

THE CITY OF BURLINGTON FAILED TO ADHERE TO THE FOLLOWING REGULATORY STATUTES REQUIRED UNDER THE RCW AND WAC RULES THAT WERE IN FORCE DURING THE 1997 ANNEXATION AND 1999 SEPA APPLICATION; AS FOLLOWS:

RCW 36.70A.030, RCW 36.70A.045, RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.110, RCW 36.70A.131, RCW 36.70A.140, RCW 36.70A.170, RCW 36.70A.172, RCW 36.70A.340, RCW 36.70A.345, RCW 43.21C .030, RCW 43.21C.031, WAC 365-190-040, WAC 365-190-070

A county or city that fails to designate critical areas, agricultural lands, forest lands, or mineral resource lands under RCW 36.70A.170 by the date such action was required to have been taken; (2) a county or city that fails to adopt development regulations under RCW 36.70A.060 protecting critical areas or conserving agricultural lands, forest lands, or mineral resource lands by the date such action was required to have been taken; (3) a county that fails to designate urban growth areas under RCW 36.70A.110 by the date such action was required to have been taken; and (4) a county or city that fails to adopt its comprehensive plan or development regulations when such actions are required to be taken.

RCW 36.70A.010 Legislative findings.

Applicable Cases

The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth.

[1990 1st ex.s. c 17 § 1.]

“The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.”

RCW 42.56.030

11/18/2013

DECLARATION OF MARGARET FLEEK, PLANNER FOR THE CITY OF BURLINGTON EXPLAINING HOW SHE HAD ADHERED TO THE RCW AND WAC CODES WHEN SHE WAS INSTRUMENTAL IN THE CREATION OF THE BURLINGTON HILL DEVELOPMENT; BUT NEGLECTED TO ADHERE TO THE STATES REQUIRED WAC 365-190-07 MINERAL RESOURCE LANDS: (1) Counties and cities shall identify and classify aggregate and mineral resource lands effective 4/15/91.]; EXCERPTS AS FOLLOWS:

1. I am currently employed as the Planner for the City of Burlington, Washington. I make this Declaration based on my personal knowledge.

2. I am employed by the City of Burlington as the Planning Director. I have been employed by the City for a period of 22 years and do hereby make this Declaration in that capacity.

3. My duties as Planning Director for the City of Burlington include managing the City's land use permitting process, which includes subdivision development, annexations, receiving permit applications for development proposals, and acting as the City's SEPA responsible official.

4. Burlington Hill has always been a predominant landmark of the area associated with the City. In the mid-1990's, and pursuant to the then-recently enacted Growth Management Act, Skagit County included Burlington Hill in the City of Burlington's Urban Growth Area ("UGA"). As set out in the Growth Management Act, cities and towns are most able to provide municipal services, **RCW 36.70A.110(4)**, and nearly all such UGA property is intended to be ultimately annexed into a city or town. Burlington Hill, on which several homes and an apartment building had already been developed, was identified for residential development by Skagit County. In the summer of 1998 a Forest Practices Permit Application was submitted to the state Department of Natural Resources ("DNR") by Lester Stafford, to harvest the timber on Burlington Hill. DNR issued a forest practices permit to Mr. Stafford. At about this same time, a group of property owners, which would include Property Investors, began to actively pursue annexation of Burlington Hill into the City.

5. The annexation of unincorporated property by a city or town is a complex process that requires many steps. The City of Burlington annexed Burlington Hill in strict accordance with

the statutes then in effect, which included the submission of two separate petitions to the City by the property owners desiring annexation; public hearings held before the City's Planning Commission, City Council, and County Boundary Review Board; and the formal adoption of an ordinance annexing the property. On May 20, 1997, the City accepted a petition commencing annexation proceedings of Burlington Hill into the City; the petition was signed by 9 property owners, including Property Investors. The annexation process was completed on December 10, 1998, when the Burlington City Council adopted an ordinance annexing Burlington Hill into the City. At the time of annexation the proposed Tinas Coma plat was being formulated, and I spoke to the property developers prior to, and subsequent to, annexation. In doing so, I maintained a professional relationship with the developers as I always do. The direction I have always received from the elected officials of the City is that the Planning and Building Departments are expected to provide excellent customer service to anyone who seeks information from the City, or who is navigating the permit system. As City Planner, I take a great deal of pride in the services that are offered by me and the staff that I supervise, and in the way that we interact with citizens on a daily basis.

6. At the same time as the annexation was proceeding, the Tinas Coma subdivision was being formulated by Property Investors. On January 13, 1999, a Draft Environmental Impact Statement was issued for the rezoning and development of Burlington Hill. AGRA Earth and Environmental was a co-author of the draft EIS. The City complied with all applicable statutory and regulatory requirements of public notice, hearing, and comment for the EIS. The Final EIS for the rezoning and development of Burlington Hill was issued on February 12, 1999. In preparing the EIS, the City complied with the requirements of **RCW 43.21C.030(2)(c)**.

7. On February 8, 1999, the City received a preliminary plat application for the Tinas Coma subdivision from the project's developer, Defendant Property Investors; the design of the plat placed the majority of the lots on the crown of Burlington Hill, so as to take advantage of views that are available. The plat design would require the developers to construct a roadway to serve the plat and access the lots. This roadway, called Hillcrest Drive, provided an entrance to the proposed subdivision from the northwest, and another entrance from the opposite of Burlington Hill on the southeast.

8. The Tinas Coma plat application was reviewed in accordance with the City's development regulations that were in place as of February 8, 1999. At that time, the City had not adopted any development regulations that addressed the development or redevelopment of former rock quarries or mining sites. I have read Plaintiffs' Motion...in which Plaintiffs' allege that the City's Code designated sites such as Burlington Hill as being "subject to special review." The City's Critical Areas Ordinance, which addresses geologically hazardous areas, was not adopted by the City of Burlington until 2002; the Tinas Coma subdivision was completed in 2000. No earlier ordinance addressed geologic hazards, or mining.

9. I have read...Declaration in Support of Motion for Dismissal Pursuant to Washington SLAPP Statute. At the time that SEPA was performed on the Tinas Coma subdivision proposal in 1999, the internet was still relatively new, and searches and search results such as those described...simply were not feasible.

10. On March 11, 1999, the Burlington City Council granted preliminary plat approval to the Tinas Coma subdivision. On June 8, 2000, the Final Plat of the Tinas Coma Addition was approved by the Burlington City Council. Attached hereto and identified as Exhibit "C" is a copy of the City's ordinance No. 1429, approving the final plat. The City Engineer at the time, Rod Garrett, and I approved the Tinas Coma Plat Map on August 10, 2000, and signed it that same day. The Plat Map was recorded by the Skagit County Auditor on August 11, 2000, at which time the subdivision's roadways were dedicated to public use.

RCW 36.70A.030 Definitions.

Applicable Cases

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

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

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

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

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

pursuant to this chapter.

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

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

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.708.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

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

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

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

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

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

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

(14) "Rural character" refers to the patterns of land use and 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.

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

(17) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

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

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

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

[1997 c 429 § 3; 1995 c 382 § 9. Prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.]

RCW 36.70A.045 Phasing of comprehensive plan submittal.

Applicable Cases

The department may adopt a schedule to permit phasing of comprehensive plan submittal for counties and cities planning under RCW 36.70A.040. This schedule shall not permit a comprehensive plan to be submitted greater than one hundred eighty days past the date that the plan was required to be submitted and shall be used to facilitate expeditious review and interjurisdictional coordination of comprehensive plans and development regulations.

[1991 sp.s. c 32 § 15.]

RCW 36.70A.050 Guidelines to classify agriculture, forest, and mineral lands and critical areas.

Applicable Cases

(1) Subject to the definitions provided in RCW 36.70A.030, the department shall adopt guidelines, under chapter 34.05 RCW, no later than September 1, 1990, to guide the classification of: (a) Agricultural lands; (b) forest lands; (c) mineral resource lands; and (d) critical areas. The department shall consult with the department of agriculture regarding guidelines for agricultural lands, the department of natural resources regarding forest lands and mineral resource lands, and the department of ecology regarding critical areas.

(2) In carrying out its duties under this section, the department shall consult with interested parties, including but not limited to: (a) Representatives of cities; (b) representatives of counties; (c) representatives of developers; (d) representatives of builders; (e) representatives of owners of agricultural lands, forest lands, and mining lands; (f) representatives of local economic development officials; (g) representatives of environmental organizations; (h) representatives of special districts; (i) representatives of the governor's office and federal and state agencies; and (j) representatives of Indian tribes. In addition to the consultation required under this subsection, the department shall conduct public hearings in the various regions of the state. The department shall consider the public input obtained at such public hearings when adopting the guidelines.

(3) The guidelines under subsection (1) of this section shall be minimum guidelines that apply to all jurisdictions, but also shall allow for regional differences that exist in Washington state. The intent of these guidelines is to assist counties and cities in designating the classification of agricultural lands, forest lands, mineral resource lands, and critical areas under RCW 36.70A.170.

(4) The guidelines established by the department under this section regarding classification of forest lands shall not be inconsistent with guidelines adopted by the department of natural resources.

[1990 1st ex.s. c 17 § 5.]

RCW 36.70A.060 Natural resource lands and critical areas--Development regulations.

Applicable Cases

(1) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to

assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals. Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

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

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

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

[1998 c 286 § 5; 1991 sp.s. c 32 § 21; 1990 1st ex. s. c 17 § 6.]

RCW 36.70A.110 Comprehensive plans--Urban growth areas.

Applicable Cases

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

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period. Each urban growth area shall permit urban densities and

shall include greenbelt and open space areas. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

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

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

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

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

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

[1997 c 429 § 24; 1995 c 400 § 2; 1994 c 249 § 2 7; 1993 sp.s. c 6 § 2; 1991 sp.s. c 32 § 2 9; 1990 1st ex.s. c 17 § 11.]

Notes:

Severability--1997 c 429: See note following RCW 36.70A.3201.

Construction--Application--1995 c 400: See note following RCW 36.70A.070.

Effective date--1995 c 400: See note following RCW 36.70A.040.

Severability--Application--1994 c 249: See notes following RCW 34.05.30.
Effective date--1993 sp.s. c 6: See note following RCW 36.70A.040.

RCW 36.70A.131 Mineral resource lands--Review of related designations and development Regulations.

Applicable Cases

As part of the review required by RCW 36.70A.130(1), a county or city shall review its mineral resource lands designations adopted pursuant to RCW 36.70A.170 and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060. In its review, the county or city shall take into consideration:

(1) New information made available since the adoption or last review of its designations or development regulations, including data available from the department of natural resources relating to mineral resource deposits; and

(2) New or modified model development regulations for mineral resource lands prepared by the department of natural resources, the department of community, trade, and economic development, or the Washington state association of counties.

[1998 c 286 § 7.]

RCW 36.70A.140 Comprehensive plans--Ensure public participation.

Applicable Cases

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

[1995 c 347 § 107; 1990 1st ex.s. c 17 § 14.]

Notes:

Finding--Severability--Part headings and table of contents not law--1995 c 347: See notes following RCW 36.70A.470.

RCW 36.70A.170 Natural resource lands and critical areas--Designations.

Applicable Cases

(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

(a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;

(b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;

(c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and

(d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050.

[1990 1st ex.s. c 17 § 17.]

RCW 36.70A.172 Critical areas--Designation and protection--Best available science to be used.

Applicable Cases

(1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, a growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW 36.70A.290 that involves critical areas.

[1995 c 347 § 105.]

RCW 36.70A.340 Noncompliance and sanctions.

Applicable Cases

Upon receipt from the board of a finding that a state agency, county, or city is in noncompliance under RCW 36.70A.330, or as a result of failure to meet the requirements of RCW 36.70A.210, the governor may either:

(1) Notify and direct the director of the office of financial management to revise allotments in appropriation levels;

(2) Notify and direct the state treasurer to withhold the portion of revenues to which the county or city is entitled under one or more of the following: The motor vehicle fuel tax, as provided in chapter 82.36 RCW; the transportation improvement account, as provided in RCW 47.26.084; the urban arterial trust account, as provided in RCW 47.26.080; the rural arterial trust account, as provided in RCW 36.79.150; the sales and use tax, as provided in chapter 82.14

RCW; the liquor profit tax, as provided in RCW 66.08.190; and the liquor excise tax, as provided in RCW 82.08.170; or

(3) File a notice of noncompliance with the secretary of state and the county or city, which shall temporarily rescind the county or city's authority to collect the real estate excise tax under RCW 82.46.030 until the governor files a notice rescinding the notice of noncompliance.

[1991 sp.s. c 32 § 2 6.]

RCW 36.70A.345 Sanctions.

Applicable Cases

The governor may impose a sanction or sanctions specified under RCW 36.70A.340 on:

(1) A county or city that fails to designate critical areas, agricultural lands, forest lands, or mineral resource lands under RCW 36.70A.170 by the date such action was required to have been taken; (2) a county or city that fails to adopt development regulations under RCW 36.70A.060 protecting critical areas or conserving agricultural lands, forest lands, or mineral resource lands by the date such action was required to have been taken; (3) a county that fails to designate urban growth areas under RCW 36.70A.110 by the date such action was required to have been taken; and (4) a county or city that fails to adopt its comprehensive plan or development regulations when such actions are required to be taken.

Imposition of a sanction or sanctions under this section shall be preceded by written findings by the governor, that either the county or city is not proceeding in good faith to meet the requirements of the act; or that the county or city has unreasonably delayed taking the required action. The governor shall consult with and communicate his or her findings to the appropriate growth management hearings board prior to imposing the sanction or sanctions. For those counties or cities that are not required to plan or have not opted in, the governor in imposing sanctions shall consider the size of the jurisdiction relative to the requirements of this chapter and the degree of technical and financial assistance provided.

[1994 c 249 § 33; 1993 sp.s. c 6 § 5.]

Notes:

Severability--Application-- 1994 c 249: See notes following RCW 34.05.310.

Effective date--1 993 sp.s. c 6 : See note following RCW 36.70A.040.

RCW 43.21C.030 Guidelines for state agencies, local 43.21C.030(2)(c).

Governments--Statements--Reports--Advice--Information.

Applicable Cases

The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

(a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(b) Identify and develop methods and procedures, in consultation with the department of ecology and the ecological commission, which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making

along with economic and technical considerations;

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(d) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any public agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, province, state, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the governor, the department of ecology, the ecological commission, and the public, and shall accompany the proposal through the existing agency review processes;

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(f) Recognize the world-wide and long-range character of environmental problems and, where consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(g) Make available to the federal government, other states, provinces of Canada, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(h) Initiate and utilize ecological information in the planning and development of natural resource-oriented projects .

[1971 ex.s. c 109 § 3.]

RCW 43.21C.031 Significant impacts.

Applicable Cases

(1) An environmental impact statement (the detailed statement required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. The environmental impact statement may be combined with the recommendation or report on the proposal or issued as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined document.

[1995 c 347 § 203; 1983 c 117 § 1.]

WAC 365-190-040 Process.

The classification and designation of natural resource lands and critical areas is an important step among several in the overall growth management process. Together these steps comprise a vision of the future, and that vision gives direction to the steps in the form of specific goals and objectives. Under the Growth Management Act, the timing of the first steps coincides with development of the larger vision through the comprehensive planning process. People are asked to take the first steps, designation and classification of natural resource lands and critical areas, before the goals, objectives, and implementing policies of the comprehensive plan are finalized. Jurisdictions planning under the Growth Management Act must also adopt interim regulations for the conservation of natural resource lands and protection of critical areas. In this way, the classification and designation help give shape to the content of the plan, and at the same time natural resource lands are conserved and critical areas are protected from incompatible development while the plan is in process.

Under the Growth Management Act, preliminary classifications and designations will be completed in 1991. Those planning under the act must also enact interim regulations to protect and conserve these lands by September 1, 1991. By July 1, 1992, counties and cities not planning under the act must bring their regulations into conformance with their comprehensive plans. By July 1, 1993, counties and cities planning under the act must adopt comprehensive plans, consistent with the goals of the act. Implementation of the plans will occur by the following year.

(1) Classification is the first step in implementing RCW 36.70A.050. It means defining categories to which natural resource lands and critical areas will be assigned. Pursuant to RCW 36.70A.170, natural resource lands and critical areas will be designated based on the defined classifications. Designation establishes, for planning purposes: The classification scheme; the general distribution, location, and extent of the uses of land, where appropriate, for agriculture, forestry, and mineral extraction; and the general distribution, location, and extent of critical areas. Inventories and maps can indicate designations of natural resource lands. In the circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be readily identified, these areas should be designated by performance standards or definitions, so they can be specifically identified during the processing of a permit or development authorization. Designation means, at least, formal adoption of a policy statement, and may include further legislative action. Designating inventoried lands for comprehensive planning and policy definition may be less precise than subsequent regulation of specific parcels for conservation and protection.

Classifying, inventorying, and designating lands or areas does not imply a change in a landowner's right to use his or her land under current law. Land uses are regulated on a parcel basis and innovative land use management techniques should be applied when counties and cities adopt regulations to conserve and protect designated natural resource lands and critical areas. The department of community development will provide technical assistance to counties and cities on a wide array of regulatory options and alternative land use management techniques. These guidelines may result in critical area designations that overlay other critical area or natural resource land classifications. That is, if two or more critical area designations apply to a given parcel, or portion of a given parcel, both or all designations apply. For counties and cities required or opting to plan under chapter 36.70A RCW, reconciling these multiple designations will be the subject of local development regulations adopted pursuant to RCW 36.70A.060.

(2) Counties and cities shall involve the public in classifying and designating natural resource lands and critical areas.

(a) Public participation:

(i) Public participation should include at a minimum:

Landowners; representatives of agriculture, forestry, mining, business, environmental, and community groups; tribal governments; representatives of adjacent counties and cities; and state agencies. The public participation program should include early and timely public notice of pending designations and regulations.

(ii) Counties and cities should consider using: Technical and citizen advisory committees with broad representation, press releases, news conferences, neighborhood meetings, paid advertising (e.g., newspaper, radio, T.V., transit), newsletters, and other means beyond the required normal legal advertising and public notices. Plain, understandable language should be used. The department of community development will provide technical assistance in preparing public participation plans, including: A pamphlet series, workshops, and a list of agencies available to provide help.

(b) Adoption process. Statutory and local processes already in place governing land use decisions are the minimum processes required for designation and regulation pursuant to RCW 36.70A.060 and 36.70A.170. At least these steps should be included in the process:

(i) Accept the requirements of chapter 36.70A RCW, especially definitions of agricultural lands, forest lands, minerals, long-term commercial significance, critical areas, geologically hazardous areas, and wetlands as mandatory minimums.

(ii) Consider minimum guidelines developed by department of community development under RCW 36.70A.050.

(iii) Consider other definitions used by state and federal regulatory agencies.

(iv) Consider definitions used by the county and city and other counties and cities.

(v) Determine recommended definitions and check conformance with minimum definitions of chapter 36.70A RCW.

(vi) Adopt definitions, classifications, and standards.

(vii) Apply definitions to the land by mapping designated natural resource lands.

(viii) Establish designation amendment procedures.

(c) Intergovernmental coordination. The Growth Management Act requires coordination among communities and jurisdictions to reconcile conflicts and strive for consistent definitions, standards, and designations within regions. The minimum coordination process required under these guidelines may take one of two forms:

(i) Adjacent cities (or those with overlapping or adjacent planning areas); counties and the cities within them; and adjacent counties would provide each other and all adjacent special purpose districts and special purpose districts within them notice of their intent to classify and designate natural resource lands and critical areas within their jurisdiction. Counties or cities receiving notice may provide comments and input to the notifying jurisdiction. The notifying jurisdiction specifies a comment period prior to adoption. Within forty-five days of the jurisdiction's date of adoption of classifications or designations, affected jurisdictions are supplied a copy of the proposal. The department of community development may provide mediation services to counties and cities to help resolve disputed classifications or designations.

(ii) Adjacent jurisdictions; all the cities within a county; or all the cities and several counties may choose to cooperatively classify and designate natural resource lands and critical areas within their jurisdictions. Counties and cities by interlocal agreement would identify the

definitions, classification, designation, and process that will be used to classify and designate lands within their areas. State and federal agencies or tribes may participate in the interlocal agreement or be provided a method of commenting on designations and classifications prior to adoption by jurisdictions.

Counties and/or cities may begin with the notification option ((c)(i) of this subsection) and choose to change to the interlocal agreement method ((c)(ii) of this subsection) prior to completion of the classification and designations within their jurisdictions. Approaches to intergovernmental coordination may vary between natural resource land and critical area designation. It is intended that state and federal agencies with land ownership or management responsibilities, special purpose districts, and Indian tribes with interests within the jurisdictions adopting classification and designation be consulted and their input considered in the development and adoption of designations and classifications. The department of community development may provide mediation services to help resolve disputes between counties and cities that are using either the notification or interlocal agreement method of coordinating between jurisdictions.

(d) Mapping. Mapping should be done to identify designated natural resource lands and to identify known critical areas. Counties and cities should clearly articulate that the maps are for information or illustrative purposes only unless the map is an integral component of a regulatory scheme.

Although there is no specific requirement for inventorying or mapping either natural resource lands or critical areas, chapter 36.70A RCW requires that counties and cities planning under chapter 36.70A RCW adopt development regulations for uses adjacent to natural resource lands. Logically, the only way to regulate adjacent lands is to know where the protected lands are. Therefore, mapping natural resource lands is a practical way to make regulation effective. For critical areas, performance standards are preferred, as any attempt to map wetlands, for example, will be too inexact for regulatory purposes. Standards will be applied upon land use application. Even so, mapping critical areas for information but not regulatory purposes, is advisable.

(e) Reporting. Chapter 36.70A RCW requires that counties and cities annually report their progress to department of community development. Department of community development will maintain a central file including examples of successful public involvement programs, interjurisdictional coordination, definitions, maps, and other materials. This file will serve as an information source for counties and cities and a planning library for state agencies and citizens.

(f) Evaluation. When counties and cities adopt a comprehensive plan, chapter 36.70A RCW requires that they evaluate their designations and development regulations to assure they are consistent with and implement the comprehensive plan. When considering changes to the designations or development regulations, counties and cities should seek interjurisdictional coordination and public participation.

(g) Designation amendment process. Land use planning is a dynamic process. Procedures for designation should provide a rational and predictable basis for accommodating change.

Land use designations must provide landowners and public service providers with the information necessary to make decisions. This includes: Determining when and where growth will occur, what services are and will be available, how they might be financed, and what type and level of land use is reasonable and/or appropriate. Resource managers need to know where

and when conversions of rural land might occur in response to growth pressures and how those changes will affect resource management.

Designation changes should be based on consistency with one or more of the following criteria:

- (i) Change in circumstances pertaining to the comprehensive plan or public policy.
- (ii) A change in circumstances beyond the control of the landowner pertaining to the subject property.
- (iii) An error in designation.
- (iv) New information on natural resource land or critical area status.
- (h) Use of innovative land use management techniques.

Resource uses have preferred and primary status in designated natural resource lands of long-term commercial significance. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques which minimize land use incompatibilities and most effectively maintain current and future natural resource lands.

Techniques to conserve and protect agricultural, forest lands, and mineral resource lands of long-term commercial significance include the purchase or transfer of development rights, fee simple purchase of the land, less than fee simple purchase, purchase with leaseback, buffering, land trades, conservation easements or other innovations which maintain current uses and assure the conservation of these natural resource lands.

Development in and adjacent to agricultural and forest lands of long-term commercial significance shall assure the continued management of these lands for their long-term commercial uses. Counties and cities should consider the adoption of right-to-farm provisions. Covenants or easements that recognize that farming and forest activities will occur should be imposed on new development in or adjacent to agricultural or forest lands. Where buffering is used it should be on land within the development unless an alternative is mutually agreed on by adjacent landowners.

Counties and cities planning under the act should define a strategy for conserving natural resource lands and for protecting critical areas, and this strategy should integrate the use of innovative regulatory and nonregulatory techniques.

[Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-040, filed 3/15/91, effective 4/15/91.]

WAC 365-190-070 Mineral resource lands.

(1) Counties and cities shall identify and classify aggregate and mineral resource lands from which the extraction of minerals occurs or can be anticipated. Other proposed land uses within these areas may require special attention to ensure future supply of aggregate and mineral resource material, while maintaining a balance of land uses.

(2) Classification criteria. Areas shall be classified as mineral resource lands based on geologic, environmental, the areas to be studied and their order of study shall be specified by counties and cities.

(a) Counties and cities should classify lands with long term commercial significance for extracting at least the following minerals: Sand, gravel, and valuable metallic substances. Other minerals may be classified as appropriate.

(b) In classifying these areas, counties and cities should consider maps and information on location and extent of mineral deposits provided by the Washington state department of natural resources and the United States Bureau of Mines.

Additionally, the department of natural resources has a detailed minerals classification system counties and cities may choose to use.

(c) Counties and cities should consider classifying known and potential mineral deposits so that access to mineral resources of long-term commercial significance is not knowingly precluded.

(d) In classifying mineral resource lands, counties and cities shall also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

- (i) General land use patterns in the area;
- (ii) Availability of utilities;
- (iii) Availability and adequacy of water supply;
- (iv) Surrounding parcel sizes and surrounding uses;
- (v) Availability of public roads and other public services;
- (vi) Subdivision or zoning for urban or small lots;
- (vii) Accessibility and proximity to the point of use or market;
- (viii) Physical and topographic characteristics of the mineral resource site;
- (ix) Depth of the resource;
- (x) Depth of the overburden;
- (xi) Physical properties of the resource including quality and type;
- (xii) Life of the resource; and
- (xiii) Resource availability in the region.

[Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-070, filed 3/15/91, effective 4/15/91.]