance criteria, which establish basic development standards and limitations, and specify the conditions under which developments will be allowed.

Unlike traditional, "euclidean" zoning, which separates land uses into discreet districts based on their presumed compatibility or incompatibility with predetermined lists of permitted and prohibited uses, performance-based zoning systems evaluate proposed land uses on a case-by-case basis according to the merits of each proposal. Projects are evaluated on the basis of their particular "size, shape, location, natural features, and site development concept, rather than according to a predetermined zoning district classification." [Streamlining Local Regulations, pp. 15-16]

Performance zoning is based in part on the model of environmental impact analysis which focuses on identification of a project's physical impacts. Under this model, identified negative impacts must be mitigated before a project can be approved. Under a performance-based zoning system, a proposed land use must be able to show that it can meet the specified performance standards without negatively impacting the community in order to obtain a development permit.

Many communities implement performance zoning through a point system that ties development
approval to the ability of a proposed project to qualify for a sufficient number of points. Points are awarded for meeting basic performance criteria.

A typical list of performance criteria may include such items as:

- compliance with density standards
- traffic generation - capacity of existing streets
- neighborhood compatibility
- impact on and capacity of existing utilities
- proximity to existing infrastructure (water and sewer lines, schools, police and fire stations, transportation facilities)
- parking
- noise levels
- proportion of open space
- protection of natural features

In theory, under this system, any use could locate next to any other use provided it could satisfy the performance standards in place. For example, a commercial use may be allowed to locate next to a residential area if the proposed use can meet certain conditions, such as landscape buffering and arterial street access rather than access via neighborhood streets. While performance based zoning systems allow considerable flexibility in determining the potential uses of a particular site, proposals must still meet the performance standards which govern actual development.

**Benefits:**

Performance zoning permits all types of housing units, and provides more flexibility for developers to respond to a broader spectrum of the housing market. This added flexibility encourages developers to build a broader range of housing types including affordable units. [Affordable Housing - Local Government Regulatory and Administrative Techniques, pp. 14-15]

By substituting performance criteria for designation of zoning districts as a means for determining land uses, performance systems have the effect of increasing the supply of developable land. The increased land supply can translate into lower land prices and lower cost development, which can contribute to the development of affordable housing. [Flexible Zoning - How It Works, p. 79]

Performance-based standards typically allow greater flexibility in site design and project density, which encourages use of cost-saving techniques such as building clustering, mixed-use, and small-lot developments.

**Key Policy Issues:**

This technique involves the establishment of detailed performance criteria to be used for impact measurement and mitigation.

A key challenge is to develop performance criteria that will mitigate the negative impacts of developments without unnecessarily restricting developers from applying creative design and use solutions. [Flexible Zoning - How it Works, p. 94]

Few communities have developed performance-based systems which have replaced all traditional zoning districts. Most have incorporated performance zoning within a traditional framework, but with fewer zoning districts and more flexible use and density regulations.

Performance zoning allows the marketplace to decide how to meet the specified standards that the community sets. It is a conscious legislative attempt to protect the interest of all parties involved.
while providing the basis for compromise and flexible criteria for development.

Streamlining Local Regulations
HUD/Joint Venture for Affordable Housing

MOBILE/MANUFACTURED HOUSING

With production costs substantially lower than conventional built housing, mobile/manufactured homes represent a significant source of affordable housing, particularly for low- and moderate-income households.

For purposes of regulation, most cities make a distinction in their zoning codes between conventional site-built housing and mobile/manufactured housing. The term "mobile/manufactured home" is defined as:

"A structure, originally designed and constructed to be transportable in one or more sections, that is built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating and electrical systems contained therein. The structure must comply with the National Mobile Home Construction and Safety Standards Act of 1974 as administered by the U.S. Department of Housing and Urban Development and as adopted in RCW 43.22, if applicable." [A Model Ordinance for Siting Mobile/Manufactured Home Parks, p. 3]

Conventional site-built housing is defined as:

"Residential units that are assembled at their site of permanent location. Construction materials and equipment are brought to the site in unassembled form. Construction is regulated by the state building code." [A Model Ordinance for Siting Mobile/Manufactured Home Parks, p. 4]

Mobile/manufactured homes are also distinguished from "factory-built" housing such as modular, panelized, prefabricated, and kit homes. The major difference between mobile/manufactured and factory-built homes is that they are built to different building codes. Factory-built, like conventional site-built homes, are constructed to the requirements of the Uniform Building Code (UBC), while mobile/manufactured homes, built after June 1976, are constructed according to the standards adopted by the U.S. Department of Housing and Urban Development (HUD code). Factory-built homes that are built to UBC standards generally enjoy a greater level of acceptance in communities and are usually treated like conventional site-built homes in local zoning codes.

Cities in Washington have taken a number of different approaches to regulating the location of mobile/manufactured housing within their borders. Many cities allow mobile/manufactured homes to be placed on single-family residential lots in the same way as conventional site-built homes. Other cities have established certain zones in which mobile/manufactured homes are a permitted use, but do not permit them in all zones. Still other cities permit mobile/manufactured homes only in mobile home parks or subdivisions, but not in other residential areas.

Lack of public acceptance has been one of the biggest stumbling blocks for a more generalized siting of mobile/manufactured homes. Public perceptions of mobile/manufactured homes are, however, improving for reasons of improved appearance, better quality construction, and affordability.

As prices on conventionally built houses have rapidly increased, growing numbers of households in Washington have turned to mobile/manufactured homes as a more affordable alternative. Between 1980 and 1989, the number of mobile/manufactured homes in the state increased by 57 percent and accounted for 20 percent of all new housing (including single- and multi-family) added to the state's housing stock. As a result, mobile/manufactured homes now comprise over 9 percent of the total
housing units in the state. [Closing the Gap, p. 4]

As affordable housing becomes harder to find, manufactured housing remains a major option for low and moderate income households seeking ownership or rental of single-family housing. As manufactured housing becomes less distinguishable from stick-built housing, and public and governmental perceptions begin to match this reality, manufactured housing should be an option in more and more locations.

Washington State Department of Community Development

The problem of siting mobile/manufactured homes in Washington has recently become more pressing due to an increase in the number of mobile/manufactured home park closures. Park closures, particularly in urban areas where the number of parks has been dwindling, have caused the displacement of many mobile/manufactured homeowners, leaving them with few, if any, alternative sites for their homes. In many cases, the homes that are displaced are older, single-wide models, that are difficult to relocate because of restrictions placed by local governments and park owners. In 1991, the Washington State Legislature passed a new law establishing the Mobile Home Relocation Assistance Program to provide financial assistance to low-income mobile home park tenants who are forced to relocate due to a park closure. In addition to the financial assistance measure, this law also exempts mobile homes that are relocated due to a park closure from complying with the requirements of city or county fire, safety, or construction codes. [See RCW 59.21.105]

Benefits:

Mobile/manufactured homes cost substantially less to build than conventional site-built homes. According to the Washington Manufactured Housing Association, the average price of a new multi-section mobile/manufactured home is approximately $40,000.

Today's mobile/manufactured homes built to HUD code standards are more attractive, safe, and durable than earlier models, and can provide not only affordable, but also high quality housing, to low- and moderate-income buyers.

Growing numbers of low- and moderate-income buyers, who have been priced out of the conventional home market, are turning to mobile/manufactured homes as their only affordable alternative for homeownership. Increasing the availability of land zoned to accommodate these new homes will enhance the location options for mobile/manufactured home buyers and contribute further to their affordability.

Key Policy Issues:

Cities that are planning under the new Growth Management Act are required to prepare comprehensive plans that include a housing element. The housing element must specifically identify sufficient land for housing, including manufactured housing, as well as other types of low- and moderate-income housing.

Due to the variety in mobile/manufactured home styles, flexible community ordinances may be more useful for siting mobile/manufactured homes than restrictive ordinances which may not accommodate the full range of homes that are commercially available. [A Model Ordinance for Siting Mobile/Manufactured Home Parks, p. 8]

Local governments can establish a design review process utilizing appearance standards to ensure that mobile/manufactured homes are compatible with the neighborhoods in which they are sited.

Allowing siting of mobile/manufactured housing on individual lots offers financial advantages. Because mobile/manufactured housing is taxable as real rather than personal property in Washington State, allowing permanently sited, mobile/manufactured homes in residential zones provides a source of tax
revenue. This is also advantageous to homeowners since permanently sited mobile/manufactured homes that are compatible with their neighborhoods are likely to hold their value and be eligible for long-term loans.

Provision in zoning codes for enough mobile/manufactured park sites to provide competition among park owners will help ensure attractive, low-cost living environments for mobile/
manufactured home owners. [How Local Regulatory Improvements Can Help, p. 8]

Community controls can ensure that allowable lot sizes are small enough to make the development of mobile/manufactured home parks cost-effective for developers and affordable for home owners. Space saving siting techniques such as zero lot lines and clustering are also useful in mobile/manufactured home developments.

Infill development is an option to consider in siting mobile/ manufactured housing on individual lots. This is particularly true if the lots are small or irregularly shaped, including surplus rights-of-way.

Communities may want to consider offering density bonuses as an incentive to mobile home park developers who agree to accept older, displaced mobile homes.

ACCESSORY DWELLING UNITS

Allowing the development of accessory units is a technique for providing affordable housing which uses surplus space in existing single-family homes. An accessory dwelling unit is an additional living unit, including separate kitchen, sleeping, and bathroom facilities, attached or detached from the primary residential unit, on a single-family lot.

Attached units, contained within a single-family home, known variously as "mother-in-law apartments," "accessory apartments," or "second units," are the most commonly encountered type of accessory dwelling unit. Accessory apartments typically involve the renovation of a garage, basement family room, attached shed, or a similar space in a single-family home.

Less common are detached "accessory cottages" or "echo homes," which are structurally independent from the primary residence. These units, typically placed in the rear yard area, are usually constructed or installed for the purpose of providing housing for an elderly parent being cared for by their adult children living in the primary unit. Accessory cottages or echo homes are less frequently allowed in zoning codes and are generally more expensive to build than accessory apartments. [Accessory Units: An Increasing Source of Affordable Housing, p.5]

Benefits:

Accessory apartments are a relatively easy to obtain source of affordable housing.

Allowing accessory units is a way to provide affordable rental housing without the necessity of local government expenditures or subsidies.

Rents for accessory apartments are generally lower than rents for comparably sized non-accessory apartments, both because the owner lives in one of the units and because they are cheaper to build. [Accommodating Accessory Apartments, p. 34]

Older residents who are living on fixed incomes can use the added income to offset the costs of rising property taxes and utility bills, thus allowing them to stay in their homes. Elderly home owners may also offer lower rents to tenants in exchange for help in performing routine maintenance chores.
Young, first-time home buyers can use the extra income to help pay their mortgage payment.

Accessory apartments use surplus space in large older homes, thus making the most efficient use of the existing housing stock.

Accessory apartments encourage the upkeep of existing housing stocks since owners have extra income that can be applied to maintenance expenditures.

Accessory apartments offer renters affordable housing located in more desirable single-family neighborhoods.

**Key Policy Issues:**

Opposition to accessory units usually arises from neighborhood concerns about declining property values, exterior appearance of accessory units, and impacts on parking and traffic from increased density.

In response to community concerns, regulations are usually devised to deal with such issues as the size of units, exterior appearance, off-street parking, and concentration of units. The challenge to policymakers is to address the concerns of opponents without making conversions too difficult or expensive for homeowners.

If 1 in every 10 of America's owner-occupied single-family homes built before 1975 were to devote space to an accessory unit, 3.8 million rental units would be generated, increasing the supply of rental housing by about 10 percent.

*"Not In My Backyard": Removing Barriers to Affordable Housing*  
Advisory Commission on Regulatory Barriers to Affordable Housing  
U.S. Department of Housing & Urban Development

Many communities that allow accessory units do so through a special permit or conditional use procedure which may require a public hearing. An alternative which may make conversions less burdensome for applicants would be to require a public hearing only when requested by a certain number of neighboring property owners.

Although opposition groups often express concern that single-family neighborhoods will be overrun by accessory apartment conversions, studies done in cities which have allowed accessory units show that the actual number of conversions has been relatively small. [Accessory Apartments - Using Surplus Space In Single-Family Houses, p. 4]

American Planning Association

**PLANNED UNIT DEVELOPMENT**

Planned unit development (PUD) regulations give developers an increased level of flexibility in the overall design of residential projects in exchange for a higher quality of development. PUD ordinances often allow developers greater latitude in locating buildings on the development site, mixing various housing types and densities (single- and multi-family), and land uses (including some neighborhood commercial uses), and in some cases grant density increases over those normally allowed in the zoning ordinance.

PUD ordinances may be adopted as a part of a community's zoning or subdivision code, or may be adopted as a stand-alone ordinance. PUDs may be regulated as a separate zoning district, or as a...
conditional or special use permitted in selected districts. Some cities also designate PUDs as "floating zones" which do not apply to a particular location until an application is received and approved.

PUDs are generally characterized by:

- flexible zoning standards (lot size, setbacks, street frontage, etc.)
- focus on overall project design rather than traditional lot-by-lot zoning
- encouragement of innovative site design and housing types
- provision for on-site amenities (e.g., open space and recreational facilities)
- negotiation between developers and the community for improved design and amenities [PUDs in Practice, p. 13]

Benefits:

The most effective features of PUDs for encouraging affordable housing are the economies that can be achieved through clustering of buildings and the related savings in site development costs such as for streets and utilities.

Design flexibility allows for the concentration of buildings on that portion of the site that is most suitable for building, resulting in a more environmentally sensitive development that preserves open space and other natural features.

PUD ordinances often allow developers the opportunity to build at higher densities, spreading development costs over a larger number of units.

PUD ordinances often allow a mixture of land uses in addition to residential. Commercial revenues from mixed-use areas can be used to help subsidize affordable housing in the development. [Blueprint for Bay Area Housing, p. 55]

PUDs which allow clustering of homes on small lots and a mixture of uses, including some commercial uses, reflect not only a desire for more affordable housing developments, but also a response to new lifestyle preferences for efficient low maintenance homes, with easy access to recreation and services.

PUDs give communities greater control over design during the permit review process allowing officials to negotiate for public benefits in return for concessions on density, mixed uses, and other development standards.

Key Policy Issues:

PUDs require greater attention to a development's planning and design including detailed reviews by the city's planning staff, planning commission, and the city council.

Some cities may limit PUDs to residential developments (sometimes called Planned Residential Developments or PRDs) with no allowance for the inclusion of commercial uses.

Cities should be careful to avoid an overly cumbersome PUD process which may discourage developers from using this alternative. Flexibility is a major key to successful PUD projects.

Reducing minimum land area requirements for PUDs can encourage greater use of this development technique.

CLUSTER SUBDIVISIONS
This technique provides for the clustering of housing units within a residential development (usually single-family detached- or attached-housing) on lots smaller than those normally allowed under existing zoning, usually with the provision that the land that is saved be set aside permanently as open space.

Cluster subdivisions generally conform to a zoning districts "gross density" requirements (measured by the number of housing units per acre relative to the total area of the site), but may increase the site's "net density" (measured by the number of housing units per acre relative to the buildable area of the site), by reducing lot sizes and concentrating development on a smaller portion of the available site. [Affordable Housing - Local Government Regulatory and Administrative Techniques, p. 13]

Cluster subdivisions are similar to planned unit developments (PUDs) to the extent that they both involve clustering of homes on smaller lots; however, a cluster subdivision is a narrower concept, limited to residential uses (as opposed to mixed uses allowed in a PUD), usually requiring less stringent review procedures, and which may or may not result in higher overall densities. Cluster subdivisions are more closely related to traditional subdivision development since they generally comply with existing zoning standards governing overall density and land use restrictions. [The Cluster Subdivision: A Cost-Effective Approach, pp.1-2]

Cluster subdivision ordinances may include:

- A statement of purpose (to clarify intent and benefits sought)
- Provisions permitting transfer of densities within the subdivision (which give flexibility in site designing and allow clustering)
- Review criteria (to insure conformance with development standards and compatibility with surrounding neighborhoods)
- Identification of districts where cluster subdivisions will be allowed
- Minimum size requirements (in terms of total acreage or number of units)
- Open space requirements (usually requires that total lot reductions allowed equal open space) [The Cluster Subdivision: A Cost-Effective Approach, p. 5]

Benefits:

As in PUDs, clustering decreases development costs by reducing street lengths, sidewalks, utility lines, and other site development costs. This, in turn, also helps to reduce the costs of infrastructure maintenance.

Clustering allows for more environmentally sensitive site planning by concentrating development on the most buildable portion of the site while preserving natural drainage, vegetation, and other natural features. [The Cluster Subdivision: A Cost Effective Approach, p. 3]

Permitting cluster subdivisions "by-right" in certain zones can provide a relatively straightforward (and therefore, less costly) way of encouraging economical development without increasing overall density.

Cluster developments can provide residents with an enhanced sense of community and security within each cluster and among neighboring clusters. [Affordable Residential Land Development, p. 30]

Key Policy Issues:

Many communities set a minimum size for cluster subdivisions. Careful consideration should be given to minimum size requirements so as not to unduly discourage developers from using this option.

Consideration should be given to the issue of how much of a reduction in lot sizes will be allowed. Some communities set maximum reduction limits.
Cluster subdivisions usually require that the amount of open space must at least equal the total reduction in lot areas.

Communities may allow for either public or private ownership and maintenance of open space.

Cluster subdivisions may be permitted as a use "by-right" or as a special permit use, depending upon the level of development review desired by the community.

**Cluster Developments (Seattle, Washington)**

23.44.024 Clustered housing planned developments

Clustered housing planned developments (CHPDs) may be permitted as an administrative conditional use in single-family zones. A CHPD is intended to enhance and preserve natural features, encourage the construction of affordable housing, and allow for development and design flexibility. CHPDs shall be subject to the following provisions:

A. Site Requirements.

1. The minimum size of a CHPD shall be two (2) acres. Land which is of steep slope and designated environmentally sensitive in Section 23.62.002 and submerged land shall not be used to meet minimum size requirements unless it can be demonstrated that it is an integral part of the proposed development or that its exclusion would result in undesirable development in the excluded area.

2. The Director may exclude land from a CHPD if it is separated from the site by topographical conditions, if it has a poor functional relationship with the site, or if inclusion of the land would negatively impact adjacent single-family zoned lots.

B. Type of Dwelling Units Permitted. Only single-family dwelling units shall be permitted in a CHPD.

C. Number of Dwelling Units Permitted.

1. The number of dwelling units permitted in a CHPD shall be calculated by dividing the CHPD land area by the minimum lot size permitted by subsection A of Section 23.44.010 in the single-family zone in which the CHPD is located. Land which is of steep slope and designated environmentally sensitive in Section 23.62.002 and submerged land shall be excluded from the land used to calculate density in a CHPD unless it can be demonstrated that it is an integral part of the proposed development or that its exclusion would result in undesirable development in the excluded area. For CHPDs which include more than one (1) zone, the number of dwelling units shall be calculated based on the proportion of land area in each zone.

2. One (1) additional detached single-family structure may be permitted if the development includes recreational, meeting and/or day care facilities open to the surrounding community.

D. Subdivision. A CHPD may be subdivided into lots of less than the minimum size required by subsection A of Section 23.44.010.

E. Yards. Yards shall be required for structures within a CHPD.

1. Structures shall be set back a minimum distance of twenty feet (20') from the street property line of a CHPD.

2. No dwelling unit in a CHPD shall be closer than five feet (5') to a side lot line of an abutting single-family zoned lot.

...  

6. To provide a sense of privacy, and to mitigate the effects of shadows between structures which are more than one hundred feet (100') from the property line of CHPD, required yards between structures in the CHPD shall vary depending on the design of the facing facades as follows:

a. Walls shall be not less than ten feet (10') apart at any point.

b. A principal entrance to a structure shall be at least fifteen feet (15') from the nearest interior facade which contains no principal entrance.
c. A principal entrance to a structure shall be at least twenty feet (20') from the nearest interior facade which contains a principal entrance.

7. The Director may increase the minimum required yards or require alternate spacing or placement of structures in order to preserve or enhance topographical conditions, adjacent uses and the layout of the project and to maintain a compatible scale and design with the surrounding community.

Source: Seattle Municipal Code

SMALL LOTS AND SMALL LOT DISTRICTS

Allowing a reduction in minimum lot sizes for single-family detached or attached housing is a basic technique for reducing residential development costs. Small lot developments, whether in a cluster or traditional "grid pattern" subdivision, increase density and the opportunity for affordable housing.

Small lots (which may range from 2,500 to 6,000 sq. ft.) and small lot districts can be utilized more fully by: (1) reducing minimum lot size requirements to allow building on lots that are currently below the specified minimum size for their locales; and (2) dividing large lots that currently have excess space. [Affordable Residential Land Development, p.5]

Many communities have designated special small lot zoning districts which permit development on small lots within an entire district and encourage the use of innovative site design techniques.

Benefits:

The lower land and development costs associated with higher densities in small lot developments can result in significant savings, and therefore, lower cost housing.

With a higher density, land and infrastructure costs of multiple unit developments can be spread over a large number of units, resulting in reduced per-unit costs.

As in cluster development and PUDs, the reduced frontage and front-yard setbacks characteristic of small lots, allow for less pavement, sidewalk, and gutters per unit, shorter utility runs, and reduced material costs. [Affordable Single-Family Housing - A Review of Development Standards, p. 3]

Reduced lot size requirements allow the development of smaller houses, which may be more desirable and affordable for many of today's smaller households.

Key Policy Issues:

Small lot developments require greater attention to site design -- the layout of streets, lots, mixing of lot and house sizes, variation in building setbacks and elevations, variation in exterior designs, and landscaping -- to enhance aesthetic appeal and to blend well with surrounding developments.

Some cities include a site plan review process for small lot developments to ensure quality design.

Requirements for two side-yard setbacks are often relaxed in small lot developments, allowing for "zero lot line" development (see p. 37) and other similar design innovations which can enhance the appearance and liveability of higher density developments.

Special consideration should be given to parking in small lot developments to avoid the problem of cars dominating the streetscape (the visual quality of the development as seen from the street). Consideration may be given to staggering front-yard setbacks or allowing parking access through alleys running along rear yards.
The maintenance of privacy will also require some attention in small lot developments. Use of landscaping, fences, walls, staggered setbacks, and windowless side walls, are common techniques used to enhance privacy in small lot and other high-density single-family developments.

Some small lot development ordinances require the use of buffers at the perimeter of small lot projects to lessen the visual impact from near-by larger-lot developments and to help in achieving neighborhood acceptance. [Affordable Single-Family Housing - A Review of Development Standards, p. 20]

ZERO LOT LINE DEVELOPMENT (ZLL)

This is a technique that is used in small lot housing developments (including planned unit developments and development in small lot districts) to preserve some of the privacy and yard usefulness that is characteristic of single-family dwellings and to enhance their aesthetic appeal.

Use of conventional zoning provisions which require that the home must be set back from every lot line is not always practical for small lots since the "yards" created on each side of the house are generally very small. Zero lot line houses are sited on one side lot line and sometimes also on the rear or front lot line to maximize the available yard space. [Planning for Affordable Single-Family Housing, p. 5] Placing the house on one of the side lot lines doubles the amount of useable space on the other side.

Zero lot line development can be allowed in PUDs, in separate residential districts, and/or as exceptions in existing residential districts. Some communities permit ZLL houses to be sited on a common lot line so that they resemble duplexes. Other communities require that they be sited on alternate lot lines, to give the appearance of housing in a conventional development. [Zero Lot Line Development, p. 1]

Local officials can utilize review criteria to encourage high-quality design and include provisions in their ZLL regulations that will ensure that this type of housing is compatible with conventional housing. With these provisions, ZLL housing can be well-suited to most single-family neighborhoods. [Zero Lot Line Development, p. 10]

As developers around the country have gained more experience with ZLL development they have also been improving on the original concept with variations such as the "angled Z-lot," "zipper lots," and "alternate width lots." The angled Z-lot turns the home at a 45 degree angle to the street which enhances visual appeal and makes it possible to add more windows without compromising privacy. Zipper lots vary the depths of rear lot lines which concentrates open space on one side of the lot making wider lots possible with only garages located on the property line. Alternating width lots combine narrow and wide lots to give visual variety to the streetscape. [Density by Design, pp. 55-75]

Benefits:

Sitting on one side lot line provides a useful side yard, while sitting on the front or back lot line provides a useful front or back yard area as well.

The ZLL approach permits the lot width to be reduced (to a 40 foot frontage or even less) allowing for lower site development, utility, and materials costs. Increasing allowable density generally has the effect of reducing land and site development costs allowing developers to spread costs over more units and, therefore, reduce purchase prices in these developments.

ZLL offers the lower costs associated with high-density development while still maintaining the privacy and appearance of traditional single-family detached housing.

Key Policy Issues:

Residents in established neighborhoods may resist smaller lot development if they perceive that the new housing will be of a lower quality having a negative impact on property values. Attention to design...
is a key factor in gaining acceptance from surrounding property owners.

Space and privacy issues may be a problem if they are not taken into consideration in the design and planning stage.

Many ZLL ordinances require windowless walls on the side of houses located on lot lines to preserve privacy.

Some communities require easements for the maintenance of the sidewall for the benefit of the adjacent property owner.

Special consideration should be given to the location and design of parking and garages which may tend to dominate the appearance of the development from the street.

INFILL DEVELOPMENT

Infill refers to development that takes place on land within built-up urban areas that has been passed over for various reasons during previous development phases and has remained vacant or under-utilized.

Interest in infill development stems from a desire to channel development into areas that are already served by public facilities, including police, fire, utilities, schools, and transit, to make more efficient use of existing land and public facilities.

Many communities also encourage infill development as part of a strategy to revitalize and bring new activity to older neighborhoods. This type of development can also provide opportunities for the construction of affordable housing.

Infill development can range from construction of single-family housing on one or two adjacent lots, to an entire city block containing mixed residential and commercial uses. [Affordable Housing - Local Government Regulatory and Administrative Techniques, p. 15]

In most mid-sized and large American cities, there are thousands of vacant sites in built-up areas. These sites represent a major opportunity for development at relatively low cost.

Streamlining Local Regulations
HUD/Joint Venture for Affordable Housing

Benefits:

Infill sites are often already served by utilities and other public services can reduce a developers up-front costs, and, in turn, may help in reducing the costs of completed housing units. [Blueprint for Affordable Housing, p. 57]

Infill sites in urban areas that are well served by public transit can help to reduce traffic congestion by offering housing options that are closer to employment centers. [Blueprint for Affordable Housing, p. 57]

New housing, or mixed-use projects resulting from infill development, can have a revitalizing effect on surrounding neighborhoods.

Encouragement of infill development which seeks to make the best use of existing urban land and infrastructure can also help to reduce development pressures on suburban locations, slowing the
tendency toward urban sprawl and preserving open space and agricultural lands.

Key Policy Issues:

Washington's new Growth Management Act calls for the establishment of urban growth areas which will have the effect of channeling new growth and development into existing urban areas. As cities begin planning for higher densities within the boundaries of urban growth areas, infill development will be receiving greater attention.

Where infill sites are located on higher cost urban land, multi-family housing and/or mixed-use projects, with lower per-unit development costs, may be the most appropriate type of development.

Where land costs are particularly high, incentives such as density bonuses or allowance of mixed uses, may add to a project's feasibility.

Careful design, with particular attention to enhancing compatibility with surrounding buildings, parking, and traffic problems, will help to increase neighborhood acceptance.

Communities can encourage infill development by:

- preparing an inventory of potential infill sites and making it available to developers.
- sponsoring a work-shop for developers to demonstrate infill development opportunities and tour potential sites. The type of development required on small infill parcels may be unfamiliar to some developers.
- adopting flexible zoning and building regulations which allow development of irregular or substandard infill lots.
- allowing mixed uses for infill developments which may enhance the economic feasibility of projects.
- assisting in the consolidation of infill lots into larger, more easily developed sites. Assembling large parcels can be difficult if there are different owners who may be holding out for higher prices.
- allowing sufficient density to induce housing development.

[Blueprint for Affordable Bay Area Housing, pp. 57-58; Streamlining Local Regulations, pp. 19-20]

ADAPTIVE REUSE

This technique involves the conversion of surplus and/or outmoded buildings including old school buildings, hospitals, train stations, warehouses, factories, etc., to economically viable new uses. In its broadest application adaptive reuse projects are aimed at conserving, preserving, and recycling surplus property by adapting older buildings to current market needs. Many such projects have involved the conversion of old structures into new office and retail space, markets, restaurants, and other commercial applications. Adaptive reuse projects can also be used for the production of new housing through conversion of old buildings to new apartments or studio units.

Benefits:

Adaptive reuse is one method to introduce housing into non-residential areas.

Many older buildings which may be adapted to housing uses are located in downtown areas and may therefore offer new residents convenient access to transportation, shopping and employment centers.

Renovation and reuse of previously vacated or deteriorated buildings can be less expensive than new construction since infrastructure and other site improvements are already in place. In addition, the
basic structure, although it may need renovation, is already there. With the lower construction costs associated with renovation, developers can produce affordable living units.

Projects which involve historically or architecturally significant buildings may qualify for preservation tax credits for private investors if used for low-income housing. [Blueprint for Bay Area Housing, p. 61]

Adaptive reuse projects can assist in revitalizing declining areas by giving new life to deteriorating buildings and by bringing in new residents.

Key Policy Issues:

Communities can facilitate adaptive reuse projects by adopting flexible zoning policies, such as mixed-use zoning (see "Mixed-Use Development," p. 42), or by allowing residences as a permitted or conditional use in appropriate commercial and industrial zones. [Blueprint for Bay Area Housing, p. 61]

Utilizing this technique may involve various steps, including making inventories of potential adaptive reuse sites, amending local zoning regulations, arranging for possible property transfers of publicly-owned buildings, and providing assistance in obtaining sources of funding such as loans, grants and rent subsidies.

Some contractors are unwilling to renovate old buildings, particularly wooden structures, for which commercial financing may be difficult to find. In addition, lengthy or difficult renovations may decrease profit margins.

MIXED-USE DEVELOPMENT

Mixed-use development is an example of flexible zoning which allows various types of land uses, including office, commercial, residential, and in some cases, light industrial or manufacturing, to be combined within a single development or district. A major purpose of mixed-use zoning is to allow a balanced mix of office, commercial, and residential uses in close proximity to increase convenience to residents and reduce the number of shopping and/or commuting trips needed. Mixed-use developments can range in size from single buildings with apartments located over retail uses, to large-scale projects that include office and commercial space along with hotels, convention centers, theaters, and housing.

Mixed-use developments can be regulated in various ways. A number of communities allow residential uses by-right in certain identified commercial zones, or, in other cases, as conditional uses. Other communities allow mixed uses within a planned unit development or in special mixed-use districts which would allow this type of development by-right in designated areas.

Benefits:

Mixed-use projects can offer cost savings to developers in the form of shared parking arrangements and shared costs for building operation, maintenance, and security. [Zoning for Mixed-Use Development, p. 1]

Commercial uses can help subsidize affordable or low-income housing, which may be necessary because of high urban land prices and development costs.

Mixed-use zoning can create new housing opportunities in areas that may have previously allowed only commercial, office, or light industrial uses.

Mixed-use zoning offers one way to accommodate the higher housing densities called for under the
state's Growth Management Act. Higher density housing in commercial zones may be more politically acceptable than increasing densities in established single-family zones.

Mixed-use zoning can be utilized to better integrate land uses by locating residential developments near downtown commercial (shopping) areas. With residents working or shopping close to home, traffic congestion is reduced.

Allowing mixed uses can help to revitalize distressed neighborhoods by creating a sense of community and safety. [Streamlining Local Regulations, p. 20]

If a community wishes to encourage a mixture of land uses, it must do more than permit residential uses. It must actively promote them. The zoning ordinance should reflect this need by providing incentives or requirements for residential development and by encouraging the continuance of existing residential use.

"Mixed-Use Districts"
Teresa Zogby PAS Memo No. 79-11

**Key Policy Issues:**

Mixing of uses often requires changes in the zoning ordinance, PUD regulations, or site plan requirements.

Mixed-use developments require attention to development standards and site planning to assure that different uses are compatible (or buffered).

Mixed-use projects may be particularly useful as a type of infill development in underdeveloped commercial areas (see "Infill Development," p. 39). A common example would be small retail shops with apartments located on upper floors.

Density bonuses, or other types of incentives, may be useful to encourage developers to include residential development in mixed-use areas.

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**REZONING VACANT LAND FOR RESIDENTIAL USE**

This technique involves amending the comprehensive plan and rezoning surplus industrial and/or commercial land for residential uses. It can include land zoned for office, commercial, and industrial uses as well as underutilized agricultural land and surplus land owned by public entities.

**Benefits:**

The advantages to rezoning for residential use include close proximity to job centers, shopping and transit.

Land for affordable housing development can be created without disturbing current residential areas.

Residential use generates less traffic than industrial, office or commercial uses. [Blueprint for Bay Area Housing, p. 53]

**Key Policy Issues:**

A land use inventory, together with an analysis of projected need for commercial and industrial land,
will assist in determining the availability of surplus commercial and industrial land supply.

Special attention must be paid to site development in terms of proximity to factories and plants which produce emissions or may be unattractive in appearance.

Special attention must be paid to the possible presence of toxic materials in the soils of industrial lands developed for housing. [Blueprint for Bay Area Housing, p. 54]

Allowable densities should be sufficient to ensure economical development. Higher densities will generally result in lower per unit development costs.

Consider allowing density bonuses, or other types of developer incentives, in return for construction of affordable housing.

OFFICE/HOUSING LINKAGE

Office/housing linkage refers to a variety of programs that either require or induce developers of commercial office buildings, or other non-residential building projects, to directly construct or make financial contributions toward the construction of market-rate or affordable housing. Linkage programs make developer compliance or participation a condition for permit approval or a prerequisite for receiving some type of development incentive (usually an increase in allowable density). Linkage provisions may apply either to new construction or expansion of existing space.

Housing linkage programs are based on the theory that new commercial office development results in increased demand for housing and that developers should make some contribution toward meeting the increased housing needs which they help to create. In essence, housing linkage programs are designed to mitigate the effects of new employment on housing within the community. [Blueprint for Bay Area Housing, p.51]

Linkage programs generally are either voluntary/incentive-based or mandatory. Mandatory programs work in a way that is similar to impact fees by requiring a developer to mitigate the impact of new office development on the provision of affordable housing by paying into a housing construction fund or building the required housing. Developers are usually given the opportunity to choose between a cash payment, construction, or some other type of mitigation, such as participation in a joint public-private housing project. Voluntary linkage programs offer developers various development incentives, such as density bonuses, reduced setbacks and reduced parking requirements, which add value to the developers project or reduce development costs, in exchange for the provision of affordable housing units.

Benefits:

Incentive-based linkage programs benefit both the developer and the city. Developers benefit by acquiring development bonuses which increase the value of the project or reduce construction costs. Cities benefit from more affordable housing.

Developers are often free to select the most advantageous option for the provision of housing: constructing housing off-site; contributing to a housing trust fund; purchase of development rights (see "Transfer of Development Rights," p. 47) and rehabilitation of a building; or some other method provided by the city. [Zoning Bonuses in Central Cities, p.7]

By providing or preserving housing close to office centers, more employees are provided with the opportunity to live near where they work.
Linkage programs do not generally require the expenditure of local tax dollars to fund the construction of affordable housing units.

Office/housing linkage may be particularly useful in cities that are experiencing high growth rates with accompanying tight, high-priced housing markets to reduce some of the pressure on available housing.

A successful linkage program first must work economically; that is, it must benefit both the developer and the municipality without imposing unacceptable burdens on either.

*Defensible Linkage*
Christine J. Andrew and Dwight Merriam
Journal of the American Planning Association

**Key Policy Issues:**

The legal basis for mandatory office/housing linkage programs has not yet been clearly established in Washington State. Mandatory linkage requirements in other states have been challenged on various legal grounds, including whether linkage regulations constitute an illegal tax, or whether there is a "rational nexus" or relationship between new commercial development and an increased need for housing. Mandatory linkage programs should be carefully designed to provide a defensible legal foundation. Cities should be prepared to demonstrate an actual link between the need for housing and commercial development. [Defensible Linkage, p.205] Cities contemplating this type of program should consult their city attorney.

Voluntary/incentive-based linkage programs which provide benefits to developers in exchange for housing are more likely to avoid or withstand legal challenges.

Office/housing linkage programs will be more successful in a strong commercial office market where developments are more numerous and developers more willing to take advantage of development incentives.

Some programs allow the substantial rehabilitation of residential buildings to count as new construction, so that developers may have the option to build new residential facilities or rehabilitate existing facilities.

Linkage programs may be pre-set in an adopted zoning ordinance or negotiated on a case-by-case basis.

**TRANSFER OF DEVELOPMENT RIGHTS**

Transfer of development rights (TDR) programs have been implemented in a number of cities across the country as a means of generating funds for the preservation and/or rehabilitation of low- and moderate-income housing primarily in downtown areas. TDR programs have also been used as a means for preserving historic landmark structures, open space, and agricultural land.

TDR programs are based on the idea that ownership of real property is comprised of a "bundle of rights," including, among other things, a property's "development rights," which can be separated, sold, and transferred to another piece of property. "Development rights" are defined as the "difference between the existing use of the parcel and its potential use as permitted by existing law." [Making TDR Work, p. 203]

A TDR program allows for the sale and transfer of unused development rights from one building or parcel of land (the "sending site") to another (the "receiving site"). For example, if a four-story building were located in a zoning district that actually allowed the construction of buildings up to six stories, the
unused development potential of the building would be equal to two stories (the difference between the existing use of the property and its potential use permitted under the zoning law). Under a TDR system, the development potential represented by these two stories could be separated from the property, sold, and transferred to another property. The purchased development rights can then be used to increase the development potential of the receiving site.

Benefits:

Use of this technique benefits both developers, who can increase the density of their projects, and the community, which benefits from the preservation of low- and moderate-income housing in the downtown.

Increased housing opportunities in the downtown area can help to reduce traffic congestion and provide workers with housing close to employment centers.

When development rights are transferred between nearby properties, there is no net increase in allowable density in the area.

TDR programs can also be used to preserve historically significant sites in the downtown.

Key Policy Issues:

TDR programs can be complex to administer and apparently work best primarily in healthy downtown real estate markets where developers have sufficient incentives to purchase and use development rights.

Communities should determine whether they are willing to accept increased density in receiving areas in order to preserve low- and moderate-income housing. Property owners in receiving areas may find TDRs to be acceptable in theory, but not in their back yards.

Once development rights have been transferred, most communities place legal restrictions on the sending site, prohibiting future use of the transferred development potential.

TDR programs often provide only limited funds which may need to be supplemented, depending upon needs, through other fund sources including private financing and public subsidies.

TDR programs must be designed on the basis of a thorough understanding of the real estate market both to determine feasibility and to develop appropriate regulations. If existing zoning allows enough density to satisfy current market demand, developers will have no interest in purchasing additional development rights.

Communities may want to consider a requirement that construction or rehabilitation of housing units be completed within some fixed period of time.

EXEMPTION FROM IMPACT FEES

Over the last ten to fifteen years, many cities in Washington have enacted measures to impose impact fees to help pay for infrastructure improvements necessitated by new developments. Fees have been collected for traffic mitigation, water and sewer utilities, parks and open space, school sites, and other purposes. Impact fees have been imposed under various sources of authority, including the State Environmental Policy Act (SEPA), the State Subdivision Law, and more recently enacted legislation authorizing "voluntary agreements" with developers to help pay for development impacts. The new State Growth Management Act (GMA) also contains specific authority for cities to impose impact fees
for "public streets and roads, publicly owned parks, open space, and recreation facilities, and fire protection facilities in jurisdictions that are not part of a fire district." [RCW 82.02.090(7)]

Recognizing that impact fees can have a negative effect on the construction of affordable housing, some jurisdictions have enacted measures to reduce or waive such fees for projects that include affordable housing units.

The GMA also gives recognition to the effects of impact fees on housing affordability by granting cities specific authority to exempt low-income housing projects from the payment of impact fees. [See RCW 82.02.060, 1990-91 Supp.]

**Benefits:**

Fee reductions or waivers reduce developer's upfront costs and can help to support the construction of affordable housing units.

**Key Policy Issues:**

Many communities that impose impact fees have determined that new home buyers should bear the financial responsibility for the infrastructure costs necessitated by new developments. These policies are based on the notion that the person who benefits should pay. In the case of affordable housing construction, a good argument can be made that such developments benefit the entire community, and, therefore, reductions or waivers of impact fees are appropriate.

In order to use impact fee reductions and/or waivers, communities need to review all current impact fees and exaction requirements to determine where reductions and/or waivers for affordable housing projects may be appropriate.

Impact fee reductions and/or waivers can be used in conjunction with other affordable housing techniques such as density bonuses or inclusionary requirements to promote the construction of affordable housing.

**SUBDIVISION/DEVELOPMENT STANDARDS**

Communities can lower the costs of creating affordable housing by reevaluating their subdivision ordinances and updating or modifying regulations where possible. Minimum requirements can often be lowered to reflect actual projected usage and needs.

Most subdivision requirements involve site-improvement standards which are designed to hold down future maintenance and minimize both public and private repair and replacement costs. These standards are also used to prevent flooding, minimize accidents, protect air and water quality, and to preserve or enhance the residential setting. [How Local Regulatory Improvements Can Help, p. 5]

In subdivisions, the frontage, or width, of the lot determines the linear distance of streets, sidewalks and utility lines that must be put in place for each house. Communities requiring lot widths of, say, 100 feet when 50 feet would suffice, may be almost doubling the cost of the major site improvements per housing unit. Reducing the minimum lot frontage is an important way to reduce housing costs in many communities.

*How Local Regulatory Improvement Can Help*

HUD/Joint Venture for Affordable Housing

Site improvement standards include drainage requirements, dimensions and spacing of storm drains or
other storm catchments, street construction standards, minimum street pavement widths and cul-de-sac turning radii, parking standards, sidewalk standards, sewer pipe sizes and spacing of manholes.

Cost savings in site improvements allow direct reductions in the cost of new housing. Site improvement costs (including labor and materials) have been found to account for roughly 10 percent or more of development costs for a new single-family home. [How Local Regulatory Improvements Can Help, p. 5] Such savings passed on to the consumer, may make the difference between affordable and non-affordable housing.

Affordable housing demonstration projects in Washington State and elsewhere have utilized various types of cost reduction methods, including:

Modification of street requirements. For example, minimum pavement width (and depth in some cases) of low-volume subdivision streets have been reduced, as well as minimum turning radii of cul-de-sacs.

Curbs and gutters have been made optional, or less expensive rolled curbs were used.

Reduction of sidewalk requirements to allow narrower widths, sidewalks on one side of the street, replacement with pathways, or elimination altogether.

Costs have been decreased by using methods which reduce water and sewer utility requirements including: running the main lines close to the setback line to reduce house connection distance; common trenching for multiple utilities; shared sewer laterals and water service lines serving two or more dwellings; reduced water and sewer line sizes; and curvilinear sewers.

Grass swales and temporary impoundments may be used in many cases instead of more expensive storm drains and underground systems.

Parking space size and quantity can be reduced based on the size of current compact cars, the actual number of residents in the development, and the availability of transit. Off-street parking on driveways, in carports, or in common areas may be less costly.

[Affordable Housing - Local Government Regulatory and Administrative Techniques, pp. 17-24]

Benefits:

The money savings in development costs can significantly reduce the cost of housing, particularly when they can be spread over a large number of housing units.

The revision of subdivision standards can promote more efficient use of labor, materials and time, thus expediting the construction process and saving on total development costs. These savings can also be passed along to the consumer.

Key Policy Issues:

Washington State subdivision requirements and local ordinances must be carefully reviewed before implementing cost saving techniques.

Care must be taken to avoid site development shortcuts which may prove to be more costly in the long run.

Subdivision ordinances that have not been amended in many years and which may contain some outdated standards, in particular, may benefit from a review aimed at increasing housing affordability.
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APPENDIX A

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Rural Cluster Zoning: Survey and Guidelines

By Gary Pivo, Robert Small, and Charles R. Wolfe

Rural counties close to urban areas are the fastest-growing places in America. During the past three decades, outlying metropolitan counties, characterized by rural settlement patterns and heavy commuting to the metropolitan core, grew at a much faster rate than the nation, central metropolitan counties, or metropolitan statistical areas as a whole. Between 1970 and 1987, the population of outlying counties in metropolitan areas increased by nearly 7.5 million. As more people work at home, retired populations grow, and workplaces suburbanize—people are looking for homes beyond suburbia. A new rural sprawl is consuming large amounts of land, splitting wide open spaces into fragments that are useless for agriculture, wildlife habitat, or other rural open space purposes. Residential and agricultural land uses often conflict. When residential subdivisions move into agricultural districts, rising land values and nuisance complaints often discourage the continuation of farming or forestry. Favorable property tax rates, agricultural zoning districts, and right-to-farm laws are all aimed at reducing these conflicts.

Gary Pivo is Assistant Professor of Urban Design and Planning, University of Washington; Robert Small is Professor of Architecture and Landscape Architecture, University of Washington; and Charles R. Wolfe is an Attorney at Robinson & Cole, Hartford and Stamford, Connecticut. Kane C. Callahan, Environmental Analyst, Robinson & Cole, assisted in the preparation of certain footnotes pertaining to agricultural preservation.


3. The objectives of agricultural zoning are: (1) to protect productive agricultural land from development; (2) to locate new development on suitable soils in areas where public sewers could be efficiently provided; (3) to ensure a proper balance of different types of land uses to meet the needs of the future; (4) to minimize land use conflicts arising from nonfarm uses near active farms; and (5) to control the escalation of property values of farmland and reduce taxes paid by farmers. A typical agricultural zoning ordinance requires: (1) large lots (i.e., 50 to 100 acres in size); (2) a prohibition against conversion of farmland to nonfarm uses; and (3) restriction of residential development to structures directly related to farming activities, such as a home occupied by a farmer, the farmer's parents or children, or unrelated people working on the farm. Special exceptions and conditional uses, such as farm implement dealerships or feed lots, may be compatible and allowed within an agricultural zone. Once agricultural zones (or districts) have been adopted, affected properties often qualify for tax relief under a state's use-value assessment program. Certain states have adopted legislation providing for the establishment of agricultural districts. For example, N.Y. Agric. & Mkt. Law 14, §300 (McKinney, 1972, as amended 1988).

4. The law of the majority of American jurisdictions, see, for example, N.Y. Pub. Health Law, §1300-c, (McKinney, 1960) has been modified to provide farmers with a defense against nuisance actions resulting from changed conditions in the locality. These statutes, generally termed "right-to-farm laws," vary considerably in many particulars but share the common goal of encouraging farmers to continue devoting their land to agriculture. The impetus for this policy is recognition that a serious effort must be made to protect America's agricultural base. As of December, 1983, 47 states had adopted "right-to-farm laws" to protect farmers from nuisance suits.

An alternative is rural cluster zoning. In the case of Orinda Homeowners Committee v. Board of Supervisors, 90 Cal. Rptr. 88, 90 (Cal. App. 1970), 23 ZD 75, a California court has defined cluster zoning as:

...a device for grouping dwellings to increase dwelling densities on some portions of the development area in order to have other portions free of buildings...the plan is to devise a better use of undeveloped property than that which results from proceeding on a lot-to-lot basis. Control of density in the area to be developed is an essential part of the plan. The reservation of green, or at least open, spaces in a manner differing from the conventional front or back yard is another ingredient.

This commentary focuses on the application of cluster zoning to rural areas. Ordinance writers need to pay special attention to rural clustering since not all suburban cluster concepts are readily transferrable to rural locations. Specifically, suburban cluster concepts are inapplicable to rural areas because of their unique issues related to rural character and lifestyles, environmental protection, and compatibility with agriculture. New, special principles must guide the adaptation of cluster zoning to the rural countryside.

To assure a successful translation from a suburban to a rural cluster approach, we have developed 11 general guidelines for rural cluster zoning. The purpose of this commentary is to present these guidelines and to explain how they differ from current regulatory practice and implementation efforts.

Our ideas are based on review and development of general legal "ground rules" for cluster development, an analysis of 20 rural cluster zoning ordinances from across the country, interviews with and recommendations of the officials who use them, and graduate planning and design studios conducted at the University of Washington, in Seattle. Overall, we found significant opportunity for improvement in planning for and implementing rural cluster regulations.

LEGAL BASIS

Whether the cluster approach appears in a suburban or rural context, it must be based on sound legal and planning principles. Before drafting a cluster ordinance, those involved must assess the rural community's overall goals and objectives for open space preservation and provision of housing types so that these goals can be included in planning documents that precede the cluster ordinance. For instance, if two of the goals are to link open spaces and to complement existing agricultural uses, these sentiments should appear as policies in the adopted municipal "master plan" or "plan of development." In addition, planning and zoning authorities should develop inventories and maps of desired protected areas in order to target parcels of land suitable for cluster development in the future.

State Guidelines

The local authorities implementing a rural cluster program must also consider any statutory language regarding cluster ordinances from the enabling authority at the state level. A minority of states' zoning enabling legislation specifically ad-

5. Such advance planning is essential in the wake of Nolan v. California Coastal Commission, 483 U.S. 925 (1987), 39 ZD 226, in order to establish that the requirements of the cluster regulation bear a substantial relationship to a legitimate governmental interest.
Commentary

dresses cluster zoning. Nonetheless, several courts have held that a cluster ordinance may proceed under ordinary zoning enabling authority, even if the cluster technique is not specifically authorized by the state, because properly drawn cluster ordinances restrict only the location of structures on a parcel and do not severely impede the overall density of development. Cluster ordinances have also been generally upheld under general zoning enabling authority as long as adequate procedural due process provisions and administrative standards and guidelines are included.

Most cluster ordinances are optional—a developer can readily ignore the cluster alternative in favor of a conventional subdivision. There is, however, an increasing trend toward allowing local authorities to require cluster development on a given parcel. New York's zoning enabling law, for instance, expressly allows a local legislative body to authorize its local planning board to mandate cluster development under certain circumstances. Many legal authorities argue that, under a properly drafted ordinance, mandated cluster developments may be permissible even without such express enabling language.

Rules and Standards
To be workable and legally defensible, a cluster ordinance must set out rules and standards that can be applied to proposed developments. Such an ordinance should contain, at minimum, provisions that set out:

1. Application procedures;
2. A statement of minimum parcel size, natural features, or other qualifying parcel characteristics necessary for allowing the use of the cluster approach;
3. A method or calculation for determining the allowable number of dwellings (overall density);
4. Infrastructure requirements for roads and provision of water, sewer, and other utilities;
5. Permitted types of dwellings and design standards, if any;
6. Criteria for establishing dimensions of lots, setbacks, and road frontages; and
7. Perhaps most importantly, specific criteria addressing


9. N.Y. Town L., §281; N.Y. Vill. L., §7-738; N.Y. Gen. City Law, §37. N.Y. Town L., §281, allows the local legislative authority to authorize local planning boards to require cluster developments upon review of subdivision plats. This procedure is applicable only to lands zoned for residential purposes and cannot result in a number "of buildings or dwelling units" that would exceed the number allowed pursuant to an ordinary subdivision in the underlying zone.

Additional provisions may address specific requirements for affordable units, and/or allowance of a density bonus to developers of cluster projects. Density bonus provisions are common, where legally allowable, and can often provide an extra incentive for a developer to use cluster development. As discussed below, however, its applicability may be of questionable value where preservation of rural character is a major goal.

PURPOSES OF RURAL CLUSTER ZONING
Two purposes for rural cluster zoning are commonly given in cluster ordinances: to allow residential development in rural areas and to protect open space suitable for agriculture or environmental protection. The ordinances' fundamental premise is that both purposes can be achieved on the same parcel. The following statements of purpose are typical:

[T]o allow single-family dwellings to be clustered together in areas of non-prime agricultural farmland in a manner that prime agricultural farmland, woodland, and unique natural amenities would be preserved. (Rochester-Olmstead County, Minnesota)

[T]o provide ... a compatible mixture of agricultural uses and low-density residential development, to promote agriculture, and to protect scenic and environmentally sensitive areas. (Montgomery County, Maryland)

[T]o encourage the preservation of agricultural lands for continuing and enhanced production through use of a variety of techniques. One technique is clustering instead of dispersal of units on larger parcels. (San Luis Obispo County, California)

But the purposes of rural cluster zoning are not always achieved in practice. Impediments can include, among others, conflicts with existing agriculture, developers choosing not to use the cluster option, and open space reserves that are unsuitable for their intended purposes.

The following guidelines help practitioners overcome these types of impediments. Because practitioners may use the guidelines in a variety of jurisdictions, they are stated in general language and performance terminology wherever possible. The guidelines are intended to be adapted to specific situations by local practitioners.

LOCATING RURAL CLUSTER DISTRICTS
Guideline 1: Rural cluster zoning is most suitable in rural-to-suburban transition areas where it can preserve small-scale farming and open space while providing needed housing.

Many of the planners we interviewed believe that rural cluster housing could conflict with, rather than protect, agricultural uses. This suggests that rural clustering may make more sense as an alternative to large-lot (one to 10 acres) zoning in transitional areas where residential development is already displacing major commercial farming and forestry operations. In these circumstances, rural cluster developments can prevent open lands from being fragmented and can preserve open tracts large enough for wildlife habitat, recreation, and certain kinds of smaller-scale agriculture and

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forestry that are compatible with residential development. The preservation of these activities amid residential development will enhance the rural character of the area.

Figure 1 illustrates this guideline. It shows an archetypical planning area, based on a common metropolitan county, with an urban/suburban core in the center and large-scale agriculture and forestry on the periphery. Rural cluster zoning districts are located according to Guideline 1 in the transitional zone between the urbanized and resource production areas.

The ordinances we reviewed generally adhere to this principle by limiting clusters to areas that are already zoned for one- to 10-acre lots. Nevertheless, some of these areas are currently undivided and continue to support large-scale agriculture. Jurisdictions should be careful not to encourage residential development through introduction of the cluster option in areas planned for large-scale agriculture. Cluster developments should be introduced only in areas planned for residential subdivisions.

Land use conflicts can occur even when cluster developments are restricted to transitional areas. Smaller-lot cluster developments are often viewed as incompatible with rural character by the residents of larger-lot hobby farms. These conflicts must be addressed by careful siting and site planning decisions which will be discussed below.

Guideline 2: Cluster district boundaries should be drawn in relation to the boundaries of existing agricultural areas and environmental systems.

In practice, the boundaries of zoning districts are often arbitrary. A major goal of rural cluster zoning, however, is to preserve the integrity of natural systems, rural areas, and agricultural activities. If zoning district boundaries are the boundaries of natural features or systems (watersheds, plateaus, river valleys, or agricultural areas defined by common soils), the natural features can more easily be protected from incompatible land uses. Thus, it is essential to use these natural boundaries when laying out zoning districts.

LOCATING PROJECTS WITHIN RURAL CLUSTER DISTRICTS

Guideline 3: The total amount of development in the zoning district should be limited through gross density requirements that protect and maintain existing rural character, open space systems, and water resources, and control traffic volumes and road building.

As noted above, cluster ordinances often give developers a density bonus. Several ordinances we reviewed allowed density bonuses as an incentive to cluster. For example, in Washington County, Oregon, the gross density of rural clusters can be one unit per eight acres, while traditional subdivisions may not exceed one unit per 10 acres. An extreme case is Clark County, Washington, where a traditional subdivision in the agricultural district can be developed at one unit per 20 acres, while clustered subdivisions can be developed at one unit per five acres, plus an additional two dwellings for each 20 acres in the project.

In some jurisdictions, cluster developers receive a density bonus in return for providing certain public benefits. For example, in Orange County, Florida, the dedication of land to a public purpose yields a 25 percent density bonus. Similarly, in King County, Washington, gross densities can be doubled in exchange for a variety of public benefits.

While density bonuses often avoid allegations of a taking without just compensation, the cumulative effects of density bonuses should be carefully assessed. Rural areas can be easily damaged by excess density because they often contain natural drainage systems, septic systems, and lower-standard roads.

For example, groundwater pollution from septic systems is a common overdevelopment problem in rural areas. Many current gross density standards were adequate as long as development remained sparse. Heavy development dependent upon septic systems, however, has led to serious groundwater pollution problems. The low density and scattered development pattern in these areas has in turn led to prohibitive additional development costs where rural sewer service is proposed to prevent more groundwater pollution.

The total permitted development under a density bonus program should be kept well within the carrying capacity of these natural, infrastructural, and environmental systems. If density bonuses are allowed, the density allowed without a bonus should be reduced so that the total density with maximum bonuses will not exceed a reasonable total density for the area.

Guideline 4: Control the siting of cluster projects in order to minimize impacts on neighbors, infrastructure systems, and the surrounding environment.

Cluster developments can cause greater environmental impacts than lower density subdivisions. Cluster developments often require new access roads or road improvements, generate more traffic, stress groundwater supplies, increase

10. New York enabling legislation specifically prohibits density bonuses for cluster developments at least as to single-family dwellings. See f.n. 5, supra.
surface runoff, and cause more negative visual impact.

Local land use decision makers should ensure that cluster projects are sited in locations that can absorb these potential impacts. It may not be appropriate to allow cluster developments throughout a zoning district. Some existing ordinances, for example, only allow cluster developments where public sewer and water service are planned or available, or on sites with adequate road frontage.\textsuperscript{11} It might also be appropriate to restrict cluster developments to less visually prominent locations or away from areas already characterized by larger lots. One way to clearly designate those areas in a district in which cluster projects are allowed is by adding a cluster overlay to the zoning map in those areas where careful study has shown that only minimal impact will occur.

Figure 2 shows a typical result of regulating the siting of cluster developments within a zoning district. Reasonable access to major arterials is available to the cluster sites, which are separated by open space buffers from existing large-lot developments. The cluster sites are also located on upland soils away from the stream corridor to allow for the natural filtration of runoff from the developed portions of the project.

Guideline 5: Permitting procedures for rural cluster projects should be no more difficult for cluster developments than for traditional subdivisions and should include incentives to encourage their use. Cluster developments should be mandatory where they are a necessary contribution to a planned open space network.

One reason that local land use decision makers issue few permits for cluster developments is that cluster permitting procedures are often more complex and involve greater risk than the traditional subdivision review process. Developers prefer predictability, but more than half the jurisdictions we surveyed apply discretionary approval methods to cluster developments. These methods decrease the applicant's confidence that the appropriate approvals will take place. Half the jurisdictions we surveyed approve rural cluster developments through a floating zone application process, which usually requires approval by the municipal legislative body. Some jurisdictions require conditional use or special use permit applications, while others require either zoning or subdivision site plan approval. The authors of cluster ordinances require such additional discretion because local land use decision makers often recognize that cluster developments may not be appropriate everywhere in a zoning district. In our survey of jurisdictions, we found that, where cluster developments are permitted, they are not nearly as common as traditional subdivisions. Clearly, cluster ordinances will not achieve their purposes if they are ignored.

In fact, this avoidance of clustering is unacceptable when the preservation of open spaces and sensitive resources is at issue. It is particularly important that jurisdictions employ the cluster technique when each development project is intended to make a contribution to a larger planned open space system. As noted above, advance plans, inventories, and mapping are essential elements to adoption of a local cluster program, and the cluster ordinance should set out the parcel-qualifying

\textsuperscript{11} Cluster ordinances should provide specific language addressing provision of infrastructure and the necessary approval processes, especially with regard to rural areas where public water and sewer services are not planned or readily available, necessitating multijurisdictional approvals for community wells, community sewage systems, and establishment of private water companies.

\textsuperscript{12} See text accompanying f.n. 5 and "Legal Basis for Cluster Zoning," supra.

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frasstructural capacities should all be considered. Environmental analysis should investigate soils, steep slopes, wetlands, wildlife habitats, and hydrological systems to determine which areas can accommodate cluster development without harmful impacts. Social and aesthetic factors should also be analyzed, particularly whether an area can visually absorb cluster development. Visually prominent areas or existing "viewsheds" that do not contain opportunities for screening buildings and structures might be inappropriate for cluster development. Finally, infrastructural capabilities, both existing and planned, should be thoroughly analyzed to ensure that a cluster development can be served without reducing service levels below acceptable standards. Local land use decision makers may elect to exclude cluster development in areas that would require extensive new roads or cannot be served by public sewer and water or community septic systems and wells.

Mandatory clustering may be most appropriate to ensure the development of an open space network where local land use decision makers have carefully engaged in this advance planning process. 13

About half of the jurisdictions we surveyed treat cluster development as an outright permitted use. By combining a "permitted use" approach to clustering with the cluster overlay approach described above, a jurisdiction can control where cluster development occurs without discouraging its use. Where legally allowed, density bonuses can also be used to encourage the use of the cluster technique. According to our survey, however, the increased density incentive is unnecessary when cluster permitting is no more time consuming or risky than the traditional subdivision review process.

RURAL CLUSTER PROJECT PLANNING

Guideline 6: Standards should be established for minimum and maximum project size so projects are large enough to support viable open spaces but small enough to prevent the residential cluster development from overwhelming the surrounding area.

Each project should be large enough to support viable and autonomous agricultural or other open space uses. (While it is often desirable to link the open spaces within a project with neighboring open space tracts to provide a larger open space unit, insufficient large-scale open space planning usually precludes such successses.) The majority of the ordinances we reviewed contained a minimum project size ranging from six to 30 acres. These minimums, however, may not be large enough to ensure sufficient open space. The minimum area necessary to support open space uses that are compatible with the surrounding district should be established first. 14 The minimum project size should then be based on the percentage of each project that will be preserved as open space. For exam-

pie, if a 20-acre parcel is required for a viable agricultural operation and 50 percent of the project site will remain as open space, then the minimum project size should be at least 40 acres.

In Rochester-Olmstead County, Minnesota, a maximum project size of 160 acres is built into the cluster ordinance. This guards against oversized "master planned communities," which can amount to new villages in areas planned for smaller-scale settlements.

Guideline 7: The primary component of the project site is the open space system. The system should be a network of spaces designed to be usable for their intended purposes and permanently protected or explicitly designated for future development. Requirements for ongoing maintenance, management, and use are advisable. Preparation and implementation of an open space management plan should be required.

In our interviews, we learned that the open space in cluster projects often remains unused when not properly designed for its intended use. Rural open space uses usually require a certain type of land to be physically or economically feasible. If a goal of clustering is to protect agriculture and other open space activities, cluster ordinances must protect the sensitive land that these activities require.

Land requirements vary according to the planned use and the land's productivity. Critical characteristics can include slope, access, wetlands, drainage, aquifers, visibility, floodplain, land area, soil types, parcel shape, solar access, and separation from nearby residential areas. Consideration also should be given to protecting ongoing open space activities and, as noted above, creating linkages with open space units on adjoining sites.

Figure 3 illustrates the arrangement of cluster areas in relation to the project's open space. The open space within the project is a continuation of off-site open space. The environmentally sensitive stream corridor is included in the open space, and the area is large enough to provide an effective buffer for the water system. In addition, the open space tract is located on the most productive bottom land soils and is large enough to allow for an economically feasible agricultural operation.

Slightly more than half of the surveyed ordinances set a minimum standard for the amount of open space that must be provided. However, this standard is almost always given as a percentage of the site area—ranging from 10 to 97 percent, with 60 percent as typical. But, with a percentage standard, the size of the open space reserve depends on the size of the project. The result can be open spaces that are too small for their intended uses. In addition, an arbitrarily large percentage that seriously infringes on otherwise allowable densities can create the basis for taking and due process claims. 15

Some ordinances use a minimum acreage standard for open space ranging from 25 to 40 acres. Yet a performance standard should be used, such as the median farm size in the region, county, or town, the minimum viable economic unit for agriculture, or the minimum viable ecological unit for wildlife habitat.

13. Only one jurisdiction in our survey, Marin County, California, has made clustering mandatory. Mandatory clustering, however, is on the increase in the Northeast. Such an approach is expressly allowed under New York enabling legislation, see f.n. 9 and accompanying text, supra, and has been adopted on a town-by-town basis in the New England States. See R. Arendt, "Open Space Zoning: An Effective Way to Retain Rural Character," Michigan Planning, v.3, no.1 (January/February 1990), at 6-7, and "Varying Degrees of Mandating Cluster Design," unpublished, Center for Rural Massachusetts, September 15, 1989.

14. This approach will also avoid claims that the open space set-asides is derived in an arbitrary and capricious manner and will help to satisfy the Nollan standard. See f.n. 5, supra.

15. Recent federal and state case law, however, has suggested that courts will look beyond such claims and scrutinize the uses available on the "whole parcel" before finding that a taking has occurred. Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 39 ZD 221 (1987), Penn. Central Transportation Co. v. City of New York, 438 U.S. 104 (1978), 30 ZD 434.
In contrast with the guidelines described above under "Legal Basis," two-thirds of the surveyed ordinances do not regulate the character of the open space reserve. This frequently results in open spaces that are fragmented, narrow, inaccessible, or without adequate soils for farming, timber management, or other rural open space uses. Only a third of the ordinances describe the type of land that should be preserved, how the open space should be sited, or its required dimensions. These standards are usually given in performance language. For example:

The design of open space should show consideration for habitats by leaving open large single blocks of land. . . . (Fort Collins, Colo.)

Open space should be appropriately located with respect to permitted uses. (Loudon Co., Va.)

The greatest amount of prime agriculture land shall be preserved and in such a way as to ensure continuing feasibility of agriculture and forestry. (Rochester-Olmstead County, Minn.)

A common argument for cluster development is that it helps to permanently preserve open space. Our interviews indicated, however, that opponents of cluster developments believe the open space will not be permanent and, eventually, more development will occur than if a traditional subdivision were allowed.

A successful cluster development must feature a regime of conservation easements, restrictive covenants and an established method of open space administration. But these measures are ignored in many areas. Only one-quarter of the ordinances we reviewed require open space. Most of them allow development upon rezoning of the underlying zoning district. In some cases, ordinances contain a time-bound limit on open space development, for example, prohibition of development for five years or without an affirmative vote by 75 percent of the residents.

Ongoing open space management was also frequently mentioned in our interviews. Common issues include poor land maintenance and failure to manage land for its intended use. Several ordinances in our survey address the maintenance problem by requiring open space to be maintained to certain standards, such as free of litter and fire hazards. A maintenance agreement is sometimes required that enables a homeowners' association or public agency to maintain the property and bill the owners or exercise lien rights if standards are not met. Half of the ordinances assure the creation of a homeowners' association to manage maintenance responsibilities.

Most cluster ordinances include permitted open space uses, but, without adequate zoning enforcement or an active homeowners' association, there is no guarantee that such uses will be pursued. We were informed of several lands that were planned for agriculture or timber production but not used for these purposes. Typically, permitted open space uses include crops, range, wildlife preserves, water storage, leach fields, and public outdoor recreation. In some cases, more intensive uses, such as radio towers, public utility buildings, riding stables, and dog kennels are permitted with a conditional or special use permit.

Only two of the surveyed ordinances require open space management plans. The plan required by one of these two ordinances is an agricultural management plan. Both requirements call for plans that go well beyond maintenance issues to address techniques for open space management that allow continued use as habitat, farmland, or other rural activities.

Guideline 8: There should be a pattern of cluster areas established within the project site. Residential development should be confined to these areas. The cluster areas should be integrated into the site without causing significant impacts on neighboring properties and without interrupting the continuity of existing and planned agricultural and related uses.

Residential portions of cluster projects should be carefully located and designed in accord with the advance plans, inventories, and mapping described above to avoid conflicts with neighboring land uses and on-site open space activities. Such location decisions should include, for example, visually screening dwelling units from off-site vantage points, locating housing away from environmentally sensitive areas, existing agricultural uses, and other portions of the site suitable for open space, and careful placement of dwellings upwind from areas subject to land management practices that will cause dust, noise, smoke, odors, or similar problems.

Figure 3 illustrates some of these concepts. Open space buffers are provided to screen cluster areas from neighboring properties. In addition, homesites are located away from the environmentally sensitive stream corridor, hazardous floodplain, and agriculturally productive bottomland.

None of the ordinances we reviewed contain explicit directions on siting residential areas within cluster projects. Yet
Commentary

conflicts between residential and open space uses were commonly reported in the interviews. By requiring cluster site plans to restrict residential development to carefully selected locations, houses are developed and open space is preserved.

HOMESITE CLUSTERS

Guideline 9: The net density of the cluster areas in the project should be matched as closely as legally permissible to the land requirements for rural lifestyles. In particular, private open spaces should be large enough for rural household activities, such as raising animals, keeping orchards, and gardening.

One of the frequently cited reasons for citizen opposition to rural cluster developments is the assumption that such developments will not allow rural household activities that require larger amounts of land, such as keeping horses or other small-scale agricultural activities. Most of these activities, however, do not demand five- or 10-acre private open spaces and can be compatible with smaller private spaces in cluster developments.16

Many ordinances do not ensure that private open spaces will be large enough to support rural household activities. In most ordinances, the minimum lot size is usually less than one acre, and, in some cases, it can be as low as 5,000 square feet.

Our interviews indicated that, as a result, it is not uncommon for lots or private open spaces to contain insufficient area for a family to keep a horse, plant an orchard, or carry on other activities enjoyed by rural households. Site planners and land use decision makers should honor the expectations of families moving to a rural area, and private open spaces or lots should be designed (probably on the order of 1/2 to 1.5 acres) to meet rural needs.

Figure 4 illustrates a typical home site cluster area consistent with these suggestions. The net density and lot sizes are large enough to support the kinds of outdoor activities suitable for each rural household.

Guideline 10: The number of home sites per cluster area should be limited. Within the cluster, there should be a minimum of four and a maximum of eight home sites, a cluster core and access corridor to accommodate vehicles, utilities, and commonly owned facilities, and a pathway to the project open space system. Cluster areas should be visually and physically separated from one another and roadways by open space buffers.

The number of units in a single cluster area can affect how well the overall cluster development fits into a rural area. It is not unusual for traditional farms to group five or six buildings together around a central farmyard or for a similar number of farmhouses to be grouped around a crossroads. Clusters of homes that follow this traditional pattern do not conflict with normal expectations for rural development patterns. When the number of homes in a cluster development grows too large, however, the cluster development becomes more similar to a suburban subdivision than to a rural group of buildings. Some of the ordinances we reviewed appropriately limit the number of home sites in a cluster development to six or eight. They require that, if a parcel can be divided to exceed this number, then more than one cluster area must be created, with separation by an open space buffer. Figures 3 and 4 illustrate cluster areas limited to fewer than six or eight home sites.

The few ordinances that do require separation between cluster areas do not establish the required width of a buffer or how it should perform. In forested areas, the buffers should be wide enough to provide visual separation. The actual required width will depend on the type of vegetation in the area. Typically, buffer width will need to be between 100 and 300 feet. But, in grassland environments, vegetative screening is not possible. In those circumstances, even wider buffers will be necessary. Figure 3 shows how adequate separation between clusters should be provided.

Each cluster area also should contain an interior common area that provides vehicular access to the home sites and common land for a community leach field, small public water supply, or other necessary facilities. This is illustrated in Figure 4. Road access to the home sites from the interior of the cluster area gives residents direct access to the project's open space directly from their private yards, prevents the private open spaces from being broken apart from the larger project open space system, and causes buildings to look like part of a larger farm rather than a separate development across the road. The cluster area's interior common area should also be connected to the project's common open space system by a generous open corridor, as shown in Figure 4.

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16. Cluster developments are often approved in the form of condominiums or common interest communities. In such developments, all land may be owned in common by the homeowners' association, predating the concept of "private open space" or separate lots. "Exclusive use areas" of the common elements, however, may be established to benefit the owner of each dwelling unit through an elaborate system of covenants.
PRIVATE SPACES

Guideline 11: Lot dimensions, building heights, and setbacks should be compatible with rural character and provide the privacy, seclusion, and access to open space that are normally expected in rural areas.

Most of the ordinances we reviewed contain standards for building heights, lot dimensions, and setbacks. Yet, in most cases, the standards are more appropriate for suburban development. Here again, the expectations of rural households should be incorporated into the area and bulk standards.

Each lot or private space should allow for reasonable vehicular access from the cluster interior and provide the maximum possible rear frontage onto the project's open space system. But, buildings should be set back as far as possible from the open space in order to augment the open space system. Buildings should also be set back as far as is reasonable from neighboring lots to increase privacy and seclusion. Variations in the front yard setback can also help to avoid the visual sameness typically found in suburban tracts but out of place in rural settings. Buildings should not exceed heights associated with traditional rural residences and accessory buildings in the vicinity. Several of these suggestions are illustrated in Figure 5.

CONCLUSION

Many communities have adopted rural cluster zoning ordinances in response to the rapid rate of development in rural places close to urban areas. Their basic purposes are to meet the need for residential development while preserving agricultural and other open space uses. In practice, however, these ordinances do not always achieve their goals. We believe this reflects a lack of understanding of how to apply cluster concepts to rural areas, as well as an inappropriate application of suburban cluster concepts to rural locations.

In order to assure the success of rural cluster zoning, we have developed several guidelines. The guidelines are drawn from general legal "ground rules," the advice of current practitioners, design studies, and existing ordinances. Experience with these types of projects, however, is in its infancy. Accordingly, every community that uses this technique should watch the results carefully and be willing to implement new solutions, to realize the potential of rural cluster zoning.
RCW 36.70A.011
Findings -- Rural lands.

The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.

Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.

[2002 c 212 § 1.]
RCW 36.70A.090
Comprehensive plans -- Innovative techniques.

A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights.

[1990 1st ex.s. c 17 § 9.]
A developer’s point of view in zoning debates

BY MITCH WILLIAMS

In 1996 I moved to Kilbuck. My historical reference is circa 1954.
Joanna F. Valencia

From: Chris Lyons [chris@stargazerprop.com]
Sent: Wednesday, February 06, 2008 4:42 PM
To: CDS User
Cc: Joanna F. Valencia

Subject: written comments regarding the Eastern Washington Growth Hearings Board Decision Compliance

First of all I would like to thank the Kittitas County Community Development staff for all their work in public meetings and distribution with information. I know it is hard to find consensus in a diverse county such as we have here in Kittitas County. I am writing to you as a full time resident and business owner in Kittitas County.

I would like to submit the following written comments in regards to the documents I have reviewed that are posted on the Kittitas County Comp Plan portion of the website.

Snoqualmie Pass, previously designated Urban Growth Node with a sub area plan, should not be designated Rural but instead should be designated Limited Areas of More Intense Rural Development (LAMIRDs) and then undertake the task of reviewing areas to determine if the area is better designated as Rural.

Compliance Narrative

Issue 2 Designate the subject area, including the Snoqualmie Pass subarea and Gold Creek area, Rural and reflect changes in both its land use and zoning maps to be consistent with the rural area elements.

See my comments under Issue 5.

Issue 5 Undertake the task of reviewing areas in Kittitas County, including areas previously designated Urban Growth Nodes (Easton, Ronald, Snoqualmie Pass, Thorp and Vantage), to determine whether the area is better designated as a Rural or a Limited Areas of More Intense Rural Development (LAMIRDs). Until such time that such designation is warranted, designate previously designated Urban Growth Nodes to Rural land use designations.

Snoqualmie Pass should not be designated Rural. Currently our weekend visitors are approaching or exceeding 20,000 visitors per Saturday and Sunday. This demand and volume needs to be supported by a community, commerce, and transportation that is not Rural in character. The current ski areas, state park sno-parks and commercial facilities are turning people away due to maxed out resources, therefore growth and demand are necessary to maintain a quality of place and life here. This volume is increasing each year and with the growing Puget Sound Region represents an opportunity for Kittitas County to develop tourism that brings vitality and growth to our region while protecting the environment that they come to visit however I do not believe this can be supported with a Rural designation. Snoqualmie Pass population must be looked at for day visitors, weekend residents that may not be Kittitas County residents, and fulltime Kittitas County residents and not just designated by a population of fulltime Kittitas County residents.

Rural

This category is intended to maintain rural character by creating and maintaining larger parcel sizes, which may allow individual wells and septic systems on each parcel or community wells or community septic systems, or other innovative technologies.

We currently and in previous subarea plans expressed the desire for small parcel sizes that allow a greater density and concentration of development. We have Snoqualmie Pass Utility District for water and sewer and do not need septic and wells.

2/8/2008
Addition of 17.36.025: density requirements for PUDs limiting density to not exceed the density of the underlying zone in non urban areas.

If the underlying zone is rural, then we currently have and would like to continue a density greater than 1 unit per 3 acres.

Rural Res DENSITY

Standard 1. The average density across the contiguous land use designation shall not exceed 1 unit per 3 acres.

Standard 2. Newly created 3 acre parcels shall require, at a minimum, community water and septic systems. Newly created 5 acre parcels may be served by individual wells and onsite individual septic systems.

In response to Feb 4, 2008 Comments document

From Kittitas County Conservation, futurewise and Ridge - "Futurewise is a statewide citizens group working to promote healthy communities and cities while protecting working farms and forests for this and future generations."

Snoqualmie Pass subarea and Gold Creek area are neither working farms nor working forests. In true support of a healthy communities and cities those citizens have the need and the right to find healthy recreation and respite from their urban environment. I contend that is far better for the environment that those citizens are able to get to this place of recreation in less time and travel distance than out of state or over the border. However they must be serviced by parking and transportation to get there, by lodging to stay over, and able to access healthy food and drink, as well as experience, learn and appreciate the history and culture of the area. In order to do all these things you must have commerce and facilities to support them. Through this you are also able to create a healthy and vital community in Kittitas County by providing opportunities for businesses to develop and an economy for families here in our own communities.

GPO 8.50 In the case of Planned Unit Developments (PUDs), only residential PUDs should be permitted outside of UGA’s or UGN’s.

This does not support the need for mixed use developments allowed in the previous PUD designation copied below at Snoqualmie Pass, regardless of whether it is designated Rural or LAMIRD. Snoqualmie Pass should be an exception to this restriction of PUDs.

Existing Planned Unit Development Zone

17.36.020 Uses permitted.
A. All residential uses including multifamily structures;
B. Hotels, motels, condominiums;
C. Retail businesses;
D. Commercial-recreation businesses;
E. Restaurants, cafes, taverns, cocktail bars;

I would like to continue on our goals that were part of the Kittitas County Comprehensive Plan Chapter 7: Snoqualmie Pass Sub-Area. To quote a few key to not being designated as a Rural area are -
2. "Create a vibrant year-round community in the Pass area capable of supporting, and suitable for, both residents and recreational visitors to the the area."
5. "Protect the ability to expand recreational opportunities, both winter and summer, to accommodate visitor growth." which recognized and included Commercial Uses
6. "A mixture of uses, including residential and community services, would be encouraged in conjunction with commercial development."

2/8/2008
It seems to me that the citizens, and not special interests groups, should determine the future of their home and community. It is important to me, a resident of Snoqualmie Pass, to keep a higher density and a mixture of recreational and commercial uses now and far into the future.

In ending my comments I would like to include the following excerpt from the summary outcome of the Upper Kittitas County Vision Plan in 2005.

e. Snoqualmie Pass: March 31, 2005 - Thirteen persons in attenda
Unique Outcomes...

- Snoqualmie pass enjoys a unique position located in close proximity to n and rural Kittitas County, enjoying both urban and rural amenities.
- While higher densities in other parts of the Upper County have increase in the Snoqualmie Pass area, the planned neighborhoods have contribute sense of community.
- A favorite winter playground, Snoqualmie endures a slower economy due year. This imbalance contributes to the need for affordable housing, year employment and more diversity in the economic structure.
- Accommodations need to be made for commercial services and truck tri facilities for community needs.
- The community maintains a strong sense of history, and connection to th
- This area has examples of appropriate clustered housing and ski resort d
- Businesses support development of water and sewer systems.

Respectfully submitted by,

Chris Lyons
PO Box 165
Snoqualmie Pass, WA 98068-0165

2/8/2008
February 6, 2008

Mr. Mark McClain, Chairman  VIA E-Mail: eds@co.kittitas.wa.us
Board of County Commissioners  julie@co.kittitas.wa.us
Kittitas County
205 W. Avenue
Room 108
Ellensburg, WA 98926

RE: Comments on Comprehensive Plan Compliance with Eastern Washington Growth Management Hearings Board Order

Dear Chairman McClain and Members of the Board:

Thank you for the opportunity to provide these brief comments on the County’s effort to bring the Comprehensive Plan and Development Code into compliance with the Eastern Washington Growth Management Hearings Board (Growth Board) Final Decision and Order issued in the matter of Kittitas County Conservation et al., v. Kittitas County.

Due to the short time that the public has had to review CDS’ recommendations; the complexity of the issues; inaccurate maps; and long-standing consequences of what is being proposed, we support the County requesting an extension of at least 180 days from the Growth Board. The county needs to engage in a public review process that adequately presents the information and affords meaningful public input. It was clear from the testimony provided by representatives of each of the Citizen Advisory Committees at the February 4th BOCC hearing that the Committee members were in awe, dismay and disappointment at Director Piercy’s complete disregard for the Committees’ hard work and recommendations. The public needs more of an opportunity to understand the Committees’ recommendations. Director Piercy clearly needs to be held accountable for his apparent unilateral interpretation of the law and strong arming of individual property rights.

We support the county’s continued effort to uphold and retain the Rural-3 zone. The addition of the R-10 and Ag-10 zones combined with the limitations imposed by proposed changes to the Planned Unit Development (PUD) and Performance Based Cluster Platting (PBCP) will only perpetuate sprawl and the mass consumption of the county’s land base by only offering low density development and large lot sizes. We do not support the proposed changes to the PUD and PBCP. By removing and reducing bonus densities, the County is taking away the only tools available to reduce the development footprint of inevitable growth in the county. In addition, the proposed
changes to the PUD and PBCP will perpetuate meaningless open space without any public benefit and offers no incentive for developers to utilize these code provisions.

Easton Ridge Land Company and other proponents of PUDs and PBCP developments clearly need to be vested under the existing code provisions at the time such projects were either approved or such project applications were deemed complete.

We agree that the existing Urban Growth Nodes (UGN) need to be re-evaluated for current conditions and growth trends. But the county’s proposal to simply remove the UGN designation and make these lands “rural” seems at odds with those portions of the UGNs that are already supporting urban development. The county needs to quickly identify how lands will be designated as LAMIRDs, that that means in terms of land uses, and support such designation in the record in accordance with the GMA.

The land use and zoning maps are not accurate and will need to be updated to reflect current conditions, which may significantly alter the overall proposal as shown in the maps on the county’s website.

In particular, the maps for the Roslyn/Ronald area are not accurate. The entire area spanning around Roslyn’s Section 17 and west toward Ronald is proposed for “Rural Conservation” land use and “Forest & Range” zoning. However, the majority of this landscape already contains parcels below the 20 acre minimum set forth in the county’s criteria for “Rural Conservation” and is mostly zoned, and already developed, as R-3 or Planned Unit Development. So a zoning designation of these lands to Forest & Range is a “downzone” and unrealistic. Director Piercy inaccurately stated at the February 4th BOCC hearing that the only downzone was from Suburban (1 acre minimum) to Rural Residential (5 acre minimum). These inaccuracies represent unrealistic land use planning and misleads the BOCC, the public and the Growth Board. We are not as familiar with lower county lands but given the inaccuracies in the upper county map, the lower county maps should be reviewed for accuracy as well.

We appreciate CDS’s efforts to meet the Growth Board’s mandate but we believe it is better to slow down and do it right with adequate public involvement and accurate information.

Thank you for the opportunity to provide these comments.

Sincerely,

Anne Watanabe
Joanna F. Valencia

From: Darryl Piercy  
Sent: Thursday, February 07, 2008 3:28 PM  
To: Joanna F. Valencia; Dan Valoff; Scott Turnbull  
Subject: FW: comments and recommendations for 2/8/08 deadline  
Attachments: im55200802071428.PDF

fyi

From: Mandy Robinson  
Sent: Thursday, February 07, 2008 2:26 PM  
To: David Bowen; Alan Crankovich; Mark D. McClain; Neil Caulkins; Darryl Piercy; Allison Kimball  
Subject: comments and recommendations for 2/8/08 deadline

Please let me know if there is anyone else I should forward this info. on to.

Thank you!

Mandy Robinson, Deputy Clerk of the Board
Kittitas County Commissioners Office
205 West Fifth Street Suite #108
Ellensburg, WA 98926
509-962-7586 Phone
509-962-7679 Fax
mandy.robinson@co.kittitas.wa.us
http://www.co.kittitas.wa.us/

All e-mail sent to this address will be received by the Kittitas County e-mail system and may be subject to Public Disclosure under Chapter 42.56 RCW and is subject to archiving and review by someone other than the recipient.

From: bocc@co.kittitas.wa.us [mailto:bocc@co.kittitas.wa.us]  
Sent: Thursday, February 07, 2008 2:24 PM  
To: Mandy Robinson  
Subject: From DigitalCopier 55cpm

2/8/2008
February 7, 2008

Kittitas County Board of Commissioners
205 West 5th Ave, Suite 108
Ellensburg, WA 98926

Dear Chairman McClain and Commissioners Bowen and Crankovich

On behalf of the Forest Lands Advisory Committee (Committee), I am pleased to enclose our final recommendations for designation criteria of commercial forestlands of long-term significance in Kittitas County. These recommendations are set forth in the attached Resolution adopted today by the Committee. As you know, the Committee was charged by the Commissioners in 2006 to assess the status of commercial forestlands and the forest products industry within the County, and develop recommendations for the designation, de-designation, zoning and development of these lands. GPO 2.130B. Since its formation in May 2007, the Committee has been working diligently to fulfill these enumerated tasks within the timeframe set forth by the Commissioners (May 2008).

On a related but separate track, we understand the Hearing Board's Growth Final Decision and Order ("Order") currently sets February 18 as the date the County must achieve compliance under the Growth Management Act (GMA). As we read the Order, the only compliance issues relating to commercial forestlands are the County's lack of mandatory designation criteria and a specific notice provision applying to all plats, short plats, development permits and building permits. Order, at page 20 (defining scope of Issue #3), at pages 26-28 (Board's analysis and conclusion of Issue #3), and at pages 81-84 (Board's Findings of Fact and Conclusions of Law). Under the terms of the Order and its compliance schedule, the County's adoption of de-designation criteria is therefore not required at this time.

Community Development Services (CDS) has submitted recommendations for Issue #3 that incorporate draft documents previously prepared by the Committee. The CDS recommendations also include significant new concepts for commercial forestlands made without any prior coordination with, or review by, the Committee, such as designation and de-designation of commercial forestlands occurring only once every seven years. For the reasons stated for the record on February 4, we oppose the CDS recommendations and view them as exceeding requirements under the Order, and inconsistent with the Committee's understanding of its tasks and role under GPO 2.130B.

To comply with the Order, we enclose for your review the Committee's final recommendations for amending the Comprehensive Plan to achieve compliance with the GMA. These recommendations reflect the hard work of the Committee, and we respectfully ask that you adopt them, and not the changes recommended by the CDS to Section 2.3(C), Commercial Forest Land Use, and their proposed GPOs 2.142B, 2.142C, and 2.142D. Our changes do not differ significantly from portions of the CDS
recommendations except to delete provisions relating to de-designation and concepts that do not reflect the Committee's review and approval. The Committee will continue its work on de-designation criteria, and expects to have its final recommendations to you by May 2008 and in time for the annual amendment process for the Comprehensive Plan. KCC 15B.03.010, .020 (changes to the Comp Plan that are unnecessary to resolve the Order must be part of the annual amendment process).

If you have any questions, please don't hesitate to call me anytime.

Sincerely

On Behalf of the Forest Lands Advisory Committee:

Jeff Jones

cc: Marty Mauney
    David K. Whitwill
    Lee Spencer
    Vic Monahan
    George B. Shelton
    Bart Ausland
    Gary Kurtz
    Phil Hess
    Steve Griswold
Forest Land Advisory Committee

The Forest Lands Advisory Committee (Committee) does hereby adopt and resolve the following:

WHEREAS, the Committee was formed in May of 2007,

WHEREAS, the Kittitas County Board of County Commissioners (BOCC) adopted GPO 2.130B as part of the 2006 update and amendment of the County Comprehensive Plan (Ord. 2006-63), authorizing the formation of a growth management commercial forest committee comprised of persons within the timber industry to (a) assess the status of commercial forestlands in the commercial forest products industry in Kittitas County, (b) make recommendations for developing standards for criteria designating and redesignating commercial forestlands, and (c) make recommendations regarding zoning and development regulations for commercial forestlands within Kittitas County;

WHEREAS, the BOCC also provided in GPO 2.130B that the Committee should forward their recommendations directly to the BOCC within one year of the Committee's formation in May, 2007;

WHEREAS, on August 20, 2007, the Eastern Growth Management Hearings Board (Growth Board), issued its Final Decision and Order, Case No. 07-1-0004c (Order), and found the County out of compliance under the Washington Growth Management Act (GMA) on 12 issues, and remanded the Comp Plan back to the County;

WHEREAS, the compliance schedule set forth in the Order directed the County to achieve compliance with the GMA no later than February 18, 2008, and set a compliance hearing before the Growth Board for April 21, 2008;

WHEREAS, Issue Number Three of the Growth Board's Order is the only compliance issue directly implicating the Committee's tasks that are separately charged by the BOCC per GPO 2.130B. Issue Number 3 asks the following:

Does Kittitas County's lack of criteria for designating agricultural lands of long-term commercial significance, failure to adopt comprehensive plan provisions and development regulations to conserve natural resource lands and to protect them from incompatible development, lack of criteria for designating forest lands of long-term commercial significance, and failure to otherwise comply with the requirements for natural resource lands violate RCW 36.70A.020 (1-2, 5, 8-10, 12), 36.70A.040, 36.70A.050, 36.70A.060, 36.70A.070, 36.70A.110, 36.70A.130, 36.70A.170, 36.70A.172, and 36.70A.177? Final Decision at 20 (emphasis added);

WHEREAS, the Growth Board found that:

[The GMA] requires mandatory criteria for the designation of forest lands of long-term commercial significance. RCW 36.70A.060 and .170. The County does not have
mandatory criteria for the designation of forest lands of long-term significance. The County states that it is waiting until a commercial forest committee makes recommendations. This is helpful, yet the County is required to have the mandatory criteria now. The deadline has passed when the County was required to adopt such criteria. The failure to do so has resulted in a failure to protect such lands and a violation of the GMA. Final Decision at 27 (emphasis added).

WHEREAS, the Growth Board also held that:

The County is required to provide specific notice on documents pertaining to lands located within 500 feet of Resource Lands. RCW 36.70A.060. The County has failed to provide the full notice required under that section. The notice posted must be on all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of lands designated as resource lands containing a notice that the subject property is within or near designated resource lands. Kittitas County must add the required notice for mineral resource lands to ensure adequate notice is given of the probable activities that will occur at the County's gravel and rock mines. Final Decision at 27-28, 82-82.

WHEREAS, the Community Development Services (CDS) has developed recommendations in response to the Order and in doing so, has taken draft documents previously prepared by the Committee to address issues not required by the Order, such as criteria for the de-designation of commercial forestlands, along with language and concepts relating to commercial forestlands not previously shown to, or discussed by, the Committee, and inserted them into a proposed amendment to the Comp Plan;

WHEREAS, Issue 3 of the Order only requires the BOCC to adopt criteria for the designation of commercial forestlands and certain notice provisions;

WHEREAS, the Order and Compliance Schedule does not modify the Committee's charge under GPO 2.130B and for completing its work, including development of de-designation criteria, outside the scope of the Order's compliance schedule;

WHEREAS, the CDS broad recommendations do not reflect the letter or intent of GPO 2.130B, the Committee's final product, nor present a response appropriately tailored to the Order and Issue Number 3, lands, the Committee asks the BOCC not to adopt the CDS recommendations, and adopt the final recommendations for designation and notice as set forth below.

BE IT ADOPTED AND RESOLVED BY THE FOREST LANDS ADVISORY COMMITTEE, as follows,

Section 1. To Respond to Issue #3 (designation criteria): There shall be inserted as new paragraph number four into Section 2.3(C), Commercial Forest Land Use of the Comprehensive Plan (currently the 2006 version) the following language:

Per RCW 36.70A.170, the mandatory criteria contained within WAC 365-190-060 for designating commercial forest lands within Kittitas County is hereby adopted. The criteria, in combination with the use of private forest land grades of the department of
revenue (WAC 458-40-530) have been considered in identifying forest lands of long-term commercial significance in Kittitas County. The land use designation of Commercial Forest is used to recognize such forest lands in the County.

Section 2. To Respond to Issue #3 (designation criteria): GPO 2.131 shall be stricken entirely, and replaced with the following:

GPO 2.131 Commercial forestland should be identified and designated based on the criteria found at WAC 365-190-060, in combination with use of private forest land grades of the department of revenue (WAC 458-40-530).

Section 3. To Respond to Issue #3 (Notice): There shall be created a new GPO 2.142B:

GPO 2.142B Require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, shall contain a notice that states that: “The subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. Commercial natural resource activities performed in accordance with county, state and federal laws are not subject or legal action as public nuisances. (RCW 7.48.305)”

ADOPTED and RESOLVED this 7th day of February, 2008.

BY:

FOREST LANDS ADVISORY COMMITTEE

[Signatures]

David K. Whitwill

Lee Spencer

Jeff Jones

Bart Averland

Phil Hess

Vic Monahan

George B. Shelton

Gary Kurtz

Steve Griswold
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ADOPTED and RESOLVED this 7th day of February, 2008.

BY:

FOREST LANDS ADVISORY COMMITTEE

David K. Whitwill  
Vic Monahan  
George B. Shelton  
Gary Kutz  
Steve Gieswold  
Marty Mauney  
Lee Spencer  
Jeff Jones  
Bart Osland  
Phil Hess
Joanna F. Valencia

From: Noah Goodrich [ngoodrich@encompasses.net]
Sent: Friday, February 08, 2008 11:12 AM
To: Kittitas County Commissioners Office; Darryl Piercy; Joanna F. Valencia; Allison Kimball
Cc: Marc Kirkpatrick; Dave Nelson
Subject: Comments for the EWGHB Compliance Record
Importance: High
Attachments: Signed BOCC EWGHB.pdf

Please see the attached comments from Encompass Engineering & Surveying.

Noah Goodrich
Encompass Engineering & Surveying
108 East 2nd Street
Cle Elum, WA 98922
Phone: (509) 674-7433
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February 8, 2008

Board of County Commissioners
205 W 5th Ave Suite 108
Ellensburg, WA 98926

Re: EWGHB Compliance Meeting Extended Comment Period

Dear Commissioners:

Encompass Engineering & Surveying would like to take the opportunity to thank you for all your hard work and efforts serving on the Board of County Commissioners. We understand that the timeline for this matter is of the utmost importance. With that in mind we have the following comments for the record:

1) Prior to making a final decision in this matter, we would encourage and support you in a full 180 extension from the compliance deadline. In 1994, the newly adopted Critical Areas Ordinance was also appealed to the EWGHB. The County Commissioners at that time sought and won multiple deadline extensions allowing the county to produce a quality and informed ordinance. It would seem to be in the counties best interest to allow the FLAC and RLAC time to fully develop their ideas and recommendations to the Board of County Commissioners.

We believe that the recommendations that were brought before the Board of County Commissioners on February 4th, 2008 were at best, confusing. Although the documents may bring compliance with the EWGHB, they will leave the citizens of Kittitas County with an underdeveloped, and misunderstood Comprehensive Plan and Development Code. Wouldn’t it be in the best interest of the citizens to produce a product that both sides of the development community can live and work with?

2) In regards to the Performance Based Cluster Plat, we would encourage the Board of County Commissioners to not make a decision in this matter until the appeal is settled. We have seen this code come before the Board of County Commissioners many times in the last two years. A genuine concern for the citizens using this code is the fact that it changes too often and may soon not be a reliable development tool. If the Board of County Commissioners adopts the recommendations now and the court decides otherwise, we will all be back at the drawing board again.
Encompass Engineering & Surveying knows that the Board of County Commissioners will make an informed decision that is in the best interest of the citizens of Kittitas County. Please consider all the impacts the proposed amendments will have and allow the public and committees an opportunity to provide informative comments.

Thank you for the opportunity to comment on this matter.

Sincerely,
Encompass Engineering & Surveying

[Signature]
Marc Kirkpatrick
Principal

[Signature]
Noah Goodrich
Project Planner