

*Land Use & Climate Change Advisory Committee*  
**Homework Assignment #2 Template**  
**Due July 21, 2008**

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1. Of the ideas presented by LUCC members, identify five that you think have the most potential. At least two of the ideas should not be your own.
  - A. Recognize that the most effective and equitable way to coordinate and achieve GHG emissions reductions is at the countywide or regional level. Also, recognize that the majority of GHG emissions occur in the largest metropolitan regions of the state and that stronger regional policies are necessary in the region to achieve significant success.

Countywide Planning Policies section at RCW36.70A.210 would be amended to require policies that address Climate Change. (APA Idea #3)

- B. Begin by adopting an additional GMA goal and planning requirement that requires consistency between updated local land use plans and statewide GHG emission targets beginning with 2011 seven and ten year mandates
    - C. Update the transportation planning requirements within GMA to clarify that planning for a multimodal system is the priority and to reduce the emphasis on planning for vehicle movement. (Revise RCW 70A.070(6))
    - D. Provide a 'safe harbor' for counties and cities that use standard tools and methods recommended by the State in dealing with climate change and GhG. Have CTED coordinate with WSDOT in their efforts to develop models and tools that can be used by local jurisdictions. CTED and DOE should provide clear guidelines for land use and transportation plans that will reduce VMT and GhG substantially.
    - E. Prioritize existing state transportation and public works trust funds for projects that advance the state toward meeting GhG emission reductions and reduced oil dependence.

2. As you look across all of the ideas provided, if you have an idea for a coherent policy package that links the ideas together, indicate what that package would be. This does not need to be limited or inclusive of your five ideas above.
  - Begin by revising CPP's to address climate change, including consideration of transportation alternatives.
  - Create a goal within GMA to address climate change. Require local jurisdictions to update regional land use and transportation plans to show compliance with state GhG emissions reductions targets, recognizing that rural counties may need different consideration within the statute.
  - Provide CTED, DOE and WSDOT to assist in developing standard tools and methods to analyze the success of the GMA revisions and to assist local governments.
  - Protect forest and farmlands to keep those areas that sequester carbon.
  - Identify funding sources, such as a carbon tax, to assist local governments and the state in addressing climate change.

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1. Of the ideas presented by LUCC members, identify five that you think have the most potential. At least two of the ideas should not be your own.
  - Offer tax incentives for people that voluntarily reduce carbon emissions. Focus should be on measurement of greenhouse gases emitted from vehicles, not miles driven.
  - Phase out the state gas tax and eliminate the sales tax on highly fuel-efficient vehicles, hybrids, and flex fuel vehicles and increase the use of such vehicles.
  - Provide incentives (tangible incentives, tax credits/abatement, simplified/streamlined SPA review) for developers who want to invest and build in urban centers.
  - Cut taxes on capital investment to encourage new technologies, the replacement of inefficient equipment, and spur economic growth and job creation.
  - Increase urban density and thus reduce the need for cars.
  
2. As you look across all of the ideas provided, if you have an idea for a coherent policy package that links the ideas together, indicate what that package would be. This does not need to be limited or inclusive of your five ideas above.

Make sure current science is used to back up whatever we recommend and maintain a goal of “do no harm.” Also provide incentives for compliance rather than being compulsory.

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1. Of the ideas presented by LUCC members, identify five that you think have the most potential. At least two of the ideas should not be your own.

**1). Adoption of an additional GMA goal and planning requirement promoting consistency between local land use plans and statewide GHG emission targets, to be effective with the next GMA seven and ten-year updates.**

**2). Implement a wide menu of incentives to promote voluntary compliance by cities and counties, including safe-harbor under the GMA appeal process, access to state assistance (resource and financial) in attaining compliance, access to special rates and funding pools for public works and transportation projects which promote VMT reductions and transit investments, and beneficial use of carbon tax or cap and trade generated revenues.**

**3). Promote farmland and forest preservation strategies as a carbon sequestration strategy. Must be tied to compliance with land use regulations which are consistent with GMA sprawl reduction goals.**

**4). Revise GMA as it relates to transportation and concurrency to focus planning and resource investment on VMT, by reducing the movement of people and freight, instead of focusing on reactive approaches like congestion relief and vehicle movement. State transportation investments need to be consistent with this revised city and county focus.**

**5). See #1**

2. As you look across all of the ideas provided, if you have an idea for a coherent policy package that links the ideas together, indicate what that package would be. This does not need to be limited or inclusive of your five ideas above.

**The group needs to move quickly to agreement (or at least, debate and a majority view) on a primary outcome (I would strongly propose the creation of a new GMA goal as outlined in #1 above), in order to move to the strategies and incentives discussion, the latter which will ultimately determine the appetite of stakeholders to buy off on our primary objective. There is no other way to have a coherent policy outcome (package or piecemeal), given the clear ideological divisions among the stakeholders.**

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1. Of the ideas presented by LUCC members, identify five that you think have the most potential. At least two of the ideas should not be your own.

- 1) Incorporate climate change into GMA element (discussed below!)*
- 2) Require retail commercial developments to be mixed-use.*
- 3) Protect farm and forest lands from conversion through a multi-faceted (carrots and sticks) approach.*
- 4) Direct state funds and resources to jurisdictions that plan for and promote developments that reduce vmt.*
- 5) Develop tax-incremental financing options for local jurisdictions that pursue transit-oriented developments.*

2. As you look across all of the ideas provided, if you have an idea for a coherent policy package that links the ideas together, indicate what that package would be. This does not need to be limited or inclusive of your five ideas above.

*A GMA element should be crafted that encourages and possibly requires mixed-use and transit oriented development in urban centers. GMA currently creates a split between urban and rural lands; lands inside and outside of an UGA. This new GMA element would require UGA's to possess development frameworks that seek to reduce vmt.*

*This new GMA element would not apply to every jurisdiction. Exemptions would be provided for rural counties and small towns. For suburban communities, this element would only apply to commercial/retail districts. The result would be single family neighborhoods would be protected from higher density development; this element would only apply to new commercial/retail developments. Jurisdictions could be exempted if they follow development standards developed by CTED. Only large cities and counties (where the majority of growth will occur) will look to meet this goal through new development standards throughout their UGA's.*

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1. Of the ideas presented by Lucc members, identify five that you think have the most potential. At least two of the ideas should not be your own.
  - a. **Increase level and availability of services, product availability, etc to increase density in LAMIRD's to reduce travel**
  - b. **Prevent conversion of ag lands by providing greater revenue opportunities through accessory uses that do not result in land conversion of productive farmland**
  - c. **Increase variety of affordable housing choices within urban areas by removing barriers to accessory housing or accessory dwellings.**
  - d. **Encourage compact, walkable, and transit oriented development with a mix of use and densities that encourage walking, biking, and transit.**
  - e. **Encourage the use of cluster development that allows growth in a manner consistent with the retention of working natural resource lands. Explore rural village concept.**
  
2. As you look across all of the ideas provided, if you have an idea for a coherent policy package that links the ideas together, indicate what that package would be. This does not need to be limited or inclusive of your five ideas above.

Coherent policy package is based upon implementation of constitutional principles, followed by implementable laws based upon the constitutional principles they support, and finally through the rule promulgation that is based up sound laws passed by the legislature. Policy must not reflect faddish behavior or idealistic, populist beliefs based upon unsettled or premature science. Individuals chose best for their lives, given the opportunity to excel. However, in densely populated areas, conditions are such that opportunities are hampered by poor transportation corridors, lack of resources to travel cheaply, and lack of funding to enhance the necessary infrastructure to achieve such measures.

Clear and distinct measures of the various goals to be attained must be realistic, achievable, and the outcomes must be real. Nebulous and ideological outcomes that do not translate into real numbers, real results, and beneficial outcomes for the people being subjected to such measures will fail. If the people cannot relate to such measures, they will not accept the imposition upon their lives. Where the population is mixed about its acceptance of the measures, pilot projects should be implemented to demonstrate real outcomes before full blown measures are enacted. It may be that

the hypothesis of the measures and the expected outcomes are not implementable, nor profitable to enact. Perhaps the contemplated action to offset the supposed problem will not result in any appreciable nor measurable results without extraordinary expense. In this case, without a sense of value for dollars expended, any imposition of policy without merit will result in chaos. Better to not implement than incur a wrathful citizenry who feels duped into action that never yields any benefit.

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- 1. Of the ideas presented by LUCC members, identify five that you think have the most potential. At least two of the ideas should not be your own.**

First, it is imperative to recognize what Engrossed Substitute Senate Bill 6580 (ESSB 6580) does and does not say. The instructions to this homework assignment provide that the Land Use & Climate Change Advisory Committee's (Committee) "primary focus...as directed by ESSB 6580 Section 1, is reduction in transportation-related greenhouse gas emissions and dependence upon foreign oil (carbon fuels use)". While Section 1—the bill's legislative findings—does discuss reducing transportation-related greenhouse gas emissions and dependence upon foreign oil, it is important to read the other sections of the bill. For the purposes of this Committee, the operative language is found under section 4 of ESSB 6580.

Specifically, section 4 directs this Committee to provide a report that includes a number of findings and recommendations. For example, Section 4(i) directs the Committee to provide "descriptions of actions counties and cities are taking to address climate change issues."

ESSB 6580 further states that this Committee is to provide "[r]ecommendations of changes, *if any*, to chapter 36.70A RCW and other relevant statutes that would enable state and local governments to address climate change issues and the need to reduce dependence upon foreign oil through land use and transportation planning processes." See Section 4(ii)(emphasis added). The operative language in this sentence is "if any." Therefore, according to the Legislature, while this Committee is tasked with providing recommendations to the Growth Management Act (GMA), the Committee may decide that no changes are needed.

Section 4(iv) also contains important language this Committee must consider when making recommendations to the GMA. Specifically, this section states that this Committee's report must "consider[] positive and negative impacts to affordable housing, employment, transportation costs, and economic development that result from addressing the impacts of climate change at the local level." This section is crucial, especially in the context of new land use regulations that could have the potential of driving up housing costs. This is especially important in light of a recent study performed by University of Washington economics professor, Theo Eicher. (See attached article). Professor Eicher found that between 1989 and 2006, the median inflation-adjusted price of a Seattle house rose from \$221,000 to \$447,800. Professor Eicher found that \$200,000 of that increase was the result of land-use regulations – twice the financial impact that land use regulations have had on other major U.S. cities.

Thus, ESSB 6580 requires this Committee to take into consideration whether any recommendation it makes will negatively affect the cost of housing, employment, and/or economic development. This subsection has equal weight as ESSB 6580's other sections.

Last, Sections 4(v) and (vi) require this Committee to assess state and local resources needed to fully implement the recommendations and provide recommendations for potential additional funding to implement the recommendations.

A quick refresher of SSB 6580's provisions is necessary before this Committee delves too deeply into the issues and starts providing recommendations. It is imperative to recognize that while the Legislature created this Committee to study and provide potential recommendations to the GMA to address greenhouse gas emissions, the Legislature was very specific in how the Committee shall proceed. Ignoring the costs associated with adding new land use regulations would be a dereliction of this Committee's duty under the plain language of SSB 6580.

In addition, contrary to the instructions for this assignment, the issues that are being addressed by other Climate Action Team (CAT) Implementation Working Groups (IWG) are not off limits for this group. For example, the fact that the State Environmental Policy Act (SEPA) IWG may be addressing categorical exemptions does not mean that this issue is precluded from being addressed by this Committee. Section 4(ii) specifically states that this Committee may make recommendations to the GMA and "other relevant statutes." Because SEPA and the GMA are intricately intertwined, making recommendations to SEPA that would affect the GMA is certainly within the realm of issues the Legislature envisioned when it enacted the legislation.

With this in mind, below are five ideas BIAW believes have the most potential:

1. Authorize zoning ordinances and create incentives that increase the amount of land suitable for development within urban growth areas.
  2. Improve the population methodology used by the Office of Financial Management to ensure it reflects the economic growth expected by a community.
  3. Increase the level of availability of services and product availability in rural areas, including increased density within designated Limited Areas of More Intense Rural Development (LAMIRDs).
  4. Reduce impact fees from high-density in-fill projects and single-family housing within urban growth areas.
  5. Increase SEPA's categorical exemption to 20 dwelling units within urban growth areas.
- 2. As you look across all of the ideas provided, if you have an idea for a coherent policy package that links the ideas together, indicate what that package would be. This does not need to be limited or inclusive of your five ideas above.**

Too often high density development within urban growth areas faces numerous barriers. For example, opposing neighborhood groups often file endless appeals through Washington's Land Use Petition Act. Likewise, in-fill development also suffers from excruciatingly long permit approval timelines and other delays, such as SEPA review. Moreover, high-density development projects often never break ground because the local jurisdiction imposes onerous impact fees.

In order to reduce these barriers to dense development, which in turn would lead to fewer vehicle miles traveled and a reduction of greenhouse gas emissions, BIAW suggests a number of specific changes:

- Reduce or eliminate impact fees for high-density development projects within urban growth areas. This would have the added benefit of making housing more affordable, which, as noted above, is one of the items this Committee is required to consider when developing recommendations. *See* SSB 6580, section 4(iv).
- Increase the SEPA “categorical exemptions.” Currently, under SEPA (WAC 197-11-800), certain types of minor new construction are categorically exempt from the threshold determination and environmental impact statement (EIS) requirements. WAC 197-11-800(1)(b)(i) provides that a local government shall exempt projects up to 4 dwelling units. WAC 197-11-800(1)(c)(i) further provides that local governments may increase the exemption to 20 units. BIAW proposes that this categorical exemption should be increased to 20 dwelling units.

Another unnecessary delay and impediment to high density development is the endless appeals of comprehensive plans and development regulations beginning at the Growth Management Hearings Board stage. Too often after a local jurisdiction updates its comprehensive plans and/or development regulations under the GMA its regulations or comprehensive plans are appealed to the Growth Management Hearings Boards. Inevitably, the Growth Board’s decision is appealed to either the superior court or the court of appeals (or even to the Washington Supreme Court). The Growth Board process has become extremely expensive, time-consuming, and unnecessary. Elimination of the Growth Boards would lead to fewer GMA challenges, which in turn would lead to more in-fill and high density development, and lower housing costs.

There are other ideas that warrant attention, e.g., ideas under the “Jobs/Housing Balance and Affordable Housing” heading. Many of these ideas don’t have specific policy proposals, so it is hard for BIAW to specifically comment on these ideas at this time. However, BIAW does support these overarching policy goals.



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# UW study: Rules add \$200,000 to Seattle house price

By Elizabeth Rhodes  
Seattle Times business reporter

Backed by studies showing that middle-class Seattle residents can no longer afford the city's middle-class homes, consensus is growing that prices are too darned high. But why are they so high?

An intriguing new analysis by a University of Washington economics professor argues that home prices have, perhaps inadvertently, been driven up \$200,000 by good intentions.

Between 1989 and 2006, the median inflation-adjusted price of a Seattle house rose from \$221,000 to \$447,800. Fully \$200,000 of that increase was the result of land-use regulations, says Theo Eicher — twice the financial impact that regulation has had on other major U.S. cities.

"In a nationwide study, it can be shown that Seattle is one of the most regulated cities and a city whose housing prices are profoundly influenced by regulations," he says.

A key regulation is the state's Growth Management Act, enacted in 1990 in response to widespread public concern that sprawl could destroy the area's unique character. To preserve it, the act promoted restrictions on where housing can be built. The result is artificial density that has driven up home prices by limiting supply, Eicher says.

Long building-permit approval times and municipal land-use restrictions upheld by courts also have played significant roles in increasing Seattle's housing costs, he adds.

(While his data reflect owner-occupied homes within the city of Seattle only, Eicher thinks the same basic findings may apply to surrounding cities.)

Eicher's \$200,000 conclusion doesn't surprise Kriss Sjoblom, staff economist for the Washington Research Council, a nonpartisan organization that examines public-policy issues.

"It's actually pleasing," Sjoblom says, "that we finally have data



ROD MAR / THE SEATTLE TIMES

Theo Eicher, founding director of the UW's Economic Policy Research Center, analyzed data from a national index and concluded that Seattle is "one of the most regulated cities" when it comes to land use — and home prices reflect that.



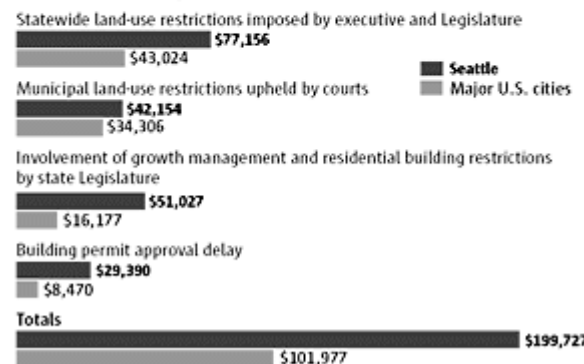
Theo Eicher, economics professor at the UW

## The high cost of regulation

From 1989 to 2006, land-use regulations added almost \$200,000 to the cost of houses in the city of Seattle, according to a University of Washington study.



Regulatory costs in Seattle are twice the national average, according to an analysis by UW economics professor Theo Eicher. Here's how the fees add up.



Sources: Theo Eicher and The Wharton Residential Land Use Regulatory Index

THE SEATTLE TIMES

that allows us to show things we thought were there all the time."

A UW professor for 13 years, Eicher is also the founding director of the UW's Economic Policy Research Center. Its goal is to provide analysis that will inform regional policy debates.

Eicher says the research center long wanted to analyze the impact of regulation on housing prices, and found a way when researchers at the University of Pennsylvania developed the Wharton Residential Land Use Regulatory Index. Based on a survey of more than 2,500 U.S. municipalities, it provided the first nationwide analysis and comparison of the effects of land-use regulation.

Eicher requested Seattle's data from the Wharton Index and analyzed it further. That led him to put a price tag on local land-use regulations.

He received no outside funding for the project and stresses he makes no value judgments about whether regulation is good, bad or needs to change.

Rather, Eicher wants the public to "understand the impact of their choices. There's always a cost associated with the cityscape. Who wants to have no parks in the city? Or, a 10-story high-rise in Blue Ridge? But there's a cost to that."

Compared with 250 major U.S. cities, he says, Seattle:

- Is first in terms of the impact of state political involvement in land issues.
- Is in the top 3 percent for approval delays for new construction.
- Is in the top 10 percent in local political pressure influencing land use.

As an example of how this plays out, Eicher explains that "the statewide growth-management plan gave King County few options but to require that landowners in rural areas that haven't already cleared their land to keep 50 to 65 percent of their property in its 'natural state.' This forced greater density in Seattle."

Then a King County referendum to repeal some of the county's land-use restrictions was judged illegal in 2006 by the state Supreme Court because it violated the state's Growth Management Act.

"The state is intervening to restrict supply. It's not that there's no land at all," Eicher says.

Economists hold that housing costs are driven by supply and demand, and say those factors have certainly influenced the cost of Seattle's housing.

But Eicher argues that "demand does not need to drive up housing prices."

Cities such as Houston and Atlanta, which have few growth restrictions, have shown that. They've been able to add enough housing to meet demand, so their home prices have risen more moderately than heavily regulated San Francisco and Boston, which have a harder time increasing housing.

According to the Wharton study, cities such as Seattle that have high median incomes, high home prices and a large percentage of college-educated workers tend to have the most land-use regulations.

Sjoblom says that makes sense: "People with higher incomes want the kind of amenities that regulation provides," he says. "If you're a homeowner and growth controls are imposed and housing prices shoot up, you're grandfathered because you own the place. In theory people will say it's [rising prices] a bad thing, but in practice it's not hurting them."

Yes

No

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Sjoblom says that's why making the changes that would foster affordability are so hard to get past the public, some 68 percent of whom are homeowners. "When you bring up specific things, like allowing multifamily housing in their neighborhood, they have misgivings."

That frustrates renters, who suspect they're being priced out. And they're right, according to a housing-affordability index created by the Washington Center for Real Estate Research at Washington State University.

Last summer, King County's potential first-time buyers earning the median family income (\$75,143) had just 37 percent of the financial wherewithal to buy the median-priced single-family house (\$477,000) at the prevailing interest rate (6.47 percent).

Five years earlier, when King County's median-priced house cost \$282,500, median-income, first-time buyers possessed 72 percent of the income needed.

(No breakout statistics are available for Seattle.)

But various government regulations make it challenging to add more affordable housing, notes Sam Anderson. He's executive officer of the Master Builders Association of King & Snohomish Counties, which has pushed government to rethink some of the regulations.

Anderson estimates that regulatory costs comprise up to 30 percent of the total cost of building a new house (land costs included). The laundry list of fees and requirements can run to 30 or more, depending on where the house is built.

Among them, Anderson says, are transportation, school and park impact fees, stormwater management fees, critical-areas mitigation and monitoring, pavement requirements and rockery permits.

And then there's the dollar cost of the process itself.

Building in Seattle can be very time-consuming compared with nearby cities, because of Seattle's neighborhood-based design-review process, says Linda Stalzer, project development director for the Dwelling Company, an Eastside homebuilder.

Design-review committees, composed of citizens interested in architecture and development, are located throughout Seattle; their job is to review commercial and multifamily housing designs before they're approved.

"Depending on how complicated your project is, it might take you three or four times to get through it," Stalzer says.

Add together all the various review and comment periods, and it can take 12 to 18 months to get to the point of applying for a building permit, she says.

On a 25-unit Capitol Hill town-house project now under way, Stalzer estimated the various fees (including consulting and mitigation costs, but not building permits or land prices) have totaled about \$650,000.

"I think there's value in going through the process because we're building things that have an impact on communities," Stalzer says. "The difficult part is the process isn't very efficient."

In the final analysis, Eicher believes Seattle's regulatory climate exists because its residents want it. "My sense is land-use restrictions are imposed to generate socially desirable outcomes," he says. "We all love parks and green spaces. But we must also be informed about the costs. It's very easy to vote for a park if you think the cost is free."

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1. Of the ideas presented by LUCC members, identify five that you think have the most potential. At least two of the ideas should not be your own.

Suggested 5 items:

1. It is important to develop a set of metrics or performance measure for cities and counties to adopt and use to regularly review their progress toward accommodating the 20-year population and employment growth projections. This will help in assessing whether adjustments are needed to ensure projections are met and steps are taken to ensure the right housing products are in close proximity to locations of employment. This will help in assessing the amount of emissions being released and whether additional steps are necessary to adjust the land use and/or transportation components of communities.
2. Ensure a variety of housing choices (including concepts for TODs and mixed use development) are available in a community which satisfies the income and lifestyle needs of the community's population demographics. The housing choices in neighborhoods should be tied closely to services that can be accessed via a multimodal transportation system.
3. Agree with the cities proposal (R.Munson/Dave Williams) to amend statutes describing the role and responsibilities of Regional Transportation Planning Organizations (RTPOs) to incorporate addressing climate change into their responsibilities. By doing so, city and county land use and transportation planning will be better coordinated at both the jurisdictional level as well as the regional level.
4. Provide funding to cities and counties to enable the preparation of comprehensive nonproject EIS's (could be subarea, community levels with consideration of combining plans at the regional or RTPO level). This should be coupled with the adoption of the list of SEPA exemptions including consideration of an exemption for urban centers. SEPA reform is important in moving forward –making it easier not more complex to move forward with projects that help reducing emissions.
5. It is critical that infrastructure funding be improved at both the state and local level. We will not achieve compact communities without ensuring better funding mechanisms for infrastructure (all aspects). A good share of the infrastructure in communities where we need to increase density is at or near the end of its life.
6. Some of the meeting dialogue identified the need to change the regulatory schemes used by counties and cities. This is the fastest way to try to get change to occur on the ground.



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1. **Of the ideas presented by LUCC members, identify five that you think have the most potential. At least two of the ideas should not be your own.**
  1. Add a new GMA goal, or amend existing Goal 10, to specifically name Climate Change and reduction of GHG as issues to be considered by cities and counties when they amend their comprehensive plans and development regulations. [Roberta Lewandowski/Futurewise; Paul Roberts, City of Everett, AWC; Rich Munson, City of Spokane Valley, AWC; Chris Marr/State Senator; Genessee Cooper Adkins/Transportation Choices Coalition; Joe Tovar/APA.]
  2. Create new local government funding mechanisms, such as Carbon Taxes and Tax Increment Financing, to facilitate the upgrading of infrastructure essential to making compact urban development functional and livable, and thereby reduce VMT and GHG. [Tayloe Washburn/AWB; Rich Hill/NAIOP]
  3. “Add a requirement to GMA that when each UGA is established, an average density target would be set that the jurisdiction(s) would have to meet before adding any residential land to the UGA.” [Jeanne Harris, City of Vancouver/AWC.]
  4. Require multicounty planning policies (MPPs) for the region that emits the greatest amount of GHG in the state: Central Puget Sound. Require its RTPO and local governments to adopt MPPS to link GHG reduction targets to implementing land use targets for jobs/housing\_balance, compact urban centers, and minimum urban densities. [Joe Tovar/APA.]
  5. Amend GMA Optional Elements section to add a Climate Change/Sustainability element and direct CTED to develop WAC guidelines for use by local governments. [Joe Tovar/APA]
2. **As you look across all of the ideas provided, if you have an idea for a coherent policy package that links the ideas together, indicate what that package would be. This does not need to be limited or inclusive of your five ideas above.**
  1. Amend the urban growth areas section of the Act to require a showing of offsetting GHG reducing measures (e.g., TDR to urban areas) before any UGA is expanded and prohibit the expansion of UGAs into floodplains, thereby encouraging infill within existing UGAs, conserving designated agricultural lands from conversion to urban uses, and protecting life and property from floods.

LUCC member comments/interests that would served by this policy package:

- “Make it more difficult for cities and counties to expand UGA boundaries unless GHG reduction strategies and best practices are being implemented within current boundaries. UGA expansions need to be offset with permanent TDR actions which promote agricultural and forest land preservation.” [Chris Marr, Senator from Spokane]
- Reduce the conversion of agricultural lands to other uses. [comment by Dan Wood, Farm Bureau, at 7-7-08 LUCC meeting]
- Protect the viability of agricultural land use, as well as life and property, by prevent urban development in flood plains. [comment by Daryl Williams, Tulalip Tribe, at 7-7-08 LUCC meeting]

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From Robert Lewandowski, Futurewise

***Homework item # 1. Of the ideas presented by LUCC members, identify five that you think have the most potential. At least two of the ideas should not be your own.***

**1. Direct CTED by December 2009 to adopt a model Climate Change (or GHG Emissions) element for local comprehensive plans and model implementing regulations.** (T. Washburn)

CTED also would provide SEPA analysis of the model plan element and development regulations that could be plugged-in to non project EISs by counties and cities. (This could be started by Executive Order, not requiring legislation.)

Jurisdictions which adopt the model performance standards into their plans and regulations would be provided a "safe harbor" from GMA Board appeals.

Incentives for jurisdictions which put in place the CTED model Plan and development regulation components could include priority access to the full variety of State infrastructure funds.

**2. Require and incent local and regional land use and transportation plans to address climate change, with accompanying analysis to show that proposed plans will achieve the state's adopted VMT reduction goals.** (Senator Marr, Mayor Munson, J. Tovar, others)

Cities and counties will soon begin updating GMA plans, with the first updates due in 2011; adding or changing a GMA goal to ensure these updates address climate change through land use location, proximity of jobs and housing, density, mixed use and supporting transportation choices is the most effective way to reduce the need for daily vehicle travel in the long term.

**3. Revise transportation and concurrency sections of the Growth Management Act to address moving people and goods, rather than vehicles, and to provide for the entire array of transportation choices, at least in larger jurisdictions.** (Senator Marr and Councilmember Harris)

**4. Retain forest and farmlands and urban area tree cover and open space to aid with carbon sequestration.** (J. Tovar, D. Wood, J. Weiss) The CAT interim report (2/08) indicates that saving trees, natural areas, working farms and forests can significantly reduced greenhouse gas in the atmosphere.

**5. Require RTPOs and Multicounty Planning Policies in the larger urban counties to focus on plans and policies that result in reduced VMTs.** (G. Adkins, J. Tovar, others) The most effective way to reduce the need for vehicle miles travelled, and subsequent ghg emissions, is to address the problem regionally in the most popular regions of the state.

***Homework item #2: As you look across all of the ideas provided, if you have an idea for a coherent policy package that links the ideas together, indicate what that package would be. This does not need to be limited or inclusive of your five ideas above.***

Directing and incenting local and regional land use and transportation plans to address state goals for VMT reduction and GHG reduction through changes to the GMA in 2009 combines many of the ideas that have been raised by LUCC committee members. This would include:

- a new or or modified GMA goal to reduce GHG and VMT
- CTED guidelines to create a model climate element that also provides a safe harbor so each jurisdiction doesn't need to individually respond to hearing boards appeals on climate change
- modified concurrency requirements to include multimodal transportation plans
- a new approach to state growth targets that addresses proximity of jobs and housing
- focus on promotion and funding for urban centers with efficient densities, and a mix of uses and housing for all incomes
- require TDR into UGA for any de-designation of currently designated rural and resource lands
- Prioritize existing state transportation and public works trust funds for projects that advance the state toward meeting ghg emission reductions and reduced oil dependence

## Memorandum

To: Land Use & Climate Change GMA Advisory Committee and Joyce Phillips, CTED

From: J. Taylor Washburn

Date: July 21, 2008

Subject: Homework Response No. 2: Comprehensive Proposal for GMA Amendments that Can Help Reduce Greenhouse Gases and Attain State Goals

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### **I. FOUR AREAS OF GMA I SUGGEST LUCC FOCUS ITS ATTENTION ON**

1. More Compact Urban Communities: How to leverage SEPA and state funds to achieve the far more compact development we need as a state in cities, or their subareas, to reduce VMTs and meet the state climate change goals
2. Moving TDR Programs into GMA: How to inject a Transfer of Development Rights (“TDR”) planning process more centrally into the GMA planning process, and thus promote less sprawl in our rural, farm and natural resource lands, while also providing more compact development in cities.
3. Financing needed infrastructure: How to avoid the mistakes we made as a state when we adopted GMA in 1990-91 and failed to adopt a substantive and practical finance program for needed infrastructure. We need now to identify ways to provide cities which choose to develop in a dense way with the infrastructure resources required to make sustainable cities effective and attractive places to live.
4. Essential Public Facilities. Improving our ability to build essential public facilities when and where we need it: For infrastructure we can fund and which we know is needed to promote compact and sustainable development, how can we improve GMA’s provisions by ensuring it is in place when we need it?

## **II. SUMMARY OF OVERALL DIRECTION OF PROPOSED GMA AMENDMENTS**

- VMTs can be significantly reduced over time through less sprawl and concentrated urban growth.
- We must change the way we do business at state, regional and local levels if we are to achieve greater success in encouraging citizens to live in urban centers which are compact, well-designed, affordable, and provided with needed infrastructure.
- This proposed legislation discussed in this memorandum seeks to encourage (not mandate) and provide tangible incentives to cities to adopt into their development regulations performance standards needed to address climate change and other environmental impacts. If they do so, it would have the intended effect of providing a far simpler and predictable permit system for developers, designed to lead to increased investment in urban centers in future years.
- These measures call for analysis by local jurisdictions of climate change impacts, with state assistance and CTED guidance in the form of a model comprehensive plan elements, model development regulations, and related non-project SEPA analysis
- These measures aim to incentivize adoption by local jurisdictions of plans calling for compact development in cities, accompanied by non-project comprehensive SEPA review of environmental impacts of plan or subarea plan, which includes analysis of climate change and other environmental impacts (maximum build-out analysis) and identifies appropriate mitigation to reduce these impacts beyond a threshold of significance. The SEPA review proposed to be conducted on model CTED plan elements may be incorporated in local subarea plan SEPA review. State incentives and CTED assistance are built into this provision.
- Based on impacts and mitigation identified in local jurisdiction non-project subarea EIS jurisdictions are encouraged and incented to adopt any needed development regulations to address identified impacts and provide mitigation in targeted areas of compact development
- Cities which chose to do the work required to meet the requirements set forth above will have the option of removing any SEPA review (or appeals) provisions from subsequent project-level development proposed in these areas of concentrated or compact growth.
- To help preserve forest, rural and farm lands, with their carbon sequestration potential, and address the legitimate concerns of property owners in those areas with

their land value, an amendment to GMA is set forth below which would elevate the role of the transfer of development rights (“TDR”) planning tool. While a TDR program can be complicated to design and implement, and needs to reflect the local market factors and local preferences regarding receiving sites and what form of benefit the TDR takes, it is time to encourage all GMA jurisdictions to use the TDR tool both to promote compact urban development and prevent greater sprawl. A balanced approach to our legislative package should include a clear facilitation of compact urban growth hand in hand with an equally clear commitment to use tools such as TDR to slow sprawl and conversion of rural, resource and farm lands outside of UGAs.

- Essential public facilities (“EPFs”) are a vital component to successful compact cities and thus our effort to reduce VMTs. Existing GMA provisions have proven to be ineffective in achieving the timely siting of EPFs, thus adversely affecting our ability to provide the infrastructure needed by cities to accommodate more growth in future years and for our region and state to remain competitive. Amendments to GMA are proposed to simplify and expedite this system, while preserving both the opportunity to receive public input in the areas where an EPF is proposed to be sited and the requirement to include reasonable mitigation measures as part of any EPF proposal.

### III. OPTIONAL IDEAS FOR LUCC CONSIDERATION WHICH ARE NOT ELABORATED ON BELOW

- **Affordable Housing**: Option for LUCC Group consideration: include affordable housing provisions which are either more directive or provide clearer incentives in taking steps to make transit-oriented development (“TOD”) which includes lower cost housing. Specifics can include: 1) a commitment to density prior to receiving any state funds for transportation; 2) reducing or eliminating the parking requirement in dense urban centers; and 3) allowing and encouraging construction of 5/2 (five floors wood over two concrete) housing which is the cheapest way to provide quality and affordable housing.
- **Concurrency**: Option for revising concurrency in ways that will better comport with climate change and VMT goals, and also better incentivize developers. The state mandate to reduce VMTs does not necessarily comport well with the way many jurisdictions approach concurrency, basing it on a LOS system which frequently requires developers to provide more lane capacity for vehicles in order to proceed with development and meet the adopted local LOS standard. More and more urban developers and city planners recognize the increased value of providing a range of alternatives to SOV use as part of the future solution to our growth objectives. Some jurisdictions, such as Redmond, are considering more transit-based approaches to concurrency. I believe our LUCC time would be well-invested in discussing ways in which we can both promote the compact development we want and do so using a

revised concurrency approach that better comports with our VMT goals and places greater emphasis on transit options. I would also like the LUCC to consider a legislative proposal that was not adopted last year (HB 2950), which recognizes that a developer can also achieve concurrency in part by payment of impact fees. If adopted this bill can help reduce VMTs by making it more difficult to prohibit growth where it belongs – in urban centers.

- **Jobs/Housing Balance:** Option: taking new steps to achieve a better jobs/housing balance in those jurisdictions which have a very high ratio. We need to discuss possible ways beyond existing provisions to achieve a balance which promotes climate change VMT objectives. Achieving greater residential density in these jurisdictions will directly assist in reducing VMTs. It is possible to condition the financial incentives and rewards associated with cities which take on sustainable and dense development on their also meeting a designated jobs/housing ratio. The LUCC should first have an objective understanding on the extent to which cities which do have a good jobs/housing ratio in fact do, or do not, result in lower VMTs. It is possible, given employment patterns, that there may not be a material difference in VMTs.
- **Mandate What are Now Optional SEPA Exemptions in Larger Cities.** If the LUCC determines not to recommend what is proposed regarding an area-wide SEPA exemption, as set forth below, others have suggested that making what are now optional SEPA thresholds for development/activities in GMA planning cities required in most if not all cities. A related suggestion is to increase new “optional” threshold levels in designated areas.

#### **IV. CONTEXT FOR SPECIFIC GMA PROPOSALS**

##### **A. SEPA AREAS CONTEXT FOR LUCC – HOW CAN WE USE SEPA IN MORE CREATIVE AND TARGETED WAYS TO BETTER PROMOTE OUR CLIMATE CHANGE AND VMT OBJECTIVES?:**

1. In areas of greatest desired urban density, such as what some cities term “urban centers” where there are adequate GMA regulations which cover basic SEPA elements of the environment and there are sustainable climate change (“CC”) provisions in place (either through adopted regulations or safe harbor SEPA standards), exempt from SEPA review all subsequent development (and appeals). This would be a great magnet for investment in the areas where we want it to reduce VMTs. One way to do that is set forth below.
2. Consider clarifying and making more attractive and user-friendly Section 240 of the SEPA statute and provisions on Planned Actions and GMA-SEPA integration. These creative tools developed in last 10 years are not used anywhere near as

much as they could and should be. The LUCC should consider if modest refinements might lead to them being utilized more in the future and thus help promote climate change and VMT objectives.

More SEPA-related issues and opportunities are laid out below.

**B. LUCC CONTEXT OF SPECIFIC PROPOSALS – WHAT ON-THE-GROUND RESULTS ARE WE TRYING TO ACHIEVE?**

If we really want change how we do business as a state and make real progress in reducing VMTs, we must identify and put in place carrots, not sticks, for both developers and cities which step up to CC challenge and opportunities<sup>1</sup>.

**1. More Compact and Sustainable Cities:** We must focus on specific ways to:

- a) encourage cities to develop more sustainable, affordable and well-designed compact areas;
- b) provide them with the resources for needed infrastructure (broadly defined);
- c) provide them with needed resources to do an effective job at subarea phase in SEPA EIS; and
- d) reward them when they choose to do so and successfully follow through. Unless and until we build cities right, and understand why many citizens continue to opt for suburbs, our efforts will not attain objectives.

**2. What do we want to take place in areas targeted by cities for compact development (and reduced VMTs).** My model of a city that is incented and rewarded for choosing to take on a lot of density and develop in a sustainable way would include as possible features (each of which possibly needs help in form of proposed SEPA, GMA or other laws/state regulations) the following:

- a) priority access to existing state funds in a variety of areas such as infrastructure, open space, housing, etc;
- b) identification of ways to leverage anticipated future growth in urban centers where we want it, in order to reduce VMTs, so that cities would be able to bond or otherwise raise revenue upfront, paid back over time by future development;
- c) a thorough subarea EIS or a sequence of subarea SEPA documents over time focused on more compact development in designated growth areas, funded as needed and reimbursed in some fashion over time by latecomer fees from developers who will reap the benefits of this upstream EIS work;

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<sup>1</sup> I recognize some LUCC members and staff may feel that more “sticks” are required to achieve the density needed to meet our GG targets. I look forward to hearing their specific proposals, and suspect a combination of carrots and sticks will be what we put forward.

- d) based on sustainability standards developed by CAT and other state sources and the mitigation identified by area-wide EIS to address maximum build out EIS analysis and CC issues, the City adopts any additional development regulations needed to ensure mitigation is in all projects and that it covers key areas of environment;
- e) the City has incorporated into the heart of its comprehensive plan and regulations a TDR receiving site program, one whose impacts (i.e. the environmental impacts of any additional height/FAR secured from buying TDR) would already have been analyzed and mitigated in area-wide EIS; the City plan element also includes incentives to provide in public and private infrastructure sustainable street design, green streets, and stormwater design;
- f) it has revised its concurrency ordinance to encourage and allow developers to achieve concurrency not through only new lane capacity, but increased access to transit and non-motorized mobility options; and
- g) it includes something akin to local design review or other efficient and effective local public process to do what we can to ensure that planned density is well-designed and sensitive to adjacent residents and neighborhoods. Having well-designed denser areas is key to their success, and any changes we propose need to recognize this.

**3. How Do We Do a More Effective Job in Reducing VMTs by Attracting Developers to Invest in Dense Urban Areas?**

This memo submits that an effective way to reduce VMTs in coming years is to build more compact cities which are developed in a sustainable manner. It suggests ways in which cities might be incented and provided with increased financial resources to do so, and calls on the LUCC to address GMA's long-standing Achilles Heel, which was our failure to provide adequate infrastructure financing for cities at the time GMA was adopted (or since). Another foundational requirement to meet our goals for compact growth in cities is to provide sustained and positive reasons for the development community to invest in future comprehensive plans which call for concentrated and sustainable development. It is critical to create a framework that will provide a powerful reason for developers to get in the game and invest in these sustainable communities. We really need to change the paradigm for them -- through carrots, not sticks. We can make a big step forward in getting developers to really become a partner with cities and environmentalists in a more comprehensive manner, if, at the end of the day, we can offer them:

- a) ability to prosper through investing in sustainable compact development in urban centers;
- b) prospect of no SEPA whatsoever in those city areas, outlined above, that have conducted prior SEPA review at a city or subarea level and that have addressed both SEPA and CC goals and standards through adoption of clear and predictable development regulations;

- c) clear and real incentives in form of reduced costs or added height/FAR if they choose to exceed adopted CC standards;
- d) similar to this, clear incentives for them to want to participate in a TDR program; and
- e) possibly reduced impact fees if they can demonstrate a CC/reduced VMT program which minimizes need for added infrastructure

**4. How Do We Better Improve GMA to Ensure that the Planned and Funded Infrastructure needed to create compact sustainable communities is ready when and where we need it?**

EPF reform is proposed to ensure that transportation and other vital infrastructure needed to promote the dense urban centers we need to reduce VMTs is in place when needed. Failure in this area is also a fatal flaw in getting developers in the game. This is discussed in more detail below and in Attachment B.

**V. SPECIFIC GMA PROPOSALS ON HOW TO IMPLEMENT MANY OF THESE SUSTAINABLE DEVELOPMENT OBJECTIVES THAT WOULD REDUCE VMTs**

**A. Amending GMA to Incentivize More Compact Urban Areas with Reduced VMTs – possible Road Map.**

The following approach tries to balance the overall state goals with approaches that are most likely to be implemented. It seeks to minimize, to the extent possible, the human and financial resources required of local jurisdictions. Finally, it seeks to understand and reflect in any actions we propose the diversity of jurisdictions and local conditions throughout the state.

A starting point is the recognition that our goal of reducing VMTs is well served by successfully achieving attractive and affordable compact development in our larger jurisdictions. As the discussion continues, we can discuss whether it makes more sense to mandate or create voluntary incentives for greater urban density in UGAs and to require or create incentives for development proximate to public transit. As noted above, an initial carrot-based approach may be most likely to achieve success. The LUCC can discuss if more “sticks” are needed to achieve state VMT objectives.

One approach would be to create incentives (or, if deemed necessary and politically feasible, possibly mandate) for local governments to meet certain performance standards for GHG per capita GHG emissions or per capita VMTs. Per capita GHG emissions might be a more fair and politically palatable statewide standard than per capita VMT reduction because there are a variety of means to reduce GHG emissions other than reducing VMTs and it may be more feasible in Eastern WA and other less urbanized parts of the state to reduce per capita GHG emissions (e.g., through green building standards, fostering forest, farm, carbon sink expansion by TDR transfer programs or

other means) than to reduce per capita VMTs. This is an issue the LUCC and others can discuss.

This approach could be done by:

1. Directing CTED by December 2009 to adopt a model Climate Change (or GHG Emissions) element for local comprehensive plans and model implementing regulations. GMA could be amended to make this element a required or optional element of local GMA comprehensive plans. It is not clear to me that a new goal has to be added to GMA to achieve this purpose. If it is optional, incentives could be provided to adopt it. If it was a requirement, one way to deal with jurisdictions which adopt the model performance standards into their plans and regulations would be to provide a "safe harbor" from GMA Board appeals. It would be logical to include a Transfer of Development Rights ("TDR") component to this comprehensive plan climate change element. A TDR proposal is outlined below and at Attachment A.
2. CTED also would provide SEPA analysis of the model plan element and development regulations that could be plugged-into non project EISs by counties and cities.
3. In the CTED model, specific per capita GHG reduction credits could be assigned to various provisions of local comprehensive plans and development regulations; placing some GG reduction benefit from specified actions.
4. GMA and SEPA could be amended to provide that all development that is consistent with the Climate Change element of the local comprehensive plan and implementing regulations would be exempt from SEPA or, at a minimum, would be exempt from SEPA analysis of climate change impacts. If project-level development were exempted for all SEPA, then the only SEPA appeal allowed would be at the subarea level when SEPA is conducted, and not at the project level. Note that this is somewhat similar to one of the options that has been proposed in one area in California. If a City's subarea EIS identified mitigation measures required in the subarea to address significant impacts, that jurisdiction could choose to adopt local development regulations requiring those mitigation measures and incentives (credits) could be provided to local governments that choose to require such mitigation.
5. Local governments could also be authorized to exempt such development from some or all development fees, as is the case with certain low income housing under RCW 82.02.
6. As is the case with the buildable lands analysis, the per capita GHG reduction could be subject to periodic audits by a state agency or the local government that

might result in loss of SEPA exemptions for conforming development unless local plans and regulations are appropriately revised.

7. Incentives for jurisdictions which choose to participate and put in place the CTED model Plan and development regulation components could include priority access to the State Infrastructure and Economic Development Revolving Funds and other similar existing resources. The fundamental question of how we direct more resources to cities to provide needed infrastructure is key to any climate change/VMT proposals to amend the GMA coming out of LUCC. It is addressed below.
8. A benefit of the general approach outlined above is its use of overall GG reduction performance standards, rather than specific "command and control" requirements. This more flexible approach would allow local governments to employ TDRs from forest and farm resource lands, other strategies to increase or increase the effectiveness of carbon "sinks", green building requirements, and a variety of land use and non-land use strategies to reduce per capita GHG emissions. Such an approach focuses on results and provides opportunities for local creativity and leadership by example and allows for regional differences in conditions and politics.

**B. Adopting a Transfer of Development ("TDR") Program Element into Local GMA Plans and Regulations.**

As noted above, TDR is one proven approach to both preserving rural, agricultural and resource lands as well as promoting dense developments in cities, with associated positive VMT and climate change sequestration impacts. TDRs are also in principle a key way to redress the diminution in property values outside of UGAs associated with the adoption of GMA. Many jurisdictions in Washington have experimented with various forms of TDR programs. In recent years, Cascade Land Conservancy, a nonprofit organization, has focused on working throughout the state to refine the TDR tool and apply it in a wide variety of communities in Washington. The state legislature has monitored and supported these efforts. CTED over the last year has been working with CLC on developing model TDR programs.

With the adoption of the 2008 state climate change laws, 2009 is an opportune time to invite jurisdictions throughout the state to review and adopt an appropriate form of TDR program for their jurisdiction as part of the GMA planning process. Successful TDR programs accomplish the twin state goals of promoting carbon sequestration outside urban growth areas (UGAs") and reducing VMTs statewide through achieving more compact urban development.

I include in this memo at Attachment A an outline of a specific TDR proposal developed by CLC for discussion at the LUCC as one of our GMA amendments. It is very much a draft, and for discussion purposes only. It is designed in a manner which seeks to

recognize and support the very different local conditions and market factors. While mandating the requirement for participating jurisdictions to engage in some form of a TDR program, the emphasis is on local choices and a flexible structure. We suggest the state legislature and CTED continue to monitor over two years the effectiveness and on-the-ground results of whatever form of TDR programs are adopted.

**C. Financing Needed Infrastructure to Create Successful and Sustainable Cities.**

As noted above, if we cannot as a LUCC come up with a way to pay for increased levels of planning, SEPA analysis and infrastructure and services needed to make cities work, it is unlikely the efforts of the LUCC and CAT will lead to effective legislation or materially impact VMTs or global warming. Many good minds and groups are grappling in one way or another with this fundamental challenge. Some hold out hope that auction revenue from a future “cap and trade” system will create a significant new and logical source of funding. Others call for reprioritizing access to existing public funding sources at the state and regional levels (see some ideas in this memorandum). Still others are developing new ways to leverage the anticipated future increase in compact sustainable development, through some combination of latecomer fees, legal tax-increment financing and other measures. Innovative new ways of using existing revenue sources such as utility taxes and stormwater fees could also possibly help fund the climate change initiatives.

Any funding package must be fair and logical. The LUCC perhaps can add value to this issue by working to first quantify what added costs may be associated with any GMA amendments it is considering. If feasible, it might then put on the table a range of specific funding strategies which might be considered to fund any new costs proposed. In doing so, it must resist the temptation to simply have private development fund any added costs, as this will simply remove any incentive for developers to invest and take risks in building in more compact and sustainable communities. On the other hand, providing developers with clear and predictable incentives for helping with public infrastructure and planning costs would be a feasible part of an overall strategy.

The state budget funds a wide array of needs each year. In the last year, some state laws provide that the economic, environmental and social threats posed by climate change trends are such that as a state we must take comprehensive measures in all areas to meet the greenhouse gas and VMT goals adopted now as state law. If this is true, two steps that might be helpful in prioritizing use of state funds would be: 1) a state law that requires that all expenditures of state funds must comport with the priorities set to ensure the state meets its climate change goals; and 2) require the adoption of some form of a GMA comprehensive plan by the state itself, which would also help to establish priorities for state actions and expenditure of funds.

**D. Essential Public Facilities: Steps to Consider to Helping Better Ensure that Planned and Funded Regional Infrastructure is Available When Needed.**

The GMA legislation adopted in 1990-91 made some real progress in recognizing the issues associated with siting essential public facilities or “EPFs”. Section 200 of the statute (Chapter 36.70A RCW) and the associated CTED regulations provide local jurisdictions and the GMA Hearing Boards with some guidance. This has made it possible for jurisdictions in which EPFs are proposed to both mitigate to some extent EPFs but also provide them with the ability to site in optimal locations. However, we need to do a better job in ensuring regional and state EPFs are in place when and where needed. Other regions around the country and world do a far more effective job in this regard, and our failure to do so is affecting our competitiveness as a region and state. Enclosed below at Attachment B is a more detailed description of the limits of existing law and an outline of possible ways to improve on our current GMA provisions. The permitting of EPFs must balance the twin goals of providing needed state and regional (as well as local) infrastructure when and where needed, but also do so in a way that provides reasonable mitigation to affected communities. Perhaps an ad hoc working sub-group of the LUCC can focus on this and any other EPF proposals and report back at our next session with specific recommendations.

## ATTACHMENT A – OUTLINE OF TDR PROPOSAL

**Note: the following TDR outline has been developed by staff at Cascade Land Conservancy, in consultation with other individuals and organizations. It is very much a draft document, for discussion purposes only. I am discussing a few components with CLC at present. However, it is a good outline for purposes of stimulating LUCC discussion. Both CLC and I intend to get additional input from LUCC members and stakeholders prior to our next LUCC meeting.**

**DRAFT:**

### **Overview: The TDR Legislation's Substantive Requirements**

The legislation requires all jurisdictions in Puget Sound Regional Council association of governments to:

- Develop a transfer of development rights program from a TDR program menu.
- Accommodate 10% of new housing units through TDR.
- For all TDR receiving area, the local jurisdiction shall either 1) exempt TDR receiving areas from SEPA/EIS analysis as authorized under state law or 2) complete a SEPA/EIS analysis at the policy level of the maximum build-out scenario.

The legislation requires Washington State to:

- Create TDR model ordinances.
- Prioritize access to state-based infrastructure funding for jurisdictions with TDR programs that conserve resource lands.
- Fund and prioritize access to the Planning and Environmental Review Fund (PERF) for SEPA/EIS analyses in TDR receiving areas.
- Provide funding to jurisdictions for SEPA/EIS analyses in TDR receiving areas.
- Prioritize state Recreation and Conservation Office (RCO) funding for jurisdictions with TDR programs that conserve resource lands.

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### **Proposed Legislative Framework**

#### **Trigger**

- All jurisdictions in the PSRC association of governments shall adopt a TDR program from a TDR program menu within three years of the effective date of this bill or the jurisdiction's next comprehensive plan update, whichever comes first.
- In adopting a TDR program, the TDR program must be consistent with the jurisdiction's comprehensive plan and development regulations.
- Jurisdictions outside of the PSRC planning region are encouraged to develop TDR programs.

## **10% of a jurisdiction's projected housing units shall be accommodated through TDR**

- Jurisdictions in the PSRC association of governments shall use TDR to accommodate 10% of their projected housing units.
- To accommodate 10% of each jurisdiction's projected housing units through TDR, the jurisdiction shall create TDR receiving areas. Each receiving area shall have a TDR zoning overlay that defines what development is allowed without TDR by right and what development is allowed with TDR by right.
- This chapter is not intended to change how counties and cities allocate population numbers since population projections are not placed on GMA resource lands.

## **TDR program menus:**

- Jurisdictions shall choose from and adopt at least one of the following TDR menus.
- Within six months of the enactment of this legislation, CTED shall contract with a qualified land trust to develop model ordinances for each of the following menus.
- Regardless of which menu is adopted, each jurisdiction (not the state, PSRC, or a land trust) shall determine where TDR sending and receiving sites are located. Jurisdictions are encouraged to accept development rights from all sending sites in the PSRC region.
- Each jurisdiction shall determine the appropriate TDR transaction mechanisms. Jurisdictions are encouraged to create flexibility in the TDR marketplace by authorizing private party transactions and a municipal TDR bank. To promote marketplace flexibility, the jurisdiction is encouraged to authorize the TDR bank to sell TDR credits and accept in-lieu fees if the bank does not have enough TDR credits to meet demand. Payment of in-lieu fees to a municipal TDR bank does not offend RCW 82.02.020 if the bank uses the payment to acquire additional TDR credits from resource lands.

### ***City/Urban Growth Area TDR Menus:***

#### **City/UGA Option One<sup>2</sup>**

Sending Site: Determined by city

Receiving Site: A TDR credit authorizes increased FAR base and/or additional height in TDR receiving sites.

#### **City /UGA Option Two<sup>3</sup>**

Sending Site: Determined by city

Receiving Site: The city creates a planned action ordinance for a receiving area. The planned action ordinance authorizes allowed base density without TDR and additional allowed density with TDR. The planned action's upfront SEPA/EIS analysis addresses the maximum build-out allowed with TDR.

#### **City/UGA Option Three<sup>4</sup>**

Sending Site: Determined by city

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<sup>2</sup> This approach has been used in the King County-City of Seattle TDR program since 2000, in San Francisco, CA since 1985, and in Cambria, San Luis Obispo County, CA since the mid-1980s.

<sup>3</sup> This approach has been used in Calvert County, MD since 1978, Denver, CO since 1982, and Palm Beach County, FL since 1989.

<sup>4</sup> The City of Tacoma, WA is considering this approach.

Receiving Site: A TDR credit authorizes “use” flexibility (e.g. allow flexibility of use within mixed-use buildings. For example, code requires a six story building has three floors of commercial and three floors of residential. A TDR credit would allow use flexibility by allowing one floor of commercial and five floors of residential).

**City/UGA Option Four<sup>5</sup>**

Sending Site: Determined by city

Receiving Site: A TDR credit increases the amount of allowed impervious surface (e.g. parking, warehouses, etc.)

**City/UGA Option Five<sup>6</sup>**

Sending Site: Determined by county

Receiving Site: A TDR credit increases base density to a density that supports transit (12du/acre).

**City/UGA Option Six**

Sending Site: Determined by city

Receiving Site: The city develops a TDR receiving site(s) that advance the city’s planning goals. The program may include some, all, or none of the items contained in the above menus.

\*\* For each city menu, the city is encouraged to place an appropriate cap on the amount of bonus available through TDR.

***County TDR Menus:***

**County Option One**

Sending Site: Determined by county

Receiving Site: The county creates a planned action ordinance for an unincorporated receiving area. The planned action ordinance authorizes allowed density without TDR and allowed density with TDR. The planned action’s upfront SEPA/EIS analysis addresses the maximum build-out allowed with TDR.

**County Option Two<sup>7</sup>**

Sending Site: Determined by county

Receiving Site: The county allows increased residential density inside master planned resorts, fully contained communities, and/or planned unit developments.

**County Option Three<sup>8</sup>**

Sending Site: Determined by county

Receiving Site: Any increase in residential density beyond the density authorized under current zoning requires TDR credits.

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<sup>5</sup> This approach has been used in Austin, TX since 1981, Redmond, WA since 1995, and Snohomish County, WA since 2007.

<sup>6</sup> This approach is used in King County, WA

<sup>7</sup> This approach is being considered in Kittitas County, WA.

<sup>8</sup> This approach is used in Montgomery County, Maryland, the New Jersey Pinelands, and Pierce County, WA.

### **County Option Four**

Sending Site: Determined by county

Receiving Site: The county develops TDR receiving site(s) that advances the county's planning goals. The program may include some, all, or none of the items contained in the above menus.

\*\* For each county menu, the county is encouraged to place an appropriate cap on the amount of bonus available through TDR

### **SEPA/EIS requirements in TDR receiving areas**

For all TDR receiving areas, the local jurisdiction shall either 1) exempt TDR receiving areas from SEPA/EIS analysis as authorized under state law<sup>9</sup> or 2) complete SEPA/EIS analysis of the maximum build-out scenario at the policy level.

The legislature shall fund and CTED shall prioritize access to the Planning and Environmental Review Fund (PERF) for jurisdictions conducting SEPA/EIS analyses in TDR receiving areas.

Cities are authorized to charge a late-comers fee to developers in the receiving area. The late-comers fee charged to the developer is to be proportional to the SEPA/EIS costs accrued by the jurisdiction in completing a SEPA/EIS analysis of the receiving area.

### **Incentives for cities and developers**

Cities that develop TDR programs that *result in the conservation of farm and forest land located outside the city's boundaries* and in the unincorporated county shall receive:

- Priority access to state-based infrastructure funding
  - Top tier access shall be given to TDR receiving sites in regional growth centers as defined by PSRC.
  - Second tier access shall be given to TDR cities.
- Priority access to state-based clean technology incentives
- Priority access to the Planning and Environmental Review Fund (PERF) for SEPA/EIS analyses in TDR receiving areas.
- Priority access to RCO funding.

Cities located outside the PSRC region that develop TDR programs that *result in the conservation of resource lands located outside the city's boundaries* are eligible and on equal footing to receiving the incentives listed above.

### **Incentives for counties to develop robust TDR programs**

Counties that coordinate TDR program development with cities shall receive:

- Priority access to the Planning and Environmental Review Fund (PERF) for SEPA/EIS analyses in TDR receiving areas.

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<sup>9</sup> It is expected that the CAT SEPA committee will recommend SEPA exemptions for development that has a net positive impact on climate stabilization and meets additional criteria to be determined by the CAT SEPA committee.

- Priority access to RCO funding.

### **Monitoring TDR**

- CTED shall track TDR program development and report back to legislature in 2013. The report shall include an analysis of TDR programs developed, challenges to developing TDR programs and benefits achieved through TDR.

**Note: Consider expanding jurisdictions required to plan with TDR from PSRC region (King, Kitsap, Pierce, Snohomish) to Buildable Lands Counties (King, Kitsap, Pierce, Snohomish, Thurston, Clark. *See, RCW 36.70A.125*).**

## **ATTACHMENT B – OUTLINE OF PROPOSAL TO SIMPLIFY EPF SITING PROCESS**

### **An Opportunity For Reducing Greenhouse Gas Emissions and Dependence on Foreign Oil (Carbon Fuel Use) through simplifying Essential Public Facility (“EPF”) process**

#### **A. Context**

- Delay in process results in increased congestion/air quality i.e. 520, 405, I-5
- Delay in siting all EPFs (i.e. Brightwater, regional transportation systems) tends to slow move from sprawl to compact urban development, and thus promote VMTs
- Larger cities with insufficient infrastructure will not be as economically competitive or as successful in attracting our citizens to live there, thus leading to a perpetuation of sprawl and VMTs
- We are not getting regional and state EPFs sited as soon as needed. They are built only after long local process, lots of prolonged litigation, such as 3<sup>rd</sup> Runway and Brightwater projects. Our competition around the nation and world is way ahead of us in funding and timely siting of key infrastructure (ULI)
- Local EPF regulations all too often do not accomplish goal of expediting EPF
- GMA goal of channeling future growth into UGAs is not well-served by insufficient infrastructure, and runs risk of more sprawl and development outside of UGAs
- Current CTED guidelines do not have teeth, and are not used in an effective manner by some locals --- they can be a tool more for delay than expediting, and would benefit from careful review.
- The present regulatory system for EPFs is not working and needs to be fixed. Aside from the general prohibition on the preclusion of the siting of EPFs in GMA, section 200, GMA provides little guidance and is mainly a source of confusion. I.e., do local governments in their required EPF provisions have to allow the siting of EPFs as a matter of right or merely set up a process for the regulation of EPFs. As we have seen, most local governments assume the latter and have more burdensome processes for EPFs than non-EPF development.

The ambivalence in existing law and the intergovernmental conflict over specific major projects demonstrates that the politics are extremely difficult.

One possible solution would be to direct CTED to revise EPF Procedural Criteria. This might be relatively easy to do politically. The CTED Procedural Criteria do not have legal effect, except perhaps persuasive in courts. GMA could be amended,

perhaps just .200, to give the CTED provisions legal effect and perhaps include a model or required local EPF Ordinance.

One of the fundamental problems is that state law does not distinguish and separately address practically important EPF issues. State law must distinguish clearly among: (1) state, regional, and local EPFs; (2) government-sponsored and privately-sponsored EPFs; (3) government-sponsored EPFs where the sponsor and host jurisdiction are (a) the same, and (b) different. Any ambitious reforms of EPF siting must address all of these categories.

SEPA reform is important as part of the solution, both in terms of providing more specifically what the EIS or Checklist must address and time limits for preparation. Administrative review should be specifically limited or eliminated and expedited, if it is allowed. The law should be clarified so that only one administrative SEPA appeal is allowed for a given EPF. Any additional SEPA review would have to be in court, directly to Court of Appeals (COA) on expedited basis and consolidated with any other challenges of the EPF approval.

Other potential SEPA reforms (since SEPA provides primary bases for challenge and delay) would be modification/clarification of lead agency provisions for the various categories of EPFs, perhaps designating a state office/officer to hear SEPA administrative appeals for state and regional EPFs. There are some pointless provisions that adversely affect siting of EPFs, such as provision for Planned Actions that excludes EPFs from eligibility. Why? EPFs would be absolutely appropriate candidates. The SEPA Rules on Phased EISs also could be clarified and made much more EPF-friendly.

Regarding the role of Examiners v. elected officials, we should discuss whether examiners should be limited to deciding quasi-judicial issues and not making or even recommending policy choices. E.g., Examiners should not have authority to even recommend the location for the siting of EPF unless very clear and near-quantifiable criteria have been adopted for the siting of EPF. Under those circumstances, the application of the criteria/standards would be quasi-judicial.

In cases of regional and state EPFs, regulation of siting should be preempted by state or regional commission. Such a reform might make more sense for host jurisdiction and neighboring communities if the state or regional commission also has authority/duty to mitigate/compensate for the impacts/costs incurred by the host jurisdiction, governed by adopted standards for such mitigation/compensation.

**B. Possible Legislative Fix to Facilitate Timely Siting of EPFs**

- Review state and local statutes and regulations and propose refinements where needed
- Specifically consider:
  - Revise CTED regs to give more teeth and make mandatory for local jurisdictions to adopt
  - Revise EPF statute RCW 36.70A.200 as needed to give more teeth, yet assure process to incorporate feasible mitigation and maybe give more mitigation to affected stakeholders. Specific process set forth below, and a fixed timeline, would be or could be included in statute
  - For all EPF projects, a uniform process, revising 36.70B as needed, could be like something like this:
    - EPF sponsor submits EPF application to local jurisdiction
    - Application to comply with all requirements of CTED regulations
    - SEPA review conducted on EPF proposal
    - Jurisdiction makes recommendation to local Hearing Examiner
    - After SEPA review complete, Quasi-judicial hearing conducted, with all weighing in, public process, etc. This is the time all make their record
    - Examiner closes hearing and record, and makes a recommendation or decision (depending on if it makes sense to have local legislative authority make decision)
    - OPTION: if Examiner makes a recommendation, then have local Council or County Commissioners make a closed record decision
    - After final local decision on EPF proposal, any appeal skips Superior Court (revising 36.70C as needed), and goes straight to Court of Appeals, if possible, on an expedited basis (revising RAP as needed)

*Land Use & Climate Change Advisory Committee*  
**Homework Assignment #2 Template**  
**Due July 21, 2008**

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Bill LaBorde, Environment Washington

***Homework item # 1. Of the ideas presented by LUCC members, identify five that you think have the most potential. At least two of the ideas should not be your own.***

**1. Direct CTED by December 2009 to adopt a model Climate Change element for local comprehensive plans and model implementing regulations.**  
(T. Washburn)

CTED also would provide SEPA analysis of the model plan element and development regulations that could be plugged-in to non project EISs by counties and cities. (This could be started by Executive Order, not requiring legislation.)

Jurisdictions which adopt the model performance standards into their plans and regulations would be provided a "safe harbor" from GMA Board appeals.

Incentives for jurisdictions which put in place the CTED model Plan and development regulation components could include priority access to the full variety of State infrastructure funds.

**2. Require and incent local and regional land use and transportation plans to address climate change, with accompanying analysis to show that proposed plans will achieve the state's adopted VMT reduction goals.**  
(Senator Marr, Mayor Munson, J. Tovar, others)

Cities and counties will soon begin updating GMA plans, with the first updates due in 2011; adding or changing a GMA goal to ensure these updates address climate change through land use location, proximity of jobs and housing, density, mixed use and supporting transportation choices is the most effective way to reduce the need for daily vehicle travel in the long term.

**3. Revise transportation and concurrency sections of the Growth Management Act to address moving people and goods, rather than vehicles, and to provide for the entire array of transportation choices, at least in larger jurisdictions.** (Senator Marr and Councilmember Harris)

**4. Retain forest and farmlands and urban area tree cover and open space to aid with carbon sequestration.** (J. Tovar, D. Wood, J. Weiss) The CAT interim report (2/08) indicates that saving trees, natural areas, working farms and forests can significantly reduced greenhouse gas in the atmosphere.

**5. Require RTPOs and Multicounty Planning Policies in the larger urban counties to focus on plans and policies that result in reduced VMTs.** (G. Adkins, J. Tovar, others) The most effective way to reduce the need for vehicle miles travelled, and subsequent ghg emissions, is to address the problem regionally in the most popular regions of the state.

*Homework item #2: As you look across all of the ideas provided, if you have an idea for a coherent policy package that links the ideas together, indicate what that package would be. This does not need to be limited or inclusive of your five ideas above.*

Directing and incenting local and regional land use and transportation plans to address state goals for VMT reduction and GHG reduction through changes to the GMA in 2009 combines many of the ideas that have been raised by LUCC committee members. This would include:

- a new or or modified GMA goal to reduce GHG and VMT
- CTED guidelines to create a model climate element that also provides a safe harbor so each jurisdiction doesn't need to individually respond to hearing boards appeals on climate change
- modified concurrency requirements to include multimodal transportation plans
- a new approach to state growth targets that addresses proximity of jobs and housing
- focus on promotion and funding for urban centers with efficient densities, and a mix of uses and housing for all incomes
- Prioritize existing state transportation and public works trust funds for projects that advance the state toward meeting ghg emission reductions and reduced oil dependence
- Pursue new funding sources that also send appropriate price signals to pay for additional transit service. Funding sources could include a carbon tax on liquid fuels, tolling revenue, or a mileage-based tax.

*Land Use & Climate Change Advisory Committee*  
**Homework Assignment #2 Template**  
**Due July 21, 2008**

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1. Of the ideas presented by LUCC members, identify five that you think have the most potential. At least two of the ideas should not be your own.
  - a) Retain natural resource land base by incentivizing those land uses. An independent task force/working group should be created by the legislature to answer the question of how those land uses should be incentivized.
  - b) Provide incentives for developers who want to invest and build in urban centers
  - c) Use TDRs to reduce sprawl, promote carbon sequestration, and reduce vmt's
  - d) Increase availability of transportation alternatives to the single occupant vehicle.
  
2. As you look across all of the ideas provided, if you have an idea for a coherent policy package that links the ideas together, indicate what that package would be. This does not need to be limited or inclusive of your five ideas above.
  - a) retain resource lands
  - b) make it easier to develop inside UGA's
  - c) develop transportation options to single-occupancy-vehicles

*Land Use & Climate Change Advisory Committee*  
**Homework Assignment #2 Template**  
**Due July 21, 2008**

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1. Of the ideas presented by LUCC members, identify five that you think have the most potential. At least two of the ideas should not be your own.
  - Amend Countywide Planning Policies or Multicounty Planning Policies. Recognize the most effective and equitable way to coordinate and achieve greenhouse gas emission reductions is at the countywide or regional level. Recognize that the majority of emissions occur in the largest metropolitan region of the state and that stronger regional policies are necessary in that region to achieve significant success
  - Encourage compact, walkable, and transit oriented development with a mix of uses and densities that encourage walking, biking, and transit
  - Consider the use of new rail technologies that could use miles of existing railroad right of way for passenger service. Development around stations should be mixed-use transit oriented development
  - Establish vehicle miles traveled reduction goals in urban areas and explore strategies such as expansion of High Occupancy Vehicle and charges for Single Occupant Vehicle use in high-congestion corridors during peak times
  - Require substantial impact fees outside of urban growth areas
  - Consider how existing state funds and potential new state resources can be aligned to prioritize and reward jurisdictions that plan for significant density and that promote reduction of vehicle miles traveled by providing added infrastructure resources
  - Create a carbon tax
2. As you look across all of the ideas provided, if you have an idea for a coherent policy package that links the ideas together, indicate what that package would be. This does not need to be limited or inclusive of your five ideas above.

The theme needs to be accountability and responsibility. Many of the measures listed MIGHT reduce GHGs, but probably won't. A number tinker around the margins of future development, but short of REQUIRING people to live in close proximity to their work (e.g. cannot buy into a town you don't work in, can't take a job in a town you don't live in, or keep your job if its transferred) but don't directly address GHGs. GMA doesn't work, either to curtail sprawl, assure infrastructure is available when needed, or necessarily promote mode shift. So:

- If a development had to contribute significantly to building the infrastructure it will drive demand for, then “sprawl” type development would become more expensive as external costs are internalized, and better market signals would be sent to consumers.
- Carbon taxes, and roadway pricing, would again start to internalize costs to the individual traveler, who could then make appropriate, responsible choices on travel times, amount, mode, routes etc. This would also tend to drive motive force change (travel isn’t evil per se from a GHG standpoint, but burning carbon inefficiently to do so is) for personal and commercial vehicles. Consumers could choose to trade off cheaper initial cost 20<sup>th</sup> century travel technology with high operating costs for newer 21<sup>st</sup> century less polluting, more expensive initially but less or comparable operating costs motive technology. And consumers could figure out the desirability of low initial cost suburban homes, against the cost of travel.
- Rewarding jurisdictions with access to state infrastructure funds would provide an incentive for responsible behavior, and make the community leadership accountable to the electorate if they make decisions that don’t make them competitive for funding.
- Making more modal choices available that provide efficient longer distance travel (e.g. heavy rail) would allow folks living in today’s development patterns with current jobs/housing imbalances to choose more efficient travel choices.