

A SHORTCOURSE



Department of Commerce

ON LOCAL PLANNING

A Short Course on Local Planning

Wednesday, February 20, 2019, 6:15 – 9:15 p.m.

Thurston County Courthouse Complex

2000 Lakeridge Drive SW, Olympia, WA Building 1, Room 152

Hosted by Thurston County

Agenda:

- 5:15– 6:30 WELCOME AND INTRODUCTIONS.....Commerce**
- 6:30 – 7:00 THE LEGAL BASIS OF PLANNING IN WASHINGTON.....Kristin French, Attorney at Law**
The statutory basis of planning in Washington State, and early planning statutes.
Constitutional issues in land use planning.
- 7:00 - 7:30 COMPREHENSIVE PLANNING BASICS.....Anne Fritzel, AICP, Planner**
An overview of Growth Management Act requirements for local planning. Ideas and tools for implementing and updating the comprehensive plan.
- 7:30 – 7:40 BREAK**
- 7:40 – 8:10 ROLES AND RESPONSIBILITIES.....Katie Baker, AICP, Planner**
Roles and responsibilities in the planning process. Legislative vs quasi-judicial decisions, tips for encouraging public involvement, best practices for effective meetings.
- 8:10 – 8:45 OPEN GOVERNMENT LAWSKristin French, Attorney at Law**
Open Public Meetings Act (OPMA) and Introduction to the Public Records Act (PRA). This training meets the requirements of RCW 42.30.205 requiring every member of a governing body to take OPMA training within 90 days of taking an official role, and every four years thereafter, as long as they remain in that role. Attendees will receive a certificate of training.
- 8:45-9:15 QUESTIONS AND ANSWERS.....All**



Planning Association
of Washington



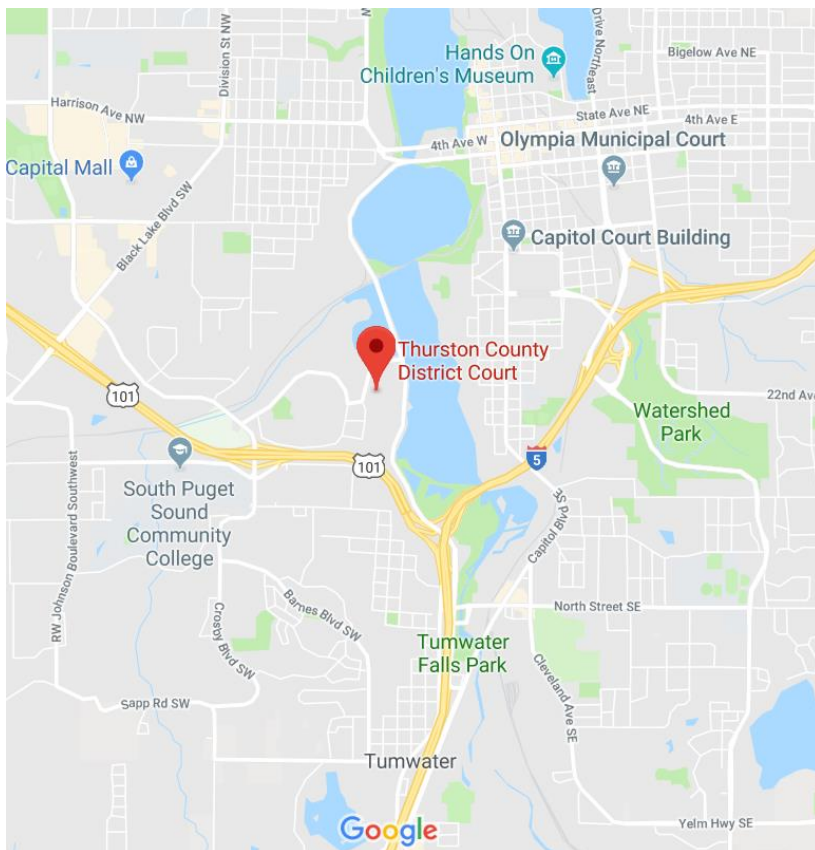
American Planning Association
Washington Chapter



REGISTRATION: Please register for the Short Course by February 13, 2019, by sending an email with your name, organization and title (if applicable) and the location of the short course you wish to attend to shortcourse@commerce.wa.gov or by leaving the same information at 360 725-3064. Registration is not required, but helps for planning purposes; all will be welcome at the event. There is no cost to attend the Short Course.

SEE ALL UPCOMING IN PERSON COURSES AND VIDEO OPTIONS ON THE SHORT COURSE WEB PAGE AT:
www.commerce.wa.gov/serving-communities/growth-management/. Agendas and presentations for past courses will be on the web site for the calendar year.

MAP OF LOCATION:



City elected officials will earn 3 CML credits in Community Planning and Development

County elected officials will receive 2 core credits towards Certified Public Official Training

For WCIA members, attendance at the Short Course provides COMPACT training credit

For RMSA members, the Short Course meets the requirements of the Land Use Advisory Member Standards

For WSBA members, viewing the video series provides 1 CLE Legal Credit, and 0.75 other credits (Activity # 1011672)

A Short Course on Local Planning: Training citizen planners since 1977

The Short Course is an opportunity for planning commissioners, local government staff, elected officials, and community members to learn about our state's legal framework for planning, comprehensive planning and community development processes, and public involvement in the planning process.

www.commerce.wa.gov/serving-communities/growth-management/ 360.725.3064

MODERATOR: Gary Idleburg, Growth Management Services
gary.idleburg@commerce.wa.gov 360.725.3062

PRESENTERS: Kristin French, Attorney at Law, Records and Compliance Manager, Mason County
PUD 3
Kristin.french@masonpud3.org, 360.432.5269

Anne Fritzel, AICP, Senior Planning, Washington State Department of Commerce
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Katie Baker, AICP, Senior Planner, City of Puyallup
kbaker@ci.puyallup.wa.gov 253.435.3604

ADDITIONAL TRAINING AND EDUCATIONAL OPPORTUNITIES IN WASHINGTON

Department of Commerce, Growth Management Services <http://www.commerce.wa.gov/serving-communities/growth-management/>. See the Short Course Manual and Videos under the “Short Course on Local Planning” Key Topic.

Municipal Research and Services Center of Washington at www.mrsc.org: See [A Planner’s Pocket Reference](#) at. www.mrsc.org/subjects/planning/PocketRef.aspx, which includes glossaries, web links for land use, environment, housing, census, economics, transportation, technical tools, model codes, and land use law.

Washington State Office of the Attorney General Trainings on Open Government, Open Public Meetings Act and Public Records Act training at www.atg.wa.gov/OpenGovernmentTraining.aspx

OUR SHORT COURSE PARTNERS

Planning Association of Washington (PAW) is a statewide, grass-roots, non-profit incorporated in 1963, with the mission to “provide unbiased practical planning education to the citizens of Washington State”. PAW created the Short Course on Local Planning and is a Founding Partner. www.planningpaw.org **Partner since 1980.**

The Washington Cities Insurance Authority (WCIA) is a liability insurance risk pool which supports member risk management through education. WCIA encourages their members to attend the Short Course on Local Planning because it is recognized as a tool for reducing land-use liability. www.wciapool.org/ **Partner since 2009.**

Washington Chapter of the American Planning Association (WA-APA) www.washington-apa.org/ **Partner since 2014.**

Risk Management Services Agency (RMSA) and www.awcnet.org/PropertyLiability.aspx

A Short Course on Local Planning: Training citizen planners since 1977

www.commerce.wa.gov/serving-communities/growth-management/ 360.725.3064

The Legal Basis of Planning in Washington

Short Course

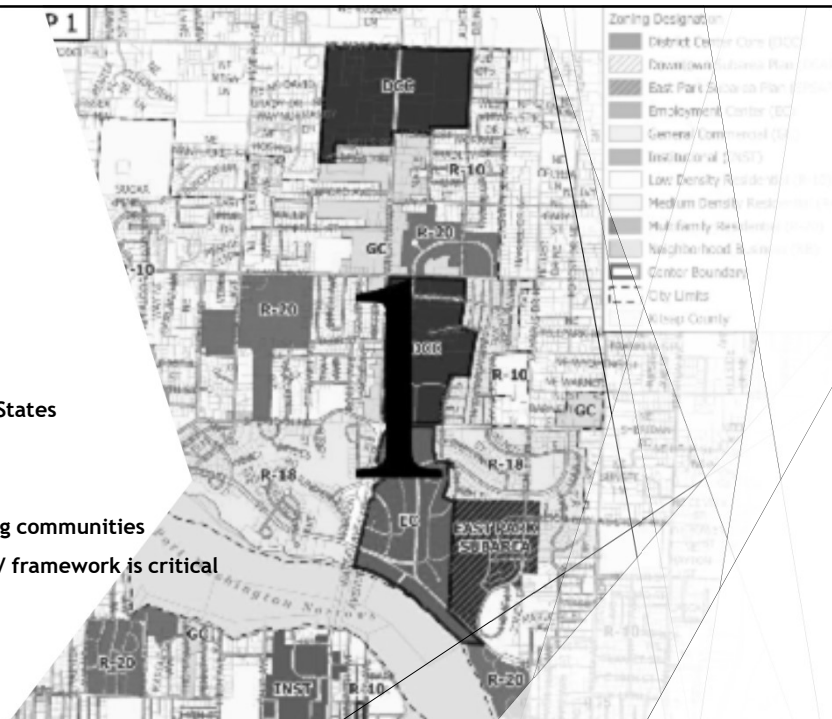
February 20, 2019

Presented by: Kristin French

Mason PUD 3 - Records & Compliance Manager

Land Use Regulation

- Profound impact on life in United States
- High stakes on all sides
- Often no easy answers
- Long-lasting consequences; shaping communities
- Land use decision making process / framework is critical
- Litigation frequently results




WHAT WE WILL COVER:

Sources of Planning and Land Use Law
 Basics of Land Use Law Research
 Legal Basis for Planning in Washington State (Case Law & Constitution)
 Statutory Basis for Planning in Washington State
 Planning Commissions / Agencies / Hearing Examiner Authorization
 State Subdivision Act (Chapter 58.17 RCW)
 State Environmental Policy Act - "SEPA" (Chapter 43.21C RCW)
 Shorelines Management Act - "SMA" (Chapter 90.58 RCW)
 Growth Management Act - "GMA" (Chapter 36.70A RCW)
 Local Project Review Act (Chapter 36.70B RCW)
 Land Use Petition Act - "LUPA" (Chapter 36.70C)
 Constitutional Issues in Land Use Planning
 Due Process (Procedural & Substantive)
 Takings
 Reasonable Use Exceptions
 Vesting / Moratoria


SOURCES OF PLANNING & LAND USE LAW

- ▶ Constitutions (Federal & State)
- ▶ Statutes
 - ▶ Federal
 - ▶ State (Revised Code of WA "RCW")
 - ▶ Federal Examples
 - ▶ Endangered Species Act (ESA)
 - ▶ Clean Water Act (CWA)
 - ▶ State Examples
 - ▶ Growth Management Act (GMA)
 - ▶ State Env Policy Act (SEPA)
 - ▶ Shoreline Management Act (SMA)
 - ▶ Open Public Meetings Act (OPMA)
- ▶ City Ordinances & Resolutions
- ▶ Comprehensive Plan & Updates
 - ▶ For jurisdictions planning under the GMA
- ▶ Administrative Regulations
 - ▶ Federal = Code of Federal Regulations (CFR)
 - ▶ State = Washington Administrative Code (WAC)
- ▶ Court Decisions
 - ▶ Federal
 - ▶ State
- ▶ Board, Agency and Commission Decisions



CASE LAW & CONSTITUTIONAL BASIS

- ▶ Village of Euclid v. Ambler Realty, 272 U.S. 365 (1926)
 - ▶ Beginning of modern planning in US
 - ▶ Village adopted one of the first ever zoning regulations in US
 - ▶ Basic goal: set some very basic standards regarding:
 - ▶ classes of use
 - ▶ three classes of height
 - ▶ area restrictions
 - ▶ Ambler Realty applied for development approval that did not meet the standards, and upon denial, sued.
 - ▶ Court Decision: US Supreme Court authorized cities and towns to establish different zone districts with specific regulations applicable



CASE LAW & CONSTITUTIONAL BASIS

Washington Constitution, Article 11 § 11

- ▶ Legal authority for zoning and land use regulation is found under Washington Constitution, Article 11 § 11
 - ▶ Any city or town can establish police power zoning as long as not in conflict with general law:
 - ▶ “... any county, city, town or township may make and enforce within its limits all such police powers, sanitary and other regulations as are not in conflict with general laws...”

STATUTORY BASIS

- ▶ Planning Enabling Act: Chapter 36.70 RCW
- ▶ Planning Commission / Agency / Hearing Examiner Authorization: Chapter 35A.63 (code cities); Chapter 35.63 (cities and towns)
- ▶ State Subdivision Act: Chapter 58.17 RCW
- ▶ State Environmental Policy Act “SEPA”: Chapter 43.21C RCW
- ▶ Shorelines Management Act “SMA”: Chapter 90.58 RCW
- ▶ Growth Management Act “GMA”: Chapter 36.70A RCW
- ▶ Local Project Review Act: Chapter 36.70B RCW
- ▶ Land Use Petition Act “LUPA”: Chapter 36.70C RCW

CITY & TOWN CLASSIFICATION

NOTE: When referencing statutes and other sources of authority, it is important to know whether your subject jurisdiction is a county, town, or city, and if a city, which type of city.

- ▶ **CITIES & TOWN GOVERNMENTS IN WASHINGTON:**
 - ▶ Classified according to their population at the time of organization (usually incorporation) or reorganization
 - ▶ **FIRST CLASS CITY:** 10,000 or more at time of organization
 - ▶ **SECOND CLASS CITY:** population of 1,500 or more at time of organization
 - ▶ **TOWN:** less than 1,500 at time of organization (no longer possible to form)
 - ▶ **CODE CITIES:** Most Washington cities are classified as “code cities” under the Optional Municipal Code, Title 35A RCW. This Code was created in 1967, designed to provide broad statutory home rule authority in matters of local concern

1930s - 1960s: Original Washington Planning Enabling Statutes

Established the basis for planning that took place for the subsequent 60 + years ... established Planning Commissions ... specified elements required in comprehensive plans ... established the roles and participants in the process (hearing examiners, planners and staff, planning commissions, city councils ...)

PLANNING COMMISSION ACT

1935 Original

PLANNING ENABLING ACT

1959

Chapter 36.70 RCW (1935 and as subsequently amended)

PLANNING COMMISSIONS/AGENCIES HEARING EXAMINER AUTHORIZATION - EXAMPLES

CODE CITIES

CHAPTER 35A.63 RCW

35A.63.020 - Planning Agency -
Creation - Powers and Duties -
Conflicts of Interest

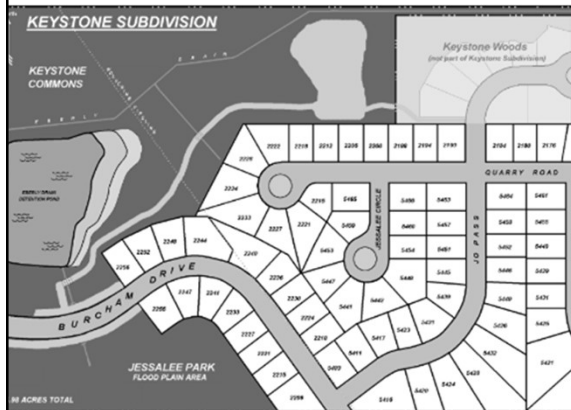
35A.63.170 - Hearing Examiner
System - Adoption Authorized

CITIES & TOWNS

CHAPTER 35.63 RCW

35.63.020: Commissioners -
Manner of Appointment

STATE SUBDIVISION ACT CHAPTER 58.17 RCW



- ▶ Adopted 1969
- ▶ Established process for subdividing land for development
- ▶ Detailed process for investigating, reviewing and approving subdivisions for single family housing development
- ▶ Subdivision (generally 5 or more lots)
- ▶ Short subdivision (generally 4 or fewer lots)
- ▶ Binding Site Plans (concept to explore in the statute)
- ▶ Planned Unit Developments "PUDs" (typically multi-family / commercial)

STATE ENVIRONMENTAL POLICY ACT ("SEPA") CHAPTER 43.21C RCW

▶ Adopted 1971 (and as subsequently amended)

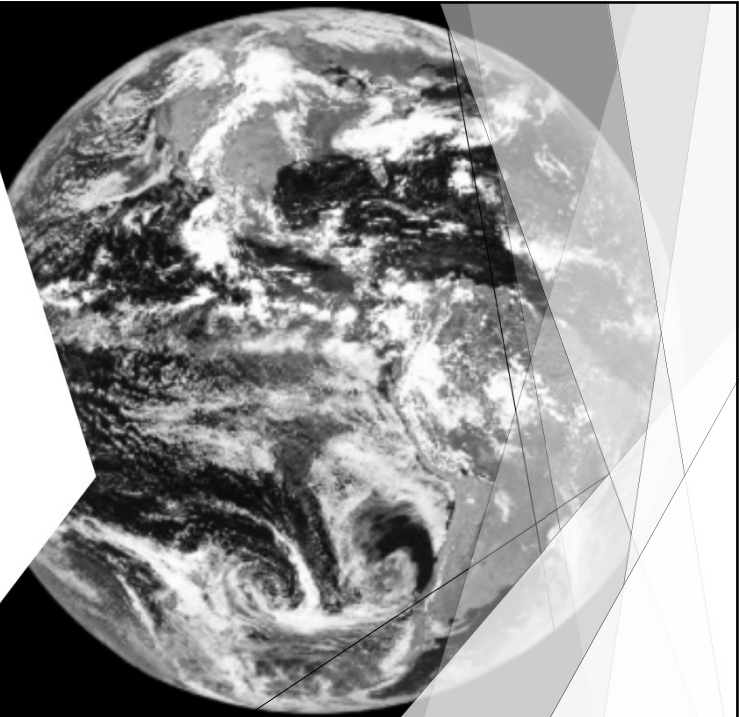
▶ Essentially provides a mechanism for decision makers such as planners, hearing examiners and city councils to have full information about projects in order to make well-founded decisions

▶ Extensive procedural statute - requires a number of steps and analysis - applies to both the built and the natural environment

▶ STEP 1: initial application (standardized "SEPA Checklist")

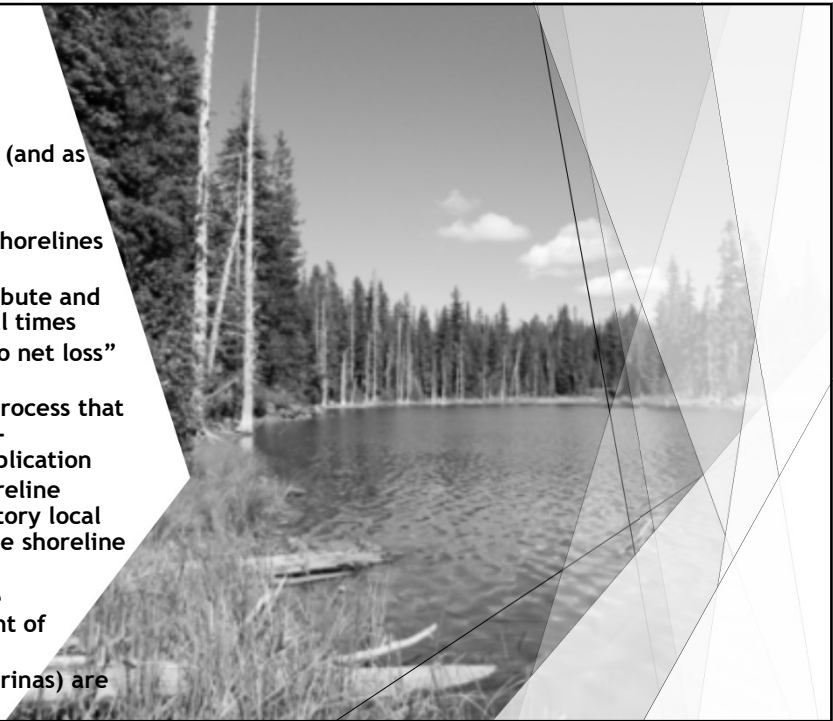
▶ STEP 2: threshold determination (non-significance (DNS); mitigated DNS; Significance (would trigger Environmental Impact Statement "EIS")... EIS process generally takes a year or more to generate the science and fact-based background related to the proposal

▶ SEPA review occurs concurrently with general project review, to ensure that all relevant information is available to the decision makers.



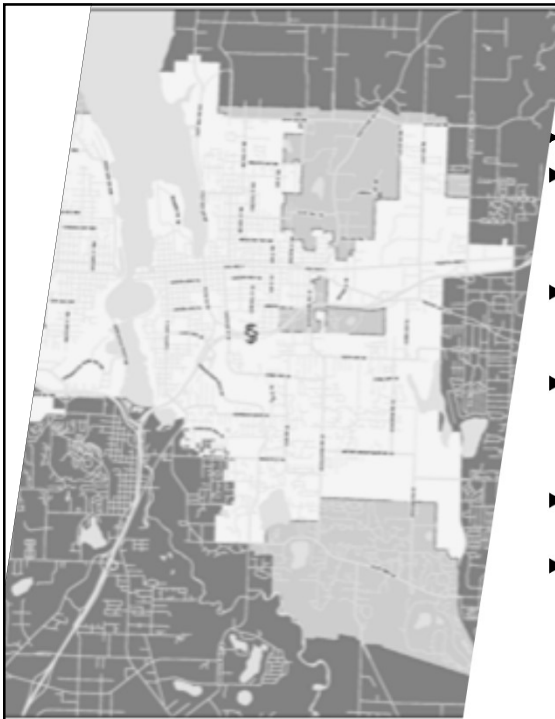
SHORELINES MANAGEMENT ACT (“SMA”) CHAPTER 90.58 RCW

- ▶ Adopted 1971 by citizen initiative (and as subsequently amended)
- ▶ Predicated upon a federal statute
- ▶ Purpose is to protect Washington shorelines in the context of development
- ▶ Goal: Shorelines to remain an attribute and amenity available to all citizens at all times
- ▶ Regulations updated to require “no net loss” of shorelines
- ▶ SMA also has detailed procedural process that may flow either concurrently or non-concurrently with the underlying application
- ▶ Local jurisdictions adopt local Shoreline Master Programs (SMPs) which inventory local shorelines, and identify and prioritize shoreline uses
- ▶ SMPs must be compliant with state regulations / reviewed by Department of Ecology
- ▶ Water dependent uses (such as marinas) are given priority



GROWTH MANAGEMENT ACT (“GMA”) CHAPTER 36.70A RCW

- ▶ Adopted 1990
- ▶ Establishes structure for comprehensive planning, concurrency / capital facilities, urban growth area (“UGA”) concept, critical area ordinances
- ▶ Cities and counties subject to the Act must plan on a 20-year horizon based on population growth projections
- ▶ Urban growth areas are drawn cooperatively between cities and counties based on population growth projections and needs analysis
- ▶ Required to be implemented at the local level
- ▶ Improvements that are necessary for development need to be in-place at the time the development is constructed; or funding sources need to be in-place to construct such improvements within a six-year horizon



LOCAL PROJECT REVIEW ACT CHAPTER 36.70B RCW

- ▶ Adopted 1995
- ▶ Legislative response to concerns regarding burdens and delays resulting from ever increasing number of environmental laws and development requirements
- ▶ See statute for significant timelines and required actions

LAND USE PETITION ACT (“LUPA”) CHAPTER 36.70C RCW

- ▶ Adopted 1995
- ▶ Requires and implements a streamlined process for appeals of land use decisions
- ▶ Purpose: reform process for judicial review of land use decisions
- ▶ Establishes uniform, expedited appeal procedures and uniform review criteria
- ▶ Act applies to judicial review of “land use decisions”
 - ▶ Such as: applications; interpretative or declaratory decisions; local jurisdiction’s enforcement of land use ordinances (with certain exceptions)

City of Kirkland

2

3

4

5 **SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING**

6 POTATA VILLAGE KIRKLAND, LLC, a
7 Washington limited liability company, and
8 LOBSANG DARGEY and TAMARA AGASSI
DARGEY, a married couple,

9 Plaintiffs/Petitioners,

10 vs.

11 THE CITY OF KIRKLAND, a Washington
12 municipal corporation,

NO.
LAND USE PETITION AND
COMPLAINT FOR DECLARATORY
JUDGMENT, WRIT OF MANDAMUS,
CONSTITUTIONAL WRIT, AND
INJUNCTION

CONSTITUTIONAL ISSUES IN LAND USE PLANNING

PROCEDURAL DUE PROCESS

SUBSTANTIVE DUE PROCESS

FIRST AMENDMENT ISSUES: FREEDOM OF SPEECH; FREEDOM
OF EXPRESSION; FREEDOM OF RELIGION

FOURTEENTH AMENDMENT: EQUAL PROTECTION

PROCEDURAL DUE PROCESS

Procedural due process essentially means that people have a
right to have issues fairly heard and decided

Key elements of due process are:

Notice of what is happening

Opportunity to be heard

SUBSTANTIVE DUE PROCESS

The question of substantive due process focuses on the outcome of the rules.
There are 4 basic questions to ask:

- Does the regulation have a legitimate purpose?
- Does the regulation appropriately accomplish the legitimate purpose - is there a rational basis between the legitimate purpose and the regulation?
- Is the regulation reasonable?
- * Is the regulation clear and able to be understood?

REMEDY FOR DUE PROCESS VIOLATION:

INVALIDATION OF SUBJECT
ORDINANCE OR REGULATION

TAKINGS

* US Constitution -
5th Amendment

* WA Constitution
Article I § 3 -
personal rights

* WA Constitution
Article I § 16 -
eminent domain

1) Just compensation must be paid before
property is taken

2) Compensation must be paid even where
property is not actually taken, but is
damaged



TAKINGS

Regulatory
takings can
result when
the use of
property is
substantially
impaired by
applicable
regulations

1) Physical Appropriation of Property

2) Regulatory Taking



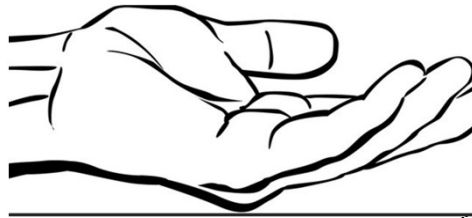
TAKINGS

Related
Concepts:

- 1) Exactions
- 2) Dedications

Exactions and dedications are essentially conditions placed on the development of property by the decision-maker approving the development

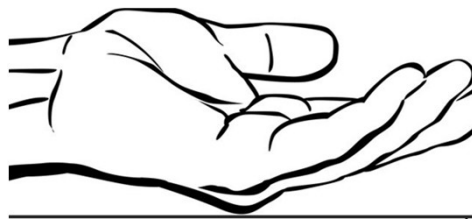
EXAMPLES: requirement to pay money outright; contribute or dedicate for things like open space and parks; traffic improvement requirements...



TAKINGS-RELATED CASE LAW

Nollan / Dolan
standard

Allows governmental entities to condition approval of permits on the dedication of property to the public, so long as there is a "nexus" and "rough proportionality" between the property that the government demands and the social costs of the applicant's proposal



Held that the government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit ("essential nexus").


TAKINGS-RELATED CASE LAW

Nollan v. California Coastal Com'n,
483 U.S. 825; 107 S.Ct. 3141 (1987)



REASONABLE USE EXCEPTIONS

If the regulations applied to property are so severe that they prohibit any use of the property, a jurisdiction may allow a reasonable use of the property in order to avoid takings claim.



VESTING

Relates to the question of what specific set of regulations apply to a development application that may progress over time


- * Common law roots (case law)



VESTING

STATUTORY CODIFICATION:


- State Building Code Act
- Development Agreement
- Plats and Subdivisions



MORITORIA

This term refers to a hold placed on development to allow a specific time period (usually six months) for relevant issues to be appropriately analyzed

EX: RCW 35A.63.220



CONCLUSION

- * Complex and ever-changing
- * Concepts are often grey and difficult to understand, as opposed to clear black and white
- * Accept that land use practice is often grey, sometimes without answers that are clearly “right” or “wrong”
- * Seek to fully analyze issues from all angles, develop a strong factual record, and show how facts fit within the legal framework to support a decision
- * Familiarize yourself with the relevant framework and standards and procedures that apply to the particular subject matter and process

A SHORTCOURSE

Topics:

- Why plan?
- Comprehensive planning
- Implementing your plan
- Updating your plan

ON LOCAL PLANNING

Comprehensive Planning under the Growth Management Act

Department of Commerce

Anne Fritzel, AICP
Senior Planner, Growth Management Services
Washington State Department of Commerce

We strengthen communities

The Department of Commerce touches every aspect of community and economic development. We work with local governments, businesses and civic leaders to strengthen communities so all residents may thrive and prosper.

Energy

Planning

Infrastructure

Business Assistance

Community Facilities

Housing

Safety / Crime Victims

Department of Commerce

2

Why is Planning Important?



- Protect the good things about your community
- Agree on a shared vision for the future of your community
- Identify community needs
- Identify strategies to implement the vision and meet needs
- Agree on local spending priorities
- Build your sense of community

3

Manage Public Expectations



"This affects my neighborhood and my home. I should have a say in what happens."

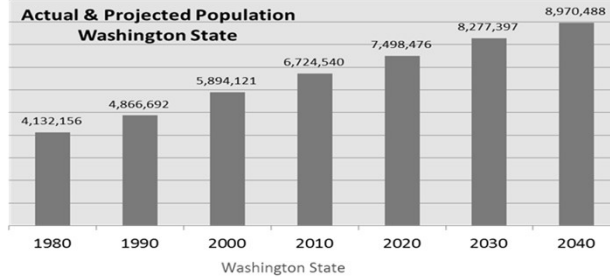
"I need to know what I can do and when I can get my permit"



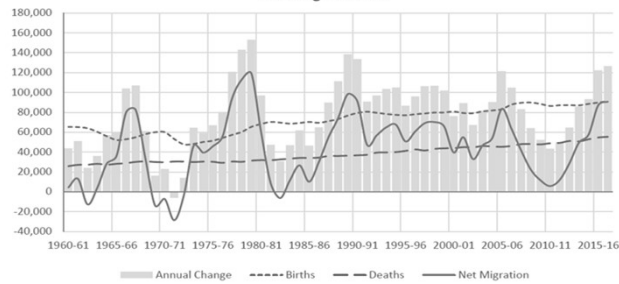
Department of Commerce

Plan to Accommodate our Future Population

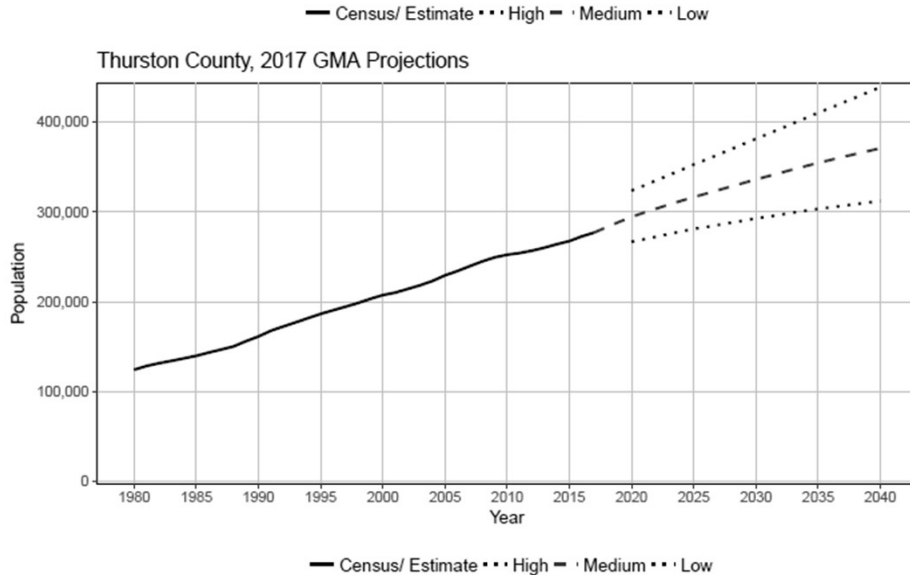
Between 1990 and 2010, our state's population grew from 4.1 to 6.7 million people. We are expected to reach 9 million by 2040. (OFM)



Components of Population Change 1960 - 2017
www.ofm.wa.gov



Thurston County, 2017 GMA Projections



OFM Forecasting & Research Division | December 2017

Why a Growth Management Act (GMA)?



Between 1990 and 2010, our state's population grew from 4.1 to 6.7 million people. We are expected to reach 9 million by 2040. (OFM)

The GMA was adopted in 1990 as a statewide planning framework to:

- Address uncoordinated development and urban sprawl
- Manage threats to the quality of life in Washington
- Require local planning, guided by state law, and regionally enforced

RCW 36.70A



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7

14 GMA Goals

RCW 36.70A.020

- Encourage **compact urban growth**
- **Reduce sprawl**
- Encourage coordinated, **multimodal transportation**
- Encourage **affordable housing**
- Encourage **economic development**
- **Protect property rights**
- **Predictable permitting**
- **Maintain natural resource industries**
- **Retain open space, enhance recreation**
- **Protect the environment**
- Encourage **citizen participation**
- **Ensure availability of public facilities and services**
- Encourage **historic preservation**
- **Manage shoreline development**



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8


The Land
Speaks First

Fully or Partially
Planning?

Countywide
Planning Policies

Local Comprehensive
Plan and Regulations

The Land Speaks First



All counties must **designate and conserve natural resource lands** of long-term commercial significance.


- Agricultural lands
- Forest lands
- Mineral resource lands

RCW 36.70A.170

All jurisdictions must **designate and protect environmentally critical areas**. “Best available science” must inform regulations that protect the functions and values of:

- Frequently flooded areas
- Geologically hazardous areas
- Aquifer recharge areas
- Fish and wildlife habitat conservation areas
- Wetlands

RCW 36.70A.172



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The Land
Speaks First


Fully or Partially
Planning?

Countywide
Planning Policies

Local Comprehensive
Plan and Regulations

Faster Growing Counties Must Do More


Growth Management Act Mandate to Plan



GMA Required to Plan:
RCW 36.70A.040

Fully Planning

Critical Areas and Resource Lands



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Innovation is in our nature.

Countywide Planning Policies



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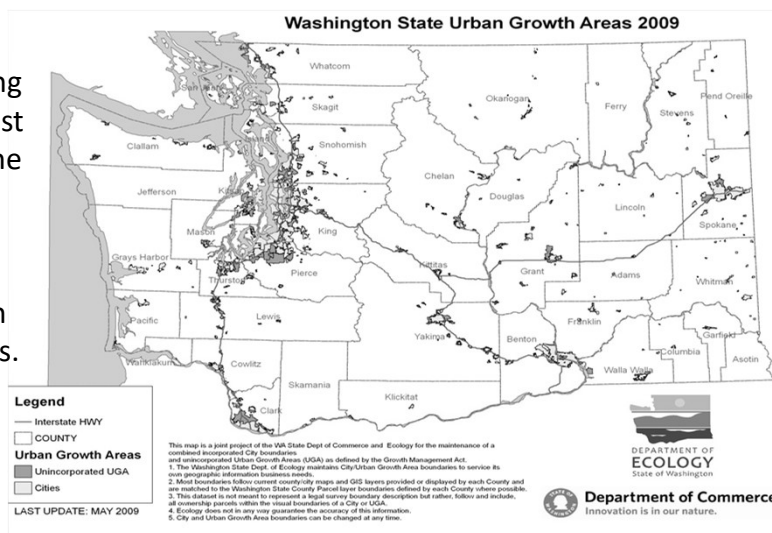
Regional framework to:

- Plan for future growth and address countywide population projections from the State Office of Financial Management.
- Designate and plan for urban growth areas and expansions to designated urban areas
- Plan for countywide facilities such as highways or airports
- Consider affordable housing needs
- Plan for countywide economic development
- Puget Sound region has multicounty planning policies assembled in Vision 2040.

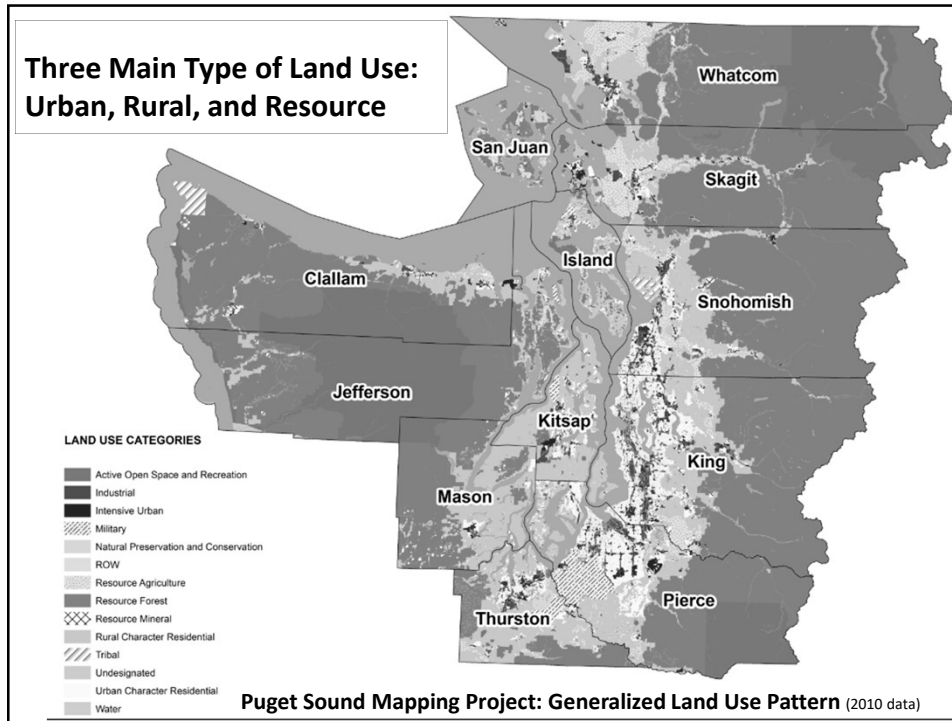
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Washington's Urban Growth Areas

Fully planning counties must work with the cities to designate existing and future urban growth areas.



12



Allocating population – Designating UGAs

Urban areas to contain most of new growth

- UGA size based on 20-year countywide population projections from OFM
- Greater housing / job densities
- Efficient use of facilities/public dollars

Rural areas to maintain rural character

- Low-density development
- Rural service levels
- Agriculture/Forestry



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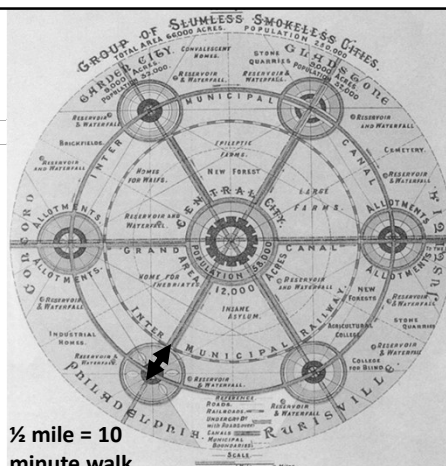
What is “good planning”?

Rural areas:

- Low-density development
- Rural service levels
- Agriculture/Forestry

Urban areas:

- The community (or neighborhood) is walkable
- Multimodal transportation is supported
- Housing is affordable



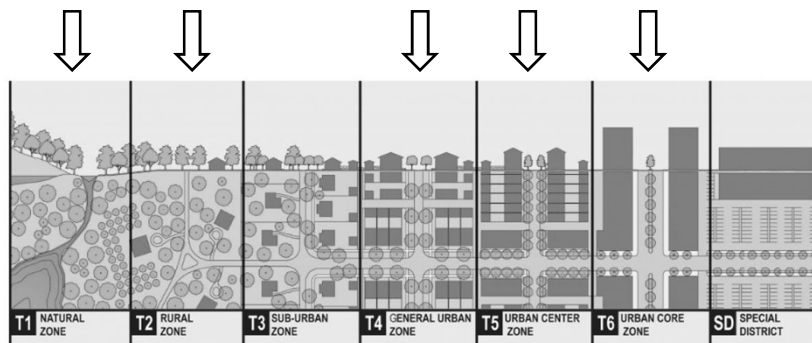
1/2 mile = 10
minute walk
Garden City by Ebenezer Howard (1920s)



What is “good planning”?

Under the GMA, land is to be designated natural resource, rural, or urban.

- Cost-effective sewer, water and stormwater systems serve urban areas.
- Rural areas have fewer services.
- The transportation system supports the land use plan.



A version of the original Transect diagram, with six successional zones from nature to urban core, with special district. By DPZ.

New Urbanists Andres Duany and Elizabeth Plater Zyberk

How does your community work for people?

- Are uses mixed so people walk or bike to work?
- Is there a store and parks within walking distance of homes?
- Can kids walk to school?
- Can teenagers and other non-drivers get around independently?
- Are there housing options for all economic segments of the community?



Photo Credit, Randall Arendt, "Rural by Design"

Required Elements of the GMA Comprehensive Plan



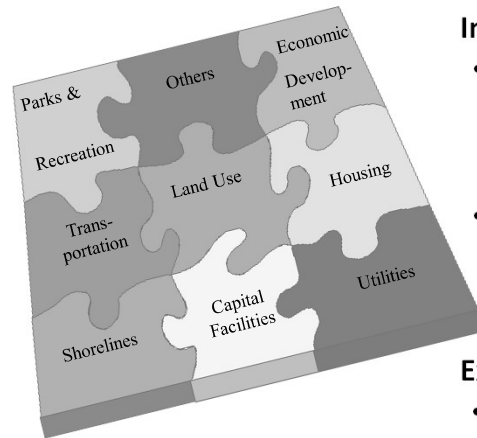
- **Land Use:** Land uses, stormwater planning, ground water, physical activity
- **Transportation:** Inventory, assessment of current and future needs, bicycle and pedestrian component
- **Housing:** Identifies the character of residential areas, Inventories existing and projected housing needs and types, Identifies sufficient land for all types of housing
- **Utilities:** Inventory, assessment of current and future needs, coordination between providers and land development.
- **Capital Facilities:** Inventory, assessment of current and future needs, coordination of planning affordability analysis of serving the land use plan.
- **Rural** (counties only): Define and protect rural character.



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RCW 36.70A.070 and WAC 365-196 18

The Plan Must Be Coordinated and Consistent



Internal consistency

- Is the plan based on the same set of assumptions? Do the plan elements all tell the same story?
- Can adequate public facilities be provided with planned development? (concurrency)

External consistency

- Countywide planning policies
- Adjacent jurisdictions



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19

Adopting the Comprehensive Plan



Plan Adoption Process

- Public outreach early and often
- Review by Planning Commission
- Complete SEPA environmental review
- 60-days notice to state before adopting
- City or County Council must adopt the comprehensive plan

Plan Updates and Appeals

- Can be amended only once per year
- Must be updated every 8 years
- Appealable within 60 days to a regional Growth Management Hearings Board

www.gmhba.wa.gov



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20

Implementing your Comprehensive Plan

Community Vision



Comprehensive plan goals and policies



Implementation strategies:

- Development regulations
- Infrastructure spending priorities



- Every permitted project
 - Every spending decision
- Is consistent with the Vision**

- **Development regulations** must be consistent with and implement the comprehensive plan.
- **Capital Improvement Plans (CIP)** priorities for local infrastructure investments must be consistent with the comprehensive plan.
- **Other activities** can implement and must be consistent with the goals of the plan.



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Development regulations implement the plan and set standards for development



- **Traditional zoning** considers *maximum* densities and *minimum* lot sizes for efficient land use. Form based codes focus on design details.
- **Critical area regulations** set buffers and restrictions in critical areas.
- **Subdivision regulations** set out the process for dividing land and ensure “adequate provisions” for utilities, parks, schools, and other requirements of development.
- **Public works standards** set out street widths and other standards related to public facilities.
- **Other regulations** such as design standards, signs, landscaping, and parking regulate appearance, health, and safety within the community.



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22

Capital Facilities: What can we afford?



Department of Commerce

Level of Service: Local expectation for a facility as development occurs.

- Required for transportation facilities.

Concurrency programs ensure that transportation and other facilities keep pace with growth.

- If a new development would decrease system level of service, the development must be denied, or the levels of service must be reassessed.

Reassessment: If revenues can't pay for needed facilities over the life of the plan, the land use element must be reassessed.

23

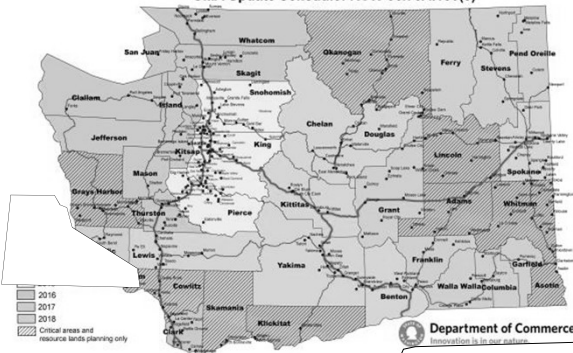

Other programs can implement comprehensive plan goals



Department of Commerce

- Interlocal agreements
- Planned action (Upfront environmental review of a sub-area)
- Streamlined development process for specific types of development
- Incentives such as tax exemptions for community benefits such as Open Space or Multifamily Housing
- Impact fees
- Transfer of development rights.
- Volunteer programs

24

<p>Grant and Loan Programs Requiring Update Completion:</p>	<h2>Updating your Comprehensive Plan:</h2>
<ul style="list-style-type: none"> • Public Works Trust Fund • Drinking Water State Revolving Fund • Centennial Clean Water Fund • Recreation and Conservation Office • Pre-Disaster Mitigation Grants 	<p>Updates are due every eight years, by June 30th</p> <p>GMA Update Schedule: RCW 36.70A.130(5)</p> 
<p> Department of Commerce</p>	<div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 2px;">2015</div> <div style="border: 1px solid black; padding: 2px;">2016</div> <div style="border: 1px solid black; padding: 2px;">2017</div> <div style="border: 1px solid black; padding: 2px;">2018</div> </div>

	<h2>Success Stories</h2>
<ul style="list-style-type: none"> ✓ Identify the goal ✓ Commit to the idea ✓ Put it in the comprehensive plan ✓ Dedicate or find the resources ✓ Make it happen 	<p>How effective planning can make your jurisdiction's vision real.</p>

Grandview Public Investments Leverage Private Improvements

- 2008 Downtown Plan
- Grants and small funds for streetscape improvements
- Encouraged building owners to improve privately owned buildings
- Within neighborhoods, CDBG funds constructed new streets and sidewalks and encouraged residential investments



Bicycle Corridors in Olympia

Transportation Policy PT25.4 *Explore the use of bicycle boulevards to support novice and family bicycling - streets with low volumes and special accommodations for bicycling.*



Planned Actions as Economic Development Tools

- Subarea plan that integrates GMA and SEPA
- Several dozen adopted, including:
 - Downtown Burien
 - Vancouver (Esther Short Park)
 - Tacoma Downtown



Hoquiam Residential Sidewalk Partnership Program

2005: **Hometown**

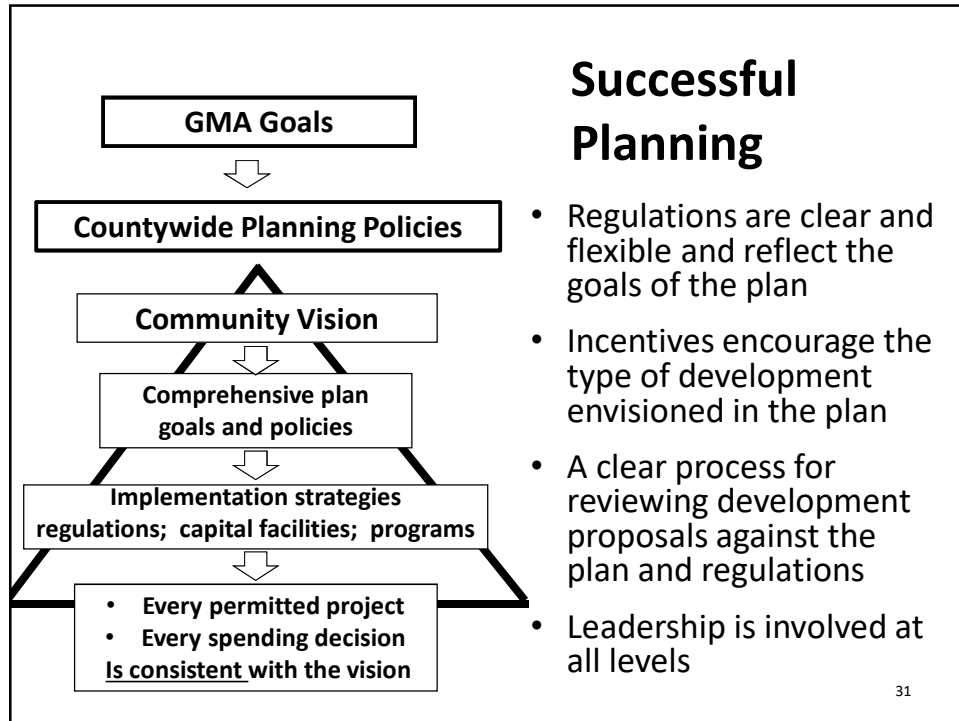
Hoquiam process identifies sidewalk repair as priority for the city.


2008: Residential Sidewalk partnership Program began


By 2010:


City had spent \$75,000 hiring summer teams to replace sidewalks. Homeowners invested \$35,000 paying about \$10 per linear foot. Saved more than \$100,000.









 **Department of Commerce**







Roles and Responsibilities in the Planning Process

Presented by
Katie Baker, Senior Planner
City of Puyallup



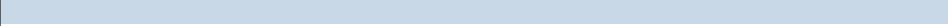
Short Course on Local Planning
Thurston County
February 20, 2019





Overview:

- Types of planning processes
- Key roles in the planning process
- Public participation
- Suggestions: Effective meetings and hearings



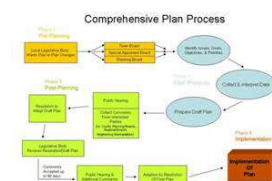
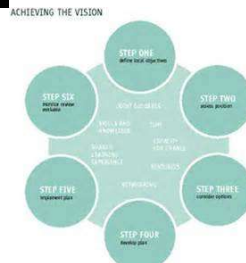
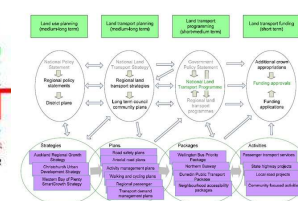
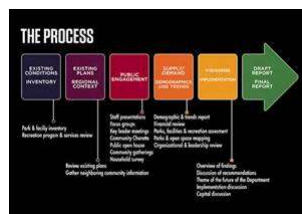
Planning Process



- Expression of **democratic** principles
 - Involves defining issues and balancing interests.
 - Engenders discussion about the role of government.
 - Protections afforded under the law (*e.g. Private property rights, freedom of speech, freedom of religion*).
 - Provides processes to afford those protections.

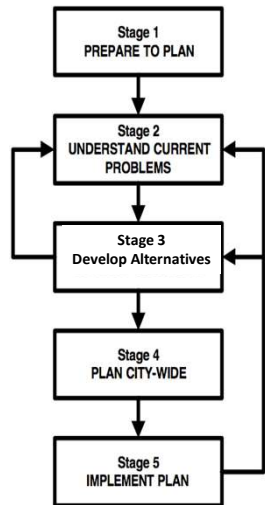
(3)

The Planning Process?



4

Planning Process – Many Influences



- State and federal laws
- Court decisions
- Demographics
- Historical land use patterns
- Economy
- New trends and events

5

Land Use Process: Two Primary Types



*More
public
input*



*Less
public
input*

Legislative: (making laws)

Developing and adopting policies and development regulations.

Quasi-Judicial: (applying laws)

Reviewing and deciding on project permit applications.

6

Legislative Process: Making the law

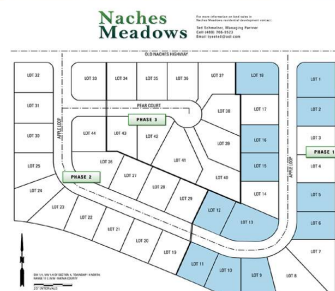


Spokesman-Review, October 5, 2016

- Drafting and adopting plans and development regulations.
- Planning commission recommends and legislative body adopts.
- Process invites broad based public participation and involves public hearing(s).

7

Quasi-Judicial – Applying the Rules



- Applies adopted policy/development regulations to specific permit.
- Does the *permit application* comply with the law?
- Conditions applied for issues not covered by law
- Public hearing notices are broad-based, but also site- specific.

8

Local Government Planning



Participants in Planning Process



- General Public
- Staff
- Elected Officials
- Planning Commission
- Hearing Examiner
- Developers

Other Participants

- Consultants
- Regional and State Agencies
- Tribes
- Utilities
- Courts/Hearings Boards
- Special Interest Groups

11

Pubic Participation

“Each county and city that is required or chooses to plan...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....

RCW 36.70A.140 (GMA)

12

Public Participation

Contribution to Process

- Offer unique, local perspectives.
- Provide detailed and/or historical community/neighborhood knowledge.

Challenges

- Knowledge about the planning process.
- Interest groups may be parochial – narrow.
- Perspective of the big picture or public interest.

13

Examples of Public Participation

- Neighborhood Associations
- Faith based and/or civic organizations
- Flier in utility bills
- Websites/Surveys
- List serves and city/county newsletters
- Next Door (app)
- Taking your plan to community events (go where the people are)
- Traditional Open Houses, Public Hearings

14

Role of Elected Officials: City/County Councils and County Commissioners

- Chief legislative authority – primary function.
- Make final decision on policies and regulations.
- Provide leadership on planning issues through budgeting.
- Make infrastructure decisions that implement the Comprehensive Plan.
- Appoint/remove planning commissioners.
- Role in quasi-judicial decision-making depends on local code (subdivisions, site specific rezones, shoreline permits)

15

Role of the Planning Commission: Provides recommendations to elected officials

Legislative: Holds public hearings and makes recommendations to local governing body on comprehensive plan/development regulations. Acts as a sounding board on local policies and code options.

Quasi-Judicial: *May* review and make recommendations or final decisions on project permits.

16

Role of Staff:

Many City/County departments involved in planning process and development review (*not just planners!!*)

Work closely with Hearing Examiner, Planning Commission and Elected Officials.

- Provide technical expertise and knowledge of the substantive and procedural aspects of the planning process.
- Prepare written staff reports to Hearing Examiner/City Council/Planning Commission.
- Provide customer service to the public to implement the plan and regulations.
- Code enforcement.

On occasion, staff and planning commission should discuss the detail level (too much/too little) and format of staff reports.

17

Role of Hearing Examiner:

Typically Involved in Quasi-Judicial Cases

- Professionally-trained to run public hearings, often required to be a land use attorney.
- Experienced in writing decisions and placing conditions on development according to local code.
- Allows local legislative/advisory bodies to concentrate on policy-making (legislative) activities.
- Reduce local government liability exposure, more legally defensible quasi-judicial decisions.
- Takes politics and personal relationships out of decisions (at least it should!!).

18

Role of Development/Business Community



- Provide feedback on regulations/policies which may sound great in principle, but may be difficult to implement.
- Sounding board to understand market demand and permit processes.

19

Role of the Media



- No legal obligation in the planning process but may take considerable interest in it.
- Direct communication link to the broader community.
- Free publicity, in an understandable format.

Staff should work to increase the media's knowledge of planning issues.

20

Advice for Planning Commissions

- Elect a knowledgeable and fair chairperson.
- Familiarize with and follow commission's by-laws and rules of procedure.
- Learn about land-use law and the topics under discussion.
- When deliberating on a decision, focus on decision criteria.

21

Advice for Public Hearings (cont'd)

- LISTEN....don't LECTURE or ARGUE!!
- Watch Body Language
- No Sidebar Conversations
- Educate yourself and ask questions prior to hearing – BE PREPARED!!
- Articulate your thoughts – Directed to decision criteria
- Avoid jargon (this goes for everyone involved in planning processes)

22

	 Department of Commerce	
	<p>Presented by:</p> <p><i>Katie Baker, AICP</i> <i>Senior Planner</i> <i>City of Puyallup</i></p>	
		<p>www.commerce.wa.gov</p> <p>facebook twitter</p>

OPEN GOVERNMENT LAWS

Open Public Meetings Act and Introduction
to Washington's Public Records Act

SHORT COURSE
February 20, 2019

Presented by

Kristin L. French

Mason PUD 3 Records & Compliance Manager

WE WILL COVER:

- ▶ OPEN PUBLIC MEETINGS ACT ("OPMA")
- ▶ Chapter 42.30 RCW
- ▶ PUBLIC RECORDS ACT ("PRA")
- ▶ Chapter 42.56 RCW



Open Public Meetings Act ("OPMA")- Chapter 42.30 RCW

- ▶ Purpose and History
- ▶ Interpretation by Courts
- ▶ Relevant Definitions / Interpretation / Application
- ▶ Recent Case Law
- ▶ Electronic Communications
- ▶ Proper Conduct of Regular and Special Meetings
- ▶ Executive Sessions
- ▶ OPMA Violations – Penalties and Consequences

PURPOSE OF OPMA:

Open and Transparent Decision-Making

- ▶ Meetings must be open and available for public attendance
- ▶ Public must have appropriate notice of meeting
- ▶ A "meeting" is subject to OPMA requirements anytime a "quorum" of a decision-making body takes "action"

WHEN DOES A “MEETING” HAPPEN?

QUORUM



ACTION



REGARDLESS OF
FORM /
LOCATION



JUDICIAL INTERPRETATION OF THE OPMA

- ▶ Enacted in 1971
- ▶ Substantial number of related court decisions
- ▶ Very strong “purpose clause” (RCW 42.30.010)
- ▶ People “...do not yield their sovereignty to the agencies which serve them...”
- ▶ Liberally construed

▶ SO... Err on the side of caution!!



RCW 42.30.030: MEETINGS DECLARED OPEN AND PUBLIC

- ▶ All **meetings** of the **governing body** of a public agency shall be open and public, and all persons shall be permitted to attend any **meeting** of the **governing body** of a public agency, except as otherwise provided in this chapter...
- ▶ So... what constitutes a "meeting"

▶ And... what constitutes a "governing body" of the public agency?

RCW 42.30.020 - DEFINITIONS "PUBLIC AGENCY"

- ▶ As used in this chapter unless the context indicates otherwise:
- ▶ (1) **"Public agency"** means:
 - ▶ (a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;
 - ▶ (b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;
 - ▶ (c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;
 - ▶ (d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

	<p style="text-align: center;">RCW 42.30.020 - DEFINITIONS “GOVERNING BODY”</p>	<p>► (2) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.</p>
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	<p style="text-align: center;">RCW 42.30.020 - DEFINITIONS “ACTION”</p>	<p>► (3) "Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.</p> <p>"Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.</p>
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<p>RCW 42.30.020 - DEFINITIONS “MEETING”</p>	<p>► (4) "Meeting" means meetings at which action is taken.</p>
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	<p>SO... does a Planning Commission constitute a “governing body” under the PRA???</p>
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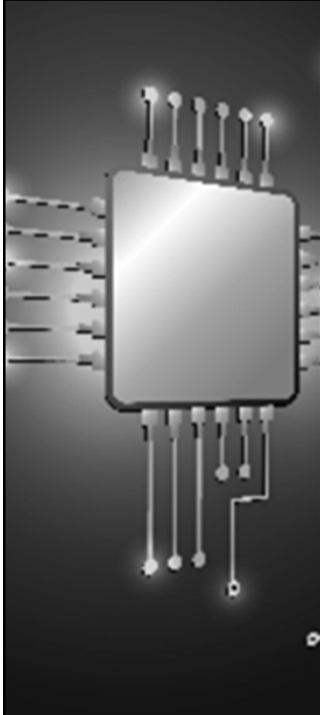
EXCEPTIONS TO THE QUORUM RULE

- 1) If a lesser number are authorized to act on behalf of a governing body;
- 2) If testimony is being taken or a hearing held



Recent case helps provide context:

*Citizens Alliance for Property
Rights Legal Fund v. San Juan
County*, 184 Wn.2d 428, 359
P.3d 753 (2015, En Banc.)



ELECTRONIC COMMUNICATIONS CONSIDERATIONS

- ▶ Strong OMPA purpose clause
- ▶ E-mail exchanges can constitute a meeting subject to OPMA
 - ▶ See for example, *Wood v. Battle Ground School Dist.*, 107 Wn.App. 550, 27 P.3d 1208 (2001)
- ▶ Same concept can apply to other methods of electronic communication such as texting and blogs
- ▶ One-way versus two-way communications
- ▶ Persons cc'd will be considered participants
- ▶ Staff members are not considered members of governing body

CONDUCTING A PUBLIC MEETING CORRECTLY

Right of Public to Attend	Versus Comment / Testify	Versus Disruption
Public has a right to be in the room to ATTEND the meeting, as opposed to right to COMMENT / TESTIFY	OPMA does not provide a basis for public comment, unless the applicable meeting agenda provides for public comment or unless the subject matter at issue requires a public hearing by law.	OPMA does not provide a basis for the public to disrupt the meeting. Disruption of a "lawful assembly" may constitute a crime. RCW 42.30.050 sets out a procedure for the governing body to follow in the event that actions by the public render the orderly conduct of the meeting unfeasible and order cannot be restored

CONDUCTING A PUBLIC MEETING CORRECTLY

- ▶ **DO NOT** condition the public's attendance on any action precedent (ex: sign in sheet). See RCW 42.30.040.
- ▶ **DO NOT** prevent the public's reasonable recording of the meeting.
- ▶ **DO NOT** vote by secret ballot. RCW 42.30.060(2).



Prohibited

TWO TYPES OF MEETINGS: Regular and Special

▶ REGULAR MEETINGS

- ▶ Standard meetings
- ▶ Held per standard schedule, as identified in ordinance, resolution, bylaws or other similar instrument – RCW 42.30.070
- ▶ Generally: agendas must be made available on the agency's website at least 24 hours in advance of meeting (RCW 42.30.077)

▶ SPECIAL MEETINGS

- ▶ May be called at any time by presiding officer or majority of members (method per RCW 42.30.080)
- ▶ Must satisfy notice requirements/process per 42.30.080(2), 24 hours in advance:

“Adjourning” Meetings / “Continuing” Hearings RCW 42.30.090 and RCW 42.30.100

► Adjournments

- The governing body of a public agency may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment.
- Less than a quorum may so adjourn from time to time.
- See related requirements under RCW 42.30.090.

► Continuances

- Any hearing being held, noticed, or ordered to be held by a governing body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the governing body in the same manner and to the same extent set forth in RCW 42.30.090 for the adjournment of meetings

EXECUTIVE SESSION

RCW 42.30.110

In recognition of the fact that certain subject matter should not be subject to the OMPA's requirements for open and transparent deliberation, certain subject matter is carved out under RCW 42.30.110 for consideration in “executive session”

EXECUTIVE SESSION CONTENT – RCW 42.30.110

CAREFULLY CONSULT THE SPECIFIC LANGUAGE IN RCW 42.30.110...

General examples include:

- (b) To consider the selection of a site of the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;
- (c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;
- (f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

EXECUTIVE SESSION CONTENT – RCW 42.30.110

CAREFULLY CONSULT THE SPECIFIC LANGUAGE IN RCW 42.30.110... Provision for consultation with legal counsel:

- (i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) [attorney-client communications] concerning: ...

EXECUTIVE SESSION CONTENT – RCW 42.30.110

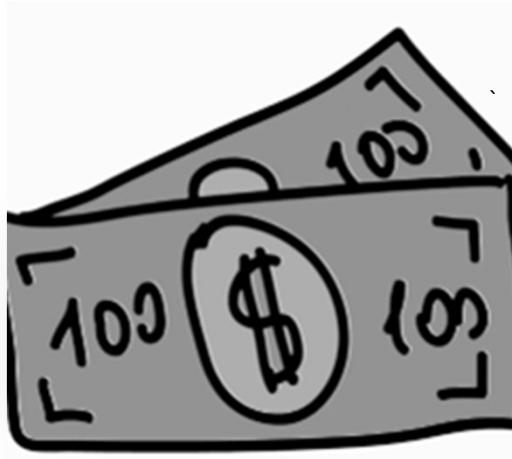
CAREFULLY CONSULT THE SPECIFIC LANGUAGE IN RCW 42.30.110... Provision for consultation with legal counsel:

- i. Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;
- ii. Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or
- iii. Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency

EXECUTIVE SESSION PROCEDURAL RULES

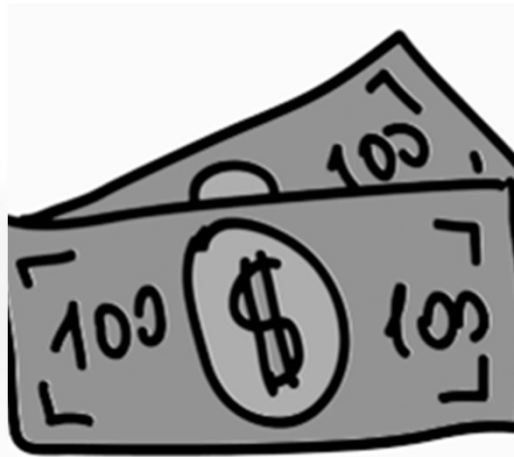
**RCW
42.30.110(2)**

- ▶ **Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded.**
- ▶ **The executive session may be extended to a stated later time by announcement of the presiding officer.**



OPMA VIOLATIONS

RCW 42.30.120
Each member of
governing body who
attends meeting in
violation of OPMA with
knowledge of
violation...
\$500 FIRST VIOLATION
**\$1,000 SUBSEQUENT
VIOLATION**



OPMA VIOLATIONS

**IN ADDITION TO
MONETARY PENALTIES:**

LOSS OF PUBLIC TRUST

**ACTION TAKEN
IMPROPERLY VOIDED
PER RCW 42.30.060(1)**

Introduction to the Public Records Act (“PRA”)

- ▶ Public Records Act (“PRA”) – Chapter 42.56 RCW
- ▶ Purpose and History
- ▶ Interpretation of the Act by Courts
- ▶ Relevant Definitions and How to Interpret and Apply the Act
- ▶ General Requirements Imposed on Local Governments
- ▶ Records Exempted from the PRA
- ▶ General Guidelines
- ▶ Retention Basics



WASHINGTON'S PUBLIC RECORDS ACT

Just like OPMA: very strong “purpose clause” that courts consider in rendering decisions

RCW 42.56.030 - People do not yield sovereignty - “liberally construed

Key PRA Definitions

RCW 42.56.010

“AGENCY” – which includes all state agencies and all local agencies (a broad definition)

Key PRA Definitions

RCW 42.56.010

“WRITING” – means handwriting, typewriting, printing, photo-stating, photographing, and every other means of recording of form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps ... and existing data compilations from which information may be obtained or translated (see statute for full list: RCW 42.56.010(4)).

Key PRA Definitions

RCW 42.56.010

“PUBLIC RECORD” – includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics...

Records Available For Public Inspection / Copying

In sum, PRA requires that each agency, in accordance with published rules, shall make public records available to the public for inspection and copying





PROMPT RESPONSE REQUIRED

RCW 42.56.520

Prompt Response Required

RCW 42.56.520 requires that agencies promptly respond to requests for public records. **Within five business days of receipt of the request**, the agency must respond by either

- (1) providing the record;
- (2) providing an internet address and link on the agency's website to the specific records requested (must provide in alternate format if requester notifies agency of inability to access); or
- (3) acknowledge receipt of request and provide reasonable estimate of time required to respond; or
- (4) Acknowledge receipt and request clarification of unclear request; or
- (5) deny request.

Note that a denial of request must be accompanied by a written statement of specific reasons for denial. Also note the agency may seek clarification of request as necessary, and an estimate of response time should take into account any need for clarification; time needed to locate and assemble information requested; and any need for third party notification.

Burden of Proof

- ▶ Under RCW 42.56.550, the burden of proof is on the agency to establish that a refusal to permit public inspection and copying is in accordance with statute; and the burden of proof is on the agency to establish that any timeline estimate for records production is reasonable.
- ▶ Public records shall be available for inspection and copying during the customary office hours of the agency, which must be posted on the agency or office's web site and made known by other means designed to provide the public with notice.


COPYING COSTS & AVAILABILITY – RCW 42.56.120

\$ - No charge for inspection of public records / locating documents and making available

\$ - Agency charges for actual costs may only be imposed in accordance with published terms calculated per 42.56.120

\$ - OR default cost provisions may be charged per 42.56.120(2)(b)

\$ - Customized service charge / deposit provisions



PRA EXEMPTIONS

- Various sections within the PRA provide basis for specific exemptions
- Various other state and federal statutes provide basis for specific exemptions
- Exemptions may be addressed through redactions and/or complete withholding depending on specific content analysis
- Redactions/Withholding must be accompanied by acceptable log content

WITHHOLDING / REDACTION LOG CONTENT

<ul style="list-style-type: none"> ▶ DOCUMENT DESCRIPTION ▶ DATE ▶ AUTHOR ▶ RECIPIENT ▶ CC's ▶ EXEMPTION BASIS / STATUTE / CITATION ▶ HOW APPLICABLE ▶ PAGE NUMBERS 	<ul style="list-style-type: none"> ▶ Agency cannot claim compensation for preparation of log ▶ Produce log at same time responsive records are produced ▶ Agency to retain a complete copy of records produced, privilege/exemption log, and copy of records withheld/redacted ▶ Claim timing implications
---	--

PRA Exemption Examples

- *NOTE: The PRA provides extensive detail regarding specifically defined exemptions to PRA disclosure requirements. These include, but are not limited to the following selected examples:*
- **Personal information and privacy exemptions** - RCW 42.56.210 and 42.56.230;
 - **Investigative, law enforcement, and crime victim exemptions** - RCW 42.56.240;
 - **Employment and licensing exemptions** - RCW 42.56.250;
 - **Real estate transaction exemptions** - RCW 42.56.260;
 - **Financial, commercial, and proprietary information exemptions** - RCW 42.56.270;
 - **Preliminary drafts, notes, recommendations, and intra-agency memorandum exemptions** - RCW 42.56.280;
 - **Agency party to controversy exemptions** - RCW 42.56.290;
 - **Archaeological Site exemptions** – RCW 42.56.300;
 - **Public Utilities and Transportation exemptions** – RCW 42.56.330;

PRA Exemptions

- *NOTE: The PRA provides extensive detail regarding specifically defined exemptions to PRA disclosure requirements. These include the following selected examples:*
- **Public Utility Districts and Municipally Owned Electrical Utilities exemption (restriction on access by law enforcement) – RCW 42.56.335;**
 - **42.56.330
Public utilities and transportation.**
 - The following information relating to public utilities and transportation is exempt from disclosure under this chapter:
 - (2) The addresses, telephone numbers, electronic contact information, and customer-specific utility usage and billing information in increments less than a billing cycle of the customers of a public utility contained in the records or lists held by the public utility of which they are customers,

PRA VIOLATIONS: PENALTIES

- ▶ RCW 42.56.550
- ▶ Superior Court review
- ▶ Burden of proof is placed on the agency
- ▶ Court may conduct hearing based solely on affidavits
- ▶ Person who prevails against agency shall be awarded all costs, including reasonable attorney fees; and in discretion of court, may be awarded up to \$100 for each day that he or she was denied the right to inspect or copy said public record

RCW 40.16.020; 42.12.010(5); 9.92.120 Preservation & Destruction of Public Records

- ▶ RCW 40.16.020: public officer who mutilates, destroys, conceals, erases, obliterates, or falsifies any record or paper pertaining to the officer's office... is guilty of a felony punishable by imprisonment or fine of up to \$5,000 or both...
- ▶ RCW 42.12.010 (5): a public officer's conviction of a felony (ex: above), causes his/her loss of office
- ▶ RCW 9.92.120: conviction of public officer of any felony or malfeasance in office shall disqualify him or her from ever afterward holding any public office in this state

RETENTION SYSTEM

In light of PRA requirements, a well-planned and systematic records management program is essential for all agencies.

Consult State of Washington retention schedules, which provide retention standards for specific records types and guide appropriate disposition actions.

Build a program that enables the agency to appropriately manage, search, produce, store and dispose of public records.



TAKEAWAYS

Be thoughtful about what you write. Ensure that the content is something that you would be comfortable having on the front page of the paper.

Appropriately preserve public records. Know the applicable record retention schedule, and how to store, manage, search, produce and dispose of agency records.

